

TRANSITIONAL JUSTICE IN ALBANIA

A Compilation of Papers by Young
Albanian Researches



Organization for Security and
Co-operation in Europe
Presence in Albania



KONRAD
ADENAUER
STIFTUNG

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FOREWORD

In 2019 - as part of a broader effort to foster the conduct of research and critical inquiry in the field of transitional justice, enhance academic analysis and contribute to a better-informed public and academic discourse on how to deal with the past - the OSCE Presence in Albania in collaboration with Konrad- Adenauer-Stiftung supported the development and implementation of a research programme on Transitional Justice in Albania.

A number of young researchers were selected to embark on year-long studies on different topics of justice and transformation in Albania, including art during the communism time, lustration and vetting in the post-communist Albania, reparation of former political prisoners, etc.

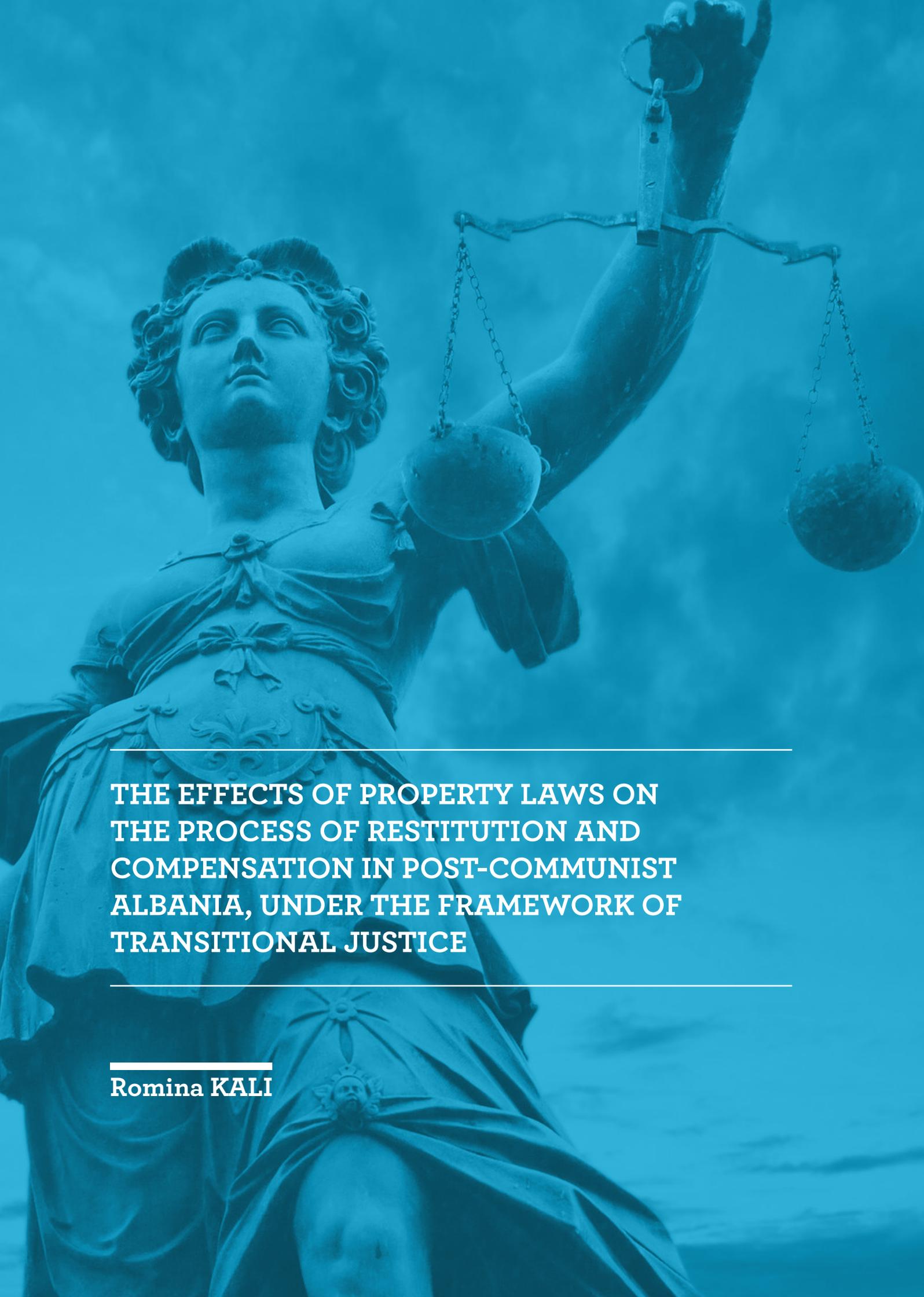
The Programme started with an intensive Autumn School in November 2018, which offered the researchers the necessary background on transitional justice methodologies, and was followed by continuous working on, and reshaping of the research topics based on literature review, collection and analysis of quantitative and qualitative data generated by State's archive databases, public discussions in the media, archives of non-governmental organizations in the country and interviews with victims and witnesses of the violations of human rights in communist time.

Under the guidance and support of highly regarded international and national experts, the researchers have been through a fascinating journey of learning and developing new skills on how to investigate Albania's communist past and its effects on the contemporary society.

The results of this intensive work were presented to an audience of young students of the University of Tirana in December 2019. The researchers had the opportunity to introduce their research concepts and findings to the students and engage in lively discussion on the current challenges in conducting research on transitional justice in Albania.

The present compilation marks the completion of the program and gathers the outcome of the research efforts. It contains the research papers received by 8th of November 2019.

This publication aims to promote the research on Albania's communist past and transitional justice processes, leading to a better-informed and facts-based discourse with a wider and multi-angle focus, to further enhance public information and knowledge about the country's Communist past, and to foster debate among students.



**THE EFFECTS OF PROPERTY LAWS ON
THE PROCESS OF RESTITUTION AND
COMPENSATION IN POST-COMMUNIST
ALBANIA, UNDER THE FRAMEWORK OF
TRANSITIONAL JUSTICE**

Romina KALI

ABSTRACT

This research aims to study the legal effects that were produced and continue to be produced by property laws on the process of restitution and compensation of properties in post-communist Albania, under the framework of transitional justice. These are the laws drafted after 1990, starting with Law 7501/1991 “On Land” and continuing with Law 7698/1993 “On the restitution and compensation of properties to former owners”, as amended and then repealed by other laws coming out. These laws were enacted with the aim of restoring property relations under and on the basis of respect for private property within democracy, the rule of law and human rights. However, what this paper aims to show is how important and effective these laws have been and still are in the transition of the post-communist Albania, how they achieved their purpose and how they affected the transitional justice process.

INTRODUCTION

Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution and facilitating initiatives in respect of the right to truth, delivering reparations, institutional reforms and national consultations.¹ It is the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation.² These goals continue with the establishment of accountable institutions established under the law that operate under it, restoring respect for the rule of law, restoring people’s trust in them and increasing access to justice for the most vulnerable in society.³ In a free and democratic social order, where human rights and freedoms are respected and the rule of law is the foundation of this society, property is considered one of the fundamental rights. Resolving property issues is a guarantee of remedying the injustices that were done during Albania’s communist regime between 1945 and 1990. Such a guarantee, could only be secured by respecting and protecting this right, and in particular, by restoring the injustices committed and by striving to avoid other injustices. The treatment of this problem must be guided by constitutional principles such as legal certainty, clarity of legislation, public interest, fair remuneration, as well as principles of justice, proportionality and the social state.

The right to property was one of the most violated rights during the communist system in Albania. During this period many initiatives were taken which amounted to legalized violations of property rights. Laws governing property ownership underwent radical changes and the non-existence of private property was constitutionally sanctioned. However, it was only after the fall of the communist system that they were declared illegal. In 1991, in order to remedy violations, several measures were taken consisting on the reparation of violations, restitution and compensation of property. However, the measures taken proved to be problematic, starting with Law 7501/1991 “On Land”, which was interpreted by the former owners, most of the Albanian society and even by the head of the political forces of that time⁴ as the law that brought all the problems that followed. It should be noted that this law was drafted and adopted by a pluralist parliament that still had the remnants of communism. This law resembled the agrarian reform and did not return the properties to former owners. Instead, it gave the land to those who used it, to the peasants. So, the correction seems to have begun with a new breach of property rights. Significant in giving positive effects to restitution and compensation laws, is the structure of the restitution process, how it is presented to individuals, how it is implemented, the legal

1. United Nations Approach to Transitional Justice Guidance Note of the Secretary-General. (March 2019). 2

2. United Nations Approach to Transitional Justice Guidance Note of the Secretary-General. (March 2019). 3.

3. <https://www.ictj.org/about>

4. Interview in the newspaper “Shekulli” with Mr. Sali Berisha, leader of the Democratic Party in the year when the law 7501 “On land” was adopted. 11.02.2014. <http://shekulli.com.al/40279/>

measures taken and changes in laws, transparency, information, reporting, interactions and institutional coordination, legal deadlines, grievances, effectiveness, enforceability and what the consequences are. Through these measures, former owners first and foremost, see how much effort society and their state is making to repair violations. The effects of legal restitution and compensation measures not only reflect the regulation of a past situation, but also convey to them the level and legal certainty they feel in the living system and the conviction that this system is built on such solid foundations as that what happened once will never happen again, history will not repeat itself.

This paper studies the effects that these measures brought, analyzing how and what kind of effects brought in a post-communist country like Albania. However, even today, after almost 30 years, addressing property violations is one of the most discussed issues in Albania. In order to explain to what extent this process took place in us, this study examines the effects brought by property laws that were passed after 1990'. Such study is very important in understanding how important these laws have been and continue to be. It aims to show that their response turns out to be great in many areas, such as the economy, foreign investment, justice, the work of competent institutions in the field of property, citizen relations, the increase of corruption, the principle of legal certainty, etc. The economic situation, social situation and the isolation of Albanians for almost 50 years has made the recovery even more difficult.

1.LITERATURE REVIEW

The legal framework of Albania's property institute has undergone major changes since the transition from communism to democracy in 1990.⁵ From the very beginning of the fall of communism and the establishment of democracy, Albania has gone through a process of reforms to property rights, including the restoration of private property, the principles of law, as well as legal initiatives to re-establish the rights of those who were unjustly expropriated during communism. However the concept of private property, although "revived" in Albania after the fall of communism, was done through a general but inconsistent⁶ privatization process. Going back in time to the communist system, under the 1976 Constitution⁷, the state was the sole owner of all real estate, excluding the possibility of private property. Private property was replaced by state property. Under communism, it was common for Central and Eastern European countries to confiscate property from one group without consent and without compensating and then transferring that property to another group.⁸ So, the governments had to determine how to address the property dispossession that had occurred during Communism.⁹

From 1991, the country began to enter in a transition period towards transforming Albania in a democratic country and centralized economy into a market oriented economy. One of the first steps in this direction was addressing property rights. Like some other communist states as Hungary, Czech Republic, Bulgaria, Latvia, Russia, Slovenia, etc., Albania as well has started the procedure of drafting new property laws since 1991. Thus, this was a positive development for the Albanian state. Drafting new property laws, on a democratic state, it represented a very important and hopeful initiative for Albania and especially for former owners. During this time, officials began the process of privatizing real estate, the transferring of state property into

5. The year 1990 is considered the first year of democracy, although the Democratic Party legally assumed power with the March 31, 1992 election.

6. World Bank Information Document. Second Edition. Report No.62519-AL. Governance in the protection of immovable property rights in Albania: an ongoing challenge. (April 2012).1

7. Law No.5506, dated 28.12.1976- Constitution of the Socialist People's Republic of Albania

8. "I call these actions property dispossession or property theft".Bernadette Atuahene, Property and Transitional Justice. 58 (UCLA L. Rev. Discourse 65. 2010.) 66

9. Bernadette Atuahene, Property and Transitional Justice. (58 UCLA L. Rev. Discourse 65 2010). 66.

private hands, instituting the restitution of property to former owners and private entities as well as providing compensation for non-restitution to former owners, in case of impossibility for property restitution. Compensation can be regarded as a form of correction of injustices done when there is no possibility to return the property. Compensation also represents a favorable solution that does not promote further disagreements. Going back to the purpose of transitional justice, the adjustment of the situation aims to prevent further injustices. Thus, compensation (which should be fair), can serve to regulate the situation of former owners but without affecting third parties who may in good faith have acquired their properties.

In the early 1990s, the restitution measures were adopted in many countries: under the so-called “restitution laws” (Albania, Bulgaria, Lithuania, and North Macedonia); under “rehabilitation laws” (the Czech Republic, Germany, Moldova, Russia, Slovakia and Ukraine) and under “property legislation” (Bulgaria, the Czech Republic, Estonia, Germany, and Slovenia).¹⁰ The majority of Eastern European countries implemented full compensation measure as for example in the Czech Republic and Slovakia.¹¹ Albania is also one of those countries seeking full compensation. Even though it has some similarities to the above states, it differs from some other countries such as Croatia, Lithuania, Serbia, Poland and Georgia, which do not recognize full compensation. These countries apply limitations to restitution and compensation based on the public interest and the proper functioning of the state; none of these countries recognizes the possibility of granting compensation equal to 100% of the estimated value of the lost property. Albania on the other hand, has always embraced full compensation as a starting point, without taking into account the real possibilities of the state budget and creating in this way unrealistic expectations.¹² Unlike Albania, which bases the compensation on value maps determined by the government, the mentioned countries use the market value as the basis for compensation, whereby using different methods to determine it. Albania has a difference with the Hungarian state regarding the compensation of former owners. In Hungary, the former owners obtained securities that they could use to buy property or other land. In Albania, the former owners were forbidden to acquire land. At first they received (partially) financial compensation. However, following mounting pressure from former owners, the Albanian government introduced legislation to compensate them with urban or coastal land.¹³ Very important to note is that the legal status of ownership at the beginning was an important factor that determined the restitution of property. In Romania and in other countries such as Poland and Hungary, individual property is not nationalized in the same extent as in Albania. So these countries, have partly allowed the individual property.¹⁴ As a result, properties that still had private property status, such as some agricultural assets, have been the subject of restitution in all Central and Eastern European countries. For Albania, as a country where everything was nationalized, would become more difficult. Other factors were added to this difficulty. Albania, as a less developed country from the economic, political, social and cultural view to undertake fundamental reforms towards market economy, appeared more differently than other countries in the post-transition as Hungary, the Czech Republic and Poland. There are other factors besides the legal status of property that have influenced the initiation and progress of the process such as historical factors, political will, economic and social status. In addition, Albania’s difficulties were further compounded by the frequent changes of property laws in the field of restitution and compensation and the adoption of new laws. According to Arjan Qafa, the frequent legal changes in the legal framework and legal packages, particularly that relating to land ownership, for its improvement, not only didn’t improve but on the contrary, it has further increased the degree of confusion. On the other hand, the frequent changes in

10. European Union.Council of Europe. Handbook on property rights..Effective Exercise of Property Restitution and Compensation Rights in Albania. (Tirana 2017). 108.

11. Florian Bjanku, Çeshtja e pronave në Shqipëri. (Gurten. Tiranë 2018)

12. European Commission.Report on the protection of property in Albania. (July 2017)

13. Florian Bjanku,Çeshtja e pronave në Shqipëri. (Gurten Tiranë, 2018) p.57-58.

14. Arjan Qafa, The issue of ownership during transition period in the former communist countries of Eastern Europe, as Poland, Hungary, Czech Republic and Albania. Academic Journal of Interdisciplinary Studies.(MCSE Publishing, Rome, Italy.Vol. 4. No 2. July 2015). 175

the legal framework in most of it did not leave enough time to evaluate the positive or negative effects of the implementation of this legal framework.¹⁵

Most of the problems which Albania currently faces in the field of property rights have their origin in the first laws adopted in the early 90's of the previous century¹⁶. Both the economy and institutions were "fragile" and it was easy to develop them on the shoulders of such problem as the issue of property restitution. As Aleks Luarasi wrote in "Legal and Institutional Reform in Albania after the Democratic Revolution" like other Eastern European countries, even Albania, with the launch of a democratic system, aimed at establishing a rule of law and respect for human rights. One of the main points of rebuilding a democratic state is the creation of new institutions. All the structures of the totalitarian state were demolished and new institutional structures took their place.¹⁷ However, the new institutions also had problems in their functioning, not having a positive impact on the development of a democratic Albania. According to Transitional Justice measures, institutional reform remains one of the key points in achieving its goals and the effectiveness of the measures taken. The establishment of steady and efficient institutions remains a sine-qua-non for the functioning of the legal state and pluralistic democracy in Albania.¹⁸ The major disadvantage of the legal reform has been the non-consistent application of law and democratic principles. There are many components that have contributed such as lack of democratic tradition, grave economic shortages, the old mentality of the customary law that do not coincide with the modern principles of right, etc. The major factor has been the weakness of the legal institutions and their ineffectiveness to apply this new system of law.¹⁹

Many laws emerged from 1991 onwards that were alleged to correct what had happened. This reform began with the Law 7491, dated 29.04.1991 "On the main constitutional provisions"²⁰, as amended, which brought about changes in the framework of the democratic organization of the state and played the role of a constitution (until the adoption of our Constitution of the Republic of Albania on 21 October 1998). Later, Law 7501 "On Land" was approved on July 19, 1991. It later proved to be one of the major obstacles to property restitution and compensation²¹ legislation. This law is today considered as the law that brought about all the legal, social, and inevitably political consequences and problems. It gave the lands of the former owners to the peasants who had worked them and who were not the real owners. In addition, not all these farmers were former owners, so they received someone else's land. This led to the creation of major conflicts in Albanian society, because the land was not divided as it had been before it was nationalized. Such conflicts were the first signs of injustices done to former owners. Furthermore, the conflicting claims, court procedures and inherent uncertainty impede the progress of the reform. Initially, the Albanian state distributed real estate property to its citizens regardless of the fact that the property might have been unjustly confiscated by the former regime. According to Swinnen, when talking about equality of pre-collectivization asset ownership, he explains that this determines the potential conflict between the objectives of "equity" and "historical justice". Empirical observations suggest that when social equity conflicted with historical justice, equity prevailed in the government's choice. He continues by explaining that more than half of the Albanian population active in agriculture and a highly unequal pre-reform land distribution, land restitution would have transferred most of the fertile land into the hands of a small group of families, leaving the bulk of rural households without land. Instead, the government decided to distribute the land to rural households because the prime importance of the land issue for

15. Arjan Qafa, The issue of ownership during transition period in the former communist countries of Eastern Europe, as Poland, Hungary, Czech Republic and Albania. *Academic Journal of Interdisciplinary Studies*. (MCSER Publishing, Rome, Italy, Vol. 4. No 2. July 2015). 181

16. European Commission. Report on the protection of property in Albania. (July 2017). 1

17. Aleks Luarasi, Legal and institutional reform in Albania after the democratic revolution. (1991 - 1997). 33.

18. Aleks Luarasi, Legal and Institutional Reform in Albania after the Democratic Revolution. (1991 - 1997). 33

19. Aleks Luarasi, Legal and institutional reform in Albania after the democratic revolution. (1991 - 1997). 49.

20. Law nr.7491 dt.29.04.1991 "On the main constitutional provisions", as amended by Law No.7561 dated .29.04.1992 "For some changes and additions to the Law No.7491 dated .29.04.1991 "On the main constitutional provisions".

21. Interviews with lawyers. April-May.2019

the large number of rural voters was more important (politically) than the large vested interests and lower collective action costs of fewer former landlords.²² These reforms made the problem of restitution and compensation even more complex, a situation that the 1998²³ Constitution acknowledged and sought to address.²⁴ Like any beginning, the beginning of reforms in Albania was difficult, especially when it came to repairing something that was badly damaged. However, as it was perceived by international actors over time, legislation on private property began wrong in post-communist Albania. The constitutional right to private property was detailed in Law 7512/1991.²⁵

Regarding the restitution and compensation process, initially, the restitution process was initiated by Law no. 7698/1993 “On the Restitution and Compensation of Property to Former Owners”. According to this law, the parties were not entitled to appeal against the decision of the competent administrative commission to a higher authority. This law has been amended many times. There was no provision in this law regarding the deadline to seek restitution/compensation of property²⁶, which changed into law over the years.²⁷ However, it was criticized for being complicated, partly open to interpretation as well as leaving discretion to the Committee of Restitution and Compensation of Properties.²⁸ According to the description given to the nature of the first law on property restitution and compensation in our country, the European Parliament Study²⁹ states this law was adopted after some earlier reforms of 1991³⁰ and 1992³¹, and as stated above, the state distributed real estate property to citizens, regardless of the fact that the property in question could have been unjustly confiscated by the former regime.³² As predicted by the European Parliament Study, the legal framework for ownership of the property restitution and compensation process did not produce the desired results.³³ The results of these years and the prolongation of a process beyond expectations are a clear indication of the negative effects that property laws have had and speak of a low expectation to regulate the situation. They have had a significant impact on the Albanian transition process. There are ethical arguments that restitution demonstrates a commitment to human rights and property that spans generations and that restitution is necessary to restore the individual’s dignity and reinstate them in the social and economic life.³⁴

22. Johan F.M Swinnen, *Transition from Collective farms to individual Tenures in Central and Eastern Europe*. (2001). 354

23. The Constitution of the Republic of Albania, which abrogated the “Main Constitutional Provisions” of 1991.

24. European Parliament. Directorate-General For Internal Policies. Policy Department.Citizens’Rights and Constitutional Affairs. *Private properties issues following the change of political regime in former socialist or communist countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia*.Study.(2010). 39.

25. European Parliament.Directorate General External Policies of the Union.*Property Restitution in Albania*. Briefing Paper. (September 2008).2

26. European Union.Council of Europe. Handbook on propertyrights..*Effective Exercise of Property Restitution and Compensation Rights in Albania*. (Tirana.2017) 103

27. By law no. 7698/1993 buildings and land were treated. Meanwhile, law no. 7699, dated 21.04.1993 “On the Compensation in Value or Lands of Former Owners of Agricultural Land, Meadows and Pastures”, through which the field of immovable property was expanded, which would be subject to the to the category of former owners, who were affected by the agrarian reform of 1945, compensation which would be in value or in land.

28. European Parliament. Directorate General External Policies of the Union.*Property Restitution in Albania*. Briefing Paper. (September 2008). 3.

29. European Parliament.Directorate General External Policies of the Union.*Property Restitution in Albania*. Briefing Paper. (September 2008). 2

30. Law 7501/1991 “On the Land”; Law 7512/1991 “On the Regulation and Protection of Private Property, Free Initiative, Private and Independent Activity, and Privatization”. (amended).

31. Law 7652/1992 “On the Privatization of State Housing”.

32. European Parliament. Directorate-General For Internal Policies. Policy Department.Citizens’Rights and Constitutional Affairs. *Private properties issues following the change of political regime in former socialist or communist countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia*.Study. (2010). 39-40

33. European Parliament. Directorate-General For Internal Policies. Policy Department.Citizens’Rights and Constitutional Affairs. *Private properties issues following the change of political regime in former socialist or communist countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia*.Study. (2010). 35.

34. Tom Allen, *Restitution and Transitional Justice in the European Court of Human Rights*.(13 Colum.J. Eur. L. 1 2006). 5.

As for the concept of restitution, according to Tom Allen in “Restitution and Transitional Justice in the European Court of Human Rights”³⁵, in the opinion of some jurists, restitution may jeopardize and undermine the values and condition of a market economy and they are not convinced that the restitution of property can resolve the issue but risks on aggravating it. The rest, however, consider this reason over the restitution of properties exaggerated. They believe, on the contrary, in the idea that opening up the issues of the past can help and serve as an example to strengthen the state of right and the rule of law. So, the restitution of properties is always directly related to the effects they give and therefore the thought can be ambiguous because there is the fear of a negative effect that can be caused in society. The repair of the situation in Albania was severely hampered and damaged over the years by the state party because the “original properties”³⁶, which were foreseen to be returned to the owners in 1993 after being in the state property fund, or were held without legal reason by others were transferred by laws, without remuneration, or against minimum remuneration to third parties.³⁷ Of course, this is a misguided course that in time would have consequences.

Restitution and compensation of owners expropriated during the communist regime has already taken an international dimension. Albania became a member of the Council of Europe in October 1996. As a result, it ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. Once a Contracting State, having ratified the ECHR including Protocol No. 1 enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol 1 for persons satisfying the requirements for entitlement.³⁸ Nevertheless, the permanent dilemma has been whether this article serves as a protector of the right to property and its restitution. The Council of Europe was created with the aim of protecting Western States from the spread of communism and shortly thereafter established the ECHR. The idea that this Convention and its articles protect the property that is in the owner’s name and not the property taken away by the owner and its restitution is upheld. The view has always been mixed that in no case does this Convention express property restitution but at the same time speaks of a peaceful enjoyment of the right to property that the individual has and enjoys. The former owners meanwhile claim that they continue to be owners and it is also widely accepted that the acquisition of property during the communist system was made in an unacceptable form by a democratic and respectful human rights system.³⁹ Although property was taken on a legal basis and based on the laws of the time, as the laws were totally contrary to democratic principles and human rights, they lead us to the challenge of considering them legally ineffective.⁴⁰ This leads us to the idea that they never ceased to be owners and this article protects them with the idea of the right to the peaceful enjoyment of their property. However, according to Tom Allen, the situation seems to have changed after the entry of the former communist states into the Council of Europe. According to him, it seems that the situation was not the same for the restitution of property in the case of Nazi occupation or of people deprived of their land and property. It seems that this situation changed with the entry of the communist states into the Council of Europe with the thought of what effects the return of property would have on these states. However, this article protects property rights and justifies expropriation solely on the basis of the public interest and the principle of proportionality.⁴¹ It is more important to note,

35. Indeed, the Court has gone as far as declaring that property rights that were not legally extinguished, but became impossible to exercise under the old regime, are no longer worthy of recognition under human rights law.” Tom Allen, *Restitution and Transitional Justice in the European Court of Human Rights*. (13 Colum.J. Eur. L. 1 2006).13.

36. The term “original owners” and “original property” - used by the European Court of Human Rights.

37. Bledar Abdurrahmani, *Kompensimi i pronës në Shqipëri, sfidë për të drejtat e njeriut*. (November.2014). 39

38. European Union.Council of Europe. *Handbook on property rights.Effective Exercise of Property Restitution and Compensation Rights in Albania*. (Tirana 2017). 98

39. It is alleged that the property was not taken away. So they never ceased to be owners, but only withdrew their right to own the property.

40. Tom Allen, *Restitution and Transitional Justice in the European Court of Human Rights*. (2006). 10

41. The European Court has largely respected the principle of proportionality, rather than legality, in most expropriation cases where states have found violations of Article 1 of Protocol 1, and in cases where third parties reside in the claimed properties.

in respect of transitional justice, that restitution in addition to the material side is needed to restore dignity and to reinstate victims as full participants in the social, political and economic life of the community.⁴² However, with regard to this treatment, it should be noted that the issue of restitution and compensation has had other points of view when it comes to dealing with the concept and the issue. According to Article 26⁴³ of the International Covenant on Civil and Political Rights⁴⁴, restitution is regarded as an affirmation of discrimination (according to the content of this article), as discrimination of an old regime that is still going on.⁴⁵

In 2004⁴⁶, the new law “On the restitution and compensation of property”⁴⁷ was adopted. ⁴⁸ It repealed the 1993 law. This law brought some innovations and resembled a more “advanced” law than the 1993 law. It already included in its content the public interest, fair remuneration and expanded means of property compensation. For the first time the Albanian state was seeking to establish a compensation fund and the restitution of property was not limited in size. The compensation law, introduced in 2004, which specifically targeted compensation for expropriations made after 1944, made the compensation process even more confusing.⁴⁹ Although the adoption of the new law was welcomed, its implementation has received widespread criticism.⁵⁰

Incomplete legislation, unstable case laws and a lack of coherence made this process not only delayed, but also failed to deliver the required results. The need to give a final settlement to the landlord’s report on the expropriated property led to the drafting and adoption of Law 133/2015, which undertakes to give a final settlement, within the time limits set out in this law, to the compensation of former owners.⁵¹ Referring to the ECHR, the Case of “Manushaqe Puto etc. vs. Albania” and the recommendations of this Court, Law 133/2015 was adopted creating a compensation mechanism that will strike a fair balance between the rights of former providers and the public interest.⁵² According to the 2016 Venice Commission Report, the existence of an up-to-date legal framework for return and compensation⁵³ beyond bad administrative practices

42. Tom Allen, *Restitution and Transitional Justice in the European Court of Human Rights*. (2006). 9

43. Article 26 “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

44. International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

45. Tom Allen, “Restitution and Transitional Justice in the European Court of Human Rights”.(2006). 25

46. This law has been subjected several times to the constitutionality test by the Constitutional Court of the Republic of Albania, respectively under Decision no. 26/2005 on the repeal as unconstitutional of Article 9 of Law No. 9235, dated 29.07.2004, “On Restitution and Compensation of Property”; Decision no.30 / 2005 on the repeal as incompatible with the Constitution of the Republic of Albania of Articles 3.2, 3.5, 5, 6.1, 6.2, 7, 8.2, 8.3, 8.4, 9 and 13.2 of Law no. 9235, dated 29.07.2004 “On restitution and compensation of property”; Decision no. 43/2011 on the repeal, as incompatible with the Constitution of the Republic of Albania, of Law No. 10308, amending Law No. 9235 “On Restitution and Compensation of Property”.

47. Law 9235/2004 “On the restitution and compensation of property”

48. “Parliament passed a bill in 2004 on property restitution and compensation for pre-Communist property owners. The opposition did not take part in the vote.”

Freedom House.Report for Albania.2005 <https://freedomhouse.org/report/freedom-world/2005/albania>.

49. European Parliament. Directorate-General For Internal Policies. Policy Department.Citizens’Rights and Constitutional Affairs. Private properties issues following the change of political regime in former socialist or communist countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia.Study.(2010) 35.

50. European Parliament. Directorate-General For Internal Policies. Policy Department.Citizens’Rights and Constitutional Affairs. Private properties issues following the change of political regime in former socialist or communist countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia. Study. (2010).35

51. <https://rm.coe.int/commentary-on-law-on-treatment-of-property-alb-/168094784a>

52. The authorities were forced, in the context of a European Court pilot decision, to establish a mechanism for the restitution and compensation of property, which should ensure: the avoidance of constant legislative changes; the making of accurate and reliable information available and carefully analyze all legal and financial implications; the creation of satisfactory remedies and avoid unfavorable procedural criteria; complete transparency and effectiveness in the decision-making process; realistic mandatory legal deadlines and sufficient financial and human resources; the increase of the burden on illegal owners seeking to legalize property rights on former-owners and state-owned properties; the establishment of a transparent and effective system of real estate registration; extensive public discussions.

53. European Commission for democracy through law (Venice Commission). Albania. Law no.133/2915 “On the treatment of property and finalization of the process of compensation of property and explanatory memorandum and report on the law (Explanatory report). Opinion NO.861/2016. Strasbourg, 4 August 2016.

is characterized by deficiencies that run counter to the principles of legal certainty, equality, proportionality, lack of effective enforcement of the law, impossibility of timely response or non-execution decisions. The novelty of this law, which is still in force today, is that it created a new scheme. Under this scheme there is no return but only compensation. The competent institution handling this case was changed again by the transfer from the Property Restitution and Compensation Agency to the Property Treatment Agency.

2.METHODOLOGY

The methodology used for this research is based primarily on laws and bylaws adopted in the property legal reforms framework with the object of restitution and compensation; national strategies and action plans; progress reports and reports of various institutions like Ombudsman, European Commission, World Bank, US Department of State, Freedom House; decisions of the European Court of Human Rights; Albanian and foreign literature. Interviews and meetings with lawyers and former owners were also used to measure the effects of these laws. Another methodology used for this research paper was an online survey designed to measure these effects and their impact on citizens, whether they are former owners or not. The survey was submitted online and was anonymous. Being online has made it easily accessible, not only in the city of Shkodra, but in all of Albania. This survey is completed by 274 people, from different cities of Albania, different ages ranging from 25 years old to 65 years old and more, from different professions, from different economic classes, from former owners and non-former owners. It has best served to measure the effectiveness these laws have had on the people, how the citizens they perceived these laws and their effects.

3. DATA ANALYSIS

3.1 From a non-existent status of private property under the communist regime, following the major transformations of 1991 to the establishment of the democratic system, the property issue was significantly affected.⁵⁴ The Albanian transition has a great deal to do with the long-lasting property issue. According to the survey, the question of whether the property issue is a cause for continued transition in Albania, resulted that most of them answered “Yes”.

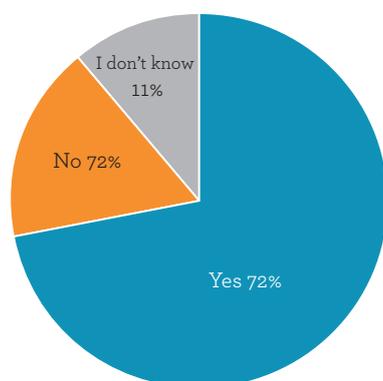


Chart 1

The chart reflects the responses of the respondents to the question whether the property issue is the reason for the ongoing transition in Albania.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

As for the property reform, the first law that brought about many debates and great impacts, whose effects are still felt, is the Law 7501 “On Land”. It is considered the law that brought about

54. Cross-Strategyfor Property Rights Reform 2012-2020.Page 8.

the problems that followed and are still present. It is claimed and defended by former owners who were affected by this law, as well as by many lawyers, that this law had political orientations and political intentions⁵⁵. The idea is that such law was made to favor peasants who were not landowners, because they wanted to use that situation for political purposes⁵⁶, thereby harming former owners and penalizing them for it. Also, according to the developed survey, the majority of respondents stated that the first property laws had political intentions, more than they intended to restore violated rights.

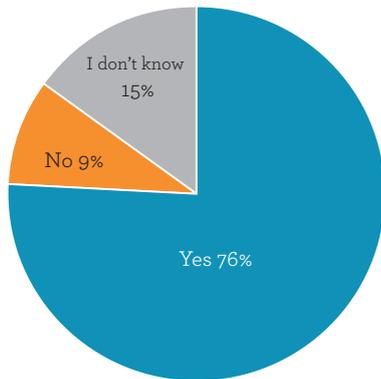


Chart 2

The chart reflects the answers of the respondents to the question whether the first property laws had a political purpose, rather than restoring property rights.

Source: Survey developed on the effects of property laws on the restitution and compensation process in post-communist Albania, on the Albanian transition. 2019

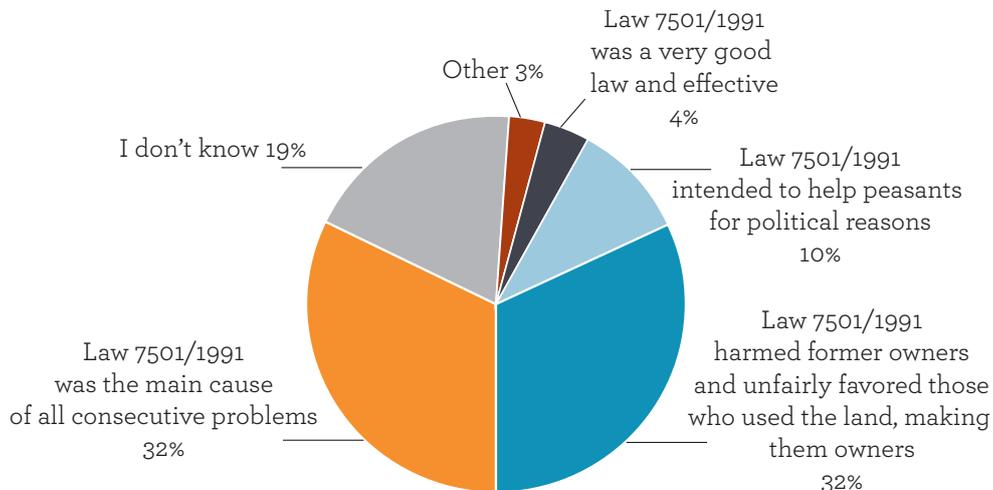


Chart 3

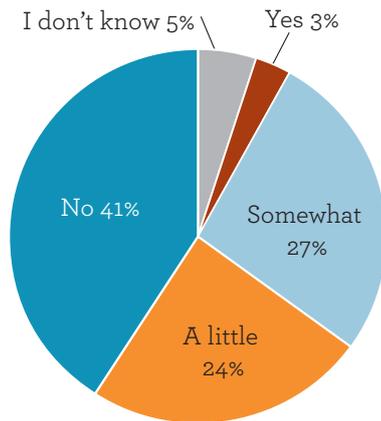
The chart shows the replies of the respondents as to how they thought about Law 7501 “On Land”.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019.

With regard to the assessment of the legal measures taken within the framework of property reform with the advent of the democratic system and whether or not the Albanian citizens are satisfied with the legal measures taken, according to the survey, the following chart showed:

55. Interviews with lawyers and former owners. April-May 2019

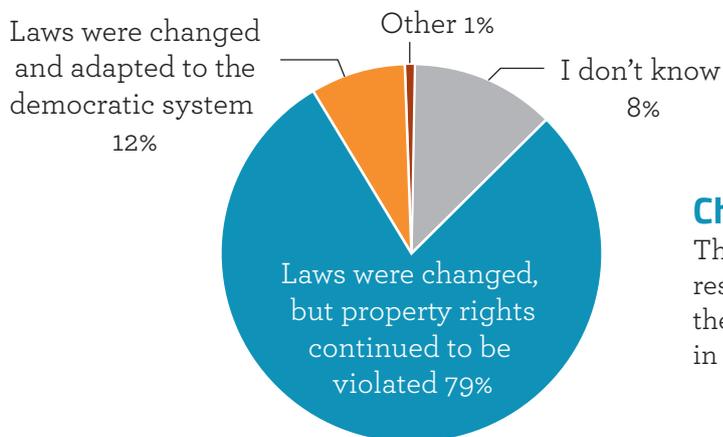
56. Results of open questions of the survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

**Chart 4**

The chart reflects the answers of the respondents to the question whether they are satisfied with the legal measures taken to regulate the property issues of restitution and compensation.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

According to the adopted laws, the state assumed the obligation to recognize, restate or compensate property to all expropriated entities during the communist regime, but today after 29 years it seems that a large proportion (including former owners and not) are not satisfied with the measures taken. From an analysis of the legislative history of property rights this strategy has found that the problem is complex and the laws adopted have been continuously amended and revised, bringing inevitable effects to the process and beyond. With the drafting of the first laws that came into force at the beginning of the democratic system, it was intended to give the required positive effect to the purpose of transitional justice.

**Chart 5**

The chart reflects the responses of the respondents to the question about how they perceived property developments in post-communist Albania.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

According to the findings of the developed survey, it appeared that property legal developments brought effects in different areas of life and society. An interesting finding is that the majority of respondents in the survey responded (based on the question of which areas were affected and to what extent) that the greatest impact these property problems had had were on the relationships between citizens.⁵⁷ The impact and effect that property issue causes, continue in various areas such as justice, economics⁵⁸, politics, citizen relations, Albania's reputation in the international arena, trust in state policies, the principle of legal certainty, the rise of financial bill of the Albania

57. The unresolved property issue - the cause of over 8,000 homicides in 20 years.

<https://www.dw.com/sq/bilanc-lufte-zgjidhja-e-konfliktit-t%C3%AB-pron%C3%ABs-n%C3%AB-shqip%C3%ABri/a-15473569><https://www.rtsh.al/lajme/shkoder-konfliktet-e-pronave-dhe-gjykatat/>

58. 52.55% said that the Albanian economy was badly damaged and 78.47% said that foreign investment was greatly affected by property problems in Albania.

State, the work of competent institutions and the public interest.

3.2 The legitimacy and effectiveness of measures in the context of transitional justice are key points in realizing the steps and goals outlined above. Citizens’ legal certainty about the state and the laws it drafts is the foundation of a healthy society where people do not feel threatened by the laws of their state. Reforms and laws are not enough, but they must be well-drafted, accurate, clear, free of political interference, impartial, and well-implemented. These laws, which, by “falling prey” to frequent legislative changes, have contributed to the creation of non-uniform executive and judicial practices⁵⁹ and have further aggravated the situation. Ensuring the enforceability of various laws and legislative measures, the effectiveness and the results they deliver, are all indicative of a fulfilled purpose.

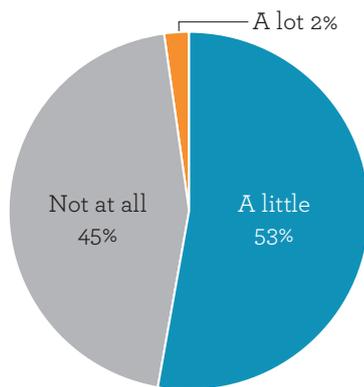


Chart 6

The chart reflects the responses of the respondents to the survey on how secure they feel in today’s property laws (legal security principle).

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

The results of the survey show that they do not feel secure before such a legal situation. In the meantime, another factor that we need to be clear about, is the restoration of a social order where former owners feel that their society is respecting their rights. It is questionable whether former owners should be called victims, given that victims are perceived as individuals who were interned, imprisoned or killed by this system. However, seen from a broader perspective, even former owners are victims of an illegal act that caused great problems and suffering in their lives, the consequences of which are felt by their heirs today. The above is also confirmed by the UN Declaration on the Right to Restitution for Victims of Gross Human Rights Violations. It defines “victims” as persons whom, “as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms [...], individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of the person’s fundamental legal rights. A “victim” may also be a dependent or a member of the immediate family or household of the direct victims as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm.⁶⁰

When talking about measures, their effects on society, we need to keep in mind the whole society’s awareness of this issue, because their positive effectiveness is increased, measures are more easily implemented, dignity is more easily repaired and property right holders are more secure in the society where they live. The purpose of restitution⁶¹ in any transitional society is not only the return of property to the owner but also the restoration of the dignity of people’s part of human rights violations and their reintegration into society as equal citizens.⁶²

59. Cross-sectorial strategy for property rights reform.2012-2020. Page 9.

60. United Nations, General Assembly Resolution 60/147, 16 December 2005.

61. As one of the measures of transitional justice.

62. “One of the primary goals of Transitional Justice is Recognition of the dignity of victims of human rights violations as citizens and human rights bearers”.

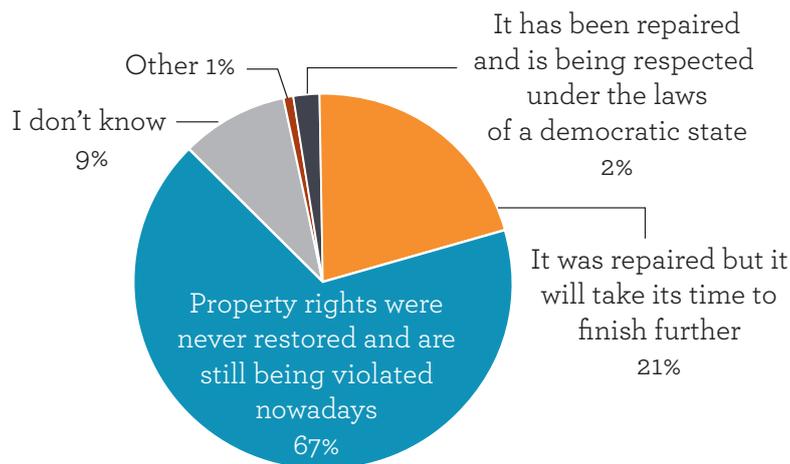


Chart 7

The chart reflects the answers to the question of how many citizens think that property rights have been rehabilitated today. As it can be seen, most feel that this right has never been restored and is being violated nowadays too.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

3.3 The institutional reform is one of the strongest points of transitional justice and the foundation of the rule of law. Institutional reform and the adoption of new laws on a democratic basis, are the assurance of the non-repetition of the past.⁶³ After the establishment of the democratic system, the establishment of institutions that would operate under democratic laws began. The change of the economic system, from a centralized economy to a market economy, led to the creation of real estate markets, which represented the transfer of rights from one owner to another. Thus, with the change of the economic system began the restoration of private property, the change of ownership regime, civil circulation and the alienation of assets. However, for such markets to function, privatization is needed. On the other hand, privatization alone is not enough for markets to function. Potential real estate buyers must be able to identify the real owners because the real owner is the one who enjoys the legal right to sell, rent, mortgage, make gifts and inherit. This has a profound effect on economic development and especially on the promotion of foreign investment. As a result, this provides legal certainty for both owners and buyers.⁶⁴ In 1991, major steps had to be taken to create a unified and effective real estate registration institution. However, having a modern system could not be done so simply without creating a legal framework for promoting and directing the land market so that transactions can be carried out easily and for the whole society⁶⁵. So, it had to go hand in hand with the drafting and promulgation of property laws and the creation of institutions that would have such powers, according to the law. According to the European Commission's 2010 Analytical Report, legislation has often been piecemeal and uncoordinated, creating a very complex legal framework, the legitimacy and justice of which is often challenged by stakeholders. As evidenced by reports from the European Commission⁶⁶, the US State Department⁶⁷ and the World Bank, difficulties are compounded by

Paul Seils, The Place of Reconciliation in Transitional Justice Conceptions and Misconceptions.(June 2017).2. .2.<https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>

63. "Redress may take a variety of forms, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition". Guidance Note of the Secretary-General. United Nations Approach to Transitional Justice. (March 2010).8-9

64. Obtained material from the official website of the former Real Estate Registration Office, which has now become part of the State Cadaster Agency.<http://www.zrpp.gov.al>

65. <http://www.zrpp.gov.al>(It was the official website of the Real Estate Registration Office, today turned to the State Cadaster Agency)

66. European Commission Report. Property rights remain weak; damaging investment potential as well as economic activity as well as lack of sustainable ownership impedes economic development and enhances corrupt practices. (2005). 30

67. Reports on Human Rights. 2009-2017.

the uncoordinated work of the institutions, often ineffective and sometimes overlapping with the work of institutions, a malfunctioning land registration system, and widespread corruption.⁶⁸ This report goes on to express concern that Albanian courts are overwhelmed with property disputes that often permeate all instances of judgment, sometimes several times. Coordination of institutions has been a problem frequently dealt with in European Commission reports. For this very purpose, the State Cadaster Agency (2018) has been created, which aims to eliminate problems such as coordination of institutions, by merging the Real Estate Registration Office and the Agency of Legalization, Urbanization, and Integration of Informal Areas/Buildings. This law is expected to bring about the positive effects and the purpose for which it was created.

3.4 The economy. According to Tom Allen⁶⁹ the biggest fear when talking about restitution in Central and Eastern European countries was exactly the fact that it would have a huge impact on the economy, of the countries where the measures would be taken. The drafting of new laws and institutional reforms has gradually brought many effects, both positive and negative, in many areas of life. Unresolved chronic disputes and legal uncertainty over property titles, hampered economic and land market development, curbed investment, and especially foreign ones, jeopardized citizens' confidence in democracy, overwhelmed the courts and above all did not repair the violated rights. The European Commission reports and the ECHR in the pilot judgment "Manushaqe Puto vs. Albania" emphasize how effective and how many legal and financial consequences the frequent changes to laws bring; therefore such thing should be avoided. One of the consequences of uncertainty over ownership of real estate property, delays in litigation and law enforcement weaknesses are detrimental to the business climate.⁷⁰ According to the 2018 report by Freedom House numerous property-restitution cases related to confiscations during the communist era remain unresolved. Illegal construction is a major problem, as is bribery linked to government approval of development projects.⁷¹ Albania needs to consolidate public finances and reduce the relatively high level of public debt, because the financial bill poses a heavy burden on the Albanian state. Despite the fact that formal foreign investment laws exist, insecure land ownership discourages investment in Albania. In general, unsustainable land management and poor enforcement of property rights represent major obstacles for companies, farms and households to enter the labor market. This has direct consequences not only on land ownership but also on income generation and the frequency of poverty.⁷² The dynamics of the current development of the Albanian economy and society necessitate the completion of this process and the consolidation of property rights and other rights deriving from it.⁷³ The economy is considered the most closely related area of property rights. According to David Leblang in "Property Rights, Democracy and Economic Growth", the direct link between the economy and property is seen at the right of owners to enjoy the item, use it and make it part of the public/civil circulation. So the right to own, rent, sell, etc., has a direct effect on the economy. If we draw a parallel between the right to property in a communist system and the economy in a democratic system, we can freely realize that the existence of a private property can bring a wider development to economy and its prosperity, and its non-existence can bring the contrary because economic development it is deeply concentrated in one hand, the state's hand. According to this author, growth rates differ according to the regime type and nations that protect property rights grow faster than nations that do not protect them.

<https://2009-2017.state.gov/j/drl/rls/hrrpt/humanrightsreport//index.htm#wrapper>

<https://al.usembassy.gov/wp-content/uploads/sites/140/2019-English-HRR.pdf>

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68. The coordination of institutions today was thought to be systematized through Law 111/2018, "On Cadaster". This law regulates the public immovable property registration service, the organization of the institution responsible for this service and the manner of administering the cadaster, as a public register of immovable property.

69. Tom Allen, "Restitution and Transitional Justice in the European Court of Human Rights".2006.

70. European Commission Progress Report on Albania. 2013. 16

71. <https://freedomhouse.org/report/freedom-world/2018/albania> 2018 Report for Albania

72. <http://documents.worldbank.org/curated/en/845701468189564365/pdf/98254ALBANIAN-CAS-P147570-PUBLIC-box393168B.pdf>

73. <https://rm.coe.int/commentary-on-law-on-treatment-of-property-alb-/168094784a>

3.5 Corruption is also a major problem caused in the property processes, but there is an interrelation between them. This implies that corruption has affected the property issue⁷⁴ and properties have significantly increased the incidence of illegal practices as well as increased corruption.⁷⁵ The fight against corruption is one of the five recommendations that our country is advised to pursue with priority in the country's European integration process. Regarding this problematic issue for the Albanian state, the charts below show how Albanians think about the impact of corruption on property and corruption. As can be seen, the majority is said to have a very large impact on both cases.

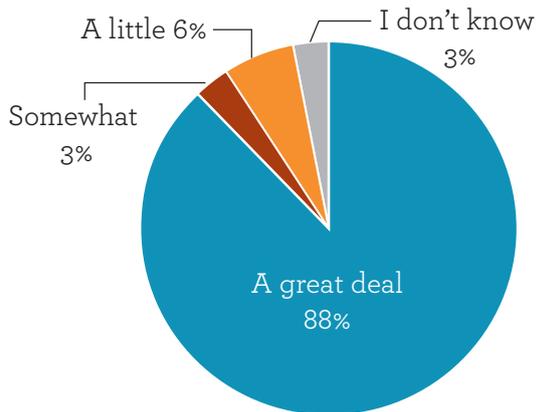


Chart 8

The chart reflects the responses of the respondents to the question whether the unresolved property issue has contributed to the further development of corruption.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

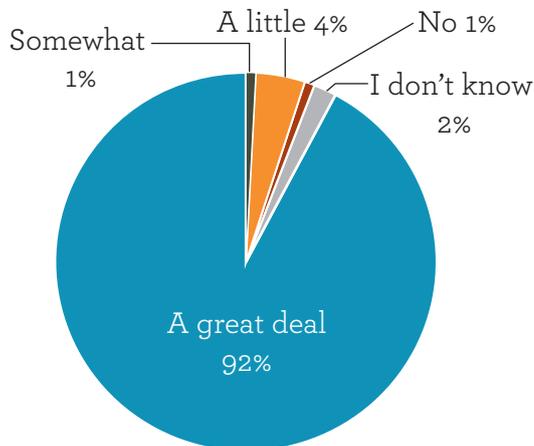


Chart 9

The chart reflects the responses of the respondents to the question whether corruption and illegal practices have affected the unresolved and prolonged property issue.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

3.6 Political will and Albania's European path. Many years have passed since the first laws focused on restitution and compensation were drafted, but today this issue remains as challenging for the state and society as it has been since day one.

74. This is due to cumbersome property registration procedures and poor enforcement of immovable property rights, which are also subject to corrupt practices (ICS 2016).

<https://www.ganintegrity.com/portal/country-profiles/albania/>

75. Cross-cutting strategy against corruption 2015-2020. March 2015

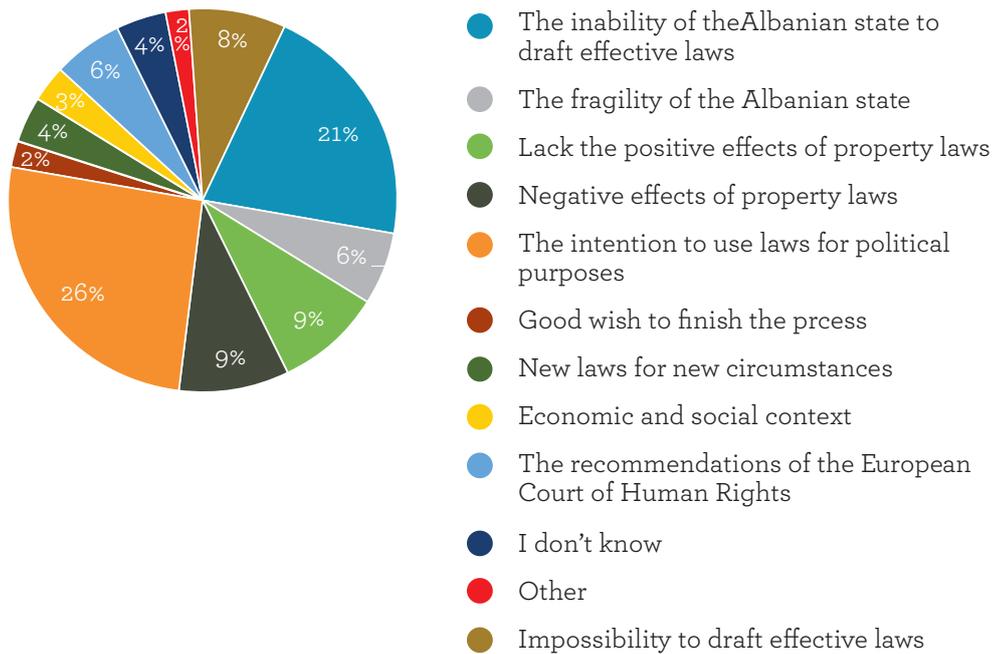


Chart 10

The following chart shows the results of the survey question on the causes that the laws were changed and new compensation laws and schemes were adopted.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

Obviously, the intention to use these laws for political purposes and the inability to draft new laws prevailed as to why the laws were changed and why new laws were drafted. However, at the same time, what strikes the most is that the less expressed response is the good will to complete the process, which shows how much trust citizens have in the process and in the political will to have it solved. The development of property reforms is not only about drafting laws but also about correcting policies. Hayami (1991) argues that using simple, transparent and uniform rules and limiting the scope for discretionary government involvement in implementation are two key variables in a successful land reform. Furthermore, we need to emphasize that it is the direct responsibility of the political will and the work of governments to design and implement property policies. However, there is still a real chance that before the reforms are finished, or even well under way, the government is replaced by another which may be less supportive and this may directly affect the continuity of property policies. As far as political will is concerned, the regulation of the property issue inevitably depends on it and on the ability to exercise and serve the consensus of other political actors.⁷⁶ The effects of the property reform also extend beyond the national sphere, in the European sphere and wider. Albania's accession to the European Union is an area that is deeply affected by the effects of the property issue. From 2003 to 2009, all European Commission Delegation Progress Reports strongly criticized the lack of compliance with constitutional provisions regarding the return of private property.⁷⁷ Reports of the European Commission have repeatedly identified that the property problem is affecting Albania's accession process. According to a European Parliament inquiry in September 2008 on the process of property restitution in Albania, it was concluded that the legal situation governing real estate property in Albania was very complex. The provisions of the applicable compensation laws and administrative procedures had proved to be unsatisfactory by the time that the study

76. European Parliament. Directorate General External Policies of the Union. Property Restitution in Albania. Briefing Paper. (September 2008). 1-2.

77. Commission of European Communities. Albania, Stabilization and Association. Report 2003, Brussels, COM(2003) 139 final, 26.03.2003. http://ec.europa.eu/enlargement/pdf/albania/com03_339_en.pdf

was completed. Albania had acted inefficiently with regard to the necessary creation of the administrative infrastructure set out in the relevant legal acts. The protection of human rights, the legal state and the functioning of a market economy capable of withstanding competitive pressures in the European internal market are among the key criteria for EU membership.⁷⁸ This also demonstrates the importance of the effects and impacts of property rights on the development and continuity of Albanian state policies. The problems of our legislation have often been reflected in the European Commission's progress reports and analytical reports, considering property rights and property issues as a whole major problem affecting the legal side and of course our social life. Priority when discussing those responsible for carrying out reforms to correct violations is given due importance to the political will to resolve the issue. Political will and a proper planning constitute the first structure when seeking to develop certain measures, whether legal, institutional, social, economic or whatever, with the primary aim of correcting the past and ensuring non-repetition. When that political will is lacking, victims will face a long and often difficult road to redress.⁷⁹

3.7 The systematic problem of non-enforcement of final court decisions as well as administrative decisions, ordering the restitution of property or compensation to former owners is a serious concern. This problem especially in cases of lawsuits against the state, has always been particularly worrying. It has been found to be a violation, together with the violation of the right to property under Article 1 of Protocol 1 to the ECHR.⁸⁰ These have been caused, by the bailiffs' inefficiency in enforcing the judicial decision, the lack of necessary funds and the lack of an effective compensation system. However, since the introduction of the private offices' service, the enforcement of court decisions has improved.⁸¹ The analysis put forward by the European Commission Reports concludes that the situation in Albania has reached a level of complexity that in some cases calls into question the principle of respect for human rights. The implementation of laws and enforcement of court decisions is one of the points where the procedures for restitution and compensation are most obstructed. By law, execution represents the last link of a completed case, its implementation. If a decision, whether administrative or judicial, is taken but not enforced, then what is the value and how much does it bring, how much is the right restored in this case. The fines that the ECtHR has ruled for violations of the Albanian state, for violating property rights, for problems with enforcement in addition to finding this problem, have also increased the financial bill charged of the Albanian state.⁸² Delays in the execution of the judgments of the ECtHR continued to be a problem, in particular with regard to property rights, court proceedings and the right to a fair trial. The Court considers that non-enforcement of the final decisions constitutes an interference with the complainant's right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 of the European Convention on Human Rights.⁸³

3.8 One of biggest effects of the Law no. 9482, dated 3.04. 2006 "On legalisation, urban planning and integration of unauthorised buildings" is the huge financial bill, the heavy burden which the ECtHR recommends to be as high as possible in favor of those who occupy state-owned or third-party properties.

78. European Commission. Opinion on Albania's Application for Membership of the European Union). Brussels, 9 November 2010: 6-8, 11;

79. International Center for transitional justice. Reparative Justice series. Reparations in Theory and Practice.13.

80. Referring to the case law of the European Court of Human Rights, *Beshiri v. Albania*, it is a concrete case where the ECtHR found that non-enforcement of domestic (administrative and judicial) decisions constituted a violation of the right to property protected by Article 1 of the Protocol. No.1.

81. European Commission Report on Albania.2019<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>

82. European Commission Progress Report on Albania. 2013.8

83. Xhezair Zaganjori. Arta Vorpsi. Denar Biba, Parime Kushtetuese dhe të drejta themelore në jurisprudencën e Gjykatës Kushtetuese. 385.

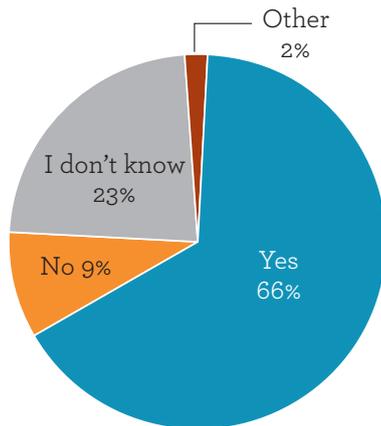


Chart 11

As to the question whether this law infringes again the property rights of former owners, the answer is as follows. 66.42% responded with YES.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

According to the Venice Commission's Opinion⁸⁴ what is first analyzed in this law, in its entirety, is its compliance with and respect for Article 1 of Protocol 1 to the ECHR.⁸⁵ What also needs to be paid attention is the effort of not violating a right by trying to fix another one. This commission emphasizes the importance of a fair balance between the public interest and the individual interests of the one who is infringed on property rights. According to the Constitution of the Republic of Albania⁸⁶, human rights restrictions are permitted only when made by law and in the protection of public interests and the protection of the rights of others. However, this must always be in proportion with the situation that dictates it. So, the principle of public interest and the principle of proportionality are principles that must necessarily be applied in such a case as legalization. After this law came out, according to this opinion issued shortly one year after (2007), it was pointed out that in the case of the legalization law it can be argued that the solution provided by this law does not bring a fair balance, since the interests of the former-property owners have been set aside, as opposed to the interests of those who have built illegal buildings. In a developed state, with a consolidated tradition of respect for human rights and the rule of law, such a solution would be difficult to accept. So it seems that their opinion has been significantly influenced by the Albanian context, but on the other hand, it is widely accepted that such practice is difficult to apply in a state that respects human rights. Legalization came as a result of the state's attempt to resolve the situation by adapting to the inevitable circumstances of the country. In fact, even the Venice Commission (2007) recognizes that when a law tries to regulate social unrest, it can be considered as a legal reason even though it may have other consequences, but it cannot reach a definitive decision that it indeed calmed these social unrests, what is more, in a proportionate way. Returning to the public interest and the common good, as recognized by the Constitution, not only ours, but many of the world's constitutions, as well as international human rights instruments, this interest should not be confused or interpreted as such when it comes to the interests of private persons.⁸⁷ According to the US Supreme Court's approach, an individual's property cannot be taken away for the benefit of another private person

84. European Commission for democracy through Law. (Venice Commission). Amicus curiae Opinion On the land on legalization, urban planning and integration of unauthorized buildings of the Republic of Albania. Opinion no.433.2007. (Strasbourg 18 June 2007)

85. The Convention was ratified by the Albanian state in 1996. Law No. 8137, dated 31.07.1996 "On the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms".

86. Related Articles of Property and Expropriation.

87. 91 According to the case James and others v. The United Kingdom paragraph 40.

The court agrees with the applicants that a deprivation of property affected for no reason other than to confer a private benefit on a private party cannot be "in the public interest". Nonetheless, the compulsory transfer of property from one individual to another way, depending upon the circumstances, constitute a legitimate means for promoting the public interests. In this connection even where the texts in force employ expressions like "for the public use", no common principle can be identified in the constitutions, legislation and case-law of the Contracting States that would warrant understanding the notion of public interest as outlawing compulsory

without the justification of a public purpose, although compensation may be paid.

Recent developments. In the European Commission Reports, in the last two years, it has been emphasized that progress should be made in the area of property rights by updating current legislation and strengthening institutional coordination. According to European Commission's 2018 report, Albania was required to take effective measures to strengthen the protection of human rights, among them the most important and priority for resolution, property rights⁸⁸. In addition, the European Commission's 2019 report identifies the need for continued efforts to consolidate human rights and follows on with the same demand as in the previous year. Property rights, according to this report, still need to be improved, to improve the legal framework for registration, expropriation and compensation.. According to this report, there are 572 unresolved cases before the ECtHR, most of which are related to property and due process in property cases. On September 20, 2018, the Committee of Ministers of the Council of Europe issued a resolution in which decided to close the monitoring of the cases of the Driza group and Manushaqe Puto⁸⁹. Prior to the creation of the State Cadaster Agency, the Property Treatment Agency handled 3,000 claims during 2018, with 6 950 still pending.⁹⁰

Finally, regarding the effectiveness and trust of the citizens as for when this issue will end, unfortunately most people think that it will never end. This is a clear indicator to understand the negative effects that this property reform has created in the thoughts of the citizens of the Albanian state.

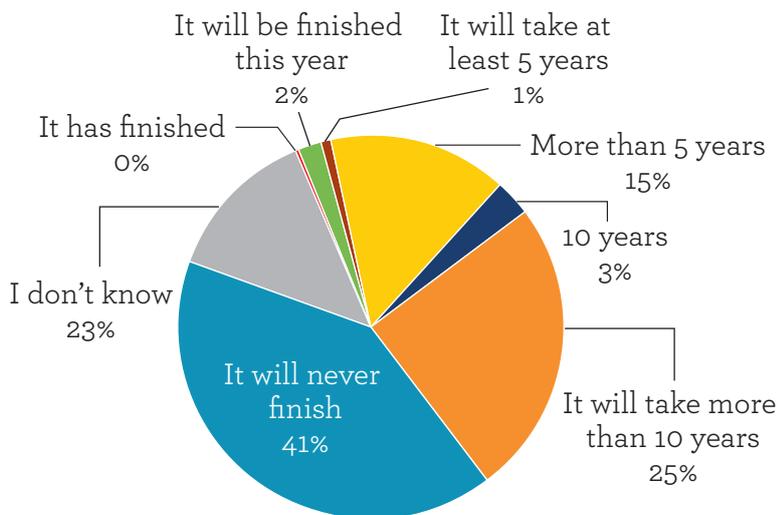


Chart 12

This chart presents the results when asking citizens what they thought when the property issue (restitution) would be over.

Source: Survey developed on the effects of property laws on the return and compensation process in post-communist Albania, on the Albanian transition. 2019

transfer between private parties

88. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf> Commission Staff Working Document. Albania 2018. Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2018 Communication on EU Enlargement Policy

89. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d646f

90. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf> Commission Staff Working Document. Albania 2019. Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019 Communication on EU Enlargement Policy

CONCLUSIONS

After studying the effects of the property laws of the restitution and compensation process it turned out that they have had numerous impacts in almost all areas of life. Thus, it was found that the issue of restitution and compensation constitute a cause for transition in Albania. In these terms, this process is interpreted as a slow, fictitious process made for political matters, even as a failed one. Property laws are considered as laws that were used by politics to exploit the situation for such interests and therefore most perceive them as laws that were not intended to repair the legal situation and restore rights, but rather political purposes. The dissatisfaction was largely over the legal measures taken with regard to property rights, noting here the Law 7501/1991 'On Land' as the initiator of the problems that followed. Dissatisfaction with property laws was proved to be great and this was not only expressed by former owners or otherwise legitimate owners, but also by those who did not enjoy this status but who clearly emphasized the effects that this issue has had on the life of former owners and the whole Albanian society. Thus, the effects continue with the conviction created by most of the Albanian citizens that those laws never corrected the situation, but it continued to be vulnerable and it is still a problem nowadays. According to the findings, it is considered a non-transparent, distorted, undemocratic, bureaucratic process, characterized by some ineffective laws, corruption and ambiguity. Regarding the Albanian transition, it turned out that corruption was one of the main causes that prevented Albania from consolidating and overcoming the transition, followed by economic problems and inefficiency of laws.

This research shows that if we would have had better laws and better functioning of institutions, the situation would have been different and not so problematic after almost 30 years of democracy. The issues that were most affected were the efficient functioning of competent institutions and relations between citizens, followed by the damage of the economy and obstruction of foreign investment, a major impact in the field of justice, the increase in the Albanian state's financial bill and the violation of principle of legal certainty.

Among the conclusions of this research, is the consideration of the law on legalization as a law that has violated property rights. In the interviews taken, as well as in the conducted survey, followed by reports on this law, it is acknowledged that it violated the former owner's property rights. The justification has been to regulate the situation caused by the years of migration, but it has nevertheless brought about a recent damage to former owners, whose rights were set aside in comparison with the rights of those who built illegally on legal property of third parties (former owners).

The property issue brought to the citizens all kinds of effects, ranging from discontent, disagreement that resulted to even deeper conflicts between citizens, endless administrative and judicial issues, overload of institutions and inevitable financial effects in the Albanian state. Concerning the drafting of laws, the intention of the Albanian state to use the situation politically brought about the drafting of several laws one after another. Their frequent changes had profoundly affected the resolution of the situation and brought about a lack of clarity and had influenced the weakening of the legal certainty that Albanian citizens had over the laws of their state. This reason is followed by another reason that is the inability of the Albanian state in those years to draft new laws.

The issue of restitution and compensation of properties, for the European Union, it represents a failure to meet the criterias of integration. As reflected in the paper, the property issue, by affecting the legal side and almost all areas of life, has been treated as a cause to hinder Albania's path to European Union integration. This comes not only because property rights are one of the main human rights issues, but because their effects are so great that it is understood that

regulating them would bring many benefits on Albania's road to EU, and vice versa. Also, in order to make them more accessible, it is best to make laws and legal procedures more understandable and simplified for citizens. Good, enforceable, well-implemented laws and effective measures would avoid the judicial procedures that place so many burdens on institutions. In addition to the reforms being undertaken in the field of justice, the fight against corruption would greatly improve the work in the property issue.

So, in conclusion, the unresolved property issue in Albania points to a situation that has not been remedied and even over the years has had effects in many areas, with the impact inevitably felt. Numerous laws, change of institutions, lack of up to several years ago of electronic systems and registers of administrative and judicial decisions brought uncertainty and a profound lack of information. Such a situation has begun to be rectified but is necessary to avoid further legal changes and changes of institutions that work on property rights, as it will continue to become a source of further uncertainties and problems. We cannot say that nothing was accomplished, but the Albanian state must be careful about its activities in this field. Ownership problems and adverse effects are also acknowledged in the Albanian State's Cross-Sectorial Ownership Strategies, hoping that over the years this situation will be remedied.

BIBLIOGRAPHY

Literature

Abdurrahmani, Bledar. Kompensimi i pronës në Shqipëri, sfidë për të drejtat e njeriut.. November.2014.

Allen Tom. Restitution and Transitional Justice in the European Court of Human Rights.13 Colum.J. Eur. L. 1 2006.

Atuahene, Bernadette. Property and Transitional Justice. 58 UCLA L. Rev. Discourse 65. 2010.

Bjanku, Florian. Çeshtja e pronave në Shqipëri. Gurten Tiranë 2018.

Commission of European. Communities. Albania, Stabilization and Association.Report 2003,

Commission Staff Working Document. Albania 2019. Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2019 Communication on EU Enlargement Policy.

Commission Staff Working Document. Albania 2018 .Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2018 Communication on EU Enlargement Policy

Constitution of the Republic of Albania 1998, which abrogated the "Main Constitutional Provisions" of 1991.

Cross-cutting strategy against corruption 2015-2020.March 2015

Cross-sectorial strategy for property rights reform.2012-2020.

Decision Driza v. Albania, no. 33771/02, judgment of 13 November 2007, final decision on 2 June 2008.

Decision of Manushaqe Puto and Others v. Albania (Pilot judgment)

European Commission for democracy through Law. Venice Commission. Amicus curiae Opinion On the land on legalization, urban planning and integration of unauthorized buildings of the Republic of Albania. Opinion no.433.2007. Strasbourg 18 June 2007.

European commission for democracy through law. Venice Commission. Albania law no. 133/20 “On the treatment of property and finalization of the process of compensation of property and explanatory memorandum and report on the law (explanatory report)”.Opinion No. 861 / 2016. Strasbourg, 4 August 2016.

European Commission Progress Report on Albania. 2013.

European Commission Report on Albania.2019.

European Commission Report on Albania 2005.

European Commission. 2010. Albania 2010 Progress Report. Brussels, 9 November 2010.

European Parliament. Directorate-General For Internal Policies. Policy Department. Citizens’Rights and Constitutional Affairs. Private properties issues following the change of political regime in former socialist or communist countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia.Study. 2010.

European Union.Council of Europe. Handbook on property rights. Effective Exercise of Property Restitution and Compensation Rights in Albania. Tirana.2017.

European Commission.Opinion on Albania’s Application for Membership of the European Union. Brussels, 9 November 2010.

European Parliament. Directorate General External Policies of the Union.Property Restitution in Albania.Briefing Paper. September 2008.

European Commission for democracy through law (Venice Commission). Albania. Law no.133/2015 “On the treatment of property and finalization of the process of compensation of property and explanatory memorandum and report on the law (Explanatory report). Opinion NO.861/2016. Strasbourg, 4 August 2016.

European Commission. Report on the protection of property in Albania. July 2017

F.M Swinnen, Johan. Transition from Collective farms to individual Tenures in Central and Eastern Europe. 2001.

Freedom House. Report for Albania.2005

Freedom House. Report for Albania.2018

International center for transitional justice. Reparative Justice series. Reparations in Theory and Practice. Forms of reparations.

International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976.

Judgment of ECtHR, November 13, 2007. Application No. 38222/02, Ramadhi and Others v. Albania.

Law 7501/1991 “On the Land”;

Law 7512/1991 “On the Regulation and Protection of Private Property, Free Initiative, Private and Independent Activity, and Privatization”.

Law 7652/1992 “On the Privatization of State Housing”.

Law 7698/1993 “On the restitution and compensation of properties to former owners”.

Law No. 9235/2004 “On Restitution and Compensation of Property”;

Law no. 9482/2006 “On legalisation, urban planning and integration of unauthorised buildings
Law 111/2018, “On Cadaster”.

Law No.5506/1976- Constitution of the Socialist People’s Republic of Albania

Law nr.7491/1991 “On the main constitutional provisions”

Luarasi, Aleks. Legal and institutional reform in Albania after the democratic revolution.1991 – 1997.

Mëneri, Suela. Kthimi dhe kompensimi i pronave në perspektivën e drejtësisë së tranzicionit. “Avokatia” Magazine.

Qafa, Arjan. The issue of ownership during transition period in the former communist countries of Eastern Europe, as Poland, Hungary, Czech Republic and Albania. Academic Journal of Interdisciplinary Studies. MCSER Publishing, Rome, Italy. Vol. 4. No 2. July 2015.

Seils, Paul. The Place of Reconciliation in Transitional Justice Conceptions and Misconceptions. June 2017.

United Nations Approach to Transitional Justice Guidance Note of the Secretary-General. March 2019.

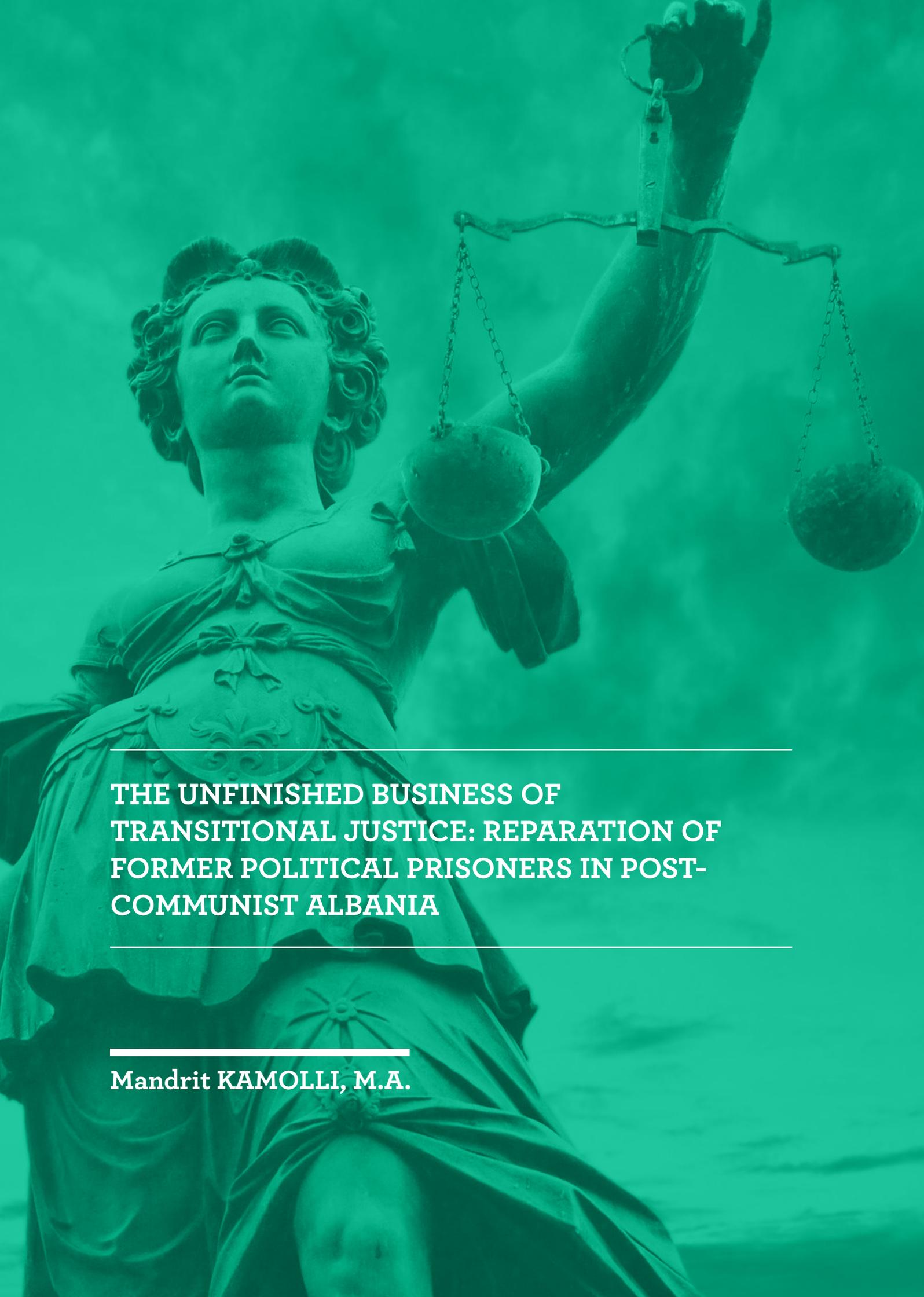
United Nations, General Assembly Resolution 60/147, 16 December 2005

World Bank Information Document. Second Edition. Report No.62519-AL. Governance in the protection of immovable property rights in Albania: an ongoing challenge. April 2012

Xhezair Zaganjori. Arta Vorpsi. Denar Biba. Parime Kushtetuese dhe të drejta themelore në jurisprudencën e Gjykatës Kushtetuese.. Adelprint, Tirana, 2012.

Internet Sites

<https://freedomhouse.org/report/freedom-world/2005/albania>.
<http://atp.gov.al>
<http://documents.worldbank.org/>
<http://shekulli.com.al/40279/>
<http://www.parlament.al/>
<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>
<https://freedomhouse.org/report/freedom-world/2018/albania>
<https://rm.coe.int/commentary-on-law-on-treatment-of-property-alb-/168094784a>
https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d646f
<https://www.ganintegrity.com/portal/country-profiles/albania/>
<https://www.ictj.org/about>
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
<http://www.zrpp.gov.al>
<https://www.ictj.org/sites/default/files/ICTJ-Briefing-Paper-Reconciliation-TJ-2017.pdf>
http://ec.europa.eu/enlargement/pdf/albania/com03_339_en.pdf



**THE UNFINISHED BUSINESS OF
TRANSITIONAL JUSTICE: REPARATION OF
FORMER POLITICAL PRISONERS IN POST-
COMMUNIST ALBANIA**

Mandrit KAMOLLI, M.A.

ABSTRACT

After the fall of the communist regime, Albanian authorities have adopted fragmented transitional justice measures including trials, compensation of victims, and access to secret police file. It is argued that measures to deal with the communist past in Albania have produced limited results because the process has been politicized and a lack of will to deal with the past has persisted. On the contrary there is an apathy and indifference to address the legacies of communist past. No research has been undertaken to study the reparation of former political prisoners as one the key pillars of transitional justice.

This research focuses on the reparation of former political prisoners in post-communist Albania. Through interviews with former political prisoners, this research tries to explore the victims' needs, the measure taken until now to repair victims and the future implication to address the victim's needs. The paper analyses the role that financial compensation, access to files, apology and forgiveness, justice and socio-political empowerment plays heal former political prisoners.

Keywords: Albania, transitional justice, former political prisoners, reparation, compensation, communism.

INTRODUCTION

*"Who controls the past controls the future,
who controls the present controls the past."*
George Orwell, '1984'

The last two decades of the 20th century are associated with historic changes when democratic movements around the world began to overthrow dictatorships and authoritarian regimes. More than 60 countries around the world started some form of democratic transition trend that political scientists defined as the 'third wave of democratization'.¹

Transitional justice (TJ) in practice and scholarly debates started to discuss the approaches these new democracies should take as Ruti Teitel asked the question 'How should [they] deal with their evil pasts?'.² She describes TJ as a field that explores the role of the law in periods of radical transformation particularly with a focus on legal responses and the concept of law and justice in the context of political transformation.³ The role that TJ plays in post-communist or post-conflict countries has been assessed in a wider context including also non-judicial means such as truth commissions, providing reparations to victims, and facilitating reconciliation processes.⁴ TJ is seen as a set of practices that are not only desirable but necessary to complete a transition from war or dictatorship to peace and democracy.⁵ Furthermore, it has been argued that TJ measures can work as catalysts during the regime change and regime consolidation periods to help build either exclusive autocratic societies or inclusive democratic ones.⁶

1. Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press, 1991)

2. Ruti Teitel, *Transitional Justice* (Oxford University Press, 2000) 3

3. *Ibid*, 4

4. Pablo De Griff (eds), *The Handbook on Reparations* (Oxford University Press, 2006) 3

5. Simon Robins, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' (2017) 11 HR&ILD 1

6. Anja Mihr, 'Regime Consolidation through Transitional Justice in Europe: The Cases of Germany, Spain and Turkey' (2017) 11 IJTJ 1

Victims are considered to be at the center of a successful transitional justice program.⁷ Since TJ is focused on using justice mechanisms to address the past linking directly and explicitly actions with addressing injustice caused to victims. Reparations of victims are a key element of TJ aiming to relieve the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts and by preventing and deterring violations. Additionally, reparation also has a broader socio-political role in demonstrating a state has acknowledged past violations and is committed to ensuring they are not repeated.⁸

In this study, I try to give voice to victims as a neglected category by focusing on the reparation of political prisoners in post-communist Albania. The research aims to assess reparation measures taken by the Albanian government from 1991 until now looking at them from the perspective of victims. Specifically, this research tries to respond to the questions: What are the victim's needs? How have those needs been impacted by measures taken to date? and What are the policy requirements to address those needs? The paper analyses the role that issues raised by victims themselves during the interviews play in reparation such as financial compensation, access to files, apology and forgiveness, justice and socio-political empowerment in healing former political prisoners.

Reparations measure in Albania were designed to give importance to material compensation to the victims. However, in this paper, I argue that reparations are also about the acknowledgment of what has happened, the responsibility for it by state and perpetrators and the establishment of the truth.

Victims in TJ: A review

Legal framework

The right to a remedy and reparation for violations of human rights is set out in the Universal Declaration of Human Rights⁹, the International Convention on Civil and Political Rights¹⁰, and several key regional agreements such as the European Convention on Human Rights¹¹. International human rights law has progressively recognized the right of victims of human rights violations to pursue their claims for redress and reparation before national justice mechanisms and, if need be, before international forums.¹²

However, despite the duty of states under international law to repair gross violations and address victim's human rights implementing this right and states corresponding duty is, in essence, a matter of domestic law and policy. To guide states in fulfilling this duty United Nations (UN) has adopted the Basic Principles and Guidelines¹³ widely known as the van Boven Principles serving as a tool for victim-oriented policies and practices.¹⁴ The basic principles and guidelines establish reparation as a necessary measure under international human rights law. They offer a categorization of reparations measures in five forms:¹⁵

7. Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice (UN, 2010)

8. See further: Simon Robins, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' (2017) 11 HR&LLD 1; Ernesto Verdeja, 'Reparations in Democratic Transition' (2006) Res Pulica 12

9. Article 8, Universal Declaration of Human Rights

10. Article 2, International Convention on Civil and Political Rights

11. Article 13, European Convention on Human Rights

12. See "Promoting the Right to Reparation for Survivors of Torture: What Role for a Permanent International Criminal Court?" (Redress, 1997) 13-19

13. UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Doc A/RES/60/147, 2006)

14. UN, Rule-Of-Law Tools for Post-Conflict States: Reparations Programmes (2008)

15. UN Basic Principles and Guidelines

- *Restitution* referring to measures which “restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred.
- *Compensation* referring to financial compensation for economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law.
- *Rehabilitation* “should include medical and psychological care as well as legal and social services.”
- *Satisfaction* is a broad category of measures, ranging from those aiming at a cessation of violations, to truth-seeking, the search for the disappeared, the recovery and reburial of remains, public apologies, judicial and administrative sanctions, commemoration and memorialization.
- *Guarantees of non-repetition* is another broad category which includes institutional reforms tending towards civilian control of military and security forces, strengthening judicial independence.

The basic principles and guidelines do not constitute an international instrument that can be ratified by States, nor do they create new legal obligations. Instead, they clarify and elaborate on the implications of relevant provisions of existing international human rights standards, some of which are legally binding on States.

Therefore, there is a need to have national legislation that implements these obligations. Thus the right to reparation needs to be addressed by states in the domestic legislation. Following, the research will look at the legislative mechanisms implemented by Albania in the national law to address the reparation of victims.

Whiles discussing reparations two important questions should first set the ground of discussion. What violations constitute grounds for reparation? And who is eligible for reparation, who are considered victims?

The basic principles and guidelines address both questions. While under several international instruments any violation of provisions of these instruments may entail a right to an appropriate remedy, the basic principles and guidelines focus on gross violations of human rights as distinct from other violations. The basic principles and guidelines emphasis that there is no agreement on what constitutes "gross violation", nevertheless, it lists genocide, apartheid, systematic violation of human rights and a second category murder; torture; establishing or maintaining over persons a status of slavery, servitude or forced labor; persecution on social, political, racial, religious or cultural grounds in a systematic manner or on a mass scale; deportation or forcible transfer of population.¹⁶

“Victims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights”¹⁷

Reparation measure have provided to be a dynamic field of TJ, over time reparation forms have been developed including both material and symbolic measures.

16. UN Basic Principles and Guidelines

17. Ibid

Reparation in practice: Ex-political prisoners and TJ processes

In the mid 1970 the fall of dictatorships regime occurred in Portugal, Greece and Spain. In Latin America, the 1980s saw transitions to democracy in Argentina, Bolivia, Brazil, Chile, and Uruguay. The third of democratization was concluded with the fall of communist regimes in Central and East Europe in 1989 – 90.

The theoretical approach to the reparation of political violence in the aftermath of totalitarian regimes is argued to include four spaces: symbolic collective and symbolic individual reparations, as well as material collective and material individual reparations.¹⁸ Symbolic collective dimension requires that reparations include a symbolic collective element of recognition, which means publicly highlighting that violations were part of an organized, coherent strategy against designated collective ‘enemies’, and not merely occasional “excesses” on the part of the perpetrators. Symbolic individual acknowledgement, is aimed at recognizing victims as individuals, and highlights the importance of not simply reducing them to an amorphous group of passive, voiceless survivors. Material collective forms of reparations provide resources to victimized groups as a way of obtaining the material basis and security required for them to participate fully in social, political and economic life. Material individual component to reparations focuses on providing individuals with greater autonomy than collective reparations, can take many forms, but normally include familial rehabilitation through access to medical, psychological and legal services, compensation for financially assessable losses, economic redress for harms that are not easily quantifiable, and restitution of lost, stolen or destroyed property.

Reparation of ex-political prisoners in Central and East Europe was diverse, some countries adopted comprehensive combined measures including de-communization¹⁹ and lustration process, financial compensation, social rehabilitation, restitution of property, access to secret files, retributive justice etc.²⁰ Two of the most pressing demands put forth by communist era victim in Eastern Europe more generally are the legal rehabilitation and financial compensation of former political prisoners.²¹

The Czech Republic is referenced as one of the most successful cases, including having prosecuted perpetrators of crimes committed in the previous regime, nationalized the property of the Communist Party, implemented a comprehensive reparation and rehabilitation program for former political prisoners, adopted the first lustration law which discharged the collaborators of the previous regimes from positions of influence, offered unlimited access to the archives of the secret police, and accordingly adopted other measures which contributed to the rewriting of the country’s modern history.²² Financial compensation was paid to surviving victims or the heirs of those who were executed or died in detention. Each political prisoner received a little compensation for salary losses, health damages, legal fees, and judicial fines, as well as CZK 2,500 (approximately US \$83) for each month of his or her incarceration.²³

18. Ernesto Verdeja, ‘Reparations in Democratic Transition’ (2006) Res Pulica 12

19. De-communization is understood as the efforts to clear out the old elite, the old patterns of behavior and network of relationships that might impeded the institutionalizing of democracy. De-communization shows that public that a clear break has been made with the past ... See further Jennifer Yoder, *From East Germans to Germans?: The New Postcommunist Elites* (Duke University Press, 1999)

20. See further: Roman David, ‘Twenty Years of Transitional Justice in the Czech Lands’ (2012) 64 EAS 4; Roman David, Susanne Choi Yuk-ping, ‘Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic’ (2015) HRC 27; Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge University Press 2013); Lavinia Stan, Nadya Nedelsky (eds), *Post-Communist Transitional Justice: Lessons from 25 Years of Experience* (Cambridge University Press 2015) Pablo De Griff (eds), *The Handbook on Reparations* (Oxford University Press, 2006); Naomi Roht-Arriaza, ‘Reparations Decisions and Dilemma’ (2004) 27 Hastings Int’l & Comp. L. Rev. 157; John Elster, *Retribution and Reparation in the Transition to Democracy* (Colombian University Press 2006)

21. Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge University Press 2013) 161

22. Roman David, ‘Twenty Years of Transitional Justice in the Czech Lands’ (2012) 64 EAS 4

23. Roman David, Susanne Choi Yuk-ping, ‘Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic’ (2015) HRC 27

In East Germany reparation was designed to restore the status of the persons who were wrongfully convicted as part of a larger institutional effort of recognizing injustice and victimhood.²⁴ From 1989 to 1999, about sixty-two thousand criminal investigations into GDR governmental injustice led to 670 trials and about one million public sector employees were vetted for pre-1989 secret police contacts and abuses of power.²⁵ Additionally, financial compensation has been provided to victims and a monthly ‘victim pension’.²⁶

In Romania, in the first two decades government provided symbolic financial compensation for each year of imprisonment or displacement endured, income tax exemption, time spent in prison or force labor was recognized for pension purposes.²⁷ Nevertheless, only monetary compensation to victims in Romania have been criticized as an attempt to buy the silence of political prisoners.²⁸ The Romanian post-communist governments have neglected their obligation to provide reparation, as delayed rehabilitation and meager monetary awards were not accompanied by apologies, valued information and other nonmaterial benefits.²⁹ Nevertheless, more should be done to fill the research gap regarding the measurement of the impact that these process have had in Europe.³⁰

Historic Context: Communist Albania and Political Prisoners

From World War Two until 1990 Albania was hermetically sealed from the rest of the world with no diplomatic relations with other countries apart from short-lived cooperation with Soviet Union (1956 - 1961) and Communist China (1961 - 1978). The communist regime lead by dictator Enver Hoxha until his death in 1985 applied an extreme form of Stalinism in Albania.

Albanian communism was extremely centralized and the communists dominated all aspects of life with the state playing a central role in shaping society. The Directorate of State Security (Albanian: Drejtoria e Sigurimit të Shtetit), commonly called the Sigurimi, asserted political control and arrested critics while border guards shot people who tried to flee. Sigurimi was considered by dictator Hoxha as the ‘sharpest and dearest weapon of the Party’.³¹ The political police employed some 10,000 full-time agents and it is estimated that one in four Albanians worked for Sigurimi agencies, usually as informants.³²

Sigurimi was a key instrument for Hoxha to retain power. It employed regular and brutal purges fo opponents and operated a well-established system of prisons and internal exile. Sigurimi verified the ideological correctness of party members and ordinary citizens, monitored private phone conversations and correspondence, and purged the party, government, military and intelligence agencies of individuals closely associated with Yugoslavia, the Soviet Union and China, after Albania broke off with each of these countries.³³

The economy and industry of the country continued on a downward trend, with technological developments of other countries excluded from Albania. Hoxha centralized every aspect of

24. Christiane Wilke, ‘Recognizing Victimhood: Politics and Narratives of Rehabilitation in Germany’ (2007) 6 JHR 4

25. Ibid

26. Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge University Press 2013) 164

27. Ibid, 167

28. Ibid

29. Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge University Press 2013) 181

30. A study measuring the impact of reparation measures has been conducted in the Czech Republic, see further Roman David, Susanne Choi Yuk-ping, ‘Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic’ (2015) HRC 27

31. Luan Shtepani, ‘Sigurimi i Shtetit, zbardhet urdhri “tepër sekret” i Kadri Hazbiut’ (Shekulli, 2017) < <http://shekulli.com.al/sigurimi-shtetit-zbardhet-urdhri-teper-sekret-kadri-hazbiut/> > accessed 28 February 2019

32. Fred Abrahams, *Modern Albania: From Dictatorship to Democracy in Europe* (New York University Press, 2015) 15

33. Robert C. Austin, Jonathan Ellison, ‘Albania’ in Lavinia Stan, *Transitional Justice in Easter Europe and Soviet Union* (Routledge, 2009) 178

the economy and abolishing all forms of private property. Collectivization of property not only impoverished Albanians but also created an ‘enemy class’ consisting of former land and property owners.

Economic reforms were followed by other measures and tactics used by the communist regime to control the society. In 1967 religion and its practice was banned, Albania was declared the first atheist nation on earth, and all places of worship were demolished. Culture and literature were entirely subject to political censorship and communist propaganda. Artists, scientists and writers were put in the service of socialism and the state.³⁴

Hundreds of innocent people were killed, thousands were imprisoned and exiled, whole families were persecuted on the pretext of “deviating from the party line”. As a result, Albania remains the most isolated and poorest country in Europe, because of the hostile policies of communist rulers towards the “imperialist West” and “revisionist East”.³⁵ It is difficult to enumerate the people imprisoned or killed by the communist regime due to a lack of data, particularly regarding the first decade of communist rule which was also one of the most repressive periods, with many citizens killed extra-judicially. According to the Institute for the Study of Communist Crimes and Consequences in Albania (ISKK)³⁶, 34,135 Albanians suffered as political prisoners during the communist regime; 59,009 Albanians were sent to deportation/labor camps; 984 died in the prisons of the communist regime; 6,027 Albanians were killed during the communist regime; and 7,022 people died in deportation camps.

Over the years I have come across the expression ‘political prisoners’ numerous times but did not understand what the term exactly implies. The young generation of Albanians know little or almost nothing – aside from ordinary daily anecdotal and nostalgic narratives – of what exactly happened during the brutal communist regime from 1945 to 1990. There are few testimonies that shed light on the extraordinary crimes committed by the communist regime.

With the collapse of the communist regime in Albania, no serious efforts, with a clear strategy of study and analysis, were ever made to understand and make public the tragedy that the Albanian society went through across almost half-century of the dictatorship.³⁷ This apathy and indifference has persisted in the education system at all levels and other fields. This and other recent debates regarding the communist past, history, memory sites, nostalgia and commemoration ceremonies for the dictator and threats to the life of writers and the director of ISKK for studying communist crimes³⁸ demonstrates a compelling need for TJ measure to address the past.

Reparation and treatment of former political prisoners in Albania

There is almost no literature or discussions concerning political prisoners, their sufferings and their “crimes”. The law ‘On the Status of Former Political Prisoners and those Prosecuted by Communist Regime’ (the Status Law)³⁹ adopted in 1993 provides for the first time a definition of political prosecution and political prisoners.

34. ‘When Sigurimi dealt with Science < <http://www.dosjet.gov.al/home/>> accessed 8 February 2019

35. Krimet e komunistit në burgje e kampe, Në Tempull nga Anisa Ymeri – News24 (February 2016) < https://www.youtube.com/watch?v=Nh4tzczjDg8&feature=player_embedded> accessed 5 February 2019

36. ISKK is an independent governmental institute created by a decision of the Albanian Parliament mandated to study and document the crimes committed by communist regime. <<http://www.iskk.gov.al/?lang=en>> accessed 5 February 2019

37. Agron Tufa, ‘The Ambivalent Role of Media on the Recognition of the Communist Crimes’ in Jonila Godole and Sonila Danaj, *Media Transformation and Collective Memory in Albania* (Institute for Democracy, Media and Culture, IDMC, 2015) 80

38. Koha Jone, ‘Agron Tufa kërcënohet me vdekje’ (28 September 2019) < <https://www.kohajone.com/2019/09/28/agron-tufa-kercenohet-me-vdekje/>> accessed 20 October 2019

39. Law 7748/1993 “On the Status of Former Political Prisoners and Prosecuted by Communist Regime”

Political persecution is defined as any act or omission performed from 8 November 1941 to 22 March 1992 by any armed formation or individual, of the National Liberation Army, state security, police, army or local government bodies by order or decision of party structures, combat, or state organs of the Albanian Communist Courts when this act or omission has caused the loss of life, liberty, civic rights, kulak designation, deportation, and any other deprivation of the participation in the political, economic and social life of the individual for the sake of convictions or his political or religious attitude.⁴⁰

The law has categorized those prosecuted by the communist regime in five categories:⁴¹ Nevertheless, no clear definition is provided about political prisoners. Article three of the Status Law refers to political prisoners as ‘persons who have been convicted with deprivation of liberty or have been exiled internally due to persecution. The Law on the Reparation of Former Political Prisoners⁴² adopted in 2007 defines political prisoners as persons who have been confined in prison, psychiatric hospital, prison hospital or confinement during interrogation.

The process of financial compensation itself is more easily understood if divided into four periods. The first period 1991 - 1997 constituted the start of the reparation of political prisoners. During this period political prisoners were more successful in voicing their demand for reparations, both material and immaterial, as we will see below. The adoption of three laws, in 1991, the Status Law in 1993 and the controversial Genocide Law in 1995 indicates the influence that political prisoners had during this period compared to the other periods. However, due to the tumultuous political situation in the aftermath of the fall of the communist regime, exploitation of political prisoners for political gains and a serious lack of political will, rendered most of the legal provisions and promises for reparation unfulfilled - including the financial compensation.

The second period 1997 - 2005 is characterized by a lack of developments regarding reparations. Some members of the former communist elite arrested for abuse of public funds in 1993 or under the Genocide Law in 1995 were set free in 1997. The whole conviction process and their release are characterized by a total lack of transparency. Little information exists about the judicial process and their discharge.⁴³ Even the majority of political prisoners interviewed for this study had a blurred memory of this period.

The third period 2007 - 2013 marks the restart of the reparation process. In 2007 the government adopted the Law on the Reparation of Former Political Prisoners⁴⁴ regulating financial compensation for former prisoners and their family members. The compensation payments started in 2009 after several protests by former political prisoners. Some interviewees stated that the reparation process would not have started without the tragic event when during a protest in 2009 a political prisoner self-immolated by setting himself on fire and this is discussed further below.⁴⁵

The fourth period from 2014 to the present, when the majority of political prisoners have received their financial compensation in up to 10 installments and the process for compensating family members of victims is in progress. Out of twenty interviewees, only one had not received the financial compensation.

40. Article 2, Law 7748/1993

41. Ibid, Article 3

42. Law no.9831, date 12.11.2007 For the Compensation of Former Politically Prosecuted by Communist Regime

43. After the social unrest in 1997 former communist elite imprisoned were set free and latter with a Constitutional Court decision they were declared innocent and the court ordered compensation for miscarriage of justice. There is almost no public information about these trials and the public has forgotten that these trials took place. The harshest punishments for the former communist elite were given in the period 1995 - 1996 trials under the controversial Genocide Law, however, all the convicted were set free during the 1997 social unrest. Albanian Telegraphic Agency (November 1996) < <http://www.hri.org/news/balkans/ata/1996/96-11-05.ata.html#15>> accessed 3 October 2019

44. Law no.9831, date 12.11.2007 For the Compensation of Former Politically Prosecuted by Communist Regime

45. Xhavit Lohja (22 June 2019, Shkoder); Fadil Daja (21 July 2019, Tirane); Angjelin Dabardaku (20 July 2019, Tirane)

METHODOLOGY

This research paper focuses on former political prisoners of Albania's past communist regime and the grave human rights violations they have suffered. The first part explores Albania's policy approach and legal framework on reparation measures, and forms of reparation. The second part of the paper aims to explore the former political prisoners' needs and how they can be addressed. It analyses twenty semi-structured interviews conducted with former political prisoners. The methodology for selecting respondents is based on snowball sampling, therefore, the qualitative data analyzed in the second part reflects the views of the interviewees and their representativeness is limited. Former political prisoners are a category of individuals difficult to identify and locate, majority of them for biological reasons do not live anymore. Additionally, there is no database of former political prisoners which can be taken as a reference. Some of the interviewees were reached through the local associations of former political prisoners.

The semi-structured interview questionnaire was designed to understand to the extent possible the suffering of victims and to collect data regarding their reparation experience and their needs to heal the past, how their needs have shaped the measures taken until now and the measures to address them. Semi-structured interviews were deemed the most appropriate tool to identify victims' perceptions, their needs and factors that impact their reparation.

Twenty interviews were conducted in four different cities of Albania with former political prisoners. All interviews are male⁴⁶ and suffered detention in different prisons during the communist regime, the majority in Spaç and Burrel. The earliest interviewee was imprisoned in 1951 and the most recent in 1986. Sixteen of the interviewees are retired and their background varies, five are teachers by profession, two engineers, one a vet. However, some of the interviewees were arrested at an early age or during military service and were never able to access a profession.

Each interview was recorded after receiving the written consent of the interviewee. In total, more than 18-hours of audio recording was collected. During interviews, most of the interviewees showed enthusiasm toward the research and shared books, written memories or court documents detailing their stories and sufferings. The processing of the data consisted of the transcription of all interviews and categorization of responses in a separate memo according to the themes that emerged from analysis of the content. The analysis in the second chapter is based on the themes derived from the data processed from interviews.

ANALYSIS OF THE INTERVIEW DATA

Prison Experience

Political prisoners under the communist regime were accused of having committed 'political crimes' under different laws of the time which were used by communists to exercise absolute control over the population and shut down any critical voice. The regime used the laws of the time to arrest and purge intellectuals and scientists under the accusation of (economic) sabotage and crimes against people and state.⁴⁷ The majority of the interviewees were convicted of 'agitation and propaganda against the state', 'high state treason', attempting to escape from Albania and

46. Women as well as men were politically persecuted during the communist regime, but the experiences of women in political prisons has received less attention and barely culturally or politically recognized in Albania. See further: Shannon Woodcock, 'Albania's Women Political Prisoners' Struggle to be Heard (2014) 20 CSR 2

47. Law no.7514, dated 30.9.1991 for the Innocence, Amnesty and Rehabilitation of Former Political Convicted and Prosecuted

economic sabotage.⁴⁸ Agitation and propaganda to overthrow or undermine the communist regime were punishable from 10 years detention up to the death penalty and high state treason by up to 15 years of imprisonment. The judicial system of the time used such accusations for agitation and propaganda to convict the enemies of the Communist Party. Typically, after serving their sentence those convicted were reconvicted,⁴⁹ as two of the interviewees explained.⁵⁰ Political prisoners were sent to designated prisons separate from ordinary inmates. Interviewees explain that the prisons designated for political prisoners were characterized by terrible conditions and forced labor that represented a severe violation of the rights and dignity of prisoners.

The prison of Spac was interesting [...] I used to think of how dictatorship and nature had made such a compromise?! It was like a natural prison, the sky and the sun were both discreet there.⁵¹

The situation in Spaç was difficult and treatment was inhumane [...] All the time we used to stay outside despite the rain or the snow. It was designed in a way to continuously be engaged. For each activity prisoners were put in line, to eat, go to the mine or to listen in standing for two hours the readings from dictator's books [...] Those who failed to accomplish the work rate in the mine were sent to solitary confinement as punishment being fed only with bread and salt.⁵²

In Burrel prison the treatment was severe, the food was scarce and without the support of families (bringing food), one could not survive.⁵³

The communist regime applied a cruel punitive policy subjecting political prisoners to torture and degrading treatment that caused both physical and moral suffering. Interviewees describe how physical torture started on arrest, and continued during interrogation, and in prison. Moral and emotional suffering is associated with inhumane treatment, fear of being reconvicted for agitation and propaganda within the prison and blackmail by prison authorities to become an informer. Usually, every prisoner was pressured and trapped by prison guards to become an informant. Becoming an informant was considered degrading in prison and they lacked the respect of other prisoners. On the other hand, not doing as the prisons guards wanted exposed prisoners to false accusations and that could amount to their reconviction. All prisoners were continuously aware inside the prison to carefully control with whom they spoke, particularly speaking against the regime and were continuously under fear of being reconvicted.⁵⁴

The prison was physical and moral devastation [...] Moral because some were used as snitches. There was nothing more terrifying than after all of those years of imprisonment the family was waiting at the gate for one to be freed but they re-punish with another 15 years because one spoke inside the prison. This has not happened in any of the Eastern countries.⁵⁵

I have passed spiritual sufferings only by believing in God [...] and together with inmate friends we believed that one day we would go out of prison. ⁵⁶

48. Eight interviewees were convicted for high state treason, nine for agitation and propaganda against the state and two for economic sabotage. There are also some interviewees where these charges are combined. The imprisonment period of the interviewees ranges from 5 to 21 years, without taking in consideration those reconvicted.

49. Fatos Lubonja, *Reconviction* (Koha 2018)

50. Interviewees Urim Elezi (14 July 2019, Korçë), reconvicted with another 10 years of imprisonment and Xhemal Zhuri (1 August 2019, Tirana), reconvicted with 12 years.

51. Agim Hakacani (31 July 2019, Tirana)

52. Gjeto Vucaj (23 July 2019, Shkoder)

53. Urank Kostreci (20 July 2019, Tirana)

54. Former political prisoner Fatos Lubonja explains all this moral and emotional torture in his book describing his reconviction in the prison of Spac. See further: Fatos Lubonja, *Reconviction* (Koha, 2018)

55. Fadil Daja (21 July 2019, Tirane)

56. Haxhi Ndreaj, (20 July 2019, Durres)

I thought that they deprived us of the right to liberty but they deprived us of the right to live as human beings.⁵⁷

Reparation Measures After the Fall of Communism

As discussed, the violation of any human right gives rise to a right to reparation of victims.⁵⁸ Whilst reparations are often understood as consisting of financial and material compensation, the four components of the Basic Principles and Guidelines and data generated from interviews confirm that reparation is a process that should encompass a set of mechanisms aiming to address to the extent possible the consequences of wrongful acts.

The fall of the communist regime found most of the political prisoners starting their life from scratch. When the anti-communist movement erupted, most victims were either in prison or internal exile or were living quietly in obscure corners out of the way of the dictatorship. They were not able to make their case because they had little contact with the elite, which – even after the end of the regime – consisted almost entirely of members of traditionally communist families, if not communist party members.⁵⁹ The government democratically elected in 1991 in the first multi-party elections started a reparation initiative for former political prisoners. The first law adopted in 1991 states “the government will take all measures to compensate and rehabilitate all persons who have been unjustly charged with violations mentioned in this law and provide for them, with priority, material, and moral assistance to fully reintegrate into society”.⁶⁰

Nevertheless, despite the aim of the law, the measures implemented in practice encompassed a number of measures of financial and material nature far from ‘full reintegration in society’. Interviewees explain that this reparation measures included: free university education for former political prisoners and their family members; free housing, employment or where the possible return of the previous profession; and some other minor privileges. The application of this reparation policy was not consistent as some interviewees explain that they were unable to receive a house. In other cases, some former political prisoners benefited from the reparations they were entitled to by law due to personal connections or support from peers.

The rehabilitation of prisoners was not easy, not to say impossible. However the democratic government that came in ‘92 to be fair, did as much as it could, gave each former political prisoner a house, allowed their children to go to university without competition, handed out treasury bills. Some were employed and some payments were distributed.⁶¹

To tell the truth political prisoners were not treated well. They accessed some measures at the beginning like the right to study, but this was not direct support as it should have been.⁶²

Together with my wife, we requested to work again as teachers. We went back to work as teachers [...] But where are my lost properties? In my poetry book “The Abysses of Disappointment” I speak about the aftermath of disappointment...⁶³

Reparation is not what has been claimed all these years, the compensation. Compensation is charity, these people should be morally lifted, their dignity should be restored because they have been treated inhumanly. We are still perceived as enemies...⁶⁴

57. Agim Hakacani (31 July 2019, Tirana)

58. UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Doc A/RES/60/147, 2006)

59. Fatos Lubonja, *The False Apocalypse: From Stalinism to Capitalism* (John Hodgson tr, Istrosbooks 2014)

60. Law no.7514, dated 30.9.1991 for the Innocence, Amnesty and Rehabilitation of Former Political Convicted and Prosecuted

61. Urank Kostreci (20 July 2019, Tirana)

62. Gjeto Vucaj (23 July 2019, Shkoder)

63. Ylber Merdani (chairman of Former Political Prisoners Association in Korca 14 July 2019, Korca)

64. Agim Hakacani (31 July 2019, Tirana)

The course of actions of political prisoners, development regarding their reparation in the first years after the fall of the communist regime and the interviewees indicate that there was a gap between their needs and government measures. This study found that political prisoners underline the reluctance of the government to provide financial compensation, punish the crimes of the communist regime and the failure of property restitution. The Status Law foresees a special status for former political prisoners defining their rights and obligations according, however, as interviewees explain the law failed to be implemented in practice.

One of the measures requested by us [political prisoners] was the punishment of the crimes, and responsibility for those crimes against humanity... No measures have been taken, be it on the legal, political or moral dimension. The authors of crimes during the communist regime were not touched on the contrary they continued and continue to rule the Albanian government...⁶⁵

To be sincere, not much has been done [for the reparation of political prisoners ...] via this association over the years we have requested to be given status as is the status for war veterans. However, this never happened.⁶⁶

In 1994 the failure of the Albanian government to implement these reparation measures led the political prisoners to enter a hunger strike. The hunger strike was organized by the National Association of Former Political Prisoners demanding primarily from the government of that time the compensation of political prisoners.⁶⁷ Contrary to the expectations of the hunger strikers the government cracked down using violence on this initiative without discussing or providing any reparation measures. One year later in 1995 being under continuous pressure, the government started a compensation program distributing treasury bills (Albanian: *letra me vlerë*) to former political prisoners. Nevertheless, political prisoners who received treasury bills consider this a mistake because they lost their value with the passing of the years.⁶⁸ Speaking about the compensation measures in the first years after the fall of communist regimes, an interviewee stated “[...] the distribution of the securities was a mistake, I think that was not right, nevertheless, we were enthusiastic at that time and did not mind.”⁶⁹

The unwillingness to assign any resources to finance the reparation of former political prisoners at that time shows the lack of political will to address the needs of political prisoners. Reparation itself was a political project of the time but was used for short-term political gains. These measures and policies lacked any wider goals. Reparation demands treating victims as rights holders.⁷⁰ Reparation of former political prisoners after the fall of the communist regime was not perceived as a state obligation toward the victims of the communist regime but as a state’s privileges.

65. Nebil Cika, chairman of Former Prosecuted Anti-Communist Association (11 July 2019, Tirana)

66. Zenel Drango, chairman of Former Political Prisoners Association in Shkodra (23 June 2019, Shkoder)

67. Fatos Lubonja, *The False Apocalypse: From Stalinism to Capitalism* (John Hodgson tr, Istrosbooks 2014)

68. Reshat Kripa (21 July 2019, Tirane), Zenel Drango (23 June 2019, Shkoder)

69. Reshat Kripa (21 July 2019, Tirane)

70. UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Doc A/RES/60/147, 2006)

Financial Compensation

Financial compensation plays an important function in the transitional justice process. It is argued that financial compensation has value because it helps victims to manage the material aspect of their loss and represents an official acknowledgment of the wrongdoing.⁷¹ Money facilitates inner healing by providing respondents with medical care and compensating part of their economic loss, thus relieving some physical and psychological consequences of imprisonment.⁷² It also restores agency by letting victims decide what they do with the money. Interviewees explain that when being convicted part of the court's decision was also confiscation of wealth (house, earnings and other property). This was a routine practice applied to all persons convicted for political crimes.

Additionally, financial compensation provided by the government is a key moral indicator demonstrating state commitment to the victims. Speaking about his satisfaction with financial compensation one interviewee stated "There is no treasury in the world that can pay for our lost youth and our sufferings. However, it is a moral obligation of the state to compensate us, that should be commended".⁷³ Monetary compensation has been at the forefront of the sorrowful battle for reparations of political prisoners in Albania. Speaking about financial compensation one interviewee declared that "financial compensation, with procedures and documentation, etc., is the evidence that our persecution continues".⁷⁴

I received one installment in 1997, then we were forced to go on strike to get the other installments. I came from Greece for every protest, and our friend, a former political prisoner set himself on fire in a protest in 2009, then they gave us the other installments.⁷⁵

The study found that political prisoners when discussing the receipt of financial compensation speak in terms of relief and express delight after the irksome process of demanding it. Most of them did not anticipate that the current center-left government of the Socialist Party⁷⁶ would commit to the financial reparation of political prisoners. Based on the law adopted in 2007 each political prisoner is entitled to 2000 ALL (approximately \$18) financial compensation per prison day.⁷⁷

This government, to tell the truth in four years gave us six installments. I am grateful for this, ingratitude equal to wickedness. With that money, my son finished his Ph.D.⁷⁸

We are the backbone of the Democratic Party,⁷⁹ however, we were given financial compensation by the leftist party.⁸⁰

Despite interviewees expressing a positive attitude towards the receipt of monetary compensation, they have different opinions about their satisfaction with the compensation. Out of 20 interviewees, only one expressed satisfaction with financial compensation. Dissatisfaction

71. Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (vol 2, first published 1995, United States Institute of Peace) 37

72. Roman David, Susanne Choi Yuk-ping, 'Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic' (2015) HRC 27

73. Urank Kostreci (20 July 2019, Tirana)

74. Nebil Cika, (11 July 2019, Tirana)

75. Fadil Daja (21 July 2019, Tirane)

76. The Socialist Party (SP) was created out of the ashes of the Communist Party of Labor of Albania. Until 1991 Fatos Nano was a member of the Labor Party and deputy prime minister for a short period, he became chairman and started the reformation of the communist party.

77. Article 6/a, Law no.9831, date 12.11.2007 For the Compensation of Former Politically Prosecuted by Communist Regime

78. Agjelin Dabardaku

79. Democratic Party (DP) was the first opposition party founded in 1990. After the fall of the communist regime, all political prisoners engaged in politics joined to DP or its close allies.

80. Zhivko Petrovic (22 June 2019, Shkoder)

with compensation is associated with the amount allocated per day of imprisonment. Some interviewees stated that the amount was too low compared to the compensation provided in other countries of Eastern Europe or compared with the promises that the government had made earlier.

Interviewees also emphasized that the compensation is partial and addresses only some of the injustices committed by the communist regime. It was stated that the government compensated only the unjust imprisonment but not forced labor.⁸¹

The lowered the compensation from 50 dollars to 20 [per day of unjust imprisonment], which means that they have compensated our imprisonment but we have received no compensation about the forced labor.⁸²

Further, some benefits provided immediately after the fall of the communist regime like houses were calculated not taking into consideration the market price at the time and withheld from compensation provided later. Political prisoners frame their financial compensation in comparison with treatment of communist perpetrators. They state that the communist elite set free in 1997⁸³ were fully compensated for miscarriages of justice and also received their compensation on time. Whereas, they received reduced compensation and had to fight for many years and pressure the government. On the other hand, perpetrators received special pensions while political prisoners are not entitled to a special pension scheme.

In a situation where Parliament has acknowledged the political prisoner's innocence, this compensation is charity. Because this is contradictory. What about all those years of unpaid work in the mines, who will pay for those? Who will pay for mine carriages we used to excavate in a barbaric manner. This is unpaid work, this is double standards ...⁸⁴

Compensation is not enough. Communists were compensated five thousand a day while us two thousand. They gave us securities and houses but they were later deducted from the total compensation, while after 1990 all houses were provided free. Also the unpaid labor, we have worked as slaves and that has not been paid...⁸⁵

Those of the communist bureau were compensated with fifty thousand a day after being declared innocent, meanwhile, we were compensated now that the currency has lost its value. Therefore, we have a lot to accomplish [with reference to reparation].⁸⁶

On the other hand, in the face of a lack of other measures and seriousness to address political prisoners some interviewees expressed the opinion that the financial compensation is an attempt by politics to buy their silence.⁸⁷

81. The Law on the Reparation of Former Political Prisoners adopted in 2007 does not make any reference to the right of reparation of political prisoner for their forced labor. The law refers to reparation of prisoners for their unjust imprisonment.

82. Bujar Guca (23 June 2019)

83. According to two interviewees there were in total 32 former perpetrators that were convicted after the fall of regime between the period 1993 - 1996. After the social unrest in 1997 they were set free and latter with a Constitutional Court decision they were declared innocent and the court ordered compensation for miscarriage of justice. There is almost no public information about these trails and the public has forgotten that these trials took place. The harshest punishments for the former communist elite were given in the period 1995 - 1996 trails under the controversial Genocide Law, however, all the convicted were set free during the 1997 social unrest. Albanian Telegraphic Agency (November 1996) < <http://www.hri.org/news/balkans/ata/1996/96-11-05.ata.html#15> > accessed 3 October 2019

84. Agim Hakacani (31 July 2019, Tirana)

85. Fadil Daja (21 July 2019, Tirane)

86. Ylber Merdani (14 July 2019, Korca)

87. Zhivko Petrovic, Reshat Kripa, Nebil Cika

Access to Sigurimi Files

The establishment of truth is important to political prisoners. For years they have been advocating for transparency over Sigurimi files, considering it as a basic human right.⁸⁸ On other hand there is relation between the establishment of truth and reparation. Under UN Basic Principles and Guidelines ‘verification of the facts and full and public disclosure of the truth’ is asserted as a form of reparation under satisfaction.

After the fall of the communist regime, the files of Sigurimi remained secret and were used politically by those who took the power to control and blackmail.⁸⁹ Therefore, this affected the other TJ components such as breaking with former regime (de-communization), accountability, and reparation and acknowledgment of former political prisoners.

With the establishment of the Authority for Information on Former State Security Files⁹⁰ (Authority for Files) in 2015, political prisoners could finally request a copy of their prosecution file compiled by Sigurimi. The majority of the interviewees declared that they have already requested and received their files. The opportunity to have access to files have played an important role in enhancing the psychological reparation and inner healing of political prisoners. Through the file, they have been able to verify the details of their persecution and prosecution by Sigurimi. On the other hand, the file serves to them as proof of the sufferings caused by the communist regime.⁹¹

Fortunately, after the adoption of the law, I made a request and collected my file. There I learned the people who denounced me. Because during the trial in that time denouncers were not shown only the witnesses. However, witnesses are just fake they tell only the things you spoke with your friends, denouncers. When I got my file, I was surprised to see people close to me and close friends. It was amazed, I have also the names but have not been able to go and tell them, I am reluctant because I had never thought.⁹²

Other perception studies have concluded that the majority of the public is not interested on the files of Sigurimi, questioning their public acknowledgement.⁹³

Apology and Forgiveness

There is an obligation to provide acknowledgment to victims through reparations, and apology is recognized as a form of reparation. UN Basic Principles and Guidelines affirm public apology, including acknowledgment of the facts and acceptance of responsibility as a form of reparation under satisfaction.⁹⁴ As a form of symbolic reparation, an apology is a formal, solemn and, in most cases, public acknowledgement that human rights violations were committed in the past, that they caused serious and often irreparable harm to victims, and that the state, group, or individual

88. Ilirian Agolli, ‘Avokati i Popullit kërkon hapjen e dosjeve të Sigurimit’ Voice of America (Tirana, 24 February 2014) < <https://www.zeriamerikes.com/a/igli-totozani-hapja-e-dosjeve/1857210.html> > accessed 12 October 2019

89. In 1994 when some political prisoners enter a hunger strike, the government of the time published a list arguing to be based on the files of the Ministry of Internal Affairs, listing those part of hunger strike as collaborators of Sigurimi.

90. Authority for Information on Former State Security Files < <http://autoritetidosjeve.gov.al/> > accessed 3 October 2019

91. Several political prisoners have used the materials found in their file in the books they have written as tangible proof of their resistance to the regime and regime’s brutal methods to suppress them. (Reshat Kripa, Ylber Merdani, Urin Elezi, Uran Kostreci)

92. Gjeto Vucaj

93. In a perception study out of 995 respondents only 37% of respondents indicate that they are interested in this topic. Over half of respondents (55%) state that they have simply never been interested in the files, and are still not interested today, while 8% state that they were interested in the past, but no longer are. See further: Institute for Development Research and Alternatives, Citizens’ understanding and perceptions of the Communist past in Albania and expectations for the future (2015) < <https://www.osce.org/albania/286821?download=true> > accessed November 2019

94. Thirteen interviewees had collected their file from Authority of Files, six expressed that they are not interested in the file and one is in the process.

apologizing is accepting some or all of the responsibility for what happened.⁹⁵ Acknowledgment in this sense means both a factual and moral recognition that victims' rights were violated, that these victims were harmed and that the state, as well as individuals who are legally accountable for committing or enabling the violations, are obligated to repair the harm done.⁹⁶

After the fall of the regime, there has been no official public apology to the victim of the former communist regime and public acknowledgment for all the human rights violations. In the 'Law for the Innocence, Amnesty and Rehabilitation of Former Political Convicted and Prosecuted' adopted in 1991 a reference is made to official apology sought by People's Assembly of the time.

[...] the People's Assembly, using its powers, grants innocent to former prisoners and politically prosecuted and considers in its honor that, as the highest representative of the people, on behalf of the rule of law, to apologize to this people about the political punishments and suffering they have encountered in the past.⁹⁷

On the other hand, Prime Minister Sali Berisha elected democratically in 1992 elections declared 'we have altogether suffered and altogether were guilty'.⁹⁸ This statement was perceived by political prisoners as the denial of their suffering, to the human rights violations and downplaying the responsibility of perpetrators.

This study found that political prisoners continue to demand an official apology by state authorities to acknowledge their sufferings and take responsibility. All the interviewees agreed that there should be an official apology, however, they express skepticism about its likelihood. They believe that lack of political will to address former political prisoners and persistence of former communists and former Sigurimi people in politics and key state positions hampers an official apology.

[...] the President and the Speaker of Parliament definitely should ask for forgiveness. Pope John Paul II asked for forgiveness for crimes conducted by the church in the Middle Ages, Chancellor Merkel asked for forgiveness for Nazi crimes...⁹⁹

Of course, the state should ask for forgiveness. It should have been done immediately after the fall of communism, but it did not happen. They should work for the rehabilitation [of political prisoners] and if rehabilitation is complete then the apology is included by default.¹⁰⁰

Political prisoners expect expression of remorse also from direct perpetrators or those who contributed to their imprisonment and prosecution. While being asked if any of those who caused them suffering during the communist regime did apologise only three replied yes.¹⁰¹ In all these cases the persons that asked for forgiveness had acted as witnesses during trials. Some interviewees explain that they had met with perpetrators after the communist regime.¹⁰² However, they describe this as a negative experience, perpetrators did not express remorse about their actions but tried to justify them saying they adhered to the law of the time.

95. Ruben Carranza et al, *More Than Words Apologies as a Form of Reparation* (International Center for Transitional Justice, 2015) <<https://www.ictj.org/publication/more-than-words-apologies-form-reparation>> accessed September 2019

96. Ibid

97. Law no.7514, dated 30.9.1991 for the Innocence, Amnesty and Rehabilitation of Former Political Convicted and Prosecuted

98. Luciano Boci, 'Obstructed Decommunistisation' (Panorama, 21 April 2012) <<http://www.panorama.com.al/dekomunistizimi-i-penguar/>> accessed 5 March 2019

99. Reshat Kripa (21 July 2019, Tirane)

100. Nebil Cika, (11 July 2019, Tirana)

101. Gjeto Vucaj, Angjelin Dapardaku, Bujar Gucia

102. Reshat Kripa,

Asked if they had forgiven their perpetrators, interviewees provide diverse replies. Three interviews state that they have forgiven their perpetrators, others that they will not forgive them unless perpetrators ask for forgiveness. Only one interviewee declared that he is not going to forgive his perpetrators no matter what.

One cannot forgive someone who does not ask for forgiveness. No one asked for forgiveness, therefore, we cannot forgive them [...] Firstly they should accept their crimes. What would calm our souls is the establishment of justice. We are not asking to take similar measures as they took against us, but the crimes of criminals during the communist regime must be punished. They should be punished to prevent repetition [...] Failure to punish communist crimes is the failure to disassociate from communism.

Social and Political Empowerment

Based on the transitional justice literature the study tried to explore whether the reparation of political prisoners is also conditioned on societal acknowledgment and community acceptance. Does the recovery of victims depend on political factors including democratic transition and consolidation, and the establishment of the rule of law? The UN Basic Principles and Guidelines have concluded that “in a social and political climate where impunity prevails, the right to reparation for victims of gross violations of human rights and fundamental freedoms is likely to become illusory. It is hard to perceive that a system of justice that cares for the rights of victims can remain at the same time.” It believed that social acknowledgment may help victims to establish their humanity, dignity, and a sense of self, empowering and helping them to reconnect with the outside world.¹⁰³

Most of the interviewees declared that the community around them know about their story. Additionally, some of the interviewees have given interviews or have written articles for the media about their stories and sufferings as political prisoners. Nevertheless, some of the interviewees express that citizens are indifferent to their sufferings and story.

I have tried to tell [my story], but they (citizens) are not interested. This is why there is a need for a national apology and the past needs to be healed. And new generations should have the possibility to read about what communism was. They should learn that Enver Hoxha destroyed his relatives and prosecuted his teachers.¹⁰⁴

Discussion on the rehabilitation of former political prisoners and other TJ measures has increasingly attracted attention in recent years in Albania. At this point studies are needed to assess the impact that societal acknowledgment will have on the overall rehabilitation of political prisoners.

As many interviewees expressed, politics is extremely important for political prisoners, for their cause against the communist regime, particularly immediately after the fall of the regime. Many of them were given access and remained active in politics. Asked about reparation measures for political prisoners after the fall of the communist regime one interviewee declared “the 1992 – 1997 period is an unattainable stage for former political prisoners, there were more than 20 members of parliament coming from this category”.¹⁰⁵ Additionally, the speaker of Parliament in this was a well-known former political prisoner, Pjeter Arbnori.¹⁰⁶ Seven interviewees declared

103. Roman David, Susanne Choi Yuk-ping, ‘Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic’ (2015) HRC 27

104. Angjelin Dabardaku

105. Reshat Kripa

106. Pjetër Arbnori (January 18, 1935 – July 8, 2006) was an Albanian gulag survivor. He was dubbed “the Mandela of the Balkans” by Albanian statesmen because of the length of his 28-year internment.

that they have voted regularly and have been engaged in politics. The possibility to have a meaningful role to play in the political process empowers them and facilitates reparation.

On the other hand, the majority of them are disappointed by politics generally and express regret that reparation of former political prisoners was heavily politicized and used for political gains. One interviewee declared that “politics has considered us as being in their pockets, therefore, it has treated us like that”.¹⁰⁷

Let it be a government of horses if people live well if the constitution is respected, I first will say long life to horses. I am for a fair state, a rule of law state [...] they (politicians) have intervened in the electoral law, and do not recognize the resignation, they do not want to resign from their chairs.¹⁰⁸

Need for Justice

One important question in transitional justice processes is how do victims perceive the relationship between reparation and justice? Can reparation be perceived as justice in itself? UN Basic Principles and Guidelines emphasize that the victim’s right to remedy encompasses access to justice. Bringing to justice the persons responsible for the violations are included under the principle of Satisfaction.

Olsen et al explain that there are four main theoretical approaches to transitional justice and human rights violations.¹⁰⁹ The “maximalist” approach advocates the highest level of accountability through human rights trials and perpetrator-focused retributive justice. A “moderate” approach advances truth commissions as an alternative, victim-oriented restorative justice mechanism that holds perpetrators accountable through non-judicial processes. A “minimalist” approach warns against accountability, contending that amnesty provides the stability necessary to nurture democracy and human rights regimes.

This study tried to understand the perception of political prisoners and the role it plays in their overall reparation. Overall, there was a strong feeling among interviewees that communist crimes should be punished and responsible individuals held accountable. While discussing the punishment of perpetrators most of the interviewees bought up the German case as an example of the punishment of those responsible for the crimes.

In my opinion, those who acted as spies, etc, should not be punished, because they are victims of the regime. No one has been involved willingly, they have been forced. The prosecutors and police operatives, in the end, have fulfilled their duty, but those who have crossed the line should be punished. For example, my prosecutor in Shkodra has tortured people in violation of the law. These people should be arrested and punished. While for me the key responsibility rests with the elite that has steered the politics. Unfortunately, they were convicted but instead were promoted in positions and to tell the truth this is serious...¹¹⁰

[The Communist regime] has been a system that must be punished, in that time Albania signed the Helsinki Declaration to have political trials, however, they were punished for ordinary crimes. Many members of the politbureau were later declared innocent, instead, they should have been punished for genocide. They should have been punished to have

107. Zenel Drangu

108. Ylber Merdani

109. Tricia D. Olsen et al, ‘The Justice Balance: When Transitional Justice Improves Human Rights and Democracy’ (2010) 32 HRC 4

110. Gjeto Vucaj

national reconciliation, they should have asked for forgiveness for what they did to this nation.¹¹¹

In Albania no justice was done over the injustice, instead, injustice was placed over injustice and without the start of justice over injustice, we will not be able to enter the European Union.¹¹²

The interviewees also associate the need for retributive justice directly with their reparation. Interviewees imply that accountability for the crimes and prosecution is reparative for victims. While asked what measures will make former political prisoners feel better regarding what happened to them, some of the interviewees answered “... without the punishment of communist crimes Albania will not make progress”.¹¹³

In fact, our generation is almost ending. What will calm us is the removal of those that have prosecuted in high positions, we do not want to see them anymore. We have received our compensation, education, and housing has been personally settled, what remains are these people we are allergic to, something must be done.¹¹⁴

One of the measures requested by us [political prisoners] was the punishment of the crimes, and responsibility for those crimes against humanity... No measures have been taken, be it on the legal, political or moral dimension. The authors of crimes during the communist regime were not touched on the contrary they continued and continue to rule the Albanian government...¹¹⁵

The first thing to do was to punish communist crimes with a Parliamentary resolution...¹¹⁶

Other Needs

De-communicization

Some of the interviewees explain that de-communicization is an important issue that should be addressed and that should have started after the fall of the communist regime. Emphasis is put on the de-communicization of textbooks and the de-communicization from communist symbolism, street names, and institutions, which still bear the names of persecutors, thereby risking erasing historical memory over what happened for decades.

In my political speeches at that time I used to say that communism must be destroyed, nevertheless we were not listened to and many necessary measures were not taken. If some actions had been taken, we would not be in the situation we are today. What will you ask? First, communist crimes should have been identified and communicated to citizens to raise awareness of who they [communist] were. Not as retribution but to let people know. Those who were in senior positions during communism should have been prevented from political participation, and a couple of individuals should have been punished.¹¹⁷

Coming to the Terms with the Past

The communist past remains an open wound in Albania’s history. It is still not clear how we as a society will cope with our past. Should we remember what happened during the communist

111. Zenel Drango

112. Beqir Topciu (19 July 2019, Tirane)

113. Bedri Cuku

114. Gjeto Vucaj

115. Nebil Cika, chairman of Former Prosecuted Anti-Communist Association (11 July 2019, Tirana)

116. Zenel Drango

117. Uran Kostreci

regime or should we forget about it? Little has been done to explore the human rights violations and wrongdoing of the communist regime and we are far from establishing a common truth. Some authors think that today's crisis of democracy in Albania has its roots in its failure to make peace with the bloody past, which has created a climate of cynicism and impunity that is still eroding the nation's spirit.¹¹⁸

Parliament has recently proposed an amendment to the law to prevent the Institute for the Study of Communist Crimes from studying crimes committed during the Second World War.¹¹⁹ The passed amendment separated the Second World War from period of the communist regime that was established after the war. Nevertheless, such an initiative is perceived as a malicious act to prevent the study of communist crimes committed during the Second World War.

All interviewees stated that it is important that current generations learn about the atrocities committed during the communist past. They express concern that the history of the communist past is being forgotten and few memory sites exist about what happened in the past. Asked whether new generations should learn about crimes committed during communism, some interviewees declared:

Of course, this is a huge handicap. Not only the history of former political prisoners prosecuted but also the history of Albanian nationalism, precisely the history of the Second World War.¹²⁰

This is the weakest point, the new generations know nothing about what happened because school books have nothing about it [what happened during the communist regime]. They [new generations] do not know what communism was, knowledge should be also for general culture to prevent its repetition.¹²¹

[...] many roads continue to be named after persecutors whereas the anti-communist heroes are not mentioned, instead they continue to be treated in the history as enemies. The problem remains the history and literature in pre-university education. Little information is provided in these books about what happened during the communist past. Little or almost nothing is done to revise history.¹²²

More than for us [political prisoners], [knowing the history] is good for citizens to be aware of what has been done. I usually go to the House of Leaves Museum¹²³ to talk with high school children. And I have noticed that they know nothing about what has happened in the era of their parents. What has happened 30-40 years ago. I want to raise awareness among Albanian citizens to get familiar with what has happened with our fellow citizens.¹²⁴

Of course there should be memory places, for example, this government opened the House of Leaves Museum, BunkArt¹²⁵ there is a plan for the Tepelena Museum. All this should have been opened by the previous government. Because this is crucial, in all other places there is a memorial for former political prosecuted, the last one was built in Romania, however, here the decision has passed in Parliament but has not been executed.¹²⁶

118. Gazmend Kapllani, 'Pas krizës aktuale të Shqipërisë qëndrojnë krimet e pandëshkuara' (2019) Reporter.al < <https://www.reporter.al/pas-krizes-aktuale-te-shqiperise-qendrojne-krimet-e-pandeshkuara/> > accessed 29 September 2019

119. Gjergj Erbara, 'Socialistët synojnë të ndalojnë studimin e Luftës së Dytë Botërore si "pjesë e komunizmit"' (2019) Reporter.al < <https://www.reporter.al/socialistet-synojne-te-ndalojne-studimin-e-luftes-se-dyte-boterore-si-pjese-e-komunizmit/> > accessed 29 September 2019

120. Reshat Kripa

121. Gjeto Vucaj

122. Nebli Cika

123. The Museum of Secret Surveillance < <http://muzeugjethi.gov.al/home/historia-e-muzeut/?lang=en> >

124. Uran Kostreci

125. BUNK'ART Museum < <http://bunkart.al/1/faqe/about-us> >

126. Reshat Kripa

CONCLUSIONS

The overthrow of the communist regime in Albania was different from some other East European countries. In Albania, we saw mostly an elite reproduction, not an elite replacement. The newborn elite lacked the willingness to properly deal with the communist past. On the contrary, TJ measures were often used for short term political gains. The reparation policies have been fragmented without taking into consideration victims' needs. Reparation of former political prisoners after the fall of the communist regime was not perceived as a state obligation toward the victims of the communist regime but as a state's privileges.

Currently, a gap exists between victims' needs and measures provided by the state. Until now priority has been given to material compensation – even though important issues were raised by interviewed political prisoners - however, not much consideration has been paid to the acknowledgment of what has happened, the responsibility for it by state and perpetrators and the establishment of the truth. In Albania, we never had a so-called 'reparation program' for the victims of communism. The measures taken until now are initiatives driven by the persistence of victims through hunger strikes and protests. Additionally, the procrastination over financial compensation has impacted its effectiveness and questioned the state's responsibility towards victims.

Former political prisoners are a heterogeneous group with diverse needs and beliefs, and their reparation depends on diverse factors. Nevertheless, this study shows that several measures would enhance the reparation of former political prisoners. Satisfactory financial compensation, accountability of perpetrators, the establishment of truth and acknowledgment for what happened, social and political empowerment, alienation with the former regime are some of the measures that this study found to enhance the reparation of former political prisoners.

BIBLIOGRAPHY

Agron Tufa, 'The Ambivalent Role of Media on the Recognition of the Communist Crimes' in Jonila Godole and Sonila Danaj, *Media Transformation and Collective Memory in Albania* (Institute for Democracy, Media and Culture, IDMC, 2015)

Anja Mihr, 'Regime Consolidation through Transitional Justice in Europe: The Cases of Germany, Spain and Turkey' (2017) 11 IJTJ 1

Authority for Information on Former State Security Files < <http://autoritetidosjeve.gov.al/>>

Authority for Information on Former State Security Files 'When Sigurimi dealt with Science < <http://www.dosjet.gov.al/home/>>

BUNK'ART Museum < <http://bunkart.al/1/faqe/about-us>>

Christiane Wilke, 'Recognizing Victimhood: Politics and Narratives of Rehabilitation in Germany' (2007) 6 JHR 4

Elez Biberaj, *Albania in Transition: The Rocky Road to Democracy* (Boulder: Westview Press, 1998)

Ernesto Verdeja, 'Reparations in Democratic Transition' (2006) Res Pulica 12

Fatos Lubonja, *The False Apocalypse: From Stalinism to Capitalism* (John Hodgson tr, Istrosbooks 2014)

Fatos Lubonja, *Reconviction* (Koha 2018)

Fred Abrahams, *Modern Albania: From Dictatorship to Democracy in Europe* (New York University Press, 2015)

Gazmend Kapllani, 'Pas krizës aktuale të Shqipërisë qëndrojnë krimet e pandëshkuara' (2019) Reporter.al < <https://www.reporter.al/pas-krizes-aktuale-te-shqiperise-qendrojne-krimet-e-pandeshkuara/>>

Gjergj Erbara, 'Socialistët synojnë të ndalojnë studimin e Luftës së Dytë Botërore si "pjesë e komunizmit"' (2019) Reporter.al < <https://www.reporter.al/socialistet-synojne-te-ndalojne-studimin-e-luftes-se-dyte-boterore-si-pjese-e-komunizmit/>>

Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice (UN, 2010)

ICTJ, What is Transitional Justice? < <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> >

Ilirian Agolli, 'Avokati i Popullit kërkon hapjen e dosjeve të Sigurimit' Voice of America (Tirana, 24 February 2014) < <https://www.zeriamerikes.com/a/igli-totozani-hapja-e-dosjeve/1857210.html>>

Institute for Development Research and Alternatives, Citizens' understanding and perceptions of the Communist past in Albania and expectations for the future (2015) < <https://www.osce.org/albania/286821?download=true>>

ISKK <<http://www.iskk.gov.al/?lang=en>>

Krimet e komunizmit në burgje e kampe, Në Tempull nga Anisa Ymeri – News24 (February 2016)
< https://www.youtube.com/watch?v=Nh4tzczjDg8&feature=player_embedded>

Koha Jone, ‘Agron Tufa kërcënohet me vdekje’ (28 September 2019) < <https://www.kohajone.com/2019/09/28/agron-tufa-kercenohet-me-vdekje/>>

Jemima García-Godos, *Victims Reparation in Transitional Justice: What is at Stake and Why?* (2008)

John Elster, *Retribution and Reparation in the Transition to Democracy* (Colombian University Press 2006)

Lavinia Stan (eds), *Transitional Justice in Eastern Europe and Former Soviet Union: Reconciling with the communist past* (Routledge, 2009)

Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge University Press 2013)

Lavinia Stan, Nadya Nedelsky (eds), *Post-Communist Transitional Justice: Lessons from 25 Years of Experience* (Cambridge University Press 2015)

Law 7748/1993 “On the Status of Former Political Prisoners and Prosecuted by Communist Regime”

Law no.7514, dated 30.9.1991 for the Innocence, Amnesty and Rehabilitation of Former Political Convicted and Prosecuted

Law no.9831, date 12.11.2007 For the Compensation of Former Politically Prosecuted by Communist Regime

Luan Shtepani, ‘Sigurimi i Shtetit, zbardhet urdhri “tepër sekret” i Kadri Hazbiut’ (Shekulli, 2017)
< <http://shekulli.com.al/sigurimi-shtetit-zbardhet-urdhri-teper-sekret-kadri-hazbiut/>>

Luciano Boci, ‘Obstructed Decommunistisation’ (Panorama, 21 April 2012) < <http://www.panorama.com.al/dekomunistizimi-i-penguar/>>

Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (vol 2, first published 1995, United States Institute of Peace)

Naomi Roht-Arriaza, ‘Reparations Decisions and Dilemma (2004) 27 *Hastings Int’l & Comp. L. Rev.* 157

Pablo De Griff (eds), *The Handbook on Reparations* (Oxford University Press, 2006)

Robert C. Austin, Jonathan Ellison, ‘Albania’ in Lavinia Stan, *Transitional Justice in Eastern Europe and Soviet Union* (Routledge, 2009)

Roman David, Susanne Choi Yuk-ping, ‘Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic’ (2015) *HRC* 27

Roman David, 'Twenty Years of Transitional Justice in the Czech Lands' (2012) 64 EAS 4

Ruben Carranza et al, More Than Words Apologies as a Form of Reparation (International Center for Transitional Justice, 2015) < <https://www.ictj.org/publication/more-than-words-apologies-form-reparation>> accessed September 2019

Ruti Teitel, *Transitional Justice* (Oxford University Press, 2000)

Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press, 1991)

Simon Robins, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' (2017) The University of York

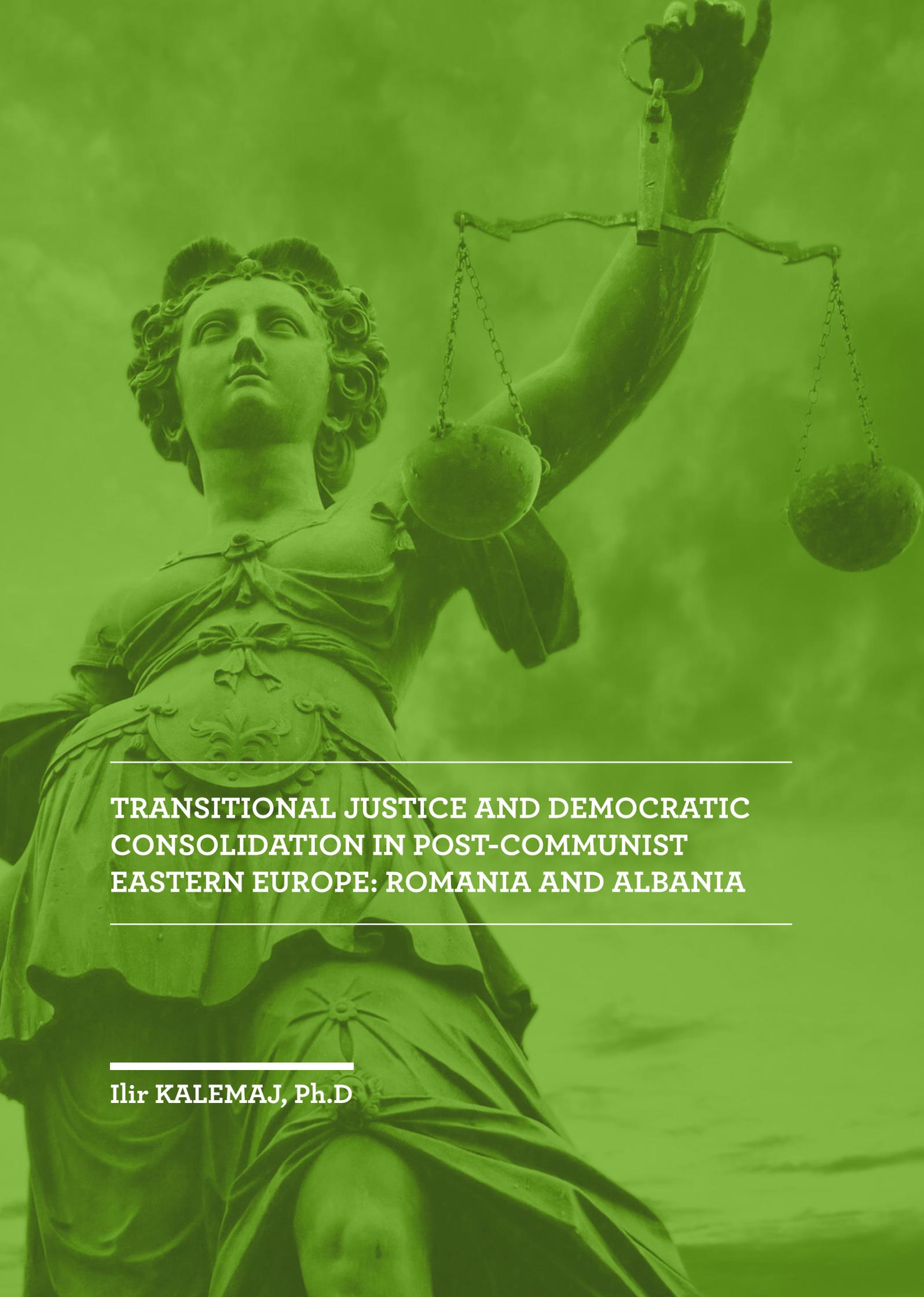
Shannon Woodcock, 'Albania's Women Political Prisoners' Struggle to be Heard (2014) 20 CSR 2
The Museum of Secret Surveillance < <http://muzeugjethi.gov.al/home/historia-e-muzeut/?lang=en>>

Tricia D. Olsen Leigh A. Payne Andrew G. Reiter, *The Justice Balance: When Transitional Justice Improves Human Rights and Democracy* (HRQ 32, 4, 2010)

Telegraphic Agency (November 1996) < <http://www.hri.org/news/balkans/ata/1996/96-11-05.ata.html#15>>

UN, *Rule-Of-Law Tools for Post-Conflict States: Reparations Programmes* (2008)

UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Doc A/RES/60/147, 2006)



**TRANSITIONAL JUSTICE AND DEMOCRATIC
CONSOLIDATION IN POST-COMMUNIST
EASTERN EUROPE: ROMANIA AND ALBANIA**

Ilir KALEMAJ, Ph.D

ABSTRACT

The existing literature in how transitional justice measures affects democratization trajectory of former communist regimes in Eastern Europe is rather scarce and underdeveloped. The present comparative study seeks to fill that gap by focusing specifically on the cases of Romania and Albania but also it gives an overview of the other countries in Central and Eastern Europe. In the kaleidoscope of CEE countries some have had a quick implementation of transitional justice measures as well as successful and rapid democratization. Yet others, despite adopting early mechanism of transitional justice did not necessarily had any particular success in their democratic endeavor. While additional states have had democratic consolidation despite not doing a particular great job in adopting rapid such measures (for example Estonia) and others failed to do both the adoption of transitional justice mechanisms as well as to democratize at all (i.e. Belarus). The present paper offers a theoretical model that seeks to capture and explain such dynamics and by referring specifically to the telling cases of Romania and Albania, to explain what role and impact do transitional justice measures have in democratic transitions.

INTRODUCTION

This paper starts with the puzzle of how the implementation of various transitional justice measures impacts democratic consolidation. The initial hypothesis is that successful implementation in an early post-dictatorship stage of transitional justice measures should result in a fast and successful transition and rapid democratic consolidation.

There is a very extensive literature about democratization in general, as well as discussion of transition processes of Central and Eastern European (CEE) countries in the aftermath of communism in particular. The speed and nature of transitions also has varied greatly and there is already an abundance of studies that deal with their trajectories. Simultaneously, we have a growing but significant scholarship in transitional justice in former communist countries, focusing on how these countries are coping with authoritarian pasts and what has been done to address it in the post-communist period. This is still an emergent field of study and much has to be done to uncover stories, collect data and develop analytical tools to help us understand critically the effects of individual and collective trauma and of measures to address it.

What remains under-researched is the link between the two phenomena. In effect, we need to know more about how success or failure to implement early on and adequately transitional justice measures affect the degree of success and the shape of democracy. The present study seeks to address this missing link and, after an overview of the state of affairs in CEE countries, it focuses particularly on Romania and Albania.

Therein, the paper investigates and seeks to provide an answer as to how a lack of full accountability for totalitarian regime crimes has resulted in a problematic democratization and weak political culture for Albania in the post-communist period. The Albanian case will be analyzed vis-à-vis the Romanian one, which, despite sharing many similarities with Albania, differs in the crucial aspect of the role played by transitional justice measures that were successfully implemented and led to a faster democratization than Albania.

The study is important in several ways. Theoretically, it provides a model to understand the role and effect of transitional justice measures in post-communist CEE countries and how these measures have affected the speed and success of transition toward democratic consolidation. Empirically, by focusing upon the examples of Romania and Albania, we can better grasp the

effects and nuances of different transitional justice measures and how they have impacted the shape of democracy writ large in these countries. Also, from a policy-making angle, this is important because it shows that the adoption of various transitional justice measures, such as retributive, restorative or reparative, can have different results, especially when we discuss post-totalitarian societies, which have a different trajectory from post-conflict or post-junta examples. All in all, my findings show that the success of transition and democratic consolidation relies to a large degree on what transitional justice mechanisms have been adopted, how they were implemented and with what effect. Although my findings do not show evidence of a direct causal effect of the implementation of transitional justice on democratic consolidation, there is definitely a correlation between the speed or timeliness of transitional justice adoption and successful democratization and enforcement of the rule of law. Adopting transitional justice measures quickly appears more likely to result in democratic consolidation.

Organizationally, the paper first gives an overview of the main debates in democratization studies, by focusing chiefly on CEE countries and their transitions from communist dictatorships. Then, it focuses on contemporary debates on transitional justice measures, particularly how they have been implemented in the former communist countries of Eastern Europe. It continues with case-selection justification and the construction of a typology that helps us understand the framework of CEE countries when measured in how effective the transitional justice mechanisms have been to help these countries transition to consolidated democracies that enforce the rule of law.

Lastly it focuses on the cases of Romania and Albania. It first discusses what transitional justice measures have been in place and how they have affected these two countries' transition trajectories. While there is significant scholarship on Romania, the Albanian case is rather unexplored and has much to offer as an archetypical state in our understanding of how transitional justice measures affect the shape of democratization in post-communist societies. In a nutshell, although both Romania and Albania implemented similar transitional justice measures (which were neither the most complete, nor the most imperfect of CEE countries), they had different outcomes when it comes to democratic consolidation: Romania has had the more successful democracy trajectory of the two.

LITERATURE REVIEW

a. Transitology and Considology debates in Eastern Europe

This section focuses on introducing some of the relevant debates that relate to the speed of transitions and present-day shape of democracies in post-communist CEE. By also discussing the role and degree of implementation of transitional justice measures, and how they have impacted these transitions, we can fill an important gap in the existing scholarship and contribute to existing debates in the field.

Therefore, I start with a brief introduction of transitology and considology debates that set up the framework of my discussion. My dependent variable is democratic consolidation and the shape and speed of transitions in CEE generally, Albania and Romania in particular. While there is an abundant literature that discusses Romania's implementation of transitional justice measures and how they have impacted its democratization, information on the Albanian case is scarce, notwithstanding their similarities in other regards.

Then, it continues with a discussion of contemporary transitional justice debates, since these measures are the ones that I rely upon as independent variables, the implementation of which

shapes the prospects for full democratic consolidation. Then, subsequent sections more specifically focus on how transitional justice has affected democratic consolidation in post-communist CEE countries. I construct a typology that helps us understand where different countries in the region fit, before focusing particularly on Romania and Albania.

Much has been written on transitions to democracy and why they are relevant for the health of a functioning society. Democracy and democratization studies go back at least to Schumpeter (1942) and especially with Dahl (1971) where he essentially noted “eight requirements for a Democracy among a Large Number of People.”¹ Recently, other authors have added to this ‘bucket list’ a couple of other essential ingredients, such as political accountability and the rule of law (Brown 1999). Both of these last two are important for my argument of how transitional justice mechanisms help to strengthen them respectively. As a branch of Comparative Politics, early transitology studies focused on immediate and unconditional transitions from dictatorships to consolidated democracies (Huntington 1993; O’Donnell et. al. 1986). This was done through ruptures of the former regime or through an initial pact, as the cases of Southern Europe in the late 1970s and 1980s demonstrated (Stepan & Linz 1996). Also, they focused on regime transformation following authoritarian rule and how the new emerging regime was unabashedly pro-democracy. As a matter of fact, these early expectations did not correspond to transitions from authoritarian rule in Latin America where pacts were difficult to achieve and often transition did not go smoothly (Stepan & Linz 1996). The significance of mode of transitions translated into the shape of democratic consolidation or lack thereof. In some cases, there was a return to authoritarian rule.

These early transition hypotheses were revisited after the kaleidoscope of events in post-communist CEE, where transitions took various shapes and democratization trajectories varied from case to case. While the importance of economic performance for democratization was noted as early as the 1950s (Lipset 1959), the strong causal relationship between economic well-being and the chances of success of democratization took on new relevance in post-communist Eastern Europe. While some were cases of rapid economic overturn achieved through ‘shock therapy’, others had a more gradual economic transformation such as Slovenia. Nonetheless, they were equally successful when it came to completing an early political transition and transformation toward complete democratic rule and the establishment of the rule of law. This was no doubt helped to a large degree by a firm rupture from communist regimes made possible through the quick implementation of transitional justice mechanisms such as trials and lustration processes in Czech Republic and East Germany.

In other cases, including Albania and Serbia, countries got caught in a difficult and prolonged transition, although for different reasons. In Albania, the chief problem was a highly fractured elite and prolonged political warfare, while in Serbia the irredentist ethnic wars led by Milosević’s regime in his attempt to carve a “Greater Serbia” out of a rump Yugoslavia. Yet, in other cases, like Ukraine and Belarus, the transition went backward, with Belarus returning quickly to authoritarian rule (Kuzio 2002). Thus, former Communist Eastern Europe offers various trajectories to democratic consolidation and have opened up new avenues of research. As one observer has duly noted:

Postcommunist Europe and Eurasia are fertile ground for testing theories that were developed in other geographical contexts-theories of democratization, institutional design, interest-group interaction, and identity politics. The reinvigorated study of the region has also produced new work that promises to enrich the general study of the political economy of reform, federalism, transitional justice, and nationalism and interethnic relations. The

1. They are: 1. Freedom to form and join organizations; 2. Freedom of expression; 3. Right to vote; 4. Eligibility for public office; 5. Right of political leaders to compete for support; 6. Alternative sources of information; 7. Free and fair elections; 8. Institutions for making government policies depend on votes and other expressions of preference.

one-lane dirt road that used to wend between area studies specialists and comparativists has, at last, become a multilane interstate (Cohen 2000: 21).

Initially, authors such as O'Donnell and Schmitter (1986) focused on the importance of political leadership decision-making and reforms of legal and institutional framework in trying to establish the rule of law. On the other hand, and of great importance for the transitional justice debate today, was their impact on exploring the past and how that was conducive to democracy and rule of law. These matters because the end goal of transition process is to reach the stage of democratic consolidation, which for authors such as Stepan and Linz is the "clear hierarchy of laws, interpreted by an independent judicial system and supported by a strong legal culture in civil society" (Linz & Stepan 1996: 10). The literature on transitology thus filled an important vacuum in the study of democratization. Whereas prior theories in the field focused on structural factors like socio-economic conditions for understanding the transition, with time, transitology opened the door for the introduction of top-down, elite-driven models that led to new transitions.²

The more recent debates focus on how a combination of comparative politics with area studies specialists (Saxonberg and Linde 2003) can balance deep knowledge of the idiosyncrasies of specific case with an appreciation of the wider context can enrich our knowledge of democratization. In addition, some recent studies have tested hypotheses that link the transition trajectories with transition outcomes, in terms of success and failure (Guo & Stradiotto 2014). They pinpoint the fact that, when there is a kind of elite pact, democracies are stronger and last longer (Stepan & Linz 1996). Pioneering works, dating many decades prior (Lipset 1959) have noted, on the other hand, a strong causal connection between economic well-being and chances of success of democratization. Both of these preconditions, are affirmed time and again in the most recent literature (i.e. Acemoglu 2014). It also is important to keep in mind that, if fragile democracies are to have a shot at consolidation, they should develop strong institutions and become more accountable as Larry Diamond (1999) reminds us.

Furthermore, it is of great importance how transitology and democratization studies take into account the newly emerging sub-fields that are both interdisciplinary and empirically rich, such as transitional justice. Below, I give a short overview of the main conceptual debates in the field, to be followed by how transitional justice has taken root in former communist Eastern Europe and how this can help us understand successful transitions and democratic consolidation.

b. Debates in contemporary Transitional Justice

The transitional justice field has long been interested in how dealing with the past effects' democratization. From the early days, debates have raged between retributivists who argue for criminal prosecution following mass violations of individual and collective rights (i.e. Drumbl 2007) and restorativists who rely mostly on "soft" ways of dealing with the past, such as truth-telling (Markovits 1995; Teitel 2002, Wiebelhaus-Brahm 2010). Others offer even a more holistic view, i.e. Alex Boraine (2010), in advocating or championing a multi-faceted transitional justice process. Yet others have noted finer differences, adding reparative conceptions of justice alongside the others (Muddell & Hawkins 2018).

A common thread in most transnational justice debates is that the end goal is a consolidated democracy that somehow settles the problem of missing justice and closes the wounds of the

2. Other authors have criticized the dichotomy between consolidated versus non-consolidated democracies (Merkel 1998), focusing instead on different layers that range from constitutional framework to civic culture, but I find this overly broad and fuzzy. Also, other scholars have criticized the consolidated democracy terminology as an overstretched concept that suffers from diffusion (Schedler 1998), but for the purpose of the present study, I define it as a democracy that matures to the point where it is impossible "to revert to authoritarianism without an external shock" (O'Donnell 1996).

past. Without a transition cycle that includes the need to address injustice, most scholars in the field (i.e. Arnould & Sriram 2014, Magara 2016) rightly believe that we cannot safely assume to have reached the stage of a consolidated democracy. After all, requiring transitional justice is a much higher bar than the two-turnover tests, for example.

State leaders are often held accountable through retributive mechanisms like criminal prosecutions and to a lesser extent and indirectly through restorative mechanisms like truth commissions. The definition of transitional justice remains contested, but, in general, it refers to the legal and non-legal mechanisms that states undertake after gross violations of individual and collective rights from the previous regime. These mechanisms include but are not limited inter alia criminal prosecutions, truth commissions, reparations, lustration, apologies, memorials, institutional reform etc. Initially dominated by legal scholars, the early focus of the field was on questions of leadership and mass accountability in democratic transition. According to Ní Aoláin and Campbell (2005), this made possible the framing of transitional justice as a coherent set of narratives and discourse, which provided the framework for the field in the future. Later on, the focus expanded and included also other aspects such as reparations and truth telling, reconciliation, forgiveness, healing etc. (de Brito 2001, Borer 2006, Stover & Weinstein 2004).

The debate between the need for trials as the primary weapon of dealing with the past versus truth commissions, was one of the yet unsolved dilemmas of scholars engaging early on with transitional justice in democratizing societies (Hayner 2002; Aukerman 2002). This constituted essentially the core debate between retributive justice and restorative justice. Reflecting a somewhat more philosophical tone, this debate centered on the “underlying philosophy of justice that should inform accountability for past violence” (Aiken 2013). On the other hand, from an empirical perspective, some authors have convincingly demonstrated that truth commissions have little impact on democracy (Wiebelhaus-Brahm 2010). This is puzzling and opens up new avenues of research because it contradicts some of the intuitive thinking and seems to discard the link between some measures of transitional justice, such as truth commissions, as having much impact on democratic consolidation. Therefore, we might assume that early and successful implementation of transitional justice measures do not necessarily impact a rapid democratization, which is counter-intuitive on first glance.

Retributivists see justice in the form of some legal “revenge” against those found guilty (Hampton 1988, Roche 2007). This type of punishment would prevent acts of vengeance in the future, “thus breaking the cycle of violence” (Blewit 2008, 39) and potentially serve as the basis for a solid rule of law in the transformation stage. Without such catharsis, its advocates argue that is almost impossible to overcome the plagues of the past and to metamorphose toward a consolidated society based on concepts of justice and the rule of law.

Quite opposite, restorative justice wants to make up and close the wounds of the past by restoring community ties and building a future based on a sense of commonness (Zehr 2002). Thus, restorative justice, as one author puts it, seeks the “transformation of subjective factors that impair community, such as anger, resentment, and desire for vengeance.” (Amstutz 2006: 166-167). Any response to such collective brokenness must seek to restore the basic fabric of society by including the victim and the offender, as well as other community members. Restorative justice principles in general have become the guiding moral force behind the development of truth commissions following mass murders, war crimes, genocide and other gross violations of human rights. Among some of the benefits of truth commissions are the elimination of a regime’s ability to deny truth (Hayner 2011, 22), thus giving justice to the victims and making it easier to forgive or move forward toward possible reconciliation.

Last but not least, we have the concept of reparative justice. This concept centers on the recognition that human relationships have greatly suffered as a result of a type of regime or a particular conflict and these ties need to be repaired (Muddell & Hawkins 2018). This is particularly relevant in countries that have suffered in the immediate past from genocide, war crimes and other mass atrocities and need to undergo a process of catharsis. Thus, repair is typically focused on trying to return the victim to their condition prior to suffering the violation to the extent possible. This cannot possibly be done without enforcing the rule of law and strong institutions that will be able to address the past in an objective way. On the other hand, as a caveat we must stress that reparations programs do not typically build by themselves either the rule of law or institutions.

Functioning institutions, greater accountability and the rule of law are highly conditional on the speed and quality of the democratization process. A fast and unequivocal transition from authoritarian rule and planned economy toward liberal democracy and free market economy generates a priori the need for stronger constitutionality and rule of law; otherwise the democratic reforms will fail to take off. Thus, transitional justice is important to understand, measure and evaluate how it impacts democracy and democratization processes. Lately, as the study of transitional justice has shifted toward more quantitative methods as a way to evaluate the success of justice mechanisms (Stewart & Wiebelhaus-Brahm 2017), the impact on democracy has become ever clearer (Thoms, Ron & Paris 2010). Indeed, for many of these studies, the attainment of a liberal democratic regime that respects civil and political rights is the main indicator of success.

Early and swift forms of addressing the past are relevant for democratic consolidation because, without a general catharsis and reflections on dictatorships and its crimes against individual freedoms and human dignity, society cannot function normally and progress will be hard to achieve. A scholar captured the importance of particular transitional justice mechanisms, when he noted that “noncriminal sanctions, such as purges, lustration, and public access to security files, are critical for the democratic reform element...” Kritz (1999, 19-20). These findings seem confirmed empirically time and again (Kritz 1995; Diamond 1999). It is, therefore, the contention of this paper that, without quick and successful implementation of transitional justice that addresses the dictatorial past, transition will be slow or suffer setbacks and democratic consolidation cannot be achieved.

In addition, a lack of democratic political culture will be reflected in weak institutions, poor checks and balances, the rise of potential authoritarianism, and a stalled reform agenda. Without a social pact that takes into account the entire legacy of the past, society simply cannot move ahead. Without accountability, there cannot be forgiveness. The ghosts of the past will continue to torment the formerly prosecuted. This is why considerate is important to take into account transitional justice measures as important variables in studying the shape of democracy in post-authoritarian societies.

CASE-SELECTION

Transitional Justice and Democratic Consolidation in post-Communist Eastern Europe

Outside Stalinist Soviet Union, totalitarian Albania and the totalitarian-sultanistic regime of Ceausescu’s Romania were the most brutal (Stepan & Linz 1996). However, recently 70 percent of present-day Russians have expressed support for Stalin’s regime and feel nostalgic (Arkhipov 2019), while Romania and Albania are the two countries with the highest negative views toward

the former regime in Eastern Europe (Kajsiu 2016). This is why I use Mill's Method of Difference to analyze these two very similar cases in most regards but that differ when it comes to the degree of democratic consolidation. These two countries in addition to their common views toward both democracy and the former regime, have other resemblances as well such as pre-communist legacies, relatively slow transition toward a market economy, initial problems of state-building etc.

The variable where they most differ is the degree of democratic consolidation. While Romania is recently considered a semi-consolidated democracy but fully free society according to Freedom House's 2018 Report with a total score of 3.46, Albania's democratization and slow transition is one of most problematic in former communist Central and Eastern European countries (Elbasani 2004; Kalemaj 2016). While Romania joined the European Union in 2007 and has completed most of the necessary reforms to successfully make the transition toward consolidate democracy and fully functioning market economy, Albania is still lagging behind, even compared to Western Balkans standards. Not only is Albania far from joining the EU, but it has yet to open the negotiation chapters, while it is currently situated in a political deadlock and suffers from non-functioning institutions (like the highest courts) and weak rule of law.

The speed of transition and democratization processes in East and Central Europe ranges from laggard Albania to successful Slovenia and Estonia. It seems that Estonia is a fully consolidated democracy with low transitional justice indicators, as the table below puts together a typology of interaction of transitional justice measure and impact on democratization in countries from CEE.³ Others, such as Vishegrad countries, that seemed well suited for rapid democratization and a smooth transition during the first post-communist decade, now seem to be struggling with the democratization processes. My hunch is that transitional justice could be the missing link to understand why some countries reach faster democratic maturity than others. However, I see this relationship in correlational rather than causal terms in the case of former communist countries of CEE.

There is an ever-growing literature about transitional justice in Eastern Europe. One of the best collections to date is that edited by Lavinia Stan (2009) which takes into account successful and unsuccessful cases, as it pertains policy intentions and degree of implementation. The same as this third wave of transitions in CEE varied a lot from country to country, transitional justice has varied as well. While some countries made rapid progress on democratization, especially in the first decade and a half after the fall of communism, some have recently slid back. This despite successful European integration of some of those countries, while others have simply muddled in or have stuck as the example of Western Balkans can testify.⁴

While in the Polish case, the European Union went out of its way and in an unprecedented move came close to vote to censor Poland, which came to a halt mainly due to opposition from Hungary. The chief reason was Poland's decision to capture the justice system by forcing into early retirement some of the Supreme Court judges and "packing the courts with government supporters" (Taylor 2019). Whereas East Germany was by far the outlier in the group of CEE countries because it was absorbed by West Germany, which in turn produced high political accountability and thorough processes of lustration, as well as other retributive, restorative and

3. All in all, Estonia has performed better in economic reforms and economic development has a direct causal link on rapid democratization as earlier works on the field have convincingly demonstrated (Lipset 1959).

4. For example, Hungary recently has been having a lot of problems with democratization and the recent measure by Freedom House makes Hungary has the first and the only EU country that has moved backward from a consolidated free democracy in a partly free democracy (Freedom House, 2019). It has also moved backward on political accountability and dealing with the Communist past in a fair and transparent manner, with Orban government going as far as to rehabilitate some Communist figures and persecuting some Communist victims and also removing unilaterally some commemorations and memorials that were to honor Communist victims. Also, Slovakia recently is going into the other extreme and rehabilitating Father Tiso's government which cooperated openly with the Nazis and is playing with Holocaust denial (Holcova 2019). This undoubtedly affects Slovakia rule of law and undermines to some extent its consolidated democracy.

reparative transitional justice components. This is a case in point of how early and successful implementation of transitional justice measures effects democratic consolidation. Czech Republic is another equally successful case as the table below illustrates.

Romania, on the other hand, although it failed to “enact radical lustration and court trials have been few in number and deficient in procedure” (Stan 2009), it nevertheless has strongly condemned via highest authority of the state, the atrocities of Communist regime, after a report from the Presidential Commission for the Analysis of the Communist Dictatorship in Romania (Vierita 2012), thus differentiating itself from most Balkan countries as well as some of its northern neighbors. But Romania has long suffered from a slow start and rather late democratization, making the first real transition of power from (former) communists to opposition only in 1996 (Marginean 1997). Some authors even argue that “Romania has yet to fulfill its second democratization wave” (Craciun 2017),⁵ while still starting to enact slowly at first and then rapidly its transitional justice measures, which helped rebuild the social fabric in a country which came a long way from a totalitarian past. I will develop the case of Romania in full in the next section that is a comparative case study. Bulgaria has a lot of similarities to Romania’s case, with consecutive governments pushing hard transitional justice measures, such as lustration but being simultaneously criticized by human rights group as violating individual rights by shifting the blame to collective guilt.⁶ Also, Bulgaria shares same democratic features as Romania in most respects.⁷ See the table below for a brief summary of CEE countries, regarding their stages of democratic consolidation on one hand and their degree of implementation of transitional justice on the other.

Democratic Consolidation

	High	Low
Holistic/ Highly Regarded	East Germany Czech Republic	Romania Bulgaria
TJ Low	Estonia Slovakia	Albania

Table 1

5. “Romania needs a second democratic transition. The first one has built new institutions but not a cohesive society; preferred enforcement and hierarchical institutions over the representative ones, and placed too much emphasis on international drivers for change.”

6. On the other hand, Helsinki Watch criticizes Bulgarian government of pushing too far on its decommunization activities and lustration measures because of “the Constitutional Court’s decision upholding the Panev Law will encourage increased efforts to purge former members of the Bulgarian Communist Party from important positions in academia.” See: <https://www.hrw.org/sites/default/files/reports/BULGARIA938.PDF>

7. Ranked partly free by Freedom House, scoring an overall 80 out of 100. See: <https://freedomhouse.org/report/freedom-world/2018/bulgaria>

Transitional Justice in post-communist Romania

This chapter will examine the effects of transitional justice mechanisms in democratic consolidation in post-communist Romania. The main conclusions are that Romania implemented early on some vigorous retributive justice mechanisms such as state and opinion (popular) trials,⁸ restorative such as active truth commissions (Stan 2009)⁹ and rehabilitation and financial compensation as reparative means to address past prisoners and formerly persecuted needs. This is a comparison to Albania which lacked the same mechanisms, which either were too little or came too late. In a nutshell, it contributes to my overall argument by focusing on the crucial difference between a functioning democracy of a full EU member such as Romania and a laggard one as Albania's case at present can best be explained.

One of the best documented cases of Transitional Justice in Communist Eastern Europe is Romania. There is some noticeable gap between political elite and civil society urges to have a clean break with the past and their lack of willingness to adopt or implement the appropriate transitional justice mechanisms that would address that need on the first place. This goes beyond a black and white split and involved the role of institutions and how they have often succumbed to political interferences. Lavinia Stan wraps this up neatly, when accounting for the Tismăneanu Commission, created by at the time President Basescu, which included several civil rights groups and completed a scientific report that detailed the crime of "1945-1989 period in a systematic and dispassionate manner" (Stan 2009: 25).

Tribunals that dealt with communist crimes, their perpetrators and their collaborators have been a feature to different degrees of implementation by all former Communist countries. They are often compared by the level of success of how much a role they had played for a swift and successful transition and how well a country democratized. In Romania we note a particular type of tribunal, the so-called "Opinion Tribunals". They were another characteristic of Romania's citizens trial, which resembled such trials created elsewhere in the past (Klinghoffer and Klinghoffer 2002),¹⁰ responsible for holding the former regime responsible for crimes against humanity although unfortunately these trials in Romania received little notice from Romanian society or its citizens living abroad. They were mostly symbolic and lacked "legal standing", so they achieved very limited success as Stan (2012) explains.

Regarding the overall lustration attempts and success, Romania started relatively late, only in the second half of the 90s (Stan 2013) and did not do enough to classify as one of the successful cases of former Eastern Europe. As the same author argues: "civil society has promoted lustration without convincing political elites to fully implement it." (Stan 2013). Regarding civil society engagement, the case of Romania, both in the 1990s and in the second decade of the aftermath of communism has shown to be much more active than the Albanian counterpart, which in no publicly recorded instance pushed consecutive Albanian governments to establish transitional justice mechanisms, although both countries show a degree of similarity when it comes to government undertakings. The difference is that in Romania it is mostly a bottom-up push for such reforms, emerging chiefly from civil society groups and networks, while in Albania is a highly top-down undertaking, given the structural weakness of civil society actors and the politicization of the debate regarding the adoption and enforcement of such measures.¹¹

8. Opinion trials were different from state trials, complimentary to them and particular only to Romania's case among the other CEE.

9. "Since the start of the democratization process in the early 1990s, only Germany, the Baltic states of Estonia, Latvia and Lithuania, and Romania have employed truth commissions as methods to reckon with communist crimes" (Stan 2009)

10. This study compares and contrasts "the history of such 'citizens tribunals' from this first astonishing success to the mixed record of subsequent efforts-including tribunals on the Moscow show trials, the American war in Vietnam, Japanese sexual slavery, the Chernobyl nuclear disaster etc." (Klinghoffer and Klinghoffer 2002).

11. When it comes to lustration measures in particular, both countries fell short in comparison with other CEE countries (i.e. Czech Republic or East Germany), but even among the Visegrad countries there were huge disparities. For example, "[w]hile in the Czech Republic 10,000 people lost their positions because of lustration in Hungary and Poland less than 500 were affected" (Stan 2009).

On the other hand, Romania initially had an active political prisoner's association that with time started to falter. As Stan (2013) reports: "[t]he Association of Former Political Prisoners in Romania (Asociația Foștilor Deținuți Politici din România), constituted in 1990 in Bucharest, had branches throughout the country and a membership that reportedly diminished from 98,700 in 1990 to 45,000 by 2000." This has often been the case in other CEE countries and variables such as time, age, and political divisions have all been instrumental in the failure to sustain political momentum.

On behalf of this alliance of former political prisoners, senator Constantin Ticu Dumitrescu:

promoted lustration through his Bill on Access to Files and Unveiling the Securitate as a Political Police which, in its original version, permitted citizens to read the secret files compiled on them by the Securitate and asked public officials and electoral candidates unveiled as former secret agents to give up their posts or renounce the electoral race. After bitter debates, Parliament stripped the bill of its lustration stipulations. When the bill was adopted as Law 187/1999, Dumitrescu was so dissatisfied with the changes operated by the house that he refused to accept the text's paternity (Stan 2000).

The most successful period regarding the calls for necessity of lustration in Romania was between 2005-07, where the Liberal-Democrats ruled the country. As Stan (2011) recalls:

[i]nspired by Bulgarian efforts, in 2006 Romanian journalists launched a Clean Voices campaign to identify secret agents from among television reporters, press contributors, and talk-show hosts. In response, Liberal legislators presented a lustration bill, the opposition lodged its own anti-nomenklatura legislative proposal, intellectuals, academics, and civil society representatives called on former and current spies to unveil their ties to communist and post-communist intelligence services, and many politicians admitted to past collaboration or were unmasked as former spies. More importantly, civil society groups convinced the Chamber of Deputies leaders to jointly organize a public debate on "Lustration: Principle or Instrument" on 25 May 2006. Besides legislators and ordinary citizens, representatives of 10 civil society groups—including the Timișoara Society, the Civic Alliance, and the Association of Former Political Prisoners—stated their position on this important transitional justice practice.

Thus, consistent to my thesis here, Romania and Albania shared same civil society vocation for lustration and other forms of radical break with communist pasts, given the similarity of their communist regimes, but there was little political will to see through enactment of legislation, pursue real trials that would purge or consistently ban from office former nomenklatura members and other transitional justice mechanisms. Below I will expand on these in Romania's case.

Romania's transitional justice measures

Romania's trials opened up with the show trial of former Communist dictator Nicolae Ceaușescu and his wife Elena that ended up with their summary shooting and is still going on today. The last trial in Romania is against Ion Iliescu, the former communist-turned-democrat, responsible for the trial against Ceaușescu, who in April 2019 is getting charged with crimes against humanity for events that took place in 1988, together with deputy Prime Minister Gelu Voiciculescu and former Air Force Cdr Iosif Rus.¹² The trials against former members of communist nomenklatura have started since 1989, immediately after the fall of the ancien regime. Civil society from those earlier days was very much supporting and making calls for such swift trials as a clean

12. <https://www.bbc.com/news/world-europe-47858664>

and swift break with the immediate past and a way to go forward with establishing rule of law and democratic credentials. For example, as early as 1991, “the Association of Former Political Prisoners submitted to prosecutors a list of notorious communist perpetrators, including deputy head of the Securitate Alexandru Nicolschi and Minister of State Security Alexandru Drăghici. In 1998, the name of Gheorghe Crăciun, former head of the Aiud prison (1958–1964), was added to the list. All three accused died before the courts heard their cases” (Muraru 2011). The civil society umbrella group “Civic Alliance” called as early as March 1991 in its “Declaration on National Reconciliation,” that “the Communist Party leaders, not all of the four million party members, should be considered morally responsible” for communist crimes. Whereas “any reference to a person should include his/ her actions, not mere party membership,” “former Central Committee members, party activists and Securitate agents should be banned from occupying public positions until year 2000” (Ștefănescu 1995: 130–131). As Lavinia Stan wraps it up neatly, there were only a few trials taking place in post-communist Romania, because of the judiciary’s lack of willingness, but also because civil society was pushing for trials in abstract rather than concrete terms. This shows the limits of democratization efforts and establishment of a firm and impartial rule of law, which would have helped to achieve a more robust break with the past and helped Romania achieve democratic consolidation earlier on.

In addition, Romania undertook restorative measures such as its Truth Commission, established in the second decade of the 1990s (Stan 2012), as well as reparative means such as rehabilitation and financial compensation that started as early as 1991 and still continues despite the delays as the below testimony in front of Commission on Security and Cooperation in Europe of U.S. Congress specifically mentions:

After many years of delay, Romania of course enacted legislation on private and communal property restitution in recent years, but the legislation is complex, the application process is cumbersome, and the processing of claims is both slow and opaque. Claimants have reported that they were unable to obtain from Romanian authorities’ basic documents needed to substantiate their claims.¹³

Table 3 Summary of competing theories in TRANSITIONAL JUSTICE¹⁴ (discussed in literature review above) and their main instruments in Romania

Retributive	Prediction
Retributive	State and Opinion (Popular) Trials in post-communist period Vetting of former officials halfhearted. Backed by civil society but not fully implemented by political elite (same as in Alb)
Restorative	Strongly emphasized in political discourse Active Truth Commissions
Reparative	Rehabilitation and Financial Compensation that started rather late but still continues (same as in Alb)

13. Property Restitution and Compensation in Post-Communist Europe: A Status Update. 108th CONGRESS 1st Session. COMMISSION ON SECURITY AND COOPERATION IN EUROPE. Washington, D.C.

14. The basis of these theories was discussed in literature review above. These are empirical hypotheses/predictions based on their main tenets.

Democratic Consolidation in Romania's case

But when it comes to democratic consolidation, Romania is shown to be much more robust than Albania and to have achieved it with relative speed. Although it is not the shining star among CEE countries, it has had quite a successful trajectory when compared to Western Balkans region in general and Albania in particular, even more so, after joining the European Union in 2007. Although both Romania and Bulgaria were deemed not ready to join the EU bloc by 2004, when the biggest enlargement of the EU happened and ten countries of CEE plus Malta and Cyprus joined in, they eventually joined in 2007. Presently, Romania has taken for the first time the six-month presidency of the European Union as well as a further indication of democratic strength and credibility, given the political consent that the other 27 member countries have to give beforehand.

Romania has an Aggregate Freedom Score of 81 out of 100 for year 2019 (Freedom House, 2019) and it has been constantly and persistently improving throughout the years. It has a rank of 61 in Transparency International regarding corruption perception, including political corruption which is strongly linked to quality of democracy and which is just a bit above the EU-28 average of 66 (Freedom House, 2019), which in itself is one of world best regional averages, although as TI warns in its latest report it “still has a long way to go to tackle corruption effectively.” (Freedom House, 2019). Although it does not help much the campaign against Romania's past special anti-corruption prosecutor Laura Codruta Covesi, in her application for EU's new European Chief Prosecutor (Gotev 2019), or the recent freezing of relations between European Socialist Group in European Parliament (PES) and Romania's ruling Socialist Party (Gurzu & Paun 2019).

However, Romania's new role as the current chairing EU Presidency, has brought much visibility, higher scrutiny and additional accountability of the country.¹⁵ In addition, the police and prosecutor's offices tackle much more effectively corruption and organized crime than before and rule of law seems to be further consolidated after the arrest of Liviu Dragnea, the leader of the ruling party PSD¹⁶ and the recent confirmation of its former National Anticorruption chief Laura Codruta Covesi as the new European Chief Prosecutor.¹⁷ The difference is obvious if we compare Romania or Bulgaria with their counterparts in the Western Balkans. Currently all Western Balkan countries suffer to some degree from some common symptoms such as corruption, state capture and organized crime (Pejic 2019). They all have little true independence of the judiciary, problems with property titles (Vesnic-Alujevic 2012), inefficient public administrations (Durovic & Stojanović 2016) and little political transparency (Kalemaj 2016). A wave of political protests is currently taking place in Podgorica, Belgrade, Tirana and Pristina. Thus, there is a big gap between consolidated democracies such as Romania and yet transitioning countries such as Albania.

Transitional Justice in post-communist Albania

Transitional justice in post-communist Albania is a topic often overlooked by scholars, at least as compared to the majority of CEE countries. One of the best pieces to date in addressing the failure of an adequate transitional justice process in post-communist Albania has been by Austin & Ellison (2008) where they argue that the three main factors that rendered such process a failure, were the country's political culture, as well as the impact of the communist regime, and most importantly “the lack of political will from Albanian political leadership to break away from its communist past.” They insist that the country failed particularly with the lustration process, which the ruling class considered “as the political means to crush the opposition and consolidate

15. For example the recent backtracking from judicial reform after strong criticism from Brussels: <https://www.dw.com/en/eu-warns-romania-against-planned-judicial-reforms/a-42294820-0>

16. <https://www.dw.com/en/romania-ruling-party-leader-jailed-for-corruption/a-48902823-0>

17. <https://www.romania-insider.com/ep-reaffirms-support-kovesi>

its power.” Thus, lustration that was not done for the purpose of a clean break with the past, holding responsible the perpetrators and achieving a catharsis that would allow the traumatized society to move ahead, but used by the political elite as a political and selective mean to get rid of political opponents while consolidating their own power. As the article neatly captures, this led to the “transitional justice process in Albania becoming highly politicized and was used by politicians for political gains, which ultimately led to loss of trust from general public failing to detach the Albanian political scene from its communist past” (Austin & Ellison 2008).

Albania stands in stark contrast even with closest neighbors that shares common past, such as Yugoslavia, given the different post-communist trajectories where the Yugoslavs were involved in identity-building and ethnic conflicts wars that seem to be missing in neighboring Albania.¹⁸ Albania has historically been a country of such paradoxes. Take religion for example. A country of four official religions that has never experienced a religious conflict and went as far under communist rule as to proclaim itself constitutionally as the only atheist country in the world in 1967. Also, the fact that it had the most difficult transition to democratic consolidation although it had a mono-ethnic society and did not get involved into irredentist and secessionist ethnic conflict of neighboring Yugoslavia (Kalemaj 2014). Another paradox of today’s reality is that despite having a population under 3 million, the country has around 140 political parties, and approximately half of them participate regularly in election cycles.

Regarding transitional justice, Albania is neither the best-case scenario, nor the worst. Actually, civil society, media and active citizens have been in forefront as compared to the political class, which often for petty reasons or conflict of interest has generally been the main obstacle to a fast and completed transitional justice process. Among the measures that Albania has undertaken, a striking one has been rehabilitation and financial compensation of former prisoners that has started in 1991, immediately after the fall of the communist regime but due to limitations of financial resources, continues to this day. Among some late measures, we can mention the vetting of former Sigurimi officials and collaborators that has started as we speak. These former officials and collaborators have to pass the filter of the Authority of Dossiers, before they can be elected or appointed in state positions of high power. Since vetting is the process by which lustration process takes place is important to note in full what a renowned scholar in the field mentions:

The higher a society’s view of the previous regime’s legitimacy, the lower its motivation to pursue justice for its authorities and the higher the likelihood, in a democratic context, that it will allow elites associated with the former regime to return to the political stage. These elites, in turn, would not be particularly likely to support vigorous transitional justice. Therefore, the more quickly they regain power, the less likely a legal framework will be established to screen such elites out of the political sphere over time. Conversely, the lower the society’s view of the previous regime’s legitimacy, the more likely it is to have both an anti-communist counter-elite to offer an alternative to communist successor parties and to offer electoral support to this counter-elite. In turn, these elites would certainly be more likely than the communist successor elites to pursue ‘decommunization’ (Nedelsky 2004, p. 88).

In the case of Albania, we can make the case that it was more the former than the latter case. The previous regime, given its absolute monopoly of power even among its former Communist Eastern European peers, and a general lack of political culture had still retained a great influence among sizeable part of populations, especially the older generation as a new study has convincingly argued (Meka and Kalemaj 2018). This was reinforced by the fact that the biggest

18. As a scholar points out: “[o]n the one hand, Albanians retain a strong national identity that is fiercely proud and patriotic, and, on the other, this identity is fragmented, marked by internal conflicts, experienced episodically, lacking an organic structure for integrating experience into sustainable narratives through which the past can be remembered or the future imagined.” (Amy 2010).

party- the Socialist Party was the former Labor Party that changed its name in a regular Congress party in 1991.

One of the paradoxes in the Albanian case is that in the immediate aftermath of communism, some quick trials on former high-ranking members of *Nomenklatura*, gave senseless sentences based on ridiculous charge (Beshiri 1998) given the seriousness of crimes of Communist regime. For example, they condemned the wife of former dictator Hoxha and some members of former Politburo on financial abuses, the so-called “coffee trials”, because they calculated such financial misappropriation as coffees and other drinks or food appropriations from members of Politburo, rather than condemn them for crimes against humanity etc. This was corrected later, when in 1996 with the Genocide Law, they were condemned for a second time.¹⁹ For supporters that was the real thing, while for critics they were politically motivated charges (Beshiri 1998). Thus, they were purged in early post-communism years because they supported the dictatorship. Most of them anyhow benefitted from the post-1997 crises amnesty and were soon released from prison. On the other hand, commemorations have taken place regularly, though much more is expected to purge textbooks from (former) ideological lenses and include that part of population that was unjustly treated and those intellectuals and politicians who were purged because of ideological convictions from the communist regime. Lory Amy, in a recent paper proposes the following:

1. Prioritize restorative commemoration of cultural heritage sites as acts of cultural mourning;
2. Make articulating the structures of state terror primary – every violence against the Albanian population was committed legally, following the laws of the state and carried out by the institutions of the state. Use these articulations to directly confront the apologists and whitewashers with evidence of the criminal nature of the state;
3. Understand and articulate how denial is built into the functioning of the state;
4. Use the important opportunity provided by the newly established Authority to Open the Secret Police Files of the Former Communist Regime to lobby the government to bring an historical truth and memory commission to Albania (Amy 2019).

On the other hand, Albania suffered from very limited trials that took place only in the aftermath of communist regime, lack of real apologies, lack of lustration etc. As one of the earliest examples of restorative justice in Albanian case was the apology of former President Berisha, immediately after the fall of Communism, in the very first year of transition: “[w]e are all guilty and we all suffered” (Berisha 2018). It was often quoted by critics from the right that emphasized that not enough was done in this earlier period to break the ties with the totalitarian past and to punish the guilty, as well as from the left that saw such declaration through ideological prism. Another example of restorative justice in Albania, were the truth commissions, but with very limited success as a transitional justice instrument influencing the democratization process. The Albanian truth commission, that took the name of its chairman in popular jargon, the Bezhani Commission²⁰ had as its main goal the opening of dossiers of high-ranking members of the past administration and to prevent them to hold elected offices during democratic transition. In fact, it was highly contested and somewhat sabotaged from its inception.²¹ In fact, as a recent work is arguing based on a comparative study, with the sole exception of Chile and South Africa, there is very little evidence for truth commissions contributing to successful democratization overall (Brahm 2019). Albania could not have possibly been the exception from the rule, given also its overall obstacles, chief among which was the lack of a national consensus and the high political

19. The Genocide Law was specified only for very high ranked members of the regime, starting with deputy ministers and above.

20. It replaced the Mezini Commission.

21. In an interview given shortly before passing away, in June 2004 for German media “One Word Southeast Europe,” Bezhani takes pride on removing from offices 104 high-ranked politicians and bureaucrats, but he also warned about 56 tapes that were burned and hundreds of dossiers either lost, stolen or misplaced, never to be found. See for more:

<https://www.pressreader.com/albania/gazeta-shqiptare/20141211/281672548278426>

antagonism that has accompanied not just the 1990s but continues to this day (Kalemaj 2017).

As it pertains to reparative mechanisms, Albania undertook rehabilitation first through the Amnesty Law in 1991. After the hunger strike from the politically persecuted prisoners, the Innocence Law acquitted these (former) prisoners of any false charge based on their ideological linings. But Albania never applied any form of property restitution for former political prisoners and the chief reason for that was the application of the new Agrarian Reform and the infamous 7501 Law that distributed the land equally. Among other reparative measures that were undertaken of importance was financial compensation through government issued securities (Alb-letra me vlere), which soon become worthless but, in the beginning, could serve for privatization of some of public enterprises. Regarding the verification trials as they were called, to certify the real sufferers of conscience under the former regime and ways to compensate them there were several forms to deal with. First, for those shot with court decision, the family would benefit the financial compensation. Second, was the category of the political prisoners. Third, the category of people shot without a court order after identification of bodies and data obtained from family members and witnesses. In any case, we are talking only of financial compensation, but not property restitution.

See the table below for a summary of transitional justice measures and how they have applied in the Albanian case.

Table 2. Summary of competing theories in TRANSITIONAL JUSTICE and their main instruments in Albania

Theory	Summary of what happened
Retributive	Limited Trials in immediate post-communist years Vetting of former officials just starting (as we speak) - same as in Romania
Restorative	Mostly rhetorical in level of political discourse Truth Commission- same as in Romania
Reparative	Rehabilitation and Financial Compensation that started in 1991 and still Continues (also included treasure bonds/securities) Lack of property restitution- Same as in Romania

Albania's yet to be completed democratic consolidation

Albania fails the test of democratic consolidation even measured by regional standards. Albania currently ranks as a partly free country with a hybrid democracy according to Freedom House index. It has an Aggregate Freedom Score of 68 for year 2019 (Freedom House, 2019), while it has further worsened in some indicators such as corruption. For example, in the last Transparency International Report, Albania slid back in the ranking and now occupied place 99 among 180 countries with a poor score of only 36 out of 100 (Transparency International 2018). It specified especially political corruption as a “serious and ongoing problem” in the country.

From its inception, Albania has had a “rocky road to democracy” (Biberaj 1999). This can be at least partly explained through the disproportional impact that the former communist past

had in impacting the country's political culture and as result its democratization trajectory, as compared to its post-communist experiences (Pop-Eleches and Tucker 2017). Actually, the former had strongly impacted the later, especially in the first decade of transition. As I have argued elsewhere, there were particularly four factors that held back Albania's successful democratization, namely its totalitarian past, a weak political & institutional culture, a clientelistic and fragmented economy not able to withstand the international market pressures and last but not least, the absence of rule of law due to widespread corruption in the judiciary, which normally would serve to correct the executive and legislative excesses (Kalemaj 2017).

One of the factors that had most impact were the elite struggles, manifested through constant and bitter political clashes. This political warfare has kept the institutional reform in limbo, the economy in hands of oligarchs who have direct access and support from political power and little chance for national consensus even when it comes to agreeing in essential and national agendas, such as reforms to speed up the European integration or constitutional and electoral changes that would improve the general election infrastructure. It is still a puzzle to explain the internal political behavior of Albania, given that on the other hand it escaped unscathed from conflicts in neighboring former Yugoslavia, it has an ethnic homogeneity which meant that it did not have to deal with nation-building like a lot of other CEE countries and excellent natural and human resources to have a jump start in the aftermath of communism.

The lack of progress is further reflected in the fact that it has not yet opened the negotiating chapters with EU five years after signing the candidate status, while it took both Serbia and Montenegro only two years each to accomplish this process. Albania currently is in possibly worst political stand-off of the post-communist era, with Albanian opposition parties walking out of the parliament and burning their mandates, after accusing the government of stealing the last elections through usage of drug-trafficking money. The government on the other hand, plans to enter the June 2019 elections like nothing has happened and the country is torn between the two camps, while protests take place routinely. Thus, we may safely conclude that different from CEE countries, such as Romania or Estonia, Albania's democracy is far from fully maturing and reaching the stage of democratic consolidation and meagre adoption and lack of full implementation of transitional justice measures played a big part of it.

BIBLIOGRAPHY

- Acemoglu, Daron. 2014. "Does Democracy Boost Economic Growth?" World Economic Forum.
- Aiken, Nevin. 2013. *Identity, Reconciliation and Transitional Justice: Overcoming Intractability in Divided Societies*. New York: Routledge.
- Albania. 2018. <https://www.transparency.org/country/ALB>
- Almond, G. & Sydney Verba. 1963. *The Civic Culture: Political Attitudes and Democracy in Five Nations*. Princeton University Press.
- Amstutz, Mark R. 2006. "Restorative Justice, Political Forgiveness and the Possibility of Political Reconciliation," in *The Politics of Past Evils: Religion, Reconciliation, and the Dilemmas of Transitional Justice*, ed. Daniel Philpott. Notre Dame: University of Notre Dame Press.
- Amy, Lory. 2019. "The Problem of Hoxha: Communist Heritage and the Demands of the Dead" Conference Proceedings from *The Outcast from Power: The Eviction/Deportation System and the Use of Forced Labor in Albania 1945-1990*.
- Amy, Lori E. 2010. "Remembering in Transition: The Transitional Stakes of Violence and Denial in Post-Communist Albania." *History of Communism in Europe* 1:207-224.
- Aoláin, Fionnuala Ní & Colm Campbell. 2005. "The Paradox of Transition in Conflicted Democracies," *Human Rights Quarterly* 27. 1. 174.
- Arkihov, Ilya. 2019. "Russian Support for Stalin Surges to Record High, Poll Says" Bloomberg, April 16. Downloaded from: <https://www.bloomberg.com/news/articles/2019-04-16/russian-support-for-soviet-tyrant-stalin-hits-record-poll-shows>
- Arnould, Valerie & Chandra Lekha Sririam. 2014. "Pathway of Impact: How Transitional Justice Affects Democratic Institutional Building," TJDI Policy Paper 1.
- Aukerman, Miriam J. 2002. "Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice," *Harvard Human Rights Journal*, 29-98.
- Austin, Robert C. and Jonathan Ellison. 2008. "Post-Communist Transitional Justice in Albania." *East European Politics and Societies*, Vol. 22, No. 2, pages 373-401.
- Berisha, Sali. 2018. "Pseishimbashkëfajtorë dhe bashkëvuajtës." *Rilindja Demokratike*. Downloaded from: <http://www.rd.al/2018/02/berisha-pse-ishim-bashkefajtores-dhe-bashkevuajtes/>
- Beshiri, Dhimiter. 1998. *Gjyqi i kafeve: procesi penal kundër të vesë së Enver Hoxhës*. Tirane: Shtëpia Botuese "Iliria".
- Blewitt, Graham T. 2008. "The Importance of a Retributive Approach to Justice," in *The Legacy of Nuremberg: Civilizing Influence or Institutionalized Vengeance?* ed. David A. Blumenthal and Timothy L.H. McCormack. Leiden: Martinus Nijhoff Publishers.
- Boraine, A. 2010. *Truth and Reconciliation in South Africa the third way*.

Borer, Anne Tristan ed. 2006. *Telling the Truths: Truth-telling and Peace Building in Post-Conflict Societies*. Notre Dame: University of Notre Dame Press.

Brahm, Eric. 2007. "Uncovering the Truth: Examining Truth Commission Success and Impact." *International Studies Association*. Published by Blackwell Publishing.

Brahm, Eric. 2019 (Forthcoming). *Truth and Consequences: The Impact of Truth Commissions in Transitional Societies*.

Brown, Archie. 1999. "Russia and Democratization," *Problems of Post-Communism*, 46/5, pp. 3-13.
Cohen, Stephen F. 2000. *Failed Crusade: America and the Tragedy of Post-Communist Russia*. New York: Norton.

Craciun, Claudiu. 2017. *Romania's Second Democratic Transition*. <https://library.fes.de/pdf-files/id-moe/13080.pdf>

Dahl, Robert A. 1971. *Polyarchy: Participation and Opposition*. New Haven: Yale University Press.
De Brito, Barahona, Alexandra, Carmen Gonzalez-Enriquez, and Paloma Aguilar, eds., 2006. *The Politics of Memory: Transitional Justice in Democratizing Societies*. Oxford: Oxford University Press.

Diamond, Larry. 1999. *Developing Democracy: Toward Consolidation*. John Hopkins University Press.

Drumbl, Mark. 2007. *Atrocity, Punishment, and International Law*. New York: Cambridge University Press.

Durovic, Gordana & Blazenka Stojanović. 2016. "The optimization of Public Administration in the Western Balkans Region: Comparative Study with Baseline Analysis." *Regional School of Public Administration*. Montenegro: ReSPA.

Elster, Jon. 2006 "Retribution," in *Retribution and Reparations in the Transition to Democracy* ed. Jon Elster. Cambridge: Cambridge University Press.

Faix, Martin & Ondrej Zvacek. 2015. "Dealing with the Past: Prosecution and Punishment of Communist Crimes in Central and Eastern European Countries." *Joacaba* vol. 16, no. 3, pp. 31-50. *Edicao Especial*.

Feher, Michael. 1999. "Terms of Reconciliation," in *Human Rights in Political Transitions: Gettysburg to Bosnia* ed. Carla Hess and Robert Post, 325-338. Cambridge, Mass.: Zone Books.
Gerring, John. 2013. "The Case-Study: What it is and What it Does?" In Robert E. Goodin ed. *The Oxford Handbook of Political Science*.

Gotev, Georgi. 2019. "Romania's Kovesi in Top Position for EU's Chief Prosecutor," *Euractiv*, Feb. 6. Downloaded from: <https://www.euractiv.com/section/justice-home-affairs/news/romanias-kovesi-in-pole-position-for-european-chief-prosecutor/>

Gurzu, Anca & Carmen Paun. 2019. *Romanian ruling party hits back at Socialists for freezing relations*. 12 April. Downloaded from: <https://www.politico.eu/article/romanian-ruling-party-hits-back-at-pes-over-freezing-of-relations-romania-eu-elections-brexit-epp-rule-of-law/>

- Guo, S. & Stradiotto, G. 2014. *Democratic Transitions: Modes and Outcomes*. Routledge. DOI: 10.13140/2.1.3550.7845
- Hayner, Priscilla. 2002. *Unspeakable Truths: Facing the Challenges of Truth Commissions*. London: Routledge.
- Hampton, Jean. 1988. "The retributive idea," in *Forgiveness and Mercy* eds. Jeffrie Murphy and Jean Hampton. Cambridge: Cambridge University Press.
- Ion Iliescu: Romania's ex-leader charged with crimes against humanity. 8 April 2019. Downloaded from: <https://www.bbc.com/news/world-europe-47858664>
- Holcova, Pavla. 2019. How the Mafias Came to Slovakia? <https://www.occrp.org/en/unfinishedlives/how-the-mafia-came-to-slovakia>, February 18.
- Kajsiu, B., 2016. Polarization without radicalization: political radicalism in Albania in a comparative perspective. *Journal of Contemporary European Studies*, 24(2): 280-299.
- Kalemaj, Ilir. 2014. *Contested Borders: Territorialization of National Identity and Shifts of "Imagined Geographies" in Albania*. Peter Lang Ltd. Oxford 2014.
- Kalemaj, Ilir. 2016. "Albania's democracy challenges: External stimuli and internal factors at play", *Academic Journal of Interdisciplinary Studies*, Vol. 5, No. 3, Sept. 30.
- Kayser -Whande, Undine & Stephanie Schell-Faucon. 2008. "Transitional Justice and Civilian Conflict Transformation." CCS Working Papers. No. 10.
- Kritz, Neil. 2009. "Policy Implications of Empirical Research on Transitional Justice," in Hugo Van der Merwe, Victoria Baxter, and Audrey Chapman, eds. *Assessing the Impact of Transitional Justice*. Washington, D.C.: U.S. Institute of Peace.
- Kritz, Neil ed. 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington DC: United States Institute of Peace Press.'
- Kuzio, Taras. 2002. "National Identity and Democratic Transition in Post-Soviet Ukraine and Belarus: A Theoretical and Comparative Perspective." *East European Perspectives*. Volume 4, Number 15.
- Lipset, Seymour. 1959. "Some Social Requisites of Democracy: Economic Development and Political Legitimacy," *The American Political Science Review*, 53 (1), 69-105.
- Magara, Ibrahim. 2016. "Transitional justice and democratization nexus: Challenges of confronting legacies of past injustices and promoting reconciliation within weak institutions in Kenya." ACCORD (African Center for the Constructive Resolution of Disputes).
- Marginean, Ioan. 1997. "Indicators of Democratization in Romania," *Social Indicators Research* Vol. 42, Issue 3, pp. 353-366.
- Markovits, Inga. 1995. *Imperfect Justice: An East-West German Diary*. Oxford University Press.
- Meka, Eltion & Ilir Kalemaj. 2018. *Gracka e Votuesit: Mes Alkimiisë Elektorale dhe Demokracisë Hibride [Voter's Trap: Between an Electoral Alchemy and Hybrid Democracy]*. Tiranë: UET Press.

Merkel, Wolfgang. 1998. "The Consolidation of Post-Autocratic Democracies: A Multi-level Model," *Democratization*, 5:3, pp.33-67.

Minow, Martha. 1998. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Hill Press.

Muddell, Kelli & Sibley Hawkins. 2018. *Gender and Transitional Justice: A Training Module Series*. Module 3: Reparative Justice. International Center for Transitional Justice.

Nathan, Benjamin. 2018. "To Hell and Back." *The New York Review of Books*. Dec. 6-19, Volume LXV, Number 19.

Nedelsky, Nadya. 2004. "Divergent Responses to a Common Past: Transitional Justice in the Czech Republic and Slovakia." *Theory and Society* 33(1): 65-115.

Orentlicher, Diane. 1991. "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal* 100, no. 8: 2537-2615;

O'Donnell, Guillermo et al. 1986. *Transitions from Authoritarian Rule: Comparative Perspectives*. Johns Hopkins University Press.

Pejic, Jelena. 2019. "All Western Balkans Countries Need Priebe Reports" to Measure State Capture," *European Western Balkans*. 8 February. Downloaded from: <https://europeanwesternbalkans.com/2019/02/08/priebe-report-state-capture-western-balkans/>

Property Restitution and Compensation in Post-Communist Europe: A Status Update. 108th CONGRESS 1st Session. COMMISSION ON SECURITY AND COOPERATION IN EUROPE. Washington, D.C.

Roht-Arriaza, Naomi. 1990. "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law," *California Law Review* 78. 2 (1990): 449-513;

Roht-Arriaza, Naomi and Javier Mariezcurrena, eds. 2006. *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*. Cambridge: Cambridge University Press.

Rotberg, Robert I. and Dennis Thompson, eds. 2000. *Truth v. Justice: The Morality of Truth Commissions*. Princeton: Princeton University Press.

Roche, Declan. 2007. "Retribution and restorative justice," in *Handbook of Restorative Justice*, ed. Gerry Johnstone and Daniel W. Van Ness. Portland, OR: Willan Publishing.

Saxonberg, Steven & Jonas Linde. 2003. "Beyond Transitology: Area Studies Debate," *Problems of Post-Communism*, Vol. 5, pp. 3-16.

Schelder, Andreas. 1998. What is Democratic Consolidation? <https://muse.jhu.edu/article/16883>
Schumpeter, Joseph A. 2014 [1942]. *Capitalism, socialism and democracy* (2nd ed.). Floyd, Virginia: Impact Books.

Stan, Lavinia. 2014. "Determinants of Post-Communist Transitional Justice: An Overview." Paper prepared for the Global Challenges Conference "Justice and Imagination: Building Peace in Post-Conflict Societies," Mount Holyoke College, February 28-March 1.

Stan, Lavinia. 2013. "Civil Society and Post-communist Transitional Justice in Romania." Chapter 2. O. Simić and Z. Volčič (eds.), *Transitional Justice and Civil Society in the Balkans*, Springer Series in Transitional Justice, Springer Science+Business Media New York.

Stan, Lavinia. 2012. *Transitional Justice in Post-Communist Romania: The Politics of Memory*. Cambridge University Press.

Stan, Lavinia. 2009. "Truth Commissions in Post-Communism: The Overlooked Solution?" *The Open Political Science Journal*, No.2, 1-13.

Stan, Lavinia ed. 2009. *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with Communist Past*. BASEES/ Routledge Series on Russian and East European Studies.

Ștefănescu, Domnița. 1995. *Cinci ani din istoria României. O cronologie a evenimentelor decembrie 1989-decembrie 1994*. Bucharest: Editura Mașina de Scris.

Stover, Eric and Harvey M. Weinstein, eds. 2004. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Cambridge: Cambridge University Press.

Stapan, Alfred & Juan Linz. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Johns Hopkins University Press.

Stuart, Brandon & Eric Wielbehaus-Brahm. 2017. "The Quantitative Turn in Transitional Justice Research: What Have We Learned About Impact?" *Transitional Justice Review*, Vol. 1, Issue. 5., Article 4.

Taylor, Paul. 2019. "EU Faces Poland Test." *Politico*. Downloaded from: <https://www.politico.eu/article/poland-article-7-test-for-eu-on-rule-of-law/> July 6

Teitel, Ruti G. 2002. *Transitional Justice*. Oxford University Press.

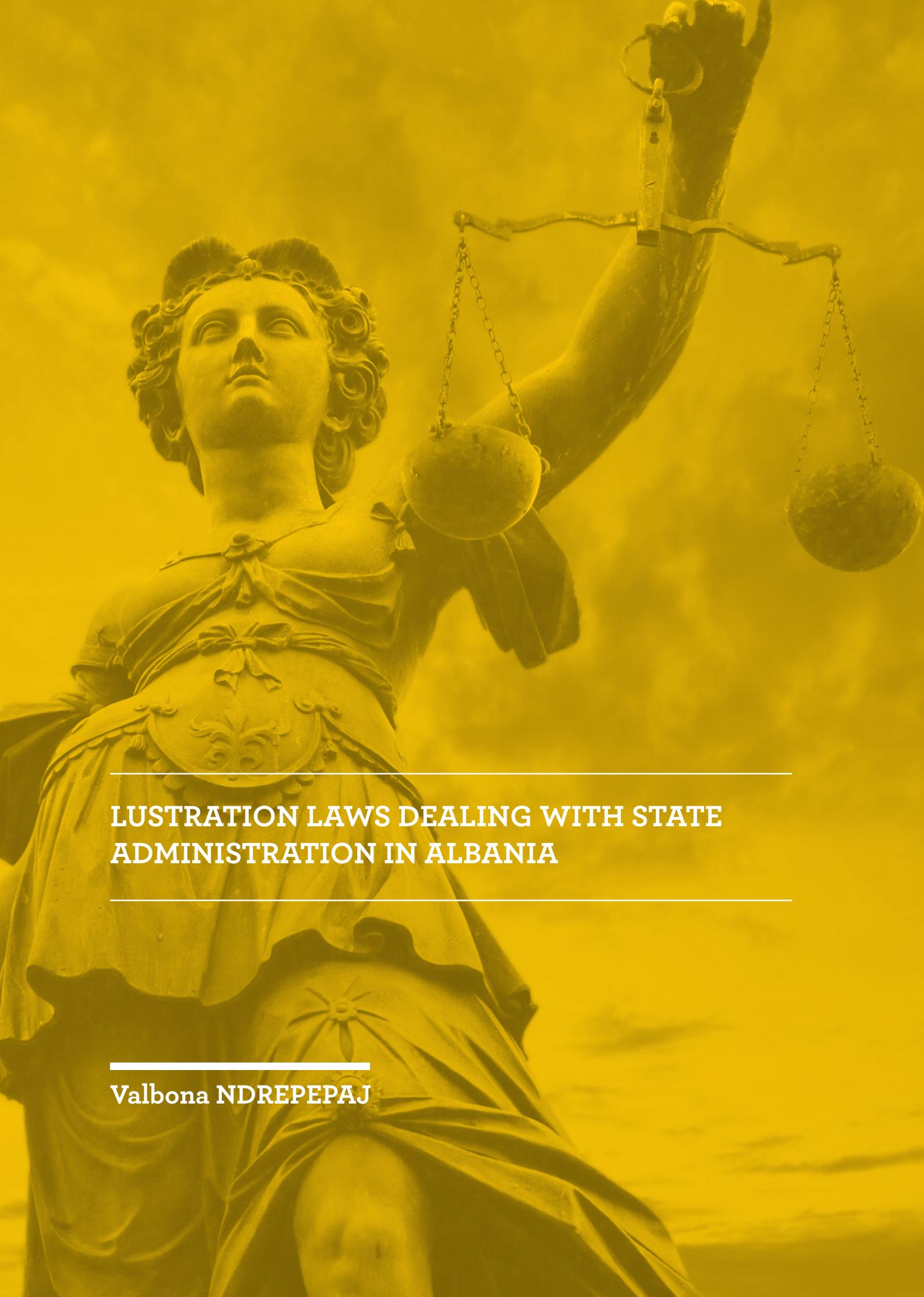
Thoms, Oskar N.T., James Ron & Roland Paris. 2010. "State-Level Effects of Transitional Justice: What Do We Know?" *International Journal of Transitional Justice*, Volume 4, Issue 3.

Zehr, Howard. 2002. *The Little Book of Restorative Justice*. Intercourse, PA: Good Books.

Vesnic-Alujevic, Lucia. 2012. "European Integration of Western Balkans: From Reconciliation to European Future." *Center for European Studies*. Brussels: CES.

Vierita, Adrian. 2012. *Romania's Communist Past*. Downloaded from: <https://www.nytimes.com/2012/03/05/opinion/romania-communist-past.html>

Wielbehaus-Brahm, Eric. 2010. *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*. New York: Routledge, 2010.



**LUSTRATION LAWS DEALING WITH STATE
ADMINISTRATION IN ALBANIA**

Valbona NDREPEPAJ

ABSTRACT

As a post-communist country, the Republic of Albania has taken several legal measures to break away from the totalitarian past and to establish a democratic state. Some of these measures were the lustration laws - taken to restrict members and collaborators of the former totalitarian regime from holding a range of public offices. But even today, many scholars declare that despite the fact there was a legal basis for lustration this process has not yet become effective. These declarations intrigued our attention to ask why these lustration laws taken in Albania have failed to be effective in producing the intended purposes, e.g., the lustration of state administration. Because of how they are designed, or, how they are implemented? To answer this question, as the core of this paper, we have operated with a particular three-step method. While as the methodology, we have used a combination of classical legal research techniques, i.e., the interpretation of legal acts and analysis of archival documents.

In the end, we have found out reasons why these lustration laws were not effective in producing the intended purposes, e.g., the lustration of state administration, are behind the how they were designed and implemented.

Keywords: lustration, state administration, Albania,

INTRODUCTION

“What we did not accomplish in 1992, what we did not accomplish in 1996, I guess we are not going to accomplish in 2008”

Pandeli Majko¹

currently State Minister of Diaspora, Republic of Albania

As a post-communist country, the Republic of Albania has taken several legal, institutional and financial measures, to break away from the totalitarian past and to establish a democratic state, based on the rule of law, respect for human rights and social justice. Some of these measures were the so-called lustration laws - taken to restrict members and collaborators of the former totalitarian regime from holding a range of public offices, state management positions, or other jobs with strong public influence. But even today, after 24 years of the first lustration law in Albania, many scholars and politicians declare that despite the fact there were/ is a legal basis for lustration and the right to information on state security files this process has not yet become effective². As students of public administration, these declarations intrigued our attention to ask why these lustration laws taken in Albania have failed to be effective in producing the intended purposes, e.g., the lustration of state administration³. Because of how they are designed, or, how they are implemented?

To answer this question, as the core of this paper, we have operated with a particular three-step method. While as the methodology is used a combination of classical legal research techniques, i.e., the interpretation of legal acts and analysis of archival documents. Thus, as the first step of our method, as the sine qua non to accomplish our aim ut supra, we have identified lustration laws dealing also with the state administration, i.e., law nr. 8043, dated 30 November 1995, law nr.

1. These are words of Mr. Pandeli Majko, a lawmaker in Albanian Parliament, during the process of discussing three legal initiatives on lustration of public figures in Legal Issues, Public Administration and Human Rights Commission, (dated 07.07.2008, page 27).

2. Bledar Abdurrahmani, Transitional justice in Albania: the lustration reform and information on communism files, (Interdisciplinary Journal of Research and Development, Vol. 5, no. 3, 2018).

3. For the scope of this paper state administration will be defined as the Council of Minister's structure, the ministries, the central institutions subordinated to the Prime Minister or a minister, including its territorial branches, as well as the administration of the Prefect.

10034, dated 22.12.2008, and the law nr.45 / 2015, dated 30.04.2015. As the second step, we have perceived the intended purposes of these above-mentioned laws. Where we have reached the conclusion the lustration of state administration was/ is not their exclusive intended purpose. These steps are closed by ranking these lustration laws in achieved their purposes, partially achieved their purposes, and not achieved their purposes *infra*. While the third step was finding reasons why these laws have failed to achieve successfully their purposes. On this account, we have found that because of how these lustration laws were designed and implemented, they did not achieve their purposes. This three-step method, by being well organized and systematic in our thoughts and actions, was successful also, for establishing the conceptual structure underlying this paper, which begins with an overview of lustration in Albania.

Thus, the first section “Overview of Lustration in Albania” deals with the ascertainment of all lustration initiatives taken in Albania from 1990-2015. Moreover, to establish a base for our analysis, as the second section, we have performed a detailed review of that available literature on the lustration laws taken in Albania. Whereby reviewing them we have deduced some features, limitations, and gaps in existing research about the Albanian lustration case. This detailed overview of lustration in Albania and the literature review process has helped us in establishing the third section, i.e., Methodology, which deals specifically with the determination of the methods used in accomplishing the aim of this paper. All this preliminary work helped us to set up the fourth section, the central section of this paper, where are identified lustration laws dealing also with the state administration in Albania and their real intended purpose; found out whether they had achieved or not the purposes for which they were brought into existence; the ranking of these laws in achieved their purposes, partially achieved their purposes, and not achieved their purposes; and will be concluded reasons why these lustration laws achieved their purposes, partially achieved their purposes, or, did not achieved their purposes. Surely, conclusions and recommendations will be an important part.

Hereby this paper, by focusing solely on lustration laws dealing with state administration and not generally in transitional justice in Albania like most authors did *infra*, by methodology used, i.e., a combination of classical legal research methods, i.e., interpretation, by archives used, e.g., archives of Mezini, Bezhani Commission *infra*, contributes in understanding some of the reasons why the lustration laws taken in Albania have failed to be successful in producing the intended purposes, e.g., lustration of state administration.

OVERVIEW OF LUSTRATION IN ALBANIA

In our opinion, the law nr.7492, dated 08.06.1991 “The depoliticization of some state institutions” can be considered as the first Albanian law containing elements of lustration. This law was concerned to prohibit political activities in some of the most important state institutions, i.e., Parliament, Presidency, Council of Ministers, ministries, and so further⁴. Thus, based on this law, within 15 days all public employees, members of political parties, had to give their resignation from public offices. If not, they had to be dismissed. While who aspired to be employed in the above-mentioned institutions had to give a written declaration as an approval of their political disengagement.⁵ But regardless of the expressed aim of this law - *ratio legis* - the depoliticization of some state institutions and the term used ... political parties... in our opinion this law was the first unintended attempt to purify some important state institutions from members of the one-time communist party. Because as we know just before 6 months of approval of this law, the People’s Assembly formally sanctioned the creation of opposition of political parties. Where the

4. Article 1.

5. Article 5.

first opposition party, i.e., the center-right Democratic Party, was formed on 12 December 1990⁶.

But many authors stated the first law containing elements on lustration date back to the beginning of 1993, i.e., the law nr. 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 nr. 7541, dated 18.12.1991 “On the regulation of the profession of the attorney in the Republic of Albania”⁷. Generally speaking this law 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 processes⁸.

While Horne has considered the first lustration laws taken in Albania the law nr. 8001, dated 22 September 1995, “On genocide and crimes against humanity committed in Albania during the communist regime for political, ideological and religious reasons” and the law nr. 8043, dated 30 November 1995, “On the control of the moral figure of officials and other persons connected with the protection of the democratic state”⁹. The law nr.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”, or the so-called Genocide Law, foreseen the purity of the public employees. But as stated by the title itself, the law *imprimis* was concerned for investigation of genocide and crimes against humanity committed in Albania during the communist regime for political, ideological and religious motives.¹⁰ After that process of investigation, authors, creators, or, implementers of that crimes were prohibited to be appointed in important institutions of the state administration¹¹ until 31.12.2001. Two months later a new law, i.e., the law nr. 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” or the so-called the Vetting Law” – *legis specialis*, was addressed to control the purity of the public official’s figure. This law has intended to purify the figure of the subjects who performed or sought to perform important duties in the structures of the Albanian state during the post-communist period. Based on this law, among the bodies and functions subject to the verification process of the image were the appointees in executive and state administration functions,¹² While to serve in these 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. 1991.¹³ 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.¹⁴ This commission exercised its activity by the end of 2001. But from 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 the law nr. 8151, dated 12.09.1996, were excluded from the verification of the elected figures the appointees and the candidates for election to the local

6. Elez Biberaj, *Albania in Transition: The Rocky Road to Democracy*, (Westview Press, 1998).

7. Bledar Abdurrahmani, *Transitional justice in Albania: the lustration reform and information on communism files*, (Interdisciplinary Journal of Research and Development, Vol. 5, no. 3, 2018); Neil Kritz, *Transitional Justice vol. II*, (Endowment of the United States Institute of Peace, 1995).

8. Article 3.

9. Cynthia Horne, *Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe*, (Comparative Political Studies 45(4), 2012).

10. Article 1.

11. Article 3.

12. Article 1.

13. Article 2.

14. Article 4.

government bodies. While the law nr. 8280, dated 13.05.1997, narrowed the circle of positions and qualities held during the communist system.

In 2008, another lustration law was passed - the law nr. 10034, dated 22.12.2008 "On the purity of the image of high officials of the public administration and the appointees". Same as the previous experiences, this law intended 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. But, this law was subject to strong criticism by the opposition, the international actors and stakeholders, claiming that it violated constitutional and democratic standards. 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 V-9/2010, abolished it as incompatible with the Constitution with the argument that the law had serious constitutional problems.

While the latest legal attempt in the field of verifying the cleanliness of the figure of public officials was the adoption of the law nr.45/2015, dated 30.04.2015 "On the Right to Information on the documents of the ex-state security directorate of state security directorate of the People's Socialist Republic of Albania". But, as the title of the law tells, the primary purpose of the law is guaranteeing the right to information on state security documents. While the cleanliness of the figure for public officials, a peripheral purpose of the law, can be considered as a minimalist not compulsory lustration mechanism.

LITERATURE REVIEW

As a base for our analysis, by using intellectual history as a systematic review of literature¹⁵, we have initially performed a detailed review of that available literature on the lustration laws taken in Albania. By reviewing them we have deduced some features, limitations, and gaps. Thus, firstly, we have come in conclusion there are books, articles, studies on transitional justice, transitional justice personnel measures – lustration laws, where Albania's case is mentioned¹⁶, but only a few of them are focused on the lustration laws taken in Albania.¹⁷

Secondly, the main of these articles present a historical overview of post-communist Albania, or, a historical overview of main lustration laws taken in Albania.¹⁸ Thirdly, the prominent

15. Gerald. J Miller and Kaifeng Yang, *The Handbook of Research Methods in Public Administration*, (CRC Press-Taylor and Francis Group, 2008).

16. Kathleen Imholz, A landmark Constitutional Court decision in Albania, (*East European Constitutional Review*, vol.2, no. 3, 1993); Neil Kritz, *Transitional Justice* vol. II, (Endowment of the United States Institute of Peace, 1995); Mark S. Ellis, *Purging the past: the current state of lustration laws in the former communist bloc*, (*Law and Contemporary Problems*, vol. 59, no. 4, 1997); Roman David, *From Prague to Baghdad: Lustration Systems and their Political Effects*, *Government and Opposition*, (Government and Opposition, vol.41, issue 3, 2006); Cynthia Horne, *Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe*, (*Comparative Political Studies* 45(4), 2012); Cynthia Horne, *Lustration, Transitional Justice, and Social Trust in Post-Communist Countries. Repairing or Wrestling the Ties that Bind?*, (*Europe-Asia studies* Vol. 66, no. 2, 2014); Cynthia Horne, *Silent Lustration Public Disclosures as Informal Lustration Mechanisms in Bulgaria and Romania*, (*Problems of Post-Communism*, vol. 62, 2015); Alexander Mayer-Rieckh and Pablo de Greiff (eds), *Justice as Prevention: Vetting Public Employees in Transitional Societies* (SSRC 2007); Lavinia Stan and Nadya Nedelsky (eds), *Encyclopedia of Transitional Justice*, (CUP 2013).

17. Neil Kritz, *Transitional Justice* vol. II, (Endowment of the United States Institute of Peace, 1995); Robert C. Austin, Jonathan Ellison, *Post-Communist Transitional Justice in Albania*, *East European Politics and Societies*, Vol. 22, 1998); Vladimir Balaš, *Albanian lustration act, its constitutional and international law pros and cons*, (*CYIL* 1, 2010); Arolda Elbasani, Artur Lipinski, *Public contestation and politics of transitional justice: Poland and Albania compared*, (*EUI Working Papers SPS* 2011/02); Bledar Abdurrahmani, *Transitional justice in Albania: the lustration reform and information on communism files*, (*Interdisciplinary Journal of Research and Development*, Vol. 5, no. 3, 2018).

18. Neil Kritz, *Transitional Justice* vol. II, (Endowment of the United States Institute of Peace, 1995); Mark S. Ellis, *Purging the past: the current state of lustration laws in the former communist bloc*, (*Law and Contemporary Problems*, vol. 59, nr. 4, 1997).

idea transmitted by some of these articles is that generally, lustration laws in Albania were unsuccessful because the process was disorganized and highly politicized.¹⁹ Fourthly, the prominent idea transmitted by some of these articles is that lustration laws in Albania were ineffective because of the inconsistency of these laws with the constitutional framework or international commitments.²⁰ Fifthly, Albania is excluded from the statistical analyses because of the lack of consistent data²¹, or, because of its marginal and uncertain status.²² In the last place, we have seen as a limitation in the existing research the focusing of these articles mainly on the general transitional justice process in Albania, and not specifically on lustration laws, or a lack of research on current lustration measures in Albania. In our opinion, the methodologies used in these articles, i.e., mainly descriptive research without focusing on “why”, or, analyzing, and presenting data, did not guarantee an accurate understanding why these laws were unsuccessful, ineffective, or if the process was truly disorganized and highly politicized. Therefore, this literature review journey helped us to form our specific research question and to develop the desirable methodology to understand why these lustration laws dealing with the state administration in Albania did not achieve their purposes, i.e., the process of collecting, analyzing, and presenting data produced by authorities charged with designation and implementation of these lustration laws.

Thus, Neil Kritz in his book “Transitional Justice”-vol. II, after giving a historical panorama of Albania starting from the occupation from Italy until the first lustration law in 1993, has written that a considerable amount of informal “lustration” has been taken in Albania, until the parliament passed the first lustration law providing the removal of persons from specific positions on the basis of their actions in the past.²³ But, per our analysis, his considerations about the way how a lustration law should be designed are important. Thus, according to him the criterion of a successful lustration law is keeping a fair balance between individual human rights and the strongly felt desire that those who violated human rights under prior regimes receive due punishment²⁴.

While according to Austin²⁵ and Ellison the first two lustration laws, i.e., the law nr. 8001, dated 22.10. 1995 On Genocide and law nr. 8043, dated 30.11.1995 the Verification Law, *prima facie* intended to ensure the democratic nature of the Albanian polity by restricting the entry of individuals with anti-democratic tendencies, but, in their context, scope, and implementation, it soon became evident that the Lustration Laws were being exploited by the Democratic Party to purge Albanian politicians. Thus, according to them, the law on Genocide was a very limited lustration law which did not therefore really serve a legal purpose; it did not effectively lustrate and was superfluous to genocide prosecutions. While the Verification Law, the first real lustration law, for screening potential and actual members of ... state administration ... had been seriously undermined. In conclusion Austin and Ellison stated that Albania was a laggard in transitional justice. The process started but it always seemed to be driven by politics.²⁶

Whereas, in their article “Public Contestation and Politics of Transitional Justice: Poland and Albania Compared”, Arolda Elbasani and Artur Lipinski gave some reasons why Law on Genocide and Law on Verification were defective. Thus they stated that the law on ‘Genocide’ did not have a

19. Robert C. Austin, Jonathan Ellison, *Post-Communist Transitional Justice in Albania*, *East European Politics and Societies*, Vol. 22, 1998); Arolda Elbasani, Artur Lipinski, *Public contestation and politics of transitional justice: Poland and Albania compared*, (EUI Working Papers SPS 2011/02); Cynthia Horne, *Silent Lustration Public Disclosures as Informal Lustration Mechanisms in Bulgaria and Romania*, (*Problems of Post-Communism*, vol. 62, 2015); Bledar Abdurrahmani, *Transitional justice in Albania: the lustration reform and information on communism files*, (*Interdisciplinary Journal of Research and Development*, Vol. 5, no. 3, 2018).

20. Vladimir Balaš, *Albanian lustration act, its constitutional and international law pros and cons*, (CYIL 1, 2010).

21. Cynthia Horne, *Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe*, (*Comparative Political Studies* 45(4), 2012); Cynthia Horne, *Silent Lustration Public Disclosures as Informal Lustration Mechanisms in Bulgaria and Romania*, (*Problems of Post-Communism*, vol. 62, 2015);

22. Jon Elster, *Transitional Justice in Historical Perspective*, (Cambridge University Press, 2004).

23. Page 730.

24. Page 734.

25. An expert of Albania and Kosovo history,

26. Page 380.

legal impact, given that genocide and crimes against humanity were already indictable offenses under the penal code, but it served as a bold political move to show that the Democrats were intent to move ahead with the anti-communist policies, especially with an eye on the forthcoming elections in 1996. While the law on ‘Verification of the Officials’ provided the legal instruments to screen and ban from democratic office a wide array of former communist officials. At first glance, the verification law opted for ‘wild’ measures to the extent that it regulated the screening of an exceptionally wide list of positions in the old regime and employed radical measures of banning from public office of all of the listed categories, but the new law proved to be loose and defective enough to allow the enacting majority ample political discretion on the working of the Verification Commission and the final results of screening. First, the provisions that enabled the government to appoint six out of seven members of the Verification Committee, cast doubts on the impartiality of the only institution in charge of managing the process. Also, the law shielded from possible banning all party leaders, who were automatically excepted from the verification process, but in cases when it was ‘required by other members of the party leadership.’²⁷ As per the in our analysis, they conclude that transitional justice remains an open issue, which has recorded merely incomplete and highly criticized results.²⁸ Also, in their book “Encyclopedia of Transitional Justice”-vol. II, Stan, and Nedelsky has written that the first round of transitional justice was used by the government to destroy the opposition.²⁹ Furthermore, in her articles, Horne excluded Albania from the statistical analyses because of the lack of consistent data, but she gave some important features about the process. For instance, firstly, Albania is categorized as an insufficiently lustrated country, because of resisted attempts at transitional justice.

In this literature review journey, we have found very useful two articles, i.e., “Albanian lustration act, its constitutional and international law pros and cons” of Vladimír Balaš, a Czech lawyer; “Transitional justice in Albania: the lustration reform and information on communism files” of Bledar Abdurrahmani, an Albanian lawyer. In the former article, the author after a thorough analysis of relevant Albanian legislation, international law commitments of Albania and casuistry of European Court of Human Rights, the author of this study submits, he believes that the lustration law examined, i.e., law nr. 10034, dated 22.12.2008 “On the purity of the image of high officials of the public administration and the appointees”, was adopted at an unfortunate moment and in a rather unfortunate way. Thus, he has written that this law itself has several weak points that detract from its value and significance and should be corrected as soon as possible. For instance, the main problem is that the lustration law was adopted as an ordinary law although it interferes with the rights guaranteed by the Constitution. This means that the real issue was not the conflict (or supposed conflict) between the lustration law and the international treaties to which Albania is a party, but rather the conflict between the Lustration Act and legislation of superior force – the Constitution. Thus Balaš, within his article, gave us some legal technical reasons why this new lustration law failed to produce the intended purposes. Whilst, in the later article author, provides a detailed analysis of the latest legal reform of lustration and the right to information on the files of the communist regime, i.e., law nr.45 / 2015, dated 30.04.2015 “On the Right to Information on the documents of the ex-state security directorate of state security directorate of the People’s Socialist Republic of Albania”, which seeks to find 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. The main finding of him is that although that there were/ is a legal basis for lustration and the right to information on state security files, this right has not yet become effective. Indeed, the added values of our article compare to Balaš and Abdurrahmani are the number of lustration laws analyzed, the focus only on lustration laws dealing also with the state administration, and the methodology used.

27. Page 6-9.

28. Ibid.

29. Page 10.

METHODOLOGY

To reach the objectives of this paper, i.e., the identifying of lustration laws dealing with state administration in Albania and finding whether they had achieved or not the purposes for which they were brought into existence; the ranking of these laws - achieved their purposes, partially achieved their purposes, and not achieved their purposes; and finding out reasons why these lustration laws achieved their purposes, partially achieved their purposes, or, did not achieved their purposes, we have operated with a combination of classical legal research methods, i.e., the interpretation of legal acts and analysis of archival documents. Thus, firstly, by using as data collection technique secondary data coming from a process of literature review, parliamentary reports, archives of the implementers authorities established under the lustration laws, and, by using as data analysis technique the 3 approaches of textual interpretation - as a legal method of finding the meaning of meaning - *intentio auctoris*, authorial intention, corresponds to what the author intended, had in mind, to say; *intentio operis* describes what the text actually says; and *intentio lectoris*, what the text conveys to the reader, what the reader takes it to mean³⁰ and content analysis - to analyze documents³¹, we have identified only lustration laws dealt with the state administration in Albania, determined their real intended purposes, and we have concluded if they achieved their purposes. After we have ranked them in achieved their purposes, partially achieved their purposes, and not achieved their purposes. Secondly, by using as data collection technique secondary data coming from parliamentary reports, archives of the implementers authorities established under these laws and other relevant institutions, i.e., Parliament of Albania, Commission of Verifying Public Figures or the so-called Bezhani Commission, Mezini Commission, Files Authority, Department of Public Administration, and Ministry for Europe and Foreign Affairs, by using as data analysis the content analysis-to analyze documents, we have find out reasons why these lustration laws achieved their purposes, partially achieved their purposes, or not achieved their purposes.

This methodology is also supported by our research question, namely, why these lustration laws dealing with the state administration in Albania did not achieve their purposes? also by our hypothesis, we assume that because of how these lustration laws were designed and implemented, they did not achieve their purposes.

FINDINGS

The identifying of lustration laws dealing with the state administration in Albania and finding whether they had achieved or not the purposes for which they were brought into existence; the ranking of these laws in achieved their purposes, partially achieved their purposes, and not achieved their purposes

By using the above-mentioned methodology, we have reached the conclusion lustration laws dealing also with the purifying of state administration in Albania are as below listed:

law nr. 8043, dated 30 November 1995, “On the control of the moral figure of officials and other persons connected with the protection of the democratic state”;

law nr. 10034, dated 22.12.2008 “On the purity of the image of high officials of the public administration and the appointees”;

30. Alfred Phillips, *Lawyers' language How and why legal language is different*, (Routledge Press, 2003).

31. Gerald. J Miller and Kaifeng Yang, *The Handbook of Research Methods in Public Administration*, (CRC Press-Taylor and Francis Group, 2008).

law nr. 45 / 2015, dated 30.04.2015 “On the Right to Information on the documents of the ex-state security directorate of state security directorate of the People’s Socialist Republic of Albania”.

But as we have mentioned our final aim is to find out whether these laws had achieved or not the purposes for which they were brought into existence, ranking them in achieve their purposes, partially achieved their purposes, and not achieved their purposes, and then finding out reasons why these lustration laws achieved their purposes, partially achieved their purposes, or did not achieve their purposes. Thus, in our point of view, the precondition to reach this was understanding their intended purposes. So, understanding what the author/ s of these laws intended to say; to describe what the text says; and what the text conveyed to the implementers of it.

Thus, let’s start our journey with the first lustration law dealing with state administration - law nr. 8043, dated 30 November 1995, “On the control of the moral figure of officials and other persons connected with the protection of the democratic state”. In the first article of the law are determined the public officials’ figures and institutions under the dominion of the law “... general directors, directors, ... Council of Ministers, Ministries, and other central institutions”³². The conditions to serve in these institutions were non-membership or non-participation in any form in onetime Labor Party of Albania; non-governmental employment, or, in State Security during 28.11.1944-31.03.1991.³³ To prove if one of the above-mentioned public officials, or, an individual aspiring to be part of one of the above-mentioned institutions was in one of the situations listed above was established a state commission. But, per our analysis, the text of this law offers two evasive issues to be clarified. Firstly, the purpose of this law was only the prevention of whom served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian political life or state apparatus, or, this law was also an instrument to guarantee the purifying of Albanian political life or state apparatus from whom served as a leader in the political structures of the Party of Labor, etc. Secondly, the purpose to prevent/ remove who served as a leader in the political structures of the Party of Labor, etc., to be part of state administration was an aim itself or it has peripheral importance?

Simply interpreting, the purpose of the law was to prevent who served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian political life or state apparatus. But, by a linguistic interpretation of article 1 ... Organs and functions for which this law determines conditions to serve in them ... *intentio operis* the text also says for the removing of who served as a leader in the political structures of the Party of Labor, etc., from state apparatus. Indeed, during consulting archives of the Commission of Verifying Public Figures, established under this law, we have concluded this law was generally used to verify public officials in duty and not those aspiring to be. Indeed, in the case of verifying those aspiring to be public officials, we have seen only 2 requests addressed to Mezini Commission by the Defense Ministry. While, as per the purpose of prevention, or, removal of who served as a leader in the political structures of the Party of Labor, etc., to be part of state administration it was not the only aim of the law. Especially, the Commission was focused on verifying political figures *infra*. These concluded interpretations are also supported by what the author/ s of this law intended, or, had in mind, to say - *intentio auctoris*. For instance, in the explanatory report of the project law sent to Parliament by the Council of Ministers, as the initiators of this law, it is written:

The coming law “On the control of the moral figure of officials and other persons connected with the protection of the democratic state” aims to eliminate/ avoid³⁴ from participation in the Albanian political life to those who their works or activities harmed the interest of

³² Article 1/ c/ ç.

³³ Article 2.

³⁴ Word used in Albanian *menjanojë*.

*Albanians and Albania in the past. This kind of law will guarantee a pure democratic life, a quiet process of transition ..., and Memoriam of the past and will be an important step to punish communism and its acts.*³⁵

While during the discussions of this law in parliamentary sessions a deputy registered to say:

*“This law aim that lustration that guarantees a pure democracy in Albania...”*³⁶

Thereby, the intended purpose of the Verification law was to prevent, or, remove who served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian political life or state apparatus. Consequently, to be part of state administration.

As per continuing our analysis, for fulfilling the purpose of this law was foreseen the establishment of a commission - Commission of Verifying Public Figures, a.k.a. Mezini and Bezhani commissions. Archives of these commissions, based on the law nr.45 / 2015, dated 30.04.2015 infra, are kept by Files Authority. According to official information provided by experts of Files Authority:

*“There are 139 files of the “Mezini” commission. These files contain various documents, mainly correspondences of the “Mezini” Commission with various institutions, decisions of this commission in the context of verification of various public figures presented by different political entities. In the nominal lists submitted by political entities, there is no information as to whether people hold civil servant positions. In addition to the above files, part of this archive fund is as well as the so-called protocol register, which reflect the names of citizens verified by this commission, but it’s not registered for the job position of these citizens, held at the time of verification.”*³⁷

While from the files of the Bezhani Commission, the same expert of Files Authority has stated that: *“the Archives Directorate stores and manages 730 decisions, which correspond to public institutions and political entities of the time. In addition to the above documents, part of this archive fund is the practices of other institutions, for which we do not have the decisions of the relevant committees. From the above, it is impossible to identify precisely the verifications carried out specifically for civil servants by the “Mezini” and “Bezhani” Commissions during the period 1995-2001”*³⁸

But indeed even after consulting Mezini and Bezhani Commissions files³⁹ based on difficulties to identify precisely the verifications carried out specifically for civil servants by them, i.e., their failure to keep documentation in accordance with bureaucratic rules because of the lack of administrative supportive staff for members of the Commissions, i.e. secretaries; lack of appropriate infrastructure, i.e., offices, ink, papers, computers, and so further, lack of the determination of concrete job position of the individuals under the process of verification, we can only make guesses about the number of civil servants, as per categories foresaw by the law, verified by these commissions. For instance, for every individual under the process of verification is filled a form as below:

35. Official letter sent to the Parliament by Council of Ministers, Report on the Draft-Law “On the control of the moral figure of officials and other persons connected with the protection of the democratic state”, nr. 3871, dated 22/11/1995, page 10.

36. Parliamentary Plenary Session dated 30.11.1995, time 17:00, page 1668.

37. This information is declared by the Right of information coordinator of Files Authority.

38. Ibid.

39. We have consulted these files from 26 August – 9 September 2019 at the Files Authority premises, under the help of Ms. Ornela Arapaj – Specialist of Research.

Table 1. Sample

No	Name/ Surname	Date of Birth	Place of Birth	Current Job	Education	Job Experience	Reason for the application

But at the category Current Job, is not filled their concrete job position, e.g., director, general director, but their profession, e.g., lawyer or economist. Furthermore, among individuals verified we have identified these categories, i.e., deputies, unemployed, pensioners, businessmen, social assistance, and “he/she seems to be state employee”⁴⁰. Thus, Mezini Commission administered 2532 requests, sent by political parties, or independent candidates to be verified candidates of 1996, 1997 election. Among these 2532 requests, corresponding to 2532 individuals, only 89 of them are identified as “he/she seems to be state employee”, but it’s impossible to identify their affiliated institution or their concrete job position, in order to identify if they have fallen in one of the categories of the article 1 of the law, i.e., appointed by the president; general directors, directors of a directory in departments; Presidency, Council of Ministers, ministries, central institutions of state administration. While this Commission administered only 46 requests by ministries, i.e., 2 requests by the Ministry of Health, 1 request by Internal Ministry, and 43 requests by Parliament of Albania. These 45 individuals resulted not to fall in one of the categories foreseen in article 2 of the law – employees of State Security (ex Sigurimi).

While Bezhani Commission, differently from Mezini Commission, worked more in verifying officials of public administration. This maybe because of no electoral election during his work time. This commission administered 2600 requests⁴¹ and within 6 months verified 7000 officials⁴². Whilst in the coming years, i.e., 2000, 2001, the commission administered requests by State Supreme Audit Institution – 21 employees; Albania State Television – 306 employees, and Council of Ministers – 147 employees. But there is still impossible to identify their concrete job position, i.e., general directors, directors of directory. Hereby, by the lack of precise information provided by these commissions, it’s difficult to truly say if this law achieved its purpose to prevent/ remove who served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian state administration. But in our opinion, based on above insignificant numbers and by keeping in mind after 2001, the year when the effects of this law expired, there were other initiatives of lustration law – 2008, 2015, this law not achieved its intended purposes - the purity of the state administration. A contrario if this law was a success why it was needed to draft, or approval the law nr. 10034, dated 22.12.2008 “On the purity of the image of high officials of the public administration and the appointees”?!

While the law nr. 10034, dated 22.12.2008 “On the purity of the image of high officials of the public administration and the appointees” or the so-called Lustration law was the second attempt to purify state administration. But except of its aim, i.e., to control the purity of the image of any elected public official 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, the purpose of this law was not achieved, because, after 2 months of coming into force, the Constitutional Court initially suspended the law enforcement, and then, by its decision V-9/2010, abolished it as incompatible with the Constitution.

40. We did this kind of division in categories after consulting all of these forms.

41. Report nr. 221, dated 28/04/1998.

42. Report nr 324, dated 04/12/1998.

But as Albania needed another lustration law, as cited by Genti Ibrahimi⁴³, where every citizen to have the right of information on the documents of the ex-state security, a new law came into force - law nr. 45 / 2015, dated 30.04.2015 “On the right to information on the documents of the ex -state security directorate of state security directorate of the People’s Socialist Republic of Albania”. Prima facie, as the title itself states, this law is not lustration oriented. This law aims to determine rules and procedures to enable any person concerned to exercise his or her right to information on former State Security documents, through a democratic and transparent process, also to protect the individual’s personality, and national unity and reconciliation. Also, Files Authority is obliged to respond to any requests made by constitutional institutions and public authorities regarding the existence of information in former State Security documents when this is required in the context of assessment, under relevant legislation, the ethical, moral and professional qualities of the candidates to be nominated or promoted in public position as mentioned below:

... b) ..., *members of Top Management Corp (TMC), ...*

Thus, by a simple linguistic interpretation *intentio operis* – interpreting what the text actually says and *intentio lectoris* – what we mean by it, the purpose of this law is to guarantee the right of information on former State Security documents, through a democratic and transparent process; to protect the individual’s personality; national unity and reconciliation. But by a linguistic interpretation *lato sensu* of the phrases ... to protect the individual’s personality, and national unity and reconciliation... with a combined reading of article 29 of the law, there is room to see this law as a lustration instrument. But lustration of the figure of public officials -TMC can be considered a peripheral purpose of the law - a minimalist not compulsory lustration mechanism. As it is foreseen in the article 29 Files Authority is obliged to respond to any requests addressed by constitutional institutions and public authorities regarding the existence of information in former State Security documents when this is required in the context of assessment, under relevant legislation, the ethical, moral and professional qualities of the candidates to be nominated or promoted, but these institutions are not obliged to do such a request by this law. For instance, in the explanatory report of the Parliamentary Commission of National Security, the aim of this law section, it is written: “ ... constitutional institutions and public authorities regarding the existence of information in former State Security documents when this is required in the context of assessment, under relevant legislation, the ethical, moral and professional qualities of the candidates to be nominated or promoted, but these institutions are not obliged to do such a request by this law. In any case, there will be no consequence even if the Files Authority has and offer information about a candidate.”⁴⁴ As well as they are not obliged to do such a request also based upon *leg specialis* Civil Servant law, wherein article 21 are foreseen general requirements to enter the civil service:

a) *being Albanian citizenship*

b) *having the full legal capacity to act,*

c) *commanding the Albanian language, written and spoken;*

ç) *being inappropriate health condition to carry out the respective duties;*

d) *not being sentenced by a final court decision for the commission of a crime or a criminal contravention committed by intention;*

43. <https://www.dw.com/sq/shqipëria-ka-nevoj%C3%AB-p%C3%ABr-nj%C3%AB-ligj-lustracioni-ku-%C3%A7do-qytetar-t%C3%AB-g%C3%ABz%C3%AB-t%C3%AB-drejt%C3%ABn-e-informimit-p%C3%AB-dosjet-e-sigurimit-e-t%C3%AB-kaluar%C3%ABn/a-4039539>.

44. Report of the Parliamentary Commission of National Security, dated 15.04.2015, page 1-2.

dh) not having been dismissed from the civil service as a disciplinary sanction which has not lapsed by the law;

e) fulfillment of the specific criteria related to education, experience and others for the respective category, class, group, and position.

So, no requirement in terms of scanning or purifying the figure of the public officials. While the decision of Council of Minister's nr. 118, dated 05.03.2014, as amended, "Procedures of appointment, recruitment, management, and ending employment relationship in civil service of TMC" members of TMC, except general requirement supra, must fulfill qualities as below mentioned: "... management skills; communication skills; ... credibility, integrity, ...", and so further. But this legal act has foreseen no mechanism how to proof the credibility or integrity of these candidates, or, what does it mean to be credible or with integrity. Do these qualities, credibility, and integrity, disallow who served as a leader in the political structures of the Party of Labor, an appointee in the executive, or state administration, or an officer during the communist period to be part of TMC? But in our opinion the specific legal requirements of having credible and honest TMC members is room to initiate a process regarding the existence of information in former State Security documents when this is required in the context of assessment, under relevant legislation, the ethical, moral and professional qualities of the candidates to be nominated or promoted within TMC. Secondly, what will happen if this process of verification results positive? Will their relationship in the civil service be terminated? In our opinion by a logical and contextual interpretation of termination of civil service relationship institute, cases, and reasons, among them ... when the appointment act to the civil service is found to be null and void ..., to guarantee a credible and honest TMC they must be released from civil service. Hereby we have concluded law nr.45 / 2015, dated 30.04.2015 "On the right to information on the documents of the ex-state security directorate of state security directorate of the People's Socialist Republic of Albania" foreseen a minimalist not compulsory lustration mechanism. As well as interpretation of us is supported by what the author/ s of this law intended, or, did they say - *intention auctoris*. For instance, in the explanatory report of the project law of Parliamentary Commission of Work, Social Issues and Health, one of the representatives of government, as the initiators of this law, has said:

*"This is not lustration law, to be clear, this is a law for the right of information. What will happen is to clarify all institutions who committed and what does he committed? Then institutions are free to choose if they will recruit or appoint the candidate."*⁴⁵

While Elsa Ballauri, one of the outstanding figures of civil society regarding lustration issues, has declared:

*"It's not enough just opening the files, but will be enough it will be accompanied with lustration. .. If we will not accompany this process together with lustration, we can't speak at all for a decommunization process..."*⁴⁶

Moreover, in the explanatory report of the Parliamentary Commission of National Security, the aim of this law section, it is written: *"The primary purpose of this law is to allow for every interested to be informed about ex Sigurimi files as well as to determine rules and procedures to exercise this right within a transparent process."*⁴⁷

As well as, in the explanatory report of the project law sent to Parliament by the Council of Ministers, as the initiators of this law, it is written:

45. Report of the Parliamentary Commission of Work, Social Issues and Health, dated 15.04.2015, page 37.

46. Ibid.

47. Ibid.

“The law aims to allow for every interested to be informed about ex Sigurimi files.”⁴⁸

While experts of OSCE Presence in Tirana during discussions of this law has declared: “This project law has foreseen no obligatory lustration, but allow the possibility to ask information about candidates during their appointment in different institutions.”⁴⁹

As per continuing, for fulfilling the purpose of this law was foreseen the establishment of a commission, i.e., Files Authority. According to official information provided by experts of Files Authority:

“It results for 2017 no requests were submitted by the institutions for the verification of candidates to be nominated or promoted according to Article 29/1/b - TMC members in the state administration and equivalent positions; for 2018, 292 candidates have been verified, in order to be appointed or promoted according to article 29/1/b - TMC members in state administration and equivalent positions, from which for 62 requests are submitted by the Department of Public Administration, while 230 requests are submitted by Ministry for Europe and Foreign Affairs. After the process of verification carried out resulted to have data in ex-Security documents for 6 candidates - they were 6 candidates verified according to the Ministry for Europe and Foreign Affairs list; for 2019, in the first quarter, 16 candidates have been verified in order to be appointed or promoted according to article 29/1/b - TMC members in the state administration and equivalent positions. After the process of verification carried out resulted to have no data in ex-Security documents for 16 candidates.”⁵⁰

It results, the 6 candidates which resulted to have data in ex-Security documents were not hired, appointed or promoted by the Ministry for Europe and Foreign Affairs.⁵¹

To sum up, in terms of lustration it’s difficult to truly say if this law will achieve its purpose to prevent/ remove who served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian state administration.

Table 2.

Ranking	Law
achieved their purposes	N/A
partially achieved their purposes	law nr.45 / 2015, dated 30.04.2015 “On the Right to Information on the documents of the ex-state security directorate of state security directorate of the People’s Socialist Republic of Albania”
not achieved their purposes	Law nr. 8043, dated 30 November 1995, “On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State”; Law nr. 10034, dated 22.12.2008 “On the purity of the image of high officials of the public administration and the appointees”

48. Ibid.

49. Report of the Parliamentary Commission of Legal Issues, Public Administration, and Human Rights, dated 04.03.2015, page 3.

50. Ibid.

51. Official information provided by the Ministry for Europe and Foreign Affairs, letter nr. 12446/1, dated 11.09.2019.

Finding out reasons why these lustration laws achieved their purposes, partially achieved their or did not achieve their purposes

By using as data collection technique the secondary data coming from parliamentary reports, archives of the implementers authorities established under these laws; by using as data analysis techniques three approaches of textual interpretation and content analysis-to analyze documents, we have found out some of the reasons why these lustration laws achieved their purposes, partially achieved their purposes, or not achieved their purposes.

Reasons why law nr. 8043, dated 30 November 1995, “On the control of the moral figure of officials and other persons connected with the protection of the democratic state” did not achieve its purposes are simultaneous because of how this law was designed and how this law was implemented. Concretely behind of how the Commission of Verifying the Public Figures, established under this law, was designed to exercise its competences. Thus, for instance, the passive role of the Commission in initiating a verification process ... “Commission initiate the procedure when a request is made by **a)** political parties in case of the local or central election, **b)** public administration institution in case of hiring, promoting a candidate or for current public employees, **c)** every interested individual.”⁵² So, this Commission had no the competence to initiate the verification of public figures ex officio. Secondly, even if one request is made, by one of the above-mentioned categories, the Commission can do verification prove ... may call for the clarification the interested people, experts, and so further.⁵³ By a linguistic interpretation of the modal verbs can and may⁵⁴, the commission was able to do verification/ investigation and there was a possibility for the commission to call for clarification the interested people and experts. But it was not obligated to do so. Thus, the usage or not of these voluntary rights by the Commission, i.e., right to do verification/investigation, or, right to call experts, was depended by the Commission members will, or, by their level of professionalism, personality, impartiality, independency; political atmosphere, or, who was the individual requested to be verified. For instance, during consulting the files of Bezhani Commission we have found a very interesting official letter sent by Mr. Bezhani,⁵⁵ head of the Commission, to the Presidency, Parliament and the Council of Ministers asking them to execute provisions of the law, e.g., “. not to be hired, appointed or promoted individuals without certificate of verification, appointed individuals/ current employees must be considered temporary employees until the verification process is over, to pass on to the commission lists of employees must be verified ...”

While in the annual reports, the correspondence letters of Mezini and Bezhani Commissions with Parliament and other state institutions are mentioned as reasons for not implementation of the law the political pressure, lack of the needed archival documentations⁵⁶, lack of recognition of the law by the staff - lack of experience, expertise, training of the staff how to implement law; lack of explanatory sub-legal acts about the law; lack of infrastructure: offices, photocopy, writing machines, computers, paper, ink; lack of administrative staff⁵⁷, lack of enough funds, the way how the commission was organized and its competences, frequent movements in public administration⁵⁸, lack of collaboration by the central public administration institution side - the refusal of sending lists of employees to the commission by them, the missing 4 members of the

52. article 7.

53. article 6.

54. <https://www.lexico.com/en/definition/may>; <https://www.lexico.com/en/definition/can..>

55. Dated 24/09/1997.

56. For instance, from 73 cassette tapes of National Information Service 56 of them were disappeared.

57. These were seen as the reasons why Commission was not able to verify public employees by Mr. Mezini, first head of the commission, - according to an official report of the commission.

58. These were seen as the reasons why Commission was not able to verify public employees by Mr. Bezhani, the second head of the commission, - according to an official report of the commission, no. 221, dated 28/04/1998.

commission.⁵⁹ For instance, Mr. Bezhani proposed, as it is said in a letter sent to the Presidency by him, the changing of law in terms of structure and competences of the Commission.⁶⁰ But his legal initiative was never considered by the Parliament of Albania.

While, as we have mentioned, the reason why law nr. 10034, dated 22.12.2008 did not achieve its purpose was the abolition, in 2010, by the Constitutional Court with the argument that the law had serious constitutional problems. But, *imprimis* this law was suspended by this court just 2 months after it comes into force. Thus, as foreseen in article 43,44 of the law, Ex-State Security Files Information Authority, law enforcement responsible authority, could not ask for, or, to administer ex-state security files from other institutions “... within 3 months after the law enforcement Internal Ministry, Defense Ministry, and State Information Service must transmit in the administration of the Authority all ex-security files kept by them. ...”⁶¹ Indeed, the reasons why constitutional court abolished this law are not the focus of this paper, but there are a lot of documents explaining why, i.e., constitutional court decision itself, and many articles *supra*. By reviewing these documents, we can conclude all of these reasons are behind how the law was designed, i.e., serious constitutional problems, disrespect of international standards on lustration, i.e., Council of Europe Resolute 1096(1996), and so further.

Whereas law nr. 45 / 2015, dated 30.04.2015 “On the right to information on the documents of the ex-state security directorate of state security directorate of the People’s Socialist Republic of Albania” was ranked by us as partially achieved its purpose because differently from two first laws is taking place as well as foreseen a minimalist not compulsory lustration mechanism. So constitutional institutions and public authorities are morally but not legally obliged to do such requests under this law. The level of using this minimalist not compulsory lustration mechanism depends on professionalism, personality, impartiality, independence of heads of constitutional institutions and public authorities; political interferences, or, who is the individual under the process of hiring or promoting.

59. Letter nr. 125, dated 31/12/1997.

60. *Ibid*.

61. Article 44.

CONCLUSION

As we have mentioned in the introduction part, the final objective of this paper was to give a contribution in understanding why lustration laws taken in Albania to deal with state administration have failed to be successful in producing the intended purposes. To reach this objective, we operated with a particular three-step method. Thus, firstly, we identified lustration laws taken in Albania to deal with the state administration, i.e., law nr. 8043, dated 30 November 1995, law nr. 10034, dated 22.12.2008, and the law nr.45 / 2015, dated 30.04.2015. Secondly, we perceived the intended purposes of these above-mentioned laws, i.e., to prevent who served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian political life or state apparatus; to control the purity of the image of any elected public official 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, or, to determine rules and procedures to enable any person concerned to exercise his or her right to information on former State Security documents, through a democratic and transparent process, also to protect the individual's personality, and national unity and reconciliation. Thus, we concluded the lustration of state administration was/ is not their exclusive intended purpose. These steps, as table below shows, are closed by ranking these lustration laws in achieved their purposes, partially achieved their purposes, and not achieved their purposes infra. While as the third step was finding reasons why these laws have failed to achieve successfully their purpose concerning the lustration of state administration. On this account, we found that because of how these lustration laws were designed and implemented, they did not achieve their purpose. Table three shows the specific reasons for each law.

Table 3.

Lustration laws dealing also with public administration	Purpose	Ranking	Reasons
<p>Law nr. 8043, dated 30 November 1995, "On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State";</p>	<p>The primary intended purpose of the law was prevention, or, removal of who served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian political life or state apparatus. While the prevention, or, removal of who served as a leader in the political structures of the Party of Labor, etc., to be part of Albanian state administration was not an aim itself.</p>	<p>not achieved its purposes</p>	<p>Reasons behind its designation: The verifying the Public Administration Figures was not an aim itself; the passive role is given by law to the Commission of Verifying the Public Figures in initiating a verification process ... after a request is made ... So, the Commission had no the competence to initiate verification of public figures ex officio. the voluntary and not compulsory right of Commission of Verifying the Public Figures, after a request is made, to do verification, investigation, or, to call for clarification the interested people, experts, and so further.</p> <p>Reasons behind its implementation: political pressure, lack of documentation/ archives of ex- Sigurimi, lack of recognition of the law by the staff - lack of experience, expertise, training of the staff how to implement the law; lack of explanatory acts about the law; lack of infrastructure: offices, photocopy, writing machines, computers, paper, ink; lack of administrative staff; frequent movements in public administration; lack of collaboration from central public administration institution side -the refusal of lists of employees to the commission by them; the working of Bezhani in missing of 4 members of the commission.</p>

<p>Law nr. 10034, dated 22.12.2008 “On the purity of the image of high officials of the public administration and of appointees”</p>	<p>The intended purpose of the law was to control 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</p>	<p>not achieved its purposes</p>	<p>Reasons behind its designation: The verifying the Public Administration Figures was not an aim itself; body of the law had serious constitutional problems, body of the law disrespects the international standards on lustration, i.e., Council of Europe Resolute 1096(1996); Reasons behind its implementation: the suspension of law by the constitutional court just 2 months after it comes into force; the abolition of the law, in 2008, by the Constitutional Court; Thus, Ex-State Security Files Information Authority, law enforcement responsible authority, could not ask for, or, to administer ex-state security files from other institution, i.e., Internal Ministry, Defense Ministry, and State Information Service;</p>
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<p>law nr.45 / 2015, dated 30.04.2015 “On the Right to Information on the documents of the ex-state security directorate of state security directorate of the People’s Socialist Republic of Albania”</p>	<p>The purpose of this law is to guarantee the right of information on former State Security documents, through a democratic and transparent process, to protect the individual’s personality, such as and national unity and reconciliation. While lustration of the figure of public officials -TMC can be considered a peripheral purpose of the law - a minimalist not compulsory lustration mechanism.</p>	<p>partially achieved its purposes</p>	<p>Reasons behind its designation: foreseen a minimalist, not compulsory lustration mechanism - So constitutional institutions and public authorities are morally but not legally obliged to use such a mechanism. Reasons behind its implementation: is taking place; legal formula foreseen in civil servants’ law to appoint a Top Management civil servant – they are appointed after a request by ministers or prime minister is made; political interferences.</p>
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But regarding law nr. 45 / 2015, dated 30.04.2015, which is currently in force, except the fact of prevision of a minimalist not compulsory lustration mechanism, we strongly encourage the usage of the article 29 of this law, because of law on Civil Servants, as amended, and the decision of the Council of Ministers nr. 118, dated 05.03.2014. There are determined credibility and integrity as a criterion to be a senior civil servant.

BIBLIOGRAPHY

- Elez Biberaj, *Albania in Transition: The Rocky Road to Democracy*, Westview Press, 1998.
- Bledar Abdurrahmani, *Transitional justice in Albania: the lustration reform and information on communism files*, *Interdisciplinary Journal of Research and Development*, Vol. 5, no. 3, 2018.
- Neil Kritz, *Transitional Justice vol. II*, Endowment of the United States Institute of Peace, 1995.
- Gerald. J Miller and Kaifeng Yang, *The Handbook of Research Methods in Public Administration*, CRC Press-Taylor and Francis Group, 2008.
- Kathleen Imholz, *A landmark Constitutional Court decision in Albania*, *East European Constitutional Review*, vol.2, no. 3, 1993.
- Mark S. Ellis, *Purging the past: the current state of lustration laws in the former communist bloc*, *Law and Contemporary Problems*, vol. 59, no. 4, 1997.
- Roman David, *From Prague to Baghdad: Lustration Systems and their Political Effects, Government and Opposition*, *Government and Opposition*, vol.41, issue 3, 2006.
- Cynthia Horne, *Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe*, *Comparative Political Studies* 45(4), 2012.
- Cynthia Horne, *Lustration, Transitional Justice, and Social Trust in Post-Communist Countries. Repairing or Wresting the Ties that Bind? Europe-Asia studies* Vol. 66, no. 2, 2014.
- Cynthia Horne, *Silent Lustration Public Disclosures as Informal Lustration Mechanisms in Bulgaria and Romania*, *Problems of Post-Communism*, vol. 62, 2015.
- Alexander Mayer-Rieckh and Pablo de Greiff (eds), *Justice as Prevention: Vetting Public Employees in Transitional Societies* SSRIC 2007.
- Lavinia Stan and Nadya Nedelsky (eds), *Encyclopedia of Transitional Justice*, CUP 2013.
- Mark S. Ellis, *Purging the past: the current state of lustration laws in the former communist bloc*, *Law and Contemporary Problems*, vol. 59, no. 4, 1997).
- Robert C. Austin, Jonathan Ellison, *Post-Communist Transitional Justice in Albania*, *East European Politics and Societies*, Vol. 22, 1998.
- Arolda Elbasani, Artur Lipinski, *Public contestation and politics of transitional justice: Poland and Albania compared*, *EUI Working Papers SPS* 2011/02.
- Vladimir Balaš, *Albanian lustration act, its constitutional and international law pros and cons*, *CYIL* 1, 2010.
- Alfred Phillips, *Lawyers' language How and why legal language is different*, (Routledge Press, 2003).
- Law no. 7492, dated 08.06.1991 "The depoliticization of some state institutions".

Law no. 8043, dated 30 November 1995, “On the control of the moral figure of officials and other persons connected with the protection of the democratic state”.

Law no. 10034, dated 22.12.2008 “On the purity of the image of high officials of the public administration and of the appointees”.

Law no. 45 / 2015, dated 30.04.2015 “On the Right to Information on the documents of the ex-state security directorate of state security directorate of the People’s Socialist Republic of Albania”.

Law no. 152/ 2013 “On the Civil Servants”, as amended.

The Decision of Council of Minister’s no. 118, dated 05.03.2014, as amended, “Procedures of appointment, recruitment, management, and ending employment relationship in civil service of TMC”.

Archives of Commission of Verifying Public Figures.

Archives of Files Authority.

Annual Reports of Department of Public Administration – 2017, 2018.

Parliamentary Reports concerning lustration laws – 1995, 2008, 2013.

Official information provided by the Ministry for Europe and Foreign Affairs, letter no. 12446/1, dated 11.09.2019.

<https://www.dw.com/sq/shqiperia-ka-nevoj%C3%AB-p%C3%ABr-nj%C3%AB-ligj-lustracioni-ku-%C3%A7do-qytetar-t%C3%AB-g%C3%ABzroj%C3%AB-t%C3%AB-drejt%C3%ABn-e-informimit-p%C3%ABr-dosjet-e-sigurimit-e-t%C3%AB-kaluar%C3%ABn/a-4039539>.



**TOPIC: THE MENTAL HEALTH SYSTEM AS A
TARGET OF TRANSITIONAL JUSTICE: MENTAL
HEALTH REFORM IN POST-COMMUNIST
ALBANIA**

Rikela FUSHA

ABSTRACT

Reconciliation and transitional justice are related to the building of trust in the context of inclusive peace building after violent conflicts or authoritarian regimes. Elements of transitional justice include both judicial and non-judicial measures, whose application aims to redress legacies of human rights abuses.

This paper aims to evaluate the relation between political transition and the mental health system, and how the mental health system addresses the needs of citizens in terms of treatment, dignity and human rights, notably through an understanding of the right to health. It also addresses the use of punitive psychiatry in Albania during the communist regime, where the mental health system was used as a tool of repression against political dissidents.

The paper proposes that mental health needs be prioritized as a part of transitional justice in contexts transitioning from conflict, mass atrocities or violence. Organized efforts which support the mental health and psychosocial needs of survivors, make an impact in their individual's ability to deal with the past, promote individual and societal stability, healthier families and communities, and boost the opportunity to participate in civic life and positive civil society growth.

Mental health is not exclusively a health or medical concern, it is also a matter of human rights, dignity, and social justice. Users of mental health services, persons with mental health conditions and persons with mental health disabilities are positioned at the confluence of many vulnerabilities, particularly those arising from poverty, stigma, discrimination, social isolation and segregation.

Key words: Transitional justice, mental health, peace building, reconciliation

INTRODUCTION

Reconciliation and transitional justice are related to the building of trust in the context of inclusive peace building after violent conflicts or authoritarian regimes. Both seek to address the legacies of violence and human rights abuses to compensate for past wrongs and promote social healing. According to the United Nations, transitional justice represents society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, deliver justice and achieve reconciliation.¹ This may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) including individual prosecutions, reparations, truth-seeking, institutional reform, vetting, and lustration or a combination thereof. Transitional justice represents both a discourse and practice that presents itself in terms of support to victims of human rights violations and gains its moral legitimacy from the fact that victims are deserving and the claim that transitional justice has the aim of acknowledging victims and providing redress. According to Robins, this claim is interrogated in the light of a practice that appears to be rooted in liberal state-building and for which victims are an essential instrument of prescribed mechanisms of transitional justice, such as trials and truth commissions.²

Application of transitional justice's mechanisms is still in process in some of the former communist countries. Referring to the United Nations, four pillars of transitional justice process include truth, justice, reparation and guarantees of non-recurrence.

1. UN Security Council Report, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (S/2004/616, 2004).

2. Simon Robins, *Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations*. Human Rights and International Legal Discourse. (Human Rights and International Legal Discourse, 2017).

The right to health is a fundamental human right and also an understanding of our life in dignity. The 1948 Universal Declaration of Human Rights mentioned health as part of the right to an adequate standard of living. The right to health was recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights.³ The right to health is an inclusive right, which means that everyone should access health care. It contains freedom of person, which includes the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.

In Albania, during the communist regime, the right to health was one of the most violated human rights. Communist regime was incapable to provide a qualitative health care for the Albanian population. Furthermore, mental health services were misused as a torture and punishment for the regime enemies.

The significant political and socioeconomic changes in Albania and other post-Socialist countries have contributed to the perception and perspective on mental health in these countries. As a mental health system in transition, Albanian healthcare had to overcome Soviet practices and principles of medicine, which were in accordance with Marxist-Leninist to incorporate policies of contemporary international standards such as those of the World Health Organization.

Semashko was the health system that the Albanian communist party adapted during its governance, which persisted even after the breaking of diplomatic relations with the former Soviet Union, because of the country's isolation and limited resources for a system transition. Semashko is a totally socialist health care model, originated in the Soviet Union. It was centralized, integrated, hierarchically organized with the government providing state-funded health care to all citizens.⁴ The Soviet Pavlovian model of medicine was applied in the field of mental health, which explored the biological, genetic and inherited bases for disease. Similar to Eastern communist countries, Albania rejected the application of Freudian psychotherapy as a bourgeois science. Diagnosis was focused mainly in psychosis, while mental health disorders such as depression, were considered as a product derived by failure of capitalist policies in Western countries.

Every system is the target of reforms and several changes in a political system and this is common even in a transitional period, in order to ensure the addressing of citizen's needs. The need for political reform is a recurring theme in political life in virtually all countries. This by itself is enough to show that people are to a degree rejecting the ways in which politics is currently conceived and practiced.⁵

Health System reform deals with a fundamental change of processes in policies and institutional arrangements of the health sector, usually guided by the government. Health sector reform deals with equity, efficiency, quality, financing, and sustainability in the provision of health care, and also in defining the priorities, refining the policies and reforming the institutions through which policies are implemented.⁶

The Mental Health System, as part of Health System reform, has a special context because the broken mental health system contributes to school drop-outs, job losses, homelessness, incarceration, and suicide, according to the Mental Health America.⁷

3. Office of the United Nations High Commissioner for Human Rights, The Human Rights Fact Sheet, (United Nations Geneva, 2008).

4. Tereza Lukášová, Semashko health financing model – economic and health consequences in Czechia, (Ecoforum, 2018).

5. José Antônio Moroni, Reforming the political system: giving power back to the people, (Social watch poverty eradication and gender justice, 2009).

6. 18th Meeting of Ministers of Health in Nepal, Health sector reform; Issues and Opportunities, (World Health Organization, 2000).

7. Mental Health America, Transforming The Mental Health System, (Official website MHA, 2019).

TRANSITIONAL JUSTICE AND MENTAL HEALTH

A mental health approach to transitional justice links to both victims and other citizens, who have been under pressure, terror and violence. Victims include those whose mental condition is damaged because of inappropriate practices of the state towards them, such as physical and psychic violence, injection of harmful drugs, torture, etc. In a dictatorial state, repression is a tool to ensure absolute power : a population living under propaganda and violence is more at risk of mental health disorders, including after transition to a new political system. The collapse of the totalitarian state is related to massive political, economic, and social changes that create conditions of instability and stress, which are associated with troubling trends in health.

For example, a study conducted in 2013 in Romania stated that the transition from communism to democracy caused changes in the pathology of psychiatric. A comparison of mental health disorders in 1990 and 1995 showed that affective disorders and depression were the top psychiatric diseases in 1995 while in 1990 they were only in fourth place.

This is an indication about the morbidity during communism, where psychoses such as schizophrenia dominated statistics of the mental health disorders. Furthermore, these diseases predominantly occurred in those between the ages of 40 and 55 years, representing exactly that segment of the population that was too old for adaptation to the new capitalist system that the democratic state promotes. During communism people had been dependent on the communist state for all elements of their existence and during the transition, this source of dependence was suddenly destroyed and brought illness and depression as an immediate and long-term consequence.⁸

PUNITIVE PSYCHIATRY

According to the Global Initiative on Psychiatry (GIP), “political abuse of psychiatry refers to the misuse of psychiatric diagnosis, treatment, and detention to obstruct the fundamental human rights of certain individuals and groups in a given society. The practice is common too but not exclusive to countries governed by totalitarian regimes. In these regimes abuses of the human rights of those politically opposed to the state are often hidden under the guise of psychiatric treatment. In democratic societies ‘whistleblowers’ on covertly illegal practices by major corporations have been subjected to the political misuse of psychiatry.”

In the Soviet Union, after the death of Stalin in the 1950s and beginning of the Khrushchev era a campaign began to pronounce political opponents mentally ill and to incarcerate them in psychiatric hospitals. In a speech published in the state newspaper Pravda in May 1959, Khrushchev proclaimed: “Of those who might start calling for opposition to Communism... we can say that clearly, their mental state is not normal (Olga Shek 2010-11). Furthermore, Snezhnevsky, a Soviet psychiatrist close to the Party, had invented “sluggish schizophrenia” as a political tool for oppressing anti-Soviet dissenters.⁹ Symptoms of sluggish schizophrenia came in the form of “reform delusions,” “struggles for the truth,” “a heightened sense of self-esteem,” and “perseverance.” People with sluggish schizophrenia often seemed functional or experienced only slight neuroses, but Snezhnevsky argued that was the very nature of the disease: its mild symptoms only progressed with time.¹⁰

8. Martin McKee, Ellen Nolte, Lessons from health during the transition from communism, (US National Library of Medicine National Institutes of Health, BMJ 2004).

9. Ian Henry Spencer, An investigation of the relationship of Soviet psychiatry to the State, (Glasgow Theses Service, 1997).

10. Stephanie Buck, The totalitarian government in Soviet Russia invented a mental illness to lock up resisters, (Timeline, 2017).

The government called for treatment for such persons, as a means to return to “normal” life. But normal life in the communist state meant uncontested service to the country and obedience to their orders even though they didn’t agree with the totalitarian regime. The concept of ‘punitive psychiatry’ or ‘political psychiatry’ is never accepted or used in Soviet documents of this time, because the act of forcing the individuals to undergo treatment in psychiatric medical institutions, was justified under the ‘compulsory medical treatment’, decided by a court.

This type of political abuse constituted violations of fundamental human rights when the psychiatric diagnoses were used as a tool to pressure political dissidents. At the end of the 1980s, the World Psychiatric Association admitted that psychiatry had been abused for political purposes. An anti-psychiatric campaign accompanied this statement and mental health professionals faced challenges of trust and integrity, with accusations of misuse by the profession.¹¹

The Soviet Union is not the only country where these abuses took place. Politicization of psychiatry was a common practice in the socialist or communist countries. In recent decades, we have seen a lot of documentation from other countries. In Romania in 1997, the International Association on the Political Use of Psychiatry (IAPUP) organized an investigative committee to research what happened and came to the conclusion that several hundred people had been victims of systematic abuse. As in the Soviet Union, on the eve of Communist festivities, potential “troublemakers” were delivered to psychiatric hospitals by busloads and released when the festivities had passed. In the 1980s, information was shared on cases in Czechoslovakia, Hungary, and Bulgaria, but all these cases were individual, and there was no evidence that a system of abuse was in place. Information on the political abuse of psychiatry in Yugoslavia in the 1980s was inconclusive.¹²

During the communist regime in Albania, different forms of punishment of political enemies of the system were used. The process of punishment started with the ‘Hetuesia’, part of the Ministry of Intern Affairs. In ‘Hetuesia’ were used violent methods of torture on suspects, to force them to admit to crimes, even though they may have been innocent. Due to such terror, persistent pressure and verbal or non-verbal violence over periods of several months, sometimes even years, some of the victims demonstrated psychological disorders and some were sent to psychiatric hospitals for treatment, while others were imprisoned, without any medication or treatment.

However, the application of punitive psychiatry in communist Albania in that period as a measure of punishment of the system’s political enemies, has never been admitted. While imprisonment, deportation, and execution were openly accepted as a form of ‘justice’ for enemies of the system, the use of psychiatry isn’t mentioned in documents as punishment, but only as a form of treatment of the mentally ill, who had committed crimes because of their unstable mental situation. Involuntary, or compulsory, admission to mental health facilities and involuntary treatment are controversial topics in the field of mental health as they impinge on personal liberty and the right to choose, and they carry the risk of abuse for political, social and other reasons.¹³

11. Michaela Amering, Margit Schmolke, *Recovery in Mental Health Reshaping Scientific and Clinical Responsibilities*, (A John Wiley & Sons, Ltd., Publication, 2005).

12. Robert van Voren, *Political Abuse of Psychiatry—An Historical Overview*, (US National Library of Medicine National Institutes of Health, *Schizophrenia Bulletin*, 2010).

13. World Health Organization, *Resource book on mental health, human rights and legislation*, (ISBN 92 4 156282, 2005).

THE ALBANIAN TRANSITION

Despite continuous propaganda, the economic downturn and isolation that followed the fall of the Communist regime created survival challenges to the Albanian population. Albania was the last European country where communism collapsed. In December of 1990, the communist regime fell after 45 harsh years. The massive protests initiated by students contributed to this process. Their motto was: “We want Albania to be like the rest of Europe!” The first large-scale attempts to change the political system were made since 1989, in Shkodra. Demonstrations in January 1990 peaked on 14 January 1990 with the overthrow of the bust of Stalin. The communist party, under the leadership of the First Secretary, Ramiz Alia tried to prevent potential threats of destabilization and used these demonstrations to pressure the population. Organizers and participants of the demonstration were arrested and some of them were sent for psychiatric treatment.

The first democratic elections in 1992 brought to power by a large majority the Democratic Party of Albania and establishment of the rule of law. Albania faced the transition with very low quality and professionalism of public administration. A well-functioning bureaucracy would have influenced probably in limiting the damage caused by the uncertainty of the transition.¹⁴

As Havel pointed out in his speech in 1991, ‘successful political transition may depend on the extent of the damage to society wrought by totalitarianism’. The longer-lived and more robust the totalitarian experience, the more arduous the transition. In this respect, the countries of Central Europe which experienced 40 years of communist rule may have an advantage over the nations of the Soviet Union with 70 or more years of authoritarianism.

MENTAL HEALTH AND THE MENTAL HEALTH SYSTEM IN LIGHT OF THE ALBANIAN POLITICAL TRANSITION

Since the collapse of the Communist regime, government services, including health care, have suffered several setbacks. During the political changes of 1991 and 1992 and the violence that accompanied it, almost a quarter of the health centers and two-thirds of village health posts were destroyed. The World Bank and OPEC Fund contributed to the restoration of the health system, especially the reconstruction of hospitals. Health care spending went through several phases in the 1990s. During the severe recession of 1990–1992, spending on health care nearly halved. From 1993 until 1996, it increased each year, and by 1996 totalled US \$85.14 million (10). It then dropped to the US \$70 million in 1997, and jumped to the US \$108 million in 1999, amounting to about US \$33 per capita.¹⁵

Privatization of the health system and development of an independent sector in the pharmaceutical industry and dentistry were the main achievements. Doctors were permitted to practice their profession privately, which during the communist regime was strictly forbidden. In 1993, the Ministry of Health produced a new policy for the health care sector in Albania, with the aim of reducing direct state involvement through decentralization. However, the mental health system remained confined to psychiatric hospitals, with no outpatient services at all due to a lack of financial and human resources.

As health is a fundamental human right, every citizen should have effective access to healthcare.

14. Gentian Elezi, *Establishing the rule of law after communism: a comparative approach*, (Polis, 2017).

15. Besim Nuri, *Health care systems in transition : Albania*, (Regional Office for Europe & European Observatory on Health Care Systems, 2002).

Mental health issues reduce the opportunity of individuals to be independent, to get an education and to work. Those with mental health conditions experience stigma, discrimination and wide-ranging violations which strip them of their dignity.¹⁶ In communist Albania, limited resources and isolation from Western treatments and practices negatively impacted the process of rehabilitation of the mentally ill.

The Directorate of State Security, commonly called the 'Sigurimi', the state security, intelligence and secret police service of the People's Socialist Republic of Albania, manipulated people, including through pressure and violence, who were obliged to cite unreal 'facts' in their testimony to the courts. Anxiety, caused by repeated purges by the secret police and a fear of being reported for some real or perceived misdeed, resulted in distrust and widespread mutual suspicion.¹⁷

In combination with frustration arising from a scarcity of consumer goods, this suspicion further contributed to a general decline in civility. The regime also rewarded those who conformed, regardless of their competence or their honesty, which, in turn, led to resentment and envy.¹⁸

Historically, former socialist countries have had a slower adaptation process with mental health policies, in comparison to other countries. The socio-political background is evaluated as responsible for framing this context. In general, totalitarian societies produced a 'totalitarian syndrome', a specific pattern of cognition, attitudes, and behaviors developed in order to adapt to life under totalitarian circumstances.¹⁹ The communist regime fabricated images of a perfect socialist state, of society and of the virtues of the 'socialist and Soviet' man. Although this propaganda was not generally believed, it produced confusion and doubts about reality.²⁰

Post-Communist Syndrome is manifested in these features:

- 1) Learned helplessness including low self-efficacy and the avoidance of initiative and responsibility, hopelessness and pessimism. This impacts the social security and is evident in a fear of change (the system).
- 2) Aspects of immorality, including normlessness, disregard for moral values and legal norms in the absence of sanctions. It is expressed in form of corruption, rudeness and violent behaviors.
- 3) The abuse of civic virtues, such as public mindedness. It is manifested through an anti-civic culture.

Post-totalitarian Syndrome offers a theoretical approach to psychological explanation of the post-communist condition of a state. Analysis of the socio-political background and the lens of Post-Communism Syndrome is a helpful approach to understand the application of transitional justice mechanisms. Post-totalitarian syndrome may have broader social and political impacts such as facilitating a return to non-democratic or dictatorial regimes or introducing a degree of social and political anarchy.

16. James D. Livingston, *Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report*, (Mental Health Commission of Canada, 2013).

17. Martina Klicperova, Ivo K. Feierabend and C. Richard Hofstetter, *In the Search for a Post-Communist Syndrome: A Theoretical Framework and Empirical Assessment*, (Journal of Community & Applied Social Psychology, 1997).

18. David K. Shipler, *Russia Broken Idols, Solemn Dreams*, (Penguin Books, 1984).

19. Martina Klicperova, *Moral values in the modern Czech history*, (Global Bioethics, 1994).

20. Gabriel A Almond, *Communism and Political Culture theory*, (Comparative Politics, 1983).

METHODOLOGY

This paper aims to evaluate the relationship between political transition and the mental health system, and how the system guarantees the rights of citizens in terms treatment, dignity and a right to health. It also addresses the application of punitive psychiatry in Albania during the communist regime, using the mental health system as a form of repression against political dissidents, and the role transitional justice has in addressing this.

This study uses both primary data collected in semi-structured interviews and secondary data from archives. The semi-structured interviews are conducted with eleven people, who are chosen for their insight and understanding of the mental health system and its post-transition reform. Four of the interviewees are linked to punitive psychiatry: one is a victim of punitive psychiatry and three have testimonials about cases of punitive psychiatry. Two of the interviewees are former medical staff in psychiatric hospitals during the communist regime, three are representatives of civil society such as associations, research institutes, and centers for trauma and rehabilitation of traumatized people and/or victims. Two interviews are conducted with contributors to the first law for mental health in Albania in 1996 and the project for deinstitutionalization of mental health services in favor of a community approach.

The secondary data is based on archival research, in the General Directorate of Archives. The source of information is the Ministry of Health's administrative data during the communist regime (fund number 512), while the reviewed documents cover the period 1966-1977. The keywords used during the archival investigation were psychiatry, mental illness and periodic health report(s).

This study respects the confidentiality of individuals involved in the mental health system and maintains the anonymity of all victims, patients and contributors to this research, except where they have been in strategic leadership positions such as minister, attorney general or have been already exposed to the public. For all the interviews informed consent has been given. Interviewees are introduced to the research aim and the way that their interview will be analyzed. All were adults and considered mentally competent to decide about their willingness to participate in this research.

The challenges of this research occurred especially in the data collection process, because of the limited amount of information. Punitive psychiatry is a rarely referenced concept in Albania and there are no previous specific researches conducted on this topic, although, there are some attempts in the form of an Encyclopedic dictionary for the victims of the communist regime and some articles for daily journals. Moreover, the category of victims of punitive psychiatry in Albania is smaller, in comparison to former political prisoners and this makes it difficult to trace and interview them.

The analysis process has taken into consideration the information provided by both archives and interviews. The selected information consists in significant documents, such as correspondence between institutions, reports, guidelines, court decisions, laws, etc.

In addition, the literature review is focused on similar studies and research conducted in former communist countries. As the Albanian health system during the communist regime has adapted the Soviet Semashko health system and Albania-Russia diplomatic relations were active from 1948 until 1960, references to the former Soviet Union are relevant for this research. For instance, the former Soviet Union has evidenced cases of punitive psychiatry application against dissidents and 'invented' the term sluggish schizophrenia to justify the isolation of political enemies in psychiatry institutions.

The process of analysis takes into consideration the Helsinki Declaration on Mental Health²¹ and the Mental Health Action Plan approved by ministers of health of member states in the European Region of the World Health Organization. This approach is based on the reflection and recognition of mental health policy and services as important and fundamental for ensuring dignity, equality and social inclusion for all citizens. On the other hand, it is crucial to overcome the differences in mental health policy between countries, especially between East and West, in the context of a communist or non-communist past.

THE MENTAL HEALTH SYSTEM AS A PART OF THE REPRESSIVE STATE: A TRANSITIONAL JUSTICE RESPONSE TO PUNITIVE PSYCHIATRY

The concept of transitional justice stems from the international human rights movement, referring both to judicial and non-judicial processes to address human rights violations committed by dictatorial or repressive regimes in the course of democratic transition and to the addressing of war crimes and massive human rights abuses committed in violent conflicts.²²

Mental health needs can be seen as a part of transitional justice in situations transitioning from conflict of authoritarianism. Supporting the mental health and psychosocial needs of survivors contributes to the individual's ability to come to terms with the past, individual and societal stability, healthier families and communities, the ability to participate in civic life and positive civil society growth. Applied comprehensively, transitional justice supports stable institutions, guarantees non-reoccurrence of violence, fosters democratic institutions, and provides truth, justice, and accountability for the victims.²³

HISTORY OF MENTAL HEALTH SERVICES IN ALBANIA

At the beginning of the 20th century in Albania psychological or psychiatric problems were considered related to religion and paranormal factors, which according to the beliefs caused suffering to the people. Until the beginning of the 21st century, it was believed that contact with Genies, or jinni, a spiritual creature mentioned in Ancient Arabian culture and Islamic theology, made people psychologically sick. Cure for psychiatric cases was through the practice of magic rituals, and sick people visited monasteries, where sick people gathered from all parts of Albania, with the hope of remedy from such disease.²⁴

The first attempt at opening a psychiatric hospital to treat the mentally ill was made by physician Sezai Çomo, who was driven by patriotic feeling and humanitarian vision. The first psychiatric hospital in Albania was opened in Vlora, in 1921, but its capacities were insufficient; there were only 20 beds, which could not address the health needs of the country. Although this hospital had more an isolation functions rather than a curative approach. In 1929, two new buildings were added and the capacity of the psychiatric hospital of Vlora was increased to 80 beds, enabling for the first time hospitalization of patients, including women. Years later, ergo therapy (the use of physical activity and exercise in the treatment of disease) was practiced as part of treatment.

21. WHO European Ministerial Conference on Mental Health, Mental Health Declaration for Europe Facing the Challenges, Building Solutions, (EUR/04/5047810/6, 2005).

22. Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Volume 1, (US Institute of Peace Press, 1995).

23. The Center for Victims of Torture, *A Survivor-Centered Approach to Transitional Justice*, (CVT Blog, 2017).

24. Nestor Polimeri, *History of Albanian Psychiatry*, (Medical books, 2000).

The quality of treatment was improved due to the qualification and training of staff, including the scientific description of the mentally ill, based on scientific criteria.

In 1940, the Italian-Greek war saw the relocation of Vlora Psychiatric Hospital to Shkodra, where patients were placed in a building that lacked the necessary facilities. Around 84 patients were sent to Volterra hospital, near Florence in Italy, but most of them were murdered by the Nazis. During the communist regime, patients who managed to survive Nazi executions were deported to Albania, at the special request of the Albanian state.

During the communist regime, the state sought to control every aspect of a citizen's life, through an unlimited power it addressed to itself. Health was one of the main objectives for the development of the Albanian communist state. It was centralized, which means that the state, through the decisions of the Ministry of Health, controlled and decided for every aspect and procedure in the health sector. Each hospital had to report everything to the Ministry of Health and indicators measured the performance of medical staff and hospitals. The Faculty of Medicine was founded in 1952 and this was the first opportunity to address the insufficient number of medical staff, especially physicians, in Albanian hospitals.

In 1956, in Tirana, the capital of Albania, a psychiatry clinic was established with a capacity of 100 beds, which became a specialized center for the entire country. In 1964, the organized service of forensic psychiatry was also added to Tirana's clinic of psychiatry, to treat patients who had committed crimes. On 29th November 1963, in Elbasan a psychiatric hospital was opened with 320 beds, expanded to 500 beds after the closure of the Durrës' Psychiatric hospital. Expansion of a psychiatric colony with 300 beds nearby made Elbasan Psychiatric hospital the largest psychiatric center in Albania.

In 1978, in Tirana a new neuropsychiatric hospital was opened with 200 beds, 100 of which were dedicated to the psychiatric clinic. In 1980 in this hospital the department of psychiatry for children was launched, the first center for treatment, screening, and prevention of psychiatric disorders in children.

During the communist regime, the development of mental health policy in Albania was highly influenced by political ideology. Albania practiced the principles of the Soviet healthcare system, the so-called Semashko, which promised universal, free access to health services, including mental health services. The Ministry of Health was the regulatory and responsible institution for every initiative related to health, because Semashko health, a system state-run healthcare model, was centralized, integrated, and hierarchically organized with the government providing state-funded healthcare to all citizens.

Albania, similar to all communist states, started to isolate itself from the science, and also the medical research, of the international scientific community. Before the communist regime and especially during the Kingdom of Ahmet Zog I, 1928-1939, scholarships were provided to doctors and medical students to European countries, such as Austria and France, to return to Albania and provide qualified medical help to citizens. The communist regime interrupted relations with West and other international agencies and the only alternative in the medical sciences was support from the Soviet Union.

During the communist regime in Albania there were consistent violations of human rights: persistent terror, persecutions and executions together with propaganda, isolation, the prohibition of freedom of speech and unfavorable living conditions created an environment that allowed for the blossoming of mental health disorders. Several documents from the General Directorate of Archives, reviewed from the period 1966 to 1977, in terms of reports from psychiatric hospitals,

guidelines and also correspondence between institutions such as the Ministry of Health and Ministry of Intern Affairs indicated a large number of mentally ill people, which was increasing every year.

The mental health system in Albania was centralized exclusively in and managed only by psychiatric hospitals, which were located in Tirana, Elbasan, Durrës, and Vlora, with no outpatient facilities at all. All patients, despite their place of residence, were gathered in these hospitals for treatment, which implied isolation and sedative drugs.

Referring to national morbidity statistics from 1967 and 1968 from four psychiatric hospitals, schizophrenia was the leading mental health disorder in both years, followed by other disorders which for unspecified reasons are not mentioned in this report. Tirana and Elbasan psychiatric hospitals reported largest burden of disease.

INSUFFICIENT RESOURCES OF STATE TO MANAGE THE SITUATION

Although the dictatorial state tried to manage all the developments in citizens' life, due to insufficient resources health due to its high cost and especially mental health, which is usually a chronic condition, was a challenge for the regime. In a secret correspondence between the Ministry of Health and the Attorney General, Leter Gega, on 4th March 1967, he expressed his concern about the rising number of mentally ill people who were released from psychiatric hospitals and because of their unstable mental condition, they were a danger for the safety and life of other citizens. Minister Gega pointed to the Ministry of Health as responsible for this bad management of the situation:

“In practice, medical institutions have had a lack of performance in the direction of discharging patients from these psychiatric hospitals, without their being completely recovered. These medical institutions responded that ‘there are no available places’ to the request of district hospitals for admission of other patients. Consequently, these patients remain outside and they have committed crimes.”

He requested from all the local institutions the application of compulsory treatment for these cases to prevent the increase of criminality. Simultaneously, with the request of the Prime Minister, on 31st March 1967, a secret correspondence occurred between the Minister of Internal Affairs, Kadri Hazbiu and the Ministry of Health about mentally ill people who represented a social threat.

Mr. Hazbiu was referred to mentally ill people in this letter as people with a mental handicap, a denigrating term used in Albanian ‘e metë’ (essentially, ‘idiot’), an offensive term for those with a disability: “From a partial verification that this ministry (Ministry of Internal Affairs), it results that in many districts of the country, there are a considered number of people with a psychical handicap, main people with schizophrenia. Some of these sick people, after being treated in psychiatric hospitals are released as treated or improved and now they are free (in 5 districts, there 99 cases).”

PSYCHIATRY AS A TOOL OF REPRESSION

The major concern of the Minister of Internal Affairs was the uncontrolled activity of those people who according to him:

“...showed violence and acted aggressively in families. They walked in the street, spoke against institutions of the communist party and government/state. They insulted the others, caused conflicts, beat and wounded the people until death and they commit other ugly crimes.”

Although the insufficient number of beds and limited resources in psychiatric hospitals, the organs of the state were determined to find a solution about this problem. Meanwhile, there were shared lists of named mentally ill people, who suffered from schizophrenia and were considered a political threat to their community.

Furthermore, a specific danger for the communist regime was the increased number of compulsory treatments driven by a court decision. Interviewees claimed that most of the healthy people who were sent to psychiatric hospitals by court decision were part of the Albanian elite and intellectuals. The purpose of choosing such political enemies as victims of punitive psychiatry was to destroy their credibility and to reduce their popularity among Albanian citizens. The apparatus of the communist regime was especially vigilant in such cases and has followed them systematically – often until their death, either a natural one or caused by torture and physiological degradation. Interviewees stated that the mental health of political enemies was endangered during the investigation (Albanian word ‘Hetuesia’), in prison as well as in psychiatric hospitals. Investigation at Hetuesia lasted from days to years, depending on the resistance of the victim. One of those interviewed, a victim of punitive psychiatry, testified that “they beat him so hard for one month until he lost consciousness several times during the day and at night.”

However, he was mentally capable, but one month later the doctor decided to use these weak moments as proof of the need for compulsory treatment. He still doesn’t know the diagnosis that sent him to hospitalization for 5 months. His crime against the socialist state was an attempt to escape the country on 25th December 1989. He explained that even though he spent only five months in the hospital, for five years he had severe headaches and fainted: “I don’t know what they did to me in psychiatry. Maybe the drugs or injections have damaged my brain, who knows...”

The uncle of one of the interviewees was a professional electrical engineer who, after a discussion with his Chinese colleagues, was sent to Hetuesia for six months, where they performed intensive electroshock on him until he became mentally ill. He was sent to the psychiatric hospital, where he died. A former mental health physician, who had worked in Elbasan during the communist regime added that besides their presence, there were specified medical staff dedicated to these patients delivered by Hetuesia or the Ministry of Internal Affairs. They served as both medics and guards at the same time: in a room of two patients, one member of staff was responsible for looking after them. In this way, these political enemies wouldn’t be able to create plots or to mobilize real patients against the medical staff.

In 1968, the minister of internal affairs Kadri Hazbiu delivered a secret directive to the institutions that reported to him about the execution of court decisions that appoint medical proceedings, such as hospitalization in a psychiatric hospital. He was concerned because “in some cases after their healing or improvement, they (patients with court decision) are released from the health institutions where they have been hospitalized. This was prohibited by the regime laws.”

For the leadership of the Albanian communist state, the condition of mentally ill people was a concern. Constant accountability from the responsible institutions was expressed in the form of correspondence, reports, and guidelines. In 1974 the General Prosecutor Dhori Panariti shared a report about the situation of 62 mentally ill patients under compulsory treatment in Elbasan's psychiatric hospital and other patients (an unspecified number) in Vlora psychiatric hospital. They had committed serious crimes such as "crimes against the state, crimes against the life and health of Albanian citizens and theft of socialist wealth". 16 hospitalized people had committed political crimes. This category of patients was dangerous, according to the report, because they can manipulate doctors concerning their improvement and escape from the hospital. Furthermore, they created groups inside the hospital and because of their physical capacity became a threat to medical staff and other patients."

This report suggested special surveillance and treatment for these patients to keep them under control in both Elbasan and Vlora hospitals, which held this category of patient. The interviewee who had experienced isolation in Elbasan psychiatry for five months during 1989, confirmed the different treatment they received, especially from the medical staff. According to the interviewee, his nutrition was worse than other patients, medical staff beat him often and injected unknown substances that made him unconscious most of the time. Nevertheless, in 1974 representatives from the Ministry of Health proposed the foundation of the Institute of Forensic Psychiatry, dedicated to implement court decisions about compulsory treatment. Previously, the mental examination was made in the psychiatric hospital of Tirana, at clinics in the neuro-psychiatric hospital of Elbasan and the psychiatric hospital of Vlora. When mental irresponsibility of people who had committed crimes was proved, they continued their treatment in those institutions.

Representatives from the Ministry of Health expressed their concern about the lack of submission of forensic reports when these patients were hospitalized. Thus, patients were treated in psychiatric hospitals without the necessary information. In many cases, diagnosis when patients were released was contradictory to the initial one, decided by the commission of experts. They had evidence also of long-term hospitalization in these cases, which caused disability in patients. The major justification for the foundation of an Institute of Forensic Psychiatry was its aim to decrease the levels of crimes committed by psychopaths (the term used in the Ministry of Health proposal). Medical conditions in the institute would be more isolated than in psychiatric hospitals. Their isolation and treatment would limit their contact and would prevent social threats to the community and their movement would be restricted. The interviewee claimed that the communist state felt threatened, because of the popularity of political enemies, who were mainly intellectuals. If they were released or had the opportunity to move in the community, they would influence public opinion concerning the repression of the communist party.

According to the proposal, individuals would prefer institutions of reeducation rather than new conditions of compulsory treatment. This factor would affect a potential reduction of their illegal actions in the future. The institute was assumed to be a special unit for the isolation of the most dangerous cases until their death. Medical staff, through the institute, would play the decisive role in the process of examination and evaluation. The medical staff was projected to contain 60% qualified doctors, of whom 70% would be males. Each of the candidates would be selected carefully in accordance to the criteria of regime. In the interviews, the function of the Institute of Forensic Psychiatry was unclear, because both categories of former-medical staff and former-patients were sent to traditional psychiatric hospitals, notably the Elbasan psychiatric hospital.

10.1 Engagement of security agencies in Mental Health

After a continuous failure from the Ministry of Health in the management of these cases, Hazbiu delegated the issue to the Ministry of Intern Affairs and the institutions under it, to control this

situation. His decision made the court the only responsible institution for the removal of medical procedures. Furthermore:

“...branches of Internal Affairs in districts, which had in their territory sick people towards whose court had decided medical proceedings, were obliged to control the application of these decisions and the conditions of patients. (They would be controlled by a policeman).”

This secret directive had as an appendix the nominal list of 33 mentally ill people who had committed crimes and must be detained (their term instead of hospitalization) in psychiatric hospitals. A search in Kujto.al (English: Remember.al) an online platform for remembrance of victims of the communist regime, showed that 15% or 5 of the 33 individuals were political prisoners and enemies of the regime. Their punishment consisted of ten to twenty years in prison for betrayal to the state, while one of them was shot to death.

10.2 Failures of the Mental Health system and the right to health

According to a report from the Ministry of Health in 1968, the total number of beds in psychiatric institutions was 900 or 1 bed per 2000 inhabitants. They had made a comparison with other states and had estimated that the ideal ratio was 3 beds per 1000 inhabitants. This ministry proposed the launch of two colonies (group of patients) in Vlora and Elbasan, with patients from those psychiatric hospitals. There the patients would benefit society by working in agriculture. In files from 1975 the situation of the mental health system in communist Albania was still chaotic and the needs of patients were not satisfied. Moreover, the Minister of Health in relation to the national situation of mentally ill people claimed that “in 1975 they had 1250 beds for mentally ill people, of which 330 were in Vlora, 820 in Elbasan and 100 in Tirana”, but there weren't enough for citizens' needs, which were estimated to be more than 2000 patients. In this document also mentioned are cases of compulsory treatment sent by judicial institutions, as a long-term treatment. Also, the feeble-minded (an old, offensive term used for mental deficiency), referring to children over 14 years, were sent to the Elbasan psychiatric hospital after their treatment in the 'House of mentally handicapped children'. Most of them used the institution as a shelter because they were abandoned by their families.

In a document from 1975 sent to the Prime Minister's Office from the Minister of Health, Llambi Ziçishti, there was evidenced of the urgent need for hospitalization of more patients with compulsory treatment. The outpatient service treated during this year 2000 cases, that should have been hospitalized, but due to the large number of patients from compulsory treatment, and so-called 'feeble-minded' patients from orphanages, there limited space. The minister Ziçishti requested from the justice institutions a specific filter to decisions about compulsory treatment, because of the incapability of actual mental health institutions to admit more cases. Nevertheless, Llambi Ziçishti closed his official letter towards the Prime Minister with the message that “there will always be place for aggressive patients in Albanian psychiatric institutions”.

Through investigation of files in the General Directorate of Archives for the period 1966-1977, it is evident that the challenges that the Albanian mental health system was facing were persistent throughout the decade. An insufficient number of beds, limited medical staff, and lack of buildings were some of the indicators that continuously were reported as unable to be managed by the available resources. Consequently, whether not declared openly in official documents, the absence of these essential resources is paralleled by a lack of medicines, sanitation, and hygiene, optimal nutrition, qualified medical staff, etc. Even though the system of surveillance and monitoring was active, the perception of state officials of beneficiaries of the mental health system was related to stigmatization and resentment. In official documents, offensive concepts about the mentally ill were used.

A report from Kadri Hazbiu in 1978 towards of Council of Ministers (resource of information Kastriot Dervishi) declared that there were 17.214 people treated and hospitalized in psychiatric institutions during the period 1971-1978. An interviewee stated that statistics during the communist period can often be controversial because officials tried to manipulate them depending the situation and the level at which they would be exposed. Especially, statistics and reports which were promoted to the population overestimated the so-called success of the communist party in different sectors of life and wellbeing.

10.3 Addressing histories of punitive psychiatry

Winter considers three levels of witnessing: legal, as in giving evidence before an (international) court against specific perpetrators; moral, implying that testimony about specific crimes against humanity frames a much wider narrative about absolute evil; and the witness as spokesperson for humanity, emphasizing that we not only have a duty to remember, but also that we forget at our moral peril.²⁵ Story telling is a method which gives victims a voice and influences both historical and collective memory. This historical narrative also includes directly the victims and their families who share their experience to large audiences.

The most famous case of a political enemy in Albania sent to a psychiatric institution was Asllan Rusi, a young talented volleyball player, who was invited to play with the successful Dinamo volleyball squad. People referred to him as a champion, due to the achievements he gave his team at the national and international level from 1963 until 1975. In 1975, the life of this talented volleyball player was changed immediately. He had a relationship with the daughter of Enver Hoxha, the dictator of Albania and supreme leader of the Communist Party which shaped his destiny. An interview with Vangjel Koja, former trainer of the Dinamo volleyball squad, reveals how Sigurimi forced him to expel Rusi from the Dinamo team, although he was the main factor in their international success. Then, Rusi was sent to a psychiatric institution without his consent and even though he was healthy and had never shown disability either physically or mentally aspects. According to Vangjel Koja, the injections that medical staff gave to Rusi caused him irreversible damage until he died in 1983 from cancer. He lost his volleyball skills of, his perfect physical condition and his mental state became unstable.

The communist regime in Albania was harsh and cruel to all of those who were considered political enemies. These opponents of the regime were officially known as public enemies, who risked the progress and security of the whole population. That dictatorial system hit everyone, without any limit of age or sex.

Bianka de Korvin, or Bianka Balliçi, the Countess from Trieste was witness and victim of regime punishment in January 1948, because she was a foreigner and this fact declared her as a Western agent (spy). After suffering ten years in prison, she was sent to the psychiatric hospital in Elbasan. Relatives and Sigurimi documents declare, that after Bianka left the psychiatry 'she was half-dead', her spinal cord was damaged and her mental condition was worsened.

During the communist regime, Albania became the first atheist country in the world. The regime was barbarous and violent to people who persisted against this decision. A lot of persecutions, tortures, and executions occurred because of religion. People were prohibited to practice religious traditions, while religious buildings and institutions were destroyed and priests, imams and students in religious schools targeted. Since some devoted individuals did not give up on praying or following the practice of religion, the regime used several techniques to put pressure on them. The first executions started in 1944, the implementation of communist ideology and

25. Jay Winter, *Remembering War: The Great War between Memory and History in the Twentieth Century*. New Haven and London, (Yale University Press, 2006).

state apparatus. From 1944 to 1949 there were 63 victims from the Catholic Clergy, (38 of them are beatified and announced as martyrs by Pope Francis), who were persecuted, arrested, tortured and sentenced to death, most of the times without any court decision.

Monsignor Jul Bonatti is one of these victims, who faced the brutality of the regime. He is ranked the third in the list of thirty-eight martyrs that were beatified by Pope Francis by a special official decision signed by Him. In this decision is written: “ The great intellectual priest, imprisoned, tortured, locked up in psychiatry; as he tried unimaginable horrors in the prison cells from Vlora to Durres, he died in the prison of Durres, beside Monsignor Prenushi, who gave him the blessing for the last pilgrimage: the Holy Sacrifice. Jul Bonati was born in Shkodra on May 24, 1874, in a patriotic family of prominent traditions

In 1946, at the age of 72, he was arrested and by decision no. 429 dated 31.10.1947 and the Military Court has pleaded guilty to the crime: Vatican agent who would be sentenced to 7 years imprisonment. Jul Bonati died in prison hospital on November 5, 1951, According to Prof. Dr. Verse Shah, “Ms. Jul Bonati was found ‘massacred into pieces’ in Durrës psychiatric hospital, attacked by the” unconscious “patients.

THE RIGHT TO MENTAL HEALTH AND THE MENTAL HEALTH SYSTEM AS A TARGET OF TRANSITIONAL JUSTICE

In Albania, the transitional justice process has been developed slowly, with a focus on material and financial reparation of victims and their families. The most common method of reparation is compensation (calculated by duration) for persecution, torture, and detention with a specific amount of money depending the category of punishment. However, through treasury bonds, houses, access to jobs and education have been delivered for former political enemies of the communist regime, this has not been a regular and inclusive process and has often promoted protests and even hunger strikes by the victims and their families. Some trials of persecutors or important representatives of the communist state occurred in 1993 and 1994, but they were limited. An official apology never came and most former Communist officials are still convinced that they have done their duty on behalf of the state.

Using psychiatry as a tool for the punishment of political enemies increased the burden of mental health disorders. When interviewed, former medical staff denied any possible connection with the application of punitive psychiatry. One of them, disowned even the existence of this concept during communist Albania “I don’t know any case of this in our country. This happened in the former the Soviet Union, but for Albania, I can’t speak”. Meanwhile, in the first years of the ‘90s, one of the former psychiatrists in Elbasan was requested by an international delegation (he didn’t remember more details about them) to give a public speech, where he would apologize for the crimes and tortures of communism. He refused “I haven’t treated anyone badly and have only done my duty. I don’t give interviews, there are other people responsible for it.”

Clearly, since the first years of democracy, there have been attempts by international institutions to develop a peace building process and also reparation. During the crises of 1991-1992, 1997 and 1999, the many foreign NGOs active in the country encouraged and supported the development of Albanian civil society. Several organizations, mostly with an anticommunist perspective were established. On 30th September 1991, the first law of reparation around communist crimes was published. It aimed to address the innocence, amnesty, and rehabilitation of former convicts and the politically persecuted. Through this law, the first pluralist parliament and Popular Assembly recognized the innocence of former prisoners and the politically persecuted. Also, on behalf of the rule of law, the Albanian democratic state expressed an official apology to these people for

political punishments and sufferings they have faced in the past. The state pledged to apply measures of reparation and rehabilitation of people who had been accused unjustly, with a special priority on material and moral help for their fast reintegration in society.

With an addition in 1993, beneficiaries from this law would include those who died in Hetuesia (during the investigation process), people who were shot without trial, people who were murdered in attempting to cross Albanian border, those who were accused of political crimes and were locked in psychiatric institutions for compulsory treatment and those who were punished for defamation and insult against the highest organs of the state and communist party. Although in this first law, there is no specific mention of victims of punitive psychiatry, in general, there are mentioned benefits that the politically persecuted would have. They had the right to return to the home where they lived before prosecution or deportation. They and their families gained the right to return to universities and also were promised that the state would employ them based on their profession. In addition, this law would set up a commission with the membership of deputies, representatives of government, officials of the judicial system and members of the Association of former political prisoners to review the political crimes of the socialist state against Albanian population, representing a limited truth-telling process, in principle. In December 1991, in democratic Albania a series of trials took place against 20 officials in the communist regime including the only female accused, the widow of the dictator, Nexhmije Hoxha. The most frequent accusation against them was 'abuse of national wealth', and Nexhmije Hoxha was sent to prison.

The 1993 reparation law, which included even the people who underwent compulsory treatment through a court decision, provided monetary compensation, during the years 1993-1994. There were a few facilities for families such as the right to study and some of them were employed, but there were no organized efforts for their rehabilitation. Although the state promised to ensure them housing opportunities, this objective is yet to be realized. Some of these people are obliged to rent a house, because their financial condition doesn't support buying a property.

Taking in consideration that these individuals has been isolated in a psychiatric institution, with the presence of mentally ill people and with continuous surveillance and pressure from medical staff, no detailed analysis or examination about the consequences of this abnormal exposure was made. One of the interviewees stated that he had never been invited to be examined, while another stated that they had only brief examinations, which were used for statistical purposes. In addition to damaged mental health during the isolation, post-traumatic stress is another disorder that can affect people who had been under pressure, torture and trauma.

In the legal context, the most important timeline for the former persecuted people in the communist regime is during the years 1991, 1993-1994 and 2007. As mentioned above, in 1991 the first law of reparation was published and during the period 1993-1994, its implementation was in process. The first years of democracy in Albania were promising in terms of reparations because the victims of the regime and their relatives benefited from monetary compensations, employment, and housing and education opportunities for themselves, families and relatives. However, not all the needs of the former persecuted people were addressed and not everyone benefited from these measures. Furthermore, medical evaluations and examinations to measure the physical and psychological consequences of the victim's health weren't performed, and these are anyway not mentioned in the reparation laws. Although the reparation process began in 1993, according to a report from the Albanian Supreme State Audit Institution, only one third of the predicted monetary compensation has been delivered to victims or their families. There is no assigned deadline for monetary compensation.²⁶

26. The Albanian Supreme State Audit Institution, Rehabilitation of the persecuted people in the transition period, (Decision Nr.86, 2016).

The Albanian Supreme State Audit Institution ends its report:

“The legal provisions have been fragmented and inadequate, insufficient and have also lack of financial resources. Albanian society has opportunities for material reparation and reasonable rehabilitation of this social group at an optimal time, responding thus the legal obligations and those laid down in the International Conventions, which has taken over the establishment of the rule of law, to end this social scourge in our country.”

The first time that punitive psychiatry during the communist regime was mentioned in media, was in a public declaration from the prime minister of that period, Mr. Sali Berisha. He emphasized the importance of inclusion in the compensation plan of the victims of punitive psychiatry, people who were isolated in psychiatry because of their political views. According to him, the psychiatric hospitals during the communist regime were used also as prisons for political enemies of the regime.

Since the arrival of democracy, 300-310 victims of punitive psychiatry have benefited from the facilities and compensations foreseen in the reparation laws. This represents the victims who were sent to psychiatric institutions by court decision and have the necessary documents to prove their persecution. They were placed in the first category for compensation, together with former prisoners. According to the reparation law, they will benefit 2000 ALL (around 18\$)/day of isolation in psychiatry. Although the monetary compensation is the most acknowledged form of reparation in Albania, the process of compensation is still ongoing. This has caused offense and displeasure to victims and their families, who have often organized strikes and protests.

Recently, the victims of punitive psychiatry in Albania are facing challenges regarding acknowledgment. Even though the official number of victims of punitive psychiatry is 300-310, there are predicted to be more cases that were isolated in psychiatric institutions without a court decision. They are facing difficulty in proving persecution and they are excluded from the status of victim and also from compensation.

To conclude, in Albania the concept of ‘punitive psychiatry’ isn’t well known by the population. This phenomenon is caused by several factors such as the small number of cases, lack of lobbying from institutions and non-governmental organizations, lack of research about health issues during communism and a consequent lack of media coverage. It is crucial for the history of Albania during the communist regime to define those who suffer, based on their documented history of persecution. Furthermore, recognition of all the victims of punitive psychiatry is a necessity. Presentation to the public with this concept and its application during the dictatorship is a form of assurance that lessons from the past, will serve for a safe future.

To change the situation and to develop a bulwark against the misuse of the psychiatric profession in the future, it is pivotal that serious efforts are made in the provision of modern mental health literature in local languages, in education, and the monitoring of human rights in closed institutions. It is time that national and international psychiatric bodies resume their interest in these cases, exert pressure on the authorities in the countries concerned and support victims of political abuse of psychiatry in every possible way, e.g. by facilitating independent psychiatric evaluations of the persons concerned.²⁷

In Albania, the first law of mental health was established in 1996. The main issues addressed were access to mental health care including access to the least restrictive care, rights of consumers and family members, competency, capacity, and guardianship issues for people with mental illness,

27. Victor Davidoff, Madeline Roache, Robert van Roren, *Psychiatry as a tool of coercion in post-soviet countries 2012-2017*, (Federation Global Initiative on Psychiatry, 2017).

voluntary and involuntary treatment and mechanisms to oversee involuntary admission and treatment practices, law enforcement and other judicial system issues for people with mental illness. However, the implementation of the Mental Health legislation is incomplete, due to the inappropriate infrastructure (health, social and legal) that should further foster the protection of the rights of the mentally ill and enhance their social inclusion.

The implementation of the first law was a challenge because it required both human and financial resources towards a human rights approach. For the first time, a multidisciplinary team was initiated, beside the psychiatrist and nurse. Psychologists, social workers, and family doctors were part of the mental health system, which went from hospitalization towards deinstitutionalization. This meant a community-based treatment and rehabilitation of patients, where family and community members would play an active role and support them. At the early stages of this model's application, community and families weren't prepared to manage this responsibility, due to lack of education and also stigmatization, related to mental health disorders.

From the year 2000, in Albania, the impact of international organizations such as the World Health Organization and also national actors have affected the development of the mental health system. Decentralization and deinstitutionalization are policies that project the progress of community care. Community care means offering therapeutic relations, rather than isolated therapeutic actions. Community care is continuity and responsibility in the care provided near the living environment, use of resources that offers community, inclusive orientation: multidisciplinary, participatory and coordinated.²⁸

Currently, mental health problems in Albania are treated in a specialized way in 13 Supported Homes, 10 Mental Health Community Centers, 4 specialized mental health services with beds and 2-day centers. Education and fighting the stigmatization are efforts to provide acceptance in society of mental health issues. Mental health is not merely a health or medical concern, it is very much a matter of human rights, dignity, and social justice. Users of mental health services, persons with mental health conditions and persons with psychosocial disabilities are positioned at the confluence of many vulnerabilities, particularly those arising from poverty, stigma, discrimination, social isolation and segregation.

In the post-communist Albania, mental health system addresses two approaches towards an inclusive health care:

- 1.** The first approach is towards the rehabilitation of victims of the communist regime. These people have experienced mental health trauma, violence and abuse in the communist regime. They deserve acknowledgment, treatment with dignity and should benefit from preventive, curative and palliative health services.
- 2.** The second approach is the addressing the human rights situation of mentally ill people, which requires the protection of their autonomy and dignity as well as the other human rights guaranteed by national laws, international legislative bills, and conventions.

The United Nations claim that States have the primary obligation to protect and promote human rights. The right to health is relevant to all States: every State has ratified at least one international human rights treaty recognizing the right to health. Albania has undergone through a harsh dictatorial regime and transition process. This increases responsibility of State towards the right of health, as a national obligation to ensure an accessible health care for its citizens, but also protection of their dignity and freedom, as a contribution from the past legacy and accountability.

28. Ministry of Health (Albania), Political document and plan of development action of health services mental in Albania, (Shteti Web, 2003).

REFERENCES:

Besim Nuri, Health care systems in transition: Albania, Regional Office for Europe & European Observatory on Health Care Systems, 2002.

David K. Shipler, *Russia Broken Idols, Solemn Dreams*, Penguin Books, 1984.

Gabriel A Almond, *Communism and Political Culture theory*, Comparative Politics, 1983.

Gentian Elezi, *Establishing the rule of law after communism: a comparative approach*, Polis, 2017.
Ian Henry Spencer, *An investigation of the relationship of Soviet psychiatry to the State*, Glasgow Theses Service, 1997.

James D. Livingston, *Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report*, Mental Health Commission of Canada, 2013.

Jay Winter, *Remembering War: The Great War between Memory and History in the Twentieth Century*. New Haven and London, Yale University Press, 2006.

José Antônio Moroni, *Reforming the political system: giving power back to the people, Social watch poverty eradication and gender justice*, 2009.

Martina Klicperova, Ivo K. Feierabend and C. Richard Hofstetter, *In the Search for a Post-Communist Syndrome: A Theoretical Framework and Empirical Assessment*, *Journal of Community & Applied Social Psychology*, 1997.

Martina Klicperova, Moral values in the modern Czech history, *Global Bioethics*, 1994.

18th Meeting of Ministers of Health in Nepal, *Health sector reform; Issues and Opportunities*, World Health Organization, 2000.

Mental Health America, *Transforming The Mental Health System*, Official website MHA, 2019.
Michaela Amering, Margit Schmolke, *Recovery in Mental Health Reshaping Scientific and Clinical Responsibilities*, A John Wiley & Sons, Ltd., Publication, 2005.

Ministry of Health (Albania), *Political document and plan of development action of health services mental in Albania*, Shteti Web, 2003.

Martin McKee, Ellen Nolte, *Lessons from health during the transition from communism*, US National Library of Medicine National Institutes of Health, *BMJ* 2004.

Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Volume 1, US Institute of Peace Press, 1995.

Nestor Polimeri, *History of Albanian Psychiatry*, Medical books, 2000.

Office of the United Nations High Commissioner for Human Rights, *The Human Rights Fact Sheet*, United Nations Geneva, 2008.

Robert van Voren, *Political Abuse of Psychiatry—An Historical Overview*, US National Library of Medicine National Institutes of Health, *Schizophrenia Bulletin*, 2010.

Simon Robins, *Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations*. Human Rights and International Legal Discourse. Human Rights and International Legal Discourse, 2017.

Stephanie Buck, *The totalitarian government in Soviet Russia invented a mental illness to lock up resisters*, Timeline, 2017.

Tereza Lukášová, *Semashko health financing model – economic and health consequences in Czechia*, Ecoforum, 2018.

The Albanian Supreme State Audit Institution, *Rehabilitation of the persecuted people in the transition period*, Decision Nr.86, 2016.

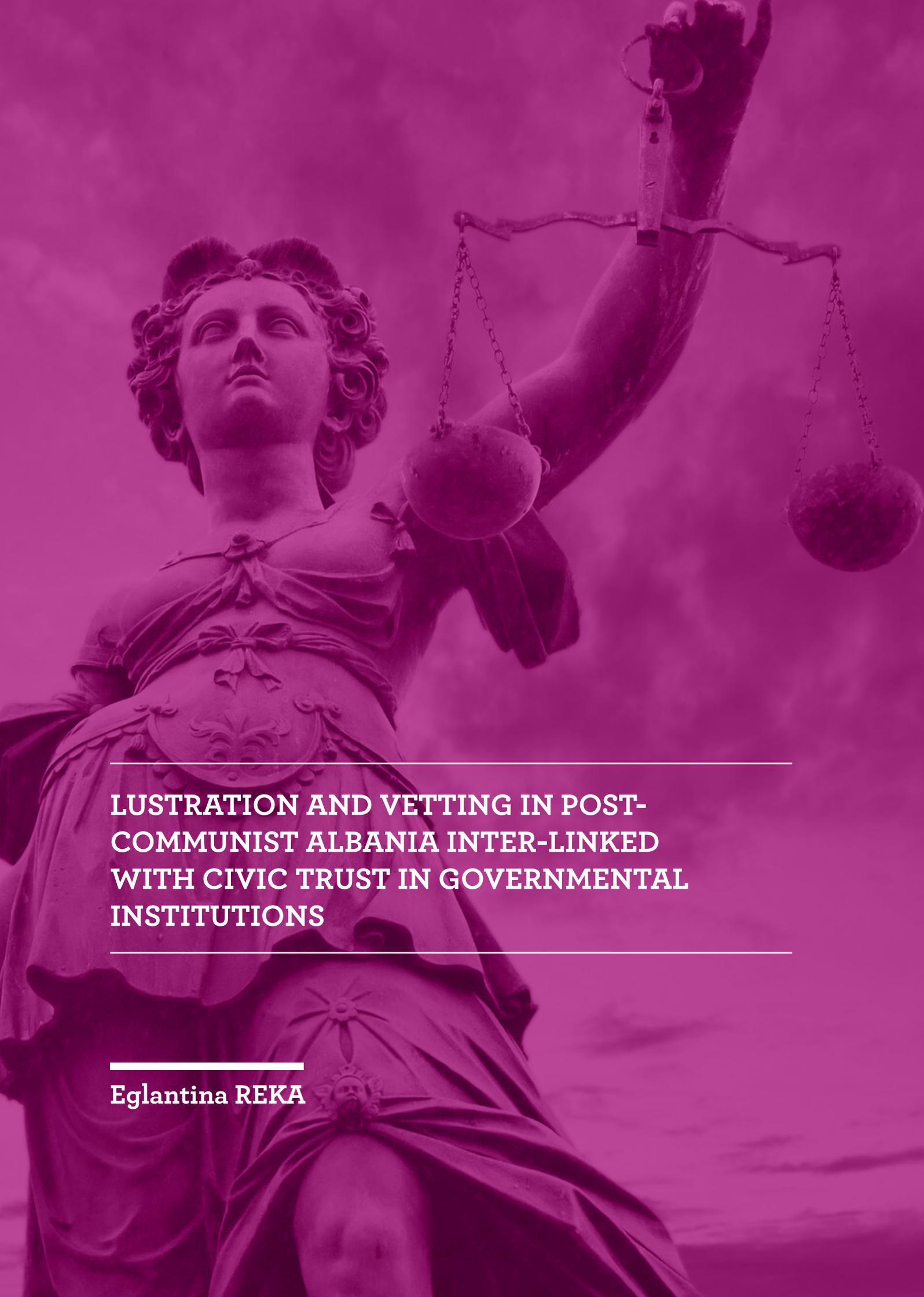
The Center for Victims of Torture, *A Survivor-Centered Approach to Transitional Justice*, CVT Blog, 2017.

UN Security Council Report, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies S/2004/616*, 2004.

Victor Davidoff, Madeline Roache, Robert van Roren, *Psychiatry as a tool of coercion in post-soviet countries 2012-2017*, Federation Global Initiative on Psychiatry, 2017.

World Health Organization, *Resource book on mental health, human rights and legislation*, ISBN 92 4 156282, 2005.

WHO European Ministerial Conference on Mental Health, *Mental Health Declaration for Europe Facing the Challenges, Building Solutions*, EUR/04/5047810/6, 2005.



**LUSTRATION AND VETTING IN POST-
COMMUNIST ALBANIA INTER-LINKED
WITH CIVIC TRUST IN GOVERNMENTAL
INSTITUTIONS**

Eglantina REKA

ABSTRACT

In Albania, after the fall of communist regime began the discussion about Transitional Justice (TJ) measures. Different TJ laws are approved and implemented in post-communist Albania, including lustration and vetting laws. TJ and lustration laws passed in the parliament with an accelerating procedure and without political consensus about wrongdoings in the past as persecution, imprisonment, torture, death penalty, isolation and other forms of violation of human rights during communism. These laws were subject of many changes during the years in the parliament and constitutional court to soft and narrowing their main purpose. The Albanian process of lustration and vetting did not include the public in the debates about the communist past and a process of common narrative about the wrongdoings of the communist regime was not build. The implementation of lustration laws from 1995 until 2001 was not transparent and was conducted not from impartial institutions. Lustration and vetting procedures in the post-dictatorial Albanian context meant the exclusion of perpetrators from public services.

In this article, I argue that this process and the different procedures of lustration and vetting did not contribute in rebuilding civic trust in governmental institutions, because the process was not transparent, impartial and inclusive. Lustration and vetting in post-communist Albania is thus, and unfinished and ongoing process. Only 7 years after the two main lustration laws expired (1995-2001) the lustration process was back in discussion, and a new law was approved in 2008 that was declared unconstitutional. In 2015, the Albanian parliament passed the law with lustration measures within it and is being implemented.

Key words: transitional justice, lustration, vetting, civic trust, Albania

INTRODUCTION

After the end of the totalitarian regime in Albania, legal TJ measures such as public apologies, amnesties, reparation and compensations, trials, lustration and vetting procedures, security and sector reforms, and memorials have passed in the parliament. Even so, these legal TJ measures could not guarantee for sure effective implementation. This paper will discuss different TJ measures laws and implementation, such as lustration and vetting.

In post-communist and totalitarian Albania lustration as a definition was used in the first years of transition 1991-2001. A decade that was poorly used both by civil society actors and policy maker, due to the need to protect the new born democracy, break with the past, de-communization and to exclude the perpetrators from public services. Also, mentioned during 2002-2015 in public discussions. In 2015 lustration as a TJ measures is included in vetting procedures. Vetting in Albania after 2015 is define in laws¹ as the re-evaluation process carrying out three components: asset assessment, background assessment, and proficiency assessment. The background assessment includes lustration procedures in excluding from public service former officers and collaborators of former State Security (Sigurimi) for the period 29 November 1944 until 2 July 1991. The laws after 2015 are vetting laws but contain lustration measures within. Lustration and vetting in Albania are a set of parliamentary laws. The term lustration and vetting in Albania context in this paper will be used in the same meaning that is the screening of public officials that committed human rights violations during communist regime.

In this article, I argue that different legal TJ measures after the end of the totalitarian regime in Albania such as the Genocide, Verification and lustration laws since 1995 have not let to

1. Law No. 45/2015: "On the right to information on the files of the former state security services during communist times - Sigurimi", Law No.84/2016 "On the transition of the judges and prosecutors in the Republic of Albania"

the anticipated transparency about past wrongdoings, nor the rise in trust in governmental institutions. Therefore, in this article I will investigate how lustration laws have led to hearing or commissions of Verification Commission in 1995-2001 that could have initiated trials and revelations of past wrongdoings, whether and if those responsible for these wrongdoings have been held to account or not and to what extent this links to democratic reforms and civic trust in governmental institutions.

TJ measures are closely linked to (re-)building trust in governmental institutions and thus knowing the truth and the facts about the past and naming those who had been responsible for the wrongdoings, is part of the trust-building process. Civic trust means “a high level of civic trust in political institutions based on active participation by citizens”² and “civic trust is only fully established when the once victimized can freely and safely interact with the former victimizers and the institutions of the new political regime”³. Lustration and vetting decision (according to the Laws) should be taken by independent and transparent institutions, legal, political and civil ones. Therefore, this article investigates which actors, institutions were involved in setting up the laws, following and implementing them or denying them and what concrete actions such as trials, commissions, hearing, parliamentary debates, media debates, and Civil Society Organizations (CSO) activities have taken place.

Political disagreement about lustration laws such as Genocide and Verification Law and the changes made in these laws several times from Albanian parliament did not let to have impartially and transparent institutions to take decisions. Lustration and vetting measures will not be effectively implemented if the debate will be conducted in placing blame only in one side. In addition, a process of building a common narrative or consensus about the past is essential for TJ measures implementation. Albanian debate about lustration and vetting procedures was conducted in accusing each other and no consensus about the past wrongdoers, affecting so the implementation of lustration and vetting and the contribution in delegitimizing the past regime and legitimizing the new regime. The debates about past wrongdoers was blaming each other and strong opposition in approving TJ laws. TJ laws such as Lustration and vetting has been proposed and approved only by the MPs from the party in power, with harsh objection from the opposition.

For an effective implementation process of vetting and lustration, the engagement of citizens, victims, victimizers, domestic or international stakeholders is essential. The newborn democratic institutions should provide the participations of all actors in the process. The engagement of Albanian victim groups and civil society such former prisoners, academia, citizens in vetting and lustration process effected its implementation. Contributing or not in rising civic trust in governmental institutions.

The misuse of the process of lustration and vetting procedures from politics in Albania affected the civic trust in democratic institutions. Hence, I argue that legal TJ measures such as Genocide, Verification and lustration laws process is inter-linked with civic trust in governmental institutions.

2. Anja Mihr 'Introduction to Transitional Justice', in Oliviera Simic (ed) Introduction to Transitional Justice, Routledge 2017, pp: 1-27

3. Anja Mihr Policy Brief No.3 Center of Governance through Human Rights, , August 2017 pg.5 : https://www.governance-platform.org/wp-content/uploads/2017/08/CoGtHR_policy-brief_no3_TransitionalJustice_August2017.pdf

TJ MEASURES, SUCH AS LUSTRATION AND VETTING IN POST-COMMUNIST COUNTRIES

Lustration is an ancient Roman and Greek word *lustratio* or *lustrum* that means a rite of purification. Lustration is a process that was among other TJ measures, implemented in WWII in West Germany and Japan, then following the transition in post-communist societies after 1989. “Transitional justice is a concept and a process that encompasses a number of different legal, political and cultural instruments and mechanisms that can strengthen, weaken, enhance or accelerate processes of regime change and consolidation”⁴. Lustration is often part of the administrative reforms in post conflict and post authoritarian societies. Lustration process, in some countries goes the same with vetting procedures. Jens Meierhenrich define the practice of lustration with three main components “first, the screening of candidates for public office; second, the barring of candidates from public office; and third, the removal of holders from public office”⁵.

Lustration/vetting as a legal instrument has no meaning without lustration law. “Lustration law is a special public employment law that regulates the process of examining whether a person holding certain higher public positions worked or collaborated with the repressive apparatus of the communist regime”⁶. In post-communist countries, lustration and lustration law have been implemented in the first phase of transition and during transformation into democracy. Some post-communist countries lustrated and other did not. TJ measures such as lustration and vetting have different impact in post-communist societies, depended the way they are implemented. Cynthia M. Horne argues, “lustration positively contributes to the process of democratic consolidation both an act of symbolic politics and a tool of bureaucratic/institutional change”⁷, and for Mayer-Rieckh the main purpose of vetting was to build fair and effective institutions that would prevent future recurrences of human rights abuse, rather than punishment.⁸ Instead, Czarnota states that, the aim of lustration and lustration laws “was the security of the state and the elimination of potential political blackmail”⁹. Roger Duthie concludes two main reason for lustration and vetting measures that are “to punish the perpetrators, and to transform institutions in order both to safeguard the democratic transition and to prevent the recurrence of human rights abuses.”¹⁰ Lustration and vetting “procedures aim to shed light on who was responsible to what extent during times of injustice and suppression”¹¹.

However, the overall purpose of lustration and vetting procedures differ from country to country, can change by time and the contest of the society when is implemented. Lustration and vetting combined with other transitional justice measures, intent to establish rule of law, to prevent the repetition of the wrongdoings from the past, to increase civic trust in institutions, decommunization and the consolidation of democracy. Lustration and vetting procedures use information from secret files to exclude from public service persons implicated in gross human rights violation giving a contribution on moral cleansing and symbolic element. Lustration

4. Mihr, Anja, ‘Introduction to Transitional Justice’, in Oliviera Simic (ed) Introduction to Transitional Justice, Routledge 2017, pp: 1-27

5. Meierhenrich, Jens “The Ethics of Lustration,” *Ethics and International Affairs* 20, no. 1 pp. 99-120, Cambridge 2006

6. David, R., ‘Lustration laws in action: The motives and evaluation of lustration policy in the Czech Republic and Poland (1989-2001)’ *Law & Social Inquiry*, 28, 2003, pp.387-439

7. Horne, Cynthia M., ‘Late lustration programmes in Romania and Poland: supporting or undermining democratic transitions?’, *Democratization*, Vol. 16, No. 2, Routledge April 2009, pp.344-376

8. Duthie, Roger ‘Introduction’ in A. Mayer-Rieckh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp. 16-39: ICTJ and Social Science Research Council

9. Czarnota, Adam ‘The Politics of the Lustration Law in Polan 1989-2006’ in A. Mayer-Rieckh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp. 222-259: ICTJ and Social Science Research Council

10. Duthie, Roger ‘Introduction’ in A. Mayer-Rieckh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp. 16-39: ICTJ and Social Science Research Council

11. Mihr, op.cit., p. 3

and vetting have positive and negative outcomes. Many authors have argued the weakness of lustration and vetting.

The authors Barret, Hack and Munkacsi argue that one of the reason why lustration has failed to build trust in democracy or politicians “is that it has been a very elite-focused measure The individuals who underwent vetting were obviously drawn from the elite, but it was also primarily the elite that undertook the debate on lustration; ordinary people have seen only the scandals arising over the years”¹².

Lustration and vetting as alone measures cannot give the anticipated democratic consolidation. Lavinia Stan argues that “important transitional justice methods such as truth commissions, property restitution, official apologies and condemnations, and memorialization have been completely ignored”¹³ weakening the impact of lustration in democracy consolidation as used as the only measure in some post-communist countries. Lustration and vetting are not enough to build civic trust in governmental institutions, as Mayer-Rieckh argues, “as a stand-alone measure, vetting is generally insufficient to ensure that abuses are not repeated. A coherent and holistic approach to transitional reform is necessary – albeit not sufficient – to effectively prevent abuses from recurring”¹⁴. Lustration and vetting combined with other transitional measures can “improve accountability, independence, representation, and responsiveness”¹⁵, so “a mix of TJ measures is needed to reach the anticipated trust.”¹⁶

Lustration and vetting has been implemented in early years of regime fall or in later year. Samuel P. Huntington wrote “in new democratic regimes, justice comes quickly or it does not come at all”¹⁷. The highlight is that the right time to have transitional measures in post-conflict or post-communist countries are the first years of transition. In addition, Horne claims, “that if lustration comes too late in the process, it could get caught in cycles of political manipulation and undermine rather than build trust”¹⁸. Horne put forward the idea that “early lustration waves were positively associated with more trust in government, but this relationship was time sensitive. In this case, the trust building effects of lustration declined considerably as time elapsed after the transition”¹⁹. Transitional justice measures and especially lustration measures contribute on building civic trust in government institutions. If lustration measures are conducted in a transparent way, it contributes in the improvement of civic trust. Civic trust helps in legitimizing the new regime. Horne proposes the “late lustration”, after the first years of transition and Lavinia Stan affirm that “the later a country launched lustration and file access, the more tampered were the secret archives, the harder was to identify the individuals involved in past human rights abuses, and the more disputed were the official findings of collaboration with the communist regime”²⁰

Ruti Teitel consider time as an important factor for transitional justice. In the author words “where the wrongdoings is that of the state, the passage of time has unexpected consequences for the possibilities of transitional justice. Time affect political change with ramification for the

12. Barrett, E., Hack, P. and Munkácsi, Á., ‘Lustration as Political Competition: Vetting in Hungary,’ in A. Mayer-Rieckh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp.260-307: ICTJ and Social Science Research Council

13. Stan, L., ‘Determinants of Post-Communist Transitional Justice: An Overview’. In *Justice and Imagination: Building Peace in Post-Conflict Societies*, Mount Holyoke College, February 28-March 1, 2014

14. Op cit. Duthie, R pg.31

15. Ibid.31

16. Anja Mihar Policy Brief No.3 Center of Governance through Human Rights, , August 2017 pg.5 : https://www.governance-platform.org/wp-content/uploads/2017/08/CoGtHR_policy-brief_no3_TransitionalJustice_August2017.pdf

17. Huntington, S., ‘The Third Wave. Democratization in the Late Twentieth Century,’ Oklahoma, University of Oklahoma Press, 1991,pp.228.

18. Horne, Cynthia M., “Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe” *Comparative Political Studies* 45(4), Sage Publication 2012, pp.412-446

19. Horne (2017), op.cit., p. 37

20. Stan, op.cit., p. 16

conditions of justice, but our intuitions do not well account for its effect upon victims' reparatory rights, as well as for the state's obligation to pay compensation-consequences that once again underscore core features that distinguish corrective justice in the abstract from reparatory justice in transitional circumstances. The salient features is the role of the state in past evil and this legacy's ongoing consequences for the possibility of repair. In these circumstances, time's role is paradoxical. The passage of time can facilitate the establishing of the fact of past wrongs, as there is a greater political distance from the predecessor regime and broader access to the archives of the state. Moreover, the greater the documentation, the greater the likelihood of compensation, though the passage of time also arguments the likelihood of death"²¹.

Lustration and vetting inter-linked with civic trust

TJ measures, Lustration and vetting as such, are link with the level of trust in governmental institutions. Anja Mihr argues "increasing the level of accountability, transparency and participation through TJ measures can lead to more trust in a political regime"²². UNDP Guidelines suggest that "not only should a vetting process, therefore, include a public information mechanism but the design of the process itself should be informed by broad consultations with civil society, in particular with victim groups and other reform-minded constituencies. Opportunities should be provided to victims of abuses and civil society organizations to provide background information about public employees and candidates, as part of the data collection process on which to base vetting decisions."²³ Including the public in the process of lustration and vetting can lead in more civic trust.

Lavinia Stan emphasize that lustration in particular is linked to building trust in the government, and the society at large. "The new democracy demonstrates commitment to hold perpetrators accountable for past crimes by administrative justice measures. In the process, public institutions are cleansed of old elites, and new individuals with the skills required for the job and commitment to the new democracy and its human rights standards can assume those positions. Trust is key to a stable democracy, which needs its citizens to believe that the new regime works for them, not just for a narrow privileged elite unconcerned with the public good...by removing old elites, lustration and vetting improve governmental performance and make state machinery more accountable to the people, thus indirectly supporting democratization. They do so by breaking the culture of impunity fostered under authoritarianism, dismantling informal networks that keep the state a prisoner of old elite, removing the possibility that those elites are blackmailed for their past, and preventing future abuses of power by tainted officials. In short, lustration and vetting are said to help improve the functionality and efficiency of the state apparatus, and make it responsive to citizens' demand"²⁴.

Lavinia Stan define lustration and vetting as a set of parliamentary laws, that meant to evaluate the integrity of individuals' collaborators of former repressive regimes about their "suitability for continued or prospective public employment"²⁵ but both lustration and vetting "seek to re-establish civic trust and re-legitimize public institutions" and can lead to institutional reform through 'the purification of state institutions from within and without'²⁶.

Andreu-Guzmán affirms that, besides effectiveness of the rule of law, the strengthening, construction, or reconstruction of the state that guarantees human rights, lustration and vetting

21. Teitel, Ruti G. 'Transitional Justice' Oxford University Press 2000

22. Anja Mihr Policy Brief No.3 Center of Governance through Human Rights, , August 2017 pg.5: https://www.governance-platform.org/wp-content/uploads/2017/08/CoGtHR_policy-brief_no3_TransitionalJustice_August2017.pdf

23. "Vetting public employees in post-conflict settings" Operational Guidelines, UNDP, Publication II, New York 2006

24. Stan, Lavinia 'Lustration and vetting' in Simic Olivera (ed.) Introduction to Transitional justice', Routledge 2017

25. Stan, Lavinia 'Lustration and vetting' in Simic Olivera (ed.) Introduction to Transitional justice', Routledge 2017

26. Stan, Lavinia 'Lustration and vetting' in Simic Olivera (ed.) Introduction to Transitional justice', Routledge 2017

procedures are crucial for “the restoration of the public’s confidence.”²⁷

United Nation define vetting wider than studies conducted in post-communist countries, including a person’s financial propriety. United Nation qualifies vetting important for the trust of citizens:

Vetting “can be defined as assessing integrity to determine suitability for public employment. Integrity refers to an employee’s adherence to international standards of human rights and professional conduct, including vetting. Public employees who are personally responsible for gross violations of human rights or serious crimes under international law revealed a basic lack of integrity and breached the trust of the citizens they were meant to serve. The citizens, in particular the victims of abuses, are unlikely to trust and rely on a public institution that retains or hires individuals with serious integrity deficits, which would fundamentally impair the institution’s capacity to deliver its mandate. Vetting processes aim at excluding from public service persons with serious integrity deficits in order to (re-)establish civic trust and (re-)legitimize public institutions”²⁸. Transitional justice measures, such as lustration and vetting are inter-linked with civic trust in governmental institutions.

To assess the correlation between lustration laws and practice and the level of civil trust, it is worth looking into parliamentarian and public debate, continuing with the approval of the laws and their implementation will be discussed in this paper to prove to which extent this process effected in civic trust in governmental institutions in post-communist Albania.

Parliamentarian debates about TJ measures in Albania 1991-2001 show that law reforms were introduced and discussed for the period 1991-2001. In addition, surveys, international and nation reports on human rights, democracy and civic trust in governmental institutions are conducted and published during transition in Albania. Statistics on the number of persons lustrated/vetted from Verification Commission during 1995-2001 and from Albania Authority on Access to Information on the former State Security Service (the Authority) 2015-ongoing and other data such as number of trials, number of explosions from office during 1995-2001 are used in this paper to argue the link of lustration and vetting implementation with civic trust in public institutions.

TJ MEASURES IN ALBANIA

In post-communist Albania were implemented the following transitional justice measures: trials, reparation and compensation, apologies, memorials education and culture, amnesties, security and sector reform, vetting and lustration. Also, literature, theater, movies, and social media about past wrongdoings. The table illustrates that during 1991-2001 were implemented seven Transitional Justice measures (Table 1).

27. Andreu-Guzmán, Federico ‘Due process and Vetting’ in A. Mayer-Riechkh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp. 448-481: ICTJ and Social Science Research Council

28. Office of the UN High Commissioner for Human Rights (OHCHR) as *Rule-of-Law Tools for Post-Conflict States – Vetting: An Operational Framework* (New York and Geneva: OHCHR, 2006)

Table 1. Transitional Justice Measures in Albania²⁹

	1991-2001	2015-2020
TJ Measures	Law No. 7514/1991; Law No. 7748/1993; Law No. 8043/1995; Law No. 8001/1995;	Law No. 45/2015; Law No. 23/2015; Law No. 9831/2007; Law No. 115/2016; Law No. 12/2018;
Trials	1993-1994: Trials for 11 former Politurbo member and senior government Officials. They were accused for corruption and abuse of power, it was not transitional justice measures, even that time the ruling government want it to look it so. 1995-1996: 24 former senior communist officials were arrested, the trials were conducted not in compliance with human rights and with a lot of legal irregularities.	No
Reparation and compensation	From 1991: Years of prison were convert in work years, retirement packages. The conviction was considered null. Monetary compensation (cash 1 instalment) and buildings for politicalu exconvicted. Privatization shares. Scholarships	Monetary compensation (cash), 8 instalments
Apologies	1991, Apology from the parliament August 1991. Apology from Enver Hoxha's children. Apology from Liri Belishova, former nomenclature elite (also a political interned convicted)	From former persecutors, perpetrators to their victims, personal apologies in written letters.
Memorials & Education & Culture	No	Bunk Art 1, Bunk Art 2, House of Leaves, Tepelena Camp, Spac Prison, (2017) commemorate of communist killing on October 10, 1947 of 15 members of parliament.
Commision of inquiry	Not especially as TJ Measures but mainly for corruption and abuse of power. It can be found in some TJ research studies as TJ Measures.	No
Amnesties	In 1991, Amnesty of Ex-Convicted and Political Persecuted	No

29. Law No.7514/1991 "On Innocence, Amnesty of Ex-Convicted and Political Persecuted"; Law No.7748/1993 "For the status of politically ex-convicted and prosecuted people by the communist regime"; Law No.8001/1995 "On Genocide and Crimes Against Humanity Committed in Albania during Communist Regime for Political, Ideological and Religious Reason"; Law No.8043/1995 "On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State"; Law No.45/2015: "On the right to information on the files of the former state security services during communist times - Sigurimi"; Law No.23/2015 "On the service outside Republic of Albania"; Law No.9831/2007 "For indemnity of political convicts in the communist regime". Law No.12/2018 "On re-evaluating (vetting) officers of the Albania State Police, Republican Guard, and Service for Internal Affairs and Complaints at the Ministry of Interior"; Law No. 115/2016 "On the organs of the management of the justice system"; Law No.84/2016 "On the transition of the judges and prosecutors in the Republic of Albania"; Law No. 45/2015: "On the right to information on the files of the former state security services during communist times - Sigurimi.

Security & Sector Reform	Sigurimi closed in July 2, 1991 and transformed in National State Service	In Judicial sector, in foreign services, state police. To ban high rank officials to maintain their positions.
Vetting and Lustration	Estimated 139 persons banned on participating in election of 1996. No official data about other categories.	2017-2018: 30 senior position are removed from office or banned from judiciary system, foreign service, state police. Because their connection with secret service.

One of the first measure of Transitional Justice in Albania was introduced on August 1991. Albania Parliament debated for five parliamentary sessions the draft law “On Innocence, Amnesty of Ex-Convicted and Political Persecuted”. These debates took place on August 1, 2, 3 and 5, to be approved on September 30, 1991³⁰. The draft law was proposed by Council of Ministers two months before parliamentary first debate. One of the first needs proposed by the parliament before approving the law, the intension was to abrogate the existing laws in disagreement with the new law proposed and in contradiction with human rights and international law that Albania was willing to adopt. Members of Parliament were willing for the amnesty, compensation and rehabilitation of ex-convictions and political persecuted. The opposition was demanding also their innocence. Socialist Party MPs opposed to give the innocence to Ex-Convicted and Political Persecuted with the main argument that was a judiciary competence and not a legislative one, being so unconstitutional. Fehmi Abdiu, one of the most active members of parliament from Socialist Party, expressed:

“Amnesty in fact is known as a legislative power, which convert in null a convicted act, extinguish prosecution, delete sentences, but all these cannot be conceived as the same with as forgiveness and even more with innocence. Innocence is an attribute of judiciary system”.³¹

Even the will to break with the past left political parties were not given up easy to the past ideas about communism. Long debates took place about wrongdoings of the communism and international human rights laws, none of MPs proposed a lustration measures. One of the opposition member of parliament Natasha Lako mentioned lustration measures and in her words:

“I think that if we are going to approve a commission where the judges and lawyers are going to take decisions about the innocence, I do not know, but I propose that those from High Court, being head of the courts, or from regions courts, of course within the laws, should be checked if they were implicated in the shameful and unjust processes. I am not judging them³²

This is one of the first lustration and vetting measures mention in Albania parliamentarian debates. Also, another member of parliament from opposition, Blerim Cela:

“We should create a commission of inquiry to put in front of the courts all those who has surpass the laws during Enver regime that are many in numbers”³³.

On September 30, 1991, Fatos Nano, the representative of Socialist Party MPs spoke that they agreed to declare the innocence of ex-convicted and political persecuted. After this declaration

30. Drejtoria e Shërbimit të Botimeve Parlamentare, Punime të Kuvendit Legjislatura e 12-të Viti 1991, nr.4, Kuvendi, Tirane 2009

31. Drejtoria e Shërbimit të Botimeve Parlamentare, Punime të Kuvendit Legjislatura e 12-të Viti 1991, nr.4, Kuvendi, Tirane 2009

32. Drejtoria e Shërbimit të Botimeve Parlamentare, Punime të Kuvendit Legjislatura e 12-të Viti 1991, nr.4, Kuvendi, Tirane 2009 (1620, 1991).

33. Drejtoria e Shërbimit të Botimeve Parlamentare, Punime të Kuvendit Legjislatura e 12-të Viti 1991, nr.4, Kuvendi, Tirane 2009(1632, 1991, Enver Hoxha is the name of dictator during 1944-1985 in Albania).

the law was voted unanimously from the Member of Parliament, being so one of the rare laws approved by all parties in consensus about wrongdoings from the past in history of Transitional Justice in Albania. In compliance with Law No.7514/1991 “On Innocence, Amnesty of Ex-Convicted and Political Persecuted”, with political will of all parties in Albania Parliament will be approved also two other laws, Law No.7748/1993 “For the status of politically ex-convicted and prosecuted people by the communist regime” and the Law No.7598/1992 “On the creation of a special fund for ex-convicted and political persecuted”.

The laws approved later on TJ measures are voted with a simple majority, with harsh debates and not consensus from MPs in the parliament about the wrongdoers. Years later the consensus will be seen only on changing and softening the laws. Especially in terms of Lustration and Vetting laws.

LUSTRATION LAWS

The first law with lustration measures in Albania is the law “For a change of the Law no.7541/1991 “For the advocate in the Republic of Albania”, which predicted criteria for the lawyers’ license. The law was proposed and approved with the simple majority in the parliament on December 1992, then the president will turn it to the parliament for some changes and it will be approved as the law No.7666, date 26.01.1993 “For the creation of evaluation commission for the license of exercising the advocacy and for a change in the law no.7541/1991 “For the advocacy in the Republic of Albania”. In both dates, the law was approved with the simple majority. The law predicted exclusive criteria for some category in the extra article 12/a³⁴. The Socialist Party will appeal the law at the Constitutional Court and the article no.3 of the law was declared unconstitutional. The Constitutional Court argues:

“In the article no.3 added to the law “For the advocacy in the republic of Albania”, also in the article 12/a, which in an imperative way, defines that are not allowed to work as lawyers, those that any given time of party-state, have had position predicted to this provision. The formulation of this article which clearly express the kind of work that the lawyer had carried in the above mentioned categories of party-state is the only criteria to ban them from the right to practice their profession, despite the fact that the lawyer has or have had the moral and professional quality. Avoiding the democratic criteria of the individual evaluation of these qualities is against article 28 of Constitutional Law no.7692/1993, where is predicted that “everyone has the right to gain the means of life in an honest way that chose or accepted by themselves. The person is free to choose his profession and work position³⁵.”

The article no.1, 3 and 4 were declared unconstitutional taking off all lustration measures predicted by the law. Then it will be in 1995 the next Lustration laws.

THE POLITICS AND LUSTRATION

In light of the table above and the interviews with stakeholders and after the winning the election on March 22, 1992, Democratic Party, proposed to the parliament a change in the law “On Labor Relation” to add the article 24/1 “for special reason related with the improvement of functions, structures of state apparatus to give life to the reform, the competent state agency has the right to transfer the public servant in another work position within their profession, when finding a substitute position is objectively impossible, the agency can pass the public servant in another

34. Parliamentarian debate, legislature No.13, year 1992, pg. 2401; Year 1993, pg. 186

35. Constitutional Decision No.8, date 21.05.1993

work position or in social assistance”³⁶. The law was approved with simple majority. In the parliamentary debates was not mention that this change in the law was a lustration measure. Without any explanation to the parliament the main goal of law change was to dismiss from their jobs Socialist Party sympathizers and replace them with Democratic Party sympathizers. Dismissals from work because of their political convention without any protection predicted by the change of the law. This model will be a widespread phenomenon during transition period in Albania, where many public servants will be dismissed from their work because of their political conventions and not as a lustration and vetting measure.

TRIALS. GENOCIDE LAWS AND VERIFICATION LAW IN 1995

In 1993 and 1994 Nexhmije Hoxha, Ramiz Alia and nine former APL Politburo members and senior government officials were tried on charges of corruption and abuse of power³⁷. The trials were conducted with many legal irregularities. They all got light sentences and were subject of appeal and amnesties. The former Politburo members benefited by the new criminal code that went into effect in June 1995, after which they were released, with exception Nexhmije Hoxha that was released on January 1997³⁸. These charges were not part of any TJ or lustration measures. In 1995 two lustration law were approved by Albanian Parliament.

The laws were set up and approved from Democratic Party, the ruling party in 1995. The laws were denied by the opposition that time. The media debate and Civil Society Organization activities did not take place because the law was introduced and approved within a few days in the parliament, using the procedure known as an accelerated act to approve a law.

Table 2: The Laws Change in Years³⁹:

Law No.	Name of the law	MPs votes	Changes
Law No. 7514/1991	“On Innocence, Amnesty of Ex-Convicted and Political Persecuted”	Voted from all members of parliament	Law No. 7660, date 14.01.1993 Law No. 7719, date 08.06.1993
Law No. 8001/1995	“On Genocide and Crimes Against Humanity Committed in Albania during Communist Regime for Political, Ideological and Religious Reason”	The law passed with simple majority, (79 votes pro, 10 against, 1 abstain, 5 MPs did not voted)	Law No. 8219, date 13.05.1997 Law No. 8231, date 19.08.1997
Law No. 8043/1995	“On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State”	Simple majority, (74 votes, 1 abstain)	Law No. 8152, date 12.09.1996 Law No. 8220, date 13.05.1997 Law No. 8232, date 19.08.1997 Law No. 8280, date 15.01.1998

36. Parliamentary debate, Legislature No.13, year 1992, pg. 299

37. Biberaj, E., ‘Albania in Transition: The Rocky Road to Democracy’, Westview Press, 1998, p.179

38. Biberaj, Elez, pg. 179

39. Drejtoria e Shërbimit të Botimeve Parlamentare, Punime të Kuvendit Legjislatura, 1991-2001, Kuvendi, Tirane 2009

Law No. 7748/1993	“For the status of politically ex-convicted and prosecuted people by the communist regime”	Voted from all member of parliament	Law No. 8217, date 13.05.1997 Law No. 8865, date 18.09.2000
Law No. 7698/1993	“For the return and compensation of properties to ex-owners”	Simple majority	Law No. 7736, date 21.07.1993 Law No. 7765, date 02.11.199_ Law No. 7832, date 16.06.1994 Law No. 7879, date 01.12.1994 Law No. 7981, date 27.07.1995

The table (Table 2) illustrate the political disagreement about TJ measures. Genocide Law and Verification Law political disagreement and the changes made in these laws several times from Albanian parliament did not let to have impartially and transparent institutions to take decisions or a due process for persons lustrated. Voted with simple majority, from only the party in power did not allowed a fair implementation lustration process.

Genocide law

The harshest parliamentary debate about lustration were during 1995 for the Law No.8001/1995 “On Genocide and Crimes Against Humanity Committed in Albania During Communist Rule for Political, Ideological and Religious Motives” known as “Genocide Law”. This law was proposed in parliament a few months before the new parliamentary elections. At the opening of the parliamentary session it is mentioned from the government that this law was delayed. The opposition party accused the government that this law was for electoral purposes and was being approved to attack political opponents. The law main purpose was to accelerate the criminal cases related to crimes against humanity for political, ideological and religious motives committed by the Communist state and to exclude former high-ranking officials and collaborators of State Security from holding positions in central or local government, in the executive and the judiciary branch, and mass media until 31 December 2001, up to 31 March 1991.

The law was approved in harsh parliamentary debate, the opposition accused the ruling party to use the law for attacking the political opponents. Servet Pellumbi, opposition MP of Albania, said:

“Four years ago, Berisha⁴⁰, leading Democratic Party, campaigned on 22 March with the slogan “to eradicate communism”, coupled with the famous saying “co-suffers and co-accomplice”... But we can already say with conviction that the evidence was made, people were massively disillusioned, because the DP’s democratic potential after coming to power, instead of growing, as expected, came ever exhausted more and more and from the slogan “co-suffers and co-responsible” there is nothing left, its place is occupied by political vengeance”⁴¹.

Another member of Parliament Pandeli Majko in his speech in parliament expressed:

“This law that we are discussing best describes this. It seems to announce the wrongdoers, but in

40. Sali Berisha, that time the president of Albania and Historical Leader of Democratic Party

41. Parliamentarian Debate: Year 1995, p. 1230

fact this is just a trick. Indeed, this law assumes a serious political speculation. This law proclaims Fatos Nano by 31 March responsible for the genocide. It is a bitter historical irony when it is known that he was elected a member of the people in the city of Tirana on 31 March. He was the only leftist who managed to win the capital. Subsequently, the first pluralistic assembly elected Fatos Nano as prime minister and no one dared at that time accuse his person as a representative of the genocide⁴².

Socialist Party MPs, strongly were against the law arguing that the law was for political vengeance. Another member of Parliament, Leontiev Çuci, argues:

“Dear MPs. I am one of those who this letter, or rather this political order, wants to implicate in the so-called genocide, because from 25 February to 31 March 1991 I was chairman of the State Plan Commission. So, for 40 days, I was in the position of minister when it was declared pluralism, in a department dealing with the economy alone”⁴³.

Also the argument of the Socialist Party MPs about this law was that already what is predicted in this was part of Criminal Code and the main purpose of the law was the acceleration of the crimes committed against humanity for political, ideological, class and religions motives. In legal point of view Genicide Law was already part of Criminal Code.

MPs from the ruling party argued the law as a need for justice of communist suffering and the defense of democracy in the country and that the need for such a law is been born from some times.

Verification Law

In parliamentary debate in 20.11.1995 for the Law no.8043, date 30.11.1995 “On the verification of the moral character of officials and other persons connected with the defence of the democratic state”, Aleksander Meksi, Prime Minister of Albania stated that in the beginning of the years 1990 and 1992 many files from former Sigurimi were destroyed⁴⁴. This fact will be admitted years later also from Ramiz Alia, the last communist president of Albania. In the debates about the law the opposition accused the government that this law was a accelerated procedure and the main reason of this law was to eliminate the political opponents (opposition). The law predicted a wide range of high position to be banned from office and the categories were very wide including the President, elected persons, senior position in public administration and juridical sector, also mass media and universities. All these categories that served during the entire period 28.11.1944 up to 31.03.1991, Politburo member, elected or director in state administration, an officer and collaborator of State Security or any analogous foreign service, a false witness or denouncer in political processes, an investigator, prosecutor or judge in special political processes are subject of the control of figure. The verification or control of character were conducted from Verification Commission.

The Commission was composed by 7 member, the chair appointed by the parliament, the deputy chair and 1 member from the Council of Ministers, 3 member from ministries of Justice, Interior and Defence, and 1 member from Informative State Service. Each decision of the Commission could be appealed in Casacion Court within 7 days from the day of notification to the person subject of the law. The judged of this court were nominated also from Albanian Parliament. The members of Commission could not guarantee impartiality and being independent from executive power.

42. Parliamentary Debate, Year 1995, p.1236

43. Parliamentary Debate, Year 1995, p.1256

44. Aleksander Meksi, Parliamentary debate, year 1995, p.1535

Implementation of Genocide Law and Verification Law

The implementation of Genocide Law started in the late 1995 and in the early 1996. The trials took place immediately after the law approval and the sentences for the persons that committed human rights violation during communism were hard sentences. The public interest were very low. Human Rights Practices Report of US Department of State affirms that: "The appeals court has reduced more than a dozen of the sentences given to high-level officials found guilty of crimes against humanity in connection with the vast network of prisons and labor camps under the Communist regime. The court reduced former chief of the Supreme Court Aranit Cela's and former general prosecutor Rrapu Mino's death sentences to 25 years in prison each and former head of the secret police Zylyflar Ramizi's to life in prison. The Appeals Court also reduced or commuted several other Communist officials' sentences, although the head of the Tirana Communist Party Llambi Gegprifti's sentence remains at 20 years. On December 29, the President issued a decree reducing in part or all of the sentences of 102 persons in prison for various charges. The times reduced ranged from 6 months to 6 years off an individual's sentence. Former prime minister Fatos Nano's sentence was reduced by 6 months under this decree"⁴⁵.

Elez Biberaj, a well-known researcher about transition in Albania argues that: "dozens of former senior Communist officials, including Alia and former Politburo members, were tried and sentenced to long prison terms. They were charged with crimes against humanity under the new penal code, which allowed legal proceedings against crimes committed by the old regime. The government insisted that the objective of the nomenklatura trials was to determine responsibilities of the past abuses. However, there was some controversy, especially around the question of whether the trials would bolster reconciliation or build a thirst for vengeance. For those eager to forget the past, especially Sigurimi officials and former senior Communist officials, the trials were a chilling reminder of the depth of Albanian's continuing anguish. Yet, the majority of Albanians, perhaps exhausted by the rapid shift in politics, appeared indifferent to the fate of their former rulers"⁴⁶. The Genocide Law and the trials conducted seems to be just a show for the party in power to gain political advantages before election.

About the implementation of Verification Law, the Office for Democratic Institutions and Human Rights Observation of the parliamentary election held in the Republic of Albania May 26 and June 2, 1996, were told by the Verification Commission that were "recommended the disqualification of approximately 200 people as candidates in the election. Most disqualifications were made under article 2c, relating to those persons registered in the list of Sigurimi (former Secret Police) as past informers. Some 60 persons appealed to the Court of Cassation and nine appeals were upheld. All others were rejected"⁴⁷. For the Mission OSCE/ODIHR the candidates' disqualification contradicts article 7.5 of the Copenhagen Document and the impartiality of member of commission, the meetings were held in close doors and it was too short between the decision of the court and the Election Day and could have left insufficient time for disqualified candidates to make an appeal⁴⁸.

Both laws Genocide Law and Verification law were sent in Constitutional Court from opposition in 1996. The Court defined reasonable boundaries and responded to the moral requirements of democratic society in Albania⁴⁹. From the Verification Law No.8043/1995 was declared unconstitutionality the provision that provided that journalists were subjected to control and the provision according to which the Minister of Justice was permitted to make a request for the

45. U.S. Department of State Albania Country Report on Human Rights Practices for 1996

46. Biberaj, Elez, pg 180

47. Office for Democratic Institutions and Human Rights Observation of the parliamentary election held in the Republic of Albania May 26 and June 2, 1996

48. Office for Democratic Institutions and Human Rights Observation of the parliamentary election held in the Republic of Albania May 26 and June 2, 1996

49. Constitutional Court Decision No.1, dated 31.01.1996

verification of the chairmen of parties and political associations⁵⁰.

The “Genocide Law” and “Verification Law” were subject of many changes from 1996 until 1998 (Table 2). The Verification Law changes starting in 1996, the change was to exclude the local government candidates from the verification of the figure. In 13 May 1997, that time Albania was in civil unrest, the parliament made huge changes on both laws. The changes were part of the political agreement and consent from left and right wings party for the sake of Albania stability. The parliamentary debate⁵¹ was very short and MPs admitted that the changes were part of political agreement. In 1997 Verification Law changed twice and narrowed the position to be lustrated. The changes permitted Fatos Nano, Skender Gjinushi and other opposition leaders to run in the parliamentary election in June 1997. The last change in Verification Law was 1998. That time in parliamentary debate were discussed only between Socialist Party Member of Parliament which came in power in the election of June 1997. They expressed the will to abrogate the entire law but let it as it was with a very narrow space for lustration measures. Both laws expired in 31 December 2001.

There is not an official number of the persons lustrated/vetted by Genocide Law and Verification Law. In the annual report of 2017, the Albanian Authority on Access to Information on the former State Security Service (Authority) confirm that all the documents created by Verification Commission are not elaborated or inventoried as the archives law demands, so there is not a list of persons controlled or verified by the Verification Commission. In addition, there is not a list of persons who have a clearness certificate⁵². These entire documents are being processed from the Authority in respect to the Law No.45/2015.

The court sessions in respect of Genocide Law during 1996 were closed to observers from the public and media, lacking the transparency. The Albanian Helsinki Committee contends that the entire process violated Albanian and international law by failing to grant prospective candidates the right to due process. There were complaints that the time for appeal was too limited, and several decisions came after the time limit had passed for candidates to file for the election⁵³, denying the right to the persons for a due process. The majority of Albanian have had not the opportunity to access the Sigurimi files. The authors Elbasani and Lipinski will argue TJ measures in Albania 1991-2001 as a failure and as “too much politics, too little debate”⁵⁴. Lacking the debate in TJ measures in Albania is affirmed also by Austin and Ellison in arguing, “key issues of the communist past were never really subject to a national debate.”⁵⁵

50. Constitutional Court Decision No.1, dated 31.01.1996

51. Parliamentary Debate, year 1997, Legislature No. 16, p.464-466

52. Annual report 2017, Authority, p.38

53. U.S. Department of State Albania Country Report on Human Rights Practices for 1996

54. Erola Elbasani and Artur Lipinski, “Public contestation and Politics of Transitional Justice: Poland and Albania compared”: EIU Working Papers, 2012

55. Robert C. Austin and Jonthan Ellison “Post-communist Transitional Justice in Albania”: East European Politics and Societies and Culture, 2008

LUSTRATION AND VETTING LINKED WITH CIVIC TRUST IN GOVERNMENTAL INSTITUTIONS

UNDP guidelines on vetting public employees (2006) considers transparency important “to reestablish civic and re-legitimize public institutions, the public needs to be aware of and trust the reform process itself. Transparency about the vetting process and consultation about its objectives will help in building confidence in the process, in reducing uncertainty experienced by the personnel subject to the process, and in ensuring that it effectively responds to the actual needs of victims and society in general”⁵⁶. The implementation of Genocide Laws and Verification law were not transparent putting in doubt to reestablish civic trust. The laws were set in that way that the executive power could control their implementation. As the report on Human Rights Practices of U.S Department of States (1996) affirms: “the executive branch effectively controlled the Commission and gave it the powers to judge, in closed session, decisions based on secret files that were not open for review to the general public, but that were available to the candidates and their lawyers for examination. The executive branch also had the final say in the decisions; the Prime Minister, Minister of Interior, and the head of SHIK had the right to appear before the Commission and take part in the decision in any case on the basis of state security interests”⁵⁷. The Verification Commission was so partial and not objective not giving the right time the parties under investigation to prepare a defense and to appeal in to a independent court. The civil society in Albania was weak during 1995-1996 and their influence in shaping civic-trust remains low. Lustration and vetting process during 1995-1996 was elite focused, excluding the public and undermining civic trust in governmental institutions.

About the discussion of lustration measures in post-communist Albania, Elez Biberaj explains: “Political forces on the right were unanimously in favor of opening all files. Others were more circumspect, demanding only disclosure only for politicians. Some insisted that the files be opened also for writers, artists, and journalists. Berisha maintained that probing to deeply into the Sigurimi would result in a national tragedy. While rejecting demands for the opening of all secret police file, the president agreed that files should be opened for all elected officials and politicians. But in addition to Berisha’s argument that opening the file would cause undue social problems, an additional contributing factor in his delaying action might have been the fact that there were a number of former Sigurimi agents and informers in the top echelons of the Democratic Party and among parliamentary deputies. While refusing to disclose the names of the former collaborators and informers in the ranks of the ruling party, government officials leaked the names of the opposition politicians and journalists who had links with the secret police. Among the politicians named were Preç Zogaj, a top leader of the Democratic Alliance, and Skender Gjinushi, chairman of the Social Democratic Party”⁵⁸. The lustration and vetting process was controlled by the party in power. Making the process partially and implemented not by independent institutions.

The US Department of State in the report on Human Rights practices in Albania considered the year 1996 a backward for human right and democracy in Albania. Stated that: “The Government’s human rights record worsened during the year. The flawed May elections, coming at a time of further government pressure on the judiciary and the press were major steps backwards for democracy. There were numerous serious human rights abuses during the May 26, 1996 parliamentary elections and the May 28 opposition demonstration in protest of those elections. Other serious problems included police killings and beatings; poor prison and pretrial detention conditions; harassment of the press; a judiciary that is subject to widespread corruption and executive pressure and lacking in resources, training, and experience; and discrimination and

56. “Vetting public employees in post-conflict settings” Operational Guidelines, UNDP, Publication II, New York 2006

57. U.S. Department of State Albania Country Report on Human Rights Practices for 1996

58. Biberaj, Elez, pg 180-181

violence against women”⁵⁹. The process of lustration in Albania in 1995 and 1996, considering these two years as more important for lustration, for international human rights reports as U.S Department of States Country report on Human Rights Practices for 1996, The Albanian Helsinki Committee, The OSCE/ODIHR Election Observation Mission 1996 in Albania, Human Rights in Post-Communist Albania⁶⁰, observed a backward democracy development and in civic-trust in government institutions.

During autumn 1995 and autumn 1996, Eurobarometer measured Public Opinion in Albania, with five main components; direction of country, household finances, market economy, satisfactory with development of democracy and respect for human rights. The public opinion in both years was very optimistic compare with years 1990-1994. Meantime the TJ measures debates about past wrongdoings were happening in Albania Parliament and law reforms was going on. However, all these was not a public debate and did not affect public opinion. The public was not yet widely informed about violation of human rights in the past and the need to punish the perpetrators.

Table 3: Eurobarometer ⁶¹ Albania Public Opinion Autumn 1995 and autumn 1996

1995			1996		
Direction of country			Direction of country		
Right 79%	Wrong 16%		Right 75%	Wrong 13%	
Household finances			Household finances		
Got better 76%	Unchanged 18%	Got worse 5%	Got better 75%	Unchanged 11%	Got worse 4%
Market economy			Market economy		
Right 76%	Wrong 17%		Right 76%	Wrong 13%	
Satisfaction with development of democracy			Satisfaction with development of democracy		
Satisfied 59%	Not Satisfied 41%		Satisfied 75%	Not Satisfied 24%	
Respect for human rights			Respect for human rights		
Respect 75%	No respect 24%		Respect 71%	No respect 25%	

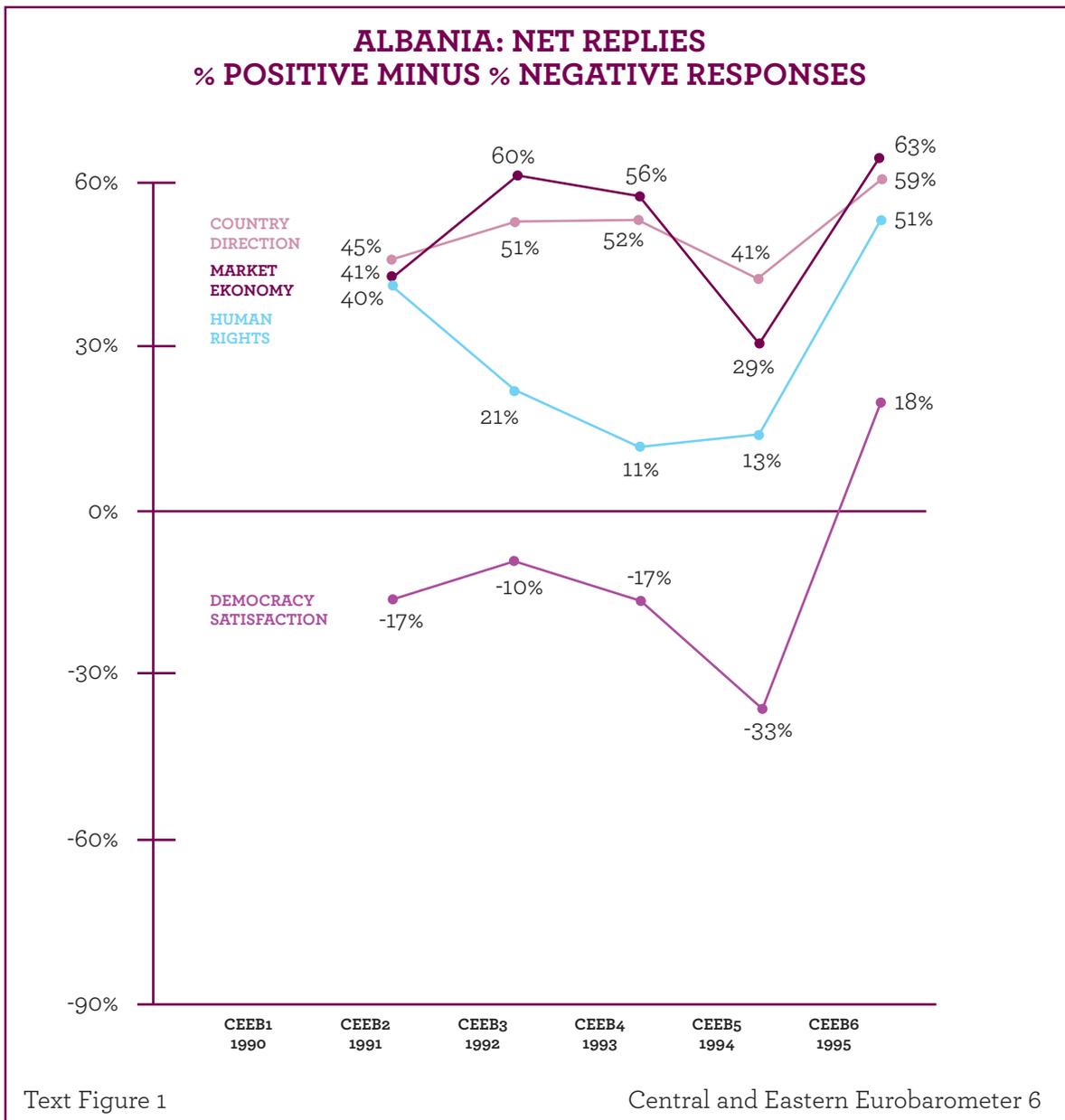
59. U.S. Department of State Albania Country Report on Human Rights Practices for 1996

60. Human Right in Post-Communist Albania, Human Rights Watch Publication, March 1996

61. Central and Eastern Eurobarometer 1995, No.6; Central and Eastern Eurobarometer 1996, No.7

Table 4: Eurobarometer, the change of public opinion of Albanians 1990-1995 ⁶²

CENTRAL AND EASTERN EUROBAROMETER N° 6



The optimism of public opinion, illustrated in Tables 3 and 4, reached the high peak in 1995 and 1996 compared with years 1990-1994. In 22 September 1995 was introduced the “Genocide Law” in Albania Parliament and approved the same day. The Eurobarometer Public Opinion in Albania in 1995 was conducted 30 October 1995-29 November 1995. Public Opinion in Albania for 1996 continues very optimistic with the satisfaction of development of democracy with 75%. The public interest of Albania in Genocide law was very low in 1995. Albanians were not part of the process and their interest was very low. Genocide Law and Verification Law did not affect Albanians opinion about the democracy development and human rights because they did not include public in the process.

62. Central and Eastern Eurobarometer 1995, No.6

Even the optimism of Albanians Public Opinion measured with the Eurobarometer in 1995 and 1996, the civic-trust in governmental institutions was very weak taking in consideration the fragility of Albania institutions that collapse in mid-1997. In 1997 civil unrest in Albania brought the “collapse of state institutions” and in years after the “public trust in institutions continues to be low⁶³. World Bank report states, “In mid-1997, trust in public authority was at a low ebb. Past government and political institutions were discredited by their complacency over the pyramid schemes and their inability to restore public order⁶⁴, rethinking country assistance strategy.

TJ measures such as lustration and vetting laws in Albania during 1995-2001 implemented in exclusive and not transparent way did not allow impartiality and independent institutions to take decision not contributing in democratic reforms and in building civic trust in governmental institutions.

LUSTRATION AND VETTING PROCEDURES AFTER 2001

The lustration laws and measures approved and implemented during 1992-2001 were not enough for right wing parties, represented mostly by Democratic Party, which only 7 years later the two lustration laws had expired set and approved another law. On December 2008, when Democratic Party was back in power after gaining the election in June 2005, passed the law “The law on the cleanliness of the Character of High Functionaries of the Public Administration and Elected persons” but the law was declared unconstitutional on 23 March 2010 from Constitutional Court before starting its effect. The law was very similar with the previous lustration laws. The Constitutional Court gave 114 reasons to declare the Law No.10034/2008 “On the cleanliness of the figure of high functionaries of the public administration and elected persons” as incompatible with the Constitution of the Republic of Albania⁶⁵. In addition, this law received censure from Council of Europe’s Venice Commission.

LUSTRATION AND VETTING YEARS 2015-2020

In early 2015, Albanian parliament passed the Law No. 45/2015: “On the right to information on the files of the former state security services during communist times – Sigurimi”. The period subject to this law is 29 November 1944 until 2 July 1991. This is a transparency law more than a lustration/vetting law. This law contains within articles dedicated to lustration/vetting and is only for former officers and collaborators of State Security (Sigurimi). One of the goals of the law is to provide lustration /vetting for candidate in high office, for officials appointed, and elected. The Albanian Authority on Access to Information on the former State Security Service have found thirty persons appear in documents of ish-Sigurim⁶⁶. The lustration/vetting of candidates concludes in December 2020. Four other laws have integrated lustration/vetting measures within in compliance with Law no.45/2015. The law protects the privacy and identity of the persons named in personal files but allows the victims to see the names of victimizers, to the persons who informed or spied on them. Transparency and access about the Sigurimi files is reached for the first time, despite attempts in earlier years. The Authority through activities and the release of information⁶⁷ is increasing public awareness about communism regime helping to prevent future violation of human rights. After 2015 in Albania are being implemented 5 TJ measures (Table 1), such as monetary reparation and compensation, apologies from former

63. Bertelsmann Stiftung’s Transformation Index (BTI) 2018

64. “Albania Country Assistance Evaluation 1992-1997” Report from CODE, Document of World Bank, November 2000

65. Constitutional Court Decision No.9, dated 23.03.2010

66. Annual Report to Albanian Parliament of the Albanian Authority on Access to Information on the former State Security Service

67. <http://autoritetidosjeve.gov.al/>

perpetrators, memorials, education and culture, vetting and lustration, research, theater, social media and movies documentaries. After 2015 Authority has been organizing activities all over Albania in collaboration with nation and international organizations, research communities and public discussions. The Authority, with the request of the public institutions, screens the persons in public office, protecting their privacy and identity. The persons, which results positive as officers, collaborators and excluding from public service. During 2017-2018 are screened from the Authority 710 persons in public service, from which 30⁶⁸ of them resulted positive in collaboration or working with Sigurimi. The Authority activities are open to public and transparent. The members of the authority are working independently from the executive power. The persons positive to vetting and lustration have the right to appeal to the court if they object the decision of the Authority as former collaborators or workers at Sigurimi. Even the transparency of the implementation of the law No.45/2015, the time is very paradoxical in the extent this law has effected public trust in governmental institutions. So far, the implementation has been transparent; the Authority has shown impartiality in decision-making. The Institute for Democracy and Mediation reports the Findings of Opinion Poll "Trust in Governance"⁶⁹ 2017. The institutions that enjoy the highest trust are Armed Forces (63 %), Education system (63%), (54%) Healthcare (53%) and State Police (53%). The least trusted institutions are The Prosecutor (22%), Courts (21%) and Political Parties (21%). Compared to 2016, Healthcare system, Education system, Parliament and Armed Forces has recorded increase in trust in government. Other institutions such as Police, President and Political Parties, have recorded a decrease in trust in government. Vetting process in Albania implemented in Albania after 25 years have a paradoxical link with in building civic trust in governmental institutions.

CONCLUSIONS

One of the main goals of lustration and vetting is to re-establish civic trust in governmental institutions. Different legal TJ measures that passed in Albania parliament, such as lustration and vetting did not have the effective implementation. Lustration and vetting through exclusion of persons that violated human right during communist was not fair during 1995-2001 and not contributing to (re-) establish civic trust. Lustration and vetting process 1995-2001 did not let to the anticipated transparency about the wrongdoings and did not affect the rise of civic trust in governmental institutions. The persons responsible about wrongdoings have not been held to account because lustration implementation was not transparent and inclusive. The debate about lustration and vetting was political-focused, not engaging citizens, victims, victimizers, domestic or international stakeholders. The lustration and vetting laws were used for political gain and conducted from institutions that could not guarantee impartiality. Lustration and vetting in Albania 1995-2001 did not contribute in rising civic-trust in governmental institution. Being so, a long and unfinished process. Lustration and vetting process in Albania is an ongoing process.

68. Authority Annual Report 2017 and 2018.

69. <http://idmalbania.org/findings-opinion-poll-trust-governance-2017-presented-tirana/>

BIBLIOGRAPHY

“Albania Country Assistance Evaluation 1992-1997” Report from CODE, Document of World Bank, November 2000

Andreu-Guzmán, Federico ‘Due process and Vetting’ in A. Mayer-Riechkh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp. 448-481: ICTJ and Social Science Research Council

Annual Report to Albanian Parliament of the Albanian Authority on Access to Information on the former State Security Service 2017

Annual Report to Albanian Parliament of the Albanian Authority on Access to Information on the former State Security Service 2018

Austin, C.Robert and Jonthan Ellison “Post-communist Transitional Justice in Albania”: *East European Politics and Societies and Culture*, 2008

Barrett, E., Hack, P. and Munkácsi, Á., ‘Lustration as Political Competition: Vetting in Hungary,’ in A. Mayer-Riechkh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp.260-307: ICTJ and Social Science Research Council

Biberaj, E., ‘Albania in Transition: The Rocky Road to Democracy’, Westview Press, 1998

Bertelsmann Stiftung’s Transformation Index (BTI) 2018

Central and Eastern Eurobarometer 1995, No.6;

Central and Eastern Eurobarometer 1996, No.7

Czarnota, Adam ‘The Politics of the Lustration Law in Poland 1989-2006’ in A. Mayer-Riechkh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp. 222-259: ICTJ and Social Science Research Council

Constitutional Decision No.8, date 21.05.1993

Constitutional Court Decision No.1, dated 31.01.1996

Constitutional Court Decision No.9, dated 23.03.2010

David, R., ‘Lustration laws in action: The motives and evaluation of lustration policy in the Czech Republic and Poland (1989–2001)’ *Law & Social Inquiry*, 28, 2003, pp.387-439

Duthie, Roger ‘Introduction’ in A. Mayer-Riechkh and P. de Greiff (ed.) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, New York 2007, pp. 16-39: ICTJ and Social Science Research Council

Horne, Cynthia M., “Building Trust and Democracy in Transition: Transitional Justice in Post-Communist Countries” *Oxford Studies in Democratization*. Oxford University Press, 2017

Elbasani, Erola and Artur Lipinski, “Public contestation and Politics of Transitional Justice:

Poland and Albania compared”: EIU Working Papers, 2012

Horne, Cynthia M., ‘Late lustration programmes in Romania and Poland: supporting or undermining democratic transitions?’, *Democratization*, Vol. 16, No. 2, Routledge April 2009, pp.344-376

Horne, Cynthia M., “Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe” *Comparative Political Studies* 45(4), Sage Publication 2012, pp.412-446

Huntington, S., ‘The Third Wave. Democratization in the Late Twentieth Century,’ (Oklahoma, University of Oklahoma Press, 1991)

“Human Right in Post-Communist Albania”, Human Rights Watch Publication, March 1996

Law No. 45/2015: “On the right to information on the files of the former state security services during communist times – Sigurimi.”

Law No.7514/1991 “On Innocence, Amnesty of Ex-Convicted and Political Persecuted”

Law No.7748/1993 “For the status of politically ex-convicted and prosecuted people by the communist regime”;

Law No.8001/1995 “On Genocide and Crimes Against Humanity Committed in Albania during Communist Regime for Political, Ideological and Religious Reason”;

Law No.8043/1995 “On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State”; Law No.45/2015: “On the right to information on the files of the former state security services during communist times – Sigurimi”;

Law No.23/2015 “On the service outside Republic of Albania”;

Law No.9831/2007 “For indemnity of political convicts in the communist regime”

Law No.12/2018 “On re-evaluating (vetting) officers of the Albania State Police, Republican Guard, and Service for Internal Affairs and Complaints at the Ministry of Interior”

Law No. 115/2016 “On the organs of the management of the justice system”;

Law No.84/2016 “On the transition of the judges and prosecutors in the Republic of Albania”

Meierhenrich, Jens “The Ethics of Lustration,” *Ethics and International Affairs* 20, no. 1 pp. 99-120, Cambridge 2006

Mihr, Anja, "Introduction to Transitional Justice", in Oliviera Simic (ed) *Introduction to Transitional Justice*, Routledge 2017, pp: 1-27

Mihr, Anja “Policy Brief No.3 Center of Governance through Human Rights, , August 2017 pg.5
https://www.governance-platform.org/wp-content/uploads/2017/08/CoGtHR_policy-brief_no3_TransitionalJustice_August2017.pdf

Office for Democratic Institutions and Human Rights Observation of the parliamentary election held in the Republic of Albania May 26 and June 2, 1996

Office of the UN High Commissioner for Human Rights (OHCHR) as Rule-of-Law Tools for Post-Conflict States – Vetting: An Operational Framework (New York and Geneva: OHCHR, 2006)

Stan, L., ‘Determinants of Post-Communist Transitional Justice: An Overview’. In *Justice and Imagination: Building Peace in Post-Conflict Societies*,” Mount Holyoke College, February 28-March 1, 2014

Stan, Lavinia ‘Lustration and vetting’ in Simic Olivera (ed.) *Introduction to Transitional justice*, Routledge 2017

Teitel, Ruti G. ‘Transitional Justice’ Oxford University Press 2000

U.S. Department of State Albania Country Report on Human Rights Practices for 1996

“Vetting public employees in post-conflict settings” Operational Guidelines, UNDP, Publication II, New York 2006

<http://autoritetidosjeve.gov.al/>

Parliamentarian debate: Drejtoria e Shërbimit të Botimeve Parlamentare, Punime të Kuvendit Legjislatura, 1991-2001, Kuvendi, Tirane 2009;

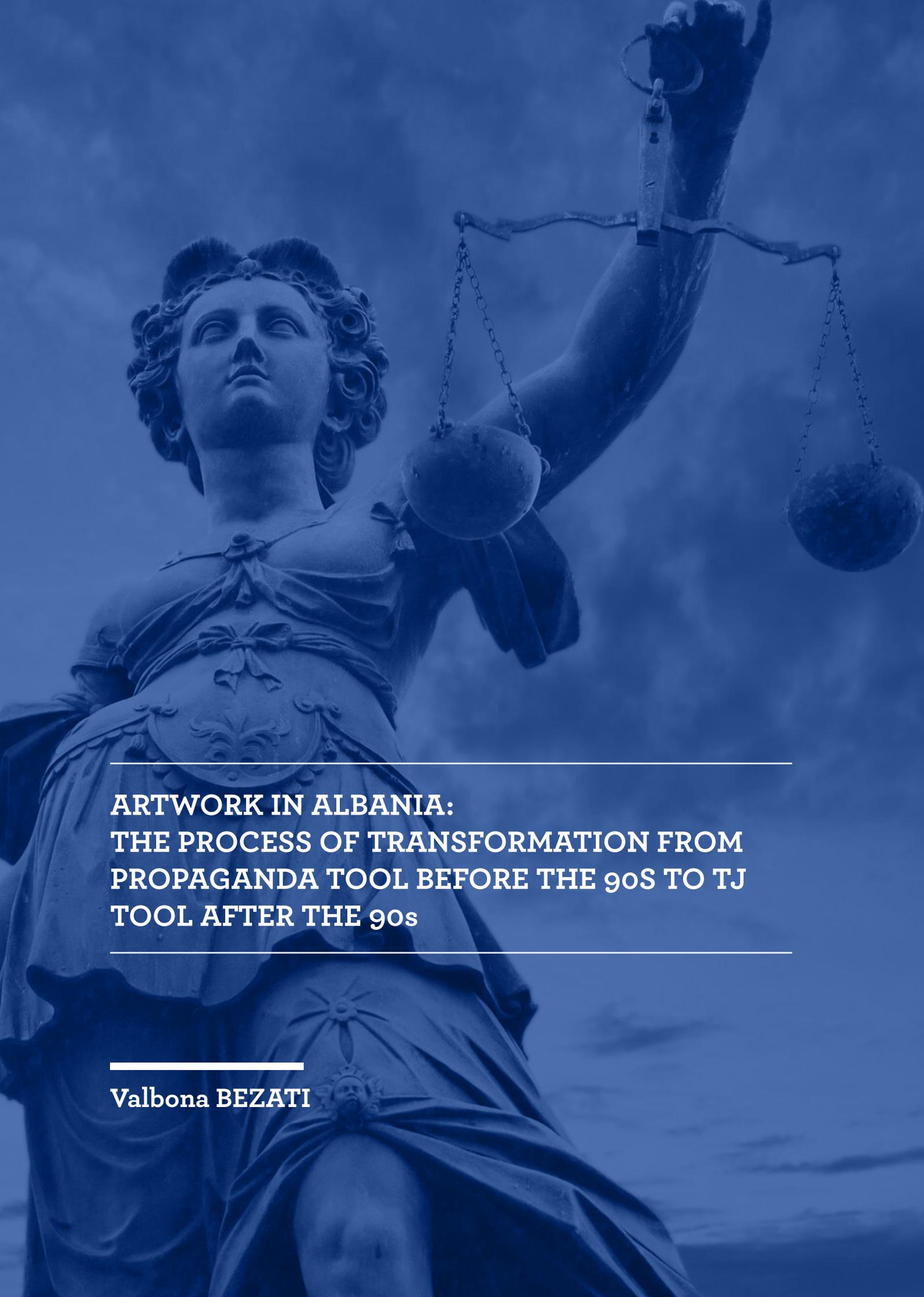
Legislature No.12; Years; 1991

Legislature No.13: Years; 1992;1993;1994;1995;1996

Legislature No.14: Years 1997

Legislature No.15: Years 1997;1998;1999;2000;2001

Legislature No.16; Years 2001



**ARTWORK IN ALBANIA:
THE PROCESS OF TRANSFORMATION FROM
PROPAGANDA TOOL BEFORE THE 90S TO TJ
TOOL AFTER THE 90s**

Valbona BEZATI

ABSTRACT

In dictatorial Albania, artworks were subjugated to the ideological framework of the Labour Party, serving the communist propaganda. This framework was legitimized even in the constitution of 1976. For more than 45 years the local artworks were censored, discredited and condemned.

After the 1990s, with the freedom brought by the fall of the communist regime, a part of the artistic work contained reflections and testimonies on the communist past in the country. Through the contents were conveyed testimonies in the public and social debates were instigated. Thus, this paper tries to highlight the role of memory in the form of art as a complementary and necessary mechanism in achieving the goals of transitional justice in Albania. It also aims to measure the power of memory TJ mechanism in confronting the past.

The data in this paper are based on the theoretical approach for art as a TJ tool and on the quantitative and qualitative data generated from the state's archive database, monitoring of public discussions in the media, archives of public institutions and non-governmental organizations in the country

Keywords: Transitional Justice; Artwork; dealing with the past; reflecting on the past; memory; memorials; Albania;

INTRODUCTION

Initiatives to research and acknowledge the role of art in the process of political change in Albania comes as a need to go beyond legal measures to cultural and social approaches. Through this material it is required to consider the importance of a form often not prioritized through which stories are told; feelings and ideas are expressed; events and persons are commemorated and remembered: the importance of Art (in this case specifically: Books; memorials; exhibitions, movies). This paper aims to analyze the effect of art: firstly, as a propaganda instrument in Albania during 1970-1980 and the role of artwork as a Transitional Justice tool after the 1990s.

After the fall of communism, Albania went through lack of institutional actions related to TJ process; at the same time, many artists took their own private initiatives to produce "artwork" related to dealing with the past and reflecting on it. For 27 years many institutions; national and international took initiatives to publicly present movies; books and exhibitions on this theme. Also, after 2000s state institutions engaged in creating memorials in honor of the victims of communism.

Through this paper I assume that all these private and state initiatives have influenced the TJ process in Albania. In this research paper, I follow the assumption that visual and performance art in itself is one of many expressions of TJ that was applied in Albania. Art can illustrate how people react to injustice and TJ measures: perceive the past; instrumentalize, influence and manipulate (always in the eyes of the artist) the public perception and inform and make people aware of past misconducts and injustice.

The paper will try to give a general overview on the importance of artwork on the process of dealing with the past, and how it can help the process of informing and making people conscientious about past misconducts and injustice.

The following paper is divided into four main pillars by chapters. In the first chapter, it brings the theoretical approach based on similar precedents elsewhere. In the second chapter, it illustrates the role of Art as a propaganda tool under communism, with results drawn from more than 600 documents generated by the Central State Archives (AQSH), as well as references by state media before the 90s. In this chapter of importance are also the living testimonies of those nowadays considered dissidents because of their artwork, added to this and the data from the security (sigurimi) files. Meanwhile in the third chapter, as an integral part of this work, data on memorials is presented; movies; exhibitions; books published after the 90s. This chapter can be considered as intensive in the quantitative data obtained from public and private institutions as well as through interviews. However, there is a lack of information from the National Art Gallery about the exhibitions. Even after persistent efforts by asking for information (based on the law on the right to information), the National Gallery of Arts never responded in a four-month waiting period, leaving a void on the initiatives taken by this public institution. Fourth, of importance for this paper, are also public debates as reactions on artworks. Local media monitoring has been an important source on qualitative and quantitative data for this chapter.

Overall, the paper is a reflective and critical look aimed at bringing about a truly new approach on the role that artworks played in the transition process in Albania, taking attention through a different form, far from law or study methods: as testimony, as a recognition and compensation of the past damages, but also as a lesson for the present through the past.

1.THEORETICAL APPROACH

1.1. The role of artworks in TJ process

Art can play a role in transitional justice processes aimed at confronting the culture of silence, denial or rationalization.¹

In the traditional concept there have been five main mechanisms considered transitional justice, which have been taken into account in the case of post-conflict countries or countries coming from dictatorial regimes: trials, truth commissions, amnesties, reparations, and lustration policies². But despite these mechanisms, there are also other means which provide information on improving the quality and extent of TJ processes in the public sphere. More specifically related to the concept: the label “transition” is generally attached to societies that transit from a totalitarian regime, or conflict (where mass atrocities and violations of human rights have taken place), to a more pluralistic type of governance, and peaceful and just society³.

Among the tools which affect the process of transitional justice, various actors have also considered the artworks related to the past. Therefore, in the past decade, arts-based approaches to peacebuilding have gained the attention of scholars and policymakers, and to recognize the importance of this inquiry the International Peace Research Association established an Arts and Peace Commission in 2004⁴.

According to Brants et al., transitional justice is not only a matter of law but also a process of making sense of the past⁵. Besides the courts, the truth commissions also limit the chances for victims to voice their whole story. Above all, they select only a few victims to voice their testimonies.⁶ De Bruyn and De Maseneer raised the question: how and why can art play a role in processes of reconciliation? Art is often invoked for its potential to produce new forms and open up our imagination, even to reconfigure time and space. It creates a time and a space to remember, to mourn, to forgive, to heal, and to glimpse a new future.”⁷ According to d’Eveie artworks are considered differently as cultural interventions, she continues by augmenting that cultural interventions in TJ is that it can contribute to the aims of transitional justice by making victims visible. They can comprise more accessible forms of transitional justice.

Ching in his study on “Transitional Justice and Transformative possibilities in memory as art outlines two ways in which the arts can contribute to the striving for transformative justice in times of transition.

Firstly says: “I suggest that memory as art allows for new meaning and turns fact into understanding, giving counsel to perceivers and witnesses without compromising their sense of self-determination.

1. James Weaver and Jeanne Colleran, Whose Memory? Whose Justice? Personal and Political trauma in Ariel Dorfman’s Death and the Maiden, *Performance Research: A Journal of the Performing Arts* Vol. 16, No.1,

2. Tricia D Olsen, Leigh A Payne and Andrew G Reiter, Transitional justice in the world, 1970-2007: Insights from a new dataset, *Journal of Peace Research*, Vol. 47, No. 6, (2010), 803

3. Sanja Bahun, *Transitional Justice, and the Arts: Reflections on the Field*, Published in *Theorizing Transitional Justice*, eds. Nir Eisikovits, Claudio Corradetti, Jack Volpe Rotondi (Ashgate, Routledge, 2014), 157.

4. Sanja Bahun, *Transitional Justice and the Arts: Reflections on the Field*, Published in *Theorizing Transitional Justice*, eds. Nir Eisikovits, Claudio Corradetti, Jack Volpe Rotondi (Ashgate, Routledge, 2014), 157

5. Chrisje Brants, Antoine Hol, and Dina Siegel, *Transitional Justice: Images and Memories*, (Surrey, England: Ashgate Publishing, 2013), 43.

6. Fayen D’Eveie, Dispersed truths and displaced memories: Extraterritorial witnessing and memorializing by diaspora through public art. In P. D. Rush, & O. Simic (Eds.), *The arts of transitional justice: Culture, activism, and memory after atrocity* (New York: Springer, 2014), 64.

7. Paul de Bruyne and Yves de Maeseneer, Secret and Sacred Places: The Role of Art in Processes of Reconciliation, in *Concilium: International Review of Theology* (2013), 24.

*The second way that I identify is intuitive: art elicits dialogue. Following Arendt's understanding of politics and action, I suggest that action made into works of art initiates space for more action, for politics. These two strands that I identify are interconnected and mutually reinforcing.*⁸

With regard to how these artworks can influence society, Golebiewski, specifically claims that the arts transform individual stories in two ways:

- First, the arts not only tell individual stories but also tell the stories of others as a group. As a result, the arts blend the differences that exist among conflicting parties, religions, classes, and generations and make them irrelevant.
- And second, the arts give a decisive role to the audience-the creators of the art leave room for the audience to reinterpret the piece, which sparks new emotion, new healing, and forgiveness.⁹

Artists have a particular privilege, a license of sorts, of autonomy and independence during ongoing processes of transitional justice because they do not share the same objectives as the state.¹⁰ The contribution to their society in this field is offering information and getting people's attention in a large range and time frame.

According to other post-conflict countries cases, the role of art is considered to be a distillation of why storytelling and cultural expression (including oral, written, visual and performative practices) in ongoing and post-conflict settings are crucial. Opportunities for portraying the truth about war and war-related experiences are not only important for individual healing, but they can also serve an important function in restoring collective memory and repairing the social fabric in which individuals are embedded.¹¹

1.2. Memorialization of memory

Memorialization is also an important reparation mechanism that can provide survivors with some solace in the transitional justice period. Reparations to survivors can be material or symbolic and individual or collective. Referring to the United Nation Secretary-General's report on transitional justice it defines it this way: *"For the United Nations, transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law."*¹²

Also according to the UN, reparations can include restitution, physical and mental rehabilitation, economic compensation, guarantees of non-repetition and a wide range of satisfaction including the recovery and reburial of remains, commemoration and memorialization.¹³

8. Anson Ching, *Transitional justice and transformative possibilities in memory as art*, (Vancouver, Canada, University of British Columbia 2018),7.

<http://hdl.handle.net/2429/65202>

9. Daniel Golebiewski, *The Arts as Healing Power in Transitional Justice*, E-International Relations, (2014), 2. Available at SSRN: <https://ssrn.com/abstract=2399850>

10. Erin Mosley, "Visualizing' Apartheid: Contemporary Art and Collective Memory During South Africa's Transition to Democracy," *Antipoda*, no. 5 (2007), 106.

11. Nadia Siddiqui, Hadi Marifat and Sari Kouvo, *Culture, Theatre and Justice: Examples from Afghanistan*, In P. D. Rush, & O. Simic (Eds.), *The arts of transitional justice: Culture, activism, and memory after atrocity* (New York: Springer, 2014), 113.

12. GUIDANCE NOTE OF THE SECRETARY-GENERAL, *United Nations Approach to Transitional Justice* (2010)

https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf

13. RULE-OF-LAW TOOLS FOR the POST-CONFLICT STATES, *Reparations programs*, United Nation (2008) <https://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>

Pablo de Greiff highlights that memorials are attempts to provide benefits directly to the victims of certain types of crimes' and can be understood as 'acts or objects, as things done or given.'¹⁴

The main contribution of building memorials mainly in public spaces is that by transmitting memories to the new generation, survivors seek to keep memories of the past alive.¹⁵ But not only memorial not only transmit the past, they also ever since the rise to prominence of "counter-monument" (Gegen Denkmal) theory and practice in response to TJ issues pertinent to the Holocaust, artistic interventions in monumental art and memorial art projects have regularly (and, one may add, intentionally) sparked controversy.¹⁶ Those controversies may result in public debate, which will be focused later on, in the material.

1.3. Memory as art

The concept memory as art according to Stephen Esquith is defined as the "re-enactment" of memory in search for collective understanding and recognition.¹⁷

Memory as art has the potential to bring to attestation important issues from human rights violation to the political and existential analyses. Another argument is that memory as art can function as a spark or as sustenance; either way, action preserved in art naturally begets more action in response.¹⁸

The testimonies conveyed through art have the ability to capture attention becoming an attractive form of storytelling.

1.4. Artworks encouraging debates in public sphere

Another form in which artworks can affect the process of transitional justice is fostering public debates on sensitive issues. This is supported by both Weaver and Colleran, saying: Art can play a role in transitional justice processes aimed at confronting the culture of silence, denial or rationalization.¹⁹ Similar precedents where artwork can provoke public debate, as intended by the photographic exhibitions of Ron Haviv, whose 'Blood and Honey' exhibition explores the wars that took place in ex-Yugoslavia.²⁰

According to Sanja Bahun, while all the arts contribute to transitional justice discourse, there is also a culture-specific preference, in each transitional site, for an art form best suited to convey complex socio-political messages.²¹ Meanwhile, L. McLeod et al. points out that Art has an important role to play in these debates in providing a space for reflection about the practice of transitional justice via exposing the temporal complexity of transitional justice. Specifically, we suggest that art stimulates exploration of alternatives.²²

14. Pablo de Greiff, *Justice and Reparations* (Oxford, Oxford University Press, 2000), pp. 453.

15. Lia Kent, *Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives*, *The International Journal of Transitional Justice* no.5, (2011), 444.

16. Claudio Corradetti, Nir Eisikovits, *Theorizing Transitional Justice* (Ashgate Publishing, Surrey, England, 2015), 161.

17. Esquith Stephen, *Complicity in Mass Violence*, *Philosophy & Public Policy Quarterly* 34, no. 4. (2004), 28.

18. Anson Ching, *Transitional justice and transformative possibilities in memory as art*, ((Vancouver, Canada, University of British Columbia 2018), 38.

19. James Weaver and Jeanne Colleran, *Whose Memory? Whose Justice? Personal and Political trauma in Ariel Dorfman's Death and the Maiden' Performance Research: A Journal of the Performing Arts* Vol. 16, No. 1 (2011), 32; Rosemarie Buikema *'Performing Dialogical Truth and Transitional Justice: The Role of Art in the Becoming Post-Apartheid of South Africa'* *Memory Studies* Vol. 5, No. 3 (2012): 283.

20. Ron Haviv, *Blood and Hone*, can be viewed at <http://photoarts.com/haviv/bloodandhoney/> (20 August 2019).

21. Sanja Bahun, *Transitional Justice and the Arts: Reflections on the Field*, Published in *Theorizing Transitional Justice*, eds. Nir Eisikovits, Claudio Corradetti, Jack Volpe Rotondi (Ashgate, Routledge, 2014), 158.

22. Laura McLeod with Jovana Dimitrijevic and Biliana Rakocevic *Artistic Activism, Public Debate and Temporal Complexities: Fighting for Transitional Justice in Serbia*, In: Olivera Simic and Peter Rush, editor(s). *The Art of Transitional Justice*, (New York: Springer, 2014), 40.

1.5. Effects of Art as dealing with the past

We should admit that it is very important the role of the effect of the artwork on the broader public. In this regard, De Greiff says that *“Cultural and artistic projects also have the potential to evoke powerful reactions among the audience to the effects of human rights violations on the lives of victims in ways that other forms of communication, such as official truth commission reports, may not”*²³ He adds further that such transformations of societal attitudes towards victimization are critical in affecting transitions.

The aforementioned point of view is dedicated by Ramirez-Barat to the use of the symbols, metaphors, or parables—or by linking individual and personal experiences to collective narratives—cultural and artistic projects can capture public attention, trigger empathy and foster dialogue.²⁴

2. ARTWORK AS A MECHANISM OF THE DICTATORIAL, THE CASE OF ALBANIA

The dictatorial systems aim to use all public communication mechanisms to propagate ideology to the masses. Propaganda is the set of methods used by an organized group in order to attract the mass of individuals.²⁵ It intends to give false information, designed and created with the intention of manipulating certain groups. According to Milovan Djilas, in the totalitarian states, the state uses the media and art to spread the official ideology, to teach it to people, to convince people to follow this ideology and at the end to impose it.²⁶

In dictatorial Albania, referring to the archival documents of the Ministry of Education and Culture issued by the Directorate of Culture in 1977, regarding the function of art as a means of communication of the Party of Labour of Albania is stated:

*“Our culture and artares importan int front of the class struggle in the ideological field, they do not endure liberal, bureaucratic and technocratic attitudes, etc”*²⁷

With regard to the artistic works created during the period 1945 to 1990, it is noted that the institutions (stimulating and controlling), created by PPSH (Party of Labour of Albania), limit the artistic works by putting it purposefulay in the service of political developments, imposing also the content and the form of artistic creativity. Such a stand is evidenced by the quotation from the archival report illustrated below:

*“The culture as part of superstructure goes in line withthe Marxist-Leninist ideology of the party. It represents in the works, the great transformations that have been done and continue to be done in our country under the leadership of the party in the understanding of the people, i then material and spiritual world. At the center of this creativity are our people, mass hero, the working person and the communists who are educated and inspired by the party: they create, fight and win in each situation, against every internal and foreign enemy”*²⁸

23. Pablo de Greiff, On making the invisible visible: The role of cultural interventions in transitional justice processes. In *Transitional Justice, Culture, and Society Beyond Outreach*, Clara Ramírez-Barat, Editor(s), International Center for Transitional Justice (Social Science Research Council, New York, 2014), 19.

24. Ramírez-Barat, In *Transitional Justice, Culture, and Society Beyond Outreach*, Clara Ramírez-Barat, Editor(s), International Center for Transitional Justice (Social Science Research Council, New York, 2014), 19.

25. Jonila Godole, *Gazetaria shqiptare në tranzicion*, (Papirus, Tiranë, 2014), 54.

26. Milovan Gjilas, *Fytyra e totalitarizmit*, (Fan Noli, Tirane 2006), 299.

27. Retrieved from Central State Archives, Fund 511. File 122, P.32. Y.1976

28. Retrieved from Central State Archives, found 511, file 122, p.4. y.1977

2.1. The institutionalization of artistic works during the period 1944 to 1990

The institutionalization of the artistic creativity was accomplished through establishment of the structures in every aspect of the art, all under the direction and supervision of Central Committee of PPSH and the Ministry of Education and Culture such as: The Committee for Culture and Arts; the creation of monopoly institutions for coordination of publications (reference: Publishing House “8 Nëntori [8 November]”); for film production (Kinostudio “Shqipëria sot [Albania today]”); The Writers’ League, etc. The aforementioned institutions created guidelines and definitions specifying the content to be seen in specific artistic works as illustrated by the document entitled “The class struggle in the work of art and the culture” as following:

“The lessons of the Party and Comrade Enver, getting closer to the lives of the people, are the most important factors that have affected the lives of people, are the most important factors that have affected the level of maturity, the Marxist Leninist understanding of the workers of the culture and arts, and the greater premises for a better future of the work of our creative intelligence”²⁹

One-year plans for the art and culture approved the list of books for publication and translation; the topics of the exhibitions as well as the thematic lines of the musical creativity. Despite the specific lists, the one-year plan specified the overall lines of the aims that all political creativity should foresee, even if it was individual. In the list designated for 1978 (document entitled “One-year planes for 1978”), these goals were put forward:

- a. Ideological and politic education of working masses*
- b. Technical-scientific education*
- c. Relatively later is the direction of cultural work for the culture of living*
- d. Artistic culture, as a special directio,n occupies a good place in the cultural activity of the masses (So, the proper education of artists, author’s note)”³⁰*

Therefore, if we take as reference the case of the theatrical materials, the “Directorate of Culture” determines in a directive way that it is peremptory to follow the ideology of the party and its predetermined goals:

“First, in order to enhance the artistic level of theaters, it is required to better align the party orientations and the lessons of Comrade Enver...”³¹

In all the cases, after the implementation of the predetermined plan of the artistic works, the institutions also carried out reports to measure the propagated effect. In one of the reports for internal use of the political actors of the Party of Labour of Albania in 1976 were highlighted the achievements related to the use of the books, through the efficient distribution and through public readings in a group, as an extension of the propaganda.

“In the process of further deepening the ideological and cultural revolution, the propaganda of the book increased, especially with regard to propagation of Party materials, the works of Comrade Enver and the main political and social literature.”³²

Classification as an “artist” is considered by the dictatorial state as a profession closely linked to the promotion of the image of the cult of the leader of Enver Hoxha and the party: *“An educated person is the one who tries to embrace the ideology and the line of the party and works with all the energy to put it into life...”³³*

29. Retrieved from Central State Archives, found 512, file 111, p.19. y.1975

30. Retrieved from Central State Archives, found 511, file 125, p.14. y.1977

31. Retrieved from Central State Archives, Fund 511. File 112, P.2. Y.1976

32. Retrieved from Central State Archives, Fund 551. File 106, P.10. Y.1976

33. Retrieved from Central State Archives, Fund 511. File 122, P.23 Y.1977

The model of treating artistic creativity as a propaganda instrument is similar to the case of the Soviet Union where in 1932, the Soviet state proclaimed that all artists must embrace the Socialist Realist philosophy and style. Its principles included loyalty to the Communist Party and correct ideological stance and content. Those who did not conform could be interrogated, imprisoned, or even executed. From the start, the new Soviet state enlisted art to serve an educational and instructional function to reinforce cultural values.³⁴

2.2. Promotion and framing of the artistic works in the service of propaganda in the media

Firstly, according to Wilbur Schramm, who focused on the critique of the “Soviet Communist Theory” in the collective work “Four Theories of the Press” (Siebert et al, 1963), some of the main features of this press, specifically the Communist media, were:

1. In communication with masses, the press was used as an instrument of the state.
2. Mass-media was closely integrated with the state instruments (departments, etc.).
3. Even the parties were used by media as instruments within the state. Mass-media were instruments of agitation and propaganda.
4. Mass-media was characterized by strict obligated responsibility.³⁵

In the case of Albania, in the early years of the dictatorial regime (1949-1950,) propaganda communication was implemented in each field in order to strengthen the positions of the communist party. The press was one of the sectors that experienced complete isolation and censorship, being completely placed in the hands of the Party as an exclusive production of its own.

The first step to take over the press from the Communist government was to ban new press bodies that could not be controlled by the government. De facto, since November 1944 in Albania there was no right of private ownership of the press.³⁶ The media of this period perceived as information only the informative data that are in accordance with the ideological and political principles that guide them. They see what they want to see, they hear what they want to hear.³⁷ In the documents of the time this characteristic, namely blind allegiance as part of the propaganda of the Party of Labour of Albania is treated as the added value of media institutions: *“The main thing in the propaganda article is its ideological accuracy. Our press is in no way allowed to propagate wrong ideas and principles.”*³⁸

By locating this argument also in the media system during the dictatorship in Albania, the professor Hamit Borici acknowledges the propaganda nature, saying that anything published on newspaper, magazine, radio-television or ATSH (Albanian Telegraphic Agency) newsletters should be fully in line with the duties and interests of the party-state.³⁹

34. https://www.guggenheim.org/arts-curriculum/topic/art-and-ideology?fbclid=IwAR2CXwNVhSa3MgirzH_c-UULaAgcqBeItN6TY2A2xFgZewsrpwlkchcJ1UM [on line visited 22th August 2019]

35. Jonila Godole, *Gazetaria shqiptare në tranzicion*, (Papyrus, Tirana, 2014), 56.

36. Hamit Borici and Mark Marku, *Histori e shtypit Shqiptar*, (SHBLU, Tirana, 2010), 224

37. *Arta Fuga, Monolog*, (Dudaj, Tiranë, 2010), 51.

38. Retrieved from Central State Archives, Fund 14, File 590, P.30-31. Y.1953

39. Hamit Borici, “Një shekull e gjysëm publicistikë Shqiptare, (Gjergj Fishta Tirana), 177.



Figure 1, In the Peoples Services magazine. Title: “Literature and art as powerful tools to achieve our communist education and duties”, 4 April 1975

within the 35th anniversary of liberation”⁵³; “35 Years of Peoples Theatre”⁵⁴; “It was released the first volume of the book of Comrade Enver Hoxha “Notes for Cine”⁵⁵; “Work with great political, ideological and military importance by Mehmet Shehu”⁵⁶).

In the “Zëri i popullit” (Voice of people) daily newspaper are published poems as artistic form dedicated to the party and cartoons representing ironically the so-called “enemies” and denigrate the foreign countries.

Thus referred to the observation of the newspaper “Në shërbim të popullit/ In the service of the people”⁴⁰ during the period 1970-1980 (118 numbers) there are 67 articles identifying three main phenomena: first, the use of art in the service of the state party (With titles: “Literature and art as powerful tools for communist education and our duties”⁴¹; “Strong ideological weapon for the protection of Marxism - Leninism and the revolutionary triumph”⁴²; “Vigilance theme in the fine arts”⁴³; “The most beautiful songs of the Party”⁴⁴; “Their heroism inspires us”⁴⁵; “Vigilance theme in the pages of a novel”⁴⁶; “Reflection of the class struggle in the pages of a novel”⁴⁷; “The great source of inspiration (party) for our artists”⁴⁸); secondly, the public criticism which shaped the public pressure by denouncing the examples considered negative (illustration of titles “Thoughts for an artistic activity”⁴⁹; “Review”⁵⁰); and third the promotional articles (illustration: “Competition of the athletic groups”⁵¹; “Girl with red ribbons”⁵²; “Literary-art competition

40. Newspaper published by the Ministry of the Interior during 1967-1990
41. IPS, 4 Aril, 1975, p.8
42. IPS, 2 Febrary, 1979, p.3
43. IPS, 3 Mrch, 1981, p. 26
44. IPS, 6 une, 1978, p.40
45. IPS, 1 Janary, 1978, p. 11
46. IPS, 12 Deceber, 1982, p. 31
47. IPS, 9 Septeber, 1977, p.33
48. IPS, 2 Febrary, 1977, p. 4
49. IPS, 12 Janary, 1979, p. 12
50. IPS, 4 Aril, 1977, p. 29
51. IPS, 12 December 1982, p. 26
52. IPS, 3 March 1979, p. 22
53. IPS, 4 Aril, 1979, p. 32
54. IPS, 6 May 1979, p. 24, 25
55. IPS, 6 June, 1978, p.6
56. IPS, 7 July 1981, p.4,5

2.3. The punishment of artists as a consequence of the deviation from the line of the Party of Labour

During nearly half century of the communist rule was created the target of “Dissident Artists”, who according to that time structures violated the ideological rules. The approach to art was also foreseen in the constitution of 1976: *“Article 35 –The state protects the cultural heritage of the people and takes care of comprehensive development of the national socialist culture. The state supports the development of literature and art of the socialist relativism, which adhere to the idealsthe socialism and communism is are in line with national popular spirit.”*⁵⁷

Given this, every artist would have to adhere the certain framework legally; other wise the artists would be accused of “Agitation and propaganda”. One example is that of Ylber Merdani⁵⁸, today 86 years old, a former political prisoner, who at first was sentenced to prison and then was interned due to the content of his poetry:

*“They discovered my manuscripts and the diary. I was sentenced 8 years in prison and loss of civil rights for 4 years for “Agitation and propaganda” due to my poems. According to those who did the expertise of my manuscripts, all the poems were nonprofessional, and were considered hostile”*⁵⁹

On same way and for the same reason agitation and propagaarea is accused and sentenced as well the former political prisoner Hysen Kica⁶⁰ saying:

*“People from Sigurimi came to control the house. They found a novel that I wrote, where I was talking about the injustices of the regime, stories, different papers and some parts of a manuscript. They confiscated them all and took them to the Branch. The chief of Dibra district investigator after their inspection said that I had seen the reality through the eyes of the enemy.”*⁶¹

Controlling artwork was thus transformed into a form to censor information in circulation, as stated in reports produced by the Central Committee:

*“Desp of the constant materialization of Marxist -Leninist theory and practice in the field of creativity, our Party has repeatedly brought to attention the danger of revisionist bourgeois degeneration...”*⁶²

The Directorate of Culture under directions from the Ministry of Education and Culture carried out analyzes and critiques regarding the content of artistic activities. As an example of the mechanism that was used for artistic activities in a critical report on the annual year of the theatre was written:

57. Online publication of the Albanian Constitution of 1976,:8 : <http://eudo-citizenship.eu/NationalDB/docs/ALB%20Kushtetuta%20e%20Republike%20Socialiste%20Popullore%20e%20Shqiperise%201976.pdf>

58. Ylber Merdani graduated from teacher education in 1959. His family was famous as hearsay traders in the city. After the Communist regime was established in the country, the Merdani family was interned and imprisoned. Ylber Merdani was sentenced in 1969 to eight years in prison and four years of civil rights loss on charges of "Agitation and Propaganda through his Poems." He was sentenced in the Spaçi prison. In Spaç he also experienced the famous revolt of May 21-23, 1973. In 1977 he was released from Spaç Prison, but in the winter of that year he was interned in Shtyllë, Kca

59. Interview with Ylber Merdani, Shkodra, June 2019

60. Hysen Kica was born in a village near the town of Bulqiza in 1947. Together with his brother he tried to cross the Shkodra border, but they couldn't make it, on the way back he was captured by police forces and sent to the investigator in the city of Shkodra. During the investigation, they found journals and letters and artifacts that add to the accusation of "agitation and propaganda", ultimately denouncing him to 14 years in prison. Hysen Kica served 3 years and 7 months in jail until he was released after the collapse of the system in 1990. He has been devoted to artistic writing since the collapse of the communist system.

61. Interview with Hysen Kica, Tirana, July 2019

62. Retrieved from Central State Archives, found 511, file 111, p.20. y.1965

“The emphasis was put in particular on the fight against revisionist bourgeois influence, the repertoire was cleaned from wrong parts or limited idea, the smaller parts with partial and rational problems were eliminated, outside our reality”⁶³

Other cases highlighted by the Museum of Remembrance project (Muzeuikujteses.al) related to the art ditence in the past include: “Trifon Jagjika, a young man who reciting in his trial” *Homeland is Naked*”, in his final speech demanded, as artillery to blow the Central Committee. Even before the shooting, the poet Wilson Blloshmi refused to become a collaborator, better become mud, he said, than collaborate with you.

The first book that aontained criticism, send to proner the founder of modern Albanian writing, Mitrush Kuteli. Also the first Albania woman writer, Musine Kokalari, born in Rome. She was also the first woman dissident, founder of a democratic party, Kokalari was imprisoned, interned, worked as a rouds cleaner, and died alone, without a funeral.⁶⁴

Project Leader Afrim Krasniqi explains that in the process of identifying cases of intellectual artistic dissidence, for a period of 3-4 years, many of ISP staff have been engaged in gathering as much evidence and data on the communist period, in order to extract from them referable data for a public database. He added: “We used all public and archival resources including the testimonies from various protagonists during the transition.”⁶⁵

An intensified period of the fight against the artists was the beginning of the 70ies, initiated from the 11th festival of Radio-Television (1972) which was condemned as a festival that spread the western bourgeoisie culture (something declared as against the state principles). Many of the organizers and participants of the festival were condemned with imprisonment, innterment, deportation. As such the director of RTVSH, Todi Lubonja was interned in Lezha, the director of the festival Mihallaq Luarasi and the singer Sherif Merdaaswere imprisoned. The artistic director, Zhani Ciko was moved from TKOB. Meanw,hile Bujar Kapexhiu, the young director of the Estrada Theatre, only 27 years old, who was at the peak of his carrier with the theatrical performances he had put in the scene, ended up in the Cement Combine “Josif Pashko” as a loading and unloading worker.⁶⁶). In addition after the speech of the dictator Enver Hoxha in March 1973, many artists and intellectuals were imprisoned and interned, based on a new way of accusation, the so-called “Foreign Exhibition (Shfaqje e huaj)”. Foreign Exhibition was considered involvement in the artistic content of innovative forms at time that would resemble the international art models.

In the investigative (sigurimi) file of the architect and visual artist Maks Velo⁶⁷, former political prisoner and former persecuted due to the abstraction and nudism aspect in his artworks, the report written by the Secretary for the Visual Arts, Kujtim Buza on 14.12.1977 was criticized as following:

“In the field of visual art, everything that he has created has the stamp of formalism, the influences of bourgeois and revisionist art, as he only read such literature and never came into contact with the lives of the people, he had just detested, mutilated it... His work is also known for a banal dilettantism, a lack of ability, which he wanted to hide with experimentation and maneuvers ascribed to the veil of the modern, which he propagated so much as a snob he is. In the field

63. Retrieved from Central State Archives, fund 511. file112, p.1. y.1976

64. <http://muzeuimemories.info/intelektuale-artiste/> [on line visited 23th August 2019]

65. Interview with Afrim Krasniqi, Tirana, July 2019

66. [https://gazetamapo.al/festivali-xi-i-kenges-revolucioni-qe-do-te-vinte-nga-muzi\(a/](https://gazetamapo.al/festivali-xi-i-kenges-revolucioni-qe-do-te-vinte-nga-muzi(a/) [on line visite3 th August 2019]

67. The 4th plenum of the CCPPH criticized Velon as practicer of foreign influences with his artistic creativity, and from September 1973 to 1978 he was transferred to the village of Ndroq, 15 km from Tirana, as a punitive measure by the communist state of Enver Hoxha. On October 14, 1978, he was sentenced and sentenced to 10 years in prison (released in 1986 two years before the full sentence of amnesty law). After leaving prison he returns to Tirana and works as a simple worker at the Abrasive Stone Plant (1978-1991)."

of theorizing and aesthetic thought, as far as we know, he has never mentioned proletarian partisanship, class tenderness, national character, the method of our art of Socialist Realism.”⁶⁸

In addition to controlling of artworks created by local artists, a detailed control was conducted on the translated works also, in order to censure, change the content etc., for the consumption of the local readers:

“Based on the regulation approved by the Ministry of Education, the (foreign literature control) branch controls the literature coming from outside, ordered out of the orders at the control branch office, in forwarding, in import warehouses, in customs and in post offices. The control branch has prevented the diffusion of harmful literature for our country such as it is the hostile, bourgeois-revisionist, religious, pornographic content of the extravagant fashion, etc.”⁶⁹

The establishment of control institutions and detailed expertise through various filters shows the importance and impact that artworks could bring to public space where these works could be disseminated, in the form of writing, music; theatrical performances or visual arts.

CHAPTER THREE

3. ARTWORK RELATED TO MEMORY AFTER 1990s

In these 27 years, there have been undertaken various artistic initiatives dedicated to the totalitarian period in Albania, individually or from government and non-governmental institutions at the national and international level.

These artistic artworks shown through public events, have served in some ways to the process of transitional justice, as following:

- Opening public debates;
- Keeping the memory of the victims alive;
- Testimonies through art (storytelling)
- Public recognition for victims

3.1. Initiatives undertaken by the Ministry of Culture

In replying to a request⁷⁰ for official information, the Ministry of Culture explains that there are three projects taken in this field at the national level in 28 years.

The first project entitled the “Sculpture of Socialist Realism in Albania” is a publication by Maks Velo (former dissident). The aim of the publication is comparison of creations of socialist realism and the European spirit in sculpture at the end of XIX and the beginning of XX.

The second project is entitled “I have a question?!” an initiative financed by the Ministry of Culture done by the Institute of Political Studies. The project was done through a permanent

68. National Library, Panorama Newspaper, February 23, 2018, pp 18-19, “Former Security File for Max Velo: Mother-in-law Denounced him for Pornography, Kujtim Buza: Snob Artist”

69. Retrieved from Central State Archives, Fund 106. File 1946, P.4. Y.1976

70. Official information from Ministry of Culture, 12 August 2019

exhibition entitled “Online Museum- Museum of Memory”⁷¹, which informs and anticipates the answers to any questions about the functioning of the dictatorial system in all life activities, especially for generations born after 1991.

The last project: the “Valley of Resistance”, which in the same form as the aforementioned online museum, has been delegated to the Institute of Political Studies. The project is focused on the development of Spaç prison-camp and brings information about the prison in the form of an “Online Museum” www.luginaeqëndresës.al.

3.2. Memorials dedicated to victims of the communism



Figure 2, Memorials in memory of the victims of communism

Memorials as artistic works serve to collective memory, recognition and public attribution of the pain of the victims of the totalitarian regimes. In the case of Albania, there are 17 memorials. Only two of them date back to the early 2000s and 15 other memorials are built after 2013. According to the table below their number has grown and culminated in 2018 with five memorials inaugurations. Geographical distribution appears balanced across the country with five memorials in central Albania, six in the north and six in the southern part.

The memorials are attributed to victims of systematic persecution and executions, as well as to commemorate and honor the anti-communist movements of 1945-1950, as well as to the dissidents of the system.

	Memorial	City	Year
1	Bunk'Art 1	Tirana	November 2014
2	Bunk'Art 2	Tirana	November 2016
3	National Memorial of Internment-Evictions in Memory of Albanian Families	Lushnja	September 2016

71. <https://muzeuimemories.info/rreth-muzeut/> [on line visited 24th August 2019)

4	“Postblock”- memorial	Tirana	March 2013
5	The memorial of the -anticommunist stand	Macukull, Mat	June 2016
6	Commemorative plaque in honor of the missing persons during the communist regime.	Tepelena	September 2015
7	Memorial dedicated to the -anticommunist revolt and the first hero of democracy Josif Buda	Kavaja	June 2018
8	Memorial dedicated to the Massacre of “Qafa e Valmerit”	Mirdita	August 2002
9	Memorial dedicated to 22 ilntelec areal’s killed in 1956		
10	Memorial dedicated to Prek Cali and the -anticommunist movement	Tamare	
11	Prek Cali Memorial	Shkodra	January 2000
12	Memorial in honor of the communist persecution in Shkodra	Shkodra	May 2019
13	Memorial of the Postriba uprising	Shkodra	
	Memorial in honor of the anti-Communist martyr “Kolo Stefanadhi”	Draçova, Permet	Dhjetor 2018
14	Memorial dedicated to Pogradeci’s martyrs	Pogradec	November 2018
15	Memorial dedicated to Fete Sadand dhe Uke Quni	Lekbelaj, Tropoja	September 2018
16	Memorial in memory of 30 martyrs executed by communists	Majkosh Tepelena	June 2018
17	Martyrs of Mursia	Murise, Saranda	September 2018

In the monuments of culture have been also transformed fola palces of persecution and imprisonment during the dictatorship. Nowadays they are important sites to be visited by tourists accompanied by informative tables or museum stands. Sites of memory are listed as below:

“Spaç Prison” – was announced Monument of Culture category II, with Order no. 656 date 5.12.2007 of the Minister of Tourism, Culture, Youth and Sports.

Former Interment Camp of Tepelena - announced for preliminary protection with Order no. 1787 date 04.08.2018 of the Minister of Culture.

The **“Forensic Laboratory”** has been announced Monument of Culture category II with Order no. 122 date 5.3.2007 of the Minister of Tourism, Culture, Youth and Sports. Later on, with the initiative of the same ministry a project to revitalize and museums the **“Museum House of Leaves”**⁷² was undertaken.

The **“Site of Witness and Memory”** in Shkodra is the first museum built in Albania to commemorate the tortures and persecutions of the communist era. The museum is built on the same site where the prison was during the dictatorship of Enver Hoxha.⁷³

72. Official information from Ministry of Culture, 12 August 2019

73. <http://www.vdkshkoder.com> [on line visited 24 August 2019]

3.3. Books on communist memory

There are 542 books that are thematic or refer to the communist past in Albania according to the official records of the national library.⁷⁴ Referring to the list provided after an official request, the books belong to different literary and study genres. Dominant are the materials of study/historical type, followed by biographies and autobiographies, collection of memories of those who have lived dictatorship, summary of documents, and fewer publicity/journals articles and novels in the field, published from 1991 until 2018.

PUBLICATIONS ON THE DICTATORSHIP ACCORDING TO GENRES

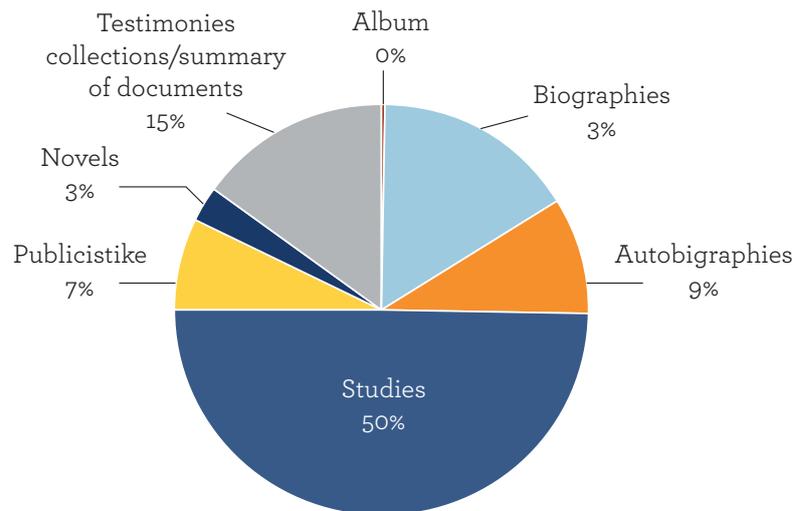


Figure 3. Graphic - Publications on the dictatorship according to genres

In the list of titles of books archived in the national library there are 138 books in foreign languages, respectively in English; in Italian; in German and in Slavic languages.

BOOKS ACCORDING THE LANGUAGE



Figure 4. Graph - books according to the language

Based on the content of the books, it is noted that 40 books have been published that enlighten and reflect the nostalgia for dictatorship. They are dedicated to magnifying the figure of Enver Hoxha, Ramiz ,Alia and the “party achievement”.

74. Official information from National Library, 20 August 2019

Parts of the books aiming reflection on the dictatorship period in Albania are also 74 publications by ISKK- Institute for the Studies of Communist Crimes and Consequences in Albania⁷⁵ in five categories:

- Periodical publications (2 books)
- Studies (36 books)
- Memoirs (22 books)
- Publicism
- Creativity and translation from prisons (7 books)

Institute for the Studies of Communist Crimes and Consequences has delivered its publications in public libraries of the Republic of Albania.⁷⁶ The Institute for Democracy, Media and Culture has also delivered publications in high schools and its public events (ex. Manual on Oral History; Communism through archival documents 2 volumes; Media Transformation and Collective Memory in Albania; (Non) Rehabilitation of Former Victims of Political Persecution in the Process of Transitional Justice (1991–2018); Between Apathy & Nostalgia: Public & Private Recollections of Communism in Contemporary Albania)⁷⁷. Despite the books, House of Leaves Museum brought the scientific journal “Dritëhije”, with articles from the thematic the communist period in Albania, the repressive activity of the state security (sigurimi), communist cultural heritage in Albania, etc.⁷⁸

3.4. Movies that reflect on the past

One of the art forms that has served to recall the events of the totalitarian period in Albania are the movies. In the archives of the Albanian Cinema Center⁷⁹, there are eight movies that contain subjects related to the reflection / recognition of the communist past in Albania:

1. Nata pa hene (The night without moon), directed by Artan Minarolli
2. Parrullat, directed by Gjergj Xhuvani
3. Lindje Perendim Lindje (East West East), directed by Gjergj Xhuvani
4. Internim (Internment), directed by Kastriot Hasa
5. Amaneti (The Last Will), directed by Namik Ajazi
6. Portreti i pambaruar (The Unfinished Portrait) directed by Klara Bellinit
7. Delegacioni (The Delegation), directed by Bujar Alimani
8. Vera pa kthim (Summer without Return), directed by Besnik Bisha

What emerges from this list is that all movies are based on true stories. In addition to this list, the students of the Academy of Arts are also engaged in producing a similar movie on this topic entitled “Facing the Past”. The Institute for Democracy, Media and Culture (IDMC) has also produced two documentaries:

- Children of the Dictatorship, by Besnik Bisha (IDMC)
- The Memory of a Country that Forgot to Forget (IDMC)

And recently the Authority for Information on Former State Security Documents (AIDSSH) in collaboration with UNDP and Embassy of Italy (produced the movie entitled “Even the Walls Have Ears” by Alketa Xhafa.

75. <http://www.iskk.gov.al> [on line visited 25 August 2019]

76. <http://www.iskk.gov.al/?p=2223> [on line visited 25 August 2019]

77. <https://www.idmc.al/libra.html> [on line visited 25 August 2019]

78. Official information from “Muzeu i gjetheve”, 7 August 2019

79. Interview with Arben Lami, Director of National film Center, Tirana, 12 July 2019

3.5. Exhibitions

Due to the lack of information by the National Gallery of Arts this part is based on research online and in the media. As such IDMC has conducted four public exhibition:

1. Communism in its time Exhibition, an exhibition on the framework of the 27th anniversary of the fall of the statue of the dictator Enver Hoxha on 20 February 1991⁸⁰
2. Propaganda during the communist dictatorship⁸¹
3. Cold war: Causes, History, Consequences⁸²
4. Postcards from the past⁸³

Another important actor that has initiated various exhibitions is also the Authority for Information on Former State Security Documents (AIDSSH), as following:

1. Photo and archive exhibition of the persecution of the Security (Sigurimi) in the villages of the internes in Myzeqe.⁸⁴
2. Installation “Even the Walls have Ears” on the crimes of the communist dictatorship in Albania.⁸⁵
3. Exhibition “Monitor, Terrorize, Persecute”⁸⁶

Meanwhile the exhibition “The Resistance” at House of Leaves Museum with photo of the former political prisoners and persecuted in prisons, internment camps etc.⁸⁷

House of Leaves Museum during the school days organizes the awareness event “Remember not to forget” which offers the high school students an opportunity to give their impressions after the visit, through artistic works in various genres such as literature, picture, installation etc. In. At the end an exhibition with all the entries is done and the winners are awarded.

CHAPTER FOUR

4. PUBLIC MEDIA DEBATES ON ARTWORKS RELATED TO THE DICTATORSHIP PAST

Based on the theoretical literature artworks can serve as an instrument of transitional justice through stimulating public debates. Given this “Art can be utilized to explore alternative processes of transitional justice, opening up public debates about the best way to achieve transitional justice via exposing the temporal complexity of the process”.⁸⁸

In the case of Albania, the media (including television programs; journal articles; reactions and comments spread in the online media etc.) is a reflection of these public debates and can

80. <https://www.idmc.al/ekspozita.html> [on line visited 26 August 2019]

81. <https://www.idmc.al/ekspozita.html> [on line visited 26 August 2019]

82. <https://www.idmc.al/ekspozita.html> [on line visited 26 August 2019]

83. www.idmc.al/en [on line visited 26 August 2019]

84. <http://autoritetidosjeve.gov.al/historite-e-patreguara-te-lushnjes/> [on line visited 26 August 2019]

85. <http://autoritetidosjeve.gov.al/instalacioni-edhe-muret-kane-veshe-mbi-krimet-e-diktatures-komuniste-ne-shqiperi/> [online visited 26 August 2019]

86. <http://autoritetidosjeve.gov.al/ekspozita-mbikeqyr-terrorizo-perndiq-22-tetor-2018/> [on line visited 26 August 2019]

87. Official information from “Muzeu i gjethëve”, 7 August 2019

88. Laura McLeod with Jovana Dimitrijevic and Biliana Rakocevic Artistic Activism, Public Debate and Temporal Complexities: Fighting for Transitional Justice in Serbia, In: Olivera Simic and Peter Rush, editor(s). *The Art of Transitional Justice*, (New York: Springer, 2014), 27.

be considered an archival database in which we can look for cases when artworks related to dictatorship past in Albania have stimulated intense debates in public level.

4.1. Public debate related to movies created during the dictatorship past

The art projected in as movies created during the dictatorship (with establishment of “New Albania” Kino-studio from 1947 until 1990) stimulated a wide public debate from March-April 2017 until November 2017, making it an important point of addenda setting in local media. Shortly said, the importance of the debate was seen on the legitimacy of the regular broadcast of these movies⁸⁹, due to the propaganda content based on the ideology of PPSH.

Public discussion started after the draft-proposal of the director of the Albanian Institute for Studying Consequences of the Communist Crimes (ISKK), Agron Tufa, in the Albanian parliament to forbidden these movies: *“Proposal for stopping communist propaganda that insults, denigrates and manipulates the feelings of the persecuted population during the dictatorship, through documentaries and artistic movies of the former “New Albania” Kino-studio.”*⁹⁰

The debate was reflected on two main media channels: first, through articles in form of letters and the second through television panel discussions. Given this, during a two-month period, they broadcasted eight⁹¹ prime-time television programs and six⁹² chronicles in the main news editions constituting 324 minutes and 20 seconds dedicated to the television debate on the movies produced during the dictatorship and 18 minutes and 22 seconds chronicles in the news section, on the same topic.

89. Author's note: Currently aired 24 hours on channels: ART Albanian; Tring Albania, Digitalb channel "T"

90. National Library, Panorama newspaper, no. 5677, Dossier category, March 31, 2017, p. 18

91. Bypass Show - Agron Tufa filmat e komunizmit janë propagandë e asaj kohe... - Show - Vizion Plus

<https://www.youtube.com/watch?v=7ylyxD-Ples> (on line visited 28 August 2019)

KAPITAL - Filmat e Komunizmit, Pro? Kundër?| Pj.3 - 24 Mars 2017 - Talk show - Vizion Plus

https://www.youtube.com/watch?v=oLP_ZXjRbeM (on line visited 28 August 2019)

KAPITAL - Filmat e Komunizmit, Pro? Kundër?| Pj.1 - 24 Mars 2017 - Talk show - Vizion Plus

<https://www.youtube.com/watch?v=YtHYASy7gU> (on line visited 28 August 2019)

KAPITAL - Filmat e Komunizmit, Pro? Kundër?| Pj.2 - 24 Mars 2017 - Talk show - Vizion Plus

https://www.youtube.com/watch?v=P_IJ3nubyuw (on line visited 28 August 2019)

Opinion - Filmat e komunizmit, te shfaqen apo jo? (14 mars 2017)

<https://www.youtube.com/watch?v=imhhv9Js20o> (on line visited 28 August 2019)

Ismail Kadare: Të pa-tolerueshëm disa nga filmat e regjimit komunist

https://www.youtube.com/watch?v=o_1zVAq48yI (on line visited 28 August 2019)

Artes nga Elsa Demo - Komunizmi në kinema

<https://www.youtube.com/watch?v=e4iqfFGSKMM> (on line visited 28 August 2019)

Censura e filmave, përballje mes Petrit Rukës e Ylljet Aliçkajt

<https://www.youtube.com/watch?v=COJc2n2HYoA> (on line visited 28 August 2019)

Report TV- Intervistat e plota per nje projektligj per dekomunistizimit e vreprave artistike

<https://www.youtube.com/watch?v=byqJOACrGVM> (on line visited 28 August 2019)

Pasdite ne TCH, 16 Mars 2017, Pjesa 2 - Top Channel Albania - Entertainment Show

<https://www.youtube.com/watch?v=2-dpvfVYQxY> (on line visited 28 August 2019)

Pasdite ne TCH, 16 Mars 2017, Pjesa 3 - Top Channel Albania - Entertainment Show

<https://www.youtube.com/watch?v=BATHvvA44WA> (on line visited 28 August 2019)

Bypass Show - Agron Tufa filmat e komunizmit janë propagandë e asaj kohe... - Show - Vizion Plus

<https://www.youtube.com/watch?v=7ylyxD-Ples> (on line visited 28 August 2019)

92. Debati/Ismail Kadare kundër filmave të regjimit komunist

<https://www.youtube.com/watch?v=Y-oReSTRDÅw> (on line visited 28 August 2019)

Filmat e realizmit socialist ndajne socioleget

<https://www.youtube.com/watch?v=NtUiH5Xs2yo> (on line visited 28 August 2019)

"Heqja e filmave, propozim dashakeq", revolta e Luftar Pajës: Mos hidhni baltë mbi mundin tonë!

https://www.youtube.com/watch?v=jv1tO7ZF_Os (on line visited 28 August 2019)

Report Tv-Dekomunistizimi/ Projektligji i PD-së në fazën e fundit

<https://www.youtube.com/watch?v=QvAuQHsrGuQ> (on line visited 28 August 2019)

Debati për ish-filmat e realizmit-socialist

https://www.youtube.com/watch?v=_O5B1Cqo_Ug (on line visited 28 August 2019)

Ora News - A komunikon me të rinjtë trashëgimia filmike e komunizmit?

<https://www.youtube.com/watch?v=jm8IYaughGI> (on line visited 28 August 2019)

There were 36 articles in the online media (21 of which were previously published in print),⁹³ which focused their content on the different positions regarding the broadcast or not of the movies produced during the dictatorship.

This public debate had two main approaches:

The first group of intellectuals leading institutions aiming at reflecting on the communist past (Ismail Kadare; Jonila Godole; Erald Kapri; Ergys Mertiri, etc.) claimed that these movies mislead the younger generation and give false historical information.

In the second group, the main opposition comes from the directors and actors of these movies, who are all set to defend these films as artistic value.

However, this issue was still pending in a “transitory” area, followed by a discussion on social networks. Although the AMA (Audiovisual Media Authority) came with an official promise that measures would be taken regarding the broadcast of these movies, currently (September 2019) these films are periodically broadcasted on three special thematic channels: RTSH Albanian; THD and Tring Albanian.

4.2. BunkArt 1 and BunkArt 2 – the debate between hymnization and reflection on the dictatorship

The opening of BunkArt1 on November 2014 and later on with the opening of BunkArt 2, on November 2016⁹⁴ have fueled debates. After the promotion of the memorial-monument, the exhibition was accompanied with relatively strong debates which were intensified after the partial

LSAPHOTO.COM



damage of the BunkArt 2 from the protesters. The right-wing protesters expressed their revolt against the public work saying that the bunker in the city center of Tirana was a nostalgia symbol and commemoration for the communism. Thus, according to official statements from the Democratic Party, a symbol of PPSH could not be a commemoration mean for the nightmares of the dictatorship in Albania.

To summarize the debate consisted on two sides against each other:

- First, it was the house of Enver Hoxha and the tunnels of interior ministry promoting the figure of the dictator and communism politics, serving at the same time as hymnization tool of that period (there were some who considered BunkArt1 as illegal museum dedicated Enver Hoxha)⁹⁵
- Second, if these memorials are testimony of the absurd of the time and serve to commemoration of the victim of the communism.

93

94. <http://bunkart.al/1/faqe/about-us> (on line visited 29 August 2019)

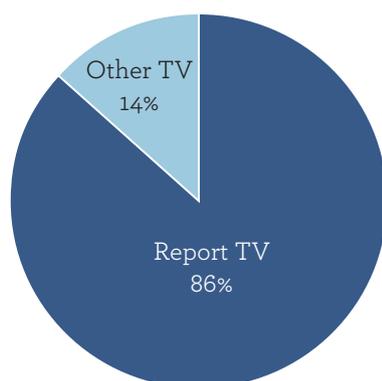
95. <https://www.reporter.al/shqiptaret-zemerohen-nga-bunkeri-i-ri-ne-qender-te-tiranes/> (on line visited 29 August 2019)

BunkArts according to the coordinators have been visited from 200 people per day and were widely discussed such as the government through the prime minister stated on 2016: “This bunker is the entrance in the first memorial, initiated to be dedicated to the memory in mind, heart and eye of the victims of the communist terror, therefore whoever said that this is a bunker to express nostalgia of the violence of the past should visit it and be quite toward the memory of the victims of the communism, who for the first time in the 25 years of the history have a space to speak directly to people, not through third persons”⁹⁶

For Simon Mirakaj, former political persecuted, activist for the topic of reflecting on the communist past this “alleged/pseudo –memorial” is similar to a private entrepreneurship. He said *“I have visited two times BunkArt2. In order to do something serious, one must consult the inteingsted parts. What is more painful is that those people whe’n were alive were considered dead, so with ,this you [meaning the creators of BunkArt2] have buried them twice”*⁹⁷

Gezim Peshkepia, another political prisoner expressed that these monuments serve only to nostalgia: *“I have visited BunkArt 1, I think it is very pure in terms of the presentation and in terms of treating the topic. They are revolted. It seems like you do not live in nowadays, but you went back on that time.”*⁹⁸

NEWS CHRONICLES FOR BUNKART BY SOURCE



Graptic nr.1, News Chronicles for BunkArt by source

This issue has been covered by media intensively, being broadcasted in the news editions based on the monitoring of all televisions in a period of 4 years – 189 televisions chroniles, from which 172 serve the promotion of the Bunkarts and only 17 provide a dual approach towards them. However, this report leaves space to discuss, given the fact that 162 promotional news chronicles were produced only by REPORT TV. The two institutions, Bunkart and Report TV, are connected with the journalist Carlo Bolino. According to the official memorial site idea of the bunkart comes from Bolino and he holds the position of general curator of the project and is also the owner of Report TV. This proves that the attention and timing provided by Report TV does not seem to be entirely natural in response to the local media agenda setting.

96. <https://www.kohajone.com/2016/11/19/bunkart-2-nostalgi-e-diktatures-rama-vizitoheni-dhe-mos-flisni-video/>

97. Interview with Simon Mirakaj, May 2019

98. Interview with Gezim Peshkopia, May 2019



Figure 5. Burimi :<https://albania.mom-rs.org/sq/pronesia/pronaret/detail/owner/owner/show/carlo-bollino/>



Figure 6. Burimi: <http://bunkart.al/1/faqe/rreth-nesh>

The results are different when comparing the situation with the articles in online media, where 34% of the published content criticized BunkArt with titles such as: “BunkArt 2: Attacks against the history”⁹⁹; “How is Bolino selling falsified history of the communist crimes”¹⁰⁰; “Bunk’art, the bunker of a dark mission!”¹⁰¹ etc.

According to Fatmiroshe Xhemalaj, historian and author of history textbooks, the mission of BunkArt is unclear since in its composition, therefore it is debatable. She said: *“Since in the name itself, BunkArts are not museums because the museum assumes to have original things, original documents inside and it is neither an exhibition because the exhibitions have a certain time and later are dismantled. Therefore, I think that they play an indicator role to understand the system, but s,till there is space to discuss”.*

To conclude, debates related to BunkArts highlighted one more time topics related to communist crimes and lack of memorials. At the same time, it has brought to attention the social conflict between nostalgia and reflection on the past.

4.3. The “Mask” portrait of Hoxha between nostalgia and hatred

On 16 September 2015 was screened “Anti homage” installation at National History Museum directed by the artist Ardian Isufi. This installation focused on the mask of the death of the dictator Enver Hoxha. The mask referring to the official announcement of the exhibition aimed at confronting the image of the dictator Hoxha with the audience that has lived in the years of communism to see if their sensations: kissing, sitting or standing cold to the image. According to Isufi himself this installation: *“It is a new conceptual approach to the relationship that every individual will have facing the dictator (his mask) and consequently the history of the dictatorship. So, the public concludes the installation that initially travels in an “isolation tunnel” and stands for a few moments in front of Enver Hoxha, creating a fictional touch with that time, we re-judge our experience towards the totalitarian isolation.”*¹⁰²

In addition to the coverage that accompanied the installation with 42 articles and 16 television chronicles that reflected the event, it was also followed by criticism of the symbolism. Through various public reactions, the danger of Hoxha’s figure being re-mystification was expressed. In other words, as a tribute to him with the mask of the dictator face, done only two weeks after his death in order to have the proportions to make it a monument or artwork in his honor.

99. <https://www.rd.al/2016/12/bunkart-2-goditje-ndaj-historise/> (on line visited 29 August 2019)

100. <http://www.albeu.com/shqipëri/si-po-e-shet-bolino-historin-e-fallsifkuar-t-krimeve-t-komunizmit/290789/> (on line visited 29 August 2019)

101. <http://www.mediaelire.net/lajm/2084/bunkart-bunker-i-nje-misjoni-te-erret/> (on line visited 29 August 2019)

102. <https://balkanweb.com/ardian-isufi-nxjerr-nga-fondet-e-muzeut-masken-e-enver-hoxhes/> (on line visited 29 August 2019)

According to the writer Flutura AÇka it should be discussed whether it is the right time to present the image of Hoxha for as long as there have not been taken into considerations measures to officially condemn the communist past in Albania, in a public statement. She writes: “Of course, it is normal to exhibit the death mask of the dictator after 25 years. But only after doing right the duties towards the democracy: To have condemned him (the dictator) for genocide, only after not turning his murders into “coffee and stuff” abuse, only after making his house a museum of the dictator, only after building a museum of the dictatorship including his terrible prisons.”¹⁰³

Meanwhile the former political persecuted Dom Gjergj Meta says that we still have not made peace with the figure of Hoxha: *“The fact that we still mention [the dictator], we have not been relieved yet. When we set free ourselves, we will not like neither to kiss him and neither spit on his figure. We simply say: You died too..”*

Every 16 September in Tirana and Gjirokastra are held public commemoration events with posters of Enver Hoxha and songs tributes to him, leaving thus the public debate on rehabilitation of former persecuted and the condemnation of the dictator figure in abeyance.



Figure 7. Hoxhas Commemoration Activity, October 16, 2016, photo: Valbona Bezati

4.4. Lack of a memorial for the victims of communism in Tirana

As mentioned in the chapter three, there have been built monuments locally, mainly with initiative of NGO-s and personal initiatives of family members, but in Tirana in 2019 is still missing a real memorial to commemorate the victims of communism. And this has initiated another public debate on the importance of a memorial to remember the victims of the dictatorship as part of the process of transitional justice.

According to the author of the chapter, all these public debates serve to the whole process of the societal reflection of the transitional justice transforming one more time the process of healing from the dictatorship at the center of the media agenda setting.

103. <https://balkanweb.com/maska-e-enverit-antihomazhi-i-ardian-isufit-ngjall-debat/> (on line visited 29 August 2019)

CONCLUSIONS

Taking all into consideration, this paper considers the art as a tool of Transitional Justice based on the literature approach and in other countries precedent. Through Artwork, post-conflictual countries can raise public debates on them, memorialize the pain and transmit testimonies to a wider public.

Regarding the Albanian case, during the communist period (1945-1990) the role of art was framed as a propaganda tool in the service of Labour Party. The creative 'works' theme was planned and delivered to the artist through the Ministry of Culture. In case some artists would break the general governmental rules on art, they would face prison punishment.

After the 90s the role of art in the Albanian society changed. An important aspect of the artwork at that time in the country became a reflection on the communism. However, the state and governmental institutions have played a minor role on initiating or supporting artwork, publications, exhibitions and memorials aiming at dealing with the past in Albania. On the other side, non-governmental organizations have published a series of study books on communism, have collected and published testimonies from contemporary witnesses of the dictatorship such as former persecuted people and political prisoners.

Also, the movies and documentaries which reflect on the country's past are a product of individual initiatives and partly produced by non-governmental organizations. The similar path has happened with memorials and exhibitions. When it comes to memorials their number is relatively small.

Times to times we deal with the issue of risking to fall and spread the nostalgia for the dictatorial system. Collecting memories and transmitting them through art has been an important form of delivering the truth but former political prisoners very often have claimed that they feel that their pain hasn't been honored as it should with a public memorial.

To summarize, we can say that the artworks have raised public debates on very important social and legal issues, more intensively in the last couple of years, but besides public awareness, those viral debates have not influenced the legislation. Therefore, there is still a need to make legal changes.

All data that is presented in this paperwork prove that in the last 5 years the attention to this topic in Albania is increased for different actors. They also bring to attention the fact that books dominate the market of reflecting on the past. Artwork where the biographic and auto-biographic books have an important influence.

To conclude, this paper claims that in a country where the lack of institution and an intensive agenda setting on nowadays problems, art has been an important factor on getting the attention of the public on serious issues such as the dictatorship, the human rights violation and also isolation. However, it has not inspired political or legal changes, therefore there is still much more to be done in this regard.

LIST OF REFERENCES

Abrahams, Fred. C. (2015) *Modern Albania. From Dictatorship to Democracy in Europe*, New York/London: New York University Press.

Bahun, Sanja. (2012). *Karmadavis: Art, Transition, Justice*. Research Paper. ESCALA and firstsite Gallery, Colchester, UK.

Bahun, Sanja. (2015). *Transitional Justice and the Arts: Reflections on the Field : Theorizing Transitional Justice*, eds. Nir Eisikovits, Claudio Corradetti, Jack Volpe Rotondi, Ashgate : Routledge

Biberaj, Elez (1999) *Albania in Transition: The Rocky Road to Democracy, USA*: Westview Press.

Boriçi, Hamit (1997) *Një shekull e gjysëm publicistikë Shqiptare*, Tirana: Gjergj Fishta

Borici, Hamit, Marku, Mark (2010) *Histori e shtypit Shqiptar*, Tirana: SHBLU

Brants, Chrisje, Hol, Antoine, Siegel, Dina (2013) *Transitional Justice: Images and Memories*. Farnham: Ashgate

Ching, Anson, (2018) *Transitional justice and transformative possibilities in memory as art*, Vancouver: University of British Columbia

Cohen, Cynthia, et al. eds. (2011). *Acting Together: Performance and the Creative Transformation of Conflict*, Vols. 1-2. New York: New Village Press, 2011.

Corradetti, Claudio & Eisikovits, N. & Rotondi, J.V.. (2015). *Theorizing transitional justice*. Surrey: Ashgate

d'Evie, Fayen. (2014). *Dispersed Truths and Displaced Memories: Extraterritorial Witnessing and Memorializing by Diaspora Through Public Art*, P. D. Rush, & O. Simic (Eds.), *The arts of transitional justice: Culture, activism, and memory after atrocity*, New York: Springer

de Greiff, Pablo (2000), *Justice and Reparations'* in *The Handbook on Reparations*, Oxford : Oxford University Press

De Maeseneer, Yves, and De Bruyne, Paul. (2013): "Secret and Sacred Places: The Role of Art in Processes of Reconciliation." *Concilium: International Review of Theology - English Edition* 1, 24-34.

Dervishi, Kastriot (2012) *Sigurimi i Shtetit 1944-1991 [State Security 1944-1991]*, Tirana: ISKK.

Fischer, Bernd J. (2010) *Enver Hoxha dhe diktatura staliniste në Shqipëri [Enver Hoxha and the Stalinist Dictatorship in Albania]*, Tirana: AIIS.

Fuga, Artan (2010), *Monolog*, Tirana: Dudaj,

Garnsey, E. (2019). *References*. In *The Justice of Visual Art: Creative State-Building in Times of Political Transition (Law in Context*, pp. 210-226). Cambridge: Cambridge University Press.

Gjilas, Milovan (2006), *Fytyra e totalitarizmit*, Tirane: Fan Noli

Godole, Jonila (2014) *Gazetaria shiptare në tranzicion* [Albanian Journalism in transition], Tirana: Papyrus.

Golebiewski, A. (2014). The arts as healing power in transitional justice. *E-International Relations Student*. Retrieved 5 July, 2019, from <http://www.e-ir.info/2014/02/19/the-arts-as-healing-power-in-transitional-justice>

James Weaver & Jeanne Colleran (2011) *Whose Memory? Whose Justice?: Personal and political trauma in Ariel Dorfman's Death and the Maiden*, *Performance Research*, 16:1, 31-42,

Kent, Lia, *Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives*, *International Journal of Transitional Justice*, Volume 5, Issue 3, 1 November 2011, Pages 434-455,

Mosely, Erin, (2007) "Visualizing' Apartheid: Contemporary Art and Collective Memory during South Africa's Transition to Democracy." *Antipoda* (5): 97-119.

Olsen, T. D., Payne, L. A., & Reiter, A. G. (2010). Transitional justice in the world, 1970-2007: Insights from a new dataset. *Journal of Peace Research*, 47(6), 803-809.

Siddiqui, N., Marifat, H., & Kouvo, S. (2014). *Culture, Theatre and Justice: Examples from Afghanistan*, In P. D. Rush, & O. Simic (Eds.), *The arts of transitional justice: Culture, activism, and memory after atrocity*, New York: Springer

Weaver, James & Colleran, Jeanne (2011) *Whose Memory? Whose Justice?: Personal and political trauma in Ariel Dorfman's Death and the Maiden*, *Performance Research*, 16:1, 31-42

Woodcock, Shannon (2016) *Life is War: Surviving Dictatorship in Communist Albania*, Bristol: Hammer On Press.

WEB SOURCES

GUIDANCE NOTE OF THE SECRETARY-GENERAL, United Nations Approach to Transitional Justice https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf

RULE-OF-LAW TOOLS FOR the POST-CONFLICT STATES, Reparations programs, <https://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>

<http://photoarts.com/haviv/bloodandhoney>

https://www.guggenheim.org/arts-curriculum/topic/art-and-ideology?fbclid=IwAR2CXwNVhSa3MgirzH_c-UULaAgcqBeItN6TY2A2xFgZewsrpwlkchcJ1UM

<http://muzeuimemories.info/intelektuale-artiste/>

[https://gazetamapo.al/festivali-xi-i-kenges-revolucioni-qe-do-te-vinte-nga-muzi\(a/](https://gazetamapo.al/festivali-xi-i-kenges-revolucioni-qe-do-te-vinte-nga-muzi(a/)

<https://muzeuimemories.info/rreth-muzeut/>

<http://www.vdkshkoder.com>

<http://www.iskk.gov.al>

<http://www.iskk.gov.al/?p=2223>

<https://www.idmc.al/libra.html>

<https://www.idmc.al/ekspozita.html>

www.idmc.al/en

<http://autoritetidosjeve.gov.al/historite-e-patreguara-te-lushnjes/>

<http://autoritetidosjeve.gov.al/instalacioni-edhe-muret-kane-veshe-mbi-krimet-e-diktatures-komuniste-ne-shqiperi/>

<http://autoritetidosjeve.gov.al/ekspozita-mbikeqyr-terrorizo-perndiq-22-tetor-2018/>

Bypass Show - Agron Tufa filmat e komunizmit janë propagandë e asaj kohe... - Show - Vizion Plus

<https://www.youtube.com/watch?v=7ylyxD-Ples>

KAPITAL - Filmat e Komunizmit, Pro? Kundër?| Pj.3 - 24 Mars 2017 - Talk show - Vizion Plus

https://www.youtube.com/watch?v=oLP_ZXjRbeM

KAPITAL - Filmat e Komunizmit, Pro? Kundër?| Pj.1 - 24 Mars 2017 - Talk show - Vizion Plus

<https://www.youtube.com/watch?v=YtHYyASy7gU>

KAPITAL - Filmat e Komunizmit, Pro? Kundër?| Pj.2 - 24 Mars 2017 - Talk show - Vizion Plus

https://www.youtube.com/watch?v=P_IJ3nubyuw

Opinion - Filmat e komunizmit, te shfaqen apo jo? (14 mars 2017)

<https://www.youtube.com/watch?v=imhhv9Js2o0>

Ismail Kadare: Të pa-tolerueshëm disa nga filmat e regjimit komunist

https://www.youtube.com/watch?v=o_1zVAq48yI

Artes nga Elsa Demo - Komunizmi në kinema

<https://www.youtube.com/watch?v=e4iqTfGSKMM>

Censura e filmave, përballje mes Petrit Rukës e Ylljet Aliçkajt

<https://www.youtube.com/watch?v=COJc2n2HYoA>

Report TV- Intervistat e plota per nje projektligj per dekomunistizimit e vreprave artistike

<https://www.youtube.com/watch?v=byqJOACrGVM>

Pasdite ne TCH, 16 Mars 2017, Pjesa 2 - Top Channel Albania - Entertainment Show

<https://www.youtube.com/watch?v=2-dpvfVvQxY>

Pasdite ne TCH, 16 Mars 2017, Pjesa 3 - Top Channel Albania - Entertainment Show

<https://www.youtube.com/watch?v=BAthvvA44WA>

Bypass Show - Agron Tufa filmat e komunizmit janë propagandë e asaj kohe... - Show - Vizion Plus

<https://www.youtube.com/watch?v=7ylyxD-Ples>

Debati/Ismail Kadare kundër filmave të regjimit komunist

<https://www.youtube.com/watch?v=Y-0ReSTRDAw>

Filmat e realizmit socialist ndajne sociologet

<https://www.youtube.com/watch?v=NtUiH5Xs2yo>

“Heqja e filmave, propozim dashakeq”, revolta e Luftar Pajës: Mos hidhni baltë mbi mundin tonë!

https://www.youtube.com/watch?v=jv1tO7ZF_Os

Report Tv-Dekomunistizimi/ Projektligji i PD-së në fazën e fundit

<https://www.youtube.com/watch?v=QvAuQHsrGuQ>

Debati për ish-filmat e realizmit-socialist

https://www.youtube.com/watch?v=_O5B1Cq0_Ug (on line visited 28 August 2019)

Ora News - A komunikon me të rinjtë trashëgimia filmike e komunizmit?

<https://www.youtube.com/watch?v=jm8IYaughGI>

<https://www.rd.al/2016/12/bunkart-2-goditje-ndaj-historise/>

<http://www.albeu.com/shqiperi/si-po-e-shet-bolino-historin-e-fallsifikuar-t-krimeve-t-komunizmit/290789/>

<http://www.mediaelire.net/lajm/2084/bunkart-bunkeri-i-nje-misjoni-te-erret/>

<https://balkanweb.com/ardian-isufi-nxjerr-nga-fondet-e-muzeut-masken-e-enver-hoxhes/>

<https://balkanweb.com/maska-e-enverit-antihomazhi-i-ardian-isufit-ngjall-debat/>

<https://www.reporter.al/shqiptaret-zemerohen-nga-bunkeri-i-ri-ne-qender-te-tiranes/> (

<https://www.kohajone.com/2016/11/19/bunkart-2-nostalgi-e-diktatures-rama-vizitojeni-dhe-mos-flisni-video/>

<http://bunkart.al/1/faqe/about-us>

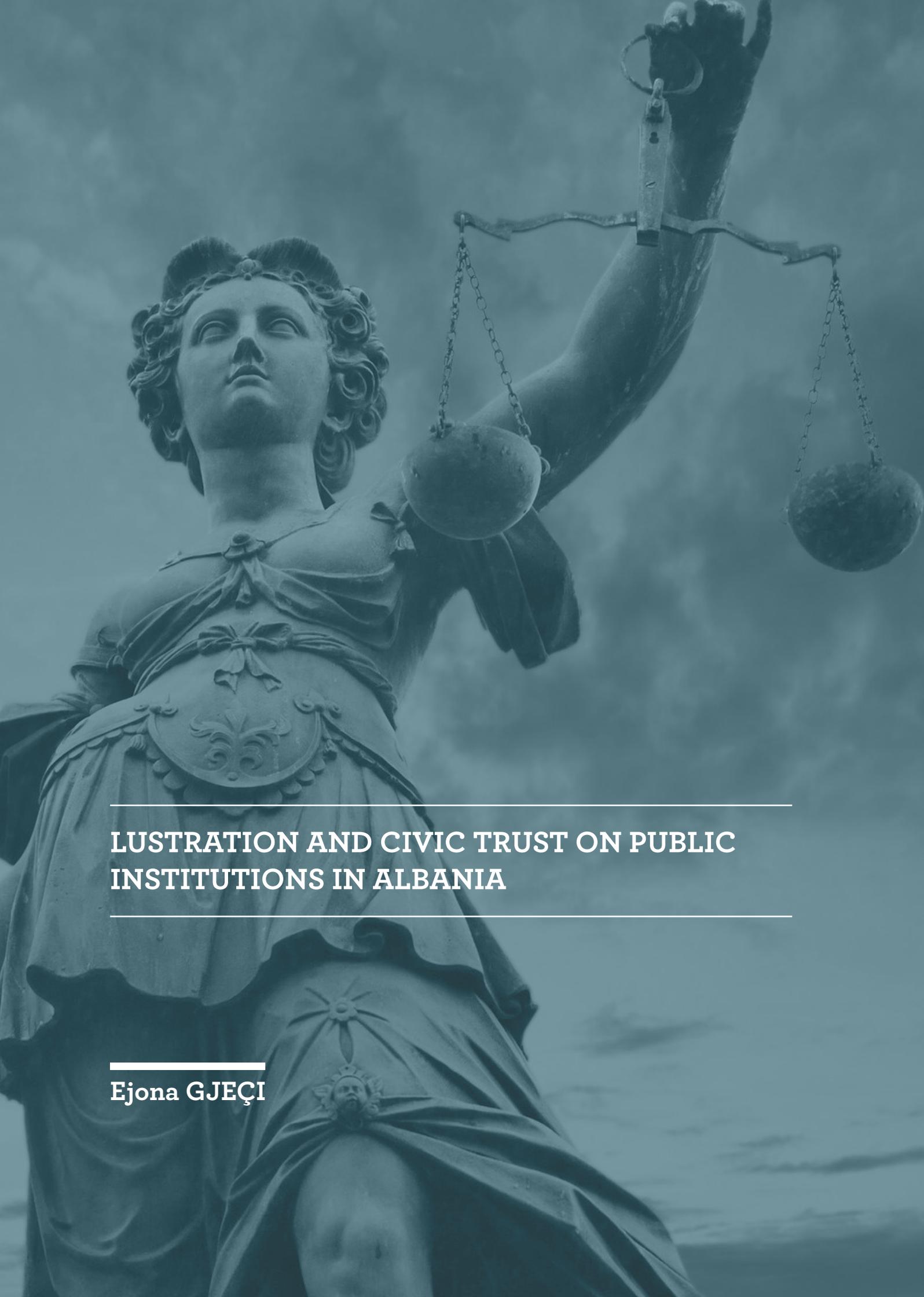
<https://balkanweb.com/maska-e-enverit-antihomazhi-i-ardian-isufit-ngjall-debat/>

ARCHIVE SOURCES

Central State Archives, Fund 14, File 590, Y.1953
Central State Archives, Fund 511. File 122, Y.1976
Central State Archives, found 511, file 122, y.1977
Central State Archives, found 512, file 111, y.1975
Central State Archives, found 511, file 125, y.1977
Central State Archives, Fund 511. File 112, Y.1976
Central State Archives, Fund 551. File 106, Y.1976
Central State Archives, Fund 511. File 122, Y.1977
Central State Archives, found 511, file 111, y.1965
Central State Archives, fund 511. file112, y.1976

NATIONAL LIBRARY

In Peoples Service, 4 Aril, 1975
IPS, 2 February, 1979
IPS, 3 Mrch, 1981
IPS, 6 june, 1978
IPS, 1 Janary, 1978
IPS, 12 Deceber, 1982
IPS, 9 Septeber, 1977
IPS, 2 Febrary, 1977
IPS, 12 Janary, 1979
IPS, 4 April, 1977
IPS, 12 December 1982
IPS, 3 March 1979
IPS, 4 Aril, 1979
IPS, 6 May, 1979
IPS, 6 June,1978
IPS, 7 July, 1981
National Library, Panorama Newspaper, February 23, 2018
National Library, Panorama Gazette, no. 5677, Dossier category, March 31, 2017



**LUSTRATION AND CIVIC TRUST ON PUBLIC
INSTITUTIONS IN ALBANIA**

Ejona GJEÇI

ABSTRACT

This paper provides an insight on the mechanism of lustration in Albania after the fall of the communist regime, while searching for a possible relation with the civic trust on public institutions of the country. The main question raised is if there exists a correlation between the lustration and trust on public institutions. Based on previous research in the field, the paper also questions the impact of the time of application of lustration and the severity of the mechanism itself as possible influencers in trust. The first hypothesis that lustration might have had positive impact in the civic trust on public institution stands. Even though to prove its statistical significance, further research is required with a larger sample and more data. According to previous studies, the impact of lustration on trust is moderated by time and severity. In this research, it is found that the variable of time does not affect trust in the case of an earlier lustration, but the level of severity influences it.

Keywords: lustration, trust, public sector, transitional justice, Albania

INTRODUCTION

Etymology of lustration

Lustration is “of special importance for transitional justice” (TJ), therefore various authors propose different definitions of it. (Posner and Vermeule, 2004 p. 767)¹

According to Horne² (2009), lustration is known as vetting of former communist secret police collaborators from public office. It is a generally implemented instrument of TJ in Central and East European (CEE) countries after the fall of communisms. Horne and other authors highlight that lustration has been applied differently in every country; there is no ‘one size fits all’. As all other public policies, instruments or mechanisms, it is understandable that each of them needs to be tailored according to the characteristics of the society it is implemented.

The literature offers various terms such as decommunisation, screening, or also vetting; which are equally meaningful, but lustration is commonly used. Originated from the word ‘lustrate’ – shedding light, purifying from guilt; lustration is considered as a necessary ritual proffering the chance to break up from the past. United Nations³(2006) reflect on this concept considering two components in the same time. First, it carries a symbolic aspect: a separation from the past authoritarian regime, and secondly the institutional side: changing the composition of the public institutions and government.

Lustration “involves the public exposure of collaborators who were otherwise not known as such, along with the prohibition of serving in office for a period of time”. (Pehe, 1991 as cited in Posner and Vermeule, 2004). Stan (2009)⁴ works with the same definition. On the other side Letki⁵ (2002) uses lustration with a slight distinction, as the procedures used for the screening process of people with past involvement in the communist regime who are seeking a position in the public administration.

1. Posner, E. A., & Vermeule, A. (2004). Transitional justice as ordinary justice. *Harvard Law Review*, 117(3), 761-825.

2. Horne, C. M. (2009). International legal rulings on lustration policies in Central and Eastern Europe: Rule of law in historical context. *Law & Social Inquiry*, 34(3), 713-744.

3. United Nations. (2006). Rule of law tools for post-conflict states: Vetting: An operational framework (UN Document HR/PUB/06/5). New York, NY: United Nations, Commission on Human Rights.

4. Stan, L. (Ed.). (2009). *Transitional justice in Eastern Europe and the former Soviet Union: Reckoning with the communist past*. Routledge.

5. Letki, N. (2002). Lustration and Democratisation in East-Central Europe. *Europe-Asia Studies*, 54(4), 529-552.

Horne and Levi⁶ (2004, p. 52) have worked extensively on lustration in the CEE countries and they offer a broader definition for the term: “It is a legal process for obtaining knowledge about key collaborators with the past regime and, when deemed appropriate, inhibiting their involvement in the present one.” Stating this, the authors explain that laws, especially in new democratic countries, tend to be caught in the cycles of political manipulation; which is also confirmed from Austin and Ellison⁷ (2008).

After the fall of communist regimes, several countries in Central and Eastern Europe inherited the public administration with officials involved in illegal activities from the past. In order to reform the institutions, the new governments adopted the so-called Lustration Laws. According to David⁸ (2003) lustration laws refer to laws that instruct particular conditions to hold a public office position during the new democracies by persons associated with the past regimes. They were specifically designed to deal with the abuses of power by previous regimes and as means of building society after transition. (Choi and David, 2012)⁹

With ‘purified’ institutions, the new governments could build democratic, free and trustworthy administration, which would serve to the citizens of the country, not to the wishes of the Party. Van de Walle et al¹⁰ (2005) consider trust as a crucial element especially during the periods of crises, which in this paper’s case is after the change of the regime from communism to democracy. According to the authors in these situations, the public sector is the main actor, which will hold together the economy and the society, thus trust in public sector becomes an element worth paying attention to.

TRUST AND PUBLIC SECTOR

Coulson (1998, p. 31)¹¹ describes trust as an indicator of “... a relationship which can be between two or more individuals, between individuals and an organisation (such as a company or social services department), or between several organisations”. As relationships, various sorts of combinations could be researched on; therefore, they need to be differentiated. Bouckaert (2012, p. 94)¹² categorizes what he calls ‘sets of interactions’ and ‘directions of relationship’ in three main groups: i -) trust between the citizens and organizations in the government and public sector, ii -) trust between government and public sector in citizens and organizations, iii -) trust within government and the public sector. The author acknowledges that the first direction of trust is the one on which there have been conducted researches the most. On the other side, Bouckaert admits that this direction of trust is crucial in order to build a functional public sector in the society. However, he acknowledges that the three of the identified directions of relationship are important when trying to understand the function of the public sector in the society.

Nevertheless, Bouckaert (2012) in his work highlights that there are differences in defining the terms ‘government’ and ‘public sector’ affected by social context, which are related to the

6. Horne, C. M., & Levi, M. (2004). Does lustration promote trustworthy governance? An exploration of the experience of Central and Eastern Europe. In *Building a trustworthy state in post-socialist transition* (pp. 52-74). Palgrave Macmillan, New York.

7. Austin, R. C., & Ellison, J. (2008). Post-communist transitional justice in Albania. *East European Politics and Societies*, 22(2), 373-401.

8. David, R. (2003). Lustration laws in action: the motives and evaluation of lustration policy in the Czech Republic and Poland (1989-2001). *Law & Social Inquiry*, 28(2), 387-439.

9. Choi, S. Y., & David, R. (2012). Lustration systems and trust: Evidence from survey experiments in the Czech Republic, Hungary, and Poland. *American Journal of Sociology*, 117(4), 1172-1201.

10. Van de Walle, S., Van Roosbroek, S., & Bouckaert, G. (2008). Trust in the public sector: is there any evidence for a long-term decline?. *International Review of Administrative Sciences*, 74(1), 47-64

11. Coulson, A. (Ed.). (1998). *Trust and contracts: relationships in local government, health and public services*. Policy Pr.

12. Bouckaert, G. (2012). Trust and public administration. *Administration*, 60(1), 91-115.

organisational structure of a country and to the languages; thus making it difficult to have international comparative assessments on trust. Thought it is not the purpose of this paper to further research on the definitions of these terms. Therefore as meaning of the public sector it is used the common accepted usage of it, as the public administration and its mechanisms that provide services to the citizens and organisations of a country. In addition, Bouckaert (2012) when using the term in his analysis, describing the public sector includes in its definition the civil service, its administrative components, the executive and legislative politicians, he also considers to include the judiciary and its mechanisms.

The importance of trust in the public sectors is analysed by several authors. Bouckaert (2012) when assessing the differences of trust between his three sets of interactions, especially for the direction of trust of the citizens on public service, highlights that above all trust has become the driving force and one of the main goals in the related reform policies. Meaning that governments value the importance of trust of the population on institutions and the service, they receive from the public service mechanisms. "Citizen's trust and confidence in public institutions is clearly an enormously complex phenomenon, with many contributing strands and factors." (Heintzman and Marson, 2002, p. 551)¹³

Heintzman and Marson also refer to the previous Bouckaert research when analysing trust. Bouckaert and other colleagues describe two approaches when it comes to trust, or confidence of citizens in public institutions. They are called the 'identity' and 'performance' theories. The identity approach supports a negative correlation between trust based on societal factors and changes of values and individual or collective identities. While the performance theory supports the idea that the government performance, or the people's perception of its performance, affects the trust on public institutions. According to the authors, the second approach's impact can be divided in two groups, macro performance and micro performance. The macro performance group involves elements like economic growth, employment, health care, education, environment and other macro indicators, which are impacted by the government performance. On the other hand, the micro performance elements include political behaviour and scandals, bureaucratic procedures, quality of service delivery to the citizens, and so on.

When discussing lustration, it can be included in the micro-performing category. Thus, it can be presumed that the level of difficulty of quantifying its impact on the creation of trust and confidence on public institutions is very high and complex.

Even though, there are strong and conflicting views of lustration effects on the trust it generates in the public. There is a plethora of studies focused on the type of lustration policies applied in different countries. But there are not as many researches for its effectiveness in the creation of public trust on institutions and governmental bodies. Consequently, this paper will study the impact of lustration policies on public trust in Albania, since the fall of communist regime.

13. Heintzman, R., & Marson, B. (2005). People, service and trust: is there a public sector service value chain?. *International Review of Administrative Sciences*, 71(4), 549-575.

LUSTRATION IN ALBANIA

Austin and Ellison (2008, p. 373)¹⁴ in their article about Albania and transitional justice state that “Having experienced possibly the harshest forms of communism in Europe, one would think that Albania had the most compelling reasons to undergo sustained transitional justice.” While just as many other analysts (Ballauri, 2014; Erebara, 2015; Ibrahim, 2009)^{15 16 17} Austin and Ellison admit that: “One need not look much past the biographies of Albania’s transition leaders to confirm that Albania did little vis-à-vis with the past.” (Austin and Ellison, 2008, p. 373)

After the fall of the communist regime, in 1991 Albania was a new fragile democratic country, which started the path towards building its own self with a new constitution, laws and public institutions and so on. Albania’s first lustration law was in 1995, which started to expire article by article in 1997 when the Socialist Party came into power until 2001 when it was no longer in force. The law captured a broad segment of action with its criteria and removed from the seats a large number of officials. Nevertheless, the selection process was not considered transparent.

When the Democratic Party came into power in 1992, with a vague article in the Labour Code started a purging campaign in the public administration of all those who were considered as ‘communists’. (Erebara, 2015) According to Austin and Ellison (2008) during this period few attempts were made to deal with the past in an objective and just way. The parties in power, the Democratic Party and the Socialist Party, did not show good will and instead used those few attempts as political means against the political opponent, which is stated from Erebara (2015) too. They conclude that this wrongdoing brought “disastrous implications for Albania’s overall transition from communism to democracy.”

The next lustration law passed in the parliament in 2008, only with the votes of the majority. The opposition and the civil society claimed that it violated the basic human rights. The constitutionalist expert Genti Ibrahim (2009) in an interview for Deutsche Welle stated after the annulment of the law that it was against the Albanian Constitution in three of its articles. He alleged that this lustration law was not transparent, since it did not offer the possibility to every citizen to know or have access to information if he or she had a file during the regime. According to Ibrahim the lustration law of 2008 should have also included the right of information. He considers the lustration in Albanian as a failed case because the process was sabotaged from those from the past regime who were still infiltrated in the public institutions and their main interest was the to be political leaders and to blackmail their political opponents. When affirming the need for a new lustration law according to the Albanian Constitution and the international standards, Ibrahim stated that the effect of the law should fall on those who were collaborators of Sigurimi (Directorate of State Security) and party functionaries, and not the public functionaries as the judges or prosecutors.

In 2015, two draft laws were being discussed. One of them was introduced from two deputies of the opposition in cooperation with the civil society, while the other one was proposed from the government of the time, led from the Socialist Party. Both of the draft laws proposed the creation of an institution of archives which would manage the files. But in contrast to the draft brought on the table from the government, the one from the civil society had foreseen also lustration and opening of the files in it. It was the duty of the new file managing authority to access the files of the public officials and those who were related to the communist regime had two options.

14. Austin, R. C., & Ellison, J. (2008). Post-communist transitional justice in Albania. *East European Politics and Societies*, 22(2), 373-401.

15. Ballauri, E. (2014). Lustracioni dhe Integrimi. Website: <https://bit.ly/2OGRGGf>, [20.04.2019].

16. Erebara, Gj. (2015). Drejtësia tranzicionale, lustracioni dhe hapja e dosjeve. Website: <https://bit.ly/2pcfKq5>, [09.03.2019].

17. Ibrahim, G. (2009). Shqipëria ka nevojë për një ligj lustracioni, ku çdo qytetar të gëzojë të drejtën e informimit për dosjet e Sigurimit e të kaluarën. Website: <https://bit.ly/2Mt8lKU>, [06.07.2019].

One of the options had foreseen their dismissal from their actual position, while the second one included the possibility of maintaining their current position but their file would become public. On the other side the government proposed the creation of the authority for accessing and managing of the files, without the element of lustration.

The Parliament of the Republic of Albania passed the draft law proposed from the government. It led to the creation of the Authority on the Information on the files of the ex-State Security in 2015. The objective and the responsibilities of the Authority, also published on their website¹⁸, are:

- *The collection of documents of the former State Security for the purposes and according to the procedures provided by this law;*
- *Evaluation, ordering, recording, preservation and administration of documents, according to the rules and principles of the legislation in force for archives;*
- *Co-operation and co-ordination of work with public authorities and archives for the purposes of applying this law;*
- *Providing information and notifications on the documents, as well as guaranteeing their review and submission to the applicants;*
- *Supporting scientific research during the historical review of the former State Security activity, by guaranteeing the possibility of reviewing documents and submitting duplicate documents;*
- *Informing individuals, constitutional institutions, public authorities and other interested subjects, according to this law.*

According to the abovementioned tasks, the Authority is responsible for the management and the maintaining of the files, providing information and supporting individuals, researchers and various institutions to access those files, but its obligations do not go any further. In his analysis Erebara (2015)¹⁹ reaches the conclusion that: “After so many successive attempts to ‘lustrate’ the country or ‘open the files’, Albania remains a country that has neither been cleared nor knows anything based on proofs from its own history.”; thus considering the process of lustration as failed. Even though the attempts to lustrate the past in Albania seem as they might have all failed, there is a lack of data and research to study the possible impact of lustration in various indicators of democracy and society wellbeing.

18. Authority on the Information on the files of the ex-State Security, <http://autoritetidosjeve.gov.al/detyrat/> [15.08.2019]

19. Erebara, Gj. (2015). Drejtësia tranzicionale, lustracioni dhe hapja e dosjeve. Website: <https://bit.ly/2pcfKq5>, [09.03.2019].

LUSTRATION AND TRUST IN PUBLIC SECTOR

Considering the impact of lustration in civic trust on public institutions, there are various viewpoints about application of lustration itself. The arguments against lustration affirm that by some means it violates the human rights and liberties. For example, Posner and Vermeule (2004, p. 791)²⁰ introduce the argument of the dilemma of retroactive justice, punishing the collaborators of the old regime through the new law, while during the regime their actions were legal and not considered a crime. The same question is raised in the research of Kaminiski and Nalepa (2006)²¹, but they raise it in a more broad level, involving all the transitional justice mechanisms. On that point, the authors conclude this violates rule of law concerns. Other authors argue that the implementation of lustration policies is problematic and biased. Not all the perpetrators are punished, while the danger of political manipulation of lustration policies undermines the goal of good governance. (Austin and Ellison, 2008)²² Therefore, it leaves grounds for citizens to perceive it as a political tool, negatively influencing the trustworthiness of public institutions. Austin and Ellison (2008) bring the case of Albania, an example where TJ tools were used as political means, also to blackmail people from the old regime still in high ranked positions after the fall of communism.

After a thorough look in a search engine using the keywords 'lustration' and 'trust' there was a result of 433 thousand articles, papers, news and other materials in the internet. While when adding 'Albania' in the search algorithm, the number of the results narrows down to 34 thousand and nine hundred. The numbers change when switching to a scholar search engine, which is more appropriate for academic research purposes. Using the same keywords, 'lustration' and 'trust', the results are 14 thousand and eight hundred. While if 'public institutions' is added in the search, the outcomes increase to 18 thousand and five hundred. When the key word 'Albania' is added, the number is reduced to 15 thousand and six hundred. It is important to mention that even though when 'Albania' is added in the search logarithm, in the first papers ranked in the result section, after a cursory look most of them are not related to the country, nor it appears in their content. What could be considered relevant from this point is that the relation between lustration and trust seems to be interesting to lot of researches, but still it cannot be compared to lustration. Because it has twice as many articles to browse in the scholar search engine, respectively 31 thousand and six hundred.

Despite being a topic of public interest, the pro arguments toward the need of lustration process, are based on the standpoint of its importance for state security and effective public administration. (Williams, 2003)²³ If public institutions are filled with human resources who served to a centralized regime, they are ill fitted compared to skills required to operate in an open market management. Other argumentations are based on the trustworthiness that the citizens need to build on the public institutions of their country. As Letki (2002, p. 540)²⁴ calls it the 'purification', the power of the rituals and symbols which should not to be underestimated. She affirms: "Performing' the rite of passage during the transition is necessary for the radical redefinition of the social and political order." UN²⁵ (2006) also highlights the symbolic significance of lustration in the process of building trust in the institutions and government.

20. Posner, E. A., & Vermeule, A. (2004). Transitional justice as ordinary justice. *Harvard Law Review*, 117(3), 761-825.

21. Kaminski, M. M., & Nalepa, M. (2006). Judging transitional justice: A new criterion for evaluating truth revelation procedures. *Journal of Conflict Resolution*, 50(3), 383-408.

22. Austin, R. C., & Ellison, J. (2008). Post-communist transitional justice in Albania. *East European Politics and Societies*, 22(2), 373-401.

23. Williams, K. (2003). Lustration as the Securitization of Democracy in Czechoslovakia and the Czech Republic. *Journal of Communist Studies and Transition Politics*, 19(4), 1-24.

24. Letki, N. (2002). Lustration and Democratization in East-Central Europe. *Europe-Asia Studies*, 54(4), 529-552.

25. United Nations. (2006). Rule of law tools for post-conflict states: Vetting: An operational framework. (UN Document HR/PUB/06/5). New York, NY: United Nations, Commission on Human Rights.

Based on these arguments the question about the lustration's impact on the civic trust on public institutions is raised and consequently the first hypothesis of the paper is:

Hypothesis 1: *Lustration positively affects the trustworthiness of public institutions.*

In their research about lustration programs, Letki (2002) and Horne²⁶ (2012) consider as important elements of timing and the harshness of its programs. Horne bases her arguments for the question 'when to lustrate' on preceding research from Ackerman²⁷ (1992) who considers as the best time the early transitional period. The reason behind it is that if the lustration tools are applied after the country passes the period of transition, it (lustration) will get vague or 'corrupted' from the very original intention. In addition, if applied too late, the suitability of this transitional justice instrument should be questioned. (Solyom, 2003)²⁸

In the case of Albania, there have been several attempts to implement various lustration tools since the fall of the communist regime, therefore making it an interesting research question if these tools are more effective in the beginning of the transitional period in the 90's. On the other hand, in 2015 when the last so called from the media 'lustration law' was passed in the parliament. Connecting it with the main objective of this research, the second hypothesis would be:

Hypothesis 2: *The earlier lustration measures are adopted the more positively will it affect civic trust on public institutions.*

As per the second element, the harshness of lustration programs, the viewpoints are divided in two main groups. The first one supports the idea that harsher programs are better at restoring institutional trust. The second group believes that milder programs are better for creation of trust, with a rather symbolic focus. Authors like Kiminski and Nalepa (2006)²⁹ have thoroughly researched the effectiveness component in both cases, lustration's severe forms of 'punishment' and the mild ones as well. According to the empirical data from Horne's several researches extended in time, it seems to be a positive correlation between the harshness and the impact of lustration, thus the same logic will be followed in this research when testing lustration's impact in trust on public institutions.

The third hypothesis for this study is:

Hypothesis 3: *The harsher the lustration programs the more positively will it affect civic trust on public institutions.*

On the other side, other authors discuss the impact of lustration on trust, taking in consideration the types of lustration systems, not the timing and severity factor, as does Horne (2012)³⁰. "Lustration systems" allow us to differentiate strategies of dealing with inherited personnel into three core categories of dismissal, exposure, and confession." (Choi & David, 2012, p. 1173)³¹ Distinguishing the types of lustration, the authors make a comparison based on sociology and behaviour logic. The dismissal is considered as the "ritual of sacrifice", where the government is purified by the tainted officials. Exposure is considered as a "shaming ritual", which aims

26. Horne, C. M. (2012). Assessing the impact of lustration on trust in public institutions and national government in Central and Eastern Europe. *Comparative Political Studies*, 45(4), 412-446.

27. Ackerman, B. (1994). *The future of liberal revolution*. Yale University Press.

28. Solyom, L. (2003). The role of constitutional courts in the transition to Democracy: with special reference to Hungary. *International Sociology*, 18(1), 133-161.

29. Kaminski, M. M., & Nalepa, M. (2006). Judging transitional justice: A new criterion for evaluating truth revelation procedures. *Journal of Conflict Resolution*, 50(3), 383-408.

30. Horne, C. M. (2012). Assessing the impact of lustration on trust in public institutions and national government in Central and Eastern Europe. *Comparative Political Studies*, 45(4), 412-446.

31. Choi, S. Y., & David, R. (2012). Lustration systems and trust: Evidence from survey experiments in the Czech Republic, Hungary, and Poland. *American Journal of Sociology*, 117(4), 1172-1201.

transparency but publicly shames the persons involved in the process. The last type, confession is compared to the ritual of “self-sacrifice” serving as the “moral re-birth” of the tainted officials, to whom is given another chance.

For each of these types of lustration, authors express various opinions. Schwartz (1994)³² regarding the dismissals mentions as an important negative consequence the possibility that this kind of lustration may diminish the administrative skills and organizational knowledge, lowering the managerial capacities of the institution. However, this involves also some possible negative effects of lustration as well, which should be taken in consideration when studying this important mechanism of transitional justice. On the other hand, maintaining these officials in the public administration might also seem not fair, since they could have likely been involved in certain activities during the communist regime. Those being in key positions might undermine the consolidation of the new democracy and young institutions, harming the political and social reforms. Moreover, it would not be fair to the victims themselves. (David, 2003)³³

Choi and David (2012) acknowledge there is lack of information and research on the impact that lustration as an important process towards institutions building in new democracies, might have on the trustworthiness of these institutions. They admit that so far, only Horne (2012) assessed empirically the impact of lustration. However, these authors developed an experiment in nationwide representative surveys, in Hungary, Poland and Czech Republic, which showed a positive relationship between dismissal and confession to the trust of citizens in their governments.

32. Schwartz, H. (1994). Lustration in Eastern Europe. *Parker School Journal of East European Law*, 1(2), 141-71.

33. David, R. (2003). Lustration laws in action: the motives and evaluation of lustration policy in the Czech Republic and Poland (1989-2001). *Law & Social Inquiry*, 28(2), 387-439.

METHODOLOGY

The study of lustration and its possible impact in civic trust on public institutions aims to study Albania's experience in three periods. The reasons behind this are the three attempts Albanian governments have made to implement lustration tools since the fall of communist regime, starting from 1995 to 2017. The periods are 1995 – 2008, 2008-2015, and 2015 – 2017. The division of the time segments corresponds to the reforms in the country.

The independent variable is lustration and the dependent variable is the civic trust on public institutions. For the independent variable, there will be used primary data, while for the dependent one secondary data. The three hypotheses will be tested for each of the periods. Since it will be divided in three segments, it will give the opportunity to make comparisons between them, especially for the second and the third hypothesis. It is expected that the severity and the timing of lustration each of them has affected the success of the lustration law on the civic trust on public institution. The anticipation is based on the diversity of the reforms passed for each period. In the same time this will be a challenge, or perhaps a limitation, because aligns both the factors, time and severity altogether.

For this study the approach and the attitude of various stakeholders, like members from the civil society, researchers, public administration employees and members of political parties were taken as sources of information during the collection phase of the primary data. The information was collected through individual interviews, with semi-structured questions. During the data collection phase where conducted seven interviews in total. Only two of the persons interviewed agreed to be quoted with their name and the rest of them preferred to be left anonymous. The first interview was conducted with Elsa Ballauri, Head of the Albanian Human Rights Group, who is at the same time a distinguished civil society activist. During her career, she worked as a journalist, writer, reporter and consultant. Ms. Ballauri is also the first woman in Albania to establish a Non Governmental Organisation and famous for supporting women rights in the country. She was active in matters of transitional justice in Albania and dealing with the past regime.

Other interviews were conducted with employees in the public administration. One of them works as a specialist in the Ministry for Europe and Foreign Affairs; another one is the head of one of the directories in the Ministry of Interior. An officer from the General Prosecutor's Office was also interviewed during this research. A judge from the Appellate Court of the District of Tirana is among the persons interviewed, who has an extensive career in the justice field stretching over two decades of professional work experience. It was considered interesting for the research to include someone from the education sector as well. Thus, an interview was conducted with a professor from the Faculty of Economy from University of Tirana. The professor has been a member of the Albanian academia before the 1990, making them a witness of both education systems, the communist and the democratic one. These five persons who were interviewed for this research, chose to keep their identity undisclosed, nevertheless their opinions and experience from the institutions that they come from, are important to this study.

The last interview for the paper was conducted in September 2019. The interviewee is Nenad Šebec, the former Executive Director of the Center for Democracy and Reconciliation in South East Europe. Mr. Šebec was also the spokesperson for the Regional Cooperation Council. His experience with democracy and reconciliation is in a regional level, making his opinion relevant not only for the case of Albania, but on a regional level as well.

In addition to person-to-person interviews, public statements from several public figures were used as secondary sources of information. Taking in consideration that there is a large number of important actors whose opinions are relevant to this study, but keeping in mind the difficulties of reaching them out and also their limited availability, some public interviews or their articles published in various media channels (published press, online portals, etc.) and books are taken along in consideration.

The materials gathered during primary data collection phase were mainly focused in gathering information related to the independent variable: lustration. The persons interviewed were asked questions regarding lustration's impact during the periods analyzed in the paper.

As much important to the research are the indicators of trust on public administration. The main sources of information are the opinion polls conducted from the Institute for Democracy and Mediation (IDM) in collaboration with United Nations Development Program (UNDP) in Albania. They cover the period from 2014 - 2018. The polls are called "Trust in Governance".

These opinion polls aim "to explore the level of public trust towards governmental institutions as well as explore citizens' attitudes towards the performance of public institutions and service delivery." The findings of the Institute's research include perceptions on: a-) trust in public institutions, b-) corruption in public institutions, c-) citizen's engagement with the government, d-) government accountability, e-) performance of public institutions, f-) satisfaction with public service delivery, g-) government transparency and so on. The paper will mainly focus on the public perceptions on the trust in public institutions, though all the other elements could be of interest in another extended research on the topic.

According to the OECD (2013)³⁴, trust in public institutions is important for the success of a wide range of public policies, programmes and regulations that depend on the cooperation and compliance of its citizens. Lack of trust compromises the eagerness of citizens and private sector to act in response to public policies and thus gets in the way of sustainable progress. As stated in the IDM reports, the aspect of trust is quite complex. It involves a combination of different stereotypes, experiences, principles and beliefs, which are all the same delicate to the policy outcomes. For example, social and demographic factors, such as the level of literacy and schooling, gender and age also influence public and political trust. Unfortunately, these polls are the latest reports with indexes on civic trust on public administration and other stakeholders that Albania has so far.

There are also some older data from the World Values Survey (WVS) Association, which is a global network of social scientist who gathers information around the world regarding the change of beliefs, principles and values and their impact in social life. The main tool for the data gathering is a common questionnaire. The answers of the questionnaire are measured in a Likert scale, of 6 levels: 1-) a great deal; 2-) quite a lot; 3-) not very much; 4-) not at all; 5-) do not know and 6-) no answer. The Survey started in 1981 and so far, there have been six completed waves of data collection, while the seventh wave results are expected to be published soon. Albania has been part of this survey for the third and the fourth wave, respectively for the period of 1998 and 2002.

Regarding trust in various society actors, or institutions, the WVS uses the term 'confidence' and not 'trust', but they are synonyms of each other, so in this case terminology is not an issue.

As per the perceived trust from the society, in case of Albania, it seems that there is no other data or report. This makes it challenging to make a longitudinal assessment of trust starting

34. OECD (2013). Government at a glance 2013. OECD publishing, Website: <https://bit.ly/2BOKWDy>. [24.04.2019].

from the fall of the regime in 1990 until nowadays. Thus, lack of quantitative data in a complete time series from 1990 regarding the trust in public administration is one of the challenges of the research. Nevertheless, the data from the World Values Survey Association and the Institute for Democracy and Mediation correspond to the lustration laws timeline, which will be the main source of information when assessing the hypotheses.

FINDINGS

The first hypothesis of the study presumes a positive relation between lustration and the trust on public institutions. When the first law of lustration passed in the parliament the expectances from the people was very high, since it happened in 1995, four years after the fall of the regime. According to Elsa Ballauri, head of Albanian Human Rights Group, who is also a popular researcher in the discussions of dealing with the past regime, the lustration of that time cannot be considered as such. She says that lustration affected the trust people had on public institutions raising their expectations towards their government and state institutions, but since the problem lays deeper and lustration is not the only tool, which could have solved the situation. Ms. Ballauri affirms that the tool of lustration as an important mechanism of transitional justice was “abused” under political implications and therefore it was a failure and did not even fulfilled its objectives. Thus, it could not have influenced the trust on public institutions.

Austin and Ellison (2008) reached the same conclusion regarding the first law of lustration in Albania. According to them, among other transitional justice tools, lustration was used as a mean of blackmailing in the arena of the political persons and parties.

Nafiz Bezhani (2001, p. 11)³⁵ served as the Chairman of the State Commission for the Control of Public Figures. He was elected from the Parliament in 1997 and in his book referring to transitional justice tools wrote: “...two laws that surprised the civilized world: the anti - genocide law, which in fact had genocide elements and also the law for the control of the figure of the officials in high ranked state positions, which penalized massively even innocent people.”

One currently high ranked public administration officer in the Ministry of Interior and another from the Prime Minister office, confirm there have been very little attempts to remove from office the employees involved in the communist regime. This is mainly addressed to high ranked public officials until the end of the year 2010. After this period, most of them passed away, or retired. Even though they confirm that lustration helps to build trust in public institutions.

Nenad Šebec, who as the former Executive Director of the Centre for Democracy and Reconciliation in South East Europe had the chance to observe on regional level, stated during the interview, that none of the Western Balkans countries could not effectively apply the transitional justice mechanisms. Especially referring to the case of Albania and Bosnia and Hercegovina, he affirmed that “in an idyllic world where lustration, or the truth commissions, would have been correctly applied, the current situation of our countries would have been much better” in every aspect. Instead according to him, there was a severe lack of political will, for various reasons, to push all the highly needed transitional instruments to be implemented.

Following the approach of Ms. Ballauri, Austin and Ellison (2008), and Erebara’s (2015) research considering the first two lustration laws as unsuccessful having little tangible impact. Therefore, the first hypothesis that lustration might have had positive impact in the civic trust on public institution stands. Even though to prove its statistical significance, further research is required

35. Bezhani, N. (2001). *Mëkatarrë: Njëpër dosjet sekrete të sigurimit të shtetit*. Botimet Toena. Tiranë. 11.

with a larger sample and more data. The entire persons interviewed expressed a strong belief that lustration could have had a larger impact on civic trust indicators toward the public institutions, if it would have been successful. This includes all the research period from 1995 – 2017.

In a general overview of the trust on institutions, public institutions included, from 2013 – 2017 from Institute for Democracy and Mediation (2017) (see Table 1), important public institutions as President, Parliament, Prosecutor, Judiciary and Courts have a very low trust index, especially if compared to international organizations like EU, UN and NATO. Political parties have as well very low trust indicators, which according to Fatos Lubonja, a civil society member and ex-prisoner of the regime, explains why the people are so sceptical and do not believe anymore that politicians are their true representatives.

Table no. 1: Institutional trust (2013-2017)

Institutions	Year				
	2013	2014	2015	2016	2017
	Percentage of trust				
Central Government	30%	37%	34%	44%	47%
Local Government	N/A	N/A	N/A	49%	49%
President	35%	25%	29%	36%	33%
Parliament	24%	29%	22%	27%	34%
Judiciary	19%	18%	17%	23%	N/A
Prosecutor	N/A	N/A	N/A	N/A	22%
Courts	N/A	N/A	N/A	N/A	21%
Police	37%	41%	46%	61%	53%
Armed Forces	51%	44%	46%	55%	63%
Political Parties	17%	19%	15%	23%	21%
Healthcare	30%	32%	27%	50%	53%
Education System	38%	37%	33%	59%	63%
Media	40%	39%	39%	58%	54%
Religious Institutions	51%	44%	52%	58%	76%
Civil Society	39%	34%	38%	46%	57%
European Union	70%	68%	72%	80%	85%
United Nations	N/A	N/A	N/A	80%	85%
NATO	74%	71%	74%	79%	84%

Source: Institute for Democracy and Mediation (2017)

Going back in time, according to WVS the levels of trust towards the central government increased when compared to 1998 versus 2002 data, though a decrease is seen in the case of trust on the parliament (see Table 2).

Both the data from the World Values Survey, from 1998 and 2002, and from the Institute for Democracy and Mediation, from 2013 – 2017, show same positive trend of trust that Albanian have towards the international organizations and bodies, as United Nations, European Union and NATO.

Table no. 2: Levels of confidence for Albania, according to the WVS

Institutions	1998 - WVS Wave 3					2002 - WVS Wave 4				
	Level of confidence					Level of confidence				
	A great deal	Quite a lot	Not very much	Not at all	Do not know & no answer	A great deal	Quite a lot	Not very much	Not at all	Do not know & no answer
Central Government	4.0%	33.9%	47.5%	6.3%	8.3%	17.9%	39.4%	27.3%	14.1%	1.3%
Parliament	5.8%	50.5%	31.5%	5.0%	7.2%	9.8%	33.9%	32.7%	20.3%	3.3%
Political Parties	1.4%	20.8%	56.1%	18.7%	3.0%	3.9%	24.7%	37.5%	31.3%	2.6%
Civil Service	1.0%	15.2%	34.8%	18.2%	30.8%	5.9%	29.1%	30.0%	23.0%	12.0%
Police	25.2%	46.6%	21.8%	4.8%	1.6%	18.9%	45.4%	25.4%	9.3%	1.0%
United Nations (UN)	42.5%	36.1%	9.8%	2.6%	9.0%	N/A	N/A	N/A	N/A	N/A
European Union (EU)	47.3%	33.7%	12.3%	1.3%	5.4%	39.4%	40.6%	11.6%	3.7%	4.7%
NATO	N/A	N/A	N/A	N/A	N/A	47.7%	35.5%	8.8%	4.3%	3.7%

Source: WVS 3rd and 4th wave, author's presentation of data

The second hypothesis considers the element of time on which lustration is implemented as a mechanism, as a possible positive factor in trust on public institutions. Following the points of view of Elsa Ballauri and Fatos Lubonja expressed during public interviews, they both consider lustration as a “failed attempt” to clean the figures of those involved in the regime. Moreover, according to Ms. Ballauri the element of time might have made a difference in the impact of the instrument itself, but also perhaps it might have created a positive impact on civic trust as well. Her logic on the arguments stays the same for all the three periods, even though she considers the last lustration law of 2015 as unnecessary. The reason behind this point of view lies on the element of time. Ballauri, as other abovementioned researchers acknowledge that the best time to implement a transitional tool as lustration is in the first years after the fall of the communist regime. While after 25 years, as it happened with the 2015 law, the tool of lustration loses its purpose. Since the mechanism becomes ineffective with the time passing by, thus the chances that it might affect the civic trust on public institutions demean with the time. Therefore, lustration especially in the last research period, after 2015, could not have influenced positively trust on public administration. In this case the later the lustration comes, the less of impact it

would have. If we reverse the logic of this argument, it means that the earlier the implementation of lustration, the higher the impact on trust on public administration. Since according to the experts interviewed the lack of proper lustration in the first years after the fall of communism might have negatively influenced the trust in public institutions. For example, we can refer to Table No. 2, year 1998 according to the World Value Survey, where some of the institutions with the lowest trust levels are the Central Government, the Parliament, the Civil Service, etc. Thought it should be taken in consideration that in 1998 Albania came out of a severe armed conflict, which had its share in the lack of trust. Nevertheless, this relation between the time of lustration and trust confirms the second hypothesis of the study.

The same reasoning follows the third hypothesis regarding the severity of punishment coming from lustration. A representative from the Institute for Democracy, Media and Culture, who covers the relations with those who went in internment camps or were in prison, acknowledged that severity is a very frequently used word from the communism survivors. This person argues that if the transitional justice mechanisms, according to those convicted from the regime, would have been more severe in terms of punishment, they would have been more satisfied from the state and the government. Thus, their trust on public institutions would have increased. Thought it should be kept in mind, that those persecuted from the regime are a small group of people, who cannot represent the entire population.

Nonetheless, on a broader level Ms. Ballauri, considering her continuous research extended in these two last decades and her senior expertise on the field of transitional justice, she affirms the lustration instrument was not severe, but there exists a collective will who wished that it would have been differently. Instead, this did not actually happen, meaning that lustration in Albania is not considered as severe in terms of punishment, as a rather mismanaged tool for political blackmail (Austin and Ellison, 2008). Getting back to the third hypothesis, considering Ballauri's and other analysts opinion that the last lustration law was a 'mild' one, following the terminology of the paper, than those in the beginning of the 90's, this means that the harshness trend of the lustration laws during the years has been decreasing. While on the other side when analysing the data on trust from the World Values Survey Association for 1998 - third wave, 2002 - fourth wave and the time segment from 2013 - 2017 data from Institute for Democracy and Mediation, the trend of trust is positive. Almost for all the institutions, the civic trust has increased during the years. In this case, there are two opposite trends; the harshness of lustration has 'decreased', while the trust on public institutions has increased. This makes the third hypothesis untrue, thus the hypothetical positive relation between a harsher lustration and trust is rejected in the Albanian case.

CONCLUSIONS

In the context of transitional justice and the communist regime Austin and Ellison (2008, p. 373) state that “Albania did little vis-à-vis with the past.” After almost a decade after Austin’s and Ellison’s work, still there are lots of things the society, the institutions, the governments can do to deal with the communist past. This includes also the researchers. Involving researchers might be crucial because they could be the main actors in gathering data, assessing the impacts, what can be improved in the future while studying the past and the present. Consequentially it should be mentioned that one of the main challenges of the paper was to find academic researches for lustration and public trust (as separate works) regarding the case of Albania; because papers studying both of them in the same time was even more challenging.

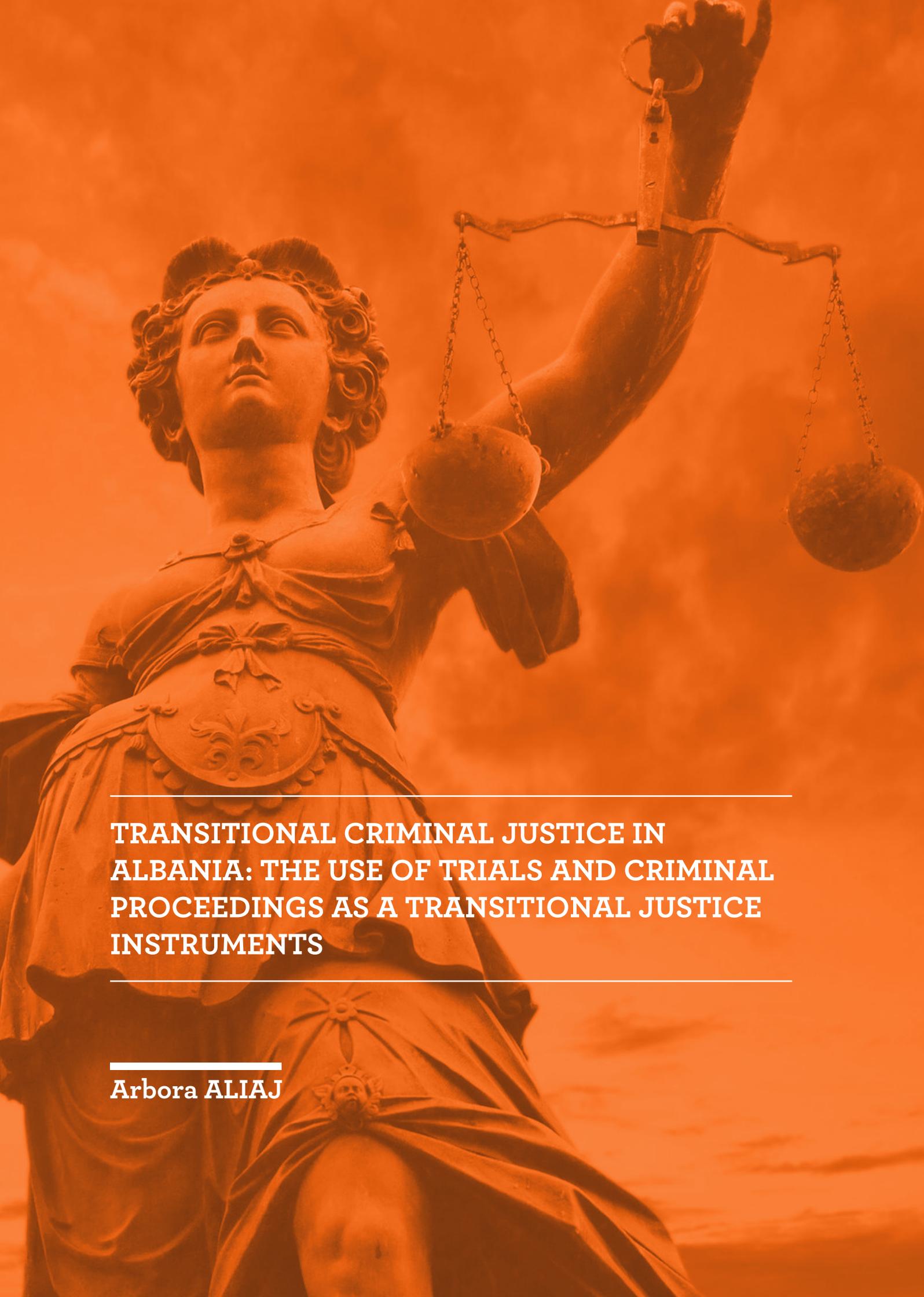
Following the work of Cynthia Horne, who is one of the few studying lustration using empirical methodology, the paper researches for a correlation between lustration and trust on public institutions in Albania starting from the fall of the regime until 2015, when the last lustration law was approved in the parliament. The quantitative data for the variable of trust were gathered as secondary data from the databases of the World Values Survey, third (1998) and fourth (2002) wave, while the other part of the data on trust was gathered from database of Institute for Democracy and Mediation for the period 2013 – 2017. On the other side, the primary data for lustration were gathered using semi – structured interviews with various stakeholders of the Albanian society relevant to the study. The first hypothesis that lustration might have had positive impact in the civic trust on public institution stands. Even though to prove its statistical significance, further research is required with a larger sample and more data. According to previous studies, the impact of lustration on trust is moderated by time and severity. In this research, it is found that the variable of time does not affect trust in the case of an earlier lustration, but the level of severity influences it.

There is a possibility that these results might change if another methodology is used. In this case it was used a mixed methodology, quantitative and qualitative. However, if the sample of the research is increased and empirical methods are used, the results might be surprising. This makes the topic interesting from the academic point of view, since there have not been many explorations in this aspect, a relation between lustration and transitional justice with the civic trust on public institutions.

REFERENCES

- Ackerman, B. (1994). *The future of liberal revolution*. Yale University Press.
- Austin, R. C., & Ellison, J. (2008). Post-communist transitional justice in Albania. *East European Politics and Societies*, 22(2), 373-401.
- Ballauri, E. (2014). Lustracioni dhe Integrimi. Website: <https://bit.ly/2OGRGGf>, [20.04.2019]
- Bezhani, N. (2001). *Mëkatarë: Një dosjet sekrete të sigurimit të shtetit*. Botimet Toena. Tiranë. 11.
- Bouckaert, G. (2012). Trust and public administration. *Administration*, 60(1), 91-115.
- Bouckaert, G., Van de Walle, S., Maddens, B. and Kampen, J.K., 2002. *Identity vs Performance: An overview of theories explaining trust in government*. Leuven, Belgium: Public Management Institute, Katholieke Universiteit Leuven.
- Choi, S. Y., & David, R. (2012). Lustration systems and trust: Evidence from survey experiments in the Czech Republic, Hungary, and Poland. *American Journal of Sociology*, 117(4), 1172-1201.
- Coulson, A. (Ed.). (1998). *Trust and contracts: relationships in local government, health and public services*. Policy Pr.
- David, R. (2003). Lustration laws in action: the motives and evaluation of lustration policy in the Czech Republic and Poland (1989-2001). *Law & Social Inquiry*, 28(2), 387-439.
- Erebara, Gj. (2015). Drejtësia tranzicionale, lustracioni dhe hapja e dosjeve. Website: <https://bit.ly/2pcfKq5>, [09.03.2019].
- Ibrahimi, G. (2009). Shqipëria ka nevojë për një ligj lustracioni, ku çdo qytetar të gëzojë të drejtën e informimit për dosjet e Sigurimit e të kaluarën. website: <https://bit.ly/2Mt8lKU>, [06.07.2019]
- Inglehart, R., C. Haerpfer, A. Moreno, C. Welzel, K. Kizilova, J. Diez-Medrano, M. Lagos, P. Norris, E. Ponarin & B. Puranen et al. (eds.). 2014. *World Values Survey: Round Three - Country-Pooled Datafile Version*: www.worldvaluessurvey.org/WVSDocumentationWV3.jsp. Madrid: JD Systems Institute
- Inglehart, R., C. Haerpfer, A. Moreno, C. Welzel, K. Kizilova, J. Diez-Medrano, M. Lagos, P. Norris, E. Ponarin & B. Puranen et al. (eds.). 2014. *World Values Survey: Round Four - Country-Pooled Datafile Version*: www.worldvaluessurvey.org/WVSDocumentationWV4.jsp. Madrid: JD Systems Institute.
- Institute for Democracy and Mediation (2016), "Public Opinion Poll: Trust in Governance 2015", website: <https://bit.ly/2qOTcfP>, [27.12.2018]
- Institute for Democracy and Mediation (2017), "Public Opinion Poll: Trust in Governance 2016", website: <https://bit.ly/2qOTcfP>, [27.12.2018]
- Institute for Democracy and Mediation (2018), "Public Opinion Poll: Trust in Governance 2017", website: <https://bit.ly/2qOTcfP>, [27.12.2018]

- Heintzman, R., & Marson, B. (2005). People, service and trust: is there a public sector service value chain?. *International Review of Administrative Sciences*, 71(4), 549-575.
- Horne, C. M., & Levi, M. (2004). Does lustration promote trustworthy governance? An exploration of the experience of Central and Eastern Europe. In *Building a trustworthy state in post-socialist transition* (pp. 52-74). Palgrave Macmillan, New York.
- Horne, C. M. (2009). International legal rulings on lustration policies in Central and Eastern Europe: Rule of law in historical context. *Law & Social Inquiry*, 34(3), 713-744.
- Horne, C. M. (2012). Assessing the impact of lustration on trust in public institutions and national government in Central and Eastern Europe. *Comparative Political Studies*, 45(4), 412-446.
- Kaminski, M. M., & Nalepa, M. (2006). Judging transitional justice: A new criterion for evaluating truth revelation procedures. *Journal of Conflict Resolution*, 50(3), 383-408.
- Letki, N. (2002). Lustration and Democratisation in East-Central Europe. *Europe-Asia Studies*, 54(4), 529-552.
- OECD (2013). *Government at a glance 2013*. OECD publishing, Website: <https://bit.ly/2BokWDy>. [24.04.2019].
- Posner, E. A., & Vermeule, A. (2004). Transitional justice as ordinary justice. *Harvard Law Review*, 117(3), 761-825.
- Sólyom, L. (2003). The role of constitutional courts in the transition to democracy: With special reference to Hungary. *International Sociology*, 18, 133-161
- Stan, L. (Ed.). (2009). *Transitional justice in Eastern Europe and the former Soviet Union: Reckoning with the communist past*. Routledge.
- Schwartz, H. (1994). Lustration in Eastern Europe. *Parker School Journal of East European Law*, 1(2), 141-71.
- United Nations. (2006). *Rule of law tools for post-conflict states: Vetting: An operational framework*. (UN Document HR/PUB/06/5). New York, NY: United Nations, Commission on Human Rights.
- Van de Walle, S., Van Roosbroek, S., & Bouckaert, G. (2008). Trust in the public sector: is there any evidence for a long-term decline?. *International Review of Administrative Sciences*, 74(1), 47-64.
- Williams, K. (2003). Lustration as the securitization of democracy in Czechoslovakia and the Czech Republic. *Journal of Communist Studies and Transition Politics*, 19(4), 1-24



**TRANSITIONAL CRIMINAL JUSTICE IN
ALBANIA: THE USE OF TRIALS AND CRIMINAL
PROCEEDINGS AS A TRANSITIONAL JUSTICE
INSTRUMENTS**

Arbora ALIAJ

ABSTRACT

Transitional justice is a relatively new approach, which has emerged in Albania as a way to address past human rights violations after the 1990s, a period which coincides with the collapse of the communist regime. Over the past 28 years, Albanian society, political parties and active stakeholders have been working continuously in that regard, for totally different interests. Consequently, has been a widespread difficulty in the specific areas of judicial and non-judicial activities, legislative framework and executive efforts used after the country moved from communism rule to democracy. However, one of the most complex issues has been the legal instruments, such as criminal proceedings and criminal trial, which will be subject of the research.

The research will explore four main areas. Firstly, it will consider the literature review. Second part analyzes the elements of the legal framework and the concrete provision for investigation and judgment of the criminal offences. Third part, presents a detailed and definitive list of criminal trials, based in the role of defendants, sentences and real time in prison. Fourth part, analyzes the differences and similarities of the criminal cases, focusing more in the loophole of legal system. In addition, the conclusion explains the research question, the finding, the methodology and study limitations.

INTRODUCTION

After the collapse of communist regime, Albania had an urgent need to deal with a divisive past of violation of human rights. Albanian society had to choose between what Ernest Renan called “historical amnesia” or collective remembrance.¹ But closed from the whole world for more than 45 years, they didn’t have a clear vision. Albanian society decided to deal with the past, following the recommendation of international community, without realizing that practices such as trials, administrative reorganization, amnesty, commemoration and reparation, are instruments of “transitional justice”.²

Since 1990, several legal reforms and a series of transitory laws of constitutional stature took place on a number of levels that guarantee Albania’s status as a parliamentary democracy with full respect for human rights. Albania has also ratified the major international human rights instruments, such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As a member of the Council of Europe, Albania has signed, but not yet ratified, the European Convention for the Protection of Human Rights and Fundamental Freedoms. The international community supported efforts to investigate the responsible for past crimes. However, individuals should be punished for having committed specific crimes rather than for an association with a now-discredited group.³ Human Rights Watch/Helsinki recognized the importance of prosecuting past abuses and is aware of the difficult task that confronts the prosecutor’s office in investigating these crimes. They endorsed efforts to ensure that all those holding positions of influence and power in government were performing their duties in a manner consistent with democratic progress and the establishment of the rule of law.”⁴ However, significant questions were raised about its ability to face the many difficulties of building a democracy.⁵

1. Faulkner, William N, “Introduction: The Definition and Historical Evolution of Transitional Justice.”(2019), 7.

2. Mobekk, Eirin: “Transitional Justice in Post- Conflict Societies-Approaches to Reconciliation”, Columbia International Affairs Online, (2005), 274.

3. Human Rights in Post-communist Albania, Human Rights Watch/ Helsinki, (March 1996), 35.

4. Human Rights Watch, Human Rights in Post-Communist Albania, (1996), 1606.

5. Elez Biberaj, “Albania In Transition; The Rocky Road To Democracy”, Taylor & Francis Group, (1999). 6.

Albanian criminal trials sought to identify authors of the serious human rights violations and the crimes against humanity carried out under the communist regime, from 1945 to 1990. However, the criminal trials resulted in a failure to achieve goals including acknowledgement, punishment and execution of the court decisions. This research will seek to elaborate that because of insufficiency of trials, late criminal proceedings, non execution of the punishment, they failed to materialize a convincing and successful transitional justice reform that would help overcome the past human rights violations effectively. It provides a detailed and informative account of the criminal proceeding and trials as an instrument of transitional justice process in Albania. Throughout the literature review articulate the need of criminal trials⁶ in the ex-communist state to abolish the legacy of the past and the building of a democratic state. It examines the background of holding criminally responsible for perpetrating of war crimes and crimes against humanity through criminal trials. Describing the accurate legal framework, the article explains the legal context which permitted the criminal trials, the legal bases for the punishments and the execution of the court decisions. The article will argue that the high ranking officials, for which had an increased public interest, were hold responsible only for the accusation of misused of state property and abuse of office, while the accusation for crimes against humanity and violation of human rights were not proven by the prosecution.

This article advances the study of criminal trials in concrete ways. Specifically, it is introduced a definitive list (Appendix I) of criminal trials according to the chronologic order. Based in the definitive list can find easily the defendants, crime committed, sentences and real time of deprivation of liberty. Despite the fact that collecting evidences is a complex issue in Albania, for several factors such as lack of digitalization and the long time that has passed, this paper has used dataset based on private libraries and media articles, as the issues has had a public influence. This methodology has been used for various reasons, but mainly, as the most convenient way in context of time efforts. After the data collection, the paper has analyzed using qualitative and quantitative methods. All the data have been divided in chronological terms and have been analyzed based on the sentence which has been accused, the real time of serving in prison, and the margins provided by criminal law. After this confrontation, it is more cleared that the margin of criminal law provision has been far away from the real time of sentence. It is composed in four parts. First part take in consideration the literature review, based in the other authors papers and research related with the issue. Second part considers the elements of the legal framework and the concrete provision for investigation and judgment of the criminal offences. Third part, presents a detailed and definitive list (Appendix I), of criminal trials, based in the role of defendants, sentences and real time in prison. Fourth part, analyzes the differences and similarities of the criminal cases, focusing more in the loophole of legal system. In addition, the conclusion explains the research question, the finding, the methodology and study limitations.

6. "Reconciliation after Violent Conflict: Policy Summary", IDEA Publications, (2003), 13-14.

LITERATURE REVIEW

The concept of transitional justice is embodied in the Council of Europe Parliamentary Assembly Resolution (1096) as: “Measures to demolish the heritage of former communist totalitarian systems”.⁷ The main objective of this Resolution consisted in the former communist countries, one of which was Albania. According to this Resolution, “the goals of this transition process are clear: to create pluralist democracies, based on the rule of law and respect for human rights and diversity. The principles of subsidiary, freedom of choice, equality of chances, economic pluralism and transparency of the decision-making process all have a role to play in this process. Separation of powers, media freedom, private property rights and the establishment of a civil society are some of the tools that could be used to achieve these goals, such as de-centralisation, de-militarisation, de-monopolization and de-bureaucratisation.”⁸ This Resolution represents a political program for a democratic transition that should be implemented in the former communist countries, but also a legal document as a framework on the meaning of transitional justice and its constitutive legal instruments. What is most significant in international law is the first articulation of transitional justice processes proposed for ex-communist states to eradicate the legacy of the past and the creation of a democratic state.⁹ According to this Resolution, implementation of transitional justice meant: prosecution for crimes committed under the Communist regime in compliance with the legal framework requirements existing in those countries.¹⁰

This resolution expressed concern about the risk of fading of the transition process. In the article 3 states that: “The dangers of a failed transition process are manifold. At best, oligarchy will reign instead of democracy, corruption instead of the rule of law, and organised crime instead of human rights. At worst, the result could be the “velvet restoration” of a totalitarian regime, if not a violent overthrow of the fledgling democracy. In that worst case, the new undemocratic regime of a bigger country can present also an international danger for its weaker neighbors. The key to peaceful coexistence and a successful transition process lies in striking the delicate balance of providing justice without seeking revenge.”¹¹

Institute For Democracy, Media And Culture has provide an abundant literature about transitional justice in Albania, but the authors, has been focused in topics related with the former political prosecuted in terms of rehabilitation,¹² reparations and the access in the process.¹³ Even The Institute for the Studies of Communist Crimes and Consequences in Albania (ISCC)¹⁴ has published various articles related with the crimes committed during the Communist era, focusing in crimes,¹⁵ prisons,¹⁶ border killings,¹⁷ and the victim of communist terror.¹⁸

7. Council of Europe, Measures to dismantle the heritage of former communist totalitarian systems, Resolution 1096 (1996). <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16507>

8. Article 2 of PACE Resolution (1096) 1996 “Measures to dismantle the heritage of former communist totalitarian systems”.

9. Bledar Abdurramani, “E kaluara komuniste dhe Shqipëria në 25 vite tranzicion”, (2015), 3.

https://www.academia.edu/31120054/E_KALUARA_KOMUNISTE_DHE_SHQIPERIA_NE_25_VITE_TRANZICION

10. Article 7 of PACE Resolution (1096) 1996 “Measures to dismantle the heritage of former communist totalitarian systems”.

11. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16507>

12. (Mos)Rehabilitimi i të përndjekurve politikë; Në procesin e drejtësisë tranzicionale (1991-2018), Instituti për Drejtësi, Media dhe Kulturë, Tiranë. 2019.

13. Mes apatisë dhe nostalgjisë: Kujtesa publike dhe private e komunizmit në Shqipërinë e sotme, Instituti për Drejtësi, Media dhe Kulturë, Tiranë. 2019.

14. The ISCC’s mission is the study and the objective evaluation of the crimes of Communism in Albania, to highlight and demonstrate them by means of documentation.

15. Çelo Hoxha, “Krimet e komunizmit gjatë luftës”, ISSK, 2015.

16. Kastriot Dervishi, “Burgjet dhe kampet e Shqipërisë Komuniste”, ISSK, Tiranë, 2015.

17. Kastriot Dervishi, “Vrasjet në kufi në vitin 1990: Përmbledhje dokumentesh”, ISSK, Tiranë, 2015.

18. “Fjalor enciklopedik i vikitimave të terrorit komunist”, ISSK, vëllimi VI, Tiranë, 2016.

However, despite that other researchers have worked in the topic of transitional justice, they have taken in consideration factors as human rights, democracy and former political oppressed. In other words, they have tried to find a correlation between the transitional justice in Albania and the fulfillment of democratic criteria, without a specific focus in criminal trials, as an instrument of transitional justice.

2. Legal Framework for the Punishment of Communist Crimes in Albania.

The condemnation of communist crimes by the new democratic state was an instrument of formal, legal, political, but also moral nature. In the Albanian legislative framework are identified several legislative measures, with the aim of punishing the crimes and perpetrators of the communist system.

Identical legal and criminal basis for convicting individuals who committed crimes during the communist period was born relatively late in Albania, about 4 years after the collapse of the communist system. It can be a factor that has influenced the effectiveness of the implementation of this transitional justice instrument and the pursuit of an aspiration for justice in the name of the violation of human rights and fundamental freedoms during the Communist era.

First, January 1993 began the criminal trial. In this process, the accused, Nexhimje Hoxha and Kino Buxheli were charged with the criminal offense of “stealing proportions of a large state property” and “abuse of office” for the period 1986-1990. In this aspect, they were under investigation for a crime, which have happened from 1986, before 7 years from the criminal process. This was a long distance of time and should consider that, during that time; Hoxha and Kino Buxheli have a relatively high impact in political, judicial and social environment.

In January 1995, Albania passed Law No. 7895, dated 27.01.1995, “The Criminal Code of the Republic of Albania”,¹⁹ which sanctioned in its Article 74 the figure of the offense of crimes against humanity, under which: “Assassination, extermination, slavery, exile and deportation, as well as any other form of torture or other violence, inhumane acts committed for political, ideological, racial, ethnic and religious reasons are punishable not less than fifteen years or life imprisonment or death.” Article 67 of the Criminal Code, in accordance with international criminal law standards,²⁰ sanctioned the institute of non-prescription for crimes against humanity.

Identical the entry into force of this instrument, around 8 months after, the Parliament voted for the Law No. 8001, dated 22.09.1995 “On the genocide and crimes against humanity committed in Albania during communist rule for political, ideological and religious motives”.²¹

Indeed, Bledar Abdurramani²² argues that law no. 8001/1995 did not constitute a legitimate legal instrument because it did not create a new legal basis for prosecution in the function of committing communism crimes, a base which was actually created long time ago with the entry into force of the Criminal Code and the Criminal Procedure. However, if analyzes the provisions and the content of this law, it will be noted that it has a more purely political rationale than procedural nature. This, due to the fact that, Article 1 of this law sanctioned: “The obligation of the Prosecution, which, in accordance with the criminal and procedural provisions, to begin immediately the investigation of the activity related to crimes against humanity committed in Albania.”²³

19. Law No. 7895, dated 27 January 1995 “Criminal Code of the Republic Of Albania”, <https://www.wipo.int/edocs/lexdocs/laws/en/al/al037en.pdf>

20. Non-operation of the statute of limitations on criminal prosecution: There is no statute of limitation operative for the criminal prosecution against war crimes and crimes against humanity.

21. LIGJI Nr.7895, dt 27.1.1995 “Kodi Penal I Republikës Së Shqipërisë”

22. Bledar Abdurramani, “E kaluara komuniste dhe Shqipëria në 25 vite tranzicion”, (2015), 10.

23. Article 1, The Law no. 8001/1995.

De facto, the real purpose of this law was not the above legal definition, as it in fact was the functional duty and a fundamental component of the prosecution body. The true purpose of the law was what was sanctioned in its Article 3. According to it, “the perpetrators of the above crimes that have been up to on March 31, 1991, as : former members of the political bureau and the central committee, former ministers and former MPs, former members of the Presidential Council, former Supreme Court presidents, former General Prosecutors, former district secretaries, former employees and former state security associates and denouncing witnesses to the detriment of defendants in political processes, cannot be solved in the central and local government bodies nor appointed to the state administration, the judicial system and the mass media until December 31, 2001”.²⁴

Robert C. Austin and Jonathan Ellison expressed that: ‘ Instead of providing a legal basis for prosecution, the Genocide Law was a way for the government to flex its political muscles and demonstrate that, instead of concentrating on mere economic crimes, as it did in 1993-1994, the government was actually prepared to tackle de-communication ‘ immediately and with priority.’²⁵

By January 1996, the general prosecutor had ordered the arrests of twenty-four former senior communist officials. Many of the accused had already been arrested and tried for lesser economic offences, but were now faced with much more serious punishment under the Genocide Law.²⁶

The commencement of criminal prosecution of crimes against humanity committed by communist authors about 5 years after the collapse of the communist regime, in the conditions when a considerable part of them were previously convicted of economic crimes, was a lethal mistake. The same opinions share even other authors, such as Abdurramani. The same opinion was articulated even from the Constitutional Court Chairman Rustem Gjata, that in terms of its impact on the lustration process, the decision to start investigation of the past with petty economic crimes was “a fatal mistake.”²⁷ Consequently, there were many difficulties to implement for several reasons. Such factors are not simply of a strictly criminal nature, such as guilty verdicts, evidence, etc., but such an act in the eyes of the public opinion contributed to the “delegitimization” of this instrument,²⁸ and in general, the former political oppressed brought deep disappointment. “Several Albanians told Human Rights Watch / Helsinki that it was more a political spectacle than a justice process that the trials against former party members were. The original charges against many of them for personal pleasure were trivialising the more serious crimes that took place during the Hoxha regime.”²⁹ This was because the Albanian society expected the communists to face real sentences. This led to serious accusations of political crimes that later became apparent or had a realistic political context in the ruling party, rather than as a request by a society seeking punishment for committing communist dictators.³⁰

The purpose of the Law on Genocide is to be an effective transitional justice instrument in Albania, in order to prosecute serious crimes of political nature committed during the communist era. However, if we consider the content of the law, time context, and the effects that brought, would be noted that was effectiveness. Related to the effect of the law, Robert C. Austin and Jonathan Ellison noted that: Therefore, the Law of Genocide did not really serve a legal purpose; it did not explain effectively and was superfluous for prosecutions of genocide, but the law was meant to make the public believe that the Democratic Party now took the luster seriously and aligned the

24. Bledar Abdurramani, “E kaluara komuniste dhe Shqipëria në 25 vite tranzicion”, (2015), 13.

25. Robert C. Austin and Jonathan Ellison, “Post-Communist Transitional Justice in Albania”, SAGE Journals, (2008), 384.

26. Fred Abrahams, “ Human Rights in Post-Communist Albania”, Refworld, (1996), 41. Human Rights Watch, 41.

27. Interview of Rustem Gjata, Tirana, 24 June 2005.

28. Bledar Abdurramani, “E kaluara komuniste dhe Shqipëria në 25 vite tranzicion”, (2015), 11.

29. Human Rights Watch, Human Rights in Post-Communist Albania, (1996), 1606. <https://www.refworld.org/docid/3ae6a7f30.html> [accessed 28 September 2019].

30. Bledar Abdurramani, “E kaluara komuniste dhe Shqipëria në 25 vite tranzicion”, (2015), 11.

most well-known former communists with the de-communication project of the DP.³¹

The law of genocide was a way for the government to flex its political muscles. This finding has been elaborated even from different authors, such as Stan.³² First, it did not constitute a new legal and criminal basis, as we sad, the Albanian Criminal Law has created these bases from entry into force, in January 1995. Secondly, it came into force during the 1996 political elections and its true purpose was to use it as a power tool to clean the political opponents. Third, lustration under genocide law was very limited.³³ The 5-year ban of exercising a public function for officials who had received a serious criminal offense of 15 years imprisonment was completely inadequate. Finally, the law aimed to make the public believe that the Democratic Party was seriously involved in the phenomenon of committing crimes of communism, lustration and decommissioning, gaining support and political votes in the upcoming elections.

3. Post-1990s trials in Albania

Ever since the establishment of political pluralism in Albania, one of the issues that have constantly dominated public opinion has been the so-called “Enigma of Gold”. According to the Democratic Party press release,³⁴ it resulted that huge amounts of this treasure were robbed and abused by the former high and corrupt Labour Party leadership and communist powers. The Labour Party and later the Socialist Party have attacked the democratic opposition for defamation and propaganda. The Socialists, who wanted to differentiate themselves from the old Communists and define themselves as a new party with social democratic credentials, also wanted to start a process, but they wanted to avoid a political process that would throw the net too wide.³⁵

However, opposition pressure prompted a special commission on treasury problems, led by Democratic Party MP Blerim Cela, in the first pluralist parliament. From this commission, as well as on Rilindja Demokratike sites,³⁶ figures have been published for various amounts of enigmatic missing treasures.³⁷ According to opposition press reports, large amounts of this treasure have been embezzled and misused by the former senior and corrupt Labor Party members and communist power holders for nearly half a century. Swiss citizen, John Megou³⁸ declared on the Albanian public television that 10 tons of gold fled of Albania with two planes from the Rinas Airport, in October - November 1990, in the direction of the Swiss Bank of Shtrasse.³⁹ Also, it is a fact that some of the former senior leadership of the Labour Party were criminally prosecuted, while some of them, including Nexhmije Hoxha, widow of Enver Hoxha, and former members of the Politburo such as Rita Marko, Manush Myftiu, and Hekuran Isai were arrested for months for alleged abuses and embezzlement of the wealth of the people, catching millions of dollars.

In this cases below, which follow the chronological order, will consider only the criminal proceedings, in which, the court declared a final sentence. These sentences will revealed that the criminal trials did not materialize a convincing and successful transitional justice in Albania. Thus did not help overcome the past quickly and effectively and did not make justice for the

31. Robert C. Austin and Jonathan Ellision, “Post-Communist Transitional Justice in Albania”, SAGE Journals, (2008), 14.

32. Stan, L., & Nedelsky, N., “Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience”, Cambridge: Cambridge University Press., (2015), 34.

33. Stan, L., & Nedelsky, N., “Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience”, Cambridge: Cambridge University Press., (2015), 34.

34. The party was founded on 12 December 1990. It was the first opposition party legalized after the fall of communism.

35. Robert C. Austin and Jonathan Ellision, “Post-Communist Transitional Justice in Albania”, SAGE Journals, (2008), 8.

36. Rilindja Demokratike is the official newspaper of the Democratic Party of Albania. <http://www.rd.al/>

37. Gazeta Dita, “Enigma e Floririt të Enver Hoxhës, (2016).<http://www.gazetadita.al/enigma-e-floririt-te-enver-hoxhes/>

38. Gazeta Zëri Info, “Si u zhdukën 4 ton florir në vitin 1990”, (2016).

<https://zeri.info/dossier/79901/tirane-zbulohen-dokumentet-sekrete-si-u-zhduken-4-tone-flori-ne-vitin-1990/>

39. Gazeta Zgjohu Shqiptar, “Vodhi 300 Ton Florir nga Shqipëria, (2018).

<https://zgjohushqiptar.info/2018/01/vodhi-300-ton-flori-nga-shqiperi-enigma.html>

victims of communism. According to Dr. Jonila Godole, director of Institut for Democracy, Media and Culture: “Because we understand the perpetrators, but not the persecutors, this is and appears to be the weakness of our past conflict.”⁴⁰ While in Kathleen Imholz words, one of the most major reasons for this failure was the delay: The evident disillusionment during the trials of Nexhmije Hoxha became more tangible by 1994. It was also no easier to gather evidence of abuse by the Communistera.⁴¹

3.1 The trial against Nexhmije Hoxhës and Kino Buxheli

Nexhmije Hoxha’s criminal trial took place in Tirana on 8 January 1993. Of special interest, this cycle has been observed. Enver Hoxha’s wife was accused of the sensitive position while his husband was alive, but particularly after his death, as one of the most important people of the last half century. Her official positions included members of the Central Committee, Deputy of the People’s Assembly, and Director of the Marxist-Leninist Studies Institute. Only after Enver Hoxha’s death was she elected the president of the Democratic Front (instead of her husband). Hoxha and the former Director of the Department of Reception, Kino Buxheli, who has done this position since 1986, are arrested. For the period 1986-1990, Hoxha and Buxheli were charged with the criminal offence of “robbing proportions of a large state asset” and “abuse of office.”

The prosecutor charged the Hoxha family and senior Labor Party members with multiple trips worldwide. These costs are hidden from the Reception Office, according to the prosecutor’s office. Top state officials, meanwhile, did not pay rent for apartments, lighting, and food, and had separate free treatment clinics. We also had 131 villas and holiday homes at their fingertips in various districts of the country where the furniture and services were made free again. Even the name of former Prime Minister Adil Carcani, including former President Ramiz Alia, was among the names that accused him of abussing the interest of the government. The prosecutor of the case stressed that there was no political element to the charges, but only concern about a large-scale fraud which took place during the communist era. The footprints of this fraud lie in the depths of the communist dictatorship’s 45 years, adding that this question should be addressed by defendant Nexhmije Hoxha and others. For Nexhmije Hoxha, the prosecutor said that 8116 cups of coffee had been drunk in her room, according to records rigorously guarded by the Reception Department during 1986-1990. So, she’d drunk more cups of coffee after her husband’s death than she should. For this reason, she had misused her position to misappropriate state property throughout abusing by the state budget, although some of the charges were dropped for lack of proof.

All Hoxha and Buxheli expressed strong regard for the progress of this judicial process, which they feel was conducted by the trial panel with integrity and professionalism. Defendant N. Hoxha closed her last word by saying she waited for any penalty with patience. While, in his last speech, the defendant Kino Buxheli found his decision ludicrous.

Nexhmije Hoxha was convicted of misappropriating state property using her position in February 1993 and sentenced to nine years in prison. The original sentence was extended by the Appeal Court on May 9 for two more years. The Court of Cassation upheld this decision. The November 1994 general amnesty and the new criminal code amendments that came into force on June 1, 1995, reduced her sentence by about two-thirds. On January 1, 1996, another pardon by President Berisha shortened her term by another six months, allowing her to serve for two years.⁴² Kino Buxheli has been sentenced to four years, but the Supreme Court has reduced the

40. Gazeta Panorama, Rrëfimi I pedagoges Jonila Godole,

<http://www.panorama.com.al/rrefimi-i-pedagoges-jonila-godole-intelektualet-enveriste-qe-me-kane-kercenuar/>

41. Kathleen Imholz, “Can Albania Break the Chain - The 1993-94 Trials for Former High Communist Officials”, 4 E. Eur. Const. Rev. 54 (1995), 57.

42. <https://www.refworld.org/docid/3ae6a7f30.html>

penalty by one year. During the signing of checks and invoices for vehicles, villas and other luxuries, Buxheli was accused of “abuse of office.” Buxheli has been in gaol for two years while awaiting criminal proceedings. This method was stigmatised as “the thief of coffee.” According to the Criminal Code⁴³, article 106 provided that the abuse of office should be punished with a change of job or with deprivation of liberty until ten years.” Meanwhile, the article 62 of Criminal Code⁴⁴ provided that the embezzlement of socialist wealth should be punished with deprivation of liberty not less than seven years or by death.”

Based in the legal articles of Criminal Code of 1977, it was expected to be hold responsible and punished with a more severe punishment. Based in the articles they were charged, the sentence margins were from seven years or by death. In this case, as Kathleen Imholz noted, “No one denied that the Hoxha family lived well and enjoyed things that were not available to other Albanians, but making those allegations the sole object of criminal proceedings seemed to trivialize the Hoxha regime’s more severe abuses.”⁴⁵ In an interview given by Nexhmije Hoxha’s lawyer, Dhimiter Beshiri said: “Since, as already known by all, it ended without the required legal and professional dignity of those who set it in motion, the international opinion and the mass media of some of the countries with authority in the world who were particularly interested in it.”⁴⁶

3.2 Criminal Proceedings of former Politburo members

Although Hoxha and Buxheli’s trial drew some concern, less attention was paid to the first trial of former members of the Politburo, the so-called “blockmen,” a group of top Labor Party officials that took place later in 1993. “Indeed, it has been forgotten by many Albanians that it has ever happened, and few can name the defendants.”⁴⁷ In fact, the defendants were Muho Asllani,⁴⁸ Besnik Bekteshi,⁴⁹ Foto Çami,⁵⁰ Hajredin Çeliku,⁵¹ Vangjel Çërrava,⁵² Llambi Gegprifti,⁵³ Qirjako Mihali,⁵⁴ Pali Miska,⁵⁵ Prokop Murra,⁵⁶ and Lenka Çuko⁵⁷ who had different functions, mainly senior party functions and state functions. The Communist government’s senior officials have been charged with abuse of power and misappropriation of state funds. Despite the case’s sensitivities, the court criticised the former communist leader and other government officials

43. Criminal Code of the Popular Republic of Albania 15.6.1977
http://ciml.25ox.com/archive/albania/albanian/kodi_penal_15_6_1977_albanian.pdf

44. Criminal Code of the Popular Republic of Albania 15.6.1977
http://ciml.25ox.com/archive/albania/albanian/kodi_penal_15_6_1977_albanian.pdf

45. Kathleen Imholz, “Decommunization in Albania,” *East European Constitutional Review* 4:3, (1995), 55.

46. Gazeta Dita, “Nexhmije Hoxha protestoi pse i vunë prangat” , (2014).
<http://www.gazetadita.al/nexhmije-hoxha-protestoi-pse-i-vune-prangat/>

47. Kathleen Imholz, “Decommunization in Albania,” *East European Constitutional Review* 4:3, (1995), 55.

48. Muho Asllani is a former Albanian politician of the Albanian Party of Labour (PPSh). He was a member of the Politburo, a representative in the Albanian Parliament for many years, First Secretary of Party in several districts, and member of the Cabinet of Albania during 1976-79.

49. Besnik Bekteshi (born 1941) is a former Albanian politician of the Albanian Party of Labour (PPSh). He has served as Deputy Prime Minister and Minister of Industry of Communist Albania.

50. Çami served for several years as First Secretary of the Party of Tirana District

51. Hajredin Çeliku was a former Albanian politician of the Albanian Party of Labour. He was a member of the Albanian Parliament, Politburo of the Party of Labour of Albania, and served as member of the Cabinet of Albania.

52. Vangjel Çërrava is a former Albanian politician of the Albanian Party of Labour (PPSh). He was member of the Albanian Parliament, Deputy Chairman of the Cabinet of Albania, and for a short time member of the Politburo of the Party.

53. Llambi Gegprifti is a former Albanian politician and mayor of Tirana from 1986 through 1987 and 1989 through 1990. He was candidate-member of the Politburo of the Party of Labour of Albania for terms of 1971, 1976, 1981, and 1986.

54. Qirjako Mihali is a former Albanian politician of the Albanian Party of Labour. He was a candidate-member of the Politburo of the Party of Labour of Albania, Minister of Finance, and member of the Albanian Parliament.

55. Pali Miska was a former Albanian politician of the Communist Era. He served as Chairman of the Assembly of the Republic of Albania from 22 November 1982 - 19 February 1987.

56. Prokop Murra (1921-2007) was a former Albanian politician of the Albanian Party of Labour.

57. Lenka Çuko was a former Albanian politician of the Albanian Party of Labour.

for abuse of office and violation of citizens fundamental rights. Consequently, not even their punishment has reached the highest points. Both were convicted with “violating the rights of men” after one year of house arrest and two months in prison.⁵⁸ In a full media blackout, the procedure continued in the name of the victims public order, national security, ethics and privacy.”⁵⁹

On December 13, 1993, all ten politburo members were ordered to pay varying amounts to the state and sentenced to between five and eight years in prison. Qirjako Mihali and Llambi Gegprifti were sentenced to eight years in prison; Pali Miska and Lenka Cuko to seven years; Hajredin Celiku, Foto Cami and Besnik Bekteshi to six years; and Vangjel Cerrava, Prokop Murra and Muho Artunda to five years. In November 1994, the Appeals Court changed the charges against all ten defendants from violating the equality of citizens⁶⁰ to abuse of power.⁶¹ The Court of Cassation later upheld the decision of the Tirana district court, reverting the charges back to article 107 and reducing the sentences by either one or two years. As in Mrs. Hoxha case, the combination of the general amnesty and the introduction of the new criminal code reduced their sentences further.

According Dr. Jörg Lüer, who is the director of the German Commission “Justitia et Pax” - “Justice and Peace” and deputy director of the German Foundation “Maximilian Kolbe”, in an interview related with the transitional justice in Albania, he said: “So far as I understand, the punishment has not been served by any of the victims.”⁶²

3.3 Third Criminal Proceeding Ramiz Alia and others senior officials from the communist regime

On May 21, 1994, another round of senior officials from the communist regime went to trial, including Ramiz Alia, the last communist president. Alia was charged with abuse of power and misappropriation of state funds, as was Adil Carçani, Manush Myftiu and Rito Marko.⁶³ Former ministers Hekuran Isai⁶⁴ and Simon Stefani⁶⁵ accused with the same charges, as well as the accused of violating the rights of citizens. Aranit Çela,⁶⁶ Rrapi Mino,⁶⁷ Zylyftar Ramizi⁶⁸ and Veiz Haderi⁶⁹ faced charges of abuse of power. Alia had been placed under house arrest in August 1992 and was formally arrested in September 1993. The ten defendants were found guilty as charged and sentenced to between three and nine years in prison; Alia received a nine-year sentence. The Court of Appeal reduced the sentences slightly, such as, Alia’s to five years. Alia, Myftiu, Carçani, Stefani and Isai were also ordered to pay various sums to the state. On November 30, the Court of Cassation reduced Alia’s term by an additional three years. The other nine defendants’ sentences were reduced by between one and three years, except for Adil Carçani and Manush Myftiu, who were serving five years under house arrest because of poor health. Within one year of their

58. Article 107 of the Penal Code

59. Article 12 of the Law on the Organization of the Judiciary and Constitutional Court says that the public and mass media may be barred from a courtroom if necessary for «national security, public order, or for the best interest of minors, private parties and justice.»

60. Article 107 of the Penal Code

61. Article 106 of the Penal Code

62. Gazeta Dosja. Al, Jorg Lüer, “Në Shqipëri mungoi ndjekja penale për krimet e komunizmit”, (2019).

<https://dosja.al/luer-ne-shqiperi-mungoi-ndjekja-penale-per-krimet-e-komunizmit/>

63. Was an Albanian political figure who served in a number of positions in Albania during its socialist period.

64. Was an Albanian politician of the Albanian Party of Labour (PPSh).

65. He served as Chairman of the Assembly of the Republic of Albania from 25 December 1978 to 22 November 1982, as well as member of the Central Committee of the Party of Labour of Albania from 1976 to 1991.

66. Was an Albanian politician of the Albanian Party of Labour (PPSh).

67. Rrapi Mino is an Albanian politician, on November 23, 1982, by order of the People’s Assembly of Albania, he was appointed Prosecutor General of the Socialist People’s Republic of Albania, a position he held until the end of the 1980s.

68. Zylyftar Ramizi - Former Deputy Minister of Interior and Director of Albanian State Security until 1991

69. Was an Albanian politician of the Albanian Party of Labour (PPSh).

sentencing, Isai, Lambi, Gegprifti, Marko and Bektashi were released from jail. On July 7, 1995, Ramiz Alia was also freed.

3.4. Trial for Crimes against humanity and Genocide.

The most recent arrests occurred in December 1995 and January 1996 when former communist officials were arrested for crimes against humanity under article 74 of the current penal code.⁷⁰ These charges focused on three issues: the bombing of the Soviet embassy in Tirana in 1951; the prohibition of religion which began in 1967; and continues killings along Albania's borders.

The prosecution accused the defendants Foto Çami, Prokop Murra, Muho Asllani, Gaqo Nesho, Zef Loka and Dilaver Bengasi for the criminal offense of Genocide and Crimes against Humanity. The judicial process downturned the indictment for the criminal offense of genocide and sentenced guilty only for crimes against humanity. However, the punishment of political officials would remain in force only for one year, as another judicial process declared them innocent by reinstating freedom. The court gave the following sentences: Mihali and Gegprifti eight years Miska and Çuko each seven years Çami, Çeliku and Bektashi of six years and Çërrava, Murra and Asllani five years.⁷¹

The District Court of Tirana reviewed in public session the criminal case in custody of the defendants Foto Çami, Prokop Murra, Muho Asllani, Gaqo Nesho, Zef Loka and Dilaver Bengasi, charged with the criminal offense of genocide and crimes against humanity committed in co-operation. In conclusion, the court declared that the defendants were responsible for the criminal offense of crimes against humanity committed in cooperation.⁷² The offense committed by the defendants, although not provided in the Criminal Code of the time during which the defendants committed the crimes, can not in any way excuse the defendants' claims, since the offense they are accused has been foreseen in the international convention "Above prescription of crimes against humanity" signed by our country at the time of committing the offense, and having the article 67 of law no.7895 dated 2.7.1995, the legislator in a taxation has expressed the effects of its extent on time when it says: "They are not subject to the prescription of prosecution of war crimes and those against humanity".⁷³ Consequently, regardless of the committing time of the criminal offense, this crime is punishable at any time when its perpetrators are discovered.

Indent an objective point of view, the offense was committed with the active participants of the defendants by compiling the forms for expulsion deportations. The offense was committed intentionally, based on political, ideological, religious motives, etc., in order to eliminate political opponents and the perpetuation of the state of dictatorship. Regarding co-operation in committing the crime, it was openly and de facto deployed by the state party under the class struggle war against any person seeking the deviation of this course for the consolidation of

70. Crimes against humanity was also a crime under the communist-era penal code.

71. Kathleen Imholz, "Decommunization in Albania," *East European Constitutional Review* 4:3(Summer 1995), pg. 56.

72. These defendants, being in high state functions during the exercise of their duty, have proposed for deportation and expulsion to numerous citizens and in the districts where they have exercised the duty they have submitted proposals for mass deportation. All these punishments by the defendants were committed for political, ideological reasons and intentionally, to perpetuate dictatorship and the totalitarian state, and to eliminate their political opponents. The deportations made by these defendants were made in various places and included women, the elderly and the children who did not consume any kind of criminal offense. During this period they were denied the fundamental rights and freedoms, such as the right to speech, movement, education and the normality of life, where some of them suffered from very serious conditions, as a result of which some have even found death. Thus, regardless of the description of the mechanism of commission of a criminal offense, it turns out that the defendants have completely exhausted the criminal offense of crimes against humanity committed in co-operation

73. Law No.7895, dated 27.01.1995, "Criminal Code of the Republic of Albania" [https://ihl.databases.icrc.org/ihlnat/a24d1cf3344e99934125673e00508142/974514e3e387f30ac1257162003f573f/\\$FILE/Ligj%20Nr.%207895.pdf](https://ihl.databases.icrc.org/ihlnat/a24d1cf3344e99934125673e00508142/974514e3e387f30ac1257162003f573f/$FILE/Ligj%20Nr.%207895.pdf)

dictatorship in Albania. The defendants in the session denied the charge and asked the court in the last word. They claimed innocence.

The top leaders of the communist regime would be deprived of liberty for only a few years. In 1999, The National Supreme Court declared them innocent. The decision of the Court of Tirana and Court of Appeals Tirana has been made recourse and the acts have been sent to the Court of Cassation, which by Decision No. 297 dated. 09/29/1997 has ruled the annulment of the decision No. 422 dated 20 June 1996 of the Tirana District Court and No. 564 dt.12.8.1996 of the Tirana Court of Appeal and the dismissal of the criminal case in custody of the defendants: Photo Çami, Prokop Murra, Muho Asllani, Gaqo Nesho, Zef Loka and Dilaver Bengasi. The decision released them from the jail.

3.5 Second Criminal Proceeding for crimes against humanity

In July 1996, another charge for “crimes against humanity” was brought against Lenka Çuko,⁷⁴ Llambi Gegprifti, and Irakli Vero, Idajet Beqiri, Sulejman Abazi, Agron Tafa, Nazmi Domi and Shkelzen Bajraktari, all high rank officials who had served as First Secretary in local government bodies. In September 1996, the court sentenced to 20 years Gegprifti, Vero to 16 years, and Çuko to 15 years’ imprisonment, 15 years in prison for Idajet Beqiri, Lenka Cuko, Sulejman Abazi and Agron Tafa, while Nazmi Domi and Shkelzen Bajraktari sentenced with 20 years in jail. The nine former senior officials of the past communist regime were accused and sentenced for genocide and crimes against humanity in cooperation with one another, on the basis of articles ⁷⁴, 67 and 25 of the Criminal Code⁷⁵. They have had various important posts in some border areas such as in Shkodra, Kukës and Durrës, The Supreme Court of Albania confirmed these convictions in 5 of November 1996.⁷⁶ All were briefly released after the riot of 1997. ⁷⁷

3.6 Another Criminal Proceeding for Ramiz Alia

On February 2, former President Ramiz Alia was arrested for a second time. The Tirana prosecutor charged him with ordering deportations and the use of firearms against civilians, both on Albania’s borders and during anti-communist demonstrations in 1990 and 1991. Alia’s lawyer requested house arrest due to his ailing health. The court argument was that Alia presented a “danger to society” and should be detained in prison. The trial began on 18 February 1997, but he escaped from the prison during the riots of 1997 and the desertion of the guards.⁷⁸ According to New York Times, at the prison where Mr. Alia and other former Communists were being held pending trials, even the guards disappeared in the chaos, and he and 300 other prisoners simply walked away. One report said that Mr. Alia had fled to Greece, while his lawyer said he had gone to live with a daughter in Sweden.”⁷⁹ However, did not find accurate information about his destination after his escape from the jail.

74. Lenka Çuko was a former Albanian politician of the Albanian Party of Labour.

75. Law No.7895, dated 27.01.1995, “Criminal Code of the Republic of Albania”

[https://ihldatabases.icrc.org/ihlnat/a24d1cf3344e99934125673e00508142/974514e3e387f30ac1257162003f573f/\\$FILE/Ligj%20Nr.%207895.pdf](https://ihldatabases.icrc.org/ihlnat/a24d1cf3344e99934125673e00508142/974514e3e387f30ac1257162003f573f/$FILE/Ligj%20Nr.%207895.pdf)

76. Albanian Telegraphic Agency (ATA), (2005).

<http://www.hri.org/news/balkans/ata/1996/96-11-05.ata.html#15>

77. These riots, and the state of anarchy which they caused, are known as the Albanian civil war of 1997. When the schemes collapsed, there was uncontained rioting, the government fell, and the country descended into anarchy and a near civil war in which some 2,000 people were killed.

78. The New Yorks Time, “Ramiz Alia, an Enforcer for a Dictator and Later Ruler of Albania, Dies at 85”, (2011).

<https://www.nytimes.com/2011/10/08/world/europe/ramiz-alia-former-ruler-of-albania-dies-at-85.html>

79. The New Yorks Time, “Ramiz Alia, an Enforcer for a Dictator and Later Ruler of Albania, Dies at 85”, (2011).

<https://www.nytimes.com/2011/10/08/world/europe/ramiz-alia-former-ruler-of-albania-dies-at-85.html>

4. Criminal Trials Similarities and Differences

As we consider the criminal trials were held in Tirana District Court, after the investigation of Tirana General Prosecution, under public tension and sensitivity, as well, increased interest of international community and the tension in judiciary. Some have called the trials as an obligation of Western Countries or Western-imposed process.⁸⁰ However, the defendants reported that they have performed their tasks under the communist law and the processes against them had hidden intentions and also were used for political manipulation. Criminal prosecutions are too easily susceptible to political manipulation and instrumentalization of the law.⁸¹ The prosecution, on the other hand, had a lot of difficulties with the “new process”, his legacy and the public trust. In the same position stayed even the court and judges, coming from the communist legal and procedural background. Despite all, the criminal proceeding was a right and duty of the state to prosecute serious human rights law violations. In words of Fred Abrahams, he concluded that: “The government has undertaken an ambitious effort to prosecute former communist officials who committed crimes during the previous regime. The process however, was limited and sometimes in breach of international law, as many of the former communist officials have completely avoided prosecution because of their ties with the current government.”⁸²

CONCLUSION

Albania failed in its mission to establish the truth, provide justice, redress to victims about its communist past. Certainly, still confronts the problem of how to publicly name the communist past, of how to reconcile the abuse, oppression, and continued emotional presence of state violence with the fact that the power elite of that past remain the power elite of the present.⁸³ Many issues related with the punishment and responsibility, remain unresolved. Criminal proceedings were undermined from the beginning.

Surprisingly, subordinates of the former communist former president, as confirmed by the court files, were accused for more serious charges and received sentences several times harsher than their superiors, who were condemned with only a few years in prison. The high ranking officials, for which had an increased public interest, were held responsible only for the accusation of misused of state property and abuse of office, while the accusation for crimes against humanity and violation of human rights were not proven by the prosecution. In Albania, too, trials for financial misconduct or corruption, rather than for the brutal crimes of a totalitarian system, have dominated the process.⁸⁴ The article provides a detailed and definite list with all the criminal trial, defendants, sentenced and real time served in the prisons. Based on this list (Appendix I), can easily compare and realized what we mention above. Symbolic court decision for the defendants in general and negligible court sentence for the high ranking officials. It is occurred that the correlation between the political and social position of high ranking officials is inadequate with the sentence decided in criminal courts.

80. Melissa Gordon, “Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda,” 1 ILSA J. INT’L & COMP. L., (1995), 223-24.

81. M. Cherif Bassiouni, *Introduction To International Criminal Law*, (2003), 418-19.

82. Human Rights Watch, *Human Rights in Post-Communist Albania*, (1996), 1606.

<https://www.refworld.org/docid/3ae6a7f30.html>

83. Birgit Hofmann, “Don’t talk to communists: The Instrumentalisation of the communist past in the Czech Republic’s Political Crises of 2008”, in Sabine FISCHER, Heiko PLEINES (eds.), *Crises and conflicts in post-socialist societies: The role of ethnic, political, and social identities*, Stuttgart: Ibidem Verlag, 2008, pg 121.

84. The National Council For Soviet And East European Research, Title VIII, Program 1755, Massachusetts Avenue, N .W. Washington, D .C . 20036, September 7, 1995, 54.

<https://www.ucis.pitt.edu/nceeer/1995-808-05-4-Holmes.pdf>

After all, taking in the consideration the challenges of the prosecution body and panel, the role of defendants as high ranking official, victims need for justice, public interest, criticized punishment, another obstacle displayed. This obstacle related with the execution of the punishment. Supreme Court and Court of Cassation in some cases founded the punishment for crimes against humanity irrelevant and released the convicted from jail. Even some convicted were released after the riot of 1997, where Albania was under a civil war.

These criminal proceedings and trails failed to pass the minimum professional, moral and legal standards. In addition, instead of investing in “enforcing justice”, resulted in artificial processes which created tension, increased public distrust in the judiciary, and the most important, they did not made justice. The question that arises is why the victims of communism did not have an active role in these processes? The answer was simple. They were not part of the process, and for this reason their voices were unheard.

However, this research did not take in fully consideration the level of procedural and legal standards which has been applied. It would have a major interest to study in the other researches, the level of legal procedure standards, which has been applied during the criminal trials.

BIBLIOGRAPHY

(Mos)Rehabilitimi i të përndjekurve politikë; Në procesin e drejtësisë tranzicionale (1991-2018), Instituti për Drejtësi, Media dhe Kulturë, Tiranë. 2019.

“Fjalor enciklopedik i viktimave të terrorit komunist”, ISSK, Vëllimi VI, Tiranë, 2016.

Abrahams. F, “ Human Rights in Post-Communist Albania”, Refworld, (1996).

Albanian Telegraphic Agency (ATA), (2005).

Austin. R and Ellision. J, “Post-Communist Transitional Justice in Albania”, SAGE Journals, (2008).

Bassiouni. Ch, Introduction To International Criminal Law, (2003).

Biberaj. E, “Albania In Transition; The Rocky Road To Democracy”, Taylor & Francis Group, (1999).

Bledar Abdurramani, “E kaluara komuniste dhe Shqipëria në 25 vite tranzicion”, (2015).
Council of Europe, Measures to dismantle the heritage of former communist totalitarian systems, Resolution 1096 (1996).

Dervishi. K, “Burgjet dhe kampet e Shqipërisë Komuniste”, ISSK, Tiranë, 2015.

Dervishi. K, “Vrasjet në kufi në vitin 1990: Përmbledhje dokumentesh”, ISSK, Tiranë, 2015.

Gordon. M, “Justice on Trial: The Efficacy of the International Criminal Tribunal for Rwanda,” 1 ILSA J. INT’L & COMP. L., (1995).

Hofmann. B, “Don’t talk to communists: The Instrumentalisation of the communist past in the Czech Republic’s Political Crises of 2006”, in Sabine Fischer, Heiko Pleines (eds.), Crises and conflicts in post-socialist societies: The role of ethnic, political, and social identities, Stuttgart: Ibidem Verlag, 2008.

Hoxha. C, “Krimet e komunizmit gjatë luftës”, ISSK, 2015.

Human Rights in Post-communist Albania, Human Rights Watch/ Helsinki, (1996).

Human Rights Watch, Human Rights in Post-Communist Albania, (1996), 1606.

Imholz. K, “Can Albania Break the Chain - The 1993-94 Trials for Former High Communist Officials”, 4 E. Eur. Const. Rev. 54 (1995), 57.

Interview of Rustem Gjata, Tirana, 24 June 2005.

Law No. 7895, dated 27 January 1995 “Criminal Code of the Republic Of Albania”,

Mes apatisë dhe nostalgjisë: Kujtesa publike dhe private e komunizmit në Shqipërinë e sotme, Instituti për Drejtësi, Media dhe Kulturë, Tiranë, (2019).

Mobekk, Eirin: “Transitional Justice in Post- Conflict Societies-Approaches to Reconciliation”, Columbia International Affairs Online, (2005).

“Reconciliation after Violent Conflict: Policy Summary”, IDEA Publications, (2003).

Stan, L., & Nedelsky, N., “Post-Communist Transitional Justice: Lessons from twenty-Five Years of Experience”, Cambridge: Cambridge University Press., (2015).

The ISCC’s mission is the study and the objective evaluation of the crimes of Communism in Albania, to highlight and demonstrate them by means of documentation.

The National Council for Soviet and East European Research, Title VIII, Program 1755, Massachusetts Avenue, N.W. Washington, D.C. 20036, 1995.

William F. “Introduction: The Definition and Historical Evolution of Transitional Justice.” (2019). Criminal Code of the Popular Republic of Albania, 15.6.1977

Gazeta Dita, “Enigma e Florirt të Enver Hoxhës, (2016).

Gazeta Dita, “Nexhmije Hoxha protestoi pse i vunë prangat” , (2014).

Gazeta Dosja. Al, Jorg Lüer, “Në Shqipëri mungoi ndjekja penale për krimet e komunizmit”, (2019).

Gazeta Zëri Info, “Si u zhdukën 4 ton florir në vitin 1990”, (2016).

Gazeta Zgjohu Shqiptar, “Vodhi 300 Ton Florir nga Shqipëria, (2018).

Gazeta Panorama, Rrëfimi I pedagoges Jonila Godole. (2018)

Law No.7895, dated 27.01.1995, “Criminal Code of the Republic of Albania”

The New Yorks Time, “Ramiz Alia, an Enforcer for a Dictator and Later Ruler of Albania, Dies at 85”, (2011).

Appendix I

A summarized way the defendants and the court decisions.

	Defendant	Crime	First Sentence	Appeal Sentence	Supreme Court Sentence	Real Time Served
1.	Nexhmije Hoxha	“stealing proportions of a large state property” and “abuse of office”	11years			5 years - Amnesty
2.	Kino Buxheli	“stealing proportions of a large state property” and “abuse of office”	4 years		1 Year	1 year Custody
3.	Ramiz Alia	abuse of office	9 years	5 years		3 years The Court of Cassation
	Ramiz Aliaj (Second Accusation)	Genocide	-	-		released after the riot of 1997
4.	Adil Çarçani	abuse of office	5 years			the Court of Cassation - various sums
5.	Manush Myftiu	abuse of office	5 years			the Court of Cassation - various sums
6.	Rita Marko	abuse of office	8 years			Released in July 1995.
7.	Simon Stefani	abuse of office	8 years			the Court of Cassation - various sums
8.	Hekuran Isai	abuse of office	5 years			the Court of Cassation - various sums
9.	Aranit Çela	abuse of office	7 years			briefly released after the riot of 1997
10	Zylyftar Ramizi	abuse of office	6 years			Amnesty
11	Rrapi Mino	abuse of office	4 years			released after the riot of 1997
12	Veiz Hadëri	abuse of office	3 years			briefly released after the riot of 1997
13	Besnik Bekteshi		6 years	6 years		briefly released after the riot of 1997

14	Muho Asllani	crimes against humanity committed in cooperation	life imprisonment	5 years		Supreme Court: Innocent
15	Foto Çami	crimes against humanity committed in cooperation	life imprisonment	6 years		Supreme Court: Innocent
16	Ha-jredin Çeliku	Genocide and Crimes against Humanity		6 years		briefly released after the riot of 1997
17	Vangjel Çërrava	Genocide and Crimes against Humanity		5 years		briefly released after the riot of 1997
18	Prokop Murra	crimes against humanity committed in cooperation	life imprisonment	5 years		Supreme Court: Innocent
19	Llambi Geg-prifti	“crimes against humanity” and genocide	20 years	8 years		Released after the riot of 1997
20	Qirjako Mihali	Genocide and Crimes against Humanity		8 years		Released after the riot of 1997
21	Pali Miska	Genocide and Crimes against Humanity		7 years		Released after the riot of 1997
22	Gaqo Nesho	crimes against humanity committed in cooperation	16 years			Supreme Court: Innocent
23	Zef Loka	crimes against humanity committed in cooperation	20 years			Supreme Court: Innocent
24	Dilaver Bengasi	crimes against humanity committed in cooperation	18 years			Supreme Court: Innocent
25	Irakli Vero	“crimes against humanity” and genocide	16 years			Released after the riot of 1997
26	Idajet Beqiri	“crimes against humanity” and genocide	15 years			Released after the riot of 1997

27	Lenka Cuko	“crimes against humanity” and genocide	15 years	7 years		Released after the riot of 1997
28	Sulejman Abazi	“crimes against humanity” and genocide	15 years			Released after the riot of 1997
29	Agron Tafa	“crimes against humanity” and genocide	15 years			Released after the riot of 1997
30	Nazmi Domi	“crimes against humanity” and genocide	20 years			Released after the riot of 1997
31	Shkelzen Bajraktari	“crimes against humanity” and genocide	20 years			Released after the riot of 1997

