

# International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context

Cynthia M. Horne

*The transitional justice literature highlights various trade-offs involved in the choice and implementation of lustration as a transitional justice measure in Central and Eastern Europe. This article examines how international legal body rulings on lustration laws have interpreted rule-of-law versus justice concerns. The European Court of Human Rights and the International Labour Organization have explored possible information problems, due process violations, employment discrimination issues, and bureaucratic loyalty concerns within the context of lustration. Three findings emerge from their legal rulings. First, contrary to popular notions, international legal bodies are not antilustration. The institutions are engaging with questions regarding the fair implementation, not the legality, of lustration laws. Second, the prioritizing of justice concerns during the transition efforts is highlighted as a way to lay a strong democratic foundation. Third, the organizations have emphasized the importance of placing rule of law in historical context, thereby situating post-Communist societies within other posttotalitarian regime-building narratives.*

## INTRODUCTION

The legality of lustration, a form of transitional justice opted for by many post-Communist countries in Central and Eastern Europe (CEE), has been repeatedly questioned by regional and international scholars, dissidents,

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Cynthia M. Horne is Assistant Professor of Political Science at Western Washington University. She can be reached by e-mail at [Cynthia.Horne@wwu.edu](mailto:Cynthia.Horne@wwu.edu). She would like to acknowledge the extremely helpful comments on earlier drafts of this article from Adriana Buliga-Stoian, Deborah Elms, Paul Chen, Margaret Levi, Eric Smith, and three anonymous reviewers for LSI. Research for this article was facilitated by two summer research grants from Western Washington University.

practitioners, international organizations, and domestic and international courts. In its most basic form, lustration is a form of employment vetting, designed to either remove or prevent from assuming public office those persons who collaborated with the previous Communist regime or secret security services (Letki 2002).<sup>1</sup> The intention of lustration is to demonstrate to the population that there is a real change in the personnel of post-Communist governments, as well as safeguard against those individuals undermining the democratic reform process. Lustration is conceived of as both an institutional and a symbolic step toward good governance. However, the means of effecting such institutional changes are fraught with potential legal and moral dilemmas. As such, the extent to which lustration laws support or undermine the process of democratic consolidation remains open to debate.

Lustration laws epitomize in many ways the trade-offs embodied in rule-of-law versus retroactive justice debates. The structure of lustration could violate fair employment laws, freedom of assembly guarantees, free speech laws, and respect for due process (Huyse 1995; Offe 1992). However, strict rule-of-law adherence could ignore injustices committed under the previous regime or allow inequalities in political and economic access and privilege to remain under the new regime (Posner and Vermeule 2004). Neither ignoring justice considerations nor flouting rule-of-law concerns is optimal for the establishment of strong democratic foundations in transitional societies.

Reflecting the complexity and situated nature of transitional justice measures, there are mixed regional and international reactions to lustration policies. Regionally there is both support for and opposition to the laws. Some former dissidents argued it would be better to move forward with the transition than get mired in the past. In 1989, Polish Prime Minister Mazowiecki called for a “thick line” to be drawn between the past and the present; in order to build a new future, one should focus on reconciliation (Michnik and Havel 1993, 21; Walicki 1997, 189; Horne and Levi 2004). Lech Walesa opposed the passage of the lustration law when he was Poland’s president, rejecting its potential administrative impact and “witch hunt” propensities (Bertschi 1995, 446; Huyse 1995, 63; *New York Times* 1992). Václav Havel also objected to the expansion of lustration while president of the Czech Republic (Michnik and Havel 1993).

Regional constitutional courts, such as those in Poland and Romania, have ruled on the unconstitutionality of various parts of lustration laws (Polish Constitutional Tribunal 2007; Constitutional Court of Romania

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1. *Law & Social Inquiry* published a special volume in 1995 exploring various aspects of this topic. In that volume, Łoś (1995, 121) defines lustration as “the screening (or vetting) of candidates for and holders of important public offices to ‘eliminate’ (usually bar for a certain period) former secret police collaborators.” Over time that definition has evolved, as national variations have expanded the scope and intention of the laws; see Hatschikjan (2004) for a debate on the changes in meaning and intention of lustration in CCE.

2008). The Hungarian Constitutional Court questioned the legality of the retroactive justice measure altogether (Kritz 1993i). The main fear has been that retroactive justice would undermine a state's commitment to rule of law and the process of democratic consolidation.

However, there has also been widespread support for the policies from regional groups and the public, who stress the importance of transitional justice to democratic consolidation and the securitization of the state (Letki 2002; Williams 2003). Polish, Czech, and German constitutional courts have also upheld lustration laws and affirmed the consistency of retroactive justice measures with the goals of democratization (Kritz 1993a, 1993e, 1993f; Lovatt 2000). Given the lack of regional consensus, national political actors have looked to the decisions and assessments of international actors to support their lustration views.

There is no consensus about lustration from international actors either. The United Nations called employment vetting processes "rule of law tools," designed to "(re-)establish civic trust and to (re-)legitimize public institutions" (United Nations 2006, 9–11). In discussing efforts to curb corruption and promote good governance in Poland and other transitional countries, the Office of the United Nations High Commissioner for Human Rights argued that "one of the most effective tools is the use of lustration against public officials found to have been involved in corruption" (Kiai 2006, 5). These policy statements conflict with assertions that lustration laws, by their very nature, undermine rule of law and democracy.

Other international actors have voiced concerns resonating with national opposition to lustration. The European Committee of Social Rights within the Council of Europe and the Helsinki Federation for Human Rights have warned about the potential excesses of lustration and the manner in which these laws might violate individual rights and international treaty obligations (Cohen 1995; Kritz 1993a; Helsinki Committee of Poland 2007; Council of Europe 2007a, 2007b).

Specifically, international legal bodies have interpreted the legality and appropriateness of lustration laws. The European Court of Human Rights (ECHR) and the International Labour Organization's (ILO) Committee of Experts have heard a number of cases regarding potential individual right violations in the context of lustration. In all of the cases, these two international legal bodies have ruled for the plaintiffs and against the state, meaning they have ruled that there was a problem with the implementation of lustration. As a result, it has been concluded that these international legal bodies are largely antilustration. Since the legal rulings are used by other international and national actors to interpret the utility of lustration, this has important regional implications.

This article tests that assumption by examining the universe of ILO and ECHR rulings since the start of lustration in CEE to the present. The cases and their rulings are analyzed within the context of four main legal problems

highlighted in the transitional justice literature related to retroactive justice issues and lustration: information problems, due process violations, employment discrimination, and bureaucratic loyalty concerns. This article shows that despite many rulings against states' use of lustration, the international legal bodies are not simplistically antilustration. Instead, their rulings have focused on the fair and appropriate implementation of lustration laws, not the legality of the laws, situating what constitutes "fair" and "appropriate" in historical context. By framing the transitions in CEE as part of a period of extraordinary politics, such as post-Weimar Germany, the international legal bodies have impacted the type and scope of rule-of-law derogations deemed temporarily acceptable in order to further the goals of democratic consolidation. What emerges from these cases is an affirmation of the centrality of historically situated transitional justice measures in both the conceptualization of democracy and implementation of rule of law in post-Communist countries.

## LUSTRATION AND RULE-OF-LAW CONCERNS

The debate about whether or not to lustrate has been framed in "rule of law" versus "justice" terms, with the umbrella concepts capturing the many ethical and legal trade-offs involved in transitional justice choices (McAdams 1997; Teitel 2000; de Brito, Enriquez, and Aguilar 2001). The literature often frames these issues as if they were mutually incompatible. Williams (2003) argued that "the wish to lustrate collided with a higher-order normative commitment to the rule of law, which was one of the defining ideas of the post-communist revolution" (7). The specific concern is whether lustration could undermine the goals of good governance through derogations of rights and laws (Offe 1992, 1996).

For example, under this rubric, trade-offs specific to lustration include retroactivity versus due process concerns (Karstedt 1998; Letki 2002; David 2003), individual rights versus collective state building goals, forgiving versus forgetting approaches (Michnik and Havel 1993; Minow 1998), forward-looking versus backward-looking institutional orders (Offe 1996), and fairness versus efficacy objectives (Ackerman 1992; Aukerman 2002). However, more and more scholars are seeing these less in terms of absolute trade-offs and more in terms of balancing (Posner and Vermeule 2004; Mayer-Riechkh and de Greiff 2007). As such, the appropriate relationship between rule-of-law and justice concerns remains a contested topic.

In this section, I situate lustration within the transitional justice debate and review some of the key legal arguments against it. Some of the arguments address bigger questions regarding retroactive justice in general, while other arguments focus on the implementation of lustration specifically. In particular, four salient legal critiques against lustration have been raised, namely,

information problems, due process violations, possible employment discrimination, and bureaucratic loyalty concerns. In assessing the appropriateness of rule-of-law versus justice trade-offs in practice in CEE, international legal bodies and international organizations have directly addressed these critiques within the larger context of retroactive justice.

In general, some aspects of lustration potentially violate strict rule-of-law guidelines in a criminal law context because of retroactive justice concerns (Offe 1996; Minow 1998; Aukerman 2002): trying someone for a crime now when it was not a crime at the time it was committed flouts procedural legality or adherence to the letter of the law (Sólyom 2003). If being a member of the Communist secret service or collaborating with the secret police was not a crime under the former regime, penalizing someone in the new regime for previous membership or activities violates fundamental rules against legal retroactivity. The Hungarian Constitutional Court ruled against the legality of national lustration laws on these grounds.<sup>2</sup> Given that the goal of lustration is good governance, basing a new legal system on procedurally questionable grounds is a dubious starting point.

More narrowly, information problems abound with the secret police files, ranging from problems with their accuracy and veracity to issues surrounding the comprehensiveness of the information used in the vetting process (Bikont 1992; Cywinski 1992; Smidova 1991; Varga 1997; Welsh 1996). Given the intentional misinformation in the files, the construction of half-truths by secret police agents and informers alike, and the selective destruction of files for political purposes, it is questionable whether guilt or innocence could be accurately judged on the basis of the contents of secret police files (Łoś 1995; Osiatynski 2007). Therefore, basing a justice process on questionable evidence might undermine the legitimacy of the entire enterprise.

Additionally, potential due process violations are often cited as legal critiques of lustration (Minow 1998). Vetting has been criticized for inadequate institutional appeal processes, thereby making it difficult for individuals to contest false accusations or lustration certificates. Lustration cases have been shrouded in classified information, thereby violating equal access to information and limiting the ability for an effective appeal of lustration charges (Boed 1999). Additionally, vetting strives for individual accountability in principle, but in practice this is not always the case. Former group membership, irrespective of individual level of involvement or individual actions, could be used in assessing former regime complicity in lustration cases. This would constitute a due process violation because it does not uphold the selectivity criteria. As such, there is concern that lustration laws fundamentally violate broad due process guarantees.

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2. However, special provisions were subsequently added in the Hungarian case in order to justify trying people for past crimes, in a strange embracing of retroactivity in practice but not in name (see Kritiz1993i, 1993j).

Finally, the potential moral turpitude of lustration has been raised, especially with respect to its possible employment discrimination implications and bureaucratic loyalty concerns. One of the reasons cited in favor of lustration is the ability of the policies to rebuild trust and legitimize public institutions. However, promoting good governance by vetting the old guard is unsettlingly reminiscent of the purges under the totalitarian system and therefore possibly anathema to the building of a society based on rule of law. Not only is there something intrinsically negative about reenacting political purges, but determining who should be captured in the vetting net is not an obvious decision. Moreover, who within that vetting net is actually culpable and what level of involvement constitutes collaboration worthy of employment exclusion (Skapska 2003)? Should previous regime involvement be used to assess potential loyalty to the new regime? Some critics have argued that the possibility for misapplying lustration is high enough to pose a real danger of undermining rather than enhancing citizen trust in government.

Given the aforementioned potential problems both in the design and implementation of the laws, it is not surprising that there is no policy uniformity across the post-Communist countries. Countries in CEE have wrestled with the appropriate scope, size, and duration of transitional justice measures as embodied in their lustration programs. Some, such as Bulgaria and Albania, have opted for limited lustration or no lustration, thereby minimizing justice concerns. Others, such as the Czech Republic and Hungary, have opted for more extensive lustration laws, weighing justice more heavily than strict rule-of-law guidelines. Still others, like Poland and Romania, have renewed and expanded their lustration programs in 2007, thereby substantially changing the scope of the new laws. Despite the regional variation in lustration programs, the programs share fundamental goals and similar core designs. The critiques outlined above largely relate to all the programs because they address the manner in which the programs reconcile rule-of-law and justice concerns. Given the lack of regional consensus, there is a potential for international institutions to substantially impact interpretations regarding the legality and appropriateness of transitional justice measures like lustration.

## INTERNATIONAL LEGAL BODIES: POLITICAL CONTEXT AND FUNCTIONS

International legal bodies have both direct and indirect power over lustration issues. They have an ability to reprimand states whose use of lustration violates international laws and treaties. There is an additional legitimizing power held by international organizations in this context. During the period of post-Communist regime building, certain policies and initiatives have been caught in cycles of political in-fighting and become

delegitimized, including lustration (Horne and Levi 2004; Kiss 2006). Because international organizations are removed from the domestic politics of the countries, their decisions about the legality of lustration laws confer a sense of legitimacy only possible from a third party.

Indirectly, they have an ability to frame lustration debates, thereby impacting the discourse surrounding lustration. By framing lustration cases as fundamental issues concerning the relationship between democracy and rule of law in former Communist countries, they have the ability to set the terms used to assess the trade-offs inherent in these transitional justice measures. Therefore, the impact of international organizations on the framing of rule-of-law issues in CEE could be particularly consequential.

Because all the post-Communist economies are signatories to the ILO and the ECHR, these institutions have jurisdiction over CEE countries in areas related to lustration. Citizens have taken advantage of their right to appeal to the ECHR and the ILO for redress of perceived rights violations by their national governments with respect to lustration. Through this opening, the ECHR and ILO have directly and intentionally placed themselves into the lustration and rule-of-law debate. The ECHR has explicitly stated a perceived responsibility to weigh in on the interpretation of these issues, arguing with reference to “the travesty of former oppressors subsequently appealing to and profiting from democracy and rule of law. . . . This Court must take a clear position on this matter” (*Case of Ždanoka v. Latvia* 2006, 37). The following section briefly reviews the structure and enforcement power of these legal bodies with respect to lustration issues.

## European Court of Human Rights

The ECHR (also referred to as the Court) both monitors and enforces the compliance of member states with the European Convention on Human Rights (the Convention).<sup>3</sup> The Court hears complaints lodged by either individuals or other member states who have been “personally and directly” the victim of right violations and issues binding judgments, including pecuniary judgments, in the event of a violation of the Convention. The member states are legally bound to abide by the Court’s judgment, and compliance is monitored by the Committee of Ministers.

The Court has heard a number of cases brought by individuals who alleged that the lustration laws violated various fundamental rights

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3. This article will focus on only those articles directly related to lustration. For a complete text of the Convention, see European Court of Human Rights, European Convention on Human Rights and Additional Protocols. <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/> (accessed January 13, 2009).



guaranteed by the Convention and its protocols. The alleged right violations include but are not limited to right to a fair trial (Article 6), right to respect for private and family life (Article 8), freedom of expression (Article 10), freedom of assembly and association (Article 11), right to an effective remedy (Article 13), prohibition of discrimination (Article 14), and right to free elections (Protocol 1, Article 3) (Council of Europe 2003). Many of these issue areas overlap with the international employment laws overseen by the ILO. In rendering judgments on these cases, the Court does not function as a court of appeal vis-à-vis national courts. It can, however, assess the compatibility of national laws with international obligations and issue rulings regarding the extent to which lustration laws comply with due process and rule-of-law requirements.

### International Labour Organization

The ILO functions as a tripartite agency, in which governments, employers, and workers jointly construct and oversee policies and programs related to international labor rights (ILO 2007b). The conventions and recommendations agreed to by its members, as well as a substantial body of case law, constitute a working set of international labor laws (5–7). The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, outlines labor standards directly applicable to lustration laws, namely, freedom of association and the elimination of employment discrimination (ILO 1998b, 14). Since the post-Communist countries of CEE have adopted and ratified these treaties, the ILO has potential power over labor rights violations in these countries.<sup>4</sup>

The ILO hears labor complaints raised by individuals, member states, or any of the stakeholders in the tripartite power-sharing arrangement, and it can initiate investigations of member states for lack of compliance with reporting procedures (ILO 1996; O'Leary, Nesporova, and Samorodov 2001). Lustration cases have been heard at the ILO through a mixture of methods of initiation.<sup>5</sup>

In conclusion, the ECHR and ILO have areas of potential legal overlap. For example, fair employment cases could be addressed through evaluations of

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4. See the IOLEX datafiles for a list of the specific year each country ratified C111: Employment and Occupation Discrimination. <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed March 1, 2009).

5. In this article I use the term ILO to refer to the various agents and agencies under the umbrella of the International Labour Organization, including the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Technically, the CEACR functions as a legal body, hearing evidence and weighing the arguments of interested parties against their international legal obligations (ILO 2007b, 15; 1996, section 13). The International Labour Office prints documents for the International Labour Organization.



due process or freedom of speech or assembly considerations. As such, in the issue area of lustration, there has been room for the two international bodies to engage in a dialogue, citing precedent from the other body in order to justify a legal interpretation on related cases.<sup>6</sup> While there is no uniformity in their interpretation of each rule-of-law issue, there is a consistency of reasoning despite their differing mandates. In the following analysis, the similarities and differences in their interpretations of lustration will be highlighted in order to elucidate how the bodies have conceptualized the appropriate relationship between rule-of-law and justice trade-offs for post-Communist transitions.

## INTERNATIONAL LEGAL RULINGS ON LUSTRATION

This section turns to the actual lustration cases in which the ILO and ECHR have responded to citizen appeals regarding lustration laws. CEE plaintiffs have all charged that either the structure of the laws or the implementation of the laws violated their individual rights and freedoms. The alleged rule-of-law violations cleave roughly into the four categories previously raised as potential legal problem areas: (1) information problems, (2) due process violations, (3) employment discrimination, and (4) bureaucratic loyalty concerns. The overarching issue of the appropriateness and legality of retroactive justice cuts across all of these specific legal issues and is taken up directly by the ECHR. Each of these areas will be examined, focusing on the overlapping international legal interpretations of lustration and the final decisions rendered by the two international legal bodies. Table 1 provides a summary of the issue areas and the rulings.

### Information Problems

Somewhat ironically, the evidence used in lustration cases comes from the Communist-era secret police files. This means that possible employment exclusion in the new system is based on evidence about secret police collaboration gathered by the former secret police agencies. As previously discussed, the veracity and appropriateness of this information has been strongly questioned. There is a danger that the distorted, incomplete, and possibly intentionally misleading information in the files could result in a highly flawed lustration process (Welsh 1996; Stan 2006). Not only might using this information undermine trust in the objectiveness and fairness of

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6. For example in the *Case of Rainys and Gasparavicius v. Lithuania* (2005), the ECHR cited an ILO ruling on Latvia and possible employment discrimination in rendering its opinion on related questions of employment discrimination in Lithuania.

**TABLE 1.**  
**Summary of Findings**

Potential Legal Problems with Lustration	ECHR Rulings	ILO Rulings
<b>Information Problems</b>	Information used in lustration cases is viable Differential use of information potential problem	Veracity and incompleteness of information potential legal problem
<b>Due Process Violations</b>	Lustration does not violate selectivity criterion Lustration does not inherently violate due process Safeguards in place surrounding lustration proceedings	No clear opinion
<b>Employment Discrimination</b>	Lustration does not intrinsically violate fair employment No one has a right to a certain job, therefore lustration exclusions legally viable	Two-list structure of vetting violates fair employment opportunities
<b>Bureaucratic Loyalty Concerns</b>	Assessing bureaucratic loyalty concerns important state function Democracy needs to be able to defend self during periods of extraordinary politics	State can consider political, sociopolitical, civic, and moral qualities when making employment decisions Lustration consistent with State's right to screen for loyalty

the national government, but knowingly using information whose veracity is highly questionable could constitute an abrogation of rule-of-law principles.

Even more confusing, the objectivity of debates about the reliability and veracity of information has also been called into question. Much of the debate over the use of the files has itself been politically motivated, with opponents of lustration highlighting information weaknesses and supporters arguing in favor of using the files (Bikont 1992; Cywinski 1992). As a result, even fundamental issues like if the lustration process should continue based on the information available for cases has remained contentious.

The ILO has highlighted both the arbitrariness of state security files and the irrefutable, and therefore unfair, nature of that evidence as potential legal problems (ILO 1994, section 88, 16). While it has not heard cases revolving around information issues, it has issued policy statements resonating with national level opposition to the use of information from the secret police files as evidence in lustration cases. In contrast, the ECHR has heard cases directly addressing the use of the files. Misuse of information in the secret police files or false accusations resulting from this information could damage personal integrity, a right guaranteed under Article 8 of the Convention on Fundamental Human Rights. However, the ECHR has failed to reject the use of the files. Instead, the ECHR has focused on the appropriate use of the files and on guaranteeing transparency of the information used.

For example, in the *Case of Turek v. Slovakia* (2004), the case involved assessments of both the use of secret police information and access to information. The plaintiff received a negative security clearance based on reasonable proof of involvement drawn from the secret police files, and he did not dispute this part of the ruling. However, he argued that information from the negative security clearance was made public both in the newspapers and unofficially on the Internet (*Case of Turek v. Slovakia* 2004, section 83). The public availability of information adversely impacted his personal integrity and “his personal life and social relations” (section 83), therefore it violated the respect for private life guaranteed under Article 8 of the Convention. The ruling also addressed differential access to information; the state had more access to classified information than the plaintiff. The unequal access to information meant ineffective protections of citizen procedural guarantees were in place, and the plaintiff argued this violated his rights (sections 115–16).

In assessing this claim about the information component of the case, the ECHR ruled that the real issue was information accessibility, not quality. It accepted the information used to “prove” collaboration and even the publication of information on who was registered with the secret police. The ECHR stressed that if the process of lustration was about “bringing to light” the past and clearing information, then the government must make every effort to make all information public. Improvements in transparency of information would further lustration processes rather than curtail them.

The ECHR’s determination affirmed national courts’ rulings about the viability and admissibility of evidence based on information from secret police archives. National courts have ruled that there was sufficient and compelling information available from the secret police files to “prove” collaboration in lustration cases (section 54). As such, the ECHR’s ruling, and this precedent used in subsequent cases, focused on the fair use of the files and fair access to information in the files, not on the veracity or credibility of the information.

### Due Process Violations

Directly related to questions about information veracity and usability are potential due process violations. Information concerns and due process violations have appeared conjoined in many cases, although they remain separate issues. Due process encompasses a number of principles but can be defined simply as a general sense that legal proceedings are fair. Due process violations can arise when lustration laws are not implemented fairly, when adequate domestic redress or right of appeal provisions are not guaranteed, or when procedural protections are not in place to safeguard citizens' rights and liberties. Because transitional regimes often do not have a history of fair legal applications, derogations of due process get at the heart of the issue of whether a post-Communist country is adhering to rule-of-law principles.

Various plaintiffs have argued that lustration violates certain freedoms, such as freedom of speech and assembly and therefore results in violations of due process. This can also occur if selectivity criteria are not followed. More fundamentally, individuals have argued that there is something intrinsically problematic about lustration in its focus on retroactive justice. The use of lustration as a retroactive justice measure is alleged to fundamentally violate rule-of-law and due process safeguards.

For example, in the *Case of Turek v. Slovakia* (2004), the plaintiff contended that the Slovak lustration procedure violated his due process rights. The ECHR majority opinion ruled that the national legal proceedings were unfair because they did not adequately respect the principle of equality (*Case of Turek v. Slovakia* 2004, section 115). However, the strongly worded dissenting opinion argued that, despite the problems with the access to information, due process was followed. The full Court commented on the fair manner in which various Slovak national level courts had ruled on the case and highlighted their responsive and nonformalistic approach (25) to hearing appeals.<sup>7</sup> The dissenting opinion thought this was sufficient to demonstrate adequate respect for due process and "the need for procedural protection of Article 8" (26). The opinion argued that differential access to a single document was not sufficient to demonstrate unequal treatment and violation of due process. The Court ruled for the plaintiff but remained unclear whether the Slovak lustration process violated due process safeguards, apart from differential access to information. The Court conceded that they did not know what or how they would have ruled if there were no procedural violations (section 117).

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7. Most countries allow the right to appeal lustration verdicts. There are institutes and specially designed lustration courts in place to hear the cases, such as the Vetting Court in Poland and its successor, the Institute of National Remembrance.

Several other recent due process cases against Poland have involved access to information, and in these cases the ECHR has further clarified its position. The alleged due process violations revolved around rights guaranteed under Article 6 of the Convention, including the right to a fair trial, right to appeal, and fair access to information (*Case of Bobek v. Poland* 2007; *Case of Matyjek v. Poland* 2007; *Case of Luboch v. Poland* 2008). Like *Turek*, the differential access to classified information was seen as essentially unfair, and the Court ruled for the plaintiffs. The Court questioned the state's need for extraordinary secrecy regarding formerly classified information, citing the substantial time period since the fall of Communism (*Case of Luboch v. Poland* 2008, section 78). On these grounds, the Court found procedural violations of due process in all three Polish cases. However, the ECHR reaffirmed its unwillingness to question the essence of lustration as a tool of transitional justice. The Court definitively stated, "It is not for the Court to speculate on what might have been the outcome of the proceedings had they complied with the fairness requirements of Article 6" (*Case of Bobek v. Poland* 2007, section 79; *Case of Matyjek v. Poland* 2007, section 69; *Case of Luboch v. Poland* 2008, section 83).

This prevailing Court approach to lustration was directly challenged in the *Case of Matyjek v. Poland* (2007). Matyjek, a member of the Polish Sejm (Parliament), was removed from office and banned from public office for ten years after being exposed as a "lustration liar" (*Decision as to the Admissibility of Application no. 38184/03 by Tadeusz Matyjek Against Poland* 2006, section 56). The nature of his position and the prominence of the case made it a relatively high profile ruling. "The applicant challenged before the Court the very essence of the lustration proceedings, in particular their allegedly unequal and secret nature, the confidentiality of the documents and the unfair procedures governing access to the case file and the conduct of hearings" (*Case of Matyjek v. Poland* 2007, section 44). In the end, the Court did not address questions regarding the legality of lustration. Instead, it continued to stress the multiple levels of procedural safeguards in place to prevent lustration abuses, and to rule on the implementation, not on the constitutionality, of lustration laws. In sum, there was nothing about the structure of lustration that necessarily violated due process rights.

The lack of selectivity in the application of the lustration laws has also been raised as a possible violation of due process. In essence, guilt by association does not meet selectivity criteria and therefore fails to satisfy due process safeguards; individual complicity or collaboration must be demonstrated. In the *Case of Rainys and Gasparavičius v. Lithuania* (2005), the ECHR's ruling touched on questions of selectivity, both in terms of information scope and application. The issue was whether past KGB involvement could disqualify individuals from private sector work in the post-Communist regime. Because "guilt" is often demonstrated based on previous Communist

party affiliation or membership rather than on individual actions in the security services, this would violate due process.

The applicants charged that the laws violated Article 14 (Prohibition of Discrimination), as well as Article 10 (Freedom of Expression). However, since the Lithuanian State used highly nuanced selection criteria for vetting, the Court did not find that the vetting process violated selectivity (*Case of Rainys and Gasparavičius v. Lithuania* 2005, 4–5). The “KGB Act”<sup>8</sup> does not

impose collective responsibility on all former KGB officers without exception. It provided for individualized restrictions on employment by way of the adoption of “the list” of positions in the former KGB which warranted application of the [employment] restrictions. . . . Given that not all former employees of the KGB were affected by the Act, Article 14 of the Convention was not therefore applicable. (*Case of Rainys and Gasparavičius v. Lithuania* 2005, section 32)

As the legal opinions suggest, if the state tried to ensure rule of law and respect for selectivity in the application of the laws, it is possible that lustration could be implemented in a way to protect both rule-of-law and retroactive justice concerns.

In conclusion, one of the oft-cited criticisms of lustration is that there is something intrinsic about the process that fails to safeguard personal rights in its pursuit of justice. However, as this series of related due process cases demonstrates, the ECHR has not found anything intrinsically incompatible between due process safeguards and lustration laws. The decisions have revolved around “the way” the laws were applied, not on the legality of the laws themselves (*Case of Bobek v. Poland* 2007, section 73).

## Employment Discrimination

Some of the highly generalized vetting systems in CEE might violate fair employment principles. Many lustration programs vet on two criteria. First, there is a list of positions and affiliations from the old regime that might disqualify candidates from positions in the new regime. Second, there is a list of positions in the new regime for which individuals must be cleared for competency and integrity. In this way, vetting investigations could be based on past and/or possible future regime involvement. This two-list method might violate fair employment principles by discriminating against a person

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8. KGB Act: see (Lithuania) The Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of the Organisation [Istatymas d\_l SSRS valstyb\_s saugumo komiteto (NKVD, NKGB, MGB, KGB) vertinimo ir šios organizacijos kadriniu darbuotoju dabartin\_s veiklos]. July 16, 1998. Lithuanian Seimas (Parliament). Government of Lithuania.

based on past memberships, affiliations, or political opinions. Variations of this basic method are used in Latvia, Lithuania, the Czech Republic, Poland, and Hungary, to name a few, with national differences in how individuals found guilty of collaboration are treated.

The ILO has heard several complaints from citizens alleging that national lustration laws violated ILO Convention No. 111 (C111) and its companion Recommendation (R111) (ILO 1996). This convention prohibits employment discrimination based on a number of factors, including exclusion based on political opinion.<sup>9</sup> Since political opinions are used in the list-based vetting system, it is possible that they are being inappropriately used as criteria for vetting under current lustration laws.

Early in the lustration process, the ILO initiated a precedent-setting full investigation of the scope and implementation of the Czech lustration law, also known as the Screening Act of 1991 (Kritz 1993h; ILO 1994).<sup>10</sup> The Screening Act limited the employment opportunities, in both the civil service and parts of the private sector, available to individuals who had served in or collaborated with the former secret police (Huyse 1995; Boed 1999). In essence, employment eligibility in certain jobs or sectors was limited to individuals based on political opinion or former membership in political groups (ILO 1996, section 196).

The ILO Committee of Experts ruled that the Czech screening laws violated fair employment provisions by disproportionately limiting employment opportunities on the basis of political opinion (ILO 1994, sections 79–80, 88). While there was some minimal movement on the part of the Czech government to narrow the scope of the lustration process, in the end the government rejected the ILO's recommendations (Kritz 1993g). The Czech Constitutional Court reviewed the ILO suggestions and rejected them as well. Despite the ILO's strongly worded disapproval, the Czech Parliament extended the time period of the lustration laws past their expiration date.<sup>11</sup> Moreover, in 2007 the Czech Republic extended the scope of its lustration laws once again to include a new phase of police vetting (BBC Monitoring 2007a). The ILO rulings seemed to elicit no rule change on the part of the Czech Republic.

Other lustration complaints from CEE citizens to the ILO have also focused on alleged discrimination based on political opinions or membership

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9. ILO 1958: Convention No. 111, Discrimination (Employment and Occupation). *General Conference of the International Labour Organization*, section 1a, (adopted June 25, 1958).

10. The new Czech Civil Service Act of 2002 replaced the Screening Act of 1991 (published 1992), extending the lustration policies in the Czech Republic.

11. ILO 2004: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Czech Republic (ratification: 1993) (published: 2004); ILO 2006: Individual Observation Concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Czech Republic (ratification: 1993) (published: 2006).



in political organizations. For example, Latvia's State Civil Service Act (2000) and the Police Act (1999) prohibit employment of persons who worked for or with the USSR or Latvian intelligence service or state security sector.<sup>12</sup> Similarly, Lithuania's open-ended Act on Civil Service (1999) restricts from civil service as well as some private sector positions those individuals who worked for the USSR State Security services (Kritz 1993k, 1993l).<sup>13</sup> The ILO found the Latvian and Lithuanian laws in violation of C111, since they could allow for employment discrimination based on political opinion.<sup>14</sup> In this case, the Committee of Experts argued that employment restrictions needed to be "proportional" to a particular job, not broadly applied to categories of civil service positions. The ILO Committee of Experts argued that the acts went "beyond justifiable exclusions in respect of a particular job based on its inherent requirements."<sup>15</sup> Generalized, rather than individualized, employment exclusion based on previous political memberships was disproportional and therefore in violation of fair employment laws.

The ILO's public admonishments have not changed Latvian or Lithuanian vetting laws. Despite repeated requests by the ILO Committee of Experts for a reconsideration of Latvian national legislation, and requests for additional information regarding the number of persons affected by the laws, as of 2007 the Latvian government had failed to provide additional information.<sup>16</sup> Lithuania has also ignored the repeated requests for information from the Committee and has not modified its national laws.<sup>17</sup>

In the aforementioned cases, when the ILO's criticisms of lustration have conflicted with national level support for lustration, the potential legal violations have elicited no national response. However, when the ILO's criticisms of lustration laws have echoed already existing national level sentiment against lustration, political forces in CEE have changed or suspended their vetting programs. Responding to an ILO Committee of Experts' request

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12. ILO 1998a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 5, 1958 Slovakia (ratification: 1993). Relevant sections cited by the ILO include State Civil Service Act 2000 (section 7(8)) and Act on Police 1999 (section 28); excerpts and information from these acts deemed legally relevant are reprinted in *Case of Rainys and Gasparavičius v. Lithuania* (2005) and *Case of Ždanoka v. Latvia* (2006).

13. ILO 2007a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 3, 1958 Lithuania (ratification: 1994). USSR State Security services include the NKVD, NKGB, MGB, and KGB. (See Latvia: Act on Civil Service of July 8, 1999 (Section 9(6)(3)); Lithuania Act on Civil Service of July 8, 1999; Kritz 1993k, 1993l.)

14. ILO 2005a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation) section 4, 1958 Latvia (ratification: 1992).

15. ILO 2002a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 6, 1958 Latvia (ratification: 1992).

16. ILO 2005a, section 2, and ILO 2007a, section 2.

17. ILO 2002b: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 5, 1958 Lithuania (ratification: 1994); ILO 2005b: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), sections 2–6, 1958 Lithuania (ratification: 1992) (submitted 2005).

to review the legality of its Screening Act, the Slovak Constitutional Court declared the lustration legislation unconstitutional and incompatible with C111.<sup>18</sup> Bulgaria also repealed its lustration laws after being urged by the ILO to assess their legality.<sup>19</sup> The Bulgarian Constitutional Court cited the ILO ruling and the need for Bulgaria to comply with C111 in its repeal of its national lustration laws (*Case of Sidabras and Dziautas v. Lithuania* 2004, section 32).<sup>20</sup> Subsequent ILO committee rulings both praised Bulgaria for the legal changes and continued to monitor Bulgarian compliance with its C111 treaty obligations.<sup>21</sup>

The ILO rulings have led to perverted and completely unintended domestic policy responses. Both Slovakia and Bulgaria are examples of domestic political parties using international rulings to legitimize their own antilustration agendas. The ILO rulings on broad questions of the legality of lustration have emboldened antireform forces, allowing political stasis and the concomitant corrupting tendency to remain entrenched. The potential for political manipulation of international rulings remains a real concern.

For example, Slovakia inherited the same Screening Law as the Czech Republic when the country of Czechoslovakia split in 1993, and, therefore, the ILO rulings on Slovakia and the Czech Republic mirrored each other. Nonetheless, there were very different domestic political responses. At the time of the split, the dominant political party in Slovakia was antilustration. The negative ILO ruling was used to legitimize getting rid of the lustration laws that would have disadvantaged the ruling party in Slovakia. In the Czech Republic, the antilustration parties were in the minority, so no legal change was forthcoming.

Slovakia's economic performance and political freedom started to decline after the split, impeded by the dominant Communist party holdovers. In 2002, Slovakia reinstituted a lustration law, the National Memory Bill, in response to high levels of political intrigue and corruption that were undermining effective governance (Radio Free Europe/Radio Liberty 2002b).<sup>22</sup>

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18. ILO 1998a, section 1.

19. ILO 1990a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 1, 1958 Bulgaria (ratification: 1960); ILO 1990b: Examination of Individual Case Concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bulgaria (ratification: 1961) Published 1990.

20. See Kritz 1993c, 1993d. For Constitutional Court rulings, see Kritz 1993b.

21. ILO 1993: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bulgaria (ratification: 1960) (published: 1993); ILO 2003: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bulgaria (ratification: 1960) (published: 2003).

22. For example, the former head of the Slovak Intelligence Service was arrested three times, the last time on charges for murder, abuse of public office, and endangering state secrets (see Naegele 2002). See Slovakia: Act of August 19, 2002, on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939–1989 and on Founding the Nation's Memory Institute [Ústav pamäti národa] and on Amending Certain Acts (Nation's Memory Act).

This law opened the files of the Communist secret police, excluded former members of the secret service from working for the current Slovak secret service, and established an Institute for National Memory where citizens could read the files (Privacy International 2003; Radio Free Europe/Radio Liberty 2002a; Toth 2002). The ILO rulings about the legality of lustration temporarily legitimized domestic political resistance to reform efforts, which were later changed when a reform-minded government took over. In this case, the ILO ruling did not constructively help to reframe lustration in rule-of-law terms; it simply provided an international justification for delaying reforms.

Bulgaria presents a similar story of domestic political manipulation. The Bulgarian Constitutional Court was captured by former Communists, who largely upheld the Communist/Socialist Party's antilustration policies over that of the ruling government (Dimitrov 1999). The Communist-dominated parliament and the Special Verification Commission of 1990 prevailed in sealing the files of secret police collaborators for thirty years (Ellis 1997, 188). The only real lustration that has taken place in Bulgaria has been the removal of certain academics from positions under the Panev Law (Boed 1999, 361; for Panev Law, see Krtiz 1993b). Moreover, the director in charge of the secret service archives was found shot in the head at his desk in late 2006—it was ruled a suicide (Smith 2006). This does not suggest any systematic adherence to rule-of-law concerns. Therefore, although C111 was invoked as a justification for rejecting the legality of lustration, it appears that this might have been a convenient means of legitimating the predilection of the Bulgarian government not to pursue lustration policies or real reform efforts.

In sum, the ILO rulings on lustration have said that using political opinions and past political membership criteria violate fair employment principles. The ILO has also expressed concern that the open-ended nature of the vetting net might impact too great a proportion of the population. Despite the ILO's explicit recommendations and reprimands regarding the method and scope of lustration, it has had little direct positive impact on national laws. Lustration is about removing people from public office who held certain political opinions or political memberships that might conflict with the creation of the new regime. Since the ILO has rejected the information used to make vetting assessments, namely, Communist regime involvement and the secret police files, they have attacked the very heart of the process of lustration. Renouncing those criteria means renouncing lustration as a tool of transitional justice. National governments have been unwilling to make those fundamental changes.

Assessments of bureaucratic loyalty with respect to employment decisions are more subtle aspects of vetting. By commenting on bureaucratic loyalty and credibility aspects of lustration rather than the legality of the entire process, both the ILO and the ECHR have had more influence in

constructively shaping national lustration policies. The ECHR's rulings on employment exclusion have been more nuanced and will be taken up in the following section on bureaucratic loyalty.

### Bureaucratic Loyalty Concerns

The sections on information problems, due process violations, and employment discrimination issues focused on the legality and mechanics of vetting. Questions regarding bureaucratic loyalty address the legality of employment vetting but also engage with the symbolic or moral component of lustration. Both scholars and policy makers in CEE have highlighted the combined moral and administrative components of lustration (Letki 2002; Posner and Vermeule 2004). Vojtech Cepl, a justice on the Constitutional Court of the Czech Republic and a principal drafter of the Czech Republic's Constitution, explained the role of lustration as "ritual purification" (Cepl 1997, 3), or as a way to change the "moral culture of postcommunist society" (Cepl and Gillis 1996, 124). Boed (1999) explains the two-pronged meaning and use of lustration in CEE as both "the purification of state organizations from their sins under the communist regime" (358), as well as "administrative measure[s] aimed at minimizing the public influence of former officials or collaborators of the communist regimes" (364). The ECHR has highlighted the cleansing or moral purification component of the concept in its use of the term (*Decision as to Admissibility of Application no. 68761/01 by Wanda Bobek Against Poland* 2006). This does not mean that the ECHR is defining lustration as purification. But it is important to note that the ECHR, like other regional constitutional courts, is embracing both an institutional and a moral cleansing component to lustration, which impacts their reasoning and final rulings on rule-of-law and justice trade-offs.

One of the arguments for vetting previous office holders rests on their questionable loyalty to the democratic transition. Not only might bureaucrats who were educated to promote the ideals of the previous centrally planned Communist regime lack the skills to facilitate a completely different set of political and economic objectives, there is a real danger that they might lack a sense of loyalty to the new goals of capitalism and democracy. As the Parliamentary Assembly of the Council of Europe Resolution 1096 explained,

some states have found it necessary to introduce administrative measures, such as lustration or decommunisation laws. The aim of these measures is to exclude persons from exercising governmental power if they cannot be trusted to exercise it in compliance with democratic principles, as they have shown no commitment to or belief in them in

the past and have no interest or motivation to make the transition to them now. (Council of Europe 1996, section 11)<sup>23</sup>

Former regime collaborators pose two possible dangers. They might be morally compromised, and they could also be susceptible to blackmail because of their past actions. Lustration provides a means of testing or ascertaining integrity and moral credibility as well as forces information transparency in order to reduce the possibility of blackmail. As the Polish Constitutional Court explained and the ECHR affirmed, lustration proves “the moral qualifications necessary for exercising public functions, described according to the relevant laws as: unblemished character, immaculate reputation, irreproachable reputation, good civic reputation, or respectful of fundamental values” (*Case of Matyjek v. Poland* 2007, section 34; *Case of Luboch v. Poland* 2008, section 35). In Poland, an individual is only disqualified for a position if he lies on his lustration certificate. It is the lying or falsification of information that results in employment exclusion. As such, the emphasis is on using lustration as a means of guaranteeing the morality and integrity of persons “in public positions demanding public trust” (*Decision as to Admissibility of Application no. 38184/03 by Tadeusz Matyjek Against Poland* 2006, section 29).

Within the context of lustration laws, the ECHR and the ILO have weighed under what conditions bureaucratic loyalty and trustworthiness considerations could trump equal employment opportunities. The ILO explicitly recognizes that there are certain public service positions “especially as regards highly responsible posts or positions of trust [for which] a certain obligation of neutrality and loyalty can be required without, however nullifying the protection afforded by the Convention” (ILO 1996, section 46). Therefore, there might be areas for which the state considers “political or socio-political attitude, civic commitment or moral qualities with regard to a large number of jobs in all sectors of activity” (section 46).<sup>24</sup> Moreover, the ILO has included language in its *General Survey* to explicitly address loyalty considerations within the context of “states of emergency” (sections 126–28, 193–97). Periods of extraordinary politics require different employment considerations. Because the post-Communist regime transitions are framed as periods of extraordinary politics by the ECHR and the ILO, these conditions take on legal importance in case rulings.

The ECHR has heard several cases in which political loyalty questions were raised as employment concerns. In the *Case of Sidabras and Dziautas v. Lithuania* (2004), two former KGB officers asserted that the KGB Act unfairly

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23. This language is cited in the *Case of Bobek v. Poland* 2007 (section 39) and *Matyjek v. Poland* 2007 (section 44) and used to render the legal decisions.

24. These considerations should not be made solely on membership in a particular group; hence, they need to follow selectivity criteria.

limited certain public and private employment options, thereby violating Article 14's prohibition of discrimination. The Lithuanian State argued the employment restrictions were necessary in order "to ensure the protection of national security and proper functioning of the educational and financial systems" (*Case of Sidabras and Džiautas v. Lithuania* 2004, section 53). In the *Case of Rainys and Gasparavičius v. Lithuania* (2005), the same issue of political loyalty arose in the context of former regime collaborators in civil service positions.

The ECHR's ruling both upheld and limited the state's right to lustrate based on loyalty criteria. In these cases, the Court ruled that KGB agents were being held to different employment standards than other persons. The crux of the matter was that the agents were being excluded not only from public sector positions but from related private sector positions as well. This application of the employment rules for private sector positions was considered "disproportionate" (*Case of Rainys and Gasparavičius v. Lithuania*, section 36). However, with respect to the presumed lack of sufficient loyalty of former KGB agents, the ECHR commented that "there existed a well-founded suspicion that the applicants lacked loyalty to the Lithuanian State" (section 32). Therefore, the bureaucratic loyalty considerations were not illegal or inappropriate; the problem was the manner in which the laws were extended to private sector positions.

The *Sidabras* dissenting opinions reflected the internal ECHR debate regarding justice concerns and the goals of state-building in fledgling democracies. The Court framed justice concerns as constitutive elements of good governance rather than as something one must weigh against rule-of-law concerns. One dissenting judge explained, "Everyone has to accept the consequences of his or her actions in life and the fact that the applicants continue to be burdened with the status of 'former KGB officers' is, in my view, totally irrelevant to the question of the applicability . . . of the Convention" (*Case of Sidabras and Džiautas v. Lithuania* 2004, 19). The Convention does not guarantee the right to a certain job, only freedom from employment discrimination. Therefore, both safeguarding the security of the state and holding people accountable for their past actions could be interpreted as consistent with Article 14.

The *Case of Ždanoka v. Latvia* (2006) also addressed issues of political loyalty and employment, explicitly situating them in historical context. In *Ždanoka*, the Court examined if past Communist Party involvement disqualified a person from political office in the present system (section 62). The plaintiff alleged that lustration laws violated her Freedom of Expression (Article 10) and her Right to Free Elections (Protocol 1, Article 3). The Constitutional Court of Latvia ruled that it was appropriate and necessary for a democratic state to "be protected against individuals who are not ethically qualified to become representatives of a democratic state at political or administrative levels" (section 62). The ethical breach in question was her

previous high-ranking involvement in the Communist Party of Latvia. The ECHR acknowledged that there were extraordinary circumstances during transitions from Communism requiring extralegal means in order to protect nascent democracies. In this case, the ECHR supported the state's right "to defend democratic values" and to make assessments about the political loyalty of its bureaucracy (section 100).

The ECHR has repeatedly sided with the states' need to protect the means by which a "democracy is capable of defending itself" (*Case of Ždanoka v. Latvia* 2006, section 87). The right of the state to require and assess the political loyalty of its civil service is grounded in a substantial body of ECHR-cited precedent (*Case of Glasenapp v. Germany* 1986; *Case of Kosiek v. Germany* 1986; *Vogt v. Germany* 1995; *Rekvényi v. Hungary* 1999). In a particularly telling choice, the historical analogy invoked in these post-Communist transition cases was post-Weimar Germany.<sup>25</sup>

The ECHR has applied the reasoning that "[t]he Fall of the Weimar Republic was due among other things to the fact that the State took too little interest in the political views of its civil servants, judges, and soldiers as a result of a misunderstanding of liberal principles" (*Case of Glasenapp v. Germany* 1986, 24–25). This represents the intentional framing of the post-Communist issue as a posttotalitarian situation, with all the evocative images associated with the subsequent rise of Fascism. Taking this historical lesson to heart, the ECHR has used a similar historically situated logic in assessing the compelling duty of post-Communist governments to safeguard democracy by guaranteeing the loyalty of the civil service.

## RETROACTIVE JUSTICE IN HISTORICAL CONTEXT

The ECHR and the ILO have primarily addressed issues directly related to the employment vetting and moral cleansing components of lustration in their cases and rulings. However, in the process of addressing the main issue areas, the legal bodies have also commented on broader questions of state-building and democratic values and their impact on the process of democratic consolidation. Moreover, they have cautioned CEE states about the danger of failing to address problems with former regimes, because those unresolved problems could undermine the new democratic institutions.

In the *Case of Ždanoka v. Latvia* (2006), the legal opinion specifically highlighted how the continued privileging of former Communist elites in the new regime could undermine the trustworthiness of the nascent democratic institutions. The judicial opinion even took issue with the framing of the case

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25. Historical analogies are used as cognitive heuristics or mental shortcuts to frame issues and provide a blueprint for decision making. For a discussion on the use and misuse of historical analogies, see Jervis (1976) and Khong (1992).



as an example of retroactive justice, arguing “it is not a case of the retroactive application of criminal law but of an inexcusable mistake of law” (39). Justice concerns were emphasized above other rule-of-law concerns in the Court opinion.

In Central and Eastern Europe we now find many old people who have blood on their hands. Some of them have become vociferous proponents of human rights. If anybody should propose retribution towards, for example, all those who in the not so distant past avidly collaborated with the secret police, they raise their voices with the accustomed arrogance derived from their past and established authoritarian position. They barefacedly claim the very human rights which they spent their life denying to others, nay, often cold-bloodedly violating them in the most brutal fashion. (37)

In this case, the Court called for appropriate, reasonable, and fair lustration as a way to counter the unfairness and corruption that still threaten to undermine the democratic consolidation process in 2006. It would be an unfortunate dereliction of justice if human rights abusers under the former regime could now claim right violations in order to obtain protection from lustration laws (39). The Court’s affirmation of the important role for justice concerns as they contribute to the process of establishing good governance represents a powerful normative message to transitional regimes.

In addition to privileging justice concerns during the transition period, both the ECHR and the ILO have repeatedly placed these determinations in political and historical context (ILO 1994, section 67). The ECHR ruled, “*Ždanoka v. Latvia* is a case in which the historical and ideological significance of transitions from Soviet Communism as a failed socio-political experiment back to capitalism, democracy and the rule of law—is inescapably the central issue” (*Case of Ždanoka v. Latvia* 2006, 37). The Court asserted that what was historically and politically appropriate and fair in the Latvian context might be different for another country. Their interpretation of “fair” was historically contextual.

While such a measure may scarcely be considered acceptable in the context of one political system, for example in a country which has an established framework of democratic institutions going back many decades or centuries, it may nonetheless be considered acceptable in Latvia in view of the historico-political context which led to its adoption and given the threat to the new democratic order posed by the resurgence of ideas which, if allowed to gain ground, might appear capable of restoring the former regime. The Court therefore accepts in the present case that the national authorities of Latvia, both legislative and judicial, are better placed to assess the difficulties faced in establishing and safeguarding the democratic order. (sections 133–34)

In this case, the opinion makes clear how rule-of-law considerations are historically and politically contingent. The Court defers to the state in making assessments about the appropriateness of rule-of-law versus justice trade-offs (see also *Case of Glasenapp v. Germany* 1986; *Vogt v. Germany* 1995).

Despite a series of cases accepting individual right violations under conditions of pressing social need, neither the ILO nor the ECHR unreflectively defers to the state on these matters. In two cases different from but related to lustration in their mutual focus on retroactivity and Communist party membership, the ECHR ruled against a state's alleged pressing social need to temporarily derogate guaranteed rights.

In the *Case of Tsonev v. Bulgaria* (2006), the ECHR rejected Bulgaria's unwillingness to register a new Communist political party with affiliations to the former Communist Party, ruling that there was no evidence this posed a real threat to the state. Similarly, in *Affaire Linkov c. République Tchèque* (2006), the ECHR rejected the Czech government's refusal to register a political party that was affiliated with and espoused the views of the former Communist regime on the grounds of a pressing "social imperative" (sections 37, 39). The Court argued there were sufficient safeguards in place to prevent a return of the Communist regime and that political party exclusions of this sort were "not necessary in a democratic society" (section 45). Therefore, the lustration cases in which the courts do support a state's pressing social needs as a reason to derogate guaranteed freedoms reflect a highly nuanced and historically contextualized understanding of rule-of-law interpretations in post-Communist transitions.

Time is an explicit variable in the Court's rulings. The Court is partially assessing the appropriateness of stretching rule-of-law adherence as a function of how long it has been since the fall of Communism. The ECHR accepted slight derogations in traditional rule-of-law practices during the transition period, with an important caveat. Rule-of-law derogations should be the exception rather than the rule, even in transitional societies (*Case of Turek v. Slovakia* 2004, section 115; *Case of Bobek v. Poland* 2007, section 62; *Case of Matyjek v. Poland* 2007, section 69).

A final issue that will continue to be legally important is how long one can cite extraordinary historical circumstances to legitimize the temporary suspension of individual liberties. When is the transition over (*Case of Ždanoka v. Latvia* 2006, sections 74–75)? The ECHR has started to question the necessity and appropriateness of the abrogation of rule-of-law principles (*Case of Bobek v. Poland* 2007, section 63). This is a legally relevant question given the wave of late or renewed lustration programs in the CEE region (Horne 2009).<sup>26</sup> In light of the potential for many more cases, the input of

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26. Both Poland and Romania embarked on new or renewed lustration policies in 2006 and 2007, expanding to include possible employment screening for private sector positions (see McLaughlin 2006; RRI 2006a and 2006b; Mite 2007). Macedonia instituted lustration laws in

international legal bodies on the legality and appropriate weighting of state-building and individual liberties within the context of lustration laws will continue to be important.

## CONCLUSION: WEIGHING JUSTICE AND RULE-OF-LAW CONSIDERATIONS

Several key findings arise from a review of the international legal cases on lustration. First, the Court's rulings and interpretations belie a simplistic interpretation of the legality of lustration. The case law and legal opinions of the ECHR and the ILO reveal that rather than being antilustration, as might be predicted by a cursory review of case outcomes alone, the institutions have supported retroactive justice measures as part of an overall program of democratization. In many cases, a positive outcome, where the Court ruled for the plaintiff and against the state, hinged on problems with the implementation, not the structure, of the laws.

The ECHR has repeatedly emphasized that in the absence of procedural errors, it would not have known how to rule on the legality of lustration. This demonstrates the ECHR's intentional placement of itself within the lustration debate on the side of how to lustrate, not whether to lustrate. The ILO has been less circumspect, in some cases issuing definitive rejections of the letter of lustration laws in several CEE countries. This rejection of the essential structure of the laws has not impacted the laws and has largely been ignored by states. The real power to impact lustration laws appears to be in ensuring that the implementation is fair and consistent with international laws rather than in rejecting the validity of this form of transitional justice in CEE.

Second, there is a consistent emphasis on justice and morality concerns as vital parts of, not antithetical to, rule-of-law considerations. The Court is ruling on both components of lustration, namely, the legality of bureaucratic change through employment vetting and the appropriateness of lustration as an act of symbolic or moral politics. Both components are seen as contributing to the establishment of good governance. The international legal rulings suggest a highly nuanced, historically situated understanding of justice concerns. In this way, lustration is conceptualized as adding to, rather than detracting from, the larger process of building good, trustworthy democratic governments.

Third, historical context matters in the interpretation of rule of law and good governance. States have the right to determine what is fair and

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2007 (BBC Monitoring 2007b). The Czech Republic also saw a renewed interest in lustration and vetting policies in 2007 (BBC Monitoring 2007a).

appropriate in light of their post-Communist regime-building tasks. The active construction of a posttotalitarian historical narrative as a basis for legal interpretation is a reoccurring theme in the legal rulings. The Court has emphasized the importance of Nuremburg and the legacy of Communism in order to contextualize the extraordinary and fragile nature of the transition period. The intentional framing of the issue as one of democracy-building under a posttotalitarian legacy is a means of legitimizing the temporary suspension of individual liberties for the larger goal of democratic consolidation. However, there is an explicit role for time in the legal interpretations. Substantial leeway may be extended early in the transition; however, ultimately a period of extraordinary politics must be temporary. The goals of good governance and democratic consolidation cannot be met by the continual derogation of individual rights.

## REFERENCES

- Ackerman, Bruce. 1992. *The Future of Liberal Revolution*. New Haven, CT: Yale University Press.
- Aukerman, Mirian. 2002. Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice. *Harvard Human Rights Journal* 15 (39): 39–97.
- BBC Monitoring. 2007a. Czech Interior Ministry to Start Checking Police for Communist Security Ties. *BBC Monitoring European*. February 19, London. Wire feed from Czech CTK News Agency, 1.
- . 2007b. Macedonian Assembly Legal Committee Approves Lustration Bill. *BBC Monitoring European*. January 23, London. Wire feed from Makfax News Agency Skopje, 1.
- Bertschi, C. Charles. 1995. Lustration and the Transition to Democracy: The Cases of Poland and Bulgaria. *East European Quarterly* 28 (4): 435–51.
- Bikont, Anna. 1992. Interview with Bogdan Borusewicz: I Don't Believe the Files Were Falsified. *Uncaptive Minds* Summer:115–22.
- Boed, Roman. 1999. An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice. *Columbia Journal of Transitional Law* 37 (2): 357–402.
- Cepl, Vojtech. 1997. The Transformation of Hearts and Minds in Eastern Europe. *The Cato Journal* 17 (2): 1–6.
- Cepl, Vojtech, and Mark Gillis. 1996. Making Amends after Communism. *Journal of Democracy* 7 (4): 118–24.
- Cohen, Stanley. 1995. State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past. *Law & Social Inquiry* 20 (1): 7–50.
- Constitutional Court of Romania. 2008. Decision no. 51 of January 31, 2008 on the Objection of Unconstitutionality of Provisions of Law No.187/1999 Concerning One's Access to His/Her Own Files and Disclosure of the Communist Political Police. [http://www.ccr.ro/decisions/pdf/en/2008/D051\\_08.pdf](http://www.ccr.ro/decisions/pdf/en/2008/D051_08.pdf). (accessed March 11, 2009).
- Council of Europe. See Statutes Cited.
- Cywinski, Piotr. 1992. Interview with Joachim Gauck: The Clean-Up Bureau. *Uncaptive Minds* Summer:123–28.

- David, Roman. 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.
- de Brito, Alexandra Barahona, Carmen Gonzalez Enriquez, and Paloma Aguilar, eds. 2001. *The Politics of Memory: Transitional Justice in Democratizing Societies*. New York: Oxford University Press.
- Dimitrov, Hristo. 1999. The Bulgarian Constitutional Court and its Interpretive Jurisdiction. *Columbia Journal of Transnational Law* 37:459–505.
- Ellis, Mark. 1997. Purging the Past: The Current State of Lustration Laws in the Former Communist Bloc. *Law and Contemporary Problems* 59 (4): 181–96.
- Hatschikjan, Magarditsch, ed. 2004. *Past and Present: Consequences for Democratisation*. Proceedings of the Seminar Organised within the Project, Disclosing Hidden History: Lustration in the Western Balkans. Paper presented at the Center for Democracy and Reconciliation in Southeast Europe, July 2–4, 2004, in Belgrade, Serbia.
- Helsinki Committee of Poland. 2007. *Position Regarding the Act of Disclosing Information Regarding Security Services Documents*. Warsaw Office, Poland. March 21. <http://humanrightshouse.org/Articles/7874.html> (accessed March 16, 2009).
- Horne, Cynthia. 2009. Late Lustration Programs in Romania and Poland: Supporting or Undermining Democratic Transitions? *Democratization* 16 (2): 343–74.
- Horne, Cynthia, and Margaret Levi. 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*, ed. Janos Kornai and Susan Rose-Ackerman, 52–74. New York: Palgrave.
- Huyse, Luc. 1995. Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past. *Law & Social Inquiry* 20 (1): 51–78.
- International Labour Organization. See Statutes Cited.
- Jervis, Robert. 1976. *Perception and Misperception in International Politics*. Princeton, NJ: Princeton University Press.
- Karstedt, Susanne. 1998. Coming to Terms with the Past in Germany after 1945 and 1989: Public Judgments on Procedures and Justice. *Law & Policy* 20 (1): 15–56.
- Khong, Yuen Foon. 1992. *Analogies at War*. Princeton, NJ: Princeton University Press.
- Kiai, Maina. 2006. How Human Rights Principles and Approaches Can Help in Fighting Corruption. Paper presented at the United Nations Conference on Anti-Corruption Measures, Good Governance and Human Rights, November 8–9, in Warsaw, Poland. United Nations Document number HR/POL/GG/SEM/2006/BP.2.
- Kiss, Csilla. 2006. The Misuses of Manipulation: The Failure of Transitional Justice in Post-Communist Hungary. *Europe-Asia Studies* 58 (6): 925–40.
- Kritz, Neil, trans. and ed. 1993a. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, DC: United States Institute of Peace Studies.
- . 1993b. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Bulgaria: Constitutional Court Decision on the Panev Law. Constitutional Case No. 32, Decision No. 1 (February 11, 1993), 300–02. Washington, DC: United States Institute of Peace Studies.
- . 1993c. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Bulgaria: Law on Banks and Credit Activity, No. 25 of March 18, 1992, 293. Washington, DC: United States Institute of Peace Studies.
- . 1993d. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Bulgaria: Law for Temporary Introduction of Some Additional Requirements for the Members of the Executive Bodies of

- Scientific Organizations and the Higher Certifying Commission ("Panev Law"). December 9, 1992, 296–99. Washington, DC: United States Institute of Peace Studies.
- . 1993e. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Czech Republic: Constitutional Court Decision on the Act on the Illegality of the Communist Regime (December 21, 1993), 620–27. Washington, DC: United States Institute of Peace Studies.
- . 1993f. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Czech and Slovak Federal Republic: Constitutional Court Decision on the Screening Law, 346–65. Washington, DC: United States Institute of Peace Studies.
- . 1993g. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Czech and Slovak Federal Republic: International Labour Organization Decision on the Screening Law, GB.252/16/19 (February 28, 1992), 252nd Session, 322–34. Washington, DC: United States Institute of Peace Studies.
- . 1993h. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Czech and Slovak Federal Republic: Screening ("Lustration") Law, Act No. 451/1991 (October 4, 1991), 312–21. Washington, DC: United States Institute of Peace Studies.
- . 1993i. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Hungary: Constitutional Court Decision on the Statute of Limitations, No. 2086/A/1991/14 (March 5, 1992), 629–40. Washington, DC: United States Institute of Peace Studies.
- . 1993j. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Hungary: Law on Background Checks to Be Conducted on Individuals Holding Certain Important Positions, Law No. 23 (March 8, 1994), 418–25. Washington, DC: United States Institute of Peace Studies.
- . 1993k. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Lithuania: Decree Banning KGB Employees and Informers from Government Positions. Decree No. 418 (October 12, 1991), 427. Washington, DC: United States Institute of Peace Studies.
- . 1993l. *Laws, Rulings, and Reports*. Vol. 3 of *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Lithuania: Law on the Verification of Mandates of Those Deputies accused of Consciously Collaborating with Special Services of Other States. Law No. I-2115 (December 17, 1991). 428–31. Washington, DC: United States Institute of Peace Studies.
- Letki, Natalia. 2002. Lustration and Democratization in East-Central Europe. *Europe-Asia Studies* 54 (4): 529–52.
- Łoś, Maria. 1995. Lustration and Truth Claims: Unfinished Revolutions in Central Europe. *Law & Social Inquiry* 20 (1): 117–61.
- Lovatt, Catherine. 2000. Securitate Shuffle. *Central Europe Review* 2 (April 17): <http://www.tol.cz/look/TOL/searchall.tpl> (accessed March 1, 2009).
- Mayer-Riechkh, Alexander, and Pablo de Greiff, eds. 2007. *Justice as Prevention: Vetting Public Employees in Transitional Societies*. New York: New York Social Science Research Council.
- McAdams, A. James, ed. 1997. *Transitional Justice and the Rule of Law in New Democracies*. Notre Dame, IN: University of Notre Dame Press.
- McLaughlin, Daniel. 2006. Thousands May Lose Job in Polish "Purge." *Irish Times*, July 26.
- Michnik, Adam, and Václav Havel. 1993. Justice or Revenge. *Journal of Democracy* 4 (1): 20–27.



- Minow, Martha. 1998. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press.
- Mite, Valentinas. 2007. Poland: Tough Lustration Law Divides Society. *Radio Free Europe/Radio Liberty On-line Reports*, March 23. <http://www.rferl.org/content/Article/1075471.html> (accessed March 1, 2009).
- Naegele, Jolyon. 2002. Slovakia: Former Secret Police Chief Arrested—Again. *Radio Free Europe/Radio Liberty On-line Reports*, December 6. <http://www.rferl.org/content/Article/1101599.html> (accessed March 1, 2009).
- New York Times. 1992. Lustration “Loses” in Poland. *New York Times*, June 7.
- Offe, Claus. 1992. Coming to Terms with Past Injustices: An Introduction to Legal Strategies Available in Post-communist Societies. *Archives Européennes de Sociologie* 33 (1): 195–201.
- . 1996. *Varieties of Transition: The East European and East German Experience*. London: Cambridge University Press.
- O’Leary, Christopher, Alena Nesporova, and Alexander Samorodov. 2001. *Manual on Evaluation of Labour Market Policies in Transition Economies*. Geneva: International Labour Organization.
- Osiatynski, Wiktor. 2007. Poland Makes Witch Hunting Easier. *New York Times* [Warsaw edition], January 22.
- Polish Constitutional Tribunal [Trybunał Konstytucyjny]. 2007. Judicial Decisions, Judgment of May 11, 2007, file Ref. No.K2/07 LUSTRATION (Fundamental arguments). English translation: <http://www.trybunal.gov.pl/eng/index.htm> (accessed January 9, 2009).
- Posner, Eric, and Adrian Vermeule. 2004. Transitional Justice as Ordinary Justice. *Harvard Law Review* 117: 761–825.
- Privacy International. 2003. Privacy and Human Rights: Slovak Republic. <http://www.privacyinternational.org/survey/phr2003/countries/slovakia.htm#ftnref2332> (accessed March 16, 2009).
- Radio Free Europe/Radio Liberty. 2002a. Slovak Parliament Overrides Presidential Veto, part 2. *RFE/RL NEWSLINE* 6 (157), August 21. <http://www.rferl.org/content/Article/1142742.html> (accessed April 7, 2009).
- . 2002b. Slovakia Makes Files from Communist and Nazi Eras Public, part 2. *RFE/RL NEWSLINE* 6 (128): July 11. <http://www.rferl.org/content/Article/1142713.html> (accessed April 7, 2009).
- RRI. 2006a. Citizens and National Security Laws. *Radio Romania International*. Bucharest-print news report. September 1. <http://www.rri.ro/index.php?lmb=4&art=16785> (site no longer active).
- . 2006b. The Exposure of the Securitate Collaborators in Romania. *Radio Romania International*. Bucharest-print news report, August 8. <http://www.rri.ro/index.php?lmb=4&art=16238> (site no longer active).
- Skapska, Grazyna. 2003. Moral Definitions of Constitutionalism in East Central Europe: Facing Past Human Rights Violations. *International Sociology* 18 (1): 199–218.
- Smidova, Jana. 1991. Interview with Stanislav Devaty: The Files Weren’t Destroyed. *Uncaptive Minds* Spring: 56–58.
- Smith, Craig. 2006. Eastern Europe Still Struggles to Purge Its Security Services. *New York Times*, December 12.
- Sólyom, László. 2003. The Role of Constitutional Courts in the Transition to Democracy: With Special Reference to Hungary. *International Sociology* 18 (1): 133–61.
- Stan, Lavinia. 2006. The Politics of Memory in Poland: Lustration, File Access and Court Proceedings. *Studies in Post-Communism Occasional Paper*. No. 10.



- Teitel, Ruti. 2000. *Transitional Justice*. New York: Oxford University Press.
- Toth, Peter. 2002. What Threatens Slovakia's Security? Trans. Martin Kovac. <http://www.slovakia.org/news/0204-3.htm> (site no longer active).
- United Nations. 2006. *Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework*. UN Document HR/PUB/06/5. New York: United Nations, Commission on Human Rights.
- Varga, Laszlo. 1997. Watchers and the Watched (From a Concise State Security Reader). *Hungarian Quarterly*. <http://www.hungarianquarterly.com/no146/p51.shtml> (accessed March 12, 2009).
- Walicki, Andrzej. 1997. Transitional Justice and the Political Struggles of Post-Communist Poland. In *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams, 185–238. Notre Dame, IN: University of Notre Dame Press.
- Welsh, Helga. 1996. Dealing with the Communist Past: Central and East European Experiences after 1990. *Europe-Asia Studies* 48 (3): 413–29.
- Williams, Kieran. 2003. Lustration as the Securitization of Democracy in Czechoslovakia and the Czech Republic. *Journal of Communist Studies and Transition Politics* 19 (4): 1–24.

## CASES CITED

- Affaire Linkov c. République Tchèque*, Arret 10504/03. European Court of Human Rights. December 7, 2006. Strasbourg: Council of Europe.
- Case of Bobek v. Poland*. 68761/01. European Court of Human Rights. July 17, 2007. Strasbourg: Council of Europe.
- Case of Glasenapp v. Germany*, Judgment 9228/80. European Court of Human Rights. August 28, 1986. Strasbourg: Council of Europe.
- Case of Kosiek v. Germany*, Judgment 9704/82. European Court of Human Rights. August 28, 1986. Strasbourg: Council of Europe.
- Case of Luboch v. Poland*. 37469/05. European Court of Human Rights. January 15, 2008. Strasbourg: Council of Europe.
- Case of Matyjek v. Poland*. 38184/03. European Court of Human Rights. April 24, 2007. Strasbourg: Council of Europe.
- Case of Rainys and Gasparavičius v. Lithuania*, Judgment 70665/01 and 74345/01. European Court of Human Rights. July 7, 2005. Strasbourg: Council of Europe.
- Case of Sidabras and Džiautas v. Lithuania*, Final 55480/00 and 59330/00. European Court of Human Rights. July 27, 2004. Strasbourg: Council of Europe.
- Case of Tsonev v. Bulgaria*, Judgment 45963/99. European Court of Human Rights. April 13, 2006. Strasbourg: Council of Europe.
- Case of Turek v. Slovakia*, Judgment 57986/00. European Court of Human Rights. February 1, 2004. Strasbourg: Council of Europe.
- Case of Ždanoka v. Latvia*, Judgment 58278/00. European Court of Human Rights. March 16, 2006. Strasbourg: Council of Europe.
- Decision as to the Admissibility of Application no. 38184/03 by Tadeusz Matyjek Against Poland*. European Court of Human Rights. Section IV. 38184/03. May 30, 2006. Strasbourg: Council of Europe.
- Decision as to the Admissibility of Application no. 68761/01 by Wanda Bobek Against Poland*. European Court of Human Rights. Second Section. 68761/01. October 24, 2006. Strasbourg: Council of Europe.
- Rekvényi v. Hungary*, Judgment 25390/94. European Court of Human Rights. May 20, 1999. Strasbourg: Council of Europe.

*Vogt v. Germany*, Final 7/1994/454/535. European Court of Human Rights. September 2, 1995. Strasbourg: Council of Europe.

## STATUTES CITED

- Council of Europe. 1996. Measures to Dismantle the Heritage of Former Communist Totalitarian Systems. Resolution 1096. Parliamentary Assembly. Strasbourg, France: Council of Europe.
- Council of Europe. 2003. Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocol 11 with Protocols Nos. 1, 4, 6, 7, 12 and 13. Council of Europe, Registry of the European Court of Human Rights: Strasbourg, France. September.
- Council of Europe 2007a. Human Rights Commissioner Presents Memorandum on Poland—Poland in the Council of Europe-News. June 20. Strasbourg. [http://www.coe.org.pl/en/information\\_office\\_of\\_the\\_council\\_of\\_europe/news?more=764632168](http://www.coe.org.pl/en/information_office_of_the_council_of_europe/news?more=764632168) (accessed March 1, 2009).
- Council of Europe. 2007b. Memorandum to the Polish Government: Assessment of the Progress Made in Implementing the 2002 Recommendations of the Council of Europe Commissioner for Human Rights. June 20. Strasbourg: Council of Europe. CommDH(2007)13 original version.
- Czech Civil Service Act. April 26, 2002. On Service of Public Servants in Administrative Authorities and on Remuneration of Such Servants and Other Employees in Administrative Authorities. No. 218/2002. <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN012622.pdf> (accessed March 1, 2009).
- Latvia: Act on Civil Service of July 8, 1999 (No. VII-1316), Section 9(6)(3). Government of Latvia.
- Lithuania: Act on Civil Service of July 8, 1999 (No. VII- 1316), Amended on 23 April 2002 (No. IX-855), and the Present Activities of Former Permanent Employees of the Organization of 16 July 1998, Which Entered into Force on 1 January 1999 (“SSC Act”).
- Lithuania: The Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of the Organisation [Istatymas d\_l SSRS valstyb\_s saugumo komiteto (NKVD, NKGB, MGB, KGB) vertinimo ir šios organizacijos kadrinu darbuotoju dabartin\_s veiklos]. July 16, 1998. Lithuanian Seimas (Parliament). Government of Lithuania.
- Slovakia: Act of August 19, 2002, on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939–1989 and on Founding the Nation’s Memory Institute [Ústav pamäti národa] and on Amending Certain Acts (Nation’s Memory Act). 553/2002 Coll. Government of Slovakia. [http://www.upn.gov.sk/data/pdf/553\\_2002\\_en.pdf](http://www.upn.gov.sk/data/pdf/553_2002_en.pdf) (accessed April 7, 2009).

## INTERNATIONAL LABOUR ORGANIZATION, Committee of Experts on the Application of Conventions and Recommendations

1958: Convention No. 111, Discrimination (Employment and Occupation). General Conference of the International Labour Organization, section 1a, (adopted June 25, 1958).

- 1990a. Examination of Individual Case Concerning Convention No. 111: Discrimination (Employment and Occupation), 1958 Bulgaria (ratification 1961) (published 1990).
- 1990b: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 1, 1958 Bulgaria (ratification 1960) (published 1990).
- 1992: Czech and Slovak Federal Republic: International Labour Organization Decision on Screening Law (February 28, 1992).
- 1993: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bulgaria (ratification 1960) (published 1993).
- 1994: Report of the Committee Set Up to Examine the Representation Made by the Trade Union Association of Bohemia, Moravia and Silesia (OS-CMS) under Article 24 of the ILO Constitution. Alleging Non-observance by the Czech Republic of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Geneva: International Labour Organization.
- 1996: *General Survey: Equality in Employment and Occupation, Convention 111*. Geneva: International Labour Organization.
- 1998a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 5, 1958 Slovakia (ratification 1993).
- 1998b: Declaration on Fundamental Principles and Rights at Work. Geneva: International Labour Organization. <http://www.ilo.org/declaration/lang-en/index.htm> (accessed March 1, 2009).
- 2002a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 6, 1958 Latvia (ratification 1992).
- 2002b: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 5, 1958 Lithuania (ratification 1994).
- 2003: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bulgaria (ratification 1960) (published 2003).
- 2004: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Czech Republic (ratification 1993) (published 2004).
- 2005a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation) section 4, 1958 Latvia (ratification 1992).
- 2005b: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), sections 2–6, 1958 Lithuania (ratification 1992) (submitted 2005).
- 2006: Individual Observation Concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Czech Republic (ratification 1993) (published 2006).
- 2007a: Individual Observation Concerning Convention No. 111, Discrimination (Employment and Occupation), section 3, 1958 Lithuania (ratification 1994).
- 2007b. *The ILO: What it is. What it does*. Geneva: International Labour Organization.