

**What is too long and when is too late for transitional justice?
Observations from the case of Romania**

Cynthia M. Horne
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Nearly 30 years after the end of Ceaușescu's regime, what is too long and when is too late to use public disclosures about secret police complicity in the past to influence the composition of public office holders in the present? This paper examines Romania's public disclosure measures from 2010 to the present, drawing on the reports of the Romanian secret police file repository agency—the C.N.S.A.S.--in order to better understand the temporal parameters surrounding their continued use. First, this paper shows that despite contentions that there are no more spies left to unmask, Romania's vetting process continues to disclose the collaborator backgrounds of current political candidates, at both the national and local levels, and individuals being considered for appointments in high ranking political and social institutions. Second, contrary to expectations that citizens might be too fatigued with the public disclosure process to consider them politically salient, citizen engagement with their personal files remains robust. Together, these findings suggest that preconceived temporal parameters for this type of transitional justice measure might have underestimated the duration of its utility and political relevance.

What is too long and when is too late for transitional justice? Observations from the case of Romania

Temporal assumptions regarding the timing and duration of certain transitional justice measures affect how academics and policymakers think about their purpose, utility and impact. This is particularly true with respect to personnel reforms designed to catalyze bureaucratic turnover in the wake of a regime transition. In the case of post-communist transitions, personnel reform measures, like lustration and public disclosures, have relied on the contents of the communist era secret police files to inform current employment screening processes.¹ Embedded in debates surrounding the conditions under which the past can and should inform future employment are two main temporal assumptions.² First, the timing of the onset of these measures is often linked to policy efficacy, with late measures generally perceived as less efficacious, possibly even counter-productive, but certainly suboptimal policy choices compared

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¹ Lavinia Stan (ed), *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist past* (New York: Routledge Press, 2009).

² Lustration as a transitional justice process has provoked fierce debate surrounding its legality, appropriateness, and implementation. See: Stan (ed), *Transitional Justice in Eastern Europe and the FSU*; Roman David, "Transitional injustice? Criteria for conformity of lustration to the right to political expression," *Europe-Asia Studies* 56,6 (2004): 789-912; and Cynthia M Horne, "International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context," *Law & Social Inquiry* 34, 3(2009): 713-44.

to measures enacted early in the transition.³ Second, there is a sense that these types of personnel reforms are more important during the transition period, but less necessary or even appropriate after a democracy has become consolidated.⁴ However, what do we really know about the relationship between the timing and duration of personnel reform measures and efficacy? Little scholarship has actually questioned our *a priori* temporal assumptions or problematized how the timing and duration of transitional justice might condition outcomes.⁵ Stepping into this lacunae in the literature, this paper focuses on temporal parameters surrounding one type of transitional justice—public disclosures—in the context of Romania’s post-communist transition.

³ Pablo de Greiff and Alexander Mayer-Rieckh (eds), *Justice as Prevention: Vetting Public Employees in Transitional Societies* (New York: Social Science Research Council, 2007); Sang Wook Daniel Han, “Transitional Justice: When Justice Strikes Back - Case Studies of Delayed Justice in Argentina and South Korea,” *Houston Journal of International Law*, 30 (2007-2008): 653-700; United Nations, *Rule of Law Tools for Post-Conflict States: Vetting: An Operational Framework* (Office of the UN High Commission on Human Rights, New York: United Nations), HR/PUB/06/5 (2006).

⁴ Council of Europe, *Measures to Dismantle the Heritage of Former Communist Totalitarian Systems*. Resolution 1096 and Doc. 7568, 3 June 1996 Parliamentary Assembly (Strasbourg France, 1996); and European Court of Human Rights, *Case of Sidabras and Dziautas v. Lithuania*, Final 55480/00 and 59330/00. 27 July 2004 (Strasbourg: Council of Europe, 2004).

⁵ Exceptions include: Thomas Obel Hansen, “The Time and Space of Transitional Justice,” in *Research Handbook of Transitional Justice*, eds. Cheryl Lawther, Luke Moffett, and Dov Jacobs (Cheltenham, UK: Edward Elgar, 2017), 34-51; Cynthia M. Horne, “Late Lustration Programs in Romania and Poland: Supporting or Undermining Democratic Transitions?” *Democratization*, 16, 2 (2009): 344-76; and Cynthia M. Horne, “The Timing of Transitional Justice Measures,” in *Post-Communist Transitional Justice: Lessons from 25 Years of Experience*, eds. Lavinia Stan and Nadya Nedelsky (New York: Cambridge University Press, 2015), 123-47.

Public disclosure measures should be understood in the context of broader post-communist lustration programs. Lustration measures are legally prescribed and delimited forms of transitional justice by which the contents of the communist era secret police files are used to assess the backgrounds of both public and semi-public officials and political candidates for evidence of membership in or collaboration with the communist security services and/or high ranking communist party positions, resulting in either voluntary or compulsory removal from positions under the new regime.⁶ The Czech Republic's use of compulsory employment dismissal as part of its lustration law is often juxtaposed against Poland's less punitive, more truth-telling approach, or even compared to Hungary's very limited and short lustration program, in order to illustrate a range of possible scope conditions for lustration in practice.⁷ In the absence of formal lustration laws, countries like Romania, Bulgaria and Slovakia have turned to public disclosure processes, functioning as a type of informal lustration process, replicating some of the procedures and goals of the measures in the post-communist space.⁸

Public disclosures similarly draw on the contents of the secret police files, reviewing the background of public office holders and candidates, appointed civil positions, and individuals in positions of public importance for evidence of collaboration with the communist security services. However there are no formal, direct employment consequences, like many lustration

⁶ Stan (ed), *Transitional Justice in Eastern Europe and the Former Soviet Union*.

⁷ Roman David, *Lustration and Transitional Justice: Personnel Systems in the Czech Republic, Hungary, and Poland* (Philadelphia: University of Pennsylvania Press, 2011).

⁸ Dragoș Petrescu, "Opening of the Securitate Files in Post-1989 Romania: Legal and Institutional Aspects," paper presented at *Association for Slavic, East European & Eurasian Studies Conference*, Boston 7 December 2018; and Cynthia M. Horne, "'Silent Lustration': Public Disclosures as Informal Lustration Mechanisms in Bulgaria and Romania," *Problems of Post-Communism*, 62, May (2015): 131-144.

measures. Instead the threat of public disclosure is intended to catalyze bureaucratic and employment change. Individuals might self-select out of public office or candidacy to prevent the shame of being disclosed, political parties could opt not to put candidates forward with collaborator backgrounds, voters could choose not to vote into office known secret police operatives, and employers could fail to hire or appoint individuals with said backgrounds. The similarity between public disclosures and regional lustration laws led to the process being dubbed a type of “silent lustration” by the Bulgarian secret police file repository agency (the Dossier Commission).⁹ As such, public disclosures can be defined as a variant of lustration, with similar goals, drawing on similar information sources, but with different constitutional mandates and therefore different legal constraints.

The public disclosure programs in Romania, Bulgaria, and Slovakia share some common elements. All three countries had heavily politicized lustration processes, repeatedly proposing and vetoing the passage of formal laws or thwarting their implementation. All three countries delimited or ruled against formal lustration: Romania’s Constitutional Court struck down the lustration laws in 2008 and blocked lustration provisions; Bulgaria passed an amendment to its constitution officially banning lustration; and Slovakia allowed its lustration law inherited from Czechoslovakia to expire without implementation in 1996.¹⁰ Despite the rejection of lustration,

⁹ Horne, “Silent Lustration.”

¹⁰ See Bulgarian Dossier Commission for legal limitations on lustration, <http://www.comdos.bg/>, access 2 February 2019; *Law for Access and Disclosure of the Documents and Announcing Affiliations of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Army*. Bulgarian law portal <http://lex.bg/bg/laws/ldoc/2135540283>, accessed 2 February 2019; Constitutional Court Decision no. 820/2010 “On the objection of unconstitutionality of provisions of the lustration law to limit temporary access to certain positions and titles for people who were part of the structures of power and the repressive apparatus of the communist regime

the three countries eventually passed and implemented public disclosure procedures, which in many ways mimicked the lustration programs of their neighbors. All three countries were relatively late to engage in authentic public disclosures, with the processes starting in earnest around 2006-2008.¹¹ As such all three are examples of delayed transitional justice. Finally, the public disclosure processes have been primarily implemented by the secret police file repository agencies in each country, all of which are active members of the broader European Network of Official Authorities in Charge of the Secret Police Files.¹² As such there is a shared sense of mission, a sharing of information about how to organize and preserve the files, and even a shared sense of accountability across the member organizations.¹³

from March 6, 1945-December 22, 1989.” *Romanian Official Gazette*. No. 420/23/VI 2010; and Rafał Leśkiewicz and Pavel Žáček (eds) *Handbook of the European Network of Official Authorities in Charge of the Secret Police Files* (Prague: The Institute for the Study of Totalitarian Regimes in cooperation with the Institute of National Remembrance, 2013).

¹¹ Cynthia M. Horne, *Building Trust and Democracy: Transitional Justice in Post-Communist Countries* (New York: Oxford University Press, 2017).

¹² Poland, Hungary, the Czech Republic, Romania, Bulgaria, Germany, and Slovakia were founding members. European Network of Official Authorities in Charge of the Secret Police Files, *A Reader on their Legal Foundations, Structures and Activities* (Berlin: Die Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik, 2009).

¹³ For example, the Czech Republic’s Institute for the Study of Totalitarian Regimes was reprimanded by the other agencies in 2014 and threatened with suspension over allegations that it was not properly vetting members of its own file repository agency. See Jan Richter, “Agency Administering Secret Police Files Threatens to Quit International Network,” *Radio Praha*, 23 January 2014, <https://www.radio.cz/en/section/curaffrs/agency-administering-secret-police-files-threatens-to-quit-international-network>, accessed 2 February 2019.

While public disclosure measures have been shown to support aspects of trust-building and democratization in the post-communist region, albeit with weaker effects than more compulsory and punitive lustration measures, what remains unclear is whether there are temporal parameters delimiting a time period for their appropriate use.¹⁴ Public disclosures are politically complicated, institutionally expensive, morally contested, and entail quasi-punitive employment consequences for those found ‘guilty’ of secret police collaboration. Since the measures are far from costless, their duration bears empirical consideration. Moreover, one of the primary goals of public disclosures is to promote trust—trust in vetted public institutions, trust in political office holders and trust in government.¹⁵ If the measures are no longer relevant or perceived as legitimate, they will fail to positively affect perceptions of the state. What is too long and when is too late to continue to use the secret police files for current employment vetting considerations?

To address these temporal conditions, this paper engages a series of sub-questions drawing on Romania’s use of its secret police files from 2010 to the present. First, demographically speaking, are there any public office holders or political candidates left to publicly disclose nearly 30 years since the fall of Ceaușescu’s regime? The old guard may have aged out of political consideration, already been unmasked, or self-selected out of political consideration, rendering an employment vetting process based on information in the secret police files from 30-50+ years ago somewhat anachronistic and possibly obsolete. Second, for truth-

¹⁴ Horne, *Building Trust and Democracy*; and Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge: Cambridge University Press, 2012).

¹⁵ United Nations, *Rule of Law Tools*; de Greiff and Mayer-Reickh, *Justice as Prevention*; Horne, *Building Trust and Democracy*; and David, *Lustration and Transitional Justice*.

telling measures to be effective they must be valued by citizens. Are citizens still interested in access to the secret police files, both their own and those of political candidates? After several decades, citizen fatigue with the duration of measures might have rendered them less politically salient and therefore less useful in building public trust. In short, focusing on the use of public disclosure measures in Romania permits a fine grained analysis of the temporal conditions associated with this regionally dominant form of transitional justice, with possible policy implications for other post-communist countries still using public disclosures, like Bulgaria, or countries using late lustration measures, like Ukraine and Poland.

To preview the main findings, Romania's vetting process continues to disclose the collaborator backgrounds of current political candidates, individuals being considered for current appointments in political and social institutions, and others holding high ranking public positions. While there is evidence of a declining number of former collaborators and operatives vying for public positions, nearly 30 years on Romania has not reached the predicted demographic cliff. In other words, the old guard has not quite aged out or been shamed out of public positions of trust, suggesting continued policy relevance to the public disclosure process. Additionally, citizen interest in the secret police files remains strong, with respect to both personal files and the files of political candidates. Predicted citizen fatigue has not rendered the process of file access and disclosure obsolete just yet. These findings suggest that preconceived temporal expiration dates for this type of transitional justice might have underestimated its utility and public relevance. However, the number of former collaborators and operatives publicly disclosed is declining, suggesting that the cost/benefit calculation associated with public disclosures might be shifting. While the paper highlights Romania's experience, it potentially

informs our understanding of temporal parameters surrounding personnel reform programs as types of transitional justice measures more broadly.

Thinking theoretically about timing

The perception of the time sensitivity of personnel reform measures, particularly lustration, appeared in scholarship at the beginning of the post-communist transitions before there was even significant implementation.¹⁶ The Council of Europe issued guidelines in 1996 recommending no more than a decade for lustration, despite the limited implementation at that time and the fact that many countries had not started their personnel reform measures yet (Czechoslovakia was the first country to pass laws in 1991).¹⁷ The rationale for why early reforms were better than late measures was strengthened when lustration became politicized in several countries in the mid-1990s, including Hungary and Romania, giving rise to concerns about possible extralegal manipulation of these measures.¹⁸ As such, the two-pronged assumptions that early measures were the most efficacious and that there was a built in expiration date for the measures developed before we had even amassed empirical evidence about the impact of these types of transitional justice.

¹⁶ Samuel Huntington, *The Third Wave Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991); John Moran, “The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget,” *Communist and Post-Communist Studies* 27, 1(1994): 95-109.

¹⁷ Council of Europe, *Measures to Dismantle the Heritage of Former Communist Totalitarian Systems*.

¹⁸ Csilla Kiss, “The Misuses of Manipulation: The Failure of Transitional Justice in Post-Communist Hungary,” *Europe-Asia Studies*, 58, 6 (2006); and Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (Cambridge: Cambridge University Press, 2012).

There are a number of reasons why lustration and public disclosures might be particularly time sensitive forms of transitional justice. First, the point of personnel reform is to change the composition of personnel in positions of power in order to support the regime transition. This is less useful if there are significant delays enacting the reforms, and some might argue, not useful late into a transition because corrupt or compromised personnel have been allowed to remain in positions of power. Delayed measures are therefore viewed as less efficacious than reforms enacted in the wake of a regime change.¹⁹

Second, the aftermath of a transition is often described as a period of ‘extraordinary politics.’²⁰ Normal politics and rules might be suspended in order to push through reforms necessary to support a democratic transition. The European Court of Human Rights (EctHR) has expressed this understanding of lustration laws, highlighting that the measures might be legally inappropriate once democracy has been consolidated.²¹ According to this thinking, the more time that passes from the transition, the less legally appropriate measures will be. Related to this, over time citizens are expected to be more interested in forward rather than backward looking justice measures.²² Citizens could become fatigued with policies that focus on the past rather than policies correcting political, social or economic problems in the present. Citizen fatigue, as

¹⁹ Claus Offe, *Varieties of Transition: The East European and East Germany Experience* (London: Cambridge University Press, 1996).

²⁰ Leszek Balcerowicz, *Socialism, Capitalism, Transformation* (Budapest: Central European University Press, 1995).

²¹ European Court of Human Rights, *Case of Bobek v. Poland*, § 62. 68761/01, 17 July 2007 (Strasbourg: Council of Europe, 2007); European Court of Human Rights, *Case of Matyjek v. Poland*, § 69. 38184/03. 24 April 2007 (Strasbourg: Council of Europe, 2007).

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

measured by loss of citizen engagement with the process, could signal that the measures are considered less salient, or worse, no longer legitimate areas to focus scarce state resources.²³

Therefore, earlier measures rather than later or longer measures are seen as ways to avoid a loss of citizen engagement.

Third, there is a concern that personnel reforms could be especially subject to instrumentalization by political parties. Lustration and public disclosure measures reveal the collaborator backgrounds of candidates for public office and individuals in positions of political power, making them potentially ripe for instrumental use by political parties against rivals. The manipulation of post-communist transitional justice measures in Hungary, Romania, and Poland illustrates the politicization of lustration.²⁴ Concerns that later and longer measures would be more prone to politicization contribute to our temporal assumptions that earlier measures are most appropriate.

Fourth, there are self-selection mechanisms, which might reduce the benefits of the public disclosure process compared to the political and economic costs. Demographically speaking, the pool of former secret police agents and principal collaborators will eventually age out of politics. Top bureaucrats, apparatchiki, and secret police officers would likely have been middle aged at the height of their communist careers and peak influence, placing them in their

²³ There is evidence of this predicted citizen fatigue in the FSU region. See Cynthia M. Horne and Lavinia Stan (eds) *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking Toward the Future* (Cambridge: Cambridge University Press, 2018).

²⁴ Kiss, “The Misuses of Manipulation”; Stan, *Transitional Justice in Post-Communist Romania*; and Aleks Szczerbiak, “Explaining Late Lustration Programs: Lessons from the Polish Case,” in *Post-Communist Transitional Justice: Lessons from 25 Years of Experience*, eds. Lavinia Stan and Nadya Nedelsky (New York: Cambridge University Press, 2015).

70s and 80s now. Perhaps the natural aging process has rendered public disclosures increasingly obsolete? A related argument is that over time individuals recognize that their backgrounds will be revealed through the vetting process, so individuals might self-select out of positions to avoid public disclosure. Alternately, political parties might avoid putting forward known collaborators as candidates to avoid negative press, or institutions might decide against appointing former collaborators to avoid tainting their image. These self-selection mechanisms might point to an appropriate end date to measures.

With respect to lustration and public disclosures, there are also expectations about the appropriate duration of these measures. The very term ‘transitional justice’ implies that the measures are used during the transition period after a regime change.²⁵ The Council of Europe suggested a ten-year period for the use of lustration measures in post-communist countries, arguing that more than a decade was too long to continue such ‘transitional’ justice.²⁶ While the ECtHR did not give a specific number of years, it similarly argued that once a democracy was consolidated such measures became less legally appropriate.²⁷ An assumption that approximately a decade was an appropriate duration for measures has remained a benchmark for evaluating personnel reforms despite the fact that subsequent ECtHR rulings and the European Commission for Democracy Through Law (the Venice Commission) have issued broader

²⁵ Ruti Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).

²⁶ Council of Europe, “Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law,” in *Measures to Dismantle the Heritage*, §g.

²⁷ European Court of Human Rights, *Case of Matyvek v. Poland*. 38184/03, April 24, 2007 (Strasbourg, France: Council of Europe, 2007).

interpretations of the duration of the measures in practice.²⁸ For example, in 2017 the ECtHR sided with Bulgaria, in a case raised by a Bulgarian citizen negatively affected by the public disclosure process, ruling that the on-going process of public disclosures was legal and appropriate even in 2017.²⁹ The Venice Commission has taken a more temporally lenient view toward Ukraine's 2014 lustration laws as well.³⁰

If we are to apply some of these temporal considerations to Romania, we might then question if there remains utility to its public disclosure program, namely, is there anyone left to publicly disclose? Second, do the measures resonate with citizens? Are citizens engaged with the process, or has it become politically irrelevant to them? Romania is an interesting case to explore temporal conditions surrounding transitional justice because by regional post-communist standards it has had a very late, long, and informal transitional justice process. Before examining the empirical evidence related to Romania's current public disclosures, I first provide some background information on the agency charged with administering Romania's secret police files—the National Council for the Study of the Securitate Archives.

C.N.S.A.S.'s Structure and Function

²⁸ European Commission for Democracy Through Law (Venice Commission), *Final Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine*, Opinion No. 788/2014, CDL-AD (2015)012, Venice, 19 June 2015.

²⁹ European Court of Human Rights (ECtHR). *Anchev v. Bulgaria*, Applications nos. 38334/08 and 68242/16, ECHR 011 (2017), 11 January 2018.

³⁰ European Commission for Democracy Through Law (Venice Commission).

The National Council for the Study of the Securitate Archives (*Consiliul National pentru Studierea Arhivelor Securitatii*-C.N.S.A.S.) manages the archives of the former communist secret police—the *Securitate*. Drawing on information in the files, its determinations of collaboration and complicity are the basis for Romania’s current public disclosure program.³¹ This section provides a brief overview of the changes to the legal mandate and scope of activities of the C.N.S.A.S. over time in order to contextualize its current activities.³²

The C.N.S.A.S. was created in 1999 and charged with managing file access, screening political candidates and office holders for evidence of collaboration with the *Securitate*, and publicly disclosing this information, although it did not have the authority to remove individuals from employment positions.³³ These functions were similar in design to other already established lustration agencies, like the Institute of National Remembrance in Poland and the Historical Archive in Hungary.³⁴ Despite the legal mandate, the C.N.S.A.S.’s ability to execute its functions was limited from its inception; it lacked funding and a building in which to work,

³¹ For a description of its charter see, C.N.S.A.S., <http://www.cnsas.ro/>, accessed 4 February 2019.

³²For more details about the domestic political environment that has shaped the evolution in structure and function of the C.N.S.A.S. see: Dragoș Petrescu, “Dilemmas of Transitional Justice in Post-1989 Romania,” in *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe*, eds. Vladimira Dvořáková Anđelko Milardović (Zagreb: Political Science Research Center, 2007): 127-152; and Lavinia Stan, “Reckoning with the Communist Past in Romania: A Scorecard,” *Europe-Asia Studies*, 65, 1 (2013): 127-46.

³³ Law 187/1999 *Regarding the Access to the Personal File and the Disclosure of the Securitate as Political Police*, <http://lege5.ro/Gratuit/gmzdgqzthe/law-nr-187-1999-on-the-access-to-the-personal-file-and-the-disclosure-of-the-securitate-as-a-political-police>, accessed January 25, 2014.

³⁴ Leśkiewicz and Žáček (eds), *Handbook of the European Network*.

lacked broad political support, and most critically lacked direct access to the secret police files.³⁵ Despite its structural hobbling, the C.N.S.A.S. reviewed some cases and issued rulings, but the judgments often appeared politically biased.³⁶ This is partially a function of the method of appointing members to the decision-making C.N.S.A.S. Collegium. The C.N.S.A.S. Collegium members are politically appointed, proportional to the parties in power, with the intention that the C.N.S.A.S. represents a range of political views.³⁷ However, since collaboration rulings are decided by majority vote, the decisions advanced can and did reflect the politicization of issues in Romanian politics, thereby undermining perceptions that the C.N.S.A.S. was making authentic and politically autonomous ruling.³⁸ In short, although the C.N.S.A.S. was structured like other file agencies in the European Network and nominally processed files, its limited number of decisions and politicized rulings undermined its credibility.

A confluence of domestic and international factors in 2006 shifted the political landscape and support for the C.N.S.A.S.³⁹ First, in 2006, the National Liberal Party, as part of the ruling Justice and Truth Alliance, pushed the passage of a more expansive lustration law to support

³⁵ Stan, *Transitional Justice in Post-Communist Romania*, 92.

³⁶ Lavinia Stan, "Moral Cleansing Romanian Style." *Problems of Post Communism* 49, 4(2002): 52-62;

³⁷ A Collegium of eleven individuals, nine nominated by political parties proportionate to their representation in Parliament, one appointed by the President, and one by the Prime Minister, has authority over the personnel employed at the C.N.S.A.S. See <http://www.C.N.S.A.S.ro/>, accessed 16 May 2018.

³⁸ Comments by Dragoș Petrescu, Panel Discussion "Remembering Past Atrocities," *Society for Romanian Studies Conference*, Bucharest, Romania, 27 June 2018.

³⁹ Horne reviews the domestic politics surrounding these changes in "Informal Lustration."

greater accountability for the past.⁴⁰ Second, the Tismăneanu Commission researched and presented a report in 2006, documenting and condemning the abuses committed against the Romanian people under the communist regime.⁴¹ Third, President Traian Băsescu endorsed the report and formally condemned aspects of the communist dictatorship, thereby creating a domestic political environment favorable toward more accountability. President Băsescu also had 60,000 files transferred to the C.N.S.A.S. in 2005/2006, thereby finally providing the C.N.S.A.S. with the information they needed to screen political candidates and office holders.⁴² Fourth, these domestic changes coincided with Romania's accession to the European Union, with some suggesting the timing of the measures showed they were designed to secure EU membership by demonstrating Romania's commitment to transparency and accountability.⁴³

The 2008 legislative elections shifted domestic politics once again, bringing into power the Social Democratic Party—a party with known ties to the former Romanian Communist Party and *Securitate*-- and the Democratic Liberal Party, who were less favorable to transitional justice. In this politically charged environment, the Constitutional Court struck down elements of

⁴⁰ For election information see European Election Database, Norsk Senter for Forskningsdata, accessed 4 February 2019, http://www.nsd.uib.no/european_election_database/country/romania/introduction.html.

⁴¹ There are disagreements in Romanian society regarding aspects of the report. See Cosmina Tanasoiu, "The Tismaneanu Report: Romania Revisits Its Past," *Problems of Post-Communism* 54, 4 (2007):60-69.

⁴² Leśkiewicz and Žáček (eds), *Handbook of the European Network of Official Authorities*, 226.

⁴³ Florin Abraham, "Three Decades of Transitional Justice in post-communist Europe," Paper presented in panel Accountability and Memorialization in Romania and Moldova, *Society for Romanian Studies Conference*, Bucharest, Romania. 27 June 2018.

the lustration law in 2008 and stripped the C.N.S.A.S. of its legal mandate for lustration.⁴⁴ The decision contracted the Court's previous rulings on the legality of lustration and was perceived as a potentially politically motivated attempt to quash disclosures that could negatively impact the grand coalition in power, or unseat members of the Court itself with collaborator pasts.⁴⁵ The C.N.S.A.S. was not dissolved, but instead given a new mandate with diminished power to reflect the Court decisions. The C.N.S.A.S. would continue to verify the background of individuals and publicly disclose the information, however, the Bucharest Court of Appeals would be the legal authority making finalized, irrevocable collaboration decisions.⁴⁶

Since 2009 the C.N.S.A.S. has operated under this new mandate, managing the secret police files, reviewing tens of thousands of files and issuing thousands of affirmative verdicts for further consideration by the Bucharest Court of Appeals.⁴⁷ Its four main functions are: I) "to ensure the free access of individuals to their personal files;" II) to facilitate the "vetting of individuals seeking public office;" III) "to expose publicly the former agents and informal collaborators of the *Securitate* in accordance with rule of law principles;" and IV) "to develop

⁴⁴ Romanian Constitutional Court (Curtea Constituțională a României) Decision No. 51 of 31 January 2008, declaring Law 187/1999 unconstitutional, in Leśkiewicz and Žáček, 226; and Constitutional Court Decision no 820/2010.

⁴⁵ Bogdan Iancu, "Post-Accession Constitutionalism with a Human Face: Judicial Reform and Lustration in Romania," *European Constitutional Law Review*, 6, 1 (2010):28-58; and Stan, *Transitional Justice in Post-Communist Romania*, 96.

⁴⁶ Leśkiewicz and Žáček, *Handbook of the European Network of Official Authorities*, 220-30.

⁴⁷ See the CNSAS website for annual reports detailing the files reviewed and decisions rendered.

<http://www.cnsas.ro/>, accessed 4 February 2019.

research and education activities... about the repressive actions of the *Securitate*.”⁴⁸ The protocols governing the file review and public disclosure processes can be broken down into four stages: first, the C.N.S.A.S. completes a preliminary investigation and finds evidence of collaboration; second, a final determination is completed and approved by the C.N.S.A.S. Collegium;⁴⁹ third, the Collegium decides which of the final determinations are forwarded to the Bucharest Court of Appeals for review and due process procedures, including granting the accused the right to a hearing and appeal; fourth, only after the full legal process is completed can a positive determination of official and irrevocable regime collaboration be rendered by the Bucharest Court of Appeals, and subsequently published in the Official Gazette, the journal of record in Romania.⁵⁰ The next sections turn to an empirical examination of the stages of the file review process, testing whether the vetting mandate has become anachronistic several decades after the transition.

Public Disclosures: Has time run out?

⁴⁸Consiliul Național Pentru Studierea Arhivelor Securității, (C.N.S.A.S.), *2017 Raport de activitate privind anul (2017 Annual Activity Report)*. (Bucharest, Romania: 2017), Synopsis p. 127, <http://www.cnsas.ro/rapoarte.html>, accessed 27 August 2018.

⁴⁹ The Collegium is the top consultative group within C.N.S.A.S., comprised of the President, the Vice-President, the Secretary and members of the different investigative units. See organizational chart, <http://www.C.N.S.A.S..ro/documente/2012.03.01%20-%20Organigrama%20C.N.S.A.S..pdf>, accessed 30 May 2018.

⁵⁰ These procedures, including the appeals process are detailed on the C.N.S.A.S. main webpage, see <http://www.C.N.S.A.S..ro/index.html>, last accessed 30 May 2018. It is of note that the Bucharest Court of Appeals is in charge of overseeing the due process safeguards of individuals and their right to appeal.

The C.N.S.A.S. reported that from 2008-2104 they verified files on 5,731 operatives and issued 3,729 public disclosures of regime complicity. As of February 27, 2018, there were 3,505 security officers and non-commissioned officers and 508 *Securitate* employees publicly disclosed on the C.N.S.A.S. website.⁵¹ These substantial figures illustrate the part the C.N.S.A.S. has played in Romania's accountability efforts. However, 25-30 years after 1989, is there anyone left to publicly disclose?

Data on both preliminary and final C.N.S.A.S. determinations, as well as irrevocable judgments of collaboration conferred by the Bucharest Court of Appeals, provide information on the number of individuals for which evidence of collaboration/complicity has been found and for which final determinations of collaboration have been published. The focus is on data over the past decade as this captures the temporal element of the research question: is there anyone left to publicly disclose?

Figure 1 presents the number of preliminary collaboration determinations over the past ten years, with the total number of cases broken down by the number of operatives and collaborators disclosed. 2009 and 2010 saw the highest number of cases initiated, reflecting both the increase in the number of files transmitted to the C.N.S.A.S. after the 2006 institutional restructuring and improvements in managing and deciphering information in the files.⁵² As predicted, there is a steady decline in the number of cases, suggesting there are fewer individuals left to publicly disclose. However, while the number of cases has declined over time, 2017 still

⁵¹ http://www.cnsas.ro/fosta_securitate.html, accessed 5 February 2019.

⁵² Consiliul Național Pentru Studierea Arhivelor Securității, (C.N.S.A.S.), *2016 Raport de activitate privind anul (2016 Annual Activity Report)*. (Bucharest, Romania, 2016), <http://www.cnsas.ro/rapoarte.html>, accessed 27 August 2018.

yielded more than 100 public officials with preliminary determinations of collaboration. To merit such a determination there must be evidence in the files, the file must include a signature of the operative/agent demonstrating involvement, and the nature of the collaboration must violate the human rights of the victim.

--insert Figure 1 here--

Following preliminary collaboration determinations, the C.N.S.A.S. Collegium evaluates the available information and issues a final determination, which could then be forwarded to the Bucharest Court of Appeals for judicial review. Figure 2 presents a breakdown of these final determinations by year.⁵³ The number of operatives and collaborators officially confirmed in the past four years of data remains significant. The total number of individuals in 2014-- 343 individuals-- was the highest of the recent four years, with declining numbers over time.⁵⁴ The ratio of informants and collaborators found in the files remained consistent over time as well. Do these figures suggest that demographically speaking previous collaborators and operatives have aged out of positions of power or public trust, or that individuals are self-selecting out of public office? While there is clear evidence of a decline in total numbers, nearly thirty years after the end of communism there remains a robust number of individuals to vet for future positions of power.

⁵³ The total number of political police collaborators and informants was higher in the finalized figures than in the preliminary determinations because some years involve addressing or finalizing investigations started in previous years. For additional information see C.N.S.A.S., *2017 Raport de activitate privind anul*.

⁵⁴ Consiliul Național Pentru Studierea Arhivelor Securității, (C.N.S.A.S.), *2014 Raport de activitate privind anul (2014 Annual Activity Report)*. (Bucharest, Romania, 2014), <http://www.cnsas.ro/rapoarte.html>, accessed 27 August 2018.

–insert figure 2 here–

Once the C.N.S.A.S. Collegium has issued a final determination, it has the option of forwarding the case to the Bucharest Court of Appeals for review, potential appeal, and final judgment. From 2008-2014, the C.N.S.A.S. advanced 1,406 cases to the Bucharest Court of Appeals, and the Court issued 1,366 final irrevocable judgments by 2016.⁵⁵ The identities of another 220 former security officers were slated for publication in the Official Gazette in 2017.⁵⁶ It is of note that the C.N.S.A.S. has gradually adopted a strategy of only advancing cases for which there is broad internal consensus regarding the quality of evidence of material collaboration, resulting in higher rates of success obtaining final affirmative Court judgments.⁵⁷ Approximately 90 percent of forwarded cases resulted in judicial determinations of collaboration, with a success rate of 98 percent in the most recent years.⁵⁸ The comportment both within the C.N.S.A.S. and between the C.N.S.A.S. and the Bucharest Court of Appeals regarding assessments of collaboration has contributed to perceptions of the legitimacy of decisions.

Figure 3 presents the number of definitive and irrevocable court determinations from 2009-2015. As Figure 3 illustrates, the number of Court finalized cases peaked in 2011 and 2012 with 214 total determinations and 205 determinations respectively, halving in 2013, with a total of 124 individuals, and nearly halving again in 2014, with a final of 74 total cases. The 2015 numbers were a fraction of that at a mere nine cases. This suggests a winnowing of cases over

⁵⁵ C.N.S.A.S., *2016 Raport de activitate privind anul*.

⁵⁶ Decisions are published in the Official Gazette—Romania’s paper of record. Budget limitations were cited in the activity report as a constraint on the timely publication of decisions. Ibid.

⁵⁷ Author discussion with Florin Abraham, former investigator C.N.S.A.S., Bucharest, Romania, 2 July 2018.

⁵⁸ C.N.S.A.S., *2017 Raport de activitate privind anul*.

time, confirming the anticipated temporal drop off in the number of individuals to be publicly disclosed.

Insert Figure 3 here

Figure 3 also speaks to another critique of lustration in general, and late lustration and public disclosure measures in particular, namely that the process largely misses the most egregious cases because the files of important agents and collaborators were destroyed both prior to and in the chaotic aftermath of the transition. In other words, the remaining files are only on less materially important collaborators and informants, rendering the process somewhat inert. However, Figure 3 illustrates these court finalized determinations were publicly disclosing both *Securitate* operatives and collaborators involved in current political life. In fact, the number of operatives receiving finalized court decisions consistently exceeded the number of cases against collaborators each year, further suggesting that the vetting net was capturing individuals who were materially important parts of the *Securitate*.⁵⁹ Moreover, all determinations require definitive proof that an individual's actions violated the human rights of a victim, therefore, almost by definition, anyone who is irrevocably found to be an operative or collaborator is guilty of material human rights' violations. Although the files are incomplete and certainly there are people who have escaped investigation, all of the publicly disclosed individuals--both operatives and collaborators-- perpetrated material offenses against others under communism, and all of them were investigated because they were candidates for or in positions of current public trust.

⁵⁹ For example, the total distribution of operatives and collaborators disclosed by the C.N.S.A.S. is available under the section "Fosta Securitate: Cadre și Colaboratori" showing many more collaborators than operatives, see http://www.C.N.S.A.S..ro/fosta_securitate.html, last accessed 1 June 2018.

These findings refute the contention that the quality of informants/collaborators/operatives is so low as to dilute any benefits from the process.

In sum, this section reviewed three stages of the public disclosure process, including preliminary determinations, final determinations, and the irrevocable finalized judgements. In terms of temporal conditions, while there has been declining utility to this process evident in the finalized court judgments, even the 25 year mark was still yielding significant numbers of affirmative collaboration determinations. In short, there are former collaborators and operatives who are politically active, proving that demographically speaking the process has not quite reached its temporal cliff, although there is evidence that it is approaching. The next section turns to the vetting of public office holders and candidates in 2016 and 2017 in order to focus more narrowly on the most temporally proximate period for collaboration evaluations.

Recent elections and appointments of public officials

Vetting new candidates for elected positions

One of the primary responsibilities of the C.N.S.A.S. is to verify the background of political candidates for national and local elections. Part of the rationale for vetting candidates is to publicly disclose information prior to elections, such that voters can then make informed election choices. This regularized review of political candidates results in thousands of C.N.S.A.S. verifications during election cycles. In 2006 and 2007 the C.N.S.A.S. performed 4,697 and 17,734 checks respectively.⁶⁰ In the 2016 election year, the C.N.S.A.S. received

⁶⁰ Consiliul Național Pentru Studierea Arhivelor Securității, (C.N.S.A.S.), *2006 Raport de activitate privind anul (2006 Annual Activity Report)*. (Bucharest, Romania, 2006), <http://www.cnsas.ro/rapoarte.html>, accessed 27 August 2018; C.N.S.A.S., *2007 Raport de activitate privind anul*; Consiliul Național Pentru Studierea Arhivelor Securității,

information on 24,112 electoral candidates to review: 18,600 for local elections and 5,532 for Parliamentary elections. The 2017 election year included the verification of 23,125 candidates: 16,278 individuals in local elections and 5,693 people in national elections. These numbers illustrate the sheer volume of candidates to screen, at both significant time and financial cost. This begs the question: are there any former operatives or collaborators left to catch in the electoral vetting net so many years after the transition? A secondary question is: are these positions of high political importance meriting a continuation of the program?

In the 2016 election cycle, the C.N.S.A.S. immediately identified and published the names of six candidates previously verified as collaborators, and identified secret police file information on 6,525 other candidates, resulting in the further investigation of 158 individuals who showed evidence of material collaboration with the *Securitate*.⁶¹ In the 2017 electoral candidate list, there was no information in the files on 13,621 people, removing them from further investigation. Another 3,974 clean certificates were issued, asserting to a lack of evidence of collaboration for an individual. After file review, 134 candidates merited additional investigation, including 77 former cadres and 57 *Securitate* employees.⁶² In the end, files on 15 candidates were transferred to the Court for further review and potential action, with 36 candidates in local elections already having been found guilty of collaboration. Additionally, from 2015-2017 the C.N.S.A.S. documented 131 cases of candidates lying on their verification

(C.N.S.A.S.), *2008 Raport de activitate privind anul (2008 Annual Activity Report)*. (Bucharest, Romania, 2008), <http://www.cnsas.ro/rapoarte.html>, accessed 27 August 2018.

⁶¹ C.N.S.A.S., *2016 Raport de activitate privind anul*.

⁶² C.N.S.A.S., *2017 Raport de activitate privind anul*.

certificates, thereby serving a significant oversight function for the process of vetting political candidates as well.⁶³

Turning to a more micro-level breakdown of electoral candidates, Table 1 present the most recent five years of data on collaborator/operative determinations for candidates for public office and elected officials at both the national and local levels. The columns separate three categories: 1) candidates for elected office; 2) individuals in elected positions of power at the national level, generally confined to the Romanian Senate and Romanian Chamber of Deputies; and 3) individuals in local or regional elected positions, including council members and mayors.⁶⁴ **Insert table 1 here**

The first column presents figures on disclosures for *candidates* in national and local elections. There are a mixture of both operatives and collaborators publicly disclosed in each year, including in 2017, but the majority of disclosures are related to collaborators. The positions are quite politically important, including candidates for the Chamber of Deputies, the Senate, and the European Parliament. The second and third columns speak to whether the pre-screening and public disclosure of candidates might affect who is ultimately elected to office. There is a stark difference between column one (candidates) and column two (elected national positions). In only one of the five years (2017) is there a case of a nationally elected individual with a known collaborator background. To rephrase, there are collaborators/operatives who put themselves forward for elected positions (column one), showing this group has not aged out or self-selected out of consideration for public office. However, there are almost no former

⁶³ Ibid.

⁶⁴ Some of the years present initial C.N.S.A.S. determinations and other years present final C.N.S.A.S. determinations, due to data availability. There is no double counting cross the categories.

collaborators/operatives (column two) who are actually elected at the national level, suggesting this information might in fact affect citizen voting behavior. At the local level the numbers tell a slightly different story. There are significantly more individuals with collaborator backgrounds at the local level (column three) than at the national level (column two), although the number of operatives in locally elected positions remains low and the number of collaborators relatively constant.

What do these findings suggest? One must be cautious attributing too much of a causal impact on public disclosures as a means of keeping former collaborators from public office, as there are clearly collaborators and operatives vying for elected office (column one) and in elected positions of power at the local level (column three). Table 1 also includes information on political appointees with known collaboration/operative backgrounds: in 2017 the Cabinet Chief in the Chamber of Deputies was revealed to have a collaborator background, and in 2013 the previous operative status of both the Chief of Services of the Chamber of Deputies and a Judge in the High Court of Cassation and Justice were disclosed. These are politically important and influential positions of power, and the fact that they are occupied by individuals with documented operative backgrounds suggests that the mere revelation of previous regime complicity does not necessarily force their removal. Nonetheless, the very limited numbers of individuals in elected positions of power at the national level compared to candidates for positions does in fact suggest that public disclosures affect, but do not determine, the composition of current public office holders. Taken together these findings illustrate the continued utility of public disclosures as a form of forward looking transitional justice.

Appointed Positions: Office Holders and Civil Society Positions

The public disclosure process is not confined to elected public officials; the C.N.S.A.S. is legally required to vet individuals holding certain appointed positions in public and semi-public institutions and associations.⁶⁵ Over time personnel in these institutions have been screened, therefore the focus is on new personnel. However, vetting does apply to all persons from this legally prescribed list of positions and institutions. This is consistent with the post-communist lustration programs' vetting of an array of positions in universities, schools, churches, unions, banks, and other broadly defined organizations and institutions of public trust.⁶⁶

Table 2 presents an array of recent (2015-2017) affirmative collaboration determinations of individuals in appointed positions at the national and local levels. Positions within the judiciary, such as magistrates, members of national and local courts and prosecutors, individuals with oversight over finances, including regional public finance positions and financial organizations, and directors in public health institutions have been verified as former collaborators or operatives. Within academia, professors, rectors, and presidents have been disclosed. Print journalists as well as radio broadcast positions have also appeared in the list of recently disclosed positions. Union leaders, museum directors, land management officials, and even pastors are also screened and revealed as collaborators. Table 2 is confined to disclosures

⁶⁵ Author interview with Dr. Adrian Cioflâncă, Member of the Collegium, C.N.S.A.S., Bucharest, Romania October 17, 2012; Author discussion with Florin Abraham, 2 July 2018. The C.N.S.A.S. website lists agencies subject to vetting and documents requests by employers. See the three foundational laws for details on the scope of vetting. http://www.cnsas.ro/doc_legi_speciale.html

⁶⁶ Stan, *Transitional Justice in Eastern Europe and the Former Soviet Union*; David, *Lustration and Transitional Justice*.

between 2015-2017, suggesting that demographically speaking we have not yet seen an aging out of former collaborators and operatives in broadly understood positions of public trust.

--Insert table 2 here--

This paper engages the temporal question, is there anyone left to publicly disclose? The most recent 2015-2017 determinations illustrate positive collaboration findings across political candidates, elected officials, and appointed positions. The empirics currently show that there remain individuals at all ranks of government and authority to screen, and furthermore suggest that the process does affect the composition of final elected officials at the national level. However, at some point there will be fewer and fewer individuals to disclose. This naturally prompts questions about the benefits of engaging in such reviews, given the operational costs associated with vetting thousands of political candidates and appointees as compared to the returns to society. There are hints in the data that the process is reaching the outside of its temporal parameters.

Gauging Citizen Fatigue

Post-communist public disclosures reveal not only the backgrounds of high ranking political figures, but include more personal revelations about the complicity of friends, colleagues, and loved-ones. These personal revelations are emotional, politically sensitive, and potentially socially divisive.⁶⁷ Have Romanian citizens grown tired of the secret police files and the years of public disclosures? As time from the transition passes, one might assume a natural waning of interest in file access and public disclosures as revelations become less socially

⁶⁷ Cynthia M. Horne, "Lustration, Transitional Justice, and Social Trust in Post-Communist Countries. Repairing and Wrestling the Ties that Bind?" *Europe-Asia Studies*, 66, 2 (2014): 225-254.

shocking and perhaps less politically salient. What do the trends show regarding citizen interest in the secret police files?

Figure 4 compares two measures of citizen engagement with the files: the number of viewing sessions at the C.N.S.A.S. reading room and the number of people who first exercised the right to review their own file in a given year. Both of these measures reflect individual engagement with personal files, meaning their own files or files of relatives for which they have access. These numbers do not include individuals who would like to review the files of public officials, nor do they include researchers with a scholarly interest in the files. There are space limitations in the viewing rooms, restricting the number of individuals who can be accommodated and therefore the numbers do not reflect the total demand.⁶⁸ As such, they are proxies for *citizen* interest in the files on a personal level.

-insert figure 4 here-

Figure 4 shows that the number of file viewing sessions remains quite high as of 2017. While the number of viewing sessions peaked in 2012 at 4,077, the 2017 figure still puts the number of viewing sessions at nearly 3,000, which remains very high in comparison to the other periods. The number of individuals who first exercised the right to access their own file in a given year was higher in 2016 than in any of the previous years. Data for the most recent five years suggests that citizen interest in the files remains strong and appears to be higher than it was

⁶⁸ Data was not available in the annual reports regarding the number of people who were turned away due to space limitations. As of 2014, on-line visitors and on-line data access has reduced the need for in-personal physical review of some files, thereby taking up some of the excess demand. On-line file access is another proxy for citizen interest.

when files first became available approximately a decade after the communist transition. In a word, the data do not support an assumption of citizen fatigue with the files.

Figure 5 also speaks to the level of interest in the files. It shows both the number of copies the C.N.S.A.S. provided to individuals related to their personal files and the total number of copies provided to both individuals and researchers in a given year. One should interpret absolute numbers with some caution, due to the C.N.S.A.S.'s resource and capacity limitations to meet all file requests.⁶⁹ However, Figure 5 shows that the total number of copies provided to individuals and researchers increased for more than a decade, topping off at approximately 1.3 million copies in 2013. Fewer copies were requested in the period after 2013, perhaps due to the fact that individuals had more expansive on-line access and therefore didn't need to rely solely on printed copies any longer. Even given the post-2013 expanded web access, in 2016 and 2017 nearly a half a million copies were provided to individuals reviewing their files each year, suggesting that both citizen and scholarly interest in the files remain robust.

-Insert figure 5 here-

There has also been an expansion in on-line file access and web views. In 2013 the number of recorded on-line visitors was 37,844 increasing over time to 80,522 visitors in 2015, and 71,880 visitors in 2016. The number of on-line visitors declined in 2017 to 56,896 but it was accompanied by a significant increase in web hits for the C.N.S.A.S., increasing threefold to more than 300,000 web views in 2017. As such, there appears to be robust engagement with the

⁶⁹ Consiliul Național Pentru Studierea Arhivelor Securității, (C.N.S.A.S.), *2015 Raport de activitate privind anul (2015 Annual Activity Report)*. (Bucharest, Romania, 2015), <http://www.cnsas.ro/rapoarte.html>, accessed 27 August 2018; and C.N.S.A.S., *2017 Raport de activitate privind anul*.

files by citizens and researchers both in person and on-line. Nearly thirty years later the number of first time users is unexpectedly robust and individuals remain engaged with personal files.

Individuals may also submit requests for information about the identity of informants or agents found in their personal files. If information exists (as many files were destroyed), the C.N.S.A.S. formally notifies petitioners in writing about the identity of said informers or collaborators.⁷⁰ Figure 6 presents figures on this proxy measure of citizen engagement with the files, documenting the number of informers disclosed per year directly to individual petitioners. It is important to note that this is not the total number of inquiries received by the C.N.S.A.S.; this figure is only the fraction of total inquiries for which there was information to report. As Figure 6 demonstrates, the number of such disclosures has continued to increase with time, reflecting both the institutional capacity of the C.N.S.A.S. to process more files, as well as sustained citizen interest in the files. The number of such affirmative disclosures peaked in 2015, a time quite late in Romania's transition. While the number of disclosures decreased in 2016 and 2017, both years remain very high and consistent with the number of operatives disclosed from 2010-2017. In sum, nearly 30 years into the transition, the three different proxy measures of citizen engagement with the files illustrate continued high levels of citizen interest.

--Insert figure 6 here--

Conclusion

What is too long and when is too late for public disclosures as transitional justice measures? This paper empirically explored some of the assumptions regarding the late transition

⁷⁰ The C.N.S.A.S. repeatedly emphasizes that notifications to individuals about regime complicity in their files is not equivalent to a formal collaborator designation because it has not completed all legal steps and due process components. For example see C.N.S.A.S., *2016 Raport de activitate privind anul*.

use of public disclosure measures as personnel reforms. In particular the paper examined the contentions that public disclosures are not useful or even appropriate so long after a regime change because there is no one left to publicly disclose, or at least no one of real importance. Related to this, predicted citizen fatigue with the process after so many years of on-going revelations might undermine its potential political saliency. The evidence presented in this paper does not support the contention that public disclosures have a built in expiration date as personnel reforms. To the contrary, the findings from Romania suggest a need to think more flexibly about our temporal assumptions with respect to this form of transitional justice.

First, the C.N.S.A.S. vetting process has continued to publicly disclose candidates running for public office, including individuals vying for seats in the Romanian Senate and Chamber of Deputies, electoral candidates for mayoral positions, and appointed positions in the judiciary and law enforcement. While the number of public disclosures has declined over time, hinting at the declining utility of this process in the future, they have not reached such a low threshold as to appear trivial as of 2018. Second, the public disclosures continue to reveal former collaborators and operatives in high ranking positions of public and social trust across the financial services, union leadership, media and public broadcasting, and universities. These types of semi-public and social institutions are often described as critical foundations for a robust civil society. To the extent that public disclosures brings transparency, accountability and potential personnel turnover to these institutions of social and political trust, there remain possible benefits for a relatively low trust society like Romania.⁷¹ In short, former collaborators and operatives have not selected out or aged out of the political process in Romania just yet.

⁷¹ Horne, *Building Trust and Democracy*, and Horne, “Lustration, Transitional Justice, and Social Trust.”

Third, while this paper could not evaluate the impact of the threat of public disclosures on potential office holders, there was preliminary evidence that while former collaborators put themselves forward as political *candidates* few obtained *elected national* positions. This suggests the revelations resonate with political parties and voters, and continue to be politically relevant indicators of integrity. Fourth, while there was preliminary evidence that Romania might be reaching its outer limits on the utility of public disclosures as seen in a marked decrease in the number of finalized, irrevocable court decisions (Figure 3), Romania has not reached this temporal limit just yet. Taken together the five proxy measures (Tables 1 and 2, Figures 1, 2, and 3) show a significant number of public disclosures of office holders and political candidates, illustrating that former collaborators and informants remain politically active 25-30 years after the transition. The fact that the revelations are of high ranking elected positions and appointed positions in Romanian government and public service today points to the current political salience of the measures, refuting contentions that only small fry are still being outed.

Fifth, the paper looked for evidence of expected citizen fatigue with the secret police files, which might signal a loss of utility or political saliency to the public disclosure process. This paper presented five separate measures of citizen engagement to triangulate these questions. All of the measures demonstrated continued high levels of citizen engagement with the files as of 2018. Citizen interest in their own files and in the public disclosure process remained on par with public interest measures from a decade prior, refuting a citizen fatigue hypothesis. To the extent that citizen interest speaks to the legitimacy of the process, we have evidence that the measures continue to resonate as forms of accountability.

It is not clear what continues to drive Romanians' personal engagement with the files, although a similar interest with the files is evident in other countries in the region as well. For

example, Bulgarians' engagement with their personal files remains high as of 2018. Moreover, a public opinion poll in 2017 showed that 61.4% of Bulgarians thought elected office holders and candidates should continue to be screened with the secret police files.⁷² While this interest in the files might be partially explained by the incomplete nature of the transition in Bulgaria and Romania, the 2019 file revelations in Latvia of the contents of the 'Cheka bags' similarly point to the political salience of the use of the files as both personnel reform and accountability measures.⁷³ As such, why post-communist citizens remain personally and politically interested in the content of the files, and for how long, remain questions open for further scholarly inquiry.

What does the case of Romania tell us about the temporal parameters of these types of public disclosures and file access measures? First, although the Council of Europe originally suggested a ten year time period for lustration and the ECtHR echoed a need to end vetting once the transition was secured, even 25-30 years is insufficient time for the former cadre to opt out of or age out of the political process. The process of lustration/public disclosure might need to take place over a much longer transition period than originally imagined. This suggests a need to rethink these durable *a priori* assumptions about the duration of personnel reform measures, since they were formed before we had such an empirically rich understanding about their use and limitations in practice.

Second, incomplete files, destroyed files, and problems with file transfers all hampered Romania's public disclosure and file access measures early in the transition, a problem other post-communist countries had as well. Over time the C.N.S.A.S. improved its management of

⁷² National Center for the Study of Public Opinion, Social Barometer Bulgaria, *Public Opinion on the work of the Dossier Commission*, https://www.comdos.bg/Социологически_барометър, accessed 9 February 2019.

⁷³ Andrew Higgins, "4,141 Latvians were just outed as K.G.B. Informants," *The New York Times*, 18 January 2019.

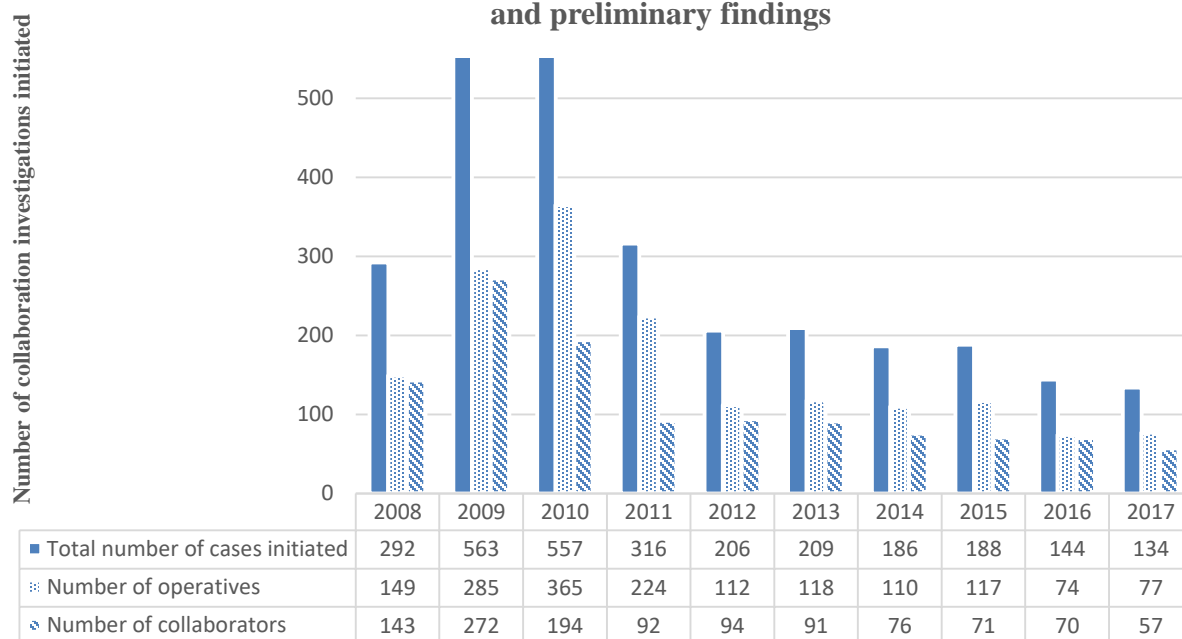
the files, as well as its ability to extract information from partial files. Building on the knowledge from the other European Network file repository agencies, the C.N.S.A.S. developed file cross-checking techniques, which have permitted determinations that might have previously been impossible due to incomplete information. For example, in 2016 the C.N.S.A.S. reported that it was able extract relevant information on 138 people without files by combing and cross-checking information from 93, 565 related dossiers.⁷⁴ The C.N.S.A.S. has gotten better at managing information and rendering judgments, and citizen interest in the files has remained high, challenging assumptions that later measures are necessarily less politically salient or legitimate than earlier measures. This is a lesson that might be applied to other post-conflict or post-authoritarian justice programs, as many similarly lack the capacity or resources to manage personnel reform information in the immediate transition period.

Third, the more temporally contentious components of the C.N.S.A.S.'s mandate involve the forward looking justice elements, namely how its revelations from the secret police files might shape future office holders and political candidates. The past affects perceptions of current integrity and capabilities for employment, potentially resulting in self-vetting, institutional removal or public shaming to catalyze removal. Looking to the future, using information in the secret police files as a proxy for integrity will become anachronistic, even if the vetting or public disclosure processes themselves do not. It bears consideration to ask *when* (not if) new integrity criteria are required, transforming this form of transitional justice into a prospective form of employment vetting and merging the past with the future. Whether C.N.S.A.S. is equipped or appropriate to play such a prospective role is questionable given its firm placement as a repository of the past.

⁷⁴ C.N.S.A.S., *2016 Raport de activitate privind anul*; and C.N.S.A.S., *2017 Raport de activitate privind anul*.

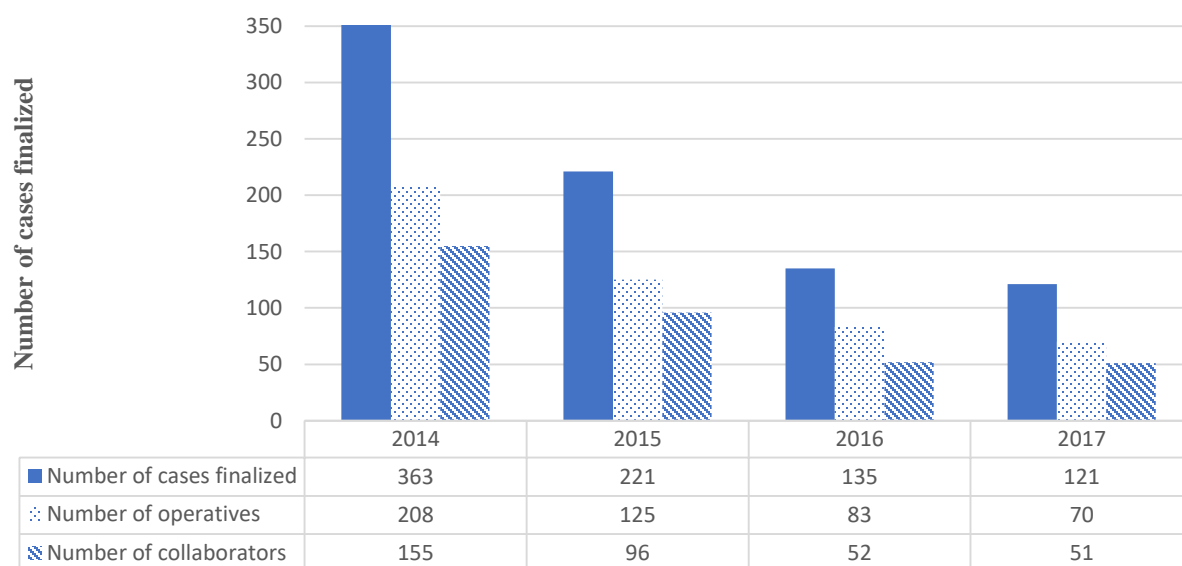
Timing of Reforms: Figures and Charts

Figure 1: Cases of collaboration/complicity initiated for investigation and preliminary findings



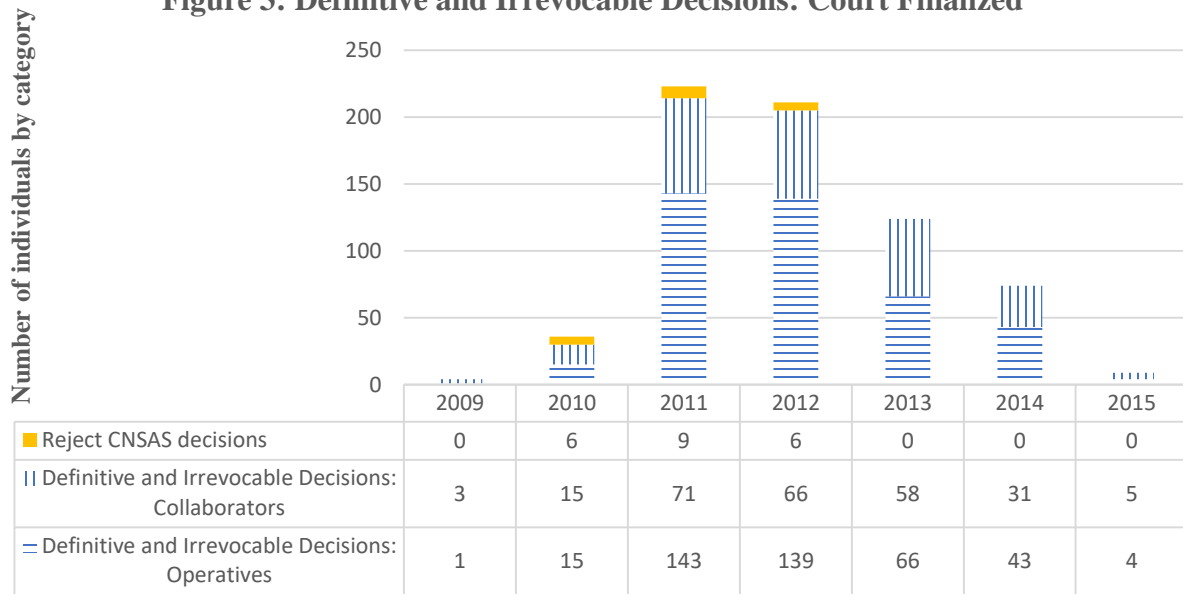
Source: Author compiled from C.N.S.A.S. Annual Activity Reports, 2008-2017,
<http://www.C.N.S.A.S.ro/>

Figure 2: Cases of collaboration/complicity: final determinations by C.N.S.A.S.



Source: Author compiled from C.N.S.A.S. Annual Activity Reports, 2014-2017,
www.C.N.S.A.S.ro

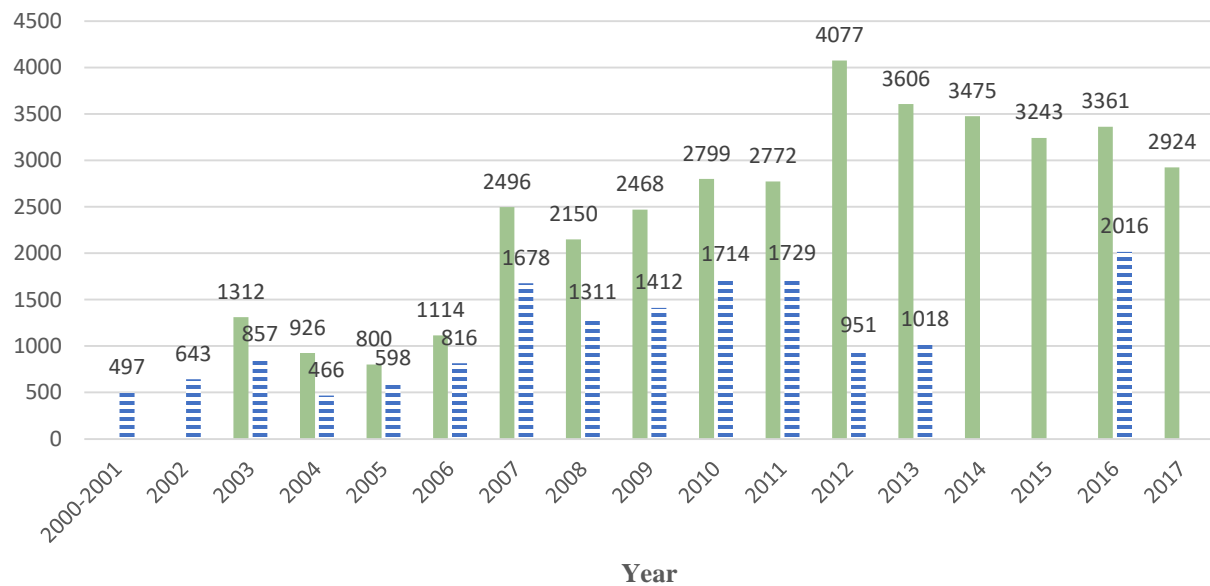
Figure 3: Definitive and Irrevocable Decisions: Court Finalized



— Definitive and Irrevocable Decisions: Operatives
 — Definitive and Irrevocable Decisions: Collaborators

Source: Author compiled from C.N.S.A.S. Annual Activity Reports, 2009-2015, www.C.N.S.A.S..ro

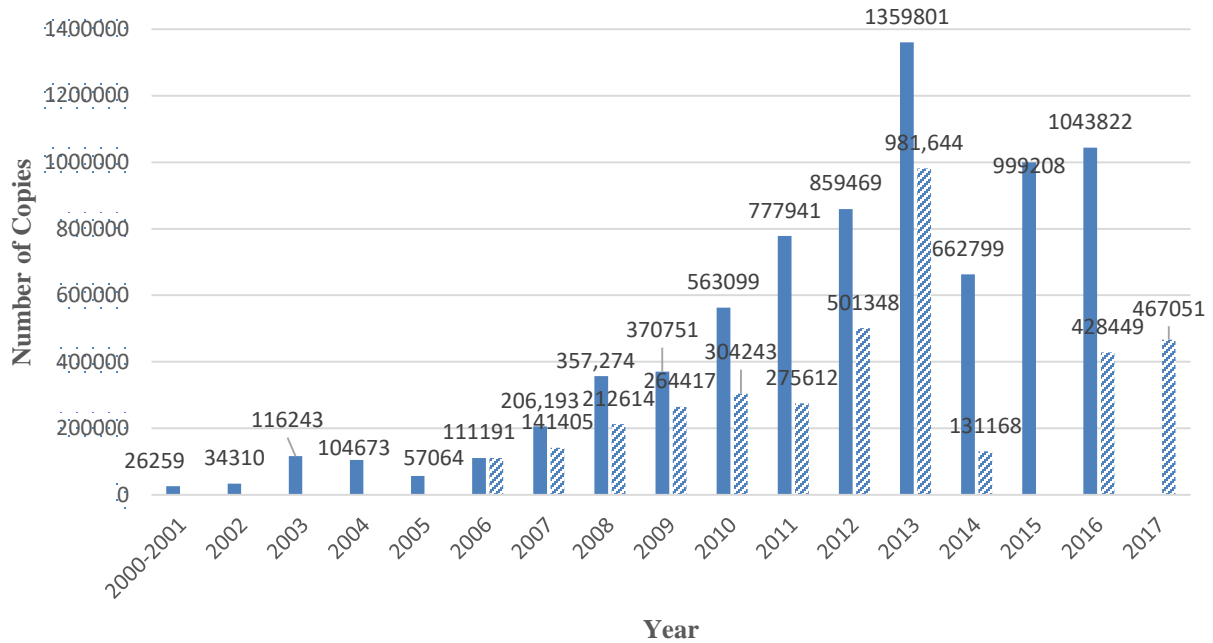
Figure 4: Citizen Direct Engagement with Files



Source: Author compiled from C.N.S.A.S. Annual Activity Reports, 2002-2017, www.C.N.S.A.S..ro

■ Number of viewing sessions (visitors to reading room--access own files)
 ■ Number of new people to first exercise right access their own files

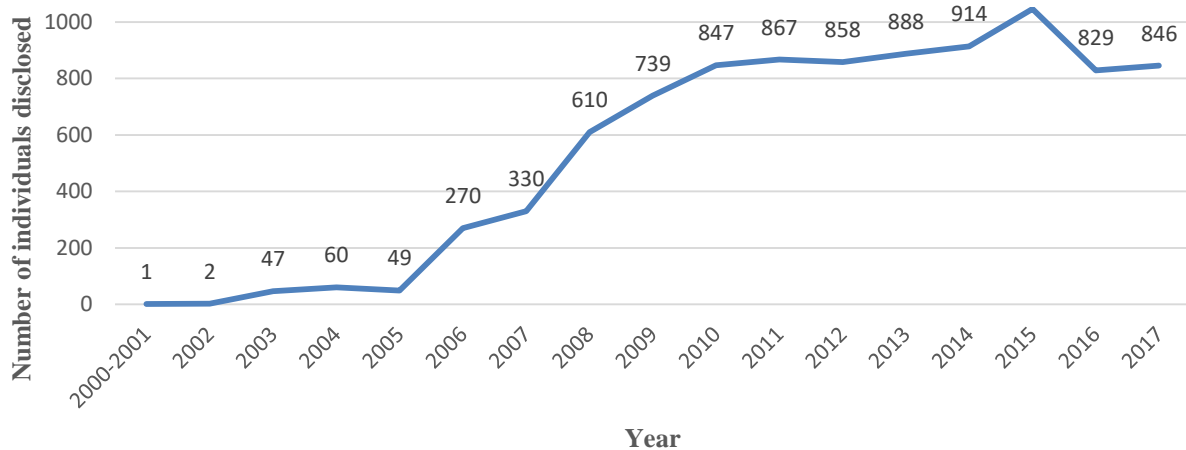
Figure 5: Copies Provided of Pages in the Secret Police Files



Source: Author compiled from C.N.S.A.S. Annual Activity Reports, 2002-2017, www.C.N.S.A.S..ro

■ Total copies provided (individuals and accredited researchers and other agencies)
 ▨ Copies provided to individuals

Figure 6: Individuals whose past regime involvement officially disclosed to petitioners



Source: Author compiled from C.N.S.A.S. Annual Activity Reports, 2002-2017, www.C.N.S.A.S..ro

Table 1: Individuals vetted for office, positions, or certifications with positive collaborator/operative determinations by C.N.S.A.S.			
Year¹ (preliminary or final determination indicated)	Candidates for elected office	National elected positions²	Local/regional elected positions
2017 final	1 operative 2 collaborators* *one candidate for Chamber of Deputies; two local positions	1 collaborator* * Cabinet Chief, Chamber of Deputies	2 operatives 29 collaborators
2016 final	0 operatives 3 collaborators *one candidate for Chamber of Deputies; two local positions	0 operatives 0 collaborators	0 operatives 15 collaborators
2015 final	1 operative 9 collaborators* *including four candidates for the Senate, three candidates for Chamber of Deputies (one who was also a candidate for European Parliament)	0 operatives 0 collaborators	2 operatives 28 collaborators
2014 initial ³	0 operatives 4 collaborators* *three candidates for Senate, one candidate for Chamber of Deputies	0 operatives 0 collaborators	0 operatives 29 collaborators
2013 initial ³	1 operative* 8 collaborators** *one candidate for Chamber of Deputies; **includes three candidates for Chamber of Deputies; one for the Senate; and various local elections including the Mayor of Bucharest	0 operatives ⁴ 0 collaborators ⁴ Although there were no directly elected former operatives, the Chief of Services of the Chamber of Deputies and a Judge in the High Court of Cassation and Justice were publicly disclosed as former <i>Securitate</i> operatives. These appointed positions are here noted as examples of persons in current positions of power with known operative backgrounds.	1 operative 29 collaborators

¹ In most recent years C.N.S.A.S. releases the names and positions for their initial and final determinations. Due to overlap in the reporting, I only count the final reports by year. ² Of note, one operative appeared in the 2017 finalized list at a high ranking government position--Secretary of State, Ministry of Defense—since this is not a directly elected position it was not registered in the national level elected positions but reflects an important example of a high ranking position being occupied by a former operative. ³ The position breakdown was not published with the 2014 or 2013 annual reports for the final determinations—only the initial determination. Therefore, the initial determinations are reported here. Data compiled by author from the annual activity reports of the C.N.S.A.S., various years.			

Table 2: Screening of Appointed Positions: Affirmative Cases 2015-2017	
Public Office Holders	Civil Society Positions
Magistrates, Members of Judiciary	Director, Public Health (regional level)
Secretary State in the Ministry of Defense	Decan, Orthodox Theological Faculty
Military Prosecutor's Office	President, Free Trade Union of Educators
	Chief Director, Regional Public Finance (various regions)
Minister of Transport	National Agency Land Improvement
Local Council Members (regional, various)	Museum Director (regional level)
Ambassadors	Head of Journal (weekly) Radio Journalism
	Founding Member, National Association of Detectives
	Pastor, His Assembly of God (stationed in USA)
	Director, Center for Financial Training – Millennium
	Union, Member of Committee of Drivers
	President, Association of Property Owners (regional)
	President, Association of Former Political Prisoners of Romania (regional offices)
	VP, Authority of Fiscal Surveillance (regional)
Data compiled by author from the annual activity reports of the C.N.S.A.S., various years.	