

DOSSIER

**CONCLUSIONS
AND
RECOMMENDATIONS**

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Contents

Acknowledgements

Executive Summary

I. Overview of main activities and achievements

II. Main findings and conclusions

III. Recommendations

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Executive summary

The process of facing the past and making a clear break with it is a sensitive and contested issue in all post-authoritarian countries. The project *Disclosing hidden history: Lustration in the Western Balkans* was initiated to evaluate the developments in this field in the Western Balkans. It particularly examined the legislation on lustration and the public access to the files of the former secret services, its implementation and the general public debates on the past in the countries of the region. The project aimed mainly at enhancing the public debates on the past, contributing to the improvement of legislation, procedures and practices on lustration and the public access to the files, increasing the legal and political awareness and strengthening the role of civil society.

The main findings and conclusions of the project show significant deficiencies both in the legislation and practices of lustration as well as of the public access to the files of the former secret services. In short, lustration did not take place in the Western Balkans. Even in cases where appropriate lustration laws were passed, the public authorities failed to implement them. The legislation about the public access to the files and its implementation are at least unsatisfactory and inadequate. The interest of the general public has focused on other issues, and civil society was not strong enough to make this issue come to the fore. The mainstream information media did not place the issue on the public agenda in a way and to an extent that would have been appropriate and necessary. Most international actors involved in democracy building in the Western Balkans paid little or no attention to contested issues of the dealing with the past. All of this had negative repercussions on democracy and the rule of law.

Although there is no single model for lustration legislation and procedures which could be successfully applied in all countries of the region, some parts of legislation and procedures are applicable and recommended for all countries. Legislation on lustration and on the public access to the files of the secret services should cover not only the period until 1990, but also the subsequent one, particularly the 1990s. This is especially important for most of the post-Yugoslav states. Public authorities should efficiently implement the laws passed on lustration and public access to the files of the secret services. Parliaments and other competent public authorities should strictly and regularly control the implementation. Public authorities should continuously and systematically include non-governmental experts and organisations in the preparation and implementation of the respective laws and procedures. International organisations should continue monitoring and assisting legislation on lustration and on public access to the files of the former secret services as well as its implementation. They should continue financial, technical and professional support for initiatives and projects (such as truth commissions) aiming at the improvement of legislation on lustration and public access to the files of the former secret services and its implementation.

I. Overview of main activities and achievements

The Center for Democracy and Reconciliation in Southeast Europe (CDRSEE) designed and carried out the project *Disclosing hidden history: Lustration in the Western Balkans* between 1 February 2004 and 31 July 2005. Five partner organisations from the Western Balkans took part:

- ✚ the *Albanian Human Rights Group* (AHRG) in Tirana,
- ✚ the *Center for Interdisciplinary Postgraduate Studies* (CIPS) at the University of Sarajevo,
- ✚ the *Croatian Helsinki Committee for Human Rights* (CHC) in Zagreb,
- ✚ the *Foundation Open Society Institute of Macedonia* (FOSIM) in Skopje,
- ✚ the *Center for Antiwar Action* (CAA) in Belgrade.

The project was financed by the European Union and USAID.

This project has created and expanded a regional network of NGOs and initiated several regional and local activities with the purpose of strengthening good governance, the rule of law, and the participation of civil society in the democratic process. Specifically, the project enhanced the debate on lustration legislation and procedures and on the regulations on the public access to the files of the former secret services and extended citizen participation in the public debate on the past in the Western Balkans.

The definition of “lustration” which framed and guided the contents of the project was agreed upon by the organisations involved during the Planning Workshop. It was decided not to use the broader definition which includes all possible parts of “de-communisation”, but the narrower one, which focuses on legal acts and procedures for screening persons seeking selected public positions for their involvement with past regimes.

The main achievements of the project are:

- it contributed to the improvement of the debates on lustration legislation and procedures;
- it contributed to the improvement of the debates on the legislation on the public access to the files of the former secret services and the practices in this field;
- it enhanced legal and political awareness about the importance of dealing openly with the past;
- it improved the public debate on the past;
- it initiated constructive analytical and critical discussions on lustration and the public access to the files amongst legal professionals, legislators, officials of public administrations, academics, journalists and activists of civil and human rights groups;
- it provided a regional comparative analysis and individual country reports on lustration, public access to the files and public debates on the past in the Western Balkans;
- it presented specific recommendations on lustration and public access to the files in the Western Balkans;
- it involved human rights groups in the lustration and files debates and strengthened their role as well as citizen participation in these processes;
- it made the project findings and results widely publicised and easily accessible on the internet.
- it focussed the public attention on project topics by inclusion of media professionals in the activities, by press releases, press conferences and publications.

Direct beneficiaries of the project were more than 150 legislators, legal experts, officials of public administrations, academics, journalists and activists of civil and human rights groups.

All activities, as foreseen in the original plan of action, have been carried out and all major objectives achieved. In particular:

All **information on the project** is publicised on the continuously updated **project web page** www.lustration.net

The following **publications** coming out of the project have been posted on the project web page:

a) *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* (<http://www.lustration.net/manual.pdf>)

This Manual provides a concise overview on developments related to the dealing with the authoritarian past in the Western Balkans, both on the level of the individual countries and on the regional level. Its focus being on lustration legislation, procedures and practices, the Manual also treats the legislation on public access to the files of the secret services and its implementation as well as the issues of the general public debates on the past. It contains a regional overview on the Western Balkans and country overviews on Albania, Bosnia and Herzegovina, Croatia, The former Yugoslav Republic of Macedonia and Serbia and Montenegro.

b) Electronic book *Past and Present: Consequences for Democratisation* (http://www.lustration.net/pap_cfd.pdf)

This book deals with contentious issues in all post-authoritarian countries: the processes of facing the past, especially disclosing historical facts hidden in secret archives, lustration and lustration procedures, as well as public debates on the past. It treats the experiences in some countries of East Central and Southeast Europe (outside the Western Balkans) with these issues and their consequences for the development of the respective societies. It also includes case studies on the experiences with public debates on the past and on the lustration issue in the individual countries of the Western Balkans. Finally, it analyses the direct or indirect effects of the public debates on the past on legislation and institutions.

c) *Dossier on Achievements, Conclusions and Recommendations* (<http://www.lustration.net/dossier.pdf>)

Based on the findings and conclusions of the project, a number of recommendations have been provided:

- ✚ *general recommendations for the Western Balkans,*
- ✚ *specific recommendations on the issues of lustration legislation,*
- ✚ *procedures and implementation and the public access to the files of the secret services of the former regimes - legislation, procedures and implementation,*
- ✚ *recommendations concerning international actors on the issues of monitoring and support.*
- ✚

The following **seminars** and **workshops** have been organised:

a) **Past and Present: Consequences for Democratisation, Belgrade, 2-4 July 2004**

(programme: http://www.lustration.net/news_seminar_belgrade.html; participants: http://www.lustration.net/news_seminar_belgrade_list.html)

The seminar was attended by 40 experts from 12 countries and attracted significant local and international media attention.

b) **Lustration, Legislation and Procedures, Tirana, 14-17 October 2004** (programme:

http://www.lustration.net/news_seminar_tirana.html; participants: http://www.lustration.net/news_seminar_tirana_part.html)

The seminar was attended by 45 experts from 8 countries and attracted significant local and international media attention.

c) **Lustration, Public Debates on the Past and the Rule of Law, Zagreb, 17-20 February 2005** (programme: http://www.lustration.net/news_seminar_zagreb.html; participants:

http://www.lustration.net/seminar_zagreb_participants.html)

The seminar was attended by 49 experts from 8 countries and attracted significant local and international media attention.

d) **Planning Workshop, Thessaloniki, 26-28 March 2004** (programme and participants:

http://www.lustration.net/news_worshop_thessaloniki.html)

The initial workshop for the planning of the project, attended by the responsible representatives of the organisations involved in the project.

e) **Recommendations Workshop, Thessaloniki, 26-29 May 2005** (programme and participants: http://www.lustration.net/news_worshop_thessaloniki2.html)

The concluding workshop on recommendations, general results and consequences of the project was attended by the responsible representatives of the organisations involved.

II. Main findings and conclusions

The findings and conclusions are mainly based on the results of the research conducted by expert groups in the countries of the region and a regional expert group. The outcome of this research was published in the *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates on the Past in the Western Balkans* (<http://www.lustration.net/manual.pdf>). They are also based on the experiences presented in the seminars of the project and numerous discussions with and interviews of experts by the project coordinators and the project director.

- a) The basic outcome of the research in the framework of this project is that lustration of public officials who were active in the time of one-party rule in the countries of the Western Balkans essentially did not take place.
- b) This is a serious failure, since the absence of lustration encouraged political arbitrariness, especially in the time immediately after the demise of one-party rule in the region.
- c) Externally enforced lustration, such as activities by international authorities in the regions of the Western Balkans that were or still are UN protectorates, cannot be considered a success.
- d) It is evident that even in cases where appropriate lustration laws have been passed, the public authorities in most cases failed to implement them.
- e) In many parts of the Western Balkans, the legislation on the public access to the files of the former secret services and its implementation are unsatisfactory and inadequate.
- f) Initiatives to establish Truth Commissions in the Western Balkans have all failed in the recent past.
- g) The mainstream information media did not place the issue on the public agenda in a way and to an extent that would have been appropriate and necessary.
- h) The interest of the general public has focused on other issues (ethnic conflicts, wars, social issues).
- i) Civil society was not strong enough to make this issue come to the fore.
- j) Experts and civil society organisations that participated in this project believe that the rule of law, democratisation and also lustration are of utmost importance for the development of the countries of the Western Balkans not only to help them prepare for EU membership but also to come to terms with their own past and prevent the reoccurrence of comparable crimes.
- k) Most international actors involved in democracy building in the Western Balkans paid little or no attention to contested issues of the dealing with the past.
- l) The EU and USAID support of this project was a useful and constructive step in supporting the dealing with the past.

III. Recommendations

There is no single model for lustration legislation and procedures which could be successfully applied in all countries of the region. Due to the different histories, traditions and experiences in the region, particular solutions have to adapt to the specific conditions. Nevertheless, some parts of legislation and procedures are applicable and recommended for all countries.

1.) General Recommendations for the Western Balkans

- a) Legislation on lustration and on the public access to the files of the secret services should cover not only the period until 1990, but also the subsequent one, particularly the 1990s. This is especially important for most of the post-Yugoslav states.
- b) Public authorities should implement the laws passed on lustration and public access to the files of the secret services. Parliaments and other public authorities should strictly and regularly control the implementation.
- c) Competent public authorities should continuously and systematically include non-governmental experts and organisations in the preparation and implementation of the respective laws and procedures.

2.) Specific recommendations

A. Lustration Legislation, Procedures and Implementation

Comprehensive lustration laws should be prepared and passed in those parts of the region where no such laws have been passed so far: Croatia, Bosnia and Herzegovina, The former Yugoslav Republic of Macedonia as well as Montenegro.

- b) The time of application of the lustration laws should include not only the period until 1990, but also the subsequent one until the date of the introduction of legislation on free access to public information.
- c) Immediately after the passing of the lustration laws, incumbents of certain offices should be screened. The laws should contain a precise list of these offices.
- d) Candidates running for certain offices should also be screened. The laws should contain a precise list of these offices.
- e) The main criterion used in the definition of the persons affected in the screening processes should not be the prior holding of a high-ranking state or party position, but the concrete involvement in human rights violations.
- f) In the preparation of the comprehensive lustration laws, the parliaments should organise public hearings involving non-governmental experts from academia, civil society and victims' organisations.
- g) The investigation (screening) processes should be done by independent commissions, set up by the competent public authorities. The files of the candidates running for public office should be screened by these independent commissions.

- h) The independent commission, vetting the incumbents of public offices and candidates running for them, should disclose to the parliament any information contained in the files, indicating that the incumbent or candidate has been involved in violations of human rights.
- i) The incumbents and candidates on whom information of having violated human rights have been found should be disqualified from holding public office for a period of time. The procedure for disqualification should be defined by law.
- j) Governments should regularly report to the parliament on the implementation of the laws.

B. Public Access to the Files of the Secret Services of the Former Regimes - Legislation, Procedures and Implementation

- a) Laws on public access to the files of the secret services of the former regimes should be prepared and passed in those parts of the region where public access is currently not allowed.
- b) In the preparation of these laws, the parliaments should organise public hearings involving non-governmental experts from academia, civil society and victims' organisations.
- c) In the other parts of the region, legislation, procedures and implementation on this issue should be reviewed and, where necessary, modified. This process should be done in a transparent manner.
- d) Personal files should, as a rule, be accessible only to the persons to whom the files refer and to their legal successors. A law regulating exceptions to this principle should be passed.
- e) For the purpose of implementation of these laws, parliaments should set up an independent body, responsible for preserving the files and for decisions concerning public and personal access to them, according to the law. This body should be obliged to provide regular public reports to the parliament on its work.

C. Truth Commissions and Public Debates on the Past

- a) For the sake of disclosing publicly contested issues of the past and to enhance public debates on them, independent truth commissions should be established. They should include distinguished personalities, experts and representatives of all segments of the society. They should work in public sessions, the main task being a solid and proper evaluation of the contested issues of the past. Public authorities should cooperate with civil society actors in the establishment of truth commissions.
- b) Regional, bi- and multilateral commissions of historians and other experts from academia as well as representatives of non-governmental organisations should be set up in order to commonly discuss issues of the past which are of mutual interest. These commissions could elaborate propositions relevant to these issues, for example propositions for textbooks on history.*

* An example of initiatives on such textbooks and their outcome is the Southeast European Joint History Project of the Center for Democracy and Reconciliation in Southeast Europe which has created Four History Workbooks for History Teachers in the Southeast European region. See the project web page <http://www.see-jhp.org/>

3.) International Actors

Monitoring and support

- a) The Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), the European Union (EU) and other international governmental and non-governmental institutions should continue monitoring and assisting legislation on lustration and on public access to the files of the former secret services as well as its implementation.
- b) International organisations should continue financial, technical and professional support for initiatives and projects (such as truth commissions) aiming at the improvement of legislation on lustration and public access to the files of the former secret services and its implementation.