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**Disqualification Measures in Eastern and Central Europe
and the Former Soviet Union**

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INTRODUCTION

The historic changes that toppled the communist monopoly on power in Eastern and Central Europe and the Soviet Union have presented the countries of the region with a host of enormous challenges. Instituting democracy and the rule of law in the face of tremendous economic problems and simmering--and in some cases openly violent--social and political conflicts is no easy task. The political, economic, social and psychological legacies of communism still influence these societies, complicating the transition to democracy. Though the degree of political and social resistance to democracy varies greatly throughout the region, the fact of this resistance cannot be ignored.

The fervency of efforts to root out the persisting negative influences of the old regime on society, as well as the desire to dispel the former communist elites themselves, also vary from country to country, and among political and social factions within countries. Decommunization measures that attempt to achieve these ends may be legislative, administrative or informal. The rationale for such measures is, however, often obscured by politics. The most frequently offered justifications are the need to cleanse the new state of the harmful influences of the old regime and its minions, and the desire to seek justice for communism's countless victims. However, decommunization policies may also offer the opportunity to seek political advantage or even political revenge.

Are efforts at decommunization effective? Is it possible to implement such policies fairly, in accordance with the rule of law and with respect for human rights? Are there other routes to coming to terms with the past and building democracy on the ruins of totalitarianism? These and other key issues connected with the transition from communism to democracy were the subject of discussions at a conference on "Democracy and Decommunization: Disqualification Measures in Eastern and Central Europe and the Former Soviet Union" held in Venice, Italy, on November 14 and 15, 1993, and sponsored by the Project on Justice in Times of Transition of the Foundation for a Civil Society, with the cooperation of the European Commission for Democracy through Law of the Council of Europe. Participants in the Venice meeting included constitutional court justices, government ministers, members of parliament, legal experts, human rights activists, journalists and other policymakers and opinion leaders from twenty-five countries in Eastern and Western Europe, North and South America and Africa.

According to Herman Schwartz, Professor of Law at the American University in Washington, DC, and Co-Chair of the Project on Justice in Times of Transition, the most common approaches to decommunization involve criminal prosecutions for crimes committed under the old regime; screening and disqualification measures designed to remove the old elites and human rights violators from influential positions in society; and historical commissions established to investigate the crimes of the past and reveal how the old regime pervaded and controlled society.

Andras Sajó, Director of the Constitutional and Legislative Policy Institute of the Central European University and Legal Advisor to President Arpad Göncz of Hungary, suggested that the central problem was how to achieve "decommunization with a human face" during the transition to democracy. Aleksander Kwasniewski, leader of Poland's Democratic Left Alliance (SLD), asked which should be the first step, carrying out decommunization, or establishing democracy. In his view, democracy must come first.

THE CITIZEN IN A TOTALITARIAN STATE: VICTIM OR ACCOMPLICE?

According to Aleksander Smolar, Chairman of the Board of the Stefan Batory Foundation in Warsaw, three fundamental perspectives on the role of the citizen under communism prevail in Poland, each of which influences its political dynamics. In his view, they may apply in other countries as well.

First, according to what Mr. Smolar termed the radical viewpoint, the citizen in the former Soviet bloc was a victim of communist power imposed from abroad. Adherents of this perspective believe it is imperative to abolish the old power structures and oust the former elites in order to build a new society. They argue that society cannot accept new sacrifices without reestablishing justice, for otherwise it would be impossible to distinguish between the past and the future. From this perspective, a rule-of-law state cannot be established on the basis of an inherited, formerly communist legal system that did not defend individual or minority rights.

The second perspective is that of the moderates; in Poland, Mr. Smolar said, this group includes many former dissidents. In their view, the citizen was an accomplice as well as a victim of communism, the so-called "homo sovieticus." Individuals were forced into collaboration with the communist state in order to survive. Politically, Mr. Smolar said, the moderates are future-oriented, concentrating on rebuilding civil society. In general, they take a pragmatic approach, believing that problems can be solved and social reconciliation achieved through this process of reconstruction.

The third group is composed of what Mr. Smolar called old-timers, which includes former communists who really want to change society as well as those who do not. This group views citizens under communism as co-builders of the postwar state. While acknowledging that there were many terrible aspects of life under communism, the old-timers recognize significant achievements as well. Some old-timers advocate a restoration of the old regime--or of the prewar regime--whereas others call for some sort of "third way" between communism and capitalism.

STATE SECURITY FILES AND DECOMMUNIZATION

All the communist state security agencies maintained an extensive system of files on citizens. The majority of these files still exist despite theft and destruction by their former custodians. In many of the formerly communist countries, the files are being used in the decommunization process, both formally--as evidence of collaboration with the state security agency--and informally--through leaks to the media.

In Germany, the primary advocate of opening the files of the State Security Agency (Stasi) of the former German Democratic Republic (GDR) is Joachim Gauck, Federal Commissioner of the Stasi Files. In his view, opening the files is the best way to "return knowledge and power to citizens." Providing full access to the files neutralizes their power. It also helps to convince people that they can trust public institutions in their new society.

Mr. Gauck emphasized that opening the Stasi files was in no way motivated by a desire for vengeance, but only for the truth. In his view, there is no conflict between the search for the truth about the past and national reconciliation; in fact, only through such a search can reconciliation be lasting. People need to know the truth before they can truly reconcile or forgive.

Mr. Gauck also stressed that it was East Germans, not West Germans, who called for opening the Stasi files, and in 1990 the postcommunist East German Volkskammer passed the necessary legislation. The law was designed to minimize the possible politicization of opening the files. It entitled Germans to read their own files, to prosecute those who were shown in the files to have disrupted their lives, and to reveal Stasi collaborators.

The Stasi files have been used to screen out former collaborators in the former GDR, including security, education and public service. Screening reflects in part a desire to assess the extent to which communist activities actually infringed on human rights in the GDR. It is important for

people to know whether the politicians who represent them had previously interfered with their lives. However, individuals with close ties to the Stasi were not necessarily guilty of any crimes.

Although some dossiers were destroyed, 180 kilometers of Stasi files remain. In comparison with the communist-era files in neighboring countries, the Stasi files, Mr. Gauck asserted, are highly reliable. Each collaborator had a Stasi controller who maintained a file on the individual. If the collaborator moved to another town, his or her controller had to pass on reliable information to the new controller. Thus he maintained that the Stasi files were quite accurate in their accounts of events--although the Stasi agents were often wildly off base in their predictions about the future utility of collaborators.

Mr. Gauck emphasized that the commission he heads merely oversees and reviews the Stasi files. It is an independent agency not subject to political control, and it does not pronounce judgments on individuals. The Stasi had established its own system of categorization, and the commission does not attempt to reclassify the files or the individuals designated as collaborators therein. The commission merely establishes the form of collaboration according to the Stasi's own classifications, and then other bodies may use this determination to decide whether an individual is qualified to continue to serve in his or her position. For example, in many universities and high schools in eastern Germany, a committee composed of faculty and students decides whether or not former collaborators may continue to hold their teaching or administrative posts.

According to Thomas Blanton, Executive Director of the National Security Archive in Washington, DC, there are a number of problems with using the files created by the old regime in the decommunization process. First, the reliability of the information contained in the files is questionable because the files were created by a totalitarian system to control society. Also, the files may be incomplete, since bureaucrats often destroyed files as a matter of procedure. This bureaucratic process of purging the files not only destroyed part of history, but also puts into question the reliability of the files remaining because it is not known what information is missing.

Emphasizing how easily the files could be used as political weapons, Mr. Blanton argued that it is of critical importance to prevent political control of the files. In his view, Mr. Gauck's commission is the only successful example of the depoliticization of state security files in the region.

According to Mr. Blanton, two principles must be followed in dealing with state security files: First, the power of those who control the files must be limited. The files should be placed in the hands of an independent commission that controls access only, and has no influence on the fate of individuals. Second, the files should not be considered sufficient evidence in determining disqualification or punishment, for dossiers are just reports, not legal proof of crimes.

Mr. Blanton also asserted that the files should be preserved, and the victims should be able to see and control access to their own dossiers. The files should also be accessible for historical research, enabling historians to analyze the communist system and to tell the truth about it.

Kujtim Cashku, Vice Chair of the Albanian Helsinki Committee, said that if, as in Albania, there is no law governing access to the state security files, they can create great insecurity and dissension within society and victimize people all over again. A truly independent judiciary is necessary to enforce any such law governing access to state security files. Albania currently lacks the financial, human and judicial resources to open and review the files of the Sigurimi, the communist-era security agency. Mr. Cashku instead advocated sealing the files and seeking other ways to help Albanian society come to terms with its communist past.

CURRENT AND PROPOSED SCREENING AND DISQUALIFICATION MEASURES

Lustration in the Czech Republic

The highly controversial policy of screening former communists, security agents and their alleged collaborators to prevent them from holding influential positions during the transition to democracy has been implemented in many East European countries and is under discussion in others, as well as in the former Soviet Union. Perhaps the most widely known screening measure implemented in the region is the 1991 lustration law of the former Czech and Slovak Federal Republic. The lustration process in Czechoslovakia began in 1990 under the auspices of the Commission for the Investigation of the Events of November 17, which was established by the Federal Assembly and charged with investigating the violence against peaceful protesters during the so-called "velvet revolution" of 1989. The Commission examined the Interior Ministry files and interviewed many witnesses, most of whom were former officers of the State Security Agency (StB). All the registers of the StB files were transferred to computer databases, and government officials, their deputies, parliamentarians and officials in the ministries of defense, interior and foreign affairs were screened for past collaboration with the StB. The Czechoslovak lustration law of October 1991--the first and most publicized screening policy among the former communist countries--developed out of this process. The Czechoslovak law was intended to prohibit all former high-ranking communists, members of the party's private army (the People's Militia), agents of the StB and their collaborators from occupying government posts and other influential positions in Czechoslovak society for five years. According to Jaroslav Basta, former Chairman of the Independent Commission of the Czechoslovak Interior Ministry responsible for reviewing charges of collaboration under this legislation, the lustration law was not only an attempt to deal with the past, but also a political action. Mr. Basta said that the Czechoslovak law was based on total trust in the files of the StB, particularly in relation to alleged StB informants. The law defined two categories of "conscious collaborators": 1) actual agents; and 2) candidates for collaboration. The StB files were the primary evidence used to determine who had collaborated. Mr. Basta remarked that few people objected to the use of these files, gathered illegally and through blackmail, as evidence.

Candidates for secret collaboration included individuals the StB wanted to engage as agents and informants. According to Mr. Basta, the StB was always most interested in political dissidents and individuals who achieved above-average success in their professions, and not in average people. If the targeted individuals were successfully recruited, the StB files would indicate them as agents. However, if the targeted individuals did not cooperate with the StB, they would remain on the list of candidates for collaboration. Thus, in Mr. Basta's view, if an individual was listed as a candidate in the StB files but there was no evidence of collaboration, then this could be understood as indirect proof that the individual had refused to collaborate. However, the lustration law did not acknowledge this line of reasoning.

Individuals designated candidates for collaboration had the right to appeal to the Independent Commission which Mr. Basta headed. The Independent Commission would decide whether the individual in question was a conscious collaborator based on information in the files and the testimony of witnesses. The Commission was entitled to demand all available materials in the archives of the Federal Interior Ministry, the Federal Security and Information Service and the Federal Ministry of Defense. Although the Commission's decision could be appealed in court, there was no provision for compensating individuals who had been wrongly named as collaborators. Many individuals on the lists of alleged agents and collaborators that were leaked to the press--ultimately, some 70,000 names were published--lost their jobs, even when the lists were proven inaccurate.

All Czechoslovak citizens could apply to be lustrated, but only those designated candidates for collaboration had the right to see their files. Unlike in Germany, where individuals had access to their own files, Czechoslovakia's files were considered classified property of the Federal Interior Ministry. Files could only be declassified and made public in two cases, when approved by the Federal Interior Minister, or when approved by the individual citizen according to a specific procedure of the Independent Commission.

In Mr. Basta's opinion, the law's provision concerning candidates for collaboration resulted not only from an eagerness to purge society, but also from the political calculation of certain parties and factions. He pointed out that the number of Czech and Slovak politicians active in 1991 and 1992 who were registered as candidates for collaboration in the StB files was much higher among the ranks of Civic Movement and other former dissident parties than in Vaclav Klaus's right-of-center Civic Democratic Party (ODS). In Mr. Basta's view, the entire lustration debate contributed to the overpoliticized atmosphere of postcommunist Czechoslovakia that eventually resulted in the country's dissolution.

After the June 1992 federal elections, calls for lustration diminished. In November 1992, the Czechoslovak Constitutional Court struck down the provisions concerning candidates for collaboration. Currently, the Czech Republic has a lustration law, Mr. Basta reported, but its scope is smaller than that of the former Czechoslovak law, and it is not employed very often. Mr. Basta also noted that legislation that would have allowed victims of the StB to see their files was proposed in the Czech parliament, but was narrowly defeated in October 1993. Most of those who voted against the proposals were members of either Prime Minister Vaclav Klaus's Civic Democratic Party or the communist party.

Bulgaria: The Panev Law

According to Georgi Panev, a Member of the Bulgarian parliament and the principal author of Bulgaria's anticommunist disqualification law (known as the Panev law), there is no alternative to democracy after the collapse of communism: society must either accept democratic reform or self-destruct. In Mr. Panev's view, the former communists are obstructing reform in Bulgaria by attempting to retain as much political and economic power as possible in order to join the new democratic society with minimal losses. In order to remove the negative influence on political, social and economic reform of the former communists, Mr. Panev considered disqualification measures critical.

The Panev law, adopted in December 1992, requires individuals holding leading positions in scientific organizations and academies to provide a written statement about their past employment and communist party activities. If an individual covered by the law held specific positions within the communist party, the state security or party educational institutions, or taught courses in certain communist-related areas of history and the social sciences, he or she would be dismissed.

The Bulgarian disqualification law was implemented without any great objection except from former communists, and Mr. Panev dismissed their arguments against it as unfounded. He said that the communists claim that the Panev law damaged the professionalism of the institutions affected, but he countered that noncommunists are also qualified to hold leading executive positions in academia. He refuted the other main argument opposing the law, that democracy cannot be created by undemocratic means, by asking, "can a law, accepted by a democratically elected parliament, be an undemocratic means?" He asserted that the Panev law does not infringe on any basic human rights and has only instituted temporary restrictive conditions on "persons of proved commitment to the implementation of the communist regime."

Dimitrina Petrova, Director of the Institute for Social and Environmental Research in Sofia, took issue with Mr. Panev's presentation of the Panev law and its impact, maintaining that the law constitutes an attack on Bulgaria's intellectual elite, including those who were dissenters within the communist system. By requiring individuals to supply a written statement about their past activities the law created two categories of people, those who signed and those who did not, regardless of their actual relationship to the former communist regime.

Under communism, Bulgaria had only a tiny community of human rights activists, Ms. Petrova said. A few dissenters could be found within the ranks of the communist elite, but not throughout Bulgarian society as a whole, as was true in Poland. Those who expressed dissent from within are now being lustrated, she asserted, by those who, in her view, took advantage of the situation under communism and are doing so again now.

Pointing out that 9,000 top managers of enterprises, 14,000 officers in the state security agency, 90 percent of government administrators and one-third of all diplomats have already been removed by administrative means, Aleksander Tomov, former Deputy Prime Minister of Bulgaria and currently a Member of parliament, expressed concern that the disqualification process is degenerating into a political power struggle in Bulgaria. He also remarked that the case of Ms. Petrova herself, who was a dissenter within Bulgarian academe under the old regime and is now a leading human rights activist, is a prime example of the mechanical excesses and blindness to nuance of the Panev law, which forced her out of her teaching post.

Russia: The Disqualification Debate Continues

In Russia, a draft law on disqualification of former communist elites and KGB agents and collaborators was informally proposed in 1993 by Galina Starovoitova, a leader of Democratic Russia and a former Advisor to President Boris Yeltsin. Nikolai Rudensky, Senior Research Fellow at the Institute for the Economy in Transition in Moscow, explained how the law would work. Four categories of people would be subject to lustration: 1) all full-time secretaries of party cells at enterprises and institutions; 2) first, second and third secretaries of party committees at the district, city, regional and territorial levels; 3) the secretariat (excluding clerical staff) of the party at the all-union level; and 4) KGB officers responsible for ideological counterintelligence and their collaborators. The people in these categories would be prohibited from holding responsible appointed or indirectly elected positions in national, regional and municipal government, as well as educational and legal positions and high-ranking administrative and editorial positions in the media. Elected positions would not be prohibited, he said; in a democracy people may vote for whomever they like.

In Mr. Rudensky's view, if lustration legislation were passed by the Russian parliament, it would stand a good chance of receiving public support. However, he said that the law proposed by Ms. Starovoitova has procedural problems. Membership in one of the designated categories should not automatically prohibit an individual from holding certain positions, he said, but should merely make him or her subject to examination. He opposed the proposed law's assumption of guilt by association--guilt should be determined on an individual basis.

According to Aleksandr Tsipko, Director of the Gorbachev Foundation in Moscow, Russian advocates of disqualification measures have not given thought to the danger they posed to Russian society. Recalling his own experience with discrimination for having lived under German occupation as a child, Mr. Tsipko asserted that lustration would create a new type of second-class citizen in Russia. Furthermore, he said, achieving true decommunization in Russia would require lustration of the entire nation. This is neither possible nor desirable.

The shock of the truth about the past would be a more effective catharsis for Russian society than punishing people, Mr. Tsipko said. However, Russian interest in learning the truth about Stalinism has died out since the late 1980s when the first gruesome revelations were publicly made because, in his view, many people feel betrayed by the truth. The Russian people have learned that they had lived their lives in a criminal state in which everyone was implicated. Vitaly Kriukov, Vice President of the Ukrainian Legal Foundation, added that former Soviet citizens no longer want to acknowledge that they had been accomplices to communism. Mr. Tsipko said that Russia now needs a cure that transcends catharsis based on the revelation of past abuses. The truth is not enough, and lustration is too dangerous in a Russia that has moved away from communism, but has not yet attained genuine democracy.

CRIMINAL SANCTIONS

Despite the scale of abuses committed under communism, it has proven difficult to bring criminal charges against former high-ranking communists and state security agents in Eastern and Central Europe and the former Soviet Union. In part, this difficulty stems from a lack of concrete evidence against the alleged perpetrators. It is also the case, however, that many abuses--particularly political surveillance and collaboration--were not illegal under the old regime, and to prosecute them under new laws would mean imposing retroactive justice. Nevertheless, where crimes can be proven, criminal charges are being made, even against former communist heads of state, as in Germany, Bulgaria, Albania and elsewhere.

According to Dimitrina Petrova of the Bulgarian Institute for Social and Environmental Research, the courts fail to carry out sentences that really reflect the scale and scope of the crimes that were committed under communism because it is very difficult to prosecute abuses of power. In Bulgaria, most criminal trials of former leading communists have been for misappropriation of funds. Todor Zhivkov, the former leader of the country, was convicted of embezzlement, but because he was old and ailing, he was not imprisoned. Nevertheless, in Ms. Petrova's view, these trials should be viewed as a historical achievement because they represent the beginnings of a truly democratic judicial system in which individuals have the right to defend themselves. Abandoning a purely legal approach to these crimes would be a step backward.

Ms. Petrova underscored the importance of considering the limitations of criminal prosecutions for communist crimes in the wider context of the crisis of criminal justice in the formerly communist countries. The criminal justice system itself is being rebuilt, she said. Andrejs Pantalejevs, a Member of the Latvian parliament, said that the courts are not yet ready to handle prosecutions of communist crimes or the implementation of a widescale process of lustration and contestation. Most judges in the region were trained in the communist legal system in which the court's role was to protect the state from individuals rather than the other way around. Wolfgang Nowak, State Secretary of Education in the eastern German state of Saxony, agreed, and noted that other countries cannot follow the German example of replacing East German judges with West German justices. He suggested that perhaps an international law court, possibly under the aegis of the Council of Europe, could advise the new democracies of the East on these issues. Herman Schwartz maintained that the new societies "are not getting to the heart of the evil with criminal prosecutions" for embezzlement and the like. In some ways, he said, criminal prosecutions "minimize and trivialize what was done."

Communism "turns the individual into the servant--even the serf--of the dictatorship of the state," and is bent on the annihilation of the human spirit, according to Vytautas Landsbergis, a Member of the Lithuanian parliament and former President of the country. He advocated the moral and legal disqualification of communism itself. Dmytro Chobit, a Member of the Ukrainian Parliamentary Commission on Questions of Crimes of the Communist Party, said that although it

is possible to find sympathy for individual communists, who may very well be decent people, as a whole, communism poses a dangerous threat to society. The focus should be on the communist system instead of on individuals, and he called for a trial of communism. Georgi Panev reported that in October 1993, a law he had drafted, proclaiming the illegality of the Bulgarian communist regime, was passed by the Bulgarian parliament.

Helmut Steinberger, a former Justice of the FRG Constitutional Court, remarked that in Germany it is not unconstitutional to be a communist because people are entitled to hold whatever political beliefs they choose. However, activities intended to overthrow Germany's democratic government are illegal.

Stefan Uritu, Chairman of the Moldovan Helsinki Committee, stressed that communism cannot be consigned to the past, but is in fact alive and well in parts of the former Soviet Union, such as the Dniester region of Moldova. Mr. Landsbergis agreed, and said that the danger of "neo-communism" is increasing in the former Soviet Union, and emphasized that communist structures and the communist system of values are entrenched in the societies of the former Soviet republics. Mr. Landsbergis also noted that the KGB has not disappeared and is still quite active in Lithuania. Evgeny Novikov, a Member of the Belarusian parliament and the Belarus League of Human Rights, said that the Belarusian successor to the KGB also remains active and is unwilling to relinquish its power. However, there is a bill in the Belarusian parliament that would put the espionage service under state supervision.

Mr. Pantalejevs called for an international condemnation of communism as a criminal regime, but also remarked that the Western democracies need to be asked hard questions about their own past relations with the communist states. Mr. Landsbergis concurred, noting that the roots of communism go deep, and include "the moral guilt of the Western democracies." According to Roger Errera, Conseillor d'Etat of France, the West's actions and inactions, words said and unsaid, did indeed have an impact on the history of Eastern Europe and the former Soviet Union. The Western democracies must not be passive spectators as the formerly communist countries undertake the transition to democracy, but should reexamine their own histories and freedoms.

OTHER MEANS OF COMING TO TERMS WITH THE PAST

Although many believe that lustration and decommunization measures are the only way to overcome the legacies of totalitarianism, Journalist and former Czech dissident Jan Urban said that there are other, less divisive means of coming to terms with the past. It is important for society to learn the truth about the past and to try to understand it. Though this may be difficult and painful for both victims and perpetrators of past abuses, Mr. Urban underscored the importance of the process to national reconciliation. It can include legal means, such as criminal prosecutions, but there are other methods as well. Roger Errera pointed out that all the options for coming to terms with the totalitarian past, including criminal prosecutions, are political choices, and each country must decide for itself which alternative to employ.

Mr. Urban cautioned that the truth should not be used as a weapon, because that will only continue to divide society. Mr. Errera agreed, remarking that if the truth about the past is not made public, the state will remain silent and corrupt. Jose Zalaquett said that "if you close a wound without cleaning it, it will fester and reappear," adding that the truth is only important as a source of power if it is not known to everyone.

Mr. Errera highlighted the ambiguous link between history and memory. The aim of history is knowledge, leading to truth and values, he said, whereas memory is a kind of virtue, the aim of which is faithfulness and "the rejection of oblivion." History helps build the national memory, Mr.

Errera said, and thus historians play important political and social roles. Artists and writers also help to create history and memory, added Halina Bortnowska-Dabrowska of the Polish Helsinki Committee for Human Rights.

Memory prevents the oppressors from having the last word, Mr. Errera asserted. "The communists reigned by fear, but also by trying to remove memory, to propagate oblivion and lies," whereas the dissidents fought to retain memory. But memory can be an oppressor too; it can be exploited politically by movements and ideologies that are not interested in the truth. Ms. Bortnowska-Dabrowska also warned that in dismissing the myths of the past that are harmful, new, equally harmful myths may be introduced. Jose Zalaquett said that society needs a common identity, a common memory; otherwise society becomes schizophrenic.

Hungary's Historical Commission

One way to seek the truth about the past is with an investigative commission. Such a commission can investigate the individual fates of the victims of the old regime, as Argentina's Commission for the Disappeared did. Or it can analyze the mechanisms of the old regime to determine how it controlled society, as in the case of the legislative commission of the German Bundestag charged with investigating the structures of the GDR communist state. Or a commission can undertake both tasks, investigating the fates of individuals and of the nation as a whole.

Even before Hungary's first free elections, the Hungarian government established a historical commission to look into the events surrounding the anticommunist uprising of 1956, while more recently several draft laws have been prepared by various political groups in the new parliament that attempt to address historical justice and proposed historical commissions. However, according to Jozsef Szajer, a Member of the Hungarian parliament and the President of the Alliance of Young Democrats (FIDESZ), all of these efforts were politicized, and none guaranteed the privacy of individuals or the independence of the commissions themselves.

Hungary's first postcommunist government under Prime Minister Jozsef Antall established a historical commission in the Hungarian Ministry of Justice to investigate the events of 1956. However, Mr. Szajer reported that the commission's members were appointed by the Minister of Justice, who had himself been criticized for his attitudes toward justice. Although in Mr. Szajer's opinion this arrangement is not ideal, he said that at least it is a starting point for the process of examining Hungary's communist past. The report of the commission's findings will be presented to the Hungarian public before the next national elections.

To a certain degree, Mr. Szajer said, Hungarian society is fed up with decommunization measures and other attempts to come to terms with the past. All parts of Hungarian society are implicated in the communist past, everyone lived through it, and people do not want to judge or to be judged. A year or two ago, Mr. Szajer said, lustration was the topic of fierce discussions between Hungarian liberals and conservatives, but now the debate has shifted to the freedom of expression, particularly in the electronic media. Although little attention is being paid to lustration now, certain political factions are preparing lustration laws. He also pointed out that although the Hungarian constitutional court long held that the statute of limitations on past crimes could not be eliminated to allow prosecution of those who had committed abuses during the communist period, recently the constitutional court ruled that, on the basis of the Geneva Convention, some crimes committed in a war context may be prosecuted.

MODEL PRINCIPLES FOR LUSTRATION

Removing individuals who committed abuses under the old regime from influential positions in society is generally agreed to be necessary, according to Professor Herman Schwartz, of the American University in Washington, DC, but there was no consensus on how best to undertake this. Lustration, at least in principle, should not be retributive, Mr. Schwartz said, but should instead help to "prevent undermining the transition to a free democratic society." In his view, this assumption implies that lustration should focus on threats to fundamental human rights from members of the former regime.

In an effort to further the international debate on lustration, Mr. Schwartz developed a set of general principles for lustration in consultation with an international group of legal experts from the Czech Republic, Poland and the United States which he presented at the Venice meeting. The proposals were based on the rule of law and human rights principles. They were intended to be forward-looking and preventive in order to avoid the continuation of human rights violations and to help bring about democracy. They do not recommend specific procedures for implementing lustration, but focus on the substantive criteria for determining who should be subject to screening. Nevertheless, any lustration process must respect due process and the rights of the individuals subject to the screening process, and he listed several procedural prerequisites for any acceptable lustration system.

According to Mr. Schwartz's principles, lustration should be limited to those "appointive governmental offices where human rights abuses may be ordered and/or perpetrated." These could include positions in internal security, law enforcement, intelligence, the judiciary and other legal offices involved in criminal or civil law enforcement. Elective offices should not be subject to lustration, but candidates should be allowed to see their own security files and make them public if they so desire.

As to the persons to be disqualified from these offices, as a rule, Mr. Schwartz said, individuals should be subject to lustration on the basis of their actions, rather than their professional positions or political beliefs. If certain individuals were found to have committed human rights violations, they would be barred for a predetermined period of time from holding posts in which they would be able to continue to commit abuses. Individuals should not be subject to lustration solely on the basis of their association with any organization that had been legal under the old regime unless the organization was responsible for human rights abuses. However, high-ranking officials in government agencies that committed abuses should have to prove that they themselves were not implicated.

As for lustration of alleged collaborators with the old regime, according to Mr. Schwartz's principles, lustration would only be permissible if the individuals were knowingly implicated in serious human rights abuses. However, any lustration procedures should be flexible enough to take into consideration mitigating factors that might have forced some individuals to collaborate.

Finally, Mr. Schwartz proposed that lustration should only be applied with respect to violations committed during a quite limited period of the immediate past, and that subsequent disqualifications should be limited to a few years. If an individual had not recently committed any abuses, he or she would not pose a great risk of committing violations in the future. To consider violations committed in the more distant past would clearly be punitive rather than preventive, he said.

Thomas Markert, Director of Legal Affairs at the Council of Europe, said that, in principle, lustration did not violate the Council's membership requirements. To be eligible to join the Council of Europe, states must accept the principles of the rule of law and the protection of individual human rights, demonstrate a commitment to ratify the International Human Rights

Convention and agree to be subject to the European Court of Human Rights. As long as lustration procedures did not discriminate on the basis of political beliefs, left the burden of proof up to the accuser, provided each individual with access to an independent tribunal that would guarantee legal due process and protected the individual's freedom of expression and right to privacy, these procedures would not be incompatible with the Council of Europe's requirements, Mr. Markert said. However, he asked whether lustration could go beyond Mr. Schwartz's preventive approach. In addition to the desire to purge society of past abusers, there are practical needs during the transition to democracy that lustration might help address, such as the renewal of the civil service. Mr. Markert maintained that it is legitimate to examine individuals to determine who is qualified to represent the state in a new democratic society.

Andrejs Pantalejevs agreed that lustration is necessary for pragmatic reasons. He viewed lustration as something like an affirmative action policy that allowed new people into the government bureaucracy, the educational system and so forth. He acknowledged that lustration is a form of discrimination, but said that it could be considered positive discrimination. For example, if two equally qualified individuals were to apply for the same public service job, the one whose past was not compromised should be selected. Mr. Markert suggested that an affirmative action policy of this sort could either complement or even replace lustration. Jose Zalaquett agreed, but remarked that both affirmative action policies and lustration are political measures. However, Halina Bortnowska-Dabrowska cautioned that while it is important to respect the rights of the victims, it could be dangerous to "privilege" them.

Ms. Bortnowska-Dabrowska also said that she was not convinced that Mr. Schwartz's preventive approach to lustration could withstand legal scrutiny. She pointed out that in criminal law it cannot be assumed that an individual who once committed a crime is likely to repeat the same offense, and she suggested that a preventive approach to lustration might actually violate the rights of the individuals subject to the process. If the rationale for lustration is preventive rather than punitive, as Mr. Schwartz asserted it should be, Ms. Bortnowska-Dabrowska said that then disqualification on the basis of the likelihood that an individual would repeat past abuses would be untenable.

Ms. Bortnowska-Dabrowska also expressed concern that lustration in effect establishes a mechanism of "parallel justice" that pronounces judgments and at least indirectly imposes sanctions on individuals. In her view, the only way to prevent future human rights abuses is to leave past crimes to be dealt with by a court of law, and to provide legal education and advice to the public to teach people about their rights and how to protect them. In order to entrench the rule of law, she said, the society in question must believe in it. If there is the appearance of impunity for past crimes, people may not trust in the rule of law, and some may return to vigilante justice.

Mr. Panev disagreed with Mr. Schwartz's assertion that elective offices should not be subject to lustration. He said that in Bulgaria, the pernicious influence of communism on the individual had created a society in which many people were unwilling to think independently, take responsibility for their actions or defend their rights and interests. In his view, disqualification measures should not exempt democratically elected officials because this widespread passivity leaves the voting public susceptible to manipulation and undercuts the assumption that election results accurately represent the popular will.

Jerzy Jaskiernia, Chairman of the Legislative Committee of the Polish Parliament, disagreed with Mr. Panev's view. In Poland, where six lustration bills had been proposed before the government of former Prime Minister Hannah Suchocka fell in the summer of 1993, a measure had been introduced in the Senate requiring all candidates for political office to declare whether they had been employed by or had collaborated with the communist security services. While no one should be prevented from running for office, the public was entitled to know about the candidates' past activities.

Stanko Nick, Chief Legal Advisor to the Croatian Ministry of Foreign Affairs, stated that he was "alarmed--not to say frightened--by the perspective of legislation which makes discrimination not only possible but socially acceptable and even compulsory." In his view, the real rationale for lustration is a "political settling of accounts, disguised in a legal form." He said that "discriminatory laws" do not provide the best way to deter the political influence of communism in a democratic society, and stressed that it is important to understand that communist parties grow stronger when they are placed outside the law. Mr. Nick maintained that there is very little difference between a one-party system and a system that banned a particular party or political orientation.

CONCLUSIONS AND FUTURE STEPS

There was no consensus among the conference participants on the need for disqualification and other decommunization measures. Some firmly believed that such policies are socially and politically divisive, whereas others asserted that they are absolutely necessary to ensure the entrenchment of democracy and to create social stability. However, all participants agreed that such measures must respect human rights and adhere to the rule of law.

Despite the lack of consensus on the specific route to decommunization and coming to terms with the past, the participants concurred on a number of the aims of this process. On the moral level, the participants agreed that it is important to seek justice for the victims of communism. Most also agreed that the postcommunist societies require a moral reconstruction, which includes changing the guiding principles of certain political and social institutions as well as changing people's mind-sets. National reconciliation and social stability are also critical aims of this process. Rebuilding--or in some cases, building for the first time--a healthy civil society in which individuals are guaranteed the freedom of independent association and the free exchange of ideas is also crucial. According to Roger Errera, civil society ensures social cohesion and the defense of society by its members. Finally, as Joachim Gauck pointed out, another aim of the process is to encourage the development of trust in the public institutions of democracy.

There was agreement among the conference participants that, to the extent possible, crimes committed under the communist regime should be prosecuted by the courts, but the participants recognized the limitations on this option. Jose Zalaquett emphasized that the overarching aim during the transition from a criminal regime to democracy should be to seek "all the truth, and as much justice as possible." He admitted that this is not a perfect solution, but said that there could be none because, paradoxically, in order to achieve full justice for past crimes, the kind of power that endangers justice would be necessary. However, according to Wolfgang Nowak, in spite of the fact the victims may be frustrated by aspects of due process that sometimes prevent alleged criminals and collaborators from being punished, it is critical that the rule of law should function. In his view, "one of the great achievements of civilized society is that judgment of the accused is placed in the hands of a judge, not the victims." But many participants acknowledged that the judiciary in many of the formerly communist countries is neither independent nor properly prepared to ensure that justice will be achieved.

Aleksander Tomov of the Bulgarian parliament suggested forming a working group that would prepare a document formulating the pros and cons of lustration. Such a document could be distributed to policymakers throughout Eastern Europe and the former Soviet Union to inform them of the many complex aspects of lustration. The participants agreed that an informal working group on lustration under the aegis of the Project on Justice in Times of Transition could make a useful contribution to the international debate on the issue.

There was no consensus on the role that investigative commissions charged with seeking the truth about the past could play in achieving national reconciliation during the transition from communism to democracy. Kujtim Cashku suggested an alternative approach to seeking national reconciliation: the formation of some kind of institution that would allow people to confess their past crimes and abuses and be forgiven. Something of this sort has already been introduced in Lithuania, according to Vytautas Landsbergis. He reported that Lithuania established a Committee of Civic Rehabilitation composed of six well-known and highly respected individuals who served as what he called "civic priests." The telephone numbers and addresses of these individuals have been widely publicized throughout Lithuania, and those who would like to confess past misdeeds may contact them to divulge their actions without fear of reprisal.

There was a consensus among the participants in the Venice meeting that an international approach to the problems facing the postcommunist countries is helpful, and many participants praised the work of the Project on Justice in Times of Transition. Jan Urban emphasized that the Venice meeting offered the participants from Eastern Europe and the former Soviet Union an opportunity to learn from the mistakes and achievements of others. Jose Zalaquett concurred with Mr. Urban, noting that while not all transitions to democracy are the same, it is still possible to gain insight from the experiences of other countries.

This report was written by Mary Albon.