Maciej Chmielewski

Lustration Systems in Poland and the Czech Republic Post-1989

The aims and procedures of political cleansing

“All the world’s a stage,

and all the men and women merely players;

they have their exits and their entrances;

and one man in his time plays many parts;

his acts being seven (political) stages.”

- As You Like It, Act II, Scene 7, 139-42

Abstract

Lustration laws, which eradicate the apparatus of old power systems in newly forming democracies, are considered to be one of the most sensitive and controversial forms of transitional justice. This paper discusses in detail a case study of the lustration laws that have been implemented in the Republic of Poland and the Czech Republic post 1989. The paper will take into consideration not only the laws themselves but the motives, effects, and results of these considerable legislations. While identifying the motives behind the main players in the political apparatus the paper also examines their capability to meet their objectives, and the effects that the system has had on society as a whole. It concludes that a certain lustration model might be necessary for democratic amalgamation in other transitional countries in central-eastern Europe.

Abstrakt

Ustawy lustracyjne, które likwidują aparaty starych systemów zasilania w tworzącej się demokracji, są uważane za jeden z najbardziej delikatnych i kontrowersyjnych postaci przejściowego systemu wymiaru sprawiedliwości. W artykule omówiono szczegółowo na przykładzie przepisów lustracyjnych, które zostały wdrożone w Republice Czeskiej i w Polskiej Republice po 1989 roku. W tym artykule należy wziąć pod uwagę nie tylko same prawa, ale motywy, skutki i wyniki tych znaczne prawnych. Przy jednoczesnym określeniu motywów głównych graczy w aparatu politycznego ten artykuł bada również ich zdolność do osiągnięcia ich celów i skutków, i rożne efekty co wywarły duże wpływy na cały społeczeństwo. Artykuł stwierdza, że pewien model lustracji może być niezbędne w demokratycznym połączeniu w innych przejściowych państwach Europy Środkowej-Wschodniej.

Contents

List of Tables

Note On Pronunciations

I have found that the pronunciations of the names and events in Czech and Polish might be hard for some English speaking readers and I have also felt that knowing the correct pronunciation is as important as knowing the subject itself. I have taken it upon myself to construct a list of the letters from the Polish and Czech alphabet and their corresponding pronunciations with an IPA symbol. IPA is the International Phonetic Alphabet; in Appendix V you will find the letter lists for Polish and Czech. I would also like to thank Omniglot© Ltd. for their extensive online database of letter charts and clear written descriptions.

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This thesis has greatly profited from the information and insights of the Polish Institute of Remembrance and the Czech Institute for the Study of Totalitarian Regimes, and the Jagiellonian University National Library.

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This thesis is dedicated to the fallen members of the 2010 Plane Crash in Smolensk, which took the lives of many great Polish reformers, freedom fighters, and most importantly lustration policy architects. This thesis is also dedicated to the memory of Ryszard Kaczorowski who died on 10 April 2010 in Smolensk, Russia.

List of Abbreviations

ABW	*Urząd Ochrony Państwa*, Office for State Protection (Poland)
BIS	*Bezpečnostní Informační Služba,* Security Information Service, 1990- (Czech Republic)
CBOS	*Centrum Badania Opinii Społecznej,* Poland's Opinion Research Center
CP	Civic Platform, *Platforma Obywatelska* (Poland)
CPC	Communist Party of Czechoslovakia
ECHR	European Court of Human Rights, Cz: *Evropská soud pro lidská práva, Pl: Europejski Trybunał Praw Człowieka*
GUBP	*Gminny Urząd Bezpieczeństwa Publicznego,* Communal Office of Public Security (Poland)
KDSBP	*Komitet do Spraw Bezpieczeństwa Publicznego*, Committee for Public Security (Poland)
KPP	*Komunistyczna Partia Polska,* Communist Party of Poland
KPRP	*Komunistyczna Partia Robotnicza Polski*, Communist Workers Party of Poland
KUMZ	Communist University of Western National Minorities (Russia, USSR)
MBP	*Ministerstwo Bezpieczństwa Publicznego,* Ministry of Public Security (Poland)
MO	*Milicja Obywatelska,* Citizens' Militia, (Communist) uniformed police (Poland)
MSW	*Ministerstwo Spraw Wewnętrznych*, Ministry of the Interior (Poland)
MUBP	*Miejski Urząd Bezpieczeństwa Publicznego*, Municipal Office of Public Security (Poland)
NKVD	Народный Комиссариат Внутренних Дел, *Narodnyy Komissariat Vnutrennikh De*, The People's Commissariat for Internal Affairs, was the public and secret police organization of the Soviet Union that directly exeuted the rule of power of the Soviets. (Russia, USSR)
PiS	*Prawo i Sprawiedliwość,* Law and Justice Party (Poland)
PKWN	*Polski Komitet Wyzwolenia Darodowego,* Polish Committee on National Liberation

PRL	*Polska Rzeczpospolita Ludowa,* Polish People's Republic
PPR	*Polska Partia Robotnicza*, Polish Workers' Party
PUBP	*Powiatowy Urząd Bezpieczeństwa Publicznego*, District Office of Public Security (Poland)
PZPR	*Polska Zjednoczona Partia Robotnicza,* Polish United Worker's Party, i.e. the Communist Party
RBP	*Resort Bezpieczństwa Publicznego*, Department of Public Security (Poland)
RIP	Spokesperson of the Public Interest (Poland)
SB	*Służba Bezpieczństwa,* Security Service of the Ministry of the Interior (Poland)
SIS	Security Information Service, *Bezpečnostní Informační Služba* 1990- (Czech Republic)
SNB	*Sbor Národní Bezpečnosti*, The National Security Corps (Czech Republic)
StB	*Státní bezpečnost,* Czechoslovakian State Security, 1945e-1990 (Czech Republic/Czechoslovakia)
SMERSH	*СМЕРШ,* Death to Spies. Counter-intelligence department in the Soviet Army, created in 1943
UOP	*Urząd Ochrony Państwa,* Office for the Protection of the State (Poland)
WSW	*Wojskowa Służba Wewnętrzna*, Military Internal Service (Poland)
WUBP	*Wojewódzki Urząd Bezpieczeństwa Publicznego,* Provincial Office of Public Security (Poland)

Introduction

There is no other statement that more adequately describes the political situation in Central-Eastern Europe better than the one written by Shakespeare in his ever performed play *As you like it.* The cleansing systems that have been enacted in Central Europe post-1989 have had critical acclaim from the international community as well as significant doubts from legal observational bodies. The word lustration is derived from Latin – *Lustro* – means, "to review, survey, observe, examine, (Lewis, 1879)". The ancient Romans performed a ritual of purification so as to reflect upon themselves and to ward off bad omens, or more simply put, to cleanse one's body or one's environment.

Today the ritual is taken literally, without the metaphysical aspirations, and has been developed into a system that seeks to find and punish individuals involved in unethical acts and procedures in accordance with the past regimes. The actors in this state are men and women who actively participated in the communist governments, and today have merged into the exaggerated 'western-style' democratic parties. The idea of politicians adapting themselves and their "ideologies" into the politics *du jour* makes quite a fascinating sociological case study. When Shakespeare listed the seven stages of an actor, he was not only considering the actor of the theatre, he was also bearing in mind the everyday man who struggles to prevail in order to preserve and materially provide for himself.

In post-communist Poland the processes of lustration take into account individuals that have been found guilty of partaking in the acts committed by Secret Service apparatuses of the communist regime. In the Czech Republic the law specifies that persons involved with certain communist organizations, including the Communist Party, be forbidden from working in the public sector.

The entire political sphere was completely reorganized following the 1989 collapse of the regime. Much of the restructuring included the re-imaging and formulation of new socio-political ideologies. More importantly it entailed the arduous hunt to find individuals to blame and to legally bring to 'justice'.

This type of political action is widely considered within populist circles; the idea that politicians are only responding to the whims of the masses, and not to the elite of society, is implemented so as to become *in touch* with society. This has become a very influential method of keeping ones political career active so as to become, what has been branded in American politics, as the 'career politician' (Canovan 1981).

Francis Fukuyama once sated that we have reached "the end of history[1]". In simpler terms, the struggles of political systems have officially ended, at least on an ideological level. Liberal democracy has been the victorious system, and no other system can be left to challenge its superiority (Siegelman, 1995). As liberal democratic systems are furthered in East-Central Europe, there must be room for error when considering the further progress. Lustration is a policy that was initiated in order to avoid errors, and to correct preexisting ones. A newly democratic regime extending from a formerly non-democratic one-party system has to overcome many extraneous circumstances when trying to reinstitute new forms of law and order. It has been widely agreed upon by scholars that the communist regimes of Central and Eastern Europe were notorious for leading corrupt and brutal establishments. The newly elected politicians have many questions to answer on legal theory and social justice, but what is the most important feature of lustration, is the extraction of truth transparency.

In this paper I will discuss the background history that led to the implementation of these legislations while additionally presenting the aims of such systems. There are many viewpoints to consider when discussing the system itself, however what very few observers question is whether these systems serve long-term purposes or are they enacted solely for short-term periods of political transition? Some might argue that this type of system is mainly focused on the short-term and I given heavy priority so as to advance the process of transition; on the other hand, other scholars, such as Roman David, argue that transitional justice can only efficiently work in the long-term, as a policy built on reflection and reexamination, a formula best suited for countries that have a traumatic past.

I will first discuss (in part II) the historical background to the secret service apparatuses of the Peoples Republic of Poland. This section clearly and chronologically describes how the secret service morphed from an illegitimate operation to a mega-power with autonomous status. I then discuss the Polish Lustration Act in all its movements, and finally present a court case that questions the procedural operations of lustrations in Poland. Part III discusses the historical background of the StB, which operated in Czechoslovakia[2] from 1945 to 1990 and the Czech Lustration Act that came into power in 1991. Part IV deals with the aims of lustration; it discusses the opinions and motives that

[1] *See*: Siegelman

[2] I this paper I have written a comparative analysis of Poland and the Czech Republic, everything that is discussed prior to the break up of Czechoslovakia in 1992 is analyzed from the Czech side only.

have been voiced in the Czech parliament and in the Polish *Sejm* prior to the acts being signed into power. The three main objectives discussed are the following: 1) personnel discontinuity and minimal justice, 2) national security and public safety, and 3) truth revelation. The first deals with agents of the ancien régime who are still seeking their political place within the new system. The section further discusses how these individuals are a supposed threat to the progress of the new institution. The second aim is the most popular reason expressed by senators during the parliamentary sessions; national security is a point that can be used quite frequently so as to stir public emotions and touch at the heart of the matter. The third and final aim is the second most mentioned feature by senators and remains the most popular with the general public. I for one find this reason to be at the heart of lustration and it should be fostered as the sole reason for future continuation. Section V includes an analysis of the ethics behind the formulation of lustration as well as the execution of such policy. Throughout this paper I plan to use many formidable examples including court cases to justify my reasoning; I support the Polish Lustration Act prior to 2007 because I find it to be the most just and pragmatic. In my conclusion I defend the supposition that there are no miracle solutions to dealing with an overtly oppressive past.

a) Methodology

This paper employs the case study method. A review of the post-1989 secret service agencies of the Republic of Poland and the Czech Republic will demonstrate to the reader how each post-communist country dealt with the ardent process of de-communization. The thesis is split into three sections, the first is dedicated to Poland and the history behind the secret service apparatuses developed and established throughout the communist regime; the chapter is comprised of historical analysis and the agencies are chronologically discussed. The chapter tries to disclose why so much negativity towards the old regime's state securities exists in contemporary times. The first section also discusses the history of the Lustration acts and how they have shaped Poland's transitional period, while also giving an individual example and how they were personally affected by lustration policy in Poland. The background analysis – prior to 1989 – illustrates that past events have drastically affected the present situations in Poland and the Czech Republic. A comparative analysis of the pre- and post time periods with

politically opinionated variables will present to the reader an objective rationale behind the introduction of lustration as a policy.

The second section in the paper focuses on the Czech Republic and presents an overview of events prior to 1989 that have shaped the actions initiated by governments prior to the fall of communism. The chapter also includes an in-depth analysis of the Lustration Acts of the Czech Republic.

The third and last section will discuss the political and strategic aims of lustration policy. It will focus on parliamentary discussions, outside observer opinions, court hearing, constitutional court tribunals, and a multi-method academic analysis. The underlying points in this chapter are based on legal research. Court rulings from the home constitutional tribunals and international human rights courts are an intricate part of the analysis. Another important facet of this chapter is the studies conducted by Maria Łoś on the recorded Polish parliamentary hearings on the matters of lustration. All these sources will be used to give the reader a sound foundation on the reasons and aims – whether personal or purely pragmatic – during the development of lustration policy. This section will answer why and how, and even for whom these policies are beneficial.

i.) Data Collection

According to the Congressional Research Service, open source information is derived from newspapers, journals, television, Internet, and radio[3]. Information regarding Lustration Acts from both countries came primarily from government run websites. The data was also derived from other sources, such as scholarly journals, trade publications, and parliamentary research databases. The main sources of journal research was through, EBSCOHost®, LexisNexis®, and Questia®, and university databases.

ii.) Translations

Many resources, including government acts, were written either in Polish, Czech, and/or English. Where there were no translations into English it was necessary to employ various methods of translating the material. Previous knowledge of all three of the languages were an asset to overcoming the language barrier, but when documents needed

[3] Congressional Research Service, "Open Source Intelligence (OSINT): Issues for Congress." *US Library of Congress:* last accessed: March 26, 2010, http://www.fas.org/sgp/crs/intel/RL34270.pdf

to be translated as an official translation, GoogleTranslate® was used as a gateway into converting the materials for the reader. The reason for the extensive emphasis on translations is due to the fact that very little has been written on the subject of lustration, and even more, lustration from Eastern Europe. I have taken it upon myself to create a comprehensive set of appendices that will have the original lustration acts and their translated counterparts.

b) Literature Review

There is a vast amount of information pertaining to transitional justice and its theoretical application in the post-soviet countries of Central Eastern Europe. The majority of literature focuses on the three former Warsaw Pact countries that were accepted into NATO by the end of the 1990s. The close timing of the destruction of the one-party communist system that occurred in the Eastern Bloc allowed for a diverse study of transitioning nations and their implementations of transitional theory.

The initial period, and the majority of relevant literature, focuses on the first years of the transitioning period in the newly emerging democratic states as well as their justifications for their policy implementations concerning their ancien régimes. Maria Łoś takes a scientific approach into the underlying justifications for the lustration policies that were implemented in Poland after 1989. The outcome resulted in the furthering and broadening of transitional justice theory in Poland and other Eastern European countries (Łoś, 1995). The majority of scholars in this group are in agreement that some sort of *cleansing* process must be initiated for the new government to function efficiently[4]. Anne Applebaum argues that the societal pursuit of civil liberties and the ardent process of creating an honest Civil Society are the main benefits of lustration policy and other forms of transitional justice theories[5].

The next grouping of literature concerns itself with the controversies surrounded with the lustration act that was voted for in Poland in 1997. There were many individuals from a variety of fields, mainly in the dissident community, who fought for amnesty, yet

[4] Calhoun, Noel. *Dilemmas of Justice in Eastern Europe's Democratic Transitions.* New York: Palgrave Macmillan, 2004; Ellis, Mark S. "Purging the Past: the Current State of Lustrations Laws in the Former Communist Bloc" *Law and Contemporary Problems* 59, no. 4 (1996), 181-196. Print; Łoś, Maria. Lustration and Truth Claims: Unfinished Revolutions in Central Europe. *Law and Social Inquiry* 20(1): 143-154. 1995.

[5] Applebaum, Anne. 'Civil society has returned to Poland – The Fate of Individual Liberty in Post-Communist Europe – Russia, alas, remains in a league of its own,' *The American Spectator*, April 2008.

the headlining opinion of the success of the nomenklatura was the "straw that broke the camels back"[6]. Lavinia Stan addresses these issues and analyzes the application of the law, claiming, "Polish lustration was no lustration at all."[7] Other authors have claimed that Poland's move for lustration was and ultimately will be a benefit to Polish society.[8]

In the next set of literature Roman David addresses the four types of lustration systems developed during the post-1989 events (inclusive, reconciliatory, exclusive, and mixed), their failures and some successes and ultimately the application of these systems in post-conflict intervention[9]. David's examination into the relationship of the Iraq war and its current political situation to that of Eastern Europe is an uncanny theoretical study of two extremes with a common goal. Jon Elster also stresses the importance of understanding the transitional justice of post 1989 East-Central Europe in order to avoid the mistakes of the ancien régime when addressing issues of retribution in the future. But as Thomas Hammarbeg points out in his recent article on using past atrocities for political purposes, "…Experience shows that strong nationalistic feelings tend to limit the space for an honest analysis of what one's forefathers or their neighbors may have done in the past…[10]"As Elster and others assert, Iraq is not the "last surviving dictatorship"[11]. This set of literature provides the reader with a concise critique of the systems that were implemented and their final outcomes fourteen to fifteen years later.

Lastly the most recent of literature pertains to lustration and discusses the newly re-enacted Lustration Act of 2007 in Poland. Many questions can be drawn from this new law, asking: whether it's even necessary? Is it proactive for the progress of Poland? And, is it completely legal? Marek Safjan discusses the new bylaws and concludes that these measures should have been addressed at the beginning of the lustration ordeal[12]. Many authors view this new piece of legislation as a distraction to the progress of democracy,

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[6] Szczerbiak, Aleks. "Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland." *Europe-Asia Studies* 54, no. 4, 202, 553-572

[7] Lavinia, Stan. 'The Politics of Memory in Poland: Lustration, File Access and Court Proceedings." *Studies in Post Communism,* Center for Post Communist Studies, St. Francis Xavier University, 10, 2006.

[8] Letki, Natalia. "Lustration and Democratization in East-Central Europe." *Europe-Asia Studies* 54, no. 4 (June 2002): 529-552.

[9] Roman, David. "From Prague to Baghdad: Lustration Systems and their Political Effects." *Government and Opposition* 41, 2 (2006) 347-372.

[10] Hammarbeg, Thomas. *Don't Misuse Past Atrocities for Political Purposes,* www.commissioner.coe.int, accessed: April 7, 2010.

[11] Elster, Jon. *Retribution and Reparation in the Transition to Democracy.* Cambridge: Cambridge University Press, 2006.

[12] Safjan, Marek. 'Transitional Justice: The Polish Example, the Case of Lustration' *European Journal of Legal Studies,* 2007, 1 & 2.

but it must be considered that some scholars will defend any measure of this kind, mainly for the sake of political and intellectual stimulation. Some authors such as Krzysztof Jasiewicz believe that any distraction to the progress of democracy is unnecessary and people should be more concerned with promoting a new governmental way of life[13]. A small group of writers, who are considered a minority in the lustration debate, give a strong opinion in the opposition of lustration. Writers like Cynthia Horne present in her writing a vast amount of court hearings that have been brought to the European Court of Human Rights in order to create a doubt for the pro-lustration side[14]. But we must ask ourselves, are authors like Cynthia Horne trying to create reasonable doubt, or are they trying to show flaws in a system that has very little experience in our contemporary history?

Conclusively, there is a vast amount of literature concerning the transition of the East-Central European states that moved from a one party monopoly of communism to a newly adopted form of a westernized democracy. While much of the writing focuses on the transitional years, and only a few allude to the late 2000s, one can infer that there is still a sufficient amount of analysis to make sound intellectual conclusions.

[13] Jasiewicz, Krzysztof. 'Is East Europe Backsliding? The Political-Party Landscape,' *Journal of Democracy*, 18, 4, 2007

[14] Horne M. Cynthia. 'International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context.' *Law and Social Inquiry*, Volume 34, Issue 3, 713-744, 2009.

Historical Background: Poland

The system of lustration first appeared on the Polish legal books in 1992 when the Polish *Sejm*[15] passed the first bill; by the years end it was deemed unconstitutional by the Constitutional Tribunal of the Republic of Poland. This was the first approach that the newly formed government took in its post-communist transitional democratic phase in order to follow other countries like Bulgaria and Czechoslovakia (Kritz, 1995). After the bill was deemed unconstitutional, more projects were established and new propositions were delivered to the *Sejm* for consideration. After careful consideration and redrafting, the *Sejm* passed the final lustration bill in 1996 and finally adopted it in 1997. Among the 460 members of the *Sejm*, 214 voted in its favor, 162 opposed, and 16 members abstained (Misztal, 1999). The senate later followed and approved the bill on May 1997; out of 100 senators, 47 voted for, and 33 voted against. The party that was the majority in voting against the bill in the senate came from the Democratic Left Alliance - *Sojusz Lewicy Demokratycznej* - (SLD), which is led by the ex-communist Social Democratic Party - *Socjaldemokracja Rzeczypospolitej Polskiej* - (SDRP). The main support in the senate was from the Solidarity Election Front - *Akcja Wyborcza Solidarność* - (AWS), the Polish Peasant Party - *Polskie Stronnictwo Ludowe* - (PSL), and the Freedom Union - *Unia Wolności* - (UW) (Constitutional Watch, 1992-2002). The bill was singed by then president, Aleksander Kwaśniewski, a member of the ex-communist SLD party.

On August 3, 1997, the senate amended the Polish Lustration Act with a bill that specified the aims of the law itself. The act "on the revealing of work or service in State security organs or of collaborations with them between 1944 and 1990 by persons holding public positions (Polish Lustration Act, 1996)" was finalized and later amended several times. Most of the amendments were made by the coalition dominated by former communists. In turn, they achieved in a further narrowing of the lustration law.

From 1997-2007 the department that dealt with lustration issues was the Public Interest Spokesperson (*Rzecznik Interesu Publicznego)* (PIS). The PIS was in charge of receiving, hearing, and evaluating affidavits in regards to political figures. Although the Polish lustration act was approved in 1997, the process began in January 1999 because of the lack of political will to establish an official lustration institution (David, 2002). In 1999 the Public Interest Spokesperson took over lustration cases. Between 1999 and 2005 there have been 277 published individuals in the Polish Monitor; with the Polish Monitor

[15] *Sejm* – Polish Parliament

serving as the sole published voice of the Public Interest Spokesperson (Publications in the Polish Monitor, 1999-2005).

TABLE 1-1

DATE	NUMBER OF PEOPLE	ARTICLE NUMBER
1999	147	11, 40
2000	9	40, 28, 11
2001	14	28, 11
2002	15	11, 28, 40
2003	26	40, 28, 11
2004	40	28, 11, 40
2005	26	40, 11, 28

(Publikacje w MP, 1999-2005)

On December 18, 2006 the Polish law regulating the Institute of National Remembrance (*Instytut Pamięci Narodowej)*, or INR, was changed and came into effect on May 15, 2007, giving it provisional lustration powers and becoming the main lustration instrument in the Polish government (Constitution Watch, 1999).

As of 2007 the INR has been in charge of lustration matters thus making it the sole judicial intermediary between the public and the supreme courts while also running a department for prosecution (www.IPN.gov.pl, 2009). The INR has taken up many old and new tasks regarding lustration matters. The institute has made it its sole mission to widen the criteria and methods of "weeding" out the accused and finding new ways to prosecute "recommended" personnel. The act itself divides high public officials into the following three categories: those who did not work or collaborate with the past security organs, those who did so but revealed the fact, and those who failed to confess their past; only the third group could essentially be dismissed from holding public office for longer than specified in the act, but this is on an accordance to the judges ruling (David, 2001).

The institute performs many tasks that are necessary to the study of the former Communist government and its administrations. The institute maintains a register of lustration statements that are delivered by the public. The center analyzes these statements, collects key information, all of which is necessary for its validation in prosecution. The institute also performs the lustration procedures, as well as notifying the

respective bodies about non-performance by non-judicial bodies of obligation in accordance with its laws. The body also acts as the sole publisher of documents, organized into catalogues, containing personal data on the lustrated as well as lustration cases.

Poland's Secret Service Agencies

a) Ministry of Public Security of Poland (1945-1954)

When the Polish communist government came into power in the mid-1940's it did not have a clear idea as to the formal organization of the secret police, or what is more commonly known today, as its intelligence agencies. On January 1, 1945 the government, by the decree of the self appointed People's Home Council[16] (*Krajowa Rada Narodowa*), organized a department called the Department of Public Security (*Resort Bezpieczństwa Publicznego,* RBP) (Dudek et al, 2005).

The Ministry of Public Security of Poland did not have a clear set of guidelines right from the beginning. The department technically was in a state of illegal operation until 1954 when it was liquidated; being that, no laws were passed by any sort of legal body that gave it legal legitimacy. Therefore it was a self-appointed division that legitimized itself through the support of the People's Home Council and was created through the Polish Committee of National Liberation (Dudek et al, 2005)

When the Ministry of Public Security came into operation in 1945, Stanisław Radkiewicz, a native of Kosów Poleski (or modern-day Belarus), took command as the director. Radkiewicz was born into a Polish peasent family, and after the retreat of the Tsarist armies, he and his family were deported to Russia. He became an ardent supporter of the Bolshevik Revolution and soon after his arrival into Russia he joined the Komosol (Communist Union of Youth) which was the first step into his succesful career with the communist party. In 1925 he was sent into Poland as an agent of the newly formed communist government in Moscow, his main task was to enable and legitimize the illegal Polish Communist Party (KPP). Shortly thereafter he was arrested and charged on the count of infringing the soveregnty of the Polish Republic; he served four years in prison.

In 1938 during Stalin's great purge, the whole aparatus of the Polish Communist Party was sentenced to be disbanded and its leaders executed. Radkiewicz was spared by Stalin himself due to the trust that the communist leader had in him; and as history later revealed, Radkiewicz was pesonally in charge on the orders of Stalin to disband the KPP

[16] Which was organized on July 21,1944, right after the establishment of the Polish Committee of National Liberation (*Polski Komitet Wyzwolenia Narodowego,* PKWN) later it was renamed Ministry of Public Security (*Ministerstwo Bezpieczństwa Publicznego,* MBP)

[18] *Bezpieka* – Was the unofficial/common name given to the Ministry of Public Security (*Ministertwo Bezpieczństwa Publicznego*).

(Terlecki, 2007). Radkiewicz served as the director of the ministry through its 1945-1954 period. Several years later, as information leaked about the crimes of *Bezpieka*[18], Radkiewicz went on to become the Minister of State-Owned Farms. In April 1956, he left the position and retired. A year later he was found by historians to be one of the main architects of Stalinist policy in Poland and abroad, finally he was officially removed from the Polish Worker's Party (*Polska Zjednoczona Partia Robotnicza,* PZPR). He died in Warsaw in 1987 (Dudek et al, 2005).

The department through its earlier years encompassed many different tasks that were intricate to the progress of a Communist Poland. The responsibilities were the following: counter-intelligence, personnel managment, finances, censorship, penitentiaries, government protection, and the judiciary, otherwise known as the the Legal Bureau and the Headquarters (Terlecki, 2005).

In mid-August 1944 the ministry took on the responsibility of branching out its departments into field operations on four geographical levels, while at the same time not subjecting themselves to local and state government legislation. These geographical districts were divided into the following categories: Provincial (*Wojewódzki,* WUBP), District (*Powiatowe*, PUBP), Municipal (*Miejskie,* MUBP), Communal (*Gminny,* GUBP) Public Security Offices, and Security Units at the communal MO stations (Dudek et al, 2005). At the end of 1945, the last local security office was installed in the city of Szczecin; this marked the end of the period of expansion, as well as the reorganization of the departments.

At this time, delegates of *Smersh* also inhabited all security offices of the Polish government[19]; therefore the role of the ministry was supported and overlooked by Soviet Security Services. The purpose of having *Smersh* operating on Polish soil was not only to look after the affairs of the Red Army, but to also carry out various missions against Polish underground collaborators. *Smersh* worked closely with NKVD[20] troops that were stationed in Poland and its border areas. It was estimated that there were over 10,000 NKVD soldiers residing on Polish grounds. In Poland, *Smersh* was in charge of its own

[19] *Smersh - СМЕРШ,* Death to Spies. Counter-intelligence department in the Soviet Army, created in 1943.
[20] NKVD - Народный Комиссариат Внутренних Дел, *Narodnyy Komissariat Vnutrennikh De*, The People's Commissariat for Internal Affairs, was the public and secret police organization of the Soviet Union that directly exeuted the rule of power of the Soviets.

internal jails, which were essentially camps supported by NKVD. These camps were not only specified for German POWs, but also for detained Poles. (Dudek et al, 2005).

The operations at this time remained independent of Soviet control; however, there was still a close watch from Moscow on its everyday operations. Many Soviet personnel were still present in the regional offices as advisors to the Polish authorities. These advisors, otherwise known as *sovietniki*, were created by the officials of the PPR and the Soviet Union towards the end of the war in late 1944. The head of the *sovietniki* group was Soviet General Ivan Serov who was at the same time an advisor to the Minister of Public Security. The number of advisors exceeded 1,000 persons; the majority was stationed in the PUBPs. The advisors were assigned various duties that benefited both the Polish Communist Party as well as the Soviet Union as a whole (Dudek et al, 2005).

In the early 1950's there was rapid expansion of the services that the ministry began to take charge of, those of which included: hospitals, clinics, residential homes, and a network of shops that in 1952 were estimated at 678 locations, as well as canteens and cafeterias. Other services that were needed to accompany the employee's daily lives were created, including: kindergartens, resorts, sports clubs, farms, bakeries, shoemakers, and barbers were all at service to the ministry (Dudek et al, 2005). This type of expansion illustrated the strength and size of the MBP in mid-1950. It also proved that in order to be an employee of the ministry one could potentially live in a "separate" world, closed from the general public, where the government could satisfy every need. When considering the sheer number of employees on the pay roll, just in the headquarters alone, one sees the absolute power of a single political apparatus. In 1953 the headquarters and the local divisions employed 14,000 people, and nearly 20,000 civilian employees were hired to run the stores and restaurants alike (Terlecki, 2007). According to a study performed by professor Andrzej Paczkowski, an influential Polish historian and a member of the Institute of National Remembrance, in 1953 there was one MBP officer to every 800 citizens; there has never been a time in Polish state history of such a great civil service apparatus.

b) Reorganization and the Józef Światło Scandal (1954-1956)

In the years post-1954 there was a growing distrust of the secret service apparatus between citizens and government officials. It was more than obvious to the officials in the ministry that their power had reached its peak, and the sharing of information had led to an uncontrolled process, meaning too many agents were allowed access to classified

information, regardless of ranking. One of these individuals, Lieutenant Colonel Józef Światło, was highly knowledgeable about the inner workings and operations of the ministry. In November of 1953 Światło was ordered by, then First Secretary of the Polish United Workers' Party, Bolesław Bierut and his colleague, Jakub Berman - who were Politburo[21] members – to go to East Berlin for a special mission. The mission was ordered to discuss the possible eradication of Wanda Pampuch-Brońska with the help of Erich Mielke then chief of East Germany's State Security. Wanda Pampuch-Brońska was the daughter of a close companion to Vladimir Lenin and a well-known intellectual in academic circles. During the Purge of 1936-37 Pampuch-Brońska was ordered by high-level communist officials to either arrest and/or dissolve the Communist University of Western National Minorites (KUMZ). In 1936 she reported under a pseudonym that she accomplished this task, later it was revealed that this did not happen, and she was very vocal about the oppression she was then facing (Curtois et al, 1999, p. 298).

When Światło and his companion Anatol Fejgin traveled to East Berlin they visited with Erich Mielke and the following day, December 5, 1953, Światło escaped to West Berlin where he came into contact with the American Military's offices and proceeded to defect from Poland. The following day he was flown to Frankfurt and at the month's end, to Washington D.C. During his stay in the United States he was debriefed on his knowledge of the secret services of Poland and Soviet Union. The information of Światło's escape became headline news around the world, and mainly through Radio Free Europe, the news traveled throughout the Soviet Bloc.

This incident was considered highly embarrassing to the Polish authorities, due to the fact that Światło was not only aware of so much quantifiable information, but that he proceeded to tell the American authorities about inmate tortures, political executions, and more importantly, the intimate details of the political struggles within the Polish United Workers' Party. Poland was put into a position that led to the inevitable halting of the majority of their operations. These events led to the eventual reorganization of the security apparatus in 1954.

In late December of 1954 the Polish Council of State[22] and the Council of Ministers came together and initiated a new plan for the future of state security. It was

[21] Politburo – Comes from the German *Politbüro,* which is a conjunction of *Political Bureau.* The term is used to identify the executive committee for a specific number of communist political parties.

[22] Council of State of the Republic of Poland – Was introduced in the 1947's Small Constitution, it composed the president, the Marshal, *Vicemarshal* of the Sejm, and the

decided to create two new divisions that would operate side by side while the reorganization of 1954 cleansed the communist apparatus of people that were not fully indicted into communist ideology. The two newly created administrations were the Ministry of Internal Affairs (*Ministerstwo Spraw Wewnętrznych,* MSW), which was first run by Władysław Dworakowski, and the Committee for Public Security (*Komitet do Spraw Bezpieczeństwa Publicznego*, KDSBP), which was headed by Władysław Wicha (Terlecki, 2007).

With the newly opened offices, the high officials felt that the number of employees needed to be significantly lowered, so as to ensure a sound and thorough collective. The numbers of employees were cut by 30% in the central headquarters, and by 40-50% in local structures (Duded et al, 2005). Additionally, the Council felt it needed to close the special cells operated by the Ministry, which were held in public areas and places of work. After the fall of communism, these closures were made public knowledge; ironically, as this information was disseminated, the ideas of the physical cells were still in people's minds even though they had been withdrawn many years before.

With the opening of new departments also came the division of labor. The Committee for Public Security took over intelligence, counter-intelligence, government security, and the secret police. In September 1955 to November 1956 the Committee also became the sole controller of the Main Directorate of Information (*Główny Zarząd Informacji Wojska*) that ran the Military Police and counter espionage services (Dudek et al, 2005).

In November of 1956 the *Sejm* passed a law that liquidated the Committee for Public Security and assigned its jurisdiction to the Ministry of Internal Affairs (MSW). Within the local offices of the KDSBP, the individuals who were not made redundant were transferred into the structure of the Citizens' Militia. At this point and time, the Secret Service of the Ministry of Internal Affairs (*Służba Bezpieczeństwa*, SB) was also created. The purpose of this agency was clearly described as (Dudek et al, 2005):

> *"The protection of the democratic people's system established by the Constitution of Polish People's Republic and the national interest against enemy espionage and terrorist activity."*

President of the Supreme Chamber of Control. The Council of State had the authority to approve laws, exercise the supreme control over the local national councils, and declare a state of emergency and martial law. The Council was repealed on July 19, 1989.

c) Secret Service of the Ministry of Internal Affairs (1956-1990)

The Secret Service of the Ministry of Internal Affairs operated in Poland over 30 years and was considered to be one of the most detested organizations of the Communist collective. When the Secret Service came into operation, society responded with two new idiomatic terms to identify the organization and the agents; *ubecy*[23] *(plural)* and *ubek*[24] *(singular)* were used to identify the SB; while *esbecy*[25] *(plural)* and *esbek*[26] *(singular)* were used to identify the agents (Piecuch, 1998). Until 1983 the special department did not have a clear definition of what it was responsible for. In 1983 the *Sejm* passed a law that was considered to be of the highest ranking in the history of the Polish People's Republic, the law defined the operations of the SB as: "operational-surveillance, investigation and various administrative-legal functions (Dudek et al, 2005)."

The Secret Service after its reorganization had to completely revamp their organization processes, as well as their overall mission. The structure of the Secret Service was then divided into three departments: Department I was dedicated to foreign intelligence, Department II was in charge of counter-intelligence, and Department III had the responsibility of supervising all anti-state activity as well as the functioning of industries and farming sectors. Additionally, Department III had five bureaus that were under its jurisdiction: Bureau "A" which was in charge of coding, Bureau "B" was responsible for surveillance, Bureau "W" was dedicated to correspondence control, and Bureau of Operational Files with the Investigation Bureau worked side by side to prepare cases for prosecution along with Main Industry Protection Inspectorate. In June 1962 a new department was created to mainly deal with the Catholic Church and other religious institutions, the department was called Department IV. In May of 1979 in Department III, there was a consolidation of certain sections; section V, VI and VII were brought together and made into a new department called Department IIIA which was responsible for the protection of the state welfare against counter political threats and unsanctioned strikes (Dudek et al, 2005).

In 1964 the leadership of MSW changed. Mieczysław Moczar and Antoni Alster, who were at the time deputy ministers, fought ardently for this position. Before the new

[23] *Ubecy* – oo-beh-tsi
[24] *Ubek* – oo-beh-ck
[25] *Esbecy* – es-beh-tsi
[26] *Esbek* – es-beh-ck

head was announced, Antoni Alster resigned and was replaced by a close friend of Mr. Moczar, Franciszek Szlachcic. Finally in late January of 1964 Mieczysław Moczar was elevated to head of the entire MSW; his appointment was a noteworthy choice in view of his long time involvement with the nationalist-communist PZPR faction; who were also known as the "patriots". In 1968 under then PZPR First Secretary Władysław Gomułka, the post of the director of MSW was changed again, Mieczysław Moczar became secretary of the Central Committee, and the post of director of MSW was filled by former Deputy Attorney General and Deputy Justice Minister Kazimierz Świtała (Dudek et al, 2005).

In 1970 the leadership of the First Secretary of the Communist Party was changed due to economic troubles of the prior secretary; Edward Gierek was elected by the Politburo on December 20, 1970. With the new appointment of the top secretary there were also changes made to the head of the MSW. Deputy minister Franciszek Szlachcic was elevated to the head of the MSW in February 1971 for less than a year. For the following few years the head position of the MSW was run by two individuals, Wiesław Ociepka and Stanisław Kowalczyk. Between 1980 and 1981 another internal agent was made head of the MSW, a man by the name of Mirosław Milewski who was within the secret service apparatus from its early years.

In the early years of Wojciech Jaruzelski, who was the last Secretary of the Polish Communist Party, there was a peculiar influx of military personnel in various government administrations. MSW was not the only ministry to get a military treatment; in other areas of the government various positions were filled with Jaruzelski's close military subordinates.

General Czesław Kiszczak, who created the SB Studies Bureau in June of 1982, brought upon the most important change in the SB. The Studies Bureau worked as a sort of political think-tank aimed at studying and executing strategies to combat political opposition. When the *Sejm* elected Tadeusz Mazowiecki as Prime Minister on August 24, 1989, the then head of MSW, Czesław Kiszczak signed order 075/89. This order was crucial to the future of the Secret Service in Poland; it once again revamped and consolidated departments and bureaus into new structures that essentially performed the same functions but worked under new guidance and revamped task forces. The order liquidated Department III, IV, V and VI, including the Studies Bureau with its local units. The order also created a new department called the Department of Studies and Analyses, which was a continuation of the Studies Bureau; but it also, merged Department IV into

its sphere so as to enhance the overall progress of the new issue of church related strikes and Solidarity threats.

Three months after the self-dissolved PZPR government a new era was ushered in for the Polish people and its administrations. The *Sejm* passed three fundamental laws that brought upon new restructuring of the Secret Service apparatus in Poland. The laws changed the Citizens' Militia into the Police of the Nation, and completely transformed the Security Service into the State Protection Office, which functioned from 1990-1996. With the restructuring of the administration, one would assume the changing of leadership of the MSW in the new Poland to be natural. A man by the name of Krzysztof Kozłowski, a devout Catholic became the new head of Internal Affairs. With the creation of the new security apparatus, and a director from a religious background, as opposed to military or political, we can soundly state that security in the new Polish Republic had a new agenda. With the creation of the Office of State Protection, Poland followed other countries on its long road as a transitional republic and broadened the definition of what an enemy of the state really is (Dudek et al, 2005).

Poland's Lustration Act

The Polish *Sejm* adopted the lustration bill in April 1997. Among the 460 members, 214 voted in its favor, 162 against, and 16 abstained from voting (Misztal, 1999). Following the *Sejm* vote, the senate majority finally approved the act. Among the 100 senators in the *Sejm*, 47 voted for, while 33 voted against it[27], bringing the long debated issue of lustration to a supposed end. The act was finally signed by then President Aleksander Kwaśniewski on June 1997 with recommendation from the president for the bill to be given a constitutional review while highlighting certain features of the degree of its jurisdiction. As the political system evolved, the issue of how Poles assesses their communist past became increasingly important in the construction of political identities among both party elites and the general public. The justification for the act is comprised of three keys notions: "a desire for openness in public life and the notion that citizens had a right to know the backgrounds of their public representatives (Szczerbiak, 2002)." In today's Poland, there are still no legislations giving citizens the right to research their own files, as in Germany for example. The purpose of this feature, which does not exist in Poland, is to create a more transparent system and eliminate the possibility of blackmail and coercion; which happens frequently within the Polish political scene.

The act "on the revealing of work or service in State security organs or of collaboration with them between 1944 and 1990 by persons holding public positions" (Polish Lustration Act) was fully enforced on August 3, 1997 (Constitutional Watch, Poland, 1997). Ultimately on October 21, 1998 the Constitutional Tribunal upheld the act but one month later, it was purported that two provisions of the act were considered unconstitutional.

Before the act was even considered for constitutional review, the idea of lustration was a contentious and controversial topic in parliamentary sessions. It was to be a political decision that would lead Poland into a fully-fledged transitional republic, and ultimately demonstrate to other post-communist countries how a peaceful process takes place. The act through its strenuous history went through many different phases. Initially it was perceived that lustration in Poland would act as an instrument to extract all communists out of publicly elected positions. Later it was

[27] The bill mainly found support by the Solidarity Election Front (AWS), the Freedom Union (UW), and the Polish Peasant Party (PSL). The main opposition was coming from the Democratic Left Alliance (SLD). (Constitution Watch, Poland, 1997)

negotiated between the newly formed political groups that individuals involved with the party could pursue their political careers, but any evidence to conspire with the PRL Secret Police would have to be made public. Many people in Poland were starting to loose faith in the new system, and some even believed that this act is morally unjustified. In 2001 Robert Soltyk, deputy foreign editor for *Gazeta Wyborcza* stated, "I don't think it's a great idea. When you look to the past through the window of the ex-special police, you don't really look into the past, you look into the past as produced by them. They were not honest people. They were inventing people and trying to use the files for their own purposes (CNN, 2001)." International observers saw the Polish version of lustration as a negotiated form of transitional justice (Elster, 2006). In other countries that have experienced various forms of transitional justice, we saw truth commissions, jail sentences, and in the most radical cases opening of all secret police documents to the public, i.e. Germany. It has been said that the Polish model is a balanced version of lustration with many chances for case-by-case justifications and ultimately, many areas that still need revising (Stan, 2006).

Eventually it was determined that the final act was a semi-original document that had drawn its inspiration from Spanish transitional legislation and mainly covered the issue of conspiring with the PRL Secret Police between the years of 1944 – 1990. What made this policy so different from its counter parts and its earlier versions was the objective of the act itself.

When the act came into force in 1999, after the long debates on various features of the act, there was to be more than 20,000 people in all spheres of the government that would be officially lustrated (Misztal, 1999). Literally everyone seeking office from the president to the local judge would have to sign and hand in an affidavit confirming ones confession of working with the secret police or on the opposite end of the spectrum, stating that they had not collaborated with the secret police in any way.

The affidavit[28], which is issued to anyone who is pursuing a publicly appointed position, will have to fill their personal information concerning their relationship with the PRL state between the years of 1944-1990 (arts. 2, 3, 4, and 7).

[28] See Appendix I for sample copy of Polish affidavit.

In the affidavit there are two sections, one is for a declaration that the candidate has not worked or conspired with the secret police, and below is the section for individuals who have worked/conspired with the secret police. This affidavit is then submitted to the Warsaw Court of Appeals which acts as the Lustration court (art. 1) where the spokesperson of the public interest (RIP) (art. 17) - being the special lustration prosecutor - will declare if the person at hand is telling the truth or lying with the full process being supervised and sanctioned by the court.

The process can take months to years depending on the person's involvement with the government of the past regime. The prosecutor will use all the documents that have been collected by the Institute of National Remembrance pertaining to the Secret Police. Furthermore, the prosecutor has the right to set a special judicial procedure that is directly connected to the regular criminal law (art. 19).

If the lustrated individual is found truthful, the affidavit is filed and the person can continue with a clean bill. However, if the lustrated person confesses to having collaborated with the secret police, then their names and confessions are published in "Monitor Polski" (The Polish Monitor), the government gazette (art. 11). Furthermore, if the lustrated individual has been found to have lied on the affidavit they will also be published in the government gazette and barred from further political actions for a minimum of 10 years (art. 30). The only individual that can be barred for life, if caught lying, is the president and/or presidential candidates wishing to run for office. Other individuals that are required to file an affidavit are: presidential appointees, deputies and senators; the act also specifies those who occupy leading positions in public media (art. 3).

When the Polish Lustration Act is compared with other acts of its kind, one can see a profound difference in its the treatment of its candidates. When an individual has come forth and given a positive affidavit, claiming that they have worked with secret police in the past, there is no punishment unless the court finds criminal acts that can be held against the person. The individual can pursue his career in politics as before, leaving the only drawback to the public's opinion; this is potentially a difficult point to neglect or hide from when the next elections come forward.

a) Lustration Act of 2007

During the 2005 elections Poland saw the next step in its yet ongoing transition; the Law and Justice Party (PIS) lead by Jarosław Kaczynski won the majority seats in the *Sejm.* This electoral win resurrected old disagreements that the Kaczynski circle often had with other political parties, primarily the Solidarity Party. The main issue on the political platform before and following the elections was the issue of lustration and how it will be redefined after the Lustration Act of 1997 expires after March 15, 2007. The act of 1997 was perceived by PIS as too narrow and had too many exceptions that individuals could bypass with few repercussions; and furthermore, it only accounted for 27,000 members of the Polish population. A new law was drawn-up by the Law and Justice Party that expanded the numbers of individuals that could be potentially vetted, including members of academia, journalists, and high-profile company executives. According to the IPN spokesperson Andrzej Arsieniuk, the new law would account for more than 700,000 people in all spheres of Polish society additionally under the new guidelines, all individuals born after September 1972 would be required to submit an affidavit. This many people would also mean a lot of paperwork, before with the act of 1997 one could submit their paperwork and be vetted in less than a year, provided nothing irregular comes up. But with the new act and its scope of power, the estimated time that is predicted is fifteen years in order to go through all the cases; meaning most people would have to wait more than two years to resume their jobs (Reuters, 2007).

Many observers view the new legislations as a harsh tool of political manipulation that has strengthened the value and capabilities of lustration by simply broadening the definition. It has been proven that many persons known to have committed human rights abuses during the days of the PRL have been completely eliminated from the political platform, but it should be considered when the optimal time to end the process should begin, or to quote Vaclav Havel, when to "…finish the revolution…(Michnik, 1993)." Lustration in Poland is viewed by much of the public as purely and solely another government issue. Public polls taken in 2006 determined that 70% of Poles believed lustration was used as a tool by the ruling party rather than a tool to provide justice to the people; in turn, the opposition party has polled at 84% in agreement to the social sentiment and 50% of the ruling party approved[29].

Since the induction of the new lustration act of 2007, many groups in Poland have resorted to boycotting the affidavit process for ethical and moral issues. Institutions such

[29] "70% uwaza, ze lustracja sluzy rozgrywkom politycznym." *IPN publikuje katalofi osob publicznych*, October 9, 2006.

as the Warsaw University formally organized a boycott to address the matter publicly[30]. The act was submitted to the Constitutional Court on May 11, 2007 for review and it was ruled that the proposed Lustration Law was unconstitutional:

> While eliminating the communist totalitarian heritage, a domestic state based on the rule of law must use the formal legal means, which could be accepted in the framework of axiology of such a state. No other means can be accepted because such a state would not be better than a typical totalitarian regime, which must be eliminated. A domestic state ruled by law has sufficient legal instruments necessary to guarantee justice and to punish the people who committed crimes. A law, which is based on the idea of revenge, cannot be accepted in a democratic state (Safjan, 2007).

The courts ruled the act as unconstitutional due to its lack of definition of what is a 'journalist' and further, 'who' is a journalist. The verdict also cleared academic personnel and employees of private institutions. The only section not deemed unconstitutional was the section mandating the vetting of individual political appointees in the media and other public institutions. It was declared that due to the governments overall involvement, and majority shareholding stance, the government had validity in vetting these individuals.

In a 2007 poll conducted by Centrum Badania Opinii Społecznej (CBOS), Poland's Opinion Research Center (See Table 3.1), citizens were asked their opinion on the Constitutional Court's ruling on the constitutionality of the Lustration Act of 2007. The poll answered in five categories and it was reported that 33% of the population felt it was 'hard to say' what their stance was on the matter. 27% of the people polled felt that it was 'rather good that it happened', and 21% that felt 'extremely pleased that it happened'. Overall the report determined that more than 48% of the population had a positive attitude to the court's ruling, making this matter more than popular with the general public (CBOS, 2007).

[30] "Poland: Tough Lustration Law Divides Society." *Radio Free Europe*, March 23, 2007, www.rferl.org, last accessed May 4, 2008..

RYS. 2. **CZY, PANA(I) ZDANIEM, DOBRZE CZY TEŻ ŹLE SIĘ STAŁO, ŻE TRYBUNAŁ KONSTYTUCYJNY ZAKWESTIONOWAŁ ZNACZNĄ CZĘŚĆ OBOWIĄZUJĄCEJ OD MARCA BIEŻĄCEGO ROKU USTAWY LUSTRACYJNEJ, UZNAJĄC JĄ ZA NIEZGODNĄ Z KONSTYTUCJĄ?**

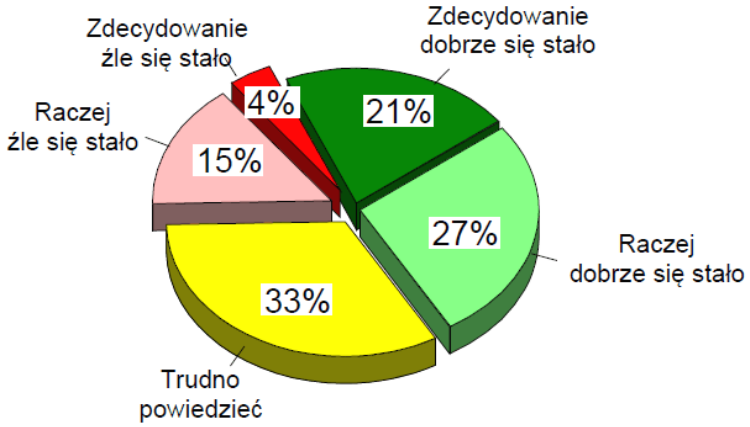

Table 3.1[31]

The Center for Opinion Research also in the same report asked a hypothetical question concerning the opening up of the secret files housed at the INR for public research, with an emphasis on private data (See Table 4.1). The results were astounding and concluded that 55% of the general Polish public would not want to 'under no reason should there be opening of files concerning private matters', and 20% stated that 'it would only be just if the files were of figures that perform important functions on a national scale'. It was concluded after this poll was taken that the majority of Poles no matter what political group they hail from, would rather keep these files locked up. The issue of file access drastically differs from country to country, it can be concluded that the average German citizen prefers a transparent review of an individual as opposed to the general public in Poland who prefers these matters to be kept at some sort of formal distance.

[31] CBOS Question: Do you think that the ruling of the Constitutional Court concerning the Lustration Act of 2007 as having unconstitutional features was a good thing?
33% - Hard to say
27% - Rather good that it happened
15% - Rather bad that it happened
21% - Extremely pleased that it happened
4% - Extremely not pleased that it happened

RYS. 4. **GDYBY DOSZŁO DO PRZYJĘCIA USTAWY O CAŁKOWITYM OTWARCIU ARCHIWÓW IPN, TO CZY, PANA(I) ZDANIEM, UPUBLICZNIAJĄC ZGROMADZONE TAM MATERIAŁY NA TEMAT POSZCZEGÓLNYCH OSÓB, POWINNO SIĘ CZY TEŻ NIE POWINNO UJAWNIAĆ INFORMACJE DOTYCZĄCE ICH ŻYCIA PRYWATNEGO – TZW. DANE WRAŻLIWE?**

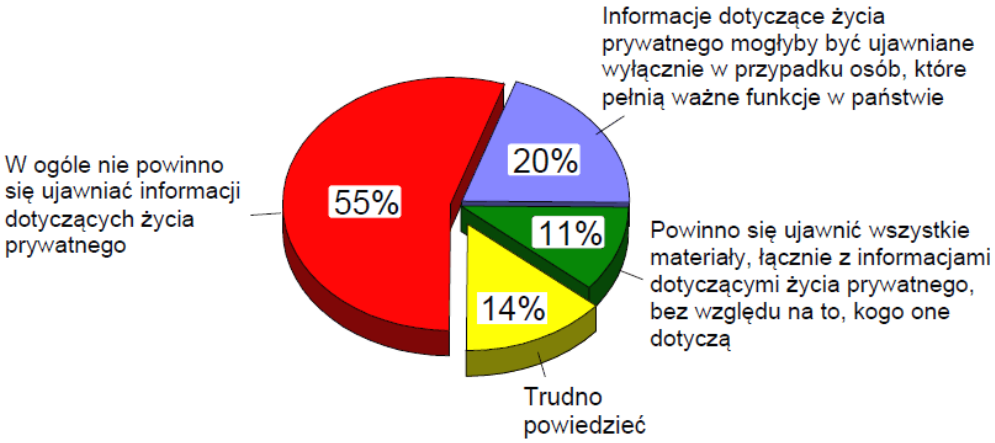

Table 4.1[32]

One of the more positive aspects of this legislation is the new responsibility that has been given to the Institute of National Remembrance (INR). The INR has been authorized to allow individuals from various sectors, i.e. journalist, historians, and academics, to pursue independent research projects with full access into the archives. The INR has also been in charge or compiling lists of individuals of different categories that have been displayed on it main website. To this date there are four lists indicating active individuals on an ongoing basis: (1) Members of the state politburo and Communist Party of the People's Republic of Poland, (2) Functioning members of the Secret Service Apparatus, (3) Public Officials, and (4) Individuals whom have collaborated with the Secret Service Apparatus or the People's Republic of Poland. As of March 23, 2010 each list has: (1) 5,860 persons, (2) 11,647 persons, (3) 5,334 persons, and (4) 3,291 persons

[32] CBOS Question: If the issue of opening up of secret files to the public ever came up for and Act, is it just or not just to include material concerning the individuals at hand information of their personal life for public viewing?
55% - Under no reason should there be opening of files concerning private matters
20% - It would only be just if the files were of figures that perform important functions on a national scale
11% - The opening of files should be allowed, including private information, without any consideration who the file is on
14% - Hard to say

(Biuletyn Informacji Publicznej, 2010)[33]. The intention of publicly disclosing the lists and is to give the general public access to the files and to formulate a sense of transparency as a form of appeasement.

In late 2007, the year ushered in Donald Tusk, the new Prime Minister of Poland. The Civic Platform (CP), now led by Tusk, is a party that grew from a small faction in parliament to a majority coalition that defeated Kaczynski in the 2007 elections, and showed its true strength when it came to winning undecided votes. The turn out rate for voting was at a all-time high of 70% in Warsaw[34]. It is widely discussed that the CP coalition was elected into office in 2007 due to the PIS' harsh stance on creating new ties with Moscow and Brussels (Jasiewicz, 2007). The Kaczynski government through its years managed to make new enemies and raise old disputes that most contemporary politicians believed to be a thing of the past[35]. While the main agenda for CP during their campaign was to tarnish Kaczynski in more than one way, including his hard position on Lustration, the CP party also realized that maintaining lustration legislation was something that was needed and desired by the Polish people.

CBOS conducted a survey where individuals were asked throughout a four-year period their opinions on 'elected personnel and if they should be able to continue holding office with a positive lustration (see Table 5.1)', the results were astonishing considering the political sentiment in 1999 and from 2005-2007. In 1999 when asked the main question 53% responded with 'should be terminated from their positions' then in 2007 the percentage grew to 62%. During the four years in participation of the survey, the percentage grew by 9%, making the CP election agenda in 2007 heavy with pro-lustration issues. On the flip side in 1999 when people were asked the same question 28% suggested that people 'should be able to continue with their positions', but when asked in 2007 the number decreased to 15% suggesting the access to knowledge and classified files spontaneously created doubt in peoples minds for lustrated individuals.

[33] All the individuals that are counted into the overall number, and displayed on the Internet database have to give permission to the Institute of National Remembrance for them to do so.
[34] "A New Government for Poland" *Time*, October 22, 2007.
[35] "New Leader in Poland, Donald Tusk – Looks to Mend Fences" *International Herald Tribune*, October 23, 2007.

RYS. 5. **CZY UWAŻA PAN(I), ŻE OSOBY PEŁNIĄCE WAŻNE FUNKCJE W PAŃSTWIE, KTÓRE BYŁY INFORMATORAMI SB:**

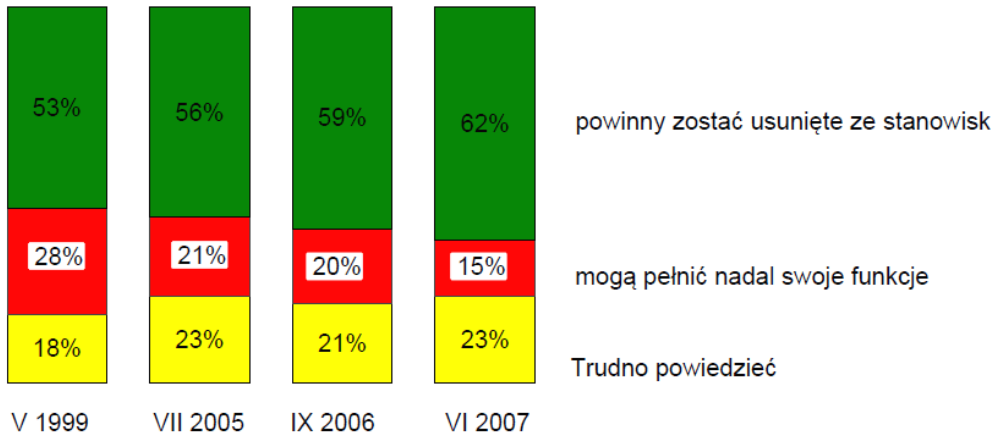

Table 5.1[36]

b) Case: Bobek v. Poland 2007

In 1999 an individual by the name of Wanda Bobek submitted her lustration affidavit to the Polish authorities in order to receive her lustration certificate. Ms. Bobek, lawyer, submitted her lustration papers as required of her profession. On the form she remained very clear and specified that she only had worked at the Security Office (*Urząd Bezpieczeństwa)* as an office assistant between the years of 1945 – 1953; later in 1953 she had left the job.

On 19 April 1999 the Commissioner of Public Interest applied Ms. Bobek's lustration case to the Warsaw Court of Appeals, acting as the first-instance Lustration

[36] Should elected personnel be able to hold office if a positive lustration is revealed?
1999 – Should be terminated from their positions 53%
Should be able to continue with their positions 28%
Hard to say 18%
2005 – Should be terminated from their positions 56%
Should be able to continue with their positions 21%
Hard to say 23%
2006 – Should be terminated from their positions 59%
Should be able to continue with their positions 20%
Hard to say 21%
2007 – Should be terminated from their positions 62%
Should be able to continue with their positions 15%
Hard to say 23%

Court. The Commissioner opted to submit her form because new evidence found that Ms. Bobek had not been forthright on her affidavit and had not admitted to collaborating with the secret services after 1953[37]. On 31 May 1999 Ms. Bobek was notified that the lustration court had received her case and was ready to proceed with the matter[38].

During the trial, both of the parties were present and gave declarations stating their position on the case; they also presented their evidence on the matter of Ms. Bobek's suspected collaborations. On 9 September 1999 both of the parties declared that no more evidence was to be presented and the court closed the hearing. On the 13th of September that same year Ms. Bobek notified the courts with a request to take further action on the matter of evidence declaration. She then submitted several documents concerning her professional career, character, and ethics. This brought the court to re-open the case and formally allow the submission of new evidence.

On 16 September 1999 the court formally came to a decision on the case of Ms. Bobek and submitted their judgment. The court ruled, based on the evidence provided by Ms. Bobek and the Commissioner, that Ms. Bobek was an intentional secret collaborator to the communist secret services after 1953. Shortly after Ms. Bobek appealed the case, it was later dismissed by the Warsaw Court of Appeals, which upheld its previous courts judgment. In response, Ms. Bobek continued to defend her case and lodged a cassation appeal to the Supreme Court, of which she chose not to attend. The Supreme Court also dismissed Ms. Bobek's case and upheld the two previous judgments.

In 2006 Ms. Bobek filed an application with the European Court of Human Rights stating that Article 6 of the Convention for the Protection of Human Rights and

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[37] The secret service after 1956 was known as *Służba Bezpieczeństwa.*

[38] Monitor Polski, 14 January 2000, No. 1, Section 9. - Communication of the Court of Appeal in Warsaw, Department of Lustrations, from 28 Dec. 1999 (Mon. Pol. z 2000 r. Nr 1, poz. 9) ('The Lustration Court of Appeal in Warsaw, Department of Lustrations, informs that in its decision from Sep. 15 199, No. V AL. 6/99, confirmed that Wanda Bobek, maiden surname Nalepa, daughter of Andrzej and Helena, born in 13 June 1929 in Niechobrze, submitted a lustration affidavit [that was found to be] not in accordance with truth as required by the [Lustration Act], because she concealed the fact of conscious and secret collaborations with security organs according to the [Lustration Act].') Original: *Sąd Apelacyjny w Warszawie – V Wydział Lustacyjny zawiadamia, iż prawomocnym orzeczeniem z dnia 15 września 1999 r., sygn. Akt V AL. 6/99, stwierdzono, że Wanda Bobek z d. Nalepa, córka Andzreja i Heleny, urodzona 13 czerwca 1929 r. w Niechobrzu, złożyła niezgodne z prawdą oświadczenia lustracyjne, o którym mowa w art. 6 ust. 1 ustawy z dnia 11 kwietnia 1997 r. o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne (Dz. U. z 1999 r. Nr 42, poz. 428, Nr 57, poz. 618, Nr 62, poz. 681 I Nr 63, poz. 701), przez to, że zataiła fakt świadomej I tajnej współpracy z organami bezpieczeństwa państwa w rozumieniu art. 1, art. 2 I art. 4 powołanej ustawy*.

Fundamental Freedoms was being violated by the Republic of Poland in reference to her hearings on the lustration process delivered against her in 1999[39]. She specifically stated that the courts and the Commissioner did not provide ample access to the case files and that the proceedings were not publicly held, as she claimed were guaranteed to her by the Constitution of Poland[40]. Ms. Bobek also alleged that the grounds of the judgments that were delivered on her cases were never made public, which is also a provision of the constitution[41]. On 24 October 2006 the ECHR declared the application admissible.

i.)ECHR Ruling

The ECHR effortlessly ruled this case due to the precedents set in previous cases. It was found to be in favor of Ms. Bobek on many different issues. Firstly the court ruled that Poland had failed to comply to Article 6 of the Convention, on the grounds that Ms. Bobek was not given a fair and reasonable trial. It was stated by the court that the Protection of State Secrets Act of 1982[42] and Protection of Classified Information Act of 1999[43] hinder the opportunity for the guilty party into having full access to files that are deemed as highly classified by the government.

The court also made the judgment that in the domestic courts, Ms. Bobek was given limited accessibility into the secret archives and was only limited to using her memory as a way to collect data. When Ms. Bobek opted to visit to the archives she was only allowed to bring with her a pen and notebook, which was then confiscated from her upon exit. During the trials the prosecutor (commissioner) had full access to copies and notes from the archives, while Ms. Bobek had access to no tangible evidence. As stated by the court, "The Court observes that the Government did not invoke any provision of domestic law which would have given the applicant a right to remove the notebooks from

[39] Application no. 68761/01.
[40] Article 45 of the Polish Constitution states, "Everyone shall have a right to a fair and public hearing in his case, without undue delay, before a competent, impartial and independent court…"
[41] Article 79 § 1 of the Polish Constitution states, "In accordance with the principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Court for a judgment on the conformity with the Constitution of a statute or another normative act on the basis of which a court or an administrative authority has issued a final decision on his freedoms or rights or on his obligations specified in the Constitution."
[42] *Ustawa o ochronie tajemnicy państwowej i służbowej 1982*
[43] *Ustawa o ochronie informacji niejawnych 1999*

the secret registry (Judgment ECHR, Bobek v. Poland, 2007)." The court ruled that Ms. Bobek should have unrestricted access to the court files, unrestricted use of any notes she made, and if possible, copies of documents she found worthy of importance to her case[44].

The court concluded that Ms. Bobek's chances of having a fair trial in Poland were curtailed due to the inaccessibility of retaining tangible evidence collected from the secret archives. The court also brought forward past cases where the Lustration Act was in question[45]. The issue of the court hearings being kept in secret due to the nature of the information was also rendered as unjust, "the Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6. This public character protects litigations against the administration of justice in secret with no public scrutiny… (Judgment ECHR, *Bobek v. Poland*, 2007)."

The ruling made it clear to the government of Poland that its prosecutorial procedures were unfair and unjust and that there was a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3. It had been found that the accused was limited and not allowed to the same set of information that was freely accessible by the commissioner, and that the court hearings were not conducted in a public space and had not remained transparent. On this basis, the court finally ruled in favor of Wanda Bobek with a limited judgment on the financial damages claimed by Ms. Bobek's attorneys. Ms. Bobek was awarded 1,400 Euros for the expenses of court hearing and lawyer fees accrued in the ECHR case.

[44] see Foucher v. France 1997 § 36.
[45] see Matyjek v. Poland 1997

Historical Background: Czech Republic

a) State Security (StB) 1945-1990

The State Security, or as it was widely known as the StB, was officially recognized as an independent unit of the Communist State in the summer of 1947 when the act calling for National Security[46] was voted for in parliament and later passed with a sweeping majority. By virtue of the new law, the StB was to provide aid and protection to the Czechoslovak Republic against, "attacks on its sovereignty, independence and democratic-republican system, security and defense (Blažek et at. 2005)."

In 1947 one of the leading CPC agents in the Ministry of Interior, Jindřich Veselý, set out the future of the StB as a three-thousand-man elite comprised of the most 'politically conscious' members of the National Security Corps (SNB). Later in 1948 leading functionaries of the political police, Štěpán Plaček and Bedřich Pokorný, proved to the political elite that the StB would serve the Communist Party better if it was given autonomy; at the end of deliberation it was decided that Group I was to be created and its main function would be security. The department (or Group) was then headed by Veselý and largely concentrated amongst eleven individual sectors within the State Security apparatus. Later the structure was subject to many changes in accordance to the needs of the CPC political leadership (Beneš et al, 1983).

Due to the different occurrences within the Soviet Bloc during the 1950s, the Ministry of National Security was created in May of 1950; its main purpose being the consolidation of all StB sections detached from the Ministry of Interior. Essentially this strategic move gave the StB its infamous power and political influence. By the years end the StB had settled its agents in six sectors of State Security Command all of which was to be headed by Colonel Osvald Závodský. The first three sectors were primarily responsible for the 'counter intelligence struggle' against foreign and domestic enemies, and against 'economic sabotage', the fifth dealt with espionage and the incarceration of individuals, vetting mail, and installing intelligence equipment, and lastly the sixth concentrated on investigation and related procedures (Beneš et al, 1983).

After the death of Joseph Stalin and Klement Gottwald, the entire State Security apparatus faced drastic changes including monthly changes in leadership within the department's heads. The power struggle within the Czech Communist Party and the great efforts taken directors of various divisions was immensely damaging to the StB's

[46] Act no. 149/1947 Sb. Call on National Security.

character as a legitimate organization. At the end of 1966 the political police headquarters returned under the wide umbrella of the StB with Colonel Jaroslav Klíma as the head director. This initiative also incorporated the Counter-intelligence Directorate, the central Military Counter-intelligence Directorate, the Directorate of Surveillance, together with the Statistical and Records Department.

When the StB incorporated the mass of the Ministry of Interior, it also received independence from the state. By the end of 1966, it was considered an autonomous agency with a profound and important strategic mission; it was to become a body of:

"State coercion with maximum action ability, fully controllable from one sole center. In protecting the state and social system, the StB was supposed to expose the activity of 'hostile' intelligence services with the aim to mar their operations directed against Czechoslovakia, 'subversive' activity pursued by the 'remnants of internal enemies,' as well as efforts of both the external and internal enemy for political and ideological subversion. Besides protecting major economic facilities and selected social situations, the StB was also in charge of investigating criminal offences directed against the interests of the Republic, and last but not least of informing the party and state bodies about the activity of the 'enemy' […] and about the overall state security situation (Blažek et al, 2005)."

Midway through 1968 when Prague Spring was at its infancy stage, Deputy Minister of the Interior colonel Viliam Šalgovič took over as the Intelligence Directorate, the central StB Directorate, the Operative Equipment Directorate, and the StB Directorate of Investigation. The political alterations that occurred within the Czechoslovak government had a significant impact on the StB itself. The Prague Spring reformers demanded that the government discontinue the practice of using the StB as an agent in "tackling home political issues and contradictions in the socialist society," and making sure that each citizens political, or lifestyle, viewpoints were not going to become of importance to the StB apparatus. During the era of Prague Spring many reforms led to purges of the StB, including the discontinuation of many programs within the agency, i.e. the CPC Action Program.

On August 21, 1968 when the Soviet Army led an occupation of Czechoslovakia, the reshuffling of the StB was suspended. The Soviets reinstated the pre-existing functions of the StB and by this time was dictated by Moscow to place pressure on the

Czechoslovak youth culture, as well as all religious groups, and anything perceived to be 'hostile' to the communist party. The invasion was justified by then First Secretary Leonid Brezhnev of the Communist Party of the Soviet Union, as an intricate maneuver to safe guard the foundations of socialism in all parts of the union. The Brezhnev Doctrine, as it later came to be known, illustrated what it meant to reach across borders in the name of political ideology.

The first section to be removed from the StB foundation was the Directorate of Investigation; this was done at the time the Velvet Revolution was at its highest peak. At this time, the StB fell under the newly formed government of Václav Havel, which subsequently obliged its re-organization. The initial plan was to transform the StB into the Intelligence Service of the Federal Ministry of the Interior, comprised of the Counter-intelligence Directorate and the Directorates of Protection of the Constitution and the National Economy. However the situation ended quite the opposite for the StB under massive pressure from the public and the newly appointed non-communist Richard Sacher as the Minister of the Interior[47]. The activities of the headquarters and smaller offices were closed and all further plans were cancelled, while at the same time, on the orders of Sacher, the Administration of Investigations Department was disbanded, which consequentially dissolved all operating security units (Moran, 1994).

During the power shifts between the new and old governments, Sacher attempted to approach the task of reorganization in a tolerant and non-vengeful manner. While doing so, he stated that, "a democratic attitude towards [members of the security forces], based on trust, is the road we can best follow" and additionally added that, "FBIS (State Service) employees must not be members of any political party, nor are they allowed to take part in political activities (Obrman, 1990)". This was Sacher's main philosophy when it came to dealing with the security agencies; he downsized the personnel from 18,000 to a mere 6,000 administrative employees. Many of these newly re-hired agents were former employees of the old service – only 8,500 of the 18,000 State Security members (47%) were not initially re-employed (*Ibid*, 1990).

The newly elected cabinet established new intelligence sectors, while at the same time ordered the vetting of former secret police members. In the end, the StB became the Security Information Service (SIS), which operates to this day under the oversight of a parliamentary committee.

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[47] Sacher was part of the Czechoslovak's Peoples Party (*Československá Strana Lidová*, *ČSL*) and practicing Catholic.

Czech Republic's Lustration Act

Every lustration law takes into consideration two positions in order to fully incorporate the intent of the objectives set out by policy makers. There are rearward-looking positions and forward-looking positions; the first concerns matters that are taken into consideration prior to the power change and the latter defines democratic posts in the newly formed government (David, 2003).

When concerning the Czech Republic's Lustration Act of 1991 one must understand the harsh standards which the act set out to uphold. The Czech Lustration Acts are widely acknowledged to be 'thorough and comprehensive[48]', 'one of the strongest[49]' and even 'the most sweeping[50]' among the acts of its kind in Central and Easter Europe. The act was upheld in the Czechoslovak parliament with 300 federal deputies; 148 voted for the act, 31 voted against, and 22 abstained[51]. The Czech lustration consists of two separate laws, the so-called 'Large Lustration Act[52]' and 'Small Lustration Act[53]'. The Lustration Act banned former communist officials and collaborators of the secret police from:

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[48] Skapska, 2003.
[49] Robertson, 2006.
[50] Schwartz, 1994.
[51] The bill was approved by the deputies of the Civic Democratic Party (ODS), the Christian Democratic Movement (KDH), the Christian Democratic Union (KDU-CSL) the Public Against Violence (VPN), the Civic Democratic Alliance (ODA), the Movement for Self-government Democracy I (HSD I), the Christian Democratic Party and the Liberal Democratic Party (KDS and LDS), the Hungarian Christian Democratic Movement (MKDH), some deputies of the Slovak National Party (SNS), the Association of Social Democrats (ADS), and the club of independent deputies. The clubs of the Civil Movement (OH), HSD II, the Movement for Democratic Slovakia (HZDS), the Social Democratic Party (CSSD), some deputies of the SNS, two members of the KDU-CSL, and the CP did not vote for the bill (abstained, voted against, did not vote, or refused to present during voting) (Federal Assembly of CSFR 1991).
[52] Act No. 451/1991 Coll., on standards required for holding specific positions in state administration of the Czech and Slovak Federal Republic, Czech Republic and Slovak Republic. [*Zákon č. 451/1991 sb., kterým se stanoví některé další předpoklady pro výkon některých funkcí ve státních orgánech a organizacích České a Slovenské Federativini Republiky, České republiky a Slovenské republiky*] of 4 October 1991.
[53] Act No. 279/1992, on certain other prerequisites for the exercise of certain offices filled by designation or appointment of members of the Police of the Czech Republic and members of the Corrections Corps of the Czech Republic. [*Zákon č. 279/1992 Sb. o některých dalších předpokladech pro výkon některých funkcí obazovaných ustanovením nebo jmenováním příslušníků Policie České republiky a příslušníků Vězeňské služby České republiky]* of 28 April 1992.

"…Holding positions in the state administration at both the federal and the republican levels; the Czechoslovak Army (the rank of the colonel and higher); the federal Security and Information Service; the federal intelligence agency; the federal police; the Office of the President; the Office of the Federal Assembly; the Office of the Czech National Council; the Office of the Slovak National Council; the offices of the federal, Czech and Slovak governments; the offices of the federal and republican Constitutional Courts; the offices of the federal republican Supreme Courts; and the Presidium of the Czechoslovak Academy of Sciences; … top positions in Czechoslovak, Czech and Slovak Radio and Television; … the Czechoslovak Press Agency; … top management positions in enterprises and banks owned by the state; to top academic positions at colleges and universities, and to judges and prosecutors (Ellis, 1996).

Shortly after the act was passed in the Czech Republic, the newly elected president of the new republic made several comments on the issue of de-communization in the new state, and how he felt about his country making the transition from a one-party monopoly to a fully democratic institution. The main issue on his mind, and at that time many other politicians, is how they were to successfully deal with past agents of communism in the new Czech Republic. In October 1991 Havel stated:

> "Those involved in one way or another with the totalitarian system were given a magnanimous opportunity. They could leave their posts quietly and inconspicuously. Nothing would have happened to them. They could have reflected on the roles they had played. They have not made use of this opportunity. They have just perked up. They have settled down in various new posts and positions and have even started to laugh at us… This has aroused general dissatisfaction, nervousness, when people see the selfsame people who were humiliating and persecuting them in various ways for years still sitting in various offices, occupying leading posts in farm cooperatives, district authorities, and local and municipal administration, ministries, and the like, and they are working using the selfsame methods to which they had become accustomed. They behave toward people in the same arrogant way as they did before (Weigel, 1992)."

On July 9, 1993, the Czech Parliament passed a Law on the Illegitimacy of and Resistance to the Communist Regime. The law declared the former Communist Party 'illegitimate' and 'criminal,' and attempted to honor those persons who "on the basis of democratic, moral or religious convictions" fought against the Communist Party. The Czech Constitutional Court ruled this law to be constitutionally sound on December 1993[54] and to this day has been a strong foundation for pro-lustration crusaders in the former soviet bloc (Ellis, 1996).

The system requires every individual who seeks, holds, or stand for employment within the government apparatus, to be fully vetted. Vetting in this context is a procedure that each person is required to undertake by filling out an affidavit[55] and submitting the necessary proof that he/she has not been active within certain groups that are aforementioned in the act. The submission of the affidavit will produce a certificate from the Ministry of Interior stating that he/she did not belong to other groups specified in the act[56]. If an individual is found to have belonged to any group specified in the act, the organization is required to end his/her employment contract or transfer him/her to a position that is not specified by the act, the person can also be barred for a period of five years from employment that is specified in the act[57]. Of those that have applied, only 5% of the requests have returned 'positive' for collaboration (Mayer-Reickh, 2007). Furthermore the publication of the certificate is only permissible with the citizen's consent[58]. The act is very specific in its application of who is to be vetted; anyone who is elected, appointed, or assigned has to allow for a vetting. When the act was drawn-up, there were many opinions expressed as to how many levels of the government have to be affected by the act. In the early stages of the transitional period in the Czech Republic, the issue of vetting was highly scrutinized by outside observers. It was well known to many that 90% of the original files needed for vetting were destroyed by StB agents and furthermore, certain individuals of these inner-circles

[54] Czech Republic: Constitutional Court Decision on the Act on the Illegality of the Communist Regime (Dec. 21 1993), *reprinted in* 2 Transitional Justice, *supra* note 5, at 620.
[55] See Appendix II for Czech Affidavit Sample.
[56] Czech Lustration Act 1991, § § 4 [1] and 4 [3].
[57] Czech Lustration Act of 1991, § 18 (2); cf. § § 15, 16.
[58] Czech Lustration Act of 1991, § 19.

were producing false certificates in order to continue with their political careers (Letki, 2002). There were many who proposed that the term *position* be replaced with *employed* so as to broaden the power of the act within the scope of the government. In the end it was left with *position* and later in 1992 there was an amendment added to the original act, which added members of the police, and members of the prison guard of the Czech Republic to be vetted before employment may commence[59].

The act includes senior positions within the offices of the constitutional organs; offices that support the presidency, the Chamber, the government, the Constitutional Court, and the Supreme Court. The public media and the management of enterprises, where the majority-shareholder is the state, have also been included. The act in its later years has been in the forefront of many controversies in that it disclosed information that many famous individuals within the Czech Republic were possible agents or collaborators (Kosař, 2008). In 2007 the former Prime Minister of the Czech Republic[60], a high-level manager in Czech Television[61], and a famous singer[62] were accused of collaborating with the former State Security. Every individual older than 18 years of age is entitled to apply to the Ministry of Interior for the issue of a lustration certificate[63]. The certificate and affidavit are not required for citizens born after 1 December 1971[64].

The issue of disclosing the STB files has been a contentious topic ever since former President Václav Havel signed the first Lustration Act of 1991. In the beginning it was assumed that the files would be under the direction of the various ministries that conducted vetting, preferably the Ministry of Interior. Later it became quite known that files had been disappearing and large gaps had been appearing within the stacks of affidavits (Letki, 2002). In 2002 legislation was drawn-up to give members of the public limited access to the files, it also included the Ministry of Defense who created a "Document Disclosure Authority" which

[59] Czech Lustration Act of 1992 no. 279/1991 Sb.
[60] Kmenta J., Vaca J., 'Tošovský spolupracoval s StB' [Tošovský collaborated with State Security Police], *MF Dnes,* 12 February, 2007, p.4.
[61] Kubita J., 'Rada ČT podržela Janečka I bývalého milicionáře' [the Council of Czech TV supported Janeček as well as a former member of the militia], *Hospodářské Noviny*, 22 February 2007, p.1 and 3.
[62] Malecký R., 'Nohavica a StB: nova fakta' [Nohavica and State Security Police: new facts], *Lidové Noviny*, 10 February 2007, p.7.
[63] Czech Lustration Act of 1992, § 8 [1].
[64] Czech Lustration Act of 2000 no. 422/2000 Sb. § 1.

allowed the public to apply and view the files that were bearing their names (Nielsen, 2008).

In February of 2008 the newly formed government of Mirek Topolánek along with the Institute of Totalitarian Regimes have all formally compiled all existing secret police files, except those in the interest of state security. The files have been electronically fed into an online database to allow for public research and for transparency to exist within the vetting process. This database has been hailed as a large step into closing the gap between the Lustration Act and the general public and giving a sense of clarity for outside observers. The project has also helped in preventing falsification of certificates and more importantly allowing for historians and media personnel to present a more objective case for Czech Lustration (Nielsen, 2008).

Upon the dissolution of Czechoslovakia in 1993, Slovakia has discontinued its lustrations procedures.

a) Case: Linkov v. Czech Republic, 2007

Linkov v. Czech Republic, deliberated in 2007 at the European Court of Human Rights, was a fundamentally groundbreaking case[65]. The outcome of the case was important for numerous issues including civil liberties, personal liberties, and more importantly safeguarding democratic instruments. On July 21, 2000 Mr. Linkov submitted his application to the Ministry of Interior in the Czech Republic in order to register his new political party. In the application he was required to state his party's aims and purposes, and more importantly his objective. The chosen name of his party was Liberální Strana (Liberal Party, 'PL'). The request was also accompanied by a letter of intent stating the party's organization and overall framework. The political ideology of the party fell on the far left of the political spectrum and it closely resembled contemporary socialist ideals, some of which were drawn from the ideologies of previously established communist parties.

On August 9, 2001, the Interior Ministry rejected Mr. Linkov's request for registration on the grounds that its statutes were contrary to Article 4 of the Law No. 424/1991[66] on political parties; it also was in conjunction with Article 5 of the Constitution[67] and Article 20 § 3 of the Charter of Fundamental Rights and Freedoms[68].

[65] ECHR Application No. 10504/03

[66] Act. No. 424/1991 On Political Parties Article 8 § 1, State the following political parties and movements may not be established and operate:
a) Political parties and movements breaching the constitution and acts of law or seeking to remove the democratic foundations of the state,

The ministry found many aspects of Mr. Linkov's aims to be in conflict with the laws set in the Czech Republic post-1989. The PL group prepared a petition to have the case heard in the Supreme Court (Nejvyšší Soud) which on Aril 2, 2002 concluded the contested decision. The group once again reorganized and filed a counter-petition to the Constitutional Court (Ústavní Soud) of the Czech Republic, to clarify the specific articles in the constitution and to prove that their rights as an organized party were being infringed upon.

The Constitutional Court declared the application was ill founded, on the grounds that the decisions petitioned against had not infringed the constitutional rights of Mr. Linkov and nor his party. The Court noted that in particular the argument regarding the compliance of the order at issue in Article 7 of the Convention was first raised in the constitutional appeal; therefore, it considered itself not competent to rule on this question that had not been reviewed by the lower courts.

The European Court of Human Rights (ECHR) ruled in the favor of Mr. Linkov on many different points. The ECHR found that the Czech Republic had been in violation of Article 11 of the Convention, and all the other violations that Mr. Linkov had accused his government were not examined by the ECHR because they felt the violation of Article 11 of the Convention was moral satisfaction for the damage suffered by the applicant.

The court felt that the denied status of his party in the Czech Republic was an infringement on Mr. Linkov's civil rights, and the reasons used by the government were seen as 'ill equipped and grossly exaggerated'. The Czech government felt that Mr. Linkov's views were not in agreement with the current political system in the Czech Republic, and therefore felt it was their prime duty to stop and interfere with the chances

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b) Political parties and movements having no democratic articles or no democratically elected bodies,
c) Political parties and movements whose objectives is to sieve and retain power in a way preventing other parties and movements from competing for power through constitutional means or to restrain equality of civil rights,
d) Political parties or movements whose programmes or activities endanger morality, public order or civil rights and freedoms.

[67] Article 5 of the Czech Constitution: *The political system is based on the free and voluntary foundation and free competition of political parties respecting fundamental democratic principles and rejecting force as a means for asserting their interests.*

[68] Article 20 § 3 of the Charter of Fundamental Rights and Freedoms: *The Exercise of these rights may be limited only in cases specified by law, if measures are involved, which are essential in a democratic society for the security of the State, protection of public security and public order, prevention of crime, or for protection of the rights and freedoms of others.*

of the PL party to get legal recognition. The government referred to this matter as a 'pressing social need' as the reason for its denial. It was stated in the court documents that no one could truly infer when there really is a 'pressing social need'.

This case is important due to the fact that it shows clearly how certain political representatives within the Czech Republic's institutions might be symptomatically paranoid and would potentially do anything possible to oust and halt anything or anyone that remotely resembles the old communist regime. What remains interesting about this case is the degree of irony in regards to the final ruling. The Czech Republic in the post-1989 decade moved from a one party monopoly of the communist regime to a fully democratic state. When it became a democratic state, shortly after the Velvet Revolution, the government passed a bill that made the past communist regime an illegal institution[69], therefore the newly elected government was already safeguarding themselves from a communist revival virtually forever unless, that is, the law is formally revoked. But the main issue in this case was not the political agenda that both sides wanted to press, but the fact that one supervisor (Czech government) was not letting an agent (Linkov) from operating freely in a *free democratic Czech Republic*. Fortunately the ECHR found this simple fact as a gross infringement on Mr. Linkov's rights and has sought to show the government of Czech Republic that in order to have a democratic system where parties can come and operate and perform a profound role, one needs to open parliament to its citizens, and in the end allow for free and fair democratic elections.

[69] Act no. 198/1993 on the Illegality of the communist regime and the resistance to this regime.

The Aims of Lustrations

The aims of lustration policies have become very ambiguous through out the years of its implementation. There have been many opinions discussed as to who gains and who looses politically, financially or even morally. Some experts see the objective of such legislation as, "an ugly power struggle (Łoś, 1995)" or more simply put, vengeful. The latter theory more widely accepted; international observers have seen it as the only rational explanation as to why a transitioning society would implement such laws and have it headed by the past's political "underdogs". The two different acts vary on many levels; one of the most important features that differentiate the Polish and the Czech acts is their relationship with the process of *de-communization*. The Czech Lustration Act is a government initiative that pans across all former personnel involved with the Communist regime, ranging from the Secret Service to the high-level officials of the communist party, all as potential human rights violators. Where as in the Polish Lustration Act, the affidavit processes only concerns individuals who were collaborators with the Secret Service regimes, who have been deemed by the current Polish government as human rights violators. This is the reason why *lustration* is distinguished from *de-communization* in Poland, while the term *lustration* also includes partial de-communization in the Czech Republic.

Even with the current opinion that these laws are only revenge driven, we must still consider the ideological foundation that the act was built upon. Analyzing the lustration debate in the Polish Senate, Maria Łoś (1995, 143-154) identified three affirmative lustration debates that reflected the three most significant pro-lustration themes: historical truth, state security, and minimal justice. These three themes can help us determine the main agenda of the political groups fighting for lustration laws.

TABLE 2.1

Lustration Themes Raised in Polish Senate Debates

Themes:	**% of 100 pro-lustration arguments that included the motives**
Personnel discontinuity and minimal justice	16
National security and public safety	52
Truth revelation	20

(Łoś 1995, 144, 146, and 148)

a) Theme: National Security and Public Safety

National security and public safety was the main theme used to provide evidence towards a pro-lustration stance. It was the most used theme in the public forum including in the leading senator's speeches; in the end it turned out to be one of the most convincing arguments for those in favor. This argument does not centre itself on the idea that if one is to bring lustration into law, there will be ethical/moral violations, but what it does preach is the idea that there are dangers in *not* implementing the system. In 1993 there was a survey conducted within the *Sejm* and it revealed that 47% of all respondents agree with the view that "former agents who now hold high state posts could hurt the state interest (Łoś 1995, 148)". This has been a very popular theme within other circles as well; many academic circles in Poland shared this feeling and saw it as a chief reason, or even perhaps the only legitimate reason to pursue lustration. This type of defense accounted for 52% of all concrete pro-lustration arguments in the Polish Senate.

> *This type of a law is needed precisely in order to…provide protection for the authority of or state; its security and stability. It should nor be a de facto continuation of the political struggle, nor a settling of accounts.*[70] *(*Łoś *1995, 147)*

> *Key positions in the state apparatus should be open to persons who are totally loyal to the state (Bohdanowicz 1992, 20).*

> *Without disclosure of the files, it will be impossible to pursue decommunization in Poland, and it is indispensable for Poland's full sovereignty and independence (Chojnacki 1992, 27).*

> *It is not a punitive law. It is a bill which we want to pass on the basis of the state's right to protect its interests, that's all (*Grześkowiak 1992, 38)

> *State security and society's need to trust those holding offices in the highest organs require that the candidates meet some initial conditions, among which a complete loyalty towards the motherland is the most important (Maliński 1992, 33)*

[70] Senate, 1992, II: 18, at 52.

For many of the commentators this theme is related to something more than just the presumed weakness of character of the former collaborators. If we look at the past history of Poland's security department, it was entirely dependent and subservient to Soviet command; the fears expressed by senators go as far to insinuate a continued link between foreign states.

> *Given that…beyond any doubt, the materials of the Interior Ministry used to be forwarded to the KGB; that, with the dismantling of the Ministry, a sizable number of documents have disappeared and rest in unknown hands – one can expect all kinds of pressure. Pressures that constitute blackmail (Romaszewski 1992, 55)*

> *In each section of each department [of the Interior Ministry], there were at least three go-betweens for Soviet intelligence. (Woyciechowski 1992, 6)*

> *There was a KGB residency in the Interior Ministry…[Its agents] had full freedom of movement within the building… they had broad access to operational files…. The Joint System of Data on the Enemy (PSED)…was put in place in 1978… The signatories were obliged to transmit data to headquarters in Moscow every two weeks. (Wojciechowski 1992, 6)*

The third prime minister of Poland Jan Olszewski used "state security" as a theme in his lustration justification. In a book interview in 1992 between Radosław Januszewski and himself, Olszewski commented on lustration in the following way:

> *I have always treated the question of lustration as very important; as an issue of both social psychology and state security. Perhaps I was more aware than anyone else about the kind of threat posed, the groups involved, and the possible extent of involvement of the new power elites.*
>
> *(Januszewski et al 1992, 6)*

The emphasis on security motives in the Polish Senate has in part to do with the geo-political location of Poland and how its position has played in history. Poland is nestled between Germany and Russia, and despite its changing borders, has always been between both territories. At one point in its history, there was territorial control in the

Polish lands by both empires. Bearing this in mind, state security might be a minimal aspect of lustration to the everyday person however for politicians it means more than just political survival.

In the Czech Republic, the threat to democracy is reduced removing members of the former totalitarian machinery, or by preventing their return to the executive post; whereas in Poland suspected individuals can be found on public record and are solely left to the public's scrutiny. The Polish lustration act is considerably more lenient than its Czech counterpart in regards to the employment of former agents in the new security organs. It was estimated that 8% of the Polish police and two-thirds of the employees of the Office for the Protection of the State (UOP) were former SB operatives in the late 1990s (Meierhenrich, 2006).

There is also considerable concern in regards to new democracies and law enforcement. In 2001 the Czech Minister of the Interior, Stanislav Gross, announced that negative lustration certificates were illegally issued to many former members of the army intelligence (CTK, 2001). This resulted in 150,000 issued lustration certificates to be re-evaluated; it was found that 117 were illegally issued as a result of "incorrect analysis" of documents (CTK 2001a).

It has also been widely reported that the Czech lustration law has been unable to halt suspected arms trading. During the 1990s the Czech Republic faced high unemployment and an economic slowdown, which forced the government to implement a more lenient licensing policy. The Ministry of Foreign Affairs, then headed by Jan Kavan, approved arms exports to Sri Lanka and Iran. It has been reported by many outside investigators that private Czech companies had done arms deals with Iran, North Korea, Libya, and Algeria (Jordan 2002; Stroehlein 1998; Kmenta 2000).

The lustration laws, even if properly enforced, can only solve some of the security problems. The risks that have emerged in the past, in respect to security, require additional legislation to regulate private security companies, export and proliferation of materials, and finally access to classified materials (David, 2003).

b) Theme: Truth Revelation

Truth Revelation is the unconscious process of rewriting history, its aim is to bring out the truth that was once suppressed, and the desire to find a general blame or even scapegoat for the past regimes actions. This is the nature of truth revelation where in the senate only 20% of arguments accounted for lustration. This theme is considered to be the more defensive of arguments, as it is more reactionary rather than progressive. This theme suggests security for the survival of democracy and national sovereignty. Responding to appeals for truth and forgiveness, a law professor from the Charles University in Prague once stated: "before we forgive, we should know what evil we are forgiving, and who caused it (Łoś, 1995, 143)". He also warns the listener against, "careless and indiscriminate lustration," and stresses "lustration can be only a small part of the cleansing process (Ibid, 143)." Many Polish senators have also shared this viewpoint during senate debates where 20% treated it as an attempt to establish historical truth and clarify issues of moral and political responsibility.

> *I would ask…that in this transition from the People's Poland to the Third Republic, we do not create a grey sphere where the axiology is blurred, where we cannot distinguish what was right from what was wrong (Kuratowska 1992, 30)*

> *If we said that in the name of faked brotherhood, we relinquish any effort to asses [the totalitarian system], we would settle for falsehood and abandon a pretence of justice. [The Senate Lustration bill] introduces such an assessment in a historical perspective.*[71] *(Łoś 1995, 144)*

> *There are large numbers of people in Poland who will do anything to ensure that truth remains hidden… [The bill] aims to reveal the truth and expose reality. (Bohdanowicz 1992, 20)*

A common message addressed in the senate speeches is that lustration brings a clarification of values, an objective evaluation of the past, and a clear future warning. Without this law, senators have emphasized, that the people of Poland are going to live out a *lie* that was been created by the past regime and furthermore perpetuated by the present

[71] Senate, 1992, II: 18, at 30a

authorities. Without the system of lustration one cannot come to closure and the past is then perceived as the norm.

It is claimed by those in favor of this theme that a lack of lustration and decommunization reinforces the silence about communism and the moral responsibility of the citizens of the new republic to shine a light on truth of the past for the rest of world. But one must consider that there are also some who question the opening of the secret files and the re-construction of the past while considering this particular theme:

> *I refuse to see them as credible; they are written by my enemies with ill will and with the goal of destroying people and ideas that have been dear to me. I cannot agree that we are reconstructing the historical truth based on these files.*[72] *(Łoś 1995, 144)*

In regards to truth revelation the amount of individuals in Poland who have received negative lustrations was 85 out of 6,689 affidavits, all of which were filed with the Spokesperson of Public Interest. These 85 individuals had their cases taken to the lustration court and by 2001 the court ruled that only 18 people had submitted untruthful affidavits. Among the persons that lost their cases, there were 4 members of Parliament, 2 were high-level state officials and 12 were lawyers. Among the 6,689 persons that submitted their affidavits, 315 people revealed their past as collaborators with the security forces (*Wyciąg z informacji o działalności Rzecznika*, 2002).

In both of the systems we see a chance for an individual to clear their names in the courts. However, the greatest difference between the two systems, are the publics' right to the truth and the historical background information pertaining to each case. In Poland the cases are published in the Polish Monitor (*Polski Monitor*) but what is not included is the nature of the 'crime'. The gazette does not state whom the individual has worked with, whom they might have hurt, or even why they were considered a collaborator. The person being lustrated in Poland is also asked to give up information that might be crucial to other cases and for the sake of an objective history. Consequently, Poles are deprived of an opportunity to utilize the potential of the lustration bylaws in order to develop a more accurate history (David, 2003).

Furthermore, in contrast to Poland, the Czech Lustration Act allows for complete secrecy when it concerns lustrated individuals. The entire lustration process is kept secret; the lustration certificate is delivered to the person concerned and cannot be published

[72] Senate, 1992, II: 18, at 55a

without the persons consent. In the end, if there is a positive lustration the individual has to resign from their position without any public knowledge of their collaboration.

The reason for the drastic difference in the two systems is the Czech government's firm stance in protecting the guilty, at the expense of truth. It has been brought up many times in the Czech parliament to wave this existing notion. One famous example brought up in discussions was by Deputy Benda, who so eloquently stated that if he named a person who oppressed him and his family for ten years, he himself, instead of the secret agent, would go to jail for three years. If, however, Benda's information were to come up as untrue, he would then be charged by a different act and go to jail for up to one year[73]. This illustrates the potential injustices of the Czech Lustration Act and how absolute truth cannot be guaranteed due to the privacy clauses in the act itself.

Access to the secret archives also remains limited in both countries. Although in the Czech Republic, the Act on the Access to Files Created by Activity of the Former State Security[74] allows all individuals access to his or her files. According to a poll conducted by TNS Factum in 2001, 52% Czechs supported an idea to develop a bill that would allow for unlimited access into secret files (CTK 2001b). Approximately 55% of Poles believe they have the right to access their files, and 22% stated access should be provided only for those publicly accused, according to the CBOS poll conducted in January 1999.

Polish Lustration Act requires the past of the politician in question to be made public; however, the Czech Lustration Act does not require for the past information of its political candidates to be made public. Nevertheless, based on § 21 (2) of the act, political parties may require lustration of their candidates. There are some parties who use this provision in order to uphold a moral stance with the public, but the majority does not. Thus, the act does not insure the public that all political candidates are 'clean'. It has been rumored in the Czech Republic that several members of the Czech Parliament who were alleged to be secret police employees or collaborators. Deputy V. Filip and Deputy V. Exner were two political personalities to make the headlines when the Pod Bal group in 2000 held an exhibit by the name of *Malik urvi: Galerie etablovane nomenklatury*[75].

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[73] Benda, V. Speech to Federal Assembly. In Federal Assembly of CSFR 1991 [s017061/119.htm] & [s017076/119.htm]

[74] Act no. 140/1996 Sb. (*Zákon o zpřístupnění svazků vzniklých činností bývalé Státní bezpečnosti)*

[75] Literally translated as 'Little as Holes: The Gallery of the Established *Nomenklatura*. The title of the exhibition allows another interpretation: *Mali kurvi* (Little Assholes).

c) Theme: Personnel Discontinuity and Minimal Justice

Lustration is rarely seen as the panacea for a government that is transitioning from a portentous past and into a contemporary democratic state. It can rarely achieve full-scale 'historical' justice. Critics claim it does little for the victims and it does nothing to address the crimes, the abuses, and all the destruction that was brought upon by the old regime. The one outcome that this piece of legislation ensures is that it bars politicians who have been accused of committing crimes in the past regime from entering high political positions in the newly formed republic. A Polish Senate Resolution from the 17th of June 1992 makes this clear:

> *The Senate of the Polish Republic asserts that the need to remove the former functionaries and collaborators of the UB[76] and the SB[77] from important state posts and create the legal basis for barring them from such positions in the future – is a minimum postulate of justice and a condition for the secure development of democracy in Poland. [78] (Łoś 1995, appendix)*

In the Senate, out of the 100 specific speeches that were pro-lustration, 16 directly invoked a notion of justice:

> *We are fulfilling a rudimentary, minimum requirement for historical justice[79](Łoś 1995, 146).*

> *The nation has a right to demand that persons responsible for outrages against it will not perform public functions[80](Łoś 1995, 146).*

> *This is an act of social justice. They deemed it justified denuding the nation of all rights, and now, in the interest of the nation, we must limit the rights of some of them (Maliński 1992, 35*).

[76] UB - *Ministerstwo Bezpieczeństwa Publicznego,* Ministry of Public Security of Poland, was a Polish secret police, intelligence, and counter-espionage service
[77] SB - Służba Bezpieczeństwa (Security Service of the Ministry of Internal Affairs) – was the internal intelligence agency and secret police established in the People's Republic of Poland in 1956 (Piecuch, 1998).
[78] Senate, 1992, II: 5, appendix.
[79] Senate, 1992, II: 18, at 31
[80] Senate, 1992, II: 18, at 49a

There are also many other opinions that adhere to the justice theme; some of the supporters of this theme are romantically inclined to preach about the past as a reflection of the future. There is little practicality in this type of observation however it still has an effect on the proactive nature of the justice-based mentality. Paris-based monthly, *Kultura,* conveys the message and spirit of the justice discourse:

> *The total lack of account taking after the collapse of communism seems to suggest a deliberate trampling on the need for justice and the rule of law. There are former party fools and renowned journalists who consider this to be proof of the 'nation's wisdom'. There are also pragmatists who argue that everything will 'parch' with time, as a new generation is growing up unaware of the suffering of its grandparents. Both the former an the latter will one day discover (if they live long enough) that they were mistaken, intentionally or otherwise (Herling-Grudziński 1993, 17-18)*

Even if the justice theme does not call for punishment, and lustration measures are not in any way penal, the foundation of the act lies in retribution. The government that was formed after the fall of the old regime must not let persons that were found guilty of wrong doings benefit from the newly emerged society. These individuals need to be brought to justice, even if it is only to name names, publish events, and to bar for a period of time. It has been inferred that survival is key in politics, and some chose to join the regime of the past, and some showed restraint. The ones that chose restraint were also surviving, but survival of the fittest has many definitions, and when politics of the matter change, the game begins all over again.

The Ethics of Lustration Policy

There are two moral concerns associated with the post-communist revolution. The first being the inequality faced by the general public during the process of market restoration, and the second the ability to come to terms with the past. Both issues have been discussed in conjunction by scholar Gil Eyal who asserted that the restoration of the capitalist system in Czechoslovakia 'was accompanied by perverse rituals of sacrifice, purification and confession (Eyal, 2000)'. The transition in most other post-communist countries differed very little than the Czechoslovak version; some states just transitioned much later and with less ease. Many observers from various fields find it important to analyze and criticize the transitional processes, whether it be from communist to capitalist, anarchist to democratic, the political genus is not really the most critical point; what remains is the choices made by politicians during this period. When considering transitional justice, lustration tends to be the populist solution to pacify the near hysterical masses, however strong the opposition remains. Gil Eyal commented on lustration in the following way:

> Lustration referred at one and the same time to the purification of society by the sacrifice of its Communist 'scapegoat', and to the purification of the individual by penance and confession, which, when correctly rendered, could actually make them fit to fulfill public functions again. Thus confession, as in the inquisition, was not meant to establish guilt, but to save one's soul, to purify one. It had to be public, so as to dramatize the message of collective guilt. It was meant to produce effects on the other guilty individuals, the majority of ordinary people, who will be able to identify themselves with the negative hero of the confession drama, confess, at least to themselves, and receive absolution (Ibid, 2000, p.56).

This paper's main intention is to impart the reader with a clear difference between the processes and aims of lustration in Poland and the Czech Republic. More importantly, I aim to deduce whether one method is in fact "better" than the other, or more simply put, which is more just. The Czech lustration dilemma is presented by Eyal as a 'collective guilt,' which everyone, for the sake of change, must account for.

The law is seen by its' enforcers as a panacea for the ugly past of the communist regime; however, it is viewed by outsiders as a continuation of the old method of ousting simply practiced by new agents. As academic observers we must choose to look at the events of the past twenty years and come to a reasonable and objective conclusion, essentially one that rejects all emotion and political persuasion.

When comparing the two systems in Central Europe one can distinguish the vast differences in the execution of the process by both governments. In the Czech Republic we see a system that is based on eradicating all individuals that were active participants in the past regime. Its main purpose initially was to create a lustration act that would ensure the new republic that the communist regime would never return, and no other coup would be able to manifest itself; whereas the Polish system aims to publicly disclose truthful information by former participants. The Polish act really only specifies individuals who were active participants in the secret services, or in cooperation with the secret services in the Peoples Republic of Poland alone. The act gives these individuals a chance to confess any wrongdoings in the new system. If these individuals do confess to being active within the secret services they are able to continue with their careers and face no barring of employment if issued; however on the opposite end of the spectrum, if the individual is caught lying they are then barred from state employment for a minimum of 10 years.

The issues surrounding lustration and the philosophical implications that uphold the foundations of such systems must also be addressed. One can infer that the ethics of lustration are excessively subjective. Each of the countries presented in this paper have a very unique history of transition from the early nineteenth century semi-parliamentary system, to a fully developed Bolshevik Communist system. Poland which entered this new era from the resolutions drawn at the Yalta Conference (Topolski et al, 2001); and the Czech Republic, formerly Czechoslovakia, having a coup d'état by the Soviet backed Communist Party of Czechoslovakia (Saxonberg, 2001) began four decades of a one party reign and a cold war between the East and West.

When taking in consideration the channels that the Soviets used to infiltrate the Eastern European countries, and establishing satellite governments in the name of each Soviet leader, one must to distinguish Poland and the Czech Republic on many levels to fully understand the political aims of their respective lustration acts.

In 1948 the Czech Republic saw a coup d'état that was hailed as the *Victorious February*. Since 1948 the Communist Party of Czechoslovakia reigned as the supreme party and declared any other party as an opposition to socialist progress; i.e. enemy of the state. Which leads scholars to discuss the definition of what is technically a political party and what technically is not. It has been asserted by academics, including Roman David, that the communist parties in countries such as Poland and Czechoslovakia were technically not political parties at all in the western democratic sense of the term (Tucker, 1999). The term 'party' is derived from the Latin term *pars* that means a 'part', which gives the underlying understanding that there has to be at least another 'part', another party, or other 'parts' (David, 2004). In the case of Czechoslovakia we saw a system of absolute control by the Czechoslovak Communist Party (CPC), which had a monolithic organizational platform, did not allow opposition or free elections, and essentially was unconstitutional in the material sense: the constitution of a regime that grants monopolized power to a political party[81] is simply a façade of a totalitarian state. The CPC was eventually ousted after 1989 and the Czech House of Deputies in 1993 passed a very controversial act entitled, *Law on the Lawlessness of the Communist Regime*[82]; the act was later upheld by the Constitutional Court of the Czech Republic[83].

In the Czech Republic, its Communist past has now since been considered an illegal organization. Bearing this in mind, one must recognize two points when considering the Czech Lustration Act. One, the communist regime was deemed as illegal, and two, the Czech Lustration Act's main intention was to avoid another chance for the communist party to retake control through a coup. Because the laws that have been passed by the Czech Parliament it must be reconsidered how we, as individuals, need to view the ever-changing forces of politics. When considering the example of the French Revolution in 1789, one can soundly assert that this occurrence in history is deemed as the birth of democracy in the contemporary historical timeline. However, there is a difference between the French Revolution and other revolutions that have occurred since 1789. One must concur that Western scholars have placed the

[81] Ustava ČSSR, article 4: "The leading forces in society and in the state was the vanguard of the working class, the Communist Party of Czechoslovakia, a voluntary combat union of the most active and conscious citizens among workers, peasants, and intelligentsia."
[82] Act No. 198/1993 Sb.
[83] Pl. ÚS 19/93

French Revolution on a golden podium whereas the Bolshevik Revolution of 1917 has been filed away so as to not draw inspiration from.

Who is to say that the Communist Regimes of Eastern Europe came into the political arena with ill intentions? We can only safely affirm that latter actions of the communist leaders can be deemed illegal however the rise of the Communist State in 1948 is in my terms *natural* and *inevitable*, a component in the States' natural evolution.

History has shown us the influence of communism spreading East and West after the Bolshevik Revolution of 1917, much like the French Revolution of 1789 spread its philosophical ideals throughout the western world, which inspired the revolutions in countries like the United States, for instance. The actions of the agents of the revolution can be put on trial and later sentenced, but when European historical factors are taken into consideration one cannot reasonably decide the legality of a political uprising.

The Czech acts have also come into question when discussing the progress of democracy, such as in the case of *Linkov v. Czech Republic*, where the existence of a left leaning party's existence is infringed upon due to the political paranoia of communist infiltration. We have to question the validity and strength of the present political situation of a state, when its current members cannot even fathom an idea of having a democratically elected 'extremist' party sit side by side in parliament and participate in its daily functions.

In the case of Poland, the Lustration Act of 1992 dictates a truth-telling scheme, one that requires the utmost in candor and leaves the destiny of the candidate to the public to either forgive or forget. According to Thomas Nagel, a professor of philosophy and law at New York University, it is the difference between knowledge and *ac*knowledgment that counts. "It's what happens and can only happen to knowledge when it becomes officially sanctioned, when it is made part of the public cognitive scene (Weschler, 1990)." The Polish version of lustration policy has been labeled as a quasi-transitional justice process and a part truth-telling instrument. The intentions of the policy are very similar to other countries, but the process of lustrating is much different. Ethically speaking, in Poland prior to 2007 the Lustration Act covered individuals who were in high-ranking positions in government, thus anyone democratically elected or appointed. After 2007, when the act was rewritten and

approved by the *Sejm*, we saw a new addition to the lustration dilemma. Individuals who worked at public universities and other organizations of public nature would also be required to submit affidavits to the government for lustration. This deduces the notion of parameters, how far should the act extend itself, and how long should it be enforced. Surely we can say that eventually there will be no one to lustrate, due purely to the progression of time, therefore we can soundly say that there should be a limit as to who is to be lustrated.

The case of *Bobek v. Poland* has shown us the risks in eliminating certain civil rights for the sake of state security. Ms. Bobek had her rights infringed upon due purely to the prosecution's stance that state documents that contain her name are for the states eyes-only. Human rights issues arise when the authority of the state takes precedence over its citizen's rights. Civil liberties are one of the main debates in Polish politics when concerning lustration policy; the question of who will be next on the chopping block is a very sensitive issue for the country. Many individuals believe that every citizen should be lustrated, but there is still the rational approach that is pushed by the minority in society, and one of the more unpopular themes is amnesty. Amnesty has been an approach that has been pushed by many leftist parties; observers' criticize these organizations for their stance by accusing them of harboring individuals that hold information viable to the lustration process. On the other hand there are those who believe that setting up a sort of truth commission is the best approach. When considering a country like Poland, one would argue that a truth commission would just be an instrument of the ruling party by persuading the commissions for personal gains as it seen in several South American countries during the late 1990s.

In Poland the government never deemed its former communist regime as an illegal institution, nor did it prosecute its communist leaders in any way. The only parameter that stated in the Act was individuals who have been active with the secret service apparatuses of the PRL. These individuals are publicly disclosed as human rights violators. Poland has taken a stance and made it very clear that infringing on its citizens rights i.e. phone tapping, spying, manipulation of records, and torturing are the crimes that were committed during the communist regime and not necessarily perpetrated by the regime itself.

Conclusively, taking into account the current information on lustration in Poland and the Czech Republic, one can assume that the Polish system is a system of

remembrance and social retribution, while the Czech system is made up of broad assumptions that focus on collective guilt and populist pacification; yet both adhere to strict guidelines of transitional justice. The issue of ethics is quite important in this field of law and it can be assumed that such policies will never be fully ethical nor will they be able to appease everyone. What can be said is that the Polish system, comparatively speaking, has proven itself predating 2007 in being the more pragmatic of the two. The Czech system hardly left room for personal accountability and forgiveness; one can even infer that this drive for revenge was sparked during the Soviet occupation of Czechoslovakia in 1968 during Prague Spring. While in Poland the fight to end communism was considered to be a peaceful transition of protests and political negotiations. Alexander Dubček[84] had a vision of pacification in the Soviet Bloc by creating a "socialism with a human face[85]," little did he know it would spark a decade of bitterness and revenge.

[84] Leader of Czechoslovakia (1968-1969) during Prague Spring, famous for his attempt to reform the Communist regime.
[85] The Prague Spring, 1968, Library of Congress. 1985. Last Accessed: April12, 2010.

Conclusion

The systems of lustration in Poland and the Czech Republic have been through many different stages and have changed on various levels. It began with a period of unregulated law initiation (1989-98) and later the division of lustrating powers to between two different judicial bodies, and finally the Lustration Act, developed in the Czech Republic, to combat immediate repercussions after the fall of communism. The political parties that aimed to eliminate the system, including the unwillingness of then Prime Minister Włodzimierz Cimoszewicz to foster support, only succeeded in narrowing lustration policy in Poland.

Many established democracies have labor laws that are relatively similar to East-Central European lustration laws. Many states treat their public employment regulations differently from their private sector laws; even freedom of expression is hindered in many countries when state interests are at hand. The United States, France, and Germany impose regulations on their civil servants, including an oath of absolute loyalty to the present administration, candor and trustworthiness, as well as political neutrality. Based on the evidence provided in this paper, one can deduce that lustration laws are virtually on the same level as contemporary labor laws; however, in this case a civil servant's loyalty to a formerly oppressive regime is formally taken into consideration.

Many scholars compare the Polish system to other lustration systems in Europe, and conclude that in most cases the Polish system has been more just in facilitating a smoother democratic transition. Nevertheless, lustration laws are certainly not sufficient nor an ultimate solution to the neutralization of former regime networks or for democratic consolidation (David, 2001). Eyal was accurate in arguing that lustration was a device created for the manufacturing of a new society, however the open-ended course contradicts the redemptive, purifying qualities that most scholars attribute to lustration policies. Rather, lustration policy was a way to secure democracy by creating an atmosphere of apprehension for the very survival of democracy. Did the 400,000 Czech citizens, and more than 700,000 Polish citizens who were lustrated, prove to the current governments that the vetting procedures had secured and even furthered the democratic process? At no point – in 1991, 1995, or 2007 – did lustration advocates present hard evidence to confirm their assertions of the threat that was inevitably going to destroy the progress of democracy (Williams, 2003).

Furthermore the confidence people had in the lustration procedures have been put to many tests in its recent history, particularly when it was disclosed in 1998 that there was black market in fake certificates claiming the bearer had not worked for or with the StB (Mladá Fronta Dnes, 1998). In June 2001 it was shown that a report issued by the Interior Ministry of the Czech Republic had made errors in 117 cases which led to alarm and distrust within the public and more importantly within parliament. Trust between society and government is one of the key indicators of democratic health, up until this point the level of trust in Poland and the Czech Republic has been on a downward curve and furthermore the new 2007 Polish legislation have fostered even more hostility between the politicos and academics.

Conclusively I would like to affirm that the Polish system of lustration is one that fits into its own category. There is no other model that matches the Polish version; I would go as far as stating that the Polish model is not really a lustration in the greater sense of the term. The system stopped short of removing officials and collaborators of the communist era but rather opted to punish individuals who chose to declare false confessions. The country as a whole however has scored poorly in other transitional justice criteria's, including file access and court proceedings, both of which are equally as important to successful democratic progress as lustration is itself. It is commonly recognized that only Poles that were in some way wronged by the communist regime were granted access to their own files, and only a fraction of the secret archive has been made available to the public in both countries (Stan, 2006).

There are however positive sides to the system, the simple fact that the past is taken into account more often in the Polish model and there is an ensured hearing for the accused. It can be inferred that this type of system is not perfect on the whole, but it has shown positive strides in bringing together a divided country for a free and democratic discussion that sets the stage for the future development of the nation. The Czech policy might be more efficient in removing the old networks from their posts in comparison to the Polish policy, which only facilitated discontinuity with the past conditionally. The Polish lustration model, regulated by criminal procedures, is certainly more developed, and its concept of a second chance may be politically more acceptable in divided countries like the Czech one. Other countries in Eastern-Central Europe that have not developed a prolific body of legislation concerning lustration have recently started to. Countries like Macedonia, in 2010, have been hearing the lustration case in its Constitutional Courts to see the validity and necessity of such policy to take effect.

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Appendix I

(Polish Lustration Affidavit - English Translated Copy)

Affidavit establishing occupation or collaboration
within the Secret Service Apparatuses of the People's Republic of Poland
and/or collaboration within other security apparatuses from and/on the date of:
February 22, 1944 – May 10, 1990.[86]

Part A

I.....
(First and last name, Maiden name, Other names used in the years 1944-1990)

Son/Daughter of.....
(Full Name of Father)

Date of Birth/Place of Birth…….
(dd/mm/yyyy) (Place of birth, city/country)

Address…….
(Current address, addresses used between the years of 1944-1990, if needed use another sheet of paper)

Place of Hold……
(Name of Identity Document, your PESEL number)

I the undersigned,

Am taking full responsibility for making statements that are consistent with the full truth to my knowledge, after reading the Act of April 11, 1997 on disclosure of the work or service within the organs of state security and/or cooperation with them in the years of 1944-1990 as a person discharging public functions (DZ. U. z 1999 r. Nr. 42 Sec. 428). **I declare that I did not work**, I was not at the service, nor was I aware of any secret collaborators[87] at any stage of the secret service apparatus in the People's Republic of Poland between the years of 1944-1990 within the framework of art. 1, art. 2, art. 4, and 4a of the here mentioned Act.

…….
(Own-Handwritten Signature)

[86] Translation carried out by Maciej Chmielewski on October 30, 2009
[87] Important Underlying Factor – Please Underline

I…….
(First and last name, Maiden name, Other names used in the years 1944-1990)

Son/Daughter of……...
(Full Name of Father)

Date of Birth/Place of Birth…….
(dd/mm/yyyy) (Place of birth, city/country)

Address…….
(Current address, addresses used between the years of 1944-1990, if needed use another sheet of paper)

Place of Hold……
(Name of Identity Document, your PESEL number)

I the undersigned,

Am taking full responsibility for making statements that are consistent with the full truth to my knowledge, after reading the Act of April 11, 1997 on disclosure of the work or service within the organs of state security and/or cooperation with them in the years of 1944-1990 as a person discharging public functions (DZ. U. z 1999 r. Nr. 42 Sec. 428). **I declare that I did work**, I was in the service, I was aware of secret collaborators[88] at any stage of the secret service apparatus in the People's Republic of Poland between the years of 1944-1990 within the framework of art. 1, art. 2, art. 4, and 4a of the here mentioned Act.

…….
(Own-Handwritten Signature)

[88] Important Underlying Factor – Please Underline

Part B[89] (Top secret after completion)

Lp.	The security apparatus of the state as specified in art. 2 of the Act of April 11th 1997, description of type of collaboration/service/agent between the years of 1944-1990.	Function	Date of initiation and termination of work, service, and/or collaboration

Additional Comments/Explanations.....

……..

……..

…….

…….

…….
(Own-Handwritten Signature)

[89] This section to be filled out by persons who have admitted to working, collaborating, and/or being an agent of the security apparatus of the People's Republic of Poland between 1944-1990 as mentioned in the Lustration Act of April 11, 1997.

(Polish Lustration Affidavit - Polish Original Copy)

Część A

Ja ..... syn/córka .....
(imię i nazwisko, nazwisko rodowe, inne nazwiska używane w latach 1944-1990) (imię ojca)

urodzony/urodzona ..... zamieszkały/zamieszkała
(data i miejsce urodzenia)

..... legitymujący się/legitymująca się
(adres zamieszkania)

..... świadom/świadoma
(nazwa dokumentu stwierdzającego tożsamość, jego numer i numer PESEL)

odpowiedzialności za złożenie niezgodnego z prawdą oświadczenia, po zapoznaniu się z treścią ustawy z dnia 11 kwietnia 1997 r. o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne (Dz.U. z 1999 r. Nr 42, poz. 428), oświadczam, że nie pracowałem/nie pracowałam, nie pełniłem/nie pełniłam służby ani nie byłem/nie byłam świadomym i tajnym współpracownikiem* organów bezpieczeństwa państwa w rozumieniu art. 1, art. 2, art. 4 i art. 4a powołanej ustawy.

.....
(własnoręczny podpis)

Ja ..... syn/córka .....
(imię i nazwisko, nazwisko rodowe, inne nazwiska używane w latach 1944-1990) (imię ojca)

urodzony/urodzona ..... zamieszkały/zamieszkała
(data i miejsce urodzenia)

..... legitymujący się/legitymująca się
(adres zamieszkania)

..... świadom/świadoma
(nazwa dokumentu stwierdzającego tożsamość, jego numer i numer PESEL)

odpowiedzialności za złożenie niezgodnego z prawdą oświadczenia, po zapoznaniu się z treścią ustawy z dnia 11 kwietnia 1997 r. o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne (Dz.U. z 1999 r. Nr 42, poz. 428), oświadczam, że pracowałem/nie pracowałam, pełniłem/nie pełniłam służby ani byłem/nie byłam świadomym i tajnym współpracownikiem* organów bezpieczeństwa państwa w rozumieniu art. 1, art. 2, art. 4 i art. 4a powołanej ustawy.

.....
(własnoręczny podpis)

Część B* (tajne po wypełnieniu)

Lp.	Organ bezpieczeństwa państwa określony w art. 2 ustawy z dnia 11 kwietnia 1997 r. o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne	Funkcja	Data podjęcia i zakończenia pracy, służby lub współpracy

Dodatkowo wyjaśniam:…….....

……

……

……

.....

(własnoręczny podpis)

*) Wypełniają osoby, które oświadczyły, że służyły, pracowały lub współpracowały z organami bezpieczeństwa państwa, o których mowa w art. 2 ustawy z dnia 11 kwietnia 1997 r. o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne (Dz.U. z 1999 r. Nr 42, poz. 428).

Appendix II

(Czech Lustration Certificate Request Form - English Translated Copy)

STAMP
(200 Crown – Administrative Fee)

REQUEST

In the issue
pertaining to aquiring an lustration certificate within the framework of § 8 Act No. 451/1991 Sb.

Title, First Name, Surname: ……

Any previous Names and/or Surnames:

……..……..

Date of Birth: ……...

Place of Birth: ……..

Residential Phone Number: ……....

Residential Address: ……..

Zip Code: ……..……

è*This also declares that I am bearer of citizenship of the Czech Republic.*

Date: ……

……..
(Official Signature of the Applicant)

Application should be sent to:

Ministry of Interior, P.O. BOX 627, 170 00 Prague 7

(Czech Lustration Certificate Request Form - Czech Original Copy)

KOLEK
(200 Kč – správní poplatek)

o Ž Á D O S T
o vystavení
lustračního osvědčení ve smyslu § 8 zákona č. 451/1991 Sb.

titul, jméno, příjmení:

……

všechna dřívější jména a příjmení:

……..……..

datum narození: ……..

místo narození: ……..…….

rodné číslo: ……..

adresa bydliště:

…….

PSČ: …….…….

è *Tímto současně prohlašuji, že jsem nositelem státního občanství České republiky.*

datum: ……

……..
(úředně ověřený podpis žadatele)

Žádost zašlete na adresu:
Ministerstvo vnitra, P.O.BOX 627, 170 00 Praha 7

Appendix III

(Polish Lustration Act – Original Version)

Podstawa Prawna Działania Rzecznika Interesu Publicznego

Ustawa o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne.
Rozporządzenie w sprawie nadania statutu Biuru Rzecznika Interesu Publicznego.

Dz.U.99.42.428

1999-06-25 zm.wyn.z Dz.U.99.57.618 ogólne

1999-07-30 zm. Dz.U.99.63.701 art.1

1999-08-07 zm. Dz.U.99.62.681 art.2

2000-06-09 zm. Dz.U.00.43.488 art.4

2000-06-21 zm.wyn.z Dz.U.00.50.600 ogólne

2002-03-08 zm. Dz.U.02.14.128 art.1

2002-06-25 zm. Dz.U.02.14.128 art.1

2002-06-29 zm. Dz.U.02.74.676 art.184

2002-11-05 zm. Dz.U.02.175.1434 art.1

2003-03-14 zm.wyn.z Dz.U.03.44.390 ogólne

2003-06-04 zm. Dz.U.02.175.1434 art.1

2004-01-01 zm. Dz.U.02.153.1271 art.46

2004-03-01 zm. Dz.U.04.25.219 art.178

USTAWA
z dnia 11 kwietnia 1997 r.
o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne

Rozdział 1
Przepisy ogólne

Art. 1.
Sądem właściwym do orzekania o zgodności z prawdą oświadczeń dotyczących pracy lub służby w organach bezpieczeństwa państwa wymienionych w ustawie lub współpracy z tymi organami w okresie od dnia 22 lipca 1944 r. do dnia 10 maja 1990 r. jest Sąd Apelacyjny w Warszawie, zwany dalej „Sądem".

Art. 2.
1. Organami bezpieczeństwa państwa w rozumieniu ustawy są

1) Resort Bezpieczeństwa Publicznego Polskiego Komitetu Wyzwolenia Narodowego,
2) Ministerstwo Bezpieczeństwa Publicznego,
3) Komitet do Spraw Bezpieczeństwa Publicznego,
4) jednostki organizacyjne podległe organom, o których mowa w pkt 1-3,
5) instytucje centralne Służby Bezpieczeństwa Ministerstwa Spraw Wewnętrznych oraz podległe im jednostki terenowe w wojewódzkich, powiatowych i równorzędnych Komendach Milicji Obywatelskiej oraz w wojewódzkich, rejonowych i równorzędnych Urzędach Spraw Wewnętrznych,
6) Zwiad Wojsk Ochrony Pogranicza,
7) Zarząd Główny Służby Wewnętrznej jednostek wojskowych Ministerstwa Spraw Wewnętrznych oraz podległe mu komórki,
8) Informacja Wojskowa,
9) Wojskowa Służba Wewnętrzna,
10) Zarząd II Sztabu Generalnego Wojska Polskiego,
11) inne służby Sił Zbrojnych prowadzące działania operacyjno-rozpoznawcze lub dochodzeniowo-śledcze, w tym w rodzajach broni oraz w okręgach wojskowych.
2. Do organów bezpieczeństwa państwa w rozumieniu ustawy należą także organy i instytucje cywilne i wojskowe państw obcych o zadaniach podobnych do zadań organów, o których mowa w ust. 1.
3. Jednostkami Służby Bezpieczeństwa w rozumieniu ustawy są te jednostki Ministerstwa Spraw Wewnętrznych, które z mocy prawa podlegały rozwiązaniu w chwili zorganizowania Urzędu Ochrony Państwa, oraz te jednostki, które były ich poprzedniczkami.

Art. 3.
1. Osobami pełniącymi funkcje publiczne w rozumieniu ustawy są: Prezydent Rzeczypospolitej Polskiej, poseł, senator oraz osoba powołana, wybrana lub mianowana na określone w innych ustawach kierownicze stanowisko państwowe, przez Prezydenta Rzeczypospolitej Polskiej, Sejm, Prezydium Sejmu, Senat, Sejm i Senat, Marszałka Sejmu, Marszałka Senatu lub Prezesa Rady Ministrów, Szef Służby Cywilnej, dyrektor generalny w ministerstwie, urzędzie centralnym lub urzędzie wojewódzkim oraz sędzia, prokurator i adwokat, a także rektor, prorektor, kierownik podstawowej jednostki organizacyjnej w publicznej i niepublicznej szkole wyższej, członek Rady Głównej Szkolnictwa Wyższego i członek Państwowej Komisji Akredytacyjnej, członek Centralnej Komisji do Spraw Stopni i Tytułów.
2. Osobami pełniącymi funkcje publiczne w rozumieniu ustawy są również: członkowie rad nadzorczych, członkowie zarządów, dyrektorzy programów oraz dyrektorzy ośrodków regionalnych i agencji "Telewizji Polskiej - Spółka Akcyjna" i "Polskiego Radia - Spółka Akcyjna", dyrektor generalny Polskiej Agencji Prasowej, dyrektorzy biur, redaktorzy naczelni oraz kierownicy oddziałów regionalnych Polskiej Agencji Prasowej, prezes Polskiej Agencji Informacyjnej, wiceprezesi, członkowie zarządu oraz dyrektorzy - redaktorzy naczelni Polskiej Agencji Informacyjnej.

Art. 4.
1. Współpracą w rozumieniu ustawy jest świadoma i tajna współpraca z ogniwami operacyjnymi lub śledczymi organów bezpieczeństwa państwa w charakterze tajnego informatora lub pomocnika przy operacyjnym zdobywaniu informacji.
2. Współpracą w rozumieniu niniejszej ustawy nie jest działanie, którego obowiązek wynikał z ustawy obowiązującej w czasie tego działania.
[3. Współpracą w rozumieniu ustawy nie jest zbieranie lub przekazywanie informacji mieszczących się w zakresie zadań wywiadowczych,

kontrwywiadowczych i dla ochrony granic.]
(Ust. 3 niezgodny z Konstytucją - wyrok TK, Dz.U. z 2003 r. Nr 99, poz. 921.)
4. Współpracą w rozumieniu ustawy nie jest współdziałanie pozorne lub uchylanie się od dostarczenia informacji pomimo formalnego dopełnienia czynności lub procedur wymaganych przez organ bezpieczeństwa państwa oczekujący współpracy.

Art. 4a.
1. Służbą w rozumieniu ustawy nie jest pełnienie jej w jednostkach, o których mowa w art. 2 ust. 1, którego obowiązek wynikał z ustawy obowiązującej w tym czasie.
[2. Współpracą w rozumieniu ustawy nie jest działanie, które nie było wymierzone przeciwko kościołom lub innym związkom wyznaniowym, opozycji demokratycznej, niezależnym związkom zawodowym, suwerennościowym aspiracjom Narodu Polskiego.
3. Współpracą w rozumieniu ustawy nie jest działanie, które nie stwarzało zagrożenia dla wolności i praw człowieka i obywatela oraz dóbr osobistych innych osób.
4. Współpracą w rozumieniu ustawy nie jest zbieranie lub przekazywanie informacji mieszczących się w zakresie zadań wywiadu, kontrwywiadu i ochrony granic.
5. Współpracą w rozumieniu ustawy nie jest współdziałanie pozorne lub uchylanie się od dostarczenia informacji pomimo formalnego dopełnienia czynności lub procedur wymaganych przez organ bezpieczeństwa państwa oczekujący współpracy.]
(Ust. 2-5 w art. 4a niezgodne z Konstytucją - wyrok TK, Dz.U. z 2002 r. Nr 84, poz. 765.)

Art. 5. (skreślony).

Rozdział 2
Oświadczenia

Art. 6.
1. Obowiązek złożenia oświadczenia, dotyczącego pracy lub służby w organach bezpieczeństwa państwa lub współpracy z tymi organami w okresie od dnia 22 lipca 1944 r. do 10 maja 1990 r., zwanego dalej "oświadczeniem", mają osoby, o których mowa w art. 7.
2. Oświadczenia osób, o których mowa w art. 7, składane są w chwili wyrażenia zgody na kandydowanie lub zgody na objęcie funkcji.

Art. 7.
1. Oświadczenia składają:
1) kandydat na Prezydenta Rzeczypospolitej Polskiej - Państwowej Komisji Wyborczej,
2) kandydat na posła lub senatora - Państwowej Komisji Wyborczej za pośrednictwem okręgowej komisji wyborczej,
2a) kandydat na posła do Parlamentu Europejskiego - Państwowej Komisji Wyborczej za pośrednictwem okręgowej komisji wyborczej,
3) osoba desygnowana na stanowisko Prezesa Rady Ministrów - Prezydentowi Rzeczypospolitej Polskiej,
4) kandydat na kierownicze stanowisko państwowe, na które powołuje lub mianuje

Prezydent Rzeczypospolitej Polskiej lub Prezes Rady Ministrów - powołującemu lub mianującemu,
5) kandydat na kierownicze stanowisko państwowe, na które powołuje, wybiera lub mianuje Sejm, Prezydium Sejmu, Sejm i Senat lub Marszałek Sejmu - Marszałkowi Sejmu,
6) kandydat na kierownicze stanowisko państwowe, na które powołuje lub mianuje Senat lub Marszałek Senatu – Marszałkowi Senatu,
7) kandydat na stanowisko Szefa Służby Cywilnej lub dyrektora generalnego w ministerstwie, urzędzie centralnym lub urzędzie wojewódzkim - Prezesowi Rady Ministrów,
8) kandydat na stanowisko sędziego Trybunału Konstytucyjnego lub sędziego Trybunału Stanu - Marszałkowi Sejmu,
8a) osoba nie będąca sędzią, ubiegająca się o stanowisko sędziego Sądu Najwyższego – Pierwszemu Prezesowi Sądu Najwyższego,
8b) osoba niebędąca sędzią, ubiegająca się o stanowisko sędziego sądu administracyjnego - Prezesowi Naczelnego Sądu Administracyjnego,
9) osoba ubiegająca się o nominację sędziowską - ministrowi właściwemu do spraw sprawiedliwości,
10) osoba ubiegająca się o nominację prokuratorską - Prokuratorowi Generalnemu,
10a) osoba ubiegająca się o wpis na listę adwokatów - ministrowi właściwemu do spraw sprawiedliwości,
11) kandydaci na stanowiska w "Telewizji Polskiej - Spółka Akcyjna" oraz w "Polskim Radiu - Spółka Akcyjna" - Przewodniczącemu Krajowej Rady Radiofonii i Telewizji,
12) kandydaci na stanowiska w Polskiej Agencji Prasowej i Polskiej Agencji Informacyjnej - Prezesowi Rady Ministrów.

2. Oświadczeń nie składają osoby, które urodziły się po dniu 10 maja 1972 r.

2a. Złożenie oświadczenia powoduje wygaśnięcie obowiązku jego powtórnego złożenia w przypadku późniejszego kandydowania na funkcję publiczną, z którą związany jest obowiązek złożenia oświadczenia.

3. Tryb składania oświadczeń przez osoby, o których mowa w ust. 1 pkt 1-2a, określają przepisy odpowiednich ordynacji wyborczych.

4. Organy, którym składane są oświadczenia, przekazują je niezwłocznie, z zastrzeżeniem ust. 5, do Sądu celem rozpoznania w trybie określonym w rozdziale 4.

5. Oświadczenie kandydata na posła, senatora albo posła do Parlamentu Europejskiego przekazuje się do Sądu jedynie w przypadku, gdy zostanie on wybrany.

Art. 8.

Oświadczenie, o którym mowa w art. 6, może złożyć do Sądu również osoba, która przed dniem wejścia w życie ustawy pełniła funkcję publiczną, a która została publicznie pomówiona o fakt pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w okresie od dnia 22 lipca 1944 r. do dnia 10 maja 1990 r.

Art. 9.

Osoby składające oświadczenie, w zakresie jego treści, są zwolnione z mocy prawa z obowiązku zachowania tajemnicy państwowej i służbowej.

Art. 10.

Wzór oświadczenia stanowi załącznik do ustawy.

Art. 11.

1. Treść oświadczenia osoby, o której mowa w art. 7, stwierdzającego fakt jej pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi, w części A określonej wzorem stanowiącym załącznik do ustawy, podaje niezwłocznie do publicznej wiadomości w Dzienniku Urzędowym Rzeczypospolitej Polskiej "Monitor Polski" organ, któremu oświadczenie zostało złożone, z zastrzeżeniem ust. 2.
2. Treść oświadczenia kandydata na Prezydenta Rzeczypospolitej Polskiej, posła lub senatora albo posła do Parlamentu Europejskiego stwierdzającego fakt ich pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi, w części A określonej wzorem stanowiącym załącznik do ustawy, podaje się do publicznej wiadomości w obwieszczeniu wyborczym.
(art. 11 niezgodny z Konstytucją w zakresie, w jakim obejmuje tajemnicą i wyłącza z obowiązku publikacji zawarte w części B załącznika dane dotyczące funkcji i czasu jej pełnienia w organach bezpieczeństwa państwa; wyrok TK, Dz.U. z 2003 r. Nr 44, poz. 390)

Rozdział 3
Rzecznik Interesu Publicznego

Art. 12-16. (skreślone).

Art. 17.
1. Stroną reprezentującą interes publiczny w postępowaniu lustracyjnym jest Rzecznik Interesu Publicznego, zwany dalej „Rzecznikiem".
2. Rzecznika i jego zastępców powołuje i odwołuje Pierwszy Prezes Sądu Najwyższego.
3. Na stanowisko Rzecznika lub jego zastępcy może być powołany ten, kto łącznie spełnia następujące warunki:
1) spełnia warunki wymagane do zajmowania stanowiska sędziego,
2) wyróżnia się wiedzą prawniczą,
3) nie pracował w organach bezpieczeństwa państwa, nie pełnił w nich służby ani nie współpracował z nimi w okresie od dnia 22 lipca 1944 r. do dnia 10 maja 1990 r.,
4) nie jest tajnym współpracownikiem Agencji Bezpieczeństwa Wewnętrznego i Agencji Wywiadu lub Wojskowych Służb Informacyjnych.
4. W przypadku powołania na stanowisko Rzecznika lub jego zastępcy sędziego lub prokuratora, są oni delegowani do pełnienia tych funkcji przez organy właściwe według przepisów o ustroju sądów lub o prokuraturze.
5. Niezwłocznie po wyrażeniu zgody na powołanie kandydat na stanowisko Rzecznika lub jego zastępcy składa Pierwszemu Prezesowi Sądu Najwyższego oświadczenie; przepis art. 7 ust. 4 ma zastosowanie. W celu sprawdzenia warunku, o którym mowa w ust. 3 pkt 3, Pierwszy Prezes Sądu Najwyższego zasięga informacji organów, o których mowa w art. 17e.

Art. 17a.
Rzecznik i jego zastępcy w zakresie wykonywania swoich zadań podlegają tylko Konstytucji i ustawom.

Art. 17b.
1. Rzecznik i jego zastępcy nie mogą zajmować innego stanowiska, z wyjątkiem

stanowiska profesora szkoły wyższej, ani wykonywać innych zajęć zawodowych.
2. Rzecznik i jego zastępcy nie mogą należeć do partii politycznej, związku zawodowego ani prowadzić działalności publicznej nie dającej się pogodzić z godnością ich urzędu.

Art. 17c.
1. Kadencja Rzecznika i jego zastępców trwa 6 lat, licząc od dnia powołania; po upływie kadencji Rzecznik pełni swoje obowiązki do czasu powołania nowego Rzecznika.
2. Kadencja Rzecznika i jego zastępców ustaje z chwilą ich śmierci lub odwołania.
3. Pierwszy Prezes Sądu Najwyższego odwołuje Rzecznika lub jego zastępcę w przypadku:
1) zrzeczenia się stanowiska,
2)stwierdzenia prawomocnym orzeczeniem Sądu niezgodności z prawdą jego oświadczenia,
3)długotrwałej przeszkody uniemożliwiającej wykonywanie obowiązków związanych ze stanowiskiem,
4) skazania prawomocnym wyrokiem za przestępstwo.

Art. 17d.
1. Do zadań Rzecznika i jego zastępców należą w szczególności: 1) analiza oświadczeń wpływających do Sądu,
2) zbieranie informacji niezbędnych do prawidłowej oceny oświadczeń,
3) składanie wniosków do Sądu o wszczęcie postępowania lustracyjnego,
4) sygnalizowanie odpowiednim organom o niewywiązywaniu się organów pozasądowych z obowiązków nałożonych przez ustawę,
5) przedstawianie Prezydentowi Rzeczypospolitej Polskiej, Sejmowi, Senatowi, Prezesowi Rady Ministrów i Pierwszemu Prezesowi Sądu Najwyższego corocznej informacji o swojej działalności, wraz z wnioskami wynikającymi ze stanu przestrzegania przepisów niniejszej ustawy.
2. Rzecznik, w zakresie wykonywania zadań określonych w ust. 1 pkt 2, może żądać nadesłania lub przedstawienia akt oraz dokumentów i pisemnych wyjaśnień, a w razie potrzeby przesłuchiwać świadków, zasięgać opinii biegłych oraz dokonywać przeszukań; w tym zakresie, a także w zakresie zadań określonych w art. 17 ust. 1 do Rzecznika stosuje się odpowiednio przepisy Kodeksu postępowania karnego dotyczące prokuratora.

Art. 17da.
1. Analizy oświadczeń Rzecznik dokonuje z uwzględnieniem kolejności, według której zostały wymienione w art. 7 funkcje publiczne.
2. W uzasadnionych przypadkach Rzecznik może odstąpić od analizy oświadczeń według kolejności, o której mowa w ust. 1. O odstępstwach takich Rzecznik przekazuje informacje wraz z uzasadnieniem do Sądu.

Art. 17db.
1. W przypadku powstania wątpliwości co do zgodności oświadczenia z prawdą, Rzecznik informuje o tym osobę, na której ciążył obowiązek złożenia oświadczenia, a także informuje o możliwości złożenia wyjaśnień; z czynności złożenia wyjaśnień sporządza się protokół.

2. W terminie 6 miesięcy od dnia doręczenia informacji, o której mowa w ust. 1, Rzecznik składa wniosek do Sądu o wszczęcie postępowania lustracyjnego albo powiadamia osobę, na której ciążył obowiązek złożenia oświadczenia, o braku podstaw do złożenia takiego wniosku.
3. Powiadomienie, o którym mowa w ust. 2, nie stoi na przeszkodzie podjęciu postępowania w razie ujawnienia nowych dowodów. W przypadku podjęcia postępowania stosuje się przepisy ust. 1 i 2.

Art. 17e.
Rzecznik, jego zastępcy oraz upoważnieni pracownicy Biura Rzecznika Interesu Publicznego mają pełny dostęp do dokumentacji, ewidencji i pomocy informacyjnych, bez względu na formę ich utrwalenia, zgromadzonych lub wytworzonych do dnia 10 maja 1990 r. przez:
1) Ministra Obrony Narodowej, Ministra Spraw Wewnętrznych i Administracji, Ministra Sprawiedliwości oraz Ministra Spraw Zagranicznych, a także przez podległe, podporządkowane lub nadzorowane przez nich organy i jednostki organizacyjne,
2) Szefa Agencji Bezpieczeństwa Wewnętrznego i Szefa Agencji Wywiadu.

Art. 17f.
1. Rzecznik wykonuje swoje zadania przy pomocy Biura Rzecznika Interesu Publicznego, zwanego dalej "Biurem".
2. W Biurze mogą być zatrudnione wyłącznie osoby, które zostały dopuszczone do tajemnicy państwowej w rozumieniu przepisów wynikających z ustawy z dnia 22 stycznia 1999 r. o ochronie informacji niejawnych (Dz.U. Nr 11, poz. 95).
3. Do pracowników Biura stosuje się odpowiednio przepisy o pracownikach urzędów państwowych.
4. Organizację oraz zasady działania Biura określa statut nadany, w drodze rozporządzenia, przez Prezesa Rady Ministrów w uzgodnieniu z Pierwszym Prezesem Sądu Najwyższego.
5. Działalność Biura finansowana jest ze środków budżetowych Sądu Najwyższego.

Art. 17g.
W sprawach wynagrodzeń Rzecznika oraz jego zastępców stosuje się odpowiednio przepisy dotyczące wynagrodzenia sędziów Sądu Najwyższego.

Rozdział 4
Postępowanie lustracyjne

Art. 18. (skreślony).

Art. 18a.
1. Postępowanie lustracyjne wszczyna się na wniosek Rzecznika lub jego zastępcy, z zastrzeżeniem ust. 2, 3 i 4, po ustaleniu, że przedłożone materiały wskazują na możliwość złożenia niezgodnego z prawdą oświadczenia.
2. Postępowanie wobec Rzecznika i jego zastępców Sąd wszczyna z urzędu.
3. Sąd wszczyna postępowanie z urzędu w przypadku złożenia oświadczenia przez osobę wymienioną w art. 8, a także w innych szczególnie uzasadnionych

przypadkach.
4. Sąd wszczyna postępowanie również na wniosek osoby, która złożyła oświadczenia stwierdzające fakt jej pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi, a domaga się ustalenia, że jej praca, służba lub współpraca była wymuszona poprzez groźbę utraty życia lub zdrowia przez nią lub osoby dla niej najbliższe w rozumieniu przepisów Kodeksu karnego.
5. W przypadku rezygnacji osoby, która złożyła oświadczenie, z pełnienia funkcji publicznej lub kandydowania na taką funkcję albo odwołania jej z takiej funkcji, jeżeli nastąpiło to przed wszczęciem postępowania lustracyjnego, Rzecznik nie kieruje do Sądu wniosku o wszczęcie postępowania lustracyjnego. **[**W przypadku, jeżeli rezygnacja albo odwołanie nastąpiło po wszczęciu postępowania lustracyjnego, jednakże nie później niż do rozpoczęcia przewodu sądowego na pierwszej rozprawie głównej, Sąd umarza postępowanie lustracyjne.**]** W stosunku do osoby, wobec której Rzecznik nie skierował do Sądu wniosku o wszczęcie postępowania lustracyjnego albo Sąd umorzył postępowanie lustracyjne, nie stosuje się przepisu art. 7 ust. 2a.
(Zdanie drugie w ust. 5 niezgodne z Konstytucją - wyrok TK, Dz.U. z 2002 r. Nr 84, poz. 765.)

Art. 18b. (skreślony).

Art. 19.
W postępowaniu lustracyjnym, w tym odwoławczym oraz kasacyjnym, w zakresie nieuregulowanym przepisami niniejszej ustawy stosuje się odpowiednio przepisy Kodeksu postępowania karnego, z tym że wyłączenie jawności postępowania następuje również na żądanie osoby poddanej postępowaniu lustracyjnemu.

Art. 20.
Do osoby poddanej postępowaniu lustracyjnemu, zwanej dalej "osobą lustrowaną", mają zastosowanie przepisy dotyczące oskarżonego w postępowaniu karnym.

Art. 21.
1. W celu rozpatrzenia sprawy Prezes Sądu Apelacyjnego w Warszawie wyznacza rozprawę.
2. Sprawę rozpoznaje 3 sędziów z udziałem protokolanta.
3. Prezes Sądu Apelacyjnego w Warszawie może zarządzić rozpoznanie sprawy przez 3 sędziów sądu wojewódzkiego delegowanych do Sądu.
4. (skreślony).

Art. 22.
1. Postępowanie lustracyjne w pierwszej instancji kończy się wydaniem orzeczenia na piśmie. Do orzeczenia stosuje się odpowiednio przepisy dotyczące wyroku.
2. Sąd wydaje orzeczenie stwierdzające fakt złożenia przez osobę lustrowaną niezgodnego z prawdą oświadczenia lub stwierdzające, że oświadczenie było prawdziwe. Orzeczenia Sądu wymagają uzasadnienia.

3. W przypadku gdy w trakcie postępowania lustracyjnego zostanie stwierdzone, iż osoba lustrowana, podejmując pracę lub służbę w organach bezpieczeństwa państwa albo współpracę z nimi, działała pod przymusem w obawie utraty życia lub zdrowia przez nią lub przez osoby dla niej najbliższe w rozumieniu przepisów Kodeksu karnego, fakt ten podawany jest w orzeczeniu Sądu.
4. Prawomocne orzeczenie Sądu stwierdzające zgodność z prawdą oświadczenia osoby określonej w art. 8 podaje się do publicznej wiadomości na wniosek tej osoby, w trybie określonym w art. 28.

Art. 23.
1. Orzeczenie Sądu wraz z uzasadnieniem doręcza się niezwłocznie stronie.
2. W terminie 14 dni od dnia otrzymania orzeczenia stronie przysługuje prawo złożenia odwołania, w którym może ona również złożyć wnioski dowodowe.

Art. 24.
1. Sąd rozpoznaje odwołanie w składzie 3 sędziów, z wyłączeniem tych sędziów, którzy uczestniczyli w wydaniu orzeczenia w pierwszej instancji. W składzie tym zasiada co najmniej 2 sędziów sądu apelacyjnego, w tym przewodniczący.
2. Odwołanie rozpoznaje się na rozprawie.
3. Sąd wyznacza termin rozprawy nie później niż na 30 dzień od dnia otrzymania odwołania.
4. Orzeczenie Sądu wydane w drugiej instancji jest prawomocne.
5. Od orzeczenia Sądu wydanego w drugiej instancji przysługuje kasacja. Kasacja wniesiona przez Rzecznika jest zwolniona od opłaty.
6. Sąd Najwyższy rozpoznaje kasację w terminie 3 miesięcy od daty jej wniesienia.

Art. 25. (skreślony).

Art. 26.
Po otrzymaniu od Państwowej Komisji Wyborczej oświadczenia kandydata na Prezydenta Rzeczypospolitej Polskiej lub informacji, o której mowa w art. 40b ust. 2 ustawy z dnia 27 września 1990 r. o wyborze Prezydenta Rzeczypospolitej Polskiej (Dz.U. Nr 67, poz. 398 i Nr 79, poz. 465, z 1993 r. Nr 45, poz. 205, z 1995 r. Nr 95, poz. 472, z 1997 r. Nr 70, poz. 443 i Nr 121, poz. 770, z 1999 r. Nr 57, poz. 618 i Nr 62, poz. 681 oraz z 2000 r. Nr 43, poz. 488), Sąd wydaje orzeczenie w pierwszej instancji w terminie 21 dni, a w drugiej instancji w terminie 14 dni. Orzeczenie Sądu niezwłocznie doręcza się Państwowej Komisji Wyborczej.

Art. 27.
1. Do wznowienia postępowania lustracyjnego, w zakresie nie uregulowanym przepisami
niniejszej ustawy, stosuje się odpowiednio przepisy Kodeksu postępowania karnego.
2. Postępowanie lustracyjne zakończone prawomocnym orzeczeniem wznawia

się, jeżeli:
1) w związku z postępowaniem dopuszczono się przestępstwa, które zostało stwierdzone prawomocnym wyrokiem, a istnieje uzasadniona podstawa do przyjęcia, że przestępstwo to mogło mieć wpływ na treść orzeczenia,
2) po wydaniu orzeczenia ujawnią się nowe fakty lub dowody nieznane przedtem sądowi, wskazujące na to, że:
a) osoba lustrowana w oświadczeniu podała prawdę a została błędnie uznana za oświadczającą nieprawdę,
[b) osoba lustrowana w oświadczeniu podała nieprawdę, a została błędnie uznana za oświadczającą prawdę.]
2a. Postępowania lustracyjnego nie wznawia się, z przyczyn, o których mowa w ust. 2 pkt 2 lit. b), po upływie 10 lat od dnia uprawomocnienia się orzeczenia.
3. Postępowanie lustracyjne może być wznowione z urzędu, na wniosek osoby, w sprawie której wydano prawomocne orzeczenie, Rzecznika lub Prezesa Sądu Apelacyjnego w Warszawie.
4. W razie śmierci osoby, w sprawie której wydano prawomocne orzeczenie, wniosek o wznowienie postępowania lustracyjnego na jej korzyść może także złożyć jej krewny w linii prostej, przysposabiający lub przysposobiony, rodzeństwo oraz małżonek.

Art. 28.
Prawomocne orzeczenie Sądu stwierdzające niezgodność z prawdą oświadczenia osoby lustrowanej podaje się niezwłocznie do publicznej wiadomości w Dzienniku Urzędowym Rzeczypospolitej Polskiej „Monitor Polski" w przypadku, gdy:
1) nie wniesiono kasacji w terminie przewidzianym dla stron,
2) kasację pozostawiono bez rozpoznania,
3) kasację oddalono.

Art. 29. (skreślony).

Art. 30.
1.Prawomocne orzeczenie Sądu, stwierdzające fakt złożenia przez osobę lustrowaną niezgodnego z prawdą oświadczenia, jest równoznaczne z utratą kwalifikacji moralnych niezbędnych do zajmowania funkcji publicznych określanych w odpowiednich ustawach jako: nieskazitelność charakteru, nieposzlakowana opinia, nienaganna opinia, dobra opinia obywatelska bądź przestrzeganie podstawowych zasad moralnych. Po upływie 10 lat od dnia uprawomocnienia, orzeczenie Sądu uznaje się za niebyłe.
2. Prawomocne orzeczenie Sądu stwierdzające fakt złożenia przez osobę lustrowaną niezgodnego z prawdą oświadczenia powoduje utratę zajmowanego stanowiska lub funkcji, do których pełnienia wymagane są cechy określone w ust. 1; nie dotyczy to sędziów, którzy w tym zakresie podlegają sądownictwu dyscyplinarnemu.
3. Prawomocne orzeczenie Sądu stwierdzające fakt złożenia przez osobę lustrowaną niezgodnego z prawdą oświadczenia powoduje pozbawienie jej na lat 10 biernego prawa wyborczego na urząd Prezydenta.
4. Skutki opisane w ust. 1-3 zachodzą w przypadku, gdy:
1) nie wniesiono kasacji w terminie przewidzianym dla stron,
2) kasację pozostawiono bez rozpoznania,
3) kasację oddalono.

Art. 31.
1. Minister właściwy do spraw obrony narodowej, minister właściwy do spraw wewnętrznych, minister właściwy do spraw sprawiedliwości, minister właściwy do spraw zagranicznych, Prezes Instytutu Pamięci Narodowej - Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, Szef Agencji Bezpieczeństwa Wewnętrznego oraz Szef Agencji Wywiadu udzielą Sądowi i Rzecznikowi pomocy w realizacji ich zadań. W szczególności obowiązani są na żądanie Sądu lub Rzecznika udostępnić im wszelkie, łącznie z zawierającymi tajemnicę państwową, materiały operacyjne i archiwalne, a także inne dokumenty niezbędne do przeprowadzenia dowodów w związku z wykonywaniem ich zadań określonych w ustawie.
2. Na żądanie Sądu lub Rzecznika organy wymienione w ust. 1 zwolnią z obowiązku zachowania tajemnicy państwowej podległych im funkcjonariuszy, żołnierzy, pracowników oraz inne osoby obowiązane do jej zachowania, umożliwiając przesłuchanie ich w charakterze świadków lub biegłych.
3. Instytucje i organy państwowe obowiązane są na żądanie Sądu lub Rzecznika udzielić niezbędnej pomocy w związku z wykonywaniem ich zadań określonych w ustawie. Jeżeli instytucje i organy państwowe dysponują materiałami, które według ich oceny mogą mieć istotne znaczenie dowodowe w związku z wykonywanymi przez Sąd lub Rzecznika zadaniami, mają obowiązek poinformować ich o tym oraz niezwłocznie udostępnić im te materiały.
4. Inni niż wymienieni w ust. 1 i 3 dysponenci dokumentów bądź informacji, określonych w tych przepisach, obowiązani są do powiadomienia o fakcie ich posiadania Sądu lub Rzecznika oraz do udostępnienia im tych dokumentów, materiałów bądź informacji.

Art. 32.
Prezes Sądu Apelacyjnego w Warszawie i Rzecznik uzgadniają z ministrem właściwym do spraw obrony narodowej, ministrem właściwym do spraw wewnętrznych, ministrem właściwym do spraw sprawiedliwości, ministrem właściwym do spraw zagranicznych, Szefem Agencji Bezpieczeństwa Wewnętrznego, Szefem Agencji Wywiadu, Prezesem Instytutu Pamięci Narodowej - Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu oraz Naczelnym Dyrektorem Archiwów Państwowych szczegółowy tryb udostępniania materiałów lub dokumentów, o których mowa w art.
31 ust. 1.

Art. 33.
1. W razie potrzeby Sąd, Rzecznik i jego zastępcy oraz w zakresie określonym przez Rzecznika, upoważnieni pracownicy Biura mają prawo, także z udziałem biegłych, wstępu do tych pomieszczeń organów wymienionych w art. 31, w których materiały lub dokumenty, określone w powołanym przepisie, są przechowywane bądź archiwizowane.
2. Biegłych powołanych przez Sąd lub Rzecznika dopuszcza się do tajemnicy państwowej, w rozumieniu przepisów wynikających z ustawy z dnia 22 stycznia 1999 r. o ochronie informacji niejawnych.

Rozdział 5

Zmiany w przepisach obowiązujących

Art. 34. (skreślony).

Rozdział 6
Przepisy przejściowe i końcowe

Art. 35-39. (pominięte).

Art. 40.
1. Obowiązek złożenia oświadczenia, o którym mowa w art. 6, mają również osoby pełniące w dniu wejścia w życie ustawy funkcje publiczne; przepis art. 7 ust. 2 stosuje się odpowiednio.
2. (skreślony).
3. Sąd podaje do wiadomości publicznej w Dzienniku Urzędowym Rzeczypospolitej Polskiej "Monitor Polski" treść oświadczenia osoby, o której mowa w ust. 1, stwierdzającego fakt jej pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi, w części A określonej wzorem stanowiącym załącznik do ustawy.
(ust. 3 w art. 40 nie zgodny z Konstytucją w zakresie, w jakim obejmuje tajemnicą i wyłącza z obowiązku publikacji zawarte w części B załącznika dane dotyczące funkcji i czasu jej pełnienia w organach bezpieczeństwa państwa; wyrok TK, Dz.U. z 2003 r. Nr 44, poz. 390)
4. Postępowanie w stosunku do osoby, o której mowa w ust. 1, przeprowadza się na zasadach i w trybie przewidzianym w niniejszej ustawie.
(wyrok TK - Dz.U. 2000 r. Nr 50, poz. 600 - ad. ust. 1 i 4, które są niezgodne z Konstytucją w zakresie, w jakim dotyczą osób, które zgodnie z art. 29 i w czasie jego obowiązywania zrezygnowały z pełnienia funkcji publicznej lub kandydowania na taką funkcję albo odwołane zostały z takiej funkcji)

Art. 41. (skreślony).

Art. 42. (skreślony).

Art. 43.
Ustawa wchodzi w życie po upływie 30 dni od dnia ogłoszenia.

Załącznik do ustawy z dnia 11 kwietnia 1997 r.

Appendix IV

(Czech Lustration Act of 1991 –Original Version)

451/1991 Sb. stanovení některých předpokladů pro výkon funkcí ve st. orgánech

§ 1

(1) Tento zákon stanoví některé další předpoklady pro výkon funkcí obsazovaných volbou, jmenováním nebo ustanovováním
a) v orgánech státních správy České a Slovenské Federativní Republiky, České republiky a Slovenské republiky,
b) v Československé armádě,
c) ve Federální bezpečnostní informační službě, Federálním policejním sboru, Sboru hradní policie,
d) v Kanceláři prezidenta České a Slovenské Federativní Republiky, Kanceláři Federálního shromáždění, Kanceláři České národní rady, Kanceláři Slovenské národní rady, Úřadu vlády České a Slovenské Federativní Republiky, Úřadu vlády České republiky, Úřadu vlády Slovenské republiky, Kanceláři Ústavního soudu České a Slovenské Federativní Republiky, Kanceláři Ústavního soudu České republiky, Kanceláři Ústavního soudu Slovenské republiky, Kanceláři Nejvyššího soudu České a Slovenské Federativní Republiky, Kanceláři Nejvyššího soudu České republiky, Kanceláři Nejvyššího soudu Slovenské republiky, v prezídiu Československé akademie věd a v předsednictvu Slovenské akademie věd, a u Nejvyššího správního soudu,
e) v Československém rozhlase, Českém rozhlase, Slovenském rozhlase, Československé televizi, České televizi, Slovenské televizi, Československé tiskové kanceláři, Československé tiskové kanceláři České republiky a Československé tiskové kanceláři Slovenské republiky,
f) ve státních podnicích, státních organizacích, akciových společnostech, kde většinovým akcionářem je stát, v podnicích zahraničního obchodu, ve státní organizaci Československé státní dráhy, státních fondech, ve státních peněžních ústavech a Státní bance československé,
g) v úřadech územních samosprávných celků,
pokud se dále nestanoví jinak.
(2) Funkcemi podle § 1 odst. 1 písm. b) se rozumí v Československé armádě a na federálním ministerstvu obrany funkce s plánovanou hodností plukovník a generál a funkce vojenských přidělenců.
(3) Funkcemi podle § 1 odst. 1 písm. f) se rozumí funkce vedoucího organizace a vedoucích pracovníků v jeho přímé řídící působnosti. Na vysokých školách a na veřejných vysokých školách[5)] se těmito funkcemi rozumějí rovněž funkce volených akademických funkcionářů a funkce schvalované akademickým senátem vysoké školy a fakulty. Funkcemi podle odstavce 1 písm. g) se rozumí funkce vedoucího úřadu a vedoucích úředníků.
(4) Tento zákon stanoví též některé další předpoklady pro výkon funkce soudce, přísedícího, prokurátora, vyšetřovatele prokuratury, státního notáře, státního arbitra a pro osoby vykonávající činnost justičního čekatele, právního čekatele prokuratury, notářského čekatele a arbitrážního čekatele.

(5) Tento zákon stanoví též podmínky spolehlivosti pro možnost provozování některých koncesovaných živností. [1)]

1) § 27 odst. 2 zákona č. 455/1991 Sb., o živnostenském podnikání (živnostenský zákon), a příloha č. 3 tohoto zákona.
2) § 16 odst. 1 písm. c) zákona č. 334/1991 Sb.l, o služebním poměru policistů zařazených ve Federálním policejním sboru a Sboru hradní policie.
3) § 59 odst. 2 až 4 zákoníku práce.
5) Zákon č. 111/1998 Sb., o vysokých školách a o změně a doplnění dalších zákonů (zákon o vysokých školách), ve znění pozdějších předpisů.

§ 2

(1) Předpokladem pro výkon funkce uvedené v § 1 je, že občan v období od 25. 2. 1948 do 17. 11. 1989 nebyl
a) příslušníkem Sboru národní bezpečnosti zařazeným ve složce Státní bezpečnosti,
b) evidován v materiálech Státní bezpečnosti jako rezident, agent, držitel propůjčeného bytu, držitel konspiračního bytu, informátor nebo ideový spolupracovník Státní bezpečnosti,
c) (ztratilo účinnost)
d) tajemníkem orgánu Komunistické strany Československa nebo Komunistické strany Slovenska od stupně okresního nebo jemu na roveň postaveného výboru výše, členem předsednictva těchto výborů, členem ústředního výboru Komunistické strany Československa nebo ústředního výboru Komunistické strany Slovenska, členem Byra pro řízení stranické práce v českých zemích nebo členem Výboru pro řízení stranické práce v českých zemích, s výjimkou těch, kteří tyto funkce zastávali pouze v období od 1. 1. 1968 do 1. 5. 1969,
e) pracovníkem aparátu orgánů uvedených pod písmenem d) na úseku politického řízení Sboru národní bezpečnosti,
f) příslušníkem Lidových milicí,
g) členem akčního výboru Národní fronty po 25. 2. 1948, prověrkových komisí po 25. 2. 1948 nebo prověrkových a normalizačních komisí po 21. 8. 1968,
h) studentem na Vysoké škole Felixe Edmundoviče Dzeržinského při Radě ministrů Svazu sovětských socialistických republik pro příslušníky Státní bezpečnosti. Vysoké škole ministerstva vnitra Svazu sovětských socialistických republik pro příslušníky Veřejné bezpečnosti, Vyšší politické škole ministerstva Svazu sovětských socialistických republik nebo vědeckým aspirantem anebo účastníkem kursů delších než 3 měsíce na těchto školách.
(2) ztratil účinnost
(3) ztratil účinnost

§ 3

(1) Předpokladem pro výkon funkcí podle § 1 ve federálním ministerstvu vnitra, Federální bezpečnostní informační službě, ve Federálním policejním sboru a Sboru hradní policie je, že občan v období od 25. 2. 1948 do 17. 11. 1989 nebyl
a) příslušníkem Sboru národní bezpečnosti zařazeným ve složce Státní bezpečnosti na úseku s kontrarozvědným zaměřením,
b) zařazen na funkci náčelníka odboru a vyšší ve složce Státní bezpečnosti,
c) studentem na Vysoké škole Felixe Edmundoviče Dzeržinského při Radě ministrů Svazu sovětských socialistických republik pro příslušníky Státní bezpečnosti, Vysoké škole ministerstva vnitra Svazu sovětských socialistických republik pro příslušníky Veřejné bezpečnosti, Vyšší politické škole ministerstva vnitra Svazu sovětských

socialistických republik nebo vědeckým aspirantem anebo účastníkem kursů delších než 3 měsíce na těchto školách,
d) ve Sboru národní bezpečnosti ve funkci tajemníka hlavního výboru Komunistické strany Československa nebo hlavního výboru Komunistické strany Slovenska, členem hlavního výboru Komunistické strany Československa nebo hlavního výboru Komunistické strany Slovenska, členem celoútvarového výboru Komunistické strany Československa anebo celoútvarového výboru Komunistické strany Slovenska nebo příslušníkem Sboru národní bezpečnosti zařazeným ve Správě pro politickovýchovnou, vzdělávací, kulturní a propagační činnost federálního ministerstva vnitra,
e) osobou uvedenou v § 2 odst. 1 písm. b) až g).
(2) ztratil účinnost

§ 4

(1) Skutečnosti uvedené v § 2 odst. 1 písm. a) a b) dokládá občan osvědčením vydaným federálním ministerstvem vnitra.
(2) ztratil účinnost
(3) Skutečnosti uvedené v § 2 odst. 1 písm. d) až h) dokládá občan čestným prohlášením.
(4) ztratil účinnost

§ 5

Občan, který má vykonávat funkci v orgánu nebo organizaci uvedených v § 1, předkládá osvědčení, čestné prohlášení, popřípadě nález vedoucímu tohoto orgánu nebo organizace. O vydání osvědčení žádá federální ministerstvo vnitra občan, pokud dále není uvedeno jinak.

§ 6

(1) Namísto občana, který má vykonávat funkci uvedenou v § 1, nebo občana, který takovou funkci ke dni účinnosti tohoto zákona vykonává, žádá federální ministerstvo vnitra o vydávání osvědčení,
a) jde-li o občana, který je do funkce volen, ten orgán, jemuž tato volba přísluší,
b) jde-li o občana, který je do funkce jmenován, ten orgán, jemuž jmenování občana do této funkce přísluší,
c) jde-li o občana, který je do funkce ustanoven, ten orgán, jemuž toto ustanovování přísluší.
Vedoucí orgánu nebo organizace zároveň tohoto občana upozorní, že je mu povinen předložit osvědčení do 30 dnů po jeho doručení.
(2) Žádost o vydání osvědčení namísto občana, který ke dni účinnosti tohoto zákona vykonává funkci uvedenou v § 1, musí být zaslána federálnímu ministerstvu vnitra nejpozději do 30 dnů ode dne účinnosti tohoto zákona.
(3) Federální ministerstvo vnitra zašle osvědčení občanu, jehož se týká, nejpozději do 60 dnů ode dne doručení žádosti a současně o zaslání tohoto osvědčení vyrozumí toho, kdo o vydání osvědčení požádal.
(4) Jestliže občan, který ke dni účinnosti tohoto zákona vykonává funkci uvedenou v § 1, nepředloží osvědčení vedoucímu orgánu nebo organizace do 30 dnů po jeho obdržení, požádá vedoucí orgánu nebo organizace do sedmi dnů federální ministerstvo vnitra o zaslání opisu osvědčení.

§ 7

Prezident České a Slovenské Federativní Republiky, předsednictvo Federálního shromáždění, předsednictvo České národní rady, předsednictvo Slovenské národní rady, vláda České a Slovenské Federativní Republiky, vláda České republiky a vláda Slovenské republiky, generální prokurátor České a Slovenské Federativní Republiky, generální prokurátor České republiky a generální prokurátor Slovenské republiky požádají federální ministerstvo vnitra o vydání osvědčení o osobách v souvislosti s výkonem funkcí zakládaných jmenováním, u kterých jim toto právo přísluší podle zvláštních předpisů. Federální ministerstvo vnitra je povinno této žádosti neprodleně vyhovět.

§ 8

(1) Každý občan starší 18 let má právo si požádat federální ministerstvo vnitra o vydání osvědčení podle § 2 odst.odst. 1 písm. a), b) a c), popřípadě i nálezu podle § 13.
(2) Žádost o vydání osvědčení musí být opatřena kolkovou známkou v hodnotě 200 Kčs a úředně ověřeným podpisem žadatele.

§ 9

(1) Osvědčení vydává federální ministerstvo vnitra a doručuje je občanovi do vlastních rukou; to neplatí, vydává-li osvědčení podle § 7.
(2) Jsou-li podklady pro vydání osvědčení v držení jiného státního orgánu, je tento orgán povinen na žádost federálního ministerstva vnitra poskytnout do sedmi dnů tomuto ministerstvu veškeré podklady a další informace potřebné pro vydání osvědčení.

§ 10

Osvědčení, nález a údaje v nich uvedené nejsou pro účely tohoto zákona a pro účely soudního řízení utajovanými informacemi.

§ 11

ztratil účinnost

§ 12

ztratil účinnost

§ 13

ztratil účinnost

§ 14

(1) Nesplňuje-li občan pro výkon funkce předpoklady uvedené v § 2, skončí pracovní poměr výpovědí danou organizací nejpozději do 15 dnů ode dne, kdy se organizace o tom dozvěděla, pokud nedojde ke skončení pracovního poměru dohodou nebo jiným způsobem v dřívějším termínu, nebo nedojde-li k zařazení občana na jinou funkci, než která je uvedená v § 1.
(2) Ustanovení odstavce 1 platí obdobně pro skončení služebního poměru propuštěním, [2)] pokud občan nesplňuje pro výkon funkce předpoklady uvedené v § 3.
(3) Odmítl-li občan učinit čestné prohlášení o skutečnostech uvedených v § 2 odst. 1 písm. d) až h), nebo je-li čestné prohlášení nepravdivé, postupuje se podle odstavce 1 nebo 2.

2) § 16 odst. 1 písm. c) zákona č. 334/1991 Sb.l, o služebním poměru policistů zařazených ve Federálním policejním sboru a Sboru hradní policie.
4) Zákon č. 83/1990 Sb. o sdružování občanů, ve znění zákona č. 300/1990 Sb.

§ 15

Nesplňuje-li prokurátor nebo vyšetřovatel prokuratury pro výkon funkce předpoklady uvedené v § 2, je tato skutečnost důvodem pro skončení jeho pracovního poměru.

§ 16

Za podmínek uvedených v § 14 odst. 1 podá příslušný orgán návrh na odvolání soudce nebo přísedícího z jeho funkce.

§ 17

Na skončení pracovního poměru podle § 14 a 15 se nevztahují ustanovení zákoníku práce o možnosti organizace dát výpověď jen s předchozím souhlasem příslušného odborového orgánu. [3)]
3) § 59 odst. 2 až 4 zákoníku práce.
5) Zákon č. 111/1998 Sb., o vysokých školách a o změně a doplnění dalších zákonů (zákon o vysokých školách), ve znění pozdějších předpisů.

§ 18

(1) ztratil účinnost
(2) Neplatnost skončení pracovního nebo služebního poměru může občan uplatnit u soudu nejpozději ve lhůtě dvou měsíců ode dne, kdy měl pracovní nebo služební poměr skončit. K řízení je příslušný krajský soud podle místa trvalého pobytu občana, a to jako soud prvního stupně.

§ 19

Zveřejňování skutečností uvedených v osvědčení nebo v nálezu nebo zveřejňování osvědčení nebo nálezu samotného, jakož i zveřejňování jakýchkoli podkladů k jejich vypracování, je bez předchozího písemného souhlasu občana zakázáno.

§ 20

Ustanovení § 1 až 3 se nevztahuje na občany narozené po 1. prosinci 1971. Po těchto občanech se nevyžaduje osvědčení ani čestné prohlášení podle § 4 tohoto zákona.

§ 21

(1) Vydavatelé periodického tisku a provozovatelé rozhlasového a televizního vysílání, agenturního zpravodajství a audiovizuálních pořadů na základě uděleného oprávnění (licence) mohou sami za sebe nebo po předchozím písemném souhlasu za pracovníka, kterého zaměstnávají a který se podílí na tvorbě myšlenkového obsahu uvedených sdělovacích prostředků, požádat federální ministerstvo vnitra o vydání osvědčení nebo komisi o vydání nálezu; ustanovení § 6 odst. 3, § 9 odst. 1, § 10, 12, 13, § 18 až § 20 tohoto zákona platí pro tyto případy obdobně.
(2) Předsedové nebo jim na roveň postavení představitelé politických stran, politických hnutí a sdružení [4)] mohou za sebe nebo za člena vedení politické strany, politického hnutí nebo sdružení požádat po jeho předchozím písemném souhlasu federální ministerstvo vnitra o vydání osvědčení nebo komisi ustanovenou podle § 11 o vydání nálezu. Ustanovení uvedená v odstavci 1 platí pro tyto vztahy obdobně.
4) Zákon č. 83/1990 Sb. o sdružování občanů, ve znění zákona č. 300/1990 Sb.

§ 22

(1) Zmocní-li zákony národních rad ministry vnitra a ministry spravedlnosti České republiky a Slovenské republiky ke zjišťování skutečností uvedených v § 2 odst. 1, jsou federální ministerstvo vnitra a komise povinny vyhovět jejich žádostem o vydání osvědčení nebo nálezu.

(2) Způsob ukončení služebního poměru příslušníků Vězeňské služby České republiky a Sboru vězeňské a justiční stráže Slovenské republiky a policistů zařazených v Policii České republiky a Policejním sboru Slovenské republiky stanoví zákony národních rad.

§ 23

Tento zákon nabývá účinnosti dnem vyhlášení.

(Czech Lustration Act of 1991 – English Version)

Act No. 451/1991 Sb. of 4th October 1991

by which several further conditions of service are determined for several posts in state bodies and organizations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic.

The Federal Parliament of the Czech and Slovak Federative Republic has passed the following law:

Section 1

1) This law determines some further conditions of service for posts filled by election, nomination or appointment

a) in bodies of the state administration of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic, b) in the Czechoslovak army,

c) in the Federal Security Information Service, Federal Police Force, the Castle Police Guards,

d) in the Czech and Slovak Federative Republic President's Office, the Federal Parliament Office, the Czech National Council Office, or the Slovak National Council Office, in a Czech and Slovak Federative Republic government department, Czech Republic government department, or Slovak Republic government department, the Office of the Constitutional Court of the Czech and Slovak Federative Republic, Office of the Constitutional Court of the Czech Republic, Office of the Constitutional Court of the Slovak Republic, Office of the Supreme Court of the Czech and Slovak Federative Republic, Office of the Supreme Court of the Czech Republic and Office of the Supreme Court of the Slovak Republic, in the presidium of the Czechoslovak Academy of Science and in the board of the Slovak Academy of Science,

e) in the Czechoslovak Radio, Czech Radio, Slovak Radio, Czechoslovak Television, Czech Television, Slovak Television; Czechoslovak Press Agency (CTK), Czechoslovak Press Agency of the Czech Republic and Czechoslovak Press Agency of the Slovak Republic,

f) in state firms, state organisations, share-holding companies in which the largest share-holder is the state, foreign trade companies, the state organisation the Czechoslovak State Railways, state funds, state financial institutions and the Czechoslovak State Bank, unless it is later stated otherwise.

2) Posts according to section 1, para. 1, clause b) in the Czechoslovak army and in the federal ministry of defence are understood to mean posts leading to the rank of colonel and general, and the posts of military attaches.
3) Posts according to section 1, para. 1, f) are understood to mean posts of head of an organisation and employees in charge of the direct running of its operation. In colleges these posts are likewise understood to mean the posts of elected academic officials and posts approved by the academic senate.

4) This law also determines some further conditions of service for the posts of judge, associate judge, prosecutor, investigator of the prosecution, state notary, state arbiter, and for persons serving as judicial pretender, legal pretender of the prosecution, notarial pretender and arbitration pretender.
5) This law also determines conditions of credibility to enable the operation of some licenced businesses. 1)

Section 2
1) A condition of service for a post named in sect. 1 is that the citizen during the period 25. 2. 1948 to 17. 11. 1989 was not
a) an officer of the National Security Corps engaged in the State Security Service.
b) recorded in the materials of the State Security Service as a resident, agent, or occupier of an apartment lent to the State Security Service, or used as a place of conspiracy, an informer, or an ideological collaborator of the State Security Service.
c) a conscious collaborator of the State Security Service
d) a Secretary of a branch of the Communist Party of Czechoslovakia or Communist Party of Slovakia from the district or similar level upwards or in the rank of a high standing committee official of the above, a member of the presidium of these committees, a member of the Central Committee of the Communist Party of Czechoslovakia or the Central Committee of the Communist Party of Slovakia, a member of the Executive Bureau for Party Work in Bohemia or a member of the Executive Committee for Party Work in Bohemia, with the exception of those who only filled these posts in the period 1. 1. 1968 to 1. 5. 1969.
e) an employee of the system of structures named in clause d) in the division in charge of the political running of the National Security Corps.

1) Section 27, para. 2, of law no. /1991 coll. on contractual business and annex No. 3 of this law.
f) an officer of the People's Militia
g) a member of the action committee of the National Front after 25. 2. 1948, the vetting committee after 25. 2. 1948 or the vitting and normalisation committee after 21. 8. 1968.
h) a student at the Felix Edmundovic Dzerzinky training college at the Council of Ministers of the USSR for officers of the State Security Service, the Training College of the USSR Ministry of the Interior for officers of the Public Security Service, the Higher Political School of the USSR Ministry of the Interior, or a postgraduate or participant of courses lasting longer than 3 months in these schools.

2) Conscious cooperation with the State Security Service according to para. 1 clause c) . is understood for the purposes of this law to mean that the citizen was recorded in the materials of the State Security Service as a confident, candidate for secret service cooperation or a reliable secret service collaborator and who knew that he had contact with an officer of the National Security Corps and that he submitted

information to him in the form of confidential dealing or carried out for him set tasks.

3) In justified cases the minister of defence of the Czech and Slovak Federative Republic may exempt the condition according to para. 1. clause a) if its implementation would affect important security interests of the state and the aim of this law is not challenged.

Section 3

1) A condition of service for a post according to section 1 in the federal ministry of the interior, the Federal Security Information Service, the Federal Police Force and the Castle Police Guards is that the citizen during the period 25th February 1948 to 17th November 1989 was not

a) An officer of the National Security Corps engaged in the State Security Service in a section with a counterintelligence orientation.

b) employed in the post of head of department and higher up in the State Security Service,

c) a student at the Felix Edmundovic Dzerzinsky Training College at the Council of Ministers of the USSR for officers of the State Security Service, the Training College of the USSR Ministry of the Interior, or a postgraduate or participant of courses lasting longer than 3 months in these schools.

d) in the National Security Corps in the post of secretary of the main committee of the Communist Party of Czechoslovakia, or the main committee of the Communist Party of Slovakia, a member of the main committee of the Communist Party of Czechoslovakia or the main committee of the Communist Party of Slovakia, a member of the all-party committee of the Communist Party of Czechoslovakia or the all-party committee of the Communist Party of Slovakia, or an officer of the National Security Corps engaged in the Department for political education and educational, cultural and propaganda activity of the federal ministry of the interior.

e) a person mentioned in section 2 para. 1 clause b) to g).

2) In justified cases the minister of the interior of the Czech and Slovak Federative Republic, the director of the Federal Security Information Service and the director of the Federal Police Force may exempt the condition under paragraph 1 clause a) if its implementation would affect important security interests of the state and the aim of this law is not challenged.

Section 4

1) The citizen will demonstrate the facts stated in section 2 para. 1. clause a) and b) with a certificate issued by the federal ministry of the interior.

2) The citizen will demonstrate the facts stated in section 2 para. 1 clause c) with a certificate issued by the federal ministry of the interior, or as the case may be with the adjudication of the commission according to section 11.

3) The citizen will demonstrate the facts stated in section 2 para. 1, clause d) to h) with an affidavit.

4) The citizen is obliged before taking up a post stated in section 1 to submit a declaration saying that he was not and is not a collaborator with any foreign intelligence or reconnaissance services.

Section 5

A citizen who is to serve in a post in a body or organisation named in section 1, will submit the certificate, affidavit, or adjudication as the case may be, to the chief of this body or organisation. The citizen will request the federal ministry of the interior to issue a certificate, unless it is stated otherwise.

Section 6
1) Instead of the citizen who is to serve in a post named in section 1 or who is serving in such a post on the day this law came into effect, the person who requests the federal ministry of the interior to issue a certificate will be:
a) in the case of a citizen elected to a post, the body concerned with the election,
b) in the case of a citizen nominated for a post, the body concerned with the nomination of the citizen for this post,
c) in the case of a citizen appointed to a post, the body concerned with the appointment.

The chief of the body or organization will at the same time warn the citizen that he is obliged to submit the certificate within 30 days of receiving it.
2) A request for a certificate made for a citizen who is serving in the post as stated in section 1 on the day this law come into effect, must be sent to the federal ministry of the interior within 30 days at the latest of the date this law comes into effect.
3) The federal ministry of the interior will send the certificate to the citizen concerned within 60 days at the latest of the date the request was received, and at the same time as this certificate is sent will inform the person who requested the certificate.
4) If the citizen who is serving in a post mentioned in section 1 on the day this law comes into effect does not submit the certificate to the chief of the body or organization within 30 days of obtaining it, the chief of the body or organization will request the federal ministry of the interior within seven days to send a copy of the certificate.

Section 7
The President of the Czech and Slovak Federative Republic, the Presidency of the Federal Parliament, the Chair of the Czech National Council, the Chair of the Slovak National Council, the government of the Czech and Slovak Federative Republic, the government of the Czech Republic, and the government of the Slovak Republic, the general prosecutor of the Czech and Slovak Federative Republic, the general prosecutor of the Czech Republic, and the general prosecutor of the Slovak Republic, will request the federal ministry of the interior to issue a certificate on persons in connection with service in posts established by appointment, for which they have this right according to special provisions. The federal ministry of the interior is obliged to comply with this request without delay.

Section 8
1) Each citizen aged over 18 has the right to request the federal ministry of the interior to issue a certificate according to section 2 para . 1. clause a) , b) , and c) , and in the case of an adjudication by the commission according to section 13.

2) A request for a certificate must be accompanied by a duty stamp to the value of 200 crowns and the officially certified signature of the applicant.

Section 9
1) The federal ministry of the interior will issue the certificate and deliver it to the citizen in person; this does not apply in the case of a certificate issued according to section 7.
2) If there are working documents, needed for issuing certificates, held by a different

state body, this body is obliged on the request of the federal ministry of the interior to provide to this ministry within seven days all the documents and other information necessary for the issuing of a certificate.

Section 10
Certificates, an adjudication and the above details are not official secrets for the purposes of this law and for the purposes of the court system.

Section 11
1) To verify the facts mentioned in section 2 para. 1 clause c) to h) an independent commission (hereafter only "commission") will be established, attached to the federal ministry of the interior. The commission will be composed of a chairperson, vice-chairperson and other members.
2) The chairperson, vice-chairperson and one member of the commission will be nominated and dismissed by the presidency of the Federal parliament from among citizens who are unimpeachable and are not deputies of the Federal Parliament. If the chairperson of the commission is a citizen of the Czech Republic, the vice-chairperson of the commission shall be a citizen of the Slovak Republic and vice-versa.
3) The minister of the interior of the Czech and Slovak Federative Republic will nominate and dismiss two members of the commission from the ranks of the employees of the federal ministry of the interior and at the same time will ensure that the post of secretary of the commission will be occupied by one of these employees; one member of the commission will be nominated and dismissed by the director of the Federal Security Information Service; one member of the committee will be nominated and dismissed by the minister of defence of the Czech and Slovak Federative Republic; around three members of the commission will be nominated and dismissed by the presidency of the Czech National Council and the presidency of the Slovak National Council from the ranks of citizens who are unimpeachable and are not deputies in the Czech National Council of the Slovak National Council; one member of the commission will be nominated and dismissed by the minister of the interior of the Slovak Republic, chosen from among the ranks of the employees of these ministries. Members of the commission by the nomination of ministries and the director of the Federal Security Information Service must have completed legal training; for the purposes of this law training obtained at the National Security Corps Training School is not considered.
4) Membership of the commission is non-replaceable. Serving in a post in the commission is another office in the common in interest for which paid time off work applies.
5) The work of the commission is secured by the federal ministry of the interior.

Section 12
1) The commission is qualified to proceed if the chairperson or the vice-chairperson of the commission and at least seven of the other members of the commission are present. The proceedings of the commission are closed to the public.
2) The citizen to whom the procedure relates must have a chance to become acquainted with all the evidence including written working documents about him. During the proceedings of the commission he must be given a chance to express his opinion on all the evidence.
3) Invited persons are obliged to report to the commission, to tell the truth and not remain silent.
4) The penal code is suitably valid with regard to the obligation to testify, and to summonses, appearances, the ban on questioning, right to refuse to testify, right to reimbursement of costs for testifying and on the requesting of an expert and his obligations.

Section 13

1) The commission starts the procedure on the basis of an application which
a) may submitted by a citizen who has obtained a certificate saying he is a person mentioned in section 2 para. 1 clause c).
b) may submitted by a citizen who asserts that the affidavit of the person serving in a post mentioned in section 1 is false. In initiating the procedure the citizen is obliged to put down a deposit to the amount of 1 000 crowns, which will be returned to him if in the course of the procedure he proves that his application was warranted.
c) may be submitted by an organization if it has doubts about the truthfulness of the affidavit of the citizen who its to serve in a post mentioned in section 1.
2) The commission will issue an adjudication, within 60 days of the date the request was received, which will state whether or not a citizen is a person mentioned in section 2 para. 1 clause c) to h) . The adjudication must be substantiated.
3) If a citizen, who otherwise does not fulfil the conditions of service for a post stated in section 2, proves that afterwards, when he stopped being in the position of a person named in section 2 para. 1 clause d) - h) , he was apprehended under the law on court rehabilitation, stated in section 2 of law no. 119/1990 coll., and that he was according to this law subject to rehabilitation, the commission will decide that he fulfils the conditions of service for the post stated in section 1.
4) The commission will send the adjudication to the citizen whom it concerns, and when sending it will inform the person who submitted the application for adjudication at the start of the procedure.
5) If it is stated in the adjudication that the citizen is not a person stated in section 2 para. 1 clause c) , this fact will be indicated in all the evidence and working documents, after which this evidence and these working papers cannot be further used in relation to the citizen.

Section 14

1) If the citizen does not fulfil the conditions of service for a post stated in section 2, his employment will terminate by means of a notice to quit given by the organisation within 15 days at the latest of the day the organisation learns the news, unless it happens that his employment is terminated by agreement or in another way within a shorter period of time, or unless it happens that the citizen is employed in a post other than one stated in section 1.
2) The provision of paragraph 1 likewise applies to the termination of service by dismissal 2) , unless the citizen fulfils the conditions of service for a post as mentioned in section 3.
3) If the citizen refuses to sign the affidavit on the facts mentioned in section 2 para. 1, clauses d) to h) , or if the affidavit is false, the procedure will be as in para. 1 or 2.
4) Section 16 para. 1 clause c) of law no. 334/1991 coll. on the service of police officers engaged in the Federal Police force and the Castle Police Guards.

Section 15

If a prosecutor or investigator of the prosecution does not fulfil the conditions of service for a post as mentioned in section 2, this fact is a reason for terminating his employment.

Section 16

In the conditions mentioned in section 14 para. 1 the relevant body will submit an application for the removal of a judge or associate judge from his post.

Section 17

The provision of the labour code on the possibility for an organisation to give notice only with the advance agreement of the respective trade union organisation does not apply in the case of termination of employment according to section 14 and 15. 3)

Section 18
1) If the citizen insists that the details stated in the adjudication are false, he may request the court for a revision of the content of this adjudication within two months at the latest of the date the adjudication was received. The county court in the citizen's place of permanent residence is qualified to conduct the proceedings, as a court of the first degree.

2) The citizen may claim in court the invalidity of having his employment or service terminated, within a deadline of two months from the day the employment or service was to end. The county court in the citizen's place of permanent residence is qualified to conduct the proceedings, as a court of the first degree.

Section 19
It is forbidden to release to the public the facts stated in the certificate or the adjudication, or to release to the public the certificate or adjudication themselves, as well as any working papers needed to elaborate them, without the advance written agreement of the citizen.

3) Section 59 para. 2 to 4 of the labour code.

Section 20
Any witness, specialist or interpreter who states a falsehood to the commission regarding a circumstance which has essential significance for the adjudication or is deliberately silent about such a circumstance, will be sentenced to imprisonment for up to three years or to a fine.

Section 21
1) Publishers of the periodical press and operators of radio and television broadcasting, a press agency and audiovisual programmes on the basis of a granted authorisation (Licence) may request, for themselves or after advance written agreement for the employee whom they are employing and who is involved in producing ideas for the said mass media, a certificate from the federal ministry of the interior or an adjudication from the commission: the provision of section 6 para. 3, section 9 para. 1, sections 10, 12, 13, and 18-20 of this agreement likewise apply in these cases.
2) The chairpersons or those in the position of representatives of political parties, political movements and associations may, for themselves or for a member of the leadership of a political party, political movement or association after advance written agreement, request the federal ministry of the interior to issue a certificate or the commission stated according to section 11 to issue an adjudication. The provisions mentioned in paragraph 1 likewise extend to these relations.

Section 22
1) If the laws of the national councils empower the ministers of the interior and the ministers of justice in the Czech Republic and Slovak Republic to ascertain the facts mentioned in section 2 para. 1, the federal ministry of the interior and the commission are obliged to comply with their requests for a certificate or adjudication.

2) The method of termination of service of an officer of the corrective training corps and police officers employed in the Police of the Czech Republic and Police Force of the Slovak Republic is determined by the laws of the national councils.

Section 23
This law comes into effect on the day it is declared and is valid until 31st December 1996.

The President of the Czech and Slovak Federative Republic
Prime Minister of the CSFR government
Chairperson of the Federal Parliament

Appendix V

Czech IPA

Czech Letter	Czech Word	IPA	English Word
A a	Tam (There)	a	a in **aaaa**
B b	Den (Day)	b	e in g**e**t
C c	Noc (Night)	t͡s	ts in ca**ts**
D d	Dva (Two)	d	d in **d**og
E e	Den (Day)	ɛ	e in g**e**t
F f	Fazole (Bean)	f	f in **f**ilm
G g	Gauč (Couch)	g	g in **g**et
H h	Hlava (Head)	ɦ	h in **h**air (never dropped)
I i	Pivo (Beer)	ɪ	e in **e**nough (same as y)
J j	Jeden (One)	j	y in **y**es
K k	Kolo (Bike)	k	c in s**c**old
L l	Lavice (Desk)	l	l in **l**ove
M m	Matka (Mother)	m	m in **m**other
N n	Noc (Night)	n	n in **n**ight
O o	Oko (Eye)	o	o in **o**range
P p	Pole (Field)	p	p in **p**ole
Q q	Kvér (Rifles)	kv	k as in q in **q**uiet, v as in ve in **ve**ry
R r	Rok (Year)	r̝	r in **r**iver, but rolled
S s	Sedam (Sevem)	s	s as in **s**even
T t	Teta (Aunt)	t	t as in **t**ime
U u	Nula (Zero)	u	oo as in st**oo**l
V v	Voda (Water)	v	v in **v**odka
W w	Wals (Waltz)	v	v as in **v**ault
X x	Xanton	ks	x in **x**anthone
Y y	Syn (Son)	ɪ	e in **e**nough (same as ý)
Z z	Zítra (Tomorrow)	z	z in **z**ipper
Dž	Not a letter, single sound	ʤ	**'g**in and **j**uice'
Dz	Not a letter, single sound	dz	'a**dz**e'
Š š	Škola (School)	ʃ	Sh as in **Sh**ip
Ě ě	Pět (Five)	jɛ	y in **ye**s

Ó ó	Dóm (Cathedral)	oː	o in m**o**re
Ž ž	Žena (Woman)	ʒ	zh in mea**s**ure
Ý ý	Výlet (Trip)	iː	ee in s**ee**n
Ů ů	Stůl (Table)	uː	oo in st**oo**l
Ú ú	Ústa (Mouth)	uː	oo in st**oo**l
Ť ť	Trať (Track)	c	'ty' in 'bes**t** **y**et'
Ř ř	Řeka (River)	ɾ̝	'rzh' but with the **r** rolled
Ň ň	Kůň (Horse)	ɲ	ni in o**ni**on
Í í	Víno (Wine)	iː	ee in s**ee**n
É é	Mléko (Milk)	ɛː	a in c**a**re
ď Ď	Teď (Now)	ɟ	'dyeh' said as one syllable víno
Á á		aː	
Č č	Číslo (Number)	ʧ	ch in **ch**urch

Polish IPA:

Polish Letter	Polish Word	IPA	English Word
A a	Album (Album)	a	Between the a sounds in c**a**t and c**a**r
B b	Balon (Baloon)	b	b in **b**ike
C c	Cyfra (Number)	ts	ch in **ch**ild
D d	Droga (Road)	d	d in **d**oor
E e	Epoka (Era)	ɛ	Similar to e in b**e**d
F f	Francja (France)	f	f in **f**eist
G g	Głowa (Head)	g	g in **g**irl
H h	Honor (Honor)	x	Like ch in the Scottish pronunciation of lo**ch**
I i	India (India)	i	y in **y**es
J j	Jajko (Egg)	j	y in **y**es
K k	Konto (Account)	k	k in s**k**ew
L l	Lampa (Lamp)	l	l in **l**ion
M m	Matka (Mother)	m	m in **M**ile
N n	Nuda (Boredom)	n	n in **n**ile
O o	Opcja (Option)	ɔ	Between the vowel sounds of *pot* (British

			pronunciation) and *walk*
P p	Partja (Party)	p	p in s**p**ike
R r	Rower (Bike)	r	A rolled r sound like in Spanish *rojo*
S s	Sowa (Owl)	s	s in **s**ign
T t	Torba (Bag)	t	t in s**t**ow
U u	Uwaga (Warning)	u	Like the vowel of *boot,* but shorter
W w	Waga (Scale)	v	v in **v**ile
Y y	Igrek	ɨ	Between the vowels of *pit* and *put*
Z z	Zebra (Zebra)	z	z in **Zaire**
Ź ź	Źródło (Stream)	ʑ	si in vi**sion**
Cz cz	Czekolada (Chocolate)	tʂ	ch in **ch**ild
Ż ż	Że (Because)	ʐ	harder si in vi**si**on
Rz rz	Rzadkie (rare)	ʐ	si in vi**si**on, roll the rz together
Ch ch	Chodzi (as)	x	Like ch in the Scottish pronunciation of *Loch*
Sz sz	Szukać (search)	ʂ	sh in ***sh****ore*
Ń ń		ɲ	ny in ca**ny**on
Dź dź		dʑ	j in **j**eep
Dz dz	Działka (Plot)	dʑ	j in **j**eep
Si si	Said (Sit)	ɕ	sh in **sh**e
Ś ś	Ściana (Wall)	ɕ	sh in **sh**e
Ę ę		ɛ	A nasal *e* sound
Ą ą		ɔ̃	A nasa *o* sound
Ó ó	Ósma (Seventh)	u	Like the vowel of *boot* but shorter
Ł ł	Łabędź (Swan)	w	w in **w**ay