**CHAPTER 3**

**EVALUATING MEASURES AND THEIR OUTCOMES**

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Romania’s efforts to confront its communist past using transitional justice measures have often been highly politicized, thwarted by entrenched interests, overridden by various political actors, including the President and the Constitutional Court, and circumvented by former members of the communist political elite.[[1]](#footnote-1) In this chapter, the term transitional justice describes a broad set of measures by which society confronts the wrongdoings in its past with the goal of obtaining some combination of truth, justice, rule of law, and durable peace for the future.[[2]](#footnote-2) Even with such a broad definition, if a consensus exists, it might agree that Romania missed many opportunities to authentically engage with possibly beneficial measures. Taking as a starting point the well documented problems with Romania’s transitional justice efforts, this chapter is motivated by two questions: first, how did Romania’s transitional justice measures compare to other regionally proximate post-communist cases, and second, have Romania’s (extremely) flawed efforts to address the past produced any positive results? To address these questions, the chapter focuses on the use and misuse of lustration laws, secret police file access procedures, and public disclosures of previous regime collaboration as a triumvirate of related transitional justice processes. By lustration measures, I mean specialized forms of employment screening, which could include the “banning of communist officials and secret political police officers and informers from post-communist politics and positions of influence in society” and/or the naming of individuals without formal employment removal penalties.[[3]](#footnote-3) Lustration measures, public disclosures of regime collaboration for individuals in positions of public trust, and general citizen access to information in secret police files are related transitional justice measures due to the focus on the secret police files and potential formal or informal consequences associated with revelations of the past. Since these measures are allegedly used to support transition goals like building trust in public institutions, promoting democracy and curbing corruption, this chapter also examines Romania’s progress in meeting some of these stated goals over the past 25 years.

This chapter takes a comparative perspective on Romania’s transitional justice measures and transition outcomes. If one were to look only at Romania, it would be relatively easy to point out all the ways Romania deviated from a transitional justice ideal. In order to contextualize Romania’s experience, it needs to be considered with respect to what has actually been achieved in other comparable post-communist cases. However, the transitional justice comparison must be appropriate if it is to be illustrative. Comparing Romania to a transition trajectory which was not a viable possibility in 1989, like the Czech Republic’s, will yield few valuable insights.[[4]](#footnote-4) To that end, first this chapter reviews the measures passed and implemented in Romania in comparison with the other Balkan countries that were considered regionally comparable in 1989, namely Bulgaria and Albania. The comparison spotlights the implementation of measures, the timing of measures, and the politicization of measures. Second, this chapter examines three transition goals linked to transitional justice measures, namely the building of trustworthy public institutions, support for democracy, and anti-corruption progress across several post-communist countries. Romania’s performance on these three outcomes will be considered with respect to the Balkan experience as well as cases considered to have had more effective lustration and transitional justice programs, like Poland and Hungary. To preview the findings, Romania finds itself stuck in the middle—the middle of regional reforms and the middle of regional progress. The conclusion speaks to what the presence or absence of transitional justice measures in Romania says about its larger post-communist transition.

**Transitional justice measures**

***Timing and implementation***

Balkans countries are considered regional laggards in terms of transitional justice, but measures were both proposed and adopted in the region early in the transition. This section considers the timing, passage and implementation of measures in the Balkans as a way to draw parallels between Romania and its neighbors. The focus is not only on measures that were passed, but also on measures that were passed over or failed to be implemented. Albania and Bulgaria passed lustration-style laws before Romania, and therefore their efforts will be considered before Romania’s in keeping with temporal considerations of the range of possible and concurrent measures available to Romania in the immediate transition environment. Table 3.1 lays out the measures in the three countries for ease of comparison.

INSERT TABLE 3.1 HERE

Albania purged its public sectors in 1992, replacing an estimated 250,000 bureaucrats with party loyalists.[[5]](#footnote-5) The non-transparent forced personnel change constituted a purge, not a transitional justice act, and affected subsequent interest in other more legally constrained bureaucratic change measures. The 1991 Law On Advocacy and its 1993 amendment (Law 7666) constituted a type of lustration measure, but it narrowly targeted lawyers, preventing certain categories of collaborators or officers with the State Security agency, and members of the Albania Labor Party (the Communist Party), from legal work for a period of five years. The Constitutional Court struck down this limited lustration law, resulting in no implementation.[[6]](#footnote-6) Of note is the extremely narrow scope of the measures—lawyers—which would have resulted in a nominal, limited lustration effort at best. The Genocide Law 8001/1995and the Verification Law 8043/1995 were wider in scope, providing screening provisions across a range of government positions, the educational system, and the media. The Verification Committee created to implement the measures immediately barred 139 people from participating in elections. However, the Committee was largely made up of Democratic Party members, whereas those barred were from opposition parties, thus rendering lustration a tool of political vendetta against opposition parties.[[7]](#footnote-7) In 1997, the Socialist Party came to power after a scandal involving the Democratic Party, and they reduced the scope of the Verification Law. The Genocide Law was also rolled back, and the Supreme Court acquitted all those accused. Despite several lustration laws, there was little implementation in practice, and the Verification and the Genocide Laws expired in 2001.[[8]](#footnote-8) The overt political manipulation of the laws, smear campaigns against opposition parties, and informal allegations published in newspapers, combined with a lack of citizen access to the files, resulted in the delegitimization of the measures. In 2008 a new lustration law was passed popularly called The Clean Hands Bill, but it was declared unconstitutional and annulled by the Constitutional Court, thereby foreclosing lustration in Albania.[[9]](#footnote-9)Issues were raised with the objectivity of the Court’s decision, since judges and prosecutors might have been personally affected by lustration. Nevertheless, the decision stood.[[10]](#footnote-10) In sum, Albania forced politicized bureaucratic change through the use of purges and several lustration laws, but looking at the implementation one cannot say Albania engaged in authentic transitional justice.

 In the case of Bulgaria, the 1992 Law on Banks and Credit Activity focused very narrowly on individuals in bank management positions but was declared unconstitutional in 1992, never implemented, and abolished by Parliament in 1997.[[11]](#footnote-11) The 1992 Panev Law narrowly targeted academics and scientific institutions, and was in force until 1995.[[12]](#footnote-12) Again, the narrow focus on academics did not suggest a lustration process with substantial bureaucratic change potential. Finally, the 1998 Law on Public Radio and Television prohibited state security officers and informers from being elected as members of the Council for Electronic Media, and in practice the Council did remove one member for being a former informer.[[13]](#footnote-13) As with the early Albanian lustration laws, the very narrow focus of the laws suggested an attempt to deflect transitional justice attention away from public office holders, rather than engage with an authentic lustration of public institutions and governance. It was not until 2001 that public disclosures of previous collaboration began across public sectors in a manner that could be considered a fledgling and extremely limited attempt at real lustration. In practice, the implementation of lustration and public disclosure processes in Bulgaria started in earnest only in 2006 with the passage of the Law for Access and Disclosure of the Documents and Announcing Affiliations of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Army, suggesting significantly delayed accountability mechanisms in Bulgaria in practice.[[14]](#footnote-14) As such, despite passing three lustration style laws, Bulgaria had no real accountability or bureaucratic change before 2006.

Taking a closer look at both the timing and implementation of regional measures puts Romania’s transitional justice in comparative perspective (Table 3.1). Although Romania was late to pass a lustration law, it was early to start discussing lustration as a transitional justice possibility. In March 1990, the Proclamation of Timişoara called for lustration through the adoption of electoral law amendments that would have in effect screened and banned Communist Party leaders and Securitate agents from running in presidential elections and from being included on party lists.[[15]](#footnote-15) As Stan explained, although it stands as only a missed opportunity, since lustration would fail to materialize in Romania for almost another decade, it set the parameters of the lustration debate in the country. In 1993 Senator Constantin Ticu Dumitrescu introduced a lustration type proposal that would have prevented part-time Securitate informers from being blackmailed based on their previous collaboration, but the proposal was rendered inert by a lack of general access to the secret police files. Dumitrescu pushed forward another lustration proposal, which was more expansive, highly contentious, hotly debated, rewritten and stripped of lustration provisions. It finally narrowly passed to becomeLaw 187/1999 on Access to the Personal File and Disclosure of the Securitate as the Political Police (Ticu Law).[[16]](#footnote-16) In practice, Consiliul Național pentru Studierea Arhivelor Securității (CNSAS or National Council for the Study of the Securitate Archives), the agency charged with administering the process, lacked independent file access privileges. Institutional constraints on CNSAS and a review process based on voluntary confessions and self-resignations resulted in the overall politicization of the process and no real implementation.[[17]](#footnote-17) It was not until 2005-2006, when President Traian Băsescu intervened and had 60,000 files transferred to the CNSAS, that public disclosures became a real possibility.

 The timing of the actually implemented measures puts Romania on par with Bulgaria and ahead of Albania. To put the timing of Romania’s reforms in regional context, Poland also engaged with late lustration measures, passing its first measure in 1997, as compared to Romania’s 1999 law. Poland also expanded its lustration provisions significantly in 2006, about the same time that Romania engaged in its expanded public disclosure program.[[18]](#footnote-18) Lithuania passed a lustration law in1999, and Hungary expanded and extended lustration in 2000. Even the Czech Republic did not grant public file access until 2002.[[19]](#footnote-19) In essence, placing Romania within a regional context illustrates the many late lustration measures in the post-communist region. Moreover, the most expansive period of public disclosures in Romania corresponded with a similar late, expansive public disclosure program in Bulgaria.

***Public Disclosures***

There was temporal and procedural continuity between the public disclosure programs adopted in Romania and Bulgaria in terms of the implementation of late transition accountability measures. The CNSAS in Romania and the Dossier Commission in Bulgaria are both file repository agencies and members of the European Network of Official Authorities in Charge of the Secret Police Files.[[20]](#footnote-20) The Bulgarian Constitution officially prohibits lustration and the Romanian Constitutional Court has ruled many times on the unconstitutionality of similar lustration measures.[[21]](#footnote-21) Thus, these file repository agencies play a pseudo-lustration role using the secret police files to disclose the background of individuals in a variety of positions of public trust.

The Romanian CNSAS's active role in unmasking collaborators and agents did not start until after the file transfer of 2006, and commenced in earnest in 2008. The Bulgarian Dossier Commission was empowered in December 2006, but really began to expand the scope of its work in 2007-2008. At that time, the Dossier Commission and the CNSAS began to review the files of political candidates and individuals in positions of public trust, and publicly disclose any former collaboration found in the secret archives. This information could not result in formal employment penalties, as there were no punitive lustration laws in place, but they had an important disclosure purpose with potential bureaucratic change elements. The scope of positions screened was broad, covering elected officials and public bureaucrats at the national and regional levels, as well as semi-public positions, such as cultural directors, or clergy members in the case of Bulgaria. While both the Dossier Commission and the CNSAS have limitations on the degree to which they can engage with formal lustration, they used their capacity as public disclosure agencies with access to the secret archives to pursue informal lustration.[[22]](#footnote-22)

The public disclosures of former secret police agents and collaborators in positions of power were and are published openly on the agency websites, as forms of symbolic public accountability.[[23]](#footnote-23) Both agencies reported that fear of public disclosure caused political parties to self-lustrate potential candidates before placing them on electoral tickets, thereby demonstrating an institutional change function to disclosures.[[24]](#footnote-24) The agencies also reported that some individuals resigned positions to avoid media attention or public backlash. Therefore, a self-selection mechanism is associated with public disclosures as well, much like the non-punitive employment change components of lustration measures used in Hungary and Poland.

In sum, the Romanian and Bulgarian public disclosure programs currently operate as transitional justice mechanisms, albeit late and informal mechanisms. In both cases, file revelations are the primary symbolic efforts to come to terms with the past, and catalyze potential bureaucratic change. This is less than the bureaucratic change effected in other post-communist states with more formal and exclusionary lustration laws. By contrast, Albania largely terminated any remaining efforts to deal with the past. The next section compares the politicization of transitional justice in several post-communist countries to elucidate some of the delays in and misuse of measures.

***Political parties and manipulation***

Lustration and file disclosure policies are politically sensitive, with potential political blowback from the disclosure of complicity with the previous regime. Nalepa documented how fear of public disclosure affected the attitudes of political parties at the Round Table talks in Poland in 1989, and post-communist attitudes toward transitional justice in Czechoslovakia and Hungary.[[25]](#footnote-25) There is evidence that the political orientation of the dominant party affected the initiation and content of lustration laws, with parties dominated by former communist elites and secret police informants disinclined toward lustration and public disclosure. In many post-communist countries, lustration laws have been wielded by parties in an attempt to potentially discredit opponent parties in the eyes of voters.[[26]](#footnote-26) This was true in the case of Romania, where vacillations in support for transitional justice and accountability made for a politicized, and at times questionable, transitional justice experience.[[27]](#footnote-27) No one party was to blame for stymieing lustration, for as Stan noted, opposition to lustration came from parties across the political spectrum.[[28]](#footnote-28) The instrumental manipulation of measures in Romania affected implementation and perceived legitimacy.

For example, Senator Ticu Dumitrescu originally proposed a lustration type measure in 1993, but it was rejected by the left-dominated parliament, and then reconsidered in 1996 under the center-right government.[[29]](#footnote-29) A significantly modified version finally passed in 1999, surviving attempts to block the measure by members of Dumitrescu’s own National Peasant Party.[[30]](#footnote-30) Parliament modified the standing lustration law in 2006, but two years later the Constitutional Court struck down the modifications and the original 1999 law. Renewed and highly contested lustration efforts in 2010 resurrected elements of the 2006 law, but they were also struck down by the Court in 2010.[[31]](#footnote-31) In 2012 another lustration law was passed despite opposition from parties across the political spectrum, but prior to implementation the Court struck it down that as well. A legislatively active Constitutional Court significantly shaped transitional justice in Romania.[[32]](#footnote-32)

Constitutional Courts have been active in lustration and transitional justice issues across the post-communist region in Bulgaria, Poland, Hungary and Albania. The Hungarian Court struck down the retroactive justice components of lustration, significantly limiting the lustration implemented in Hungary, at the same time the Czechoslovak Constitutional Court ruled in favor of similar measures.[[33]](#footnote-33) The highly activist Polish Constitutional Court ruled on the admissibility or lack of constitutionality of lustration-type measures on more than one occasion. The communist appointees in the Bulgarian Constitutional Court ruled on the unconstitutionality of the first lustration provisions, the Law on Banking and Credit (1992) and the Panev bill, soon after their passage.[[34]](#footnote-34) Albania’s Constitutional Court struck down the last effort at passing lustration: the Clean Hand’s Bill.[[35]](#footnote-35) In a word, while Romania’s Constitutional Court has been politically interventionist on the topic of lustration, it was not regionally anomalous.

Political parties also played a heavy hand influencing both the passage and the blockage of transitional justice measures in Romania. Table 3.2 pairs some transitional justice measures alongside the dominant political party in Parliament. Between 1990 and 1996 both the ruling government and the opposition blocked lustration efforts. As Table 3.2 illustrates, support for or rejection of lustration cannot be simplistically explained as a function of the political orientation of the party in power. Center-left and center-right party coalitions have been in power and neither has adopted a single approach—either for or against—transitional justice measures. The 2006 law in particular was highly contentious and largely opposed by parties comprised of many former Communist Party members. However, it was backed by the National Liberal Party, which would have been negatively affected by lustration due to the known collaborators in their ranks, including the popular minister of culture Mona Musca.[[36]](#footnote-36) While there is clear evidence of political gaming of transitional justice measures in Romania, party affiliations or communist legacies cannot explain neatly the presence or absence of transitional justice measures over time.

To put Romania’s experience in regional context, in Poland there is also evidence of significant party involvement in lustration debates. Although the first parliamentary motion on lustration was adopted in 1989, it was not until 1996 that a draft lustration law passed the Polish Parliament and it took effect only in 1997. After final passage, the Polish Constitutional Court, political parties and even the president weighed in both positively and negatively on aspects of lustration, resulting in what some described as “no lustration at all” up until the passage of the 2006 expanded lustration provisions.[[37]](#footnote-37) Even that version of the law was politically contentious, with the Constitutional Court striking down some elements of that law.[[38]](#footnote-38)

INSERT TABLE 3.2 HERE

Table 3.3 compares the immediate post-transition political environment in Hungary, Poland and Czechoslovakia, helping to contextualize the Romanian experience. As it shows, support for transitional justice fluctuated in Hungary and Poland, depending on the orientation of the dominant party, but remained relatively constant in the Czech Republic. Lustration measures were both rejected and expanded in Hungary under the socialist/former communist led government in 1994. The very polarized elections of 2002 yielding a slim socialist majority, and corresponded with an expansion of file access information. At one point the radical populist Hungarian Justice and Life Party (MIEP) proposed an expansion of screening measures, and at other times the Socialist-Free Democrat coalition and the opposition parties FIDESZ and the Hungarian Democratic Forum (MDF) proposed expansion of lustration and citizen access.[[39]](#footnote-39) In places with strong hold over communist legacy parties, there has been both rejection of and support for lustration and file access at different times. For example, the Bulgarian Socialist Party (BSP) led government passed the 2006 public disclosure/lustration law and appointed Chairman Evtim Kostadinov as head of the Dossier Commission.[[40]](#footnote-40) Under his leadership, Bulgaria embarked on a wide and deep public disclosure program. Political orientation affected attitudes toward lustration but was not deterministic, even in countries considered more forward thinking with respect to transitional justice than Romania. In many ways the absence of overt politicization of the Czech laws looks like the regional outlier rather than Romania.

In sum, the first section of this chapter considered the timing, passage, implementation, and politicization of measures in three Balkan countries in order to contextualize Romania’s experience with transitional justice. If one were to assess transitional justice measures in the region simply based on whether a lustration law was in place and according to which country passed a law first, then Romania would look like the Balkan laggard. However, on closer inspection both the timing and the implementation of measures in Romania mirrored those in Bulgaria and significantly outpaced the lack of measures in Albania. Moreover, the political manipulation of transitional justice was not a Romanian phenomenon; the same could also be said of Bulgaria, Poland and Hungary. Although Romania has not been as successful with its transitional justice measures as it could have been, it is neither a regional outlier nor extraordinary. Unfortunately, Romania’s missed opportunities with transitional justice, politicization of measures, and implementation delays were echoed in other post-communist experiences as well. The next section turns to an evaluation of transition goals in Romania, again placing its progress in regional context.

INSERT TABLE 3.3 HERE

**Evaluating transition outcomes**

This section considers Romania’s progress on several transition goals linked to transitional justice measures like lustration, public disclosures and file access procedures, namely building trust in public institutions, tackling corruption, and promoting democratization. As with the previous section, Romania is compared to the regionally proximate cases of Albania and Bulgaria, as well as the cases of Poland and Hungary, in order to evaluate possible relationships between transition goals and transitional justice.

***Trust in Public Institutions***

Public institutions like the judiciary, the courts, and the police are important for the effective functioning of a state. It is not just the staffing of those institutions that matters, but also public perception that those institutions are trustworthy. Effective and trustworthy public institutions are linked to good governance and democratization in the comparative politics literature.[[41]](#footnote-41) As such, building trustworthy public institutions was a transition goal for post-communist countries.[[42]](#footnote-42) Transitional justice measures like lustration and public disclosures were first and foremost designed to expose the collaborator backgrounds of individuals in these very public institutions. Lustration started out as a means of screening individuals in public positions, to assess their integrity and capacity to do their job based on evidence of previous collaboration or employment with the secret police and/or communist regime.[[43]](#footnote-43) As such, lustration and its employment vetting aspects were intimately linked to efforts to improve the functionality and trustworthiness of targeted public institutions.

In Romania, most of the public institutions were heavily staffed by loyalists to the Communist Party. Securitate networks of agents and informers infiltrated public institutions as a means of maintaining control over the population and ensuring that those institutions enforced policies consistent with the regime goals. Because Romania had limited lustration and did not engage in compulsory employment sanctions for individuals with known collaborator backgrounds, there was more limited employment turnover in public positions than experienced in other places with more direct bureaucratic change provisions. There is a perception that Romania’s trust in public institution levels are below regional standards due to a lack of effective transitional justice. To see whether this intuition is correct, this section compares Romania and five regional countries in terms of trust in the judiciary, the police, the press, and the parliament over 2001-2015 (data limitations for trust in the press truncated this comparison to 2013). Using annual Eurobarometer Public Opinionsurveys of trust in public institutions, I plot the percentage of people who said they could trust a certain public institution. These institutions were included in most lustration, public disclosure and file access provisions in the region. There is a strong argument to be made that transitional justice measures targeting these institutions might make them appear more trustworthy to citizens.[[44]](#footnote-44)

INSERT FIGURES 3.1 and 3.2 HERE

Figure 3.1 compares trust in the judiciary across six countries. Trust in the judiciary in Romania has generally improved after 2006, and as of 2015 Romania scored relatively well compared to other countries in the region. In fact, citizens in Romania cited more trust in the judiciary than citizens in Hungary and the Czech Republic. In terms of trust in the press, Figure 3.2 illustrates that Romania was in the middle of this group of comparative cases as of 2013. Although Romania enjoyed more trust in the press than most regional cases prior to 2008, its levels still declined over time. As of 2013, Romania’s trust levels were on par with Hungary’s, above Bulgaria’s, but below the Czech Republic and Poland. In other words, Romania’s trust in the press was in the middle of the comparative set. Figure 3.3 shows that trust in parliament fluctuated in Romania, declining from 2001 to 2010 but then slowly rising over time. In terms of trust in parliament, Romania again scored in the middle of this comparative set, having neither very high nor very low trust levels. Finally, Figure 3.4 shows that trust in the police improved over time in Romania. In 2001 Romania ranked toward the bottom of the trust index, but has slowly seen an increase in trust in the police over time. As of 2015, Romania’s level of trust in the police was on par with Poland, setting Romania in the upper half of countries in this grouping.

INSERT FIGURES 3.3 AND 3.4 HERE

 Table 3.4 presents data on trust in public institutions from the New Democracies Barometerproject, a different dataset with survey questions corresponding to Eurobarometer. The data represent the average of citizen responses to questions about how much they trusted different public institutions on a scale from 1 to 7, with 7 being the highest level of trust. Information on trust in the parliament, the courts, the police, the army, political parties and the press is presented here for the two time periods for which data was available, 1993 and 2004. These time periods captured citizen trust assessments early in the transition and almost a decade later, providing sufficient data to compare changes within Romania, and assess how Romania compared to other post-communist countries. As Table 3.4 illustrates, trust in all of the public institutions appeared to decline between 1993 and 2004 in Romania. This is the period prior to any real transitional justice measures and, as such, is a slightly different temporal slice of trust data than the national level charts previously presented. This snapshot presents a gloomy picture of trust in public institutions a decade after the transition.

INSERT TABLE 3.4 HERE

Comparing Romania’s trust levels to regional counterparts allows us to contextualize these levels. Romania’s trust in the army was higher than any of the other countries, and its levels of trust in the press were higher than in Poland and Slovakia and on par with Bulgaria. Levels of trust in the police were above Slovakia’s and on par with Lithuania, Latvia and Bulgaria. Trust in the courts was higher in Romania than Poland in 2004, and significantly better than in Bulgaria. Levels of trust in parliament and trust in parties were relatively low across all of the countries, with Romania’s levels looking on par with Poland and Latvia, as well as just below the Czech Republic. The regional comparisons of trust levels both immediately after the transition and a decade later showed that trust levels declined over this time period in many of the post-communist states, not just Romania. This hints that a larger regional phenomenon might have affected trust levels, such as the fading of post-transition euphoria, the sobering realization of the challenges of reform, and particular national level factors related to domestic economic, social or political circumstances. In short, Romania’s trends were experienced by other post-communist countries, suggesting Romania was not such a trust outlier. This is not an endorsement of Romania’s transitional justice program, so much as an acknowledgment that in terms of trust building, Romania ranks in the middle of regional comparisons.

 ***Corruption***

Directly tied to the narrative about corruption in the post-communist space is a suggested corrective in the form of transitional justice. No other transitional justice mechanism has been so explicitly framed as a corruption corrective as lustration.[[45]](#footnote-45) Informal networks of former secret police officials continued to dominate economic activities in many post-communist countries after the transition. In some countries, like Bulgaria and Poland, the disbanding of the security services created a pool of unemployed, or unemployable, well connected, former security personnel who could use their privileged networks for personal gain in post-communism.[[46]](#footnote-46) Many late lustration programs were explicitly framed as methods to address the widespread economic and political corruption linked to the continued prevalence of former *nomenklatura* networks in positions of power.[[47]](#footnote-47)

Romania’s problems with lingering corruption have been tied to the political class, for which there was little turnover after the transition.[[48]](#footnote-48) The Securitatenetwork maintained powerful ties to business elites in the post-communist regime, facilitating an extension of their political access into economic networks. The renewed and expanded Romanian lustration law of 2006-2007 was proposed and circulated in Parliament at the same time as an anti-corruption law. When politicians argued for “the moral cleansing of society,” they were clearly framing lustration as a corruption corrective.[[49]](#footnote-49) The CNSAS’s public disclosures directive allowed them to reveal the backgrounds of individuals in current positions of economic and political power, including related private sector fields, as part of the broader, national anti-corruption goals.[[50]](#footnote-50) That said, it was not until late in the transition that Romania began its expansive public disclosure measures. Thus, possible anti-corruption effects from transitional justice would also be late in the transition, if they were discernible at all. One would predict Romania’s corruption levels would be regionally high, given its relatively limited and late lustration measures.

Figure 3.5 compares the corruption levels in Romania with several other post-communist countries. Romania remained in the middle of the five countries as of 2015. Poland and Hungary had the lowest corruption levels, Albania the highest. Romania tracked closely with Bulgaria, with corruption levels declining in both countries after 2006, when the more expansive public disclosure programs began. Romania was not an extreme outlier, and showed improvement over time. It remained situated firmly in the middle of the countries considered here.

INSERT FIGURE 3.5 HERE

The change in Romania’s corruption levels over time is curious, and suggests a possible role for transitional justice in this narrative. In particular, Romania’s corruption levels were significantly higher than Bulgaria’s in 2000-2006, but started a marked decline and even fell slightly below Bulgaria’s after 2006. This is the period that corresponded with the start of Romania’s significant file revelations and public disclosures program. Of note, Bulgaria’s also declined over this time period, corresponding with public disclosures under the Dossier Commission. Poland’s corruption levels slowly rose until 2006 with a noticeable and sharp decline around the same time as the country launched its late and expansive lustration program. Again, no causal claims can be made about the corruption fighting power of lustration and public disclosures, and lustration measures might simply be part of larger governmental reforms. What we can assert is that Romania’s corruption levels improved over time, corresponding with its late transition public disclosure program. Moreover, compared to other countries in the region, after 2006 Romania’s corruption levels were in the middle of similar post-communist experiences.

***Democracy***

Scholars and policy practitioners have linked lustration to democratization, citing both bureaucratic changes and moral value realignments as possible causal mechanisms.[[51]](#footnote-51) For Elster, holding individuals accountable for their past actions could prevent future abuses under the new system.[[52]](#footnote-52) This way, lustration as a punitive consequence could support democracy by creating an environment in which individuals were accountable for their actions. Other scholars suggested that democratization was indirectly promoted by combating corruption and preventing the continued abuse of power by officials associated with the old regime.[[53]](#footnote-53) Given these connections, one would predict that countries with limited transitional justice would make less progress in democratization.

Figure 3.6 compares Romania’s democratization levels over time to its post-communist counterparts. Romania once again was in the middle of the group, ranking above Albania, for which there was limited reform and very limited transitional justice, and on par with Bulgaria and Hungary. Only Poland had significantly higher democracy scores. Romania’s democracy levels remained largely stable over time, showing no significant improvement during the wave of late transitional justice and public disclosures after 2006. However, Romania did not regress, something unfortunately visible in the case of Hungary. While Romanian democracy has not benefited from late transitional justice measures, Figure 6 once again placed Romania’s reform outcomes in the middle of similarly situated post-communist countries.

In sum, Romania would surely rank below the Czech Republic in terms of corruption and democratization levels. However, comparing Romania to the regional vanguard case, or the slightly exceptional cases of the Baltics, would not tell us much about Romania’s transition. The point was to review Romania’s progress compared to its regional compatriots (Albania and Bulgaria) and countries considered one step higher up the ladder of regional transitional justice reforms (Hungary and Poland). When Romania was viewed from this contextualized perspective, it appeared in the middle of the pack, higher in terms of trust in public institutions than some, and lower in terms of democracy than others. Overall, Romania’s reform measures and reform outcomes placed it within the middle of other post-communist experiences.

INSERT FIGURE 3.6 HERE

**Conclusion**

This chapter provided a short retrospective on Romania’s experience with lustration and public disclosure, putting both its transitional justice and progress on several transition goals within a regional context. Both the lustration measures and the informal public disclosures overseen by the CNSAS have suffered from delays, problematic implementation, political instrumentalization, and information bias. Although this chapter did not engage with other forms of transitional justice in Romania, like the Tismăneanu Commission or property restitution, there were similar problems with their implementation. The Commission produced a rushed report on communist repression that was largely academic and without real impact.[[54]](#footnote-54) The final results were somewhat tainted by the inclusion of two Securitate members on the Commission.[[55]](#footnote-55) Legislation was passed in 1990, 1992 and 2001 to allow some property restitution,but in practice many of the court-approved property restitution cases were rejected by Romanian authorities, with very few properties returned to the original owners, in a familiar cycle of failed reforms.[[56]](#footnote-56) When considered altogether, Romania’s record of transitional justice was tainted.

Putting this record in context, Romania looks similar to other post-communist countries. Most of the post-communist states, including Poland, Hungary and Lithuania, experienced politicized, delayed, and/or narrowed or truncated measures over the course of their transitional justice efforts. Romania’s late public disclosure program was temporally and structurally similar to Bulgaria’s, and a significant improvement compared to Albania’s. In a word, Romania’s flawed transitional justice program was unfortunately not regionally anomalous. Romania’s missed opportunities were post-communist missed opportunities, with all of the countries in the region struggling to implement measures that could authentically and fairly engage with the past. Romania is neither the regional laggard nor the regional vanguard, but finds itself at an uncomfortable spot in the middle.

Given Romania’s poor performance with transitional justice, one might predict that the country would be a regional laggard in terms of meeting transition goals. Countries with significantly more transitional justice did have higher democratization measures and lower corruption levels, suggesting that Romania missed opportunities to leverage transitional justice measures and facilitate various transition goals. Be that as it may, when evaluating changes in Romania’s levels of trust in public institutions, corruption and democratization over time, Romania once again appeared in the middle of post-communist comparison countries. Romania’s trust in public institutions rose, corresponding with the post-2006 period of more transparency about the past. Corruption levels also declined commensurate with public disclosure programs. While Romania missed opportunities for meaningful reform early in the transition, and repeatedly thwarted its own transitional justice efforts, it still remained in the middle of countries on a number of transition goal metrics after 2006. While Romania is not at the vanguard of regional reforms, it outpaced its Balkan compatriots on many metrics. Its transitional justice measures were in the middle of other regional efforts, and its transition outcomes remained in the middle as well. While this is not a glowing endorsement of Romania’s post-transition democratization efforts, it is also not an across the board condemnation, perhaps hinting at limitations in transitional justice measures more generally.

In conclusion, the temporal window for using transitional justice might be closed (or rapidly closing) more than 25 years after the fall of communism. There was no evidence that the post-2006 measures affected democracy levels in Romania, and corruption levels were plateauing. This means that it is unlikely that more transitional justice will solidify democracy or change perceptions of trust in government or public institutions so late in the transition. Transitional justice does not have a built-in expiration date, and accountability, transparency, and acknowledgment of the past are goals in and of themselves. However, at this point in the transition, real progress on democracy, corruption, rule of law, and civil society might require more than transitional justice measures.

**Table 3.1: Lustration, Public Disclosure and File Access Laws and Policies**

|  |  |
| --- | --- |
| **Country** | **Transitional justice measures (both passed and rejected)** |
| **Albania** | 1991 -- Ruli Report—first trials of former regime on economic grounds. Law 7541 of 18 December on Advocacy in the Republic of Albaniabecomes first attempt at lustration, with narrow focus on lawyers.1992 -- Purges of political opposition in public sector--no file access.1993 – Law 7666 of 26 January 1993 On the Creation of a Commission to Re-assess Licenses for the Exercise of Advocacy and for an Amendment to Law 7541/1991 facilitated the implementation of the 1991 Lawon Advocacy*.*1995 -- Law 8001 of 22 September On Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons (The Genocide Law). No real implementation of this lustration measure.1995 -- Law 8043 of 30 November On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State (The Verification Law). No real implementation of this lustration measure.1997 -- Government reduces scope of Verification Law and both the Genocide and the Verification Laws expire without implementation in 2001.2008 -- Law 10034 of 22 December On the cleanliness of the figure of Hugh Functionaries of the Public Administration and Elected Persons (Clean Hands Bill)2009 -- Clean Hands bill declared unconstitutional and not implemented.  |
| **Bulgaria** | 1990 -- Publication of unconfirmed list of collaborators.1992 -- Law 25 of 18 March on Banks and Credit Activity, passed as lustration of banking sector, but declared unconstitutional.1992 -- Law of 9 December for Temporary Introduction of Some Additional Requirements for the Members of the Executive Bodies of Scientific Organizations and the Higher Certifying Commission (Panev Law) — narrow focus of lustration on science and academics.1993-4 -- several trials of former leadership, limited scope.1997 -- Access to the Former State Security Files Act of 30 July, and creation of Committee for Access to the Former State Security Files (Bonev Committee). Limited effect: 23 public disclosures of collaboration.1998 -- Law on Public Radio and Television.1999 -- Constitutional Court limits publication of informers.2001-2 -- Access to the Former State Security and the General Staff Intelligence Directorate Files Act of 28 February 2001; and creation of Commission Determining Connections to the Former State Security (Andreev Committee). 7000 individuals investigated, 517 collaborators disclosed.2002 -- Classified Information Protection Act repeals access to files.2006 -- Declassification of secret police archives.2006 -- Law for Access and Disclosure of the Documents and Announcing Affiliations of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Army, December.2007 -- Committee for Disclosing the Documents and Announcing Affiliation of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Army (Kostadinov Committee)—to implement the new law, April 2007.2007-present -- Dossier Commission engages in file review and public disclosures. During 2011-4 extensive public revelations of collaboration of academics, media, clergy, Foreign Service, cabinet positions, and “credit millionaires” with secret police backgrounds. |
| **Romania** | 1990 -- Proclamation of Timișoara’s call for lustration are not implemented.Long period of no activity—President declares lustration over in 1997.1999 -- Law 187 of 9 December on Access to the Personal File and Disclosure of the Securitate as Political Police (Ticu Law). Created Council for the Study of the Securitate Archives (CNSAS) to oversee the secret police files and control public access to this information. CNSAS functions as a de facto vetting institution, issuing symbolic rulings, but implementation limited (70 collaborators revealed, 38 candidates resign).2005 -- Emergency Ordinance 149 of 10 November extends the CNSAS’s activities.2006 -- Emergency Ordinance 16 of 22 February modifies Law 187/1999 to facilitate the work of the CNSAS. Renewed lustration—270 collaborators revealed through informal disclosures.2008 -- Constitutional Court Decision 51 of 31 January declares Law 187/1999 unconstitutional.2008 -- Parliament passes Law 293 of 14 November to modify Emergency Ordinance 16 and change the activities of the CNSAS.2012 -- New Lustration Law, passed by Parliament in February 2012, is declared unconstitutional.2012-present -- public disclosures continue through CNSAS. |

**Table 3.2: Timing of Transitional Justice Compared with Dominant Political Parties**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Year** | **Transitional Justice Measure** | **Political Parties Dominant in Parliamentary Elections (% votes)** | **Year** | **Transitional Justice Measure** | **Political Parties Dominant in Parliamentary Elections (% votes)** |
| **1990** | *Proclamation of* Timișoara’s calls for lustration are not implemented | 66.31% National Salvation Front (FSN)—*left/center-left, made up of former communists* | **2004** |  | 36.61% National Union PSD+PUR—*center-left* 31.33% Justice and Truth Alliance (DA)—*center-right* |
| **1992** |  | 27.72% Democratic National Salvation Front (FDSN)—*center-left*20% Democratic Convention of Romania (CDR)—*center-right* electoral alliance of parties against National Salvation Front (FSN, former communists) | **2005** | Emergency Ordinance No. 149, extending the CNSAS’s activities.1 million files transferred to CNSAS from Romanian Intelligence Service |  |
| **1996** |  | 30% Democratic Convention of Romania (CDR)—*center-right liberal electoral alliance*21.52% Social Democracy Party of Romania (PDSR)—*center-left* | **2006** | Emergency Ordinance No. 16 modifies Law 187/1999 to facilitate the work of the CNSAS.Renewed lustration—270 collaborators revealed. |  |
| **1997** | President declares lustration over. |  | **2008** | Constitutional Court Decision No. 51 declares Law 187/1999 unconstitutional (31 January). | 33.10% Alliance Social Democratic Party + Conservative Party (PSD+PC)—*center-left political alliance*32.36% Democratic Liberal Party (PDL)-*center* |
| **1999** | Law 187/1999 On Access to the Personal File and Disclosure of the Securitate as Political Police (Ticu Law)Created CNSAS to oversee the files.  |  | **2009** | CNSAS’s power to issue collaboration verdicts taken away |  |
| **2000** |  | 36.61% Social Democracy Party of Romania (PDSR)—*center-left*19.48% Greater Romania Party (PRM)—*nationalist* | **2012** | 2012 lustration law initiative declared unconstitutional  | 58.63% Social Liberal Union (US)—*coalition of center-right and center-left parties* |
| **2001** | Limited CNSAS activity. 70 collaborators revealed, 38 candidates resign.  |  | **2016** | CNSAS continues public disclosures | Elections organized in Fall |

Sources: For party information, European Elections Database, available at: http://www.nsd.uib.no/european\_election\_database/country/romania/parties.html, accessed on 15 September 2016

**Figure 3.1: Trust in the Judiciary**

**Figure 3.2: Trust in the Press**

**Figure 3.3: Trust in Parliament**

**Figure 3.4: Trust in the Police**



**Figure 3.5: Comparative Corruption Measures**

**Figure 3.6: Comparative Democracy Measures**

**Table 3.3: Political Fractionalization and Lustration Measures**



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