

Transitional Justice as Electoral Politics

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Albania's experience with communism (1944–1990), along with subsequent attempts at transitional justice, including lustration, separate it from the rest of what used to be called Eastern Europe. Its near-total failure to address the past in any sustained or even helpful way is also unique, even given the low levels of success elsewhere in the region. As is always the case, local conditions played a decisive role, and in Albania timing was everything. In Albania, unlike elsewhere, neither formerly persecuted people nor dissidents led the charge for justice. Instead a political class emerged, often with strong communist credentials, that sought to use transitional justice for different purposes, and was responsible for Albania's uneven and politicized approach to the past. Former political prisoners, who were the most vocal in the calls for justice, were used sometimes as props. Certain other facts make the Albanian case unique. The harshness of the communist era and even the interwar legacy made everything more difficult. The past ensured that the political and economic transition would be long. Transitional justice, in the Albanian context, was only a part of electoral politics for a single party, nothing more.

More than two decades after the collapse of the communist regime we can take stock of the role transitional justice played or did not play in Albania in establishing a new state based on the rule of law. Despite the rhetoric employed by anti-communist parties, the legislation it adopted and the trials it conducted, Albania did little to deal with its communist past in a meaningful way. On only two occasions, in 1995 and 2008/2009, could one identify a shallow attempt to provide citizens with something concrete. However, both attempts were overtly political, something most citizens understood from the beginning, and therefore lost meaning for a population that sought and deserved answers. By 2014, too much time had passed for Albania to seriously consider additional attempts. This means that Albanians never got the

accounting they deserved and requested in 1992, and collaborators and perpetrators were largely left untouched.

With the defeat of the Democratic Party (DP) in 2013, transitional justice again left the agenda, this time for good. Not only did the elections of 2013 bring an end to lustration, but as the first post-communist elections that were not contested by the loser, they may indicate that Albania has finally turned a corner on other levels as well. This chapter analyzes the entire post-communist period, compares the two major legislative initiatives, and explains the changing context of Albanian domestic political life that served to create a unique set of conditions.

UNDERSTANDING THE LEGACY OF POLITICS AND BLACKMAIL

To understand how the process of transitional justice became captured by petty politics I will first examine political life under the ruling DP from 1992 to 1997 with a focus on initial economic charges against the old regime and the two forms of de-communization that the DP introduced: lustration and file access. The enactments of the Genocide Law and the Verification Law in 1995 were the first serious legislative attempts by the DP to lustrate former communists from a variety of post-communist public offices. I will follow these partisan laws and observe how the DP abused and misapplied them. I will then examine how these laws were quickly dismantled and rendered meaningless upon the accession of the Socialist Party in 1997 and the implications of its government, which lasted until 2005. File access, which was also first permitted with the introduction of the Verification Law in 1995, met the same fate as lustration. In essence, Albania was largely unsuccessful in implementing a serious program of transitional justice. The Democrats had only political purposes in mind, while the Socialists had no interest at all in reckoning with the crimes of the communist regime.

A FATAL MISTAKE

Albania's first multi-party elections in March 1991 were won easily by Albania's communists (known as the Party of Labor since 1948). The nascent DP, which emerged in late 1990 as the only opposition to the communists and was led by Sali Berisha and Gramoz Pashko, lacked adequate time to prepare. The DP also lacked strong connections to the villages, where more than 65 percent of Albanians lived and whose inhabitants feared that any change in government would result in large-scale property return and deprive them of their land, which would have been catastrophic given that prior to World War II Albania

was essentially feudal. That said, de-communization was essentially delayed in 1991.¹ During this time we see elite reproduction, not elite replacement, with very few Albanians willing to dig too deeply into the recent past.

However, the vote was challenged, and the communists faced mounting opposition from the cities in the vote's aftermath. As a result, they were forced to form a new government that included the opposition forces. This move radically transformed the political landscape and opened up the possibility of a reckoning with the past. At their tenth and last congress in June 1991, the communists did some overdue house cleaning, renamed themselves the Socialist Party of Albania (SP), and brought in some younger, less tainted faces. The party quickly dropped all references to Stalinism and communism and hoped to quietly join the mainstream of the European Socialist left.

Some modest steps were taken toward de-communization in summer 1991. Act 7514 provided an apology to those who had suffered under the communist regime, setting up the basis for compensation. However, the first serious move against the old regime was the release of a crucial report by Genc Ruli, the DP Minister of Finance in the coalition "national salvation" government, in July 1991. The report, essentially an audit of the often luxurious spending of the communist elite, subsequently became the basis of the charges against members of the old regime. It made clear that the communists were to be held to account not for their political actions but instead for their economic crimes.

As former President Sali Berisha noted, there were practical reasons for choosing mundane economic issues over more serious ones. He suggested that the coalition government, which was dominated by communists, forced certain compromises. More importantly, the judiciary was so stacked with communists that political changes stood no chance in the courts. Time was needed to develop a completely new court system amenable to serious change. Since most of what the communists did lay within the laws they promulgated, the best route for the new leaders was to catch them on preaching austerity while practicing gluttony. In terms of its impact on the lustration process, however, the decision to start the investigation of the past with petty economic crimes was "a fatal mistake."²

The notion of living well while the population suffered was expected to strike a chord amongst the very poorest sections of society. However, as Kathleen Imholz noted, "No one doubted that the [Enver] Hoxha family lived well and enjoyed goods unavailable to other Albanians, but making these changes the sole subject of a criminal proceeding seemed to trivialize the more serious abuses of the Hoxha regime."³ With the benefit of hindsight, one can say with certainty that the decision to move against the old elite based on economic crimes was a catastrophic blunder for three reasons. First, it

alienated ordinary people who expected that communists would face real justice for real crimes not because of the alcohol they consumed, the food they ate, or the refrigerators they had. Second, it became nearly impossible afterwards to engage people when serious charges were finally laid later. Lastly, it ensured that whatever happened later would appear decidedly political in spirit.

Of the entire aged Politburo charged in 1993, the vast majority were handed prison sentences based on the facts set out in the Ruli report after being tried in March 1994. Some political charges were added based on events that took place after the bombing of the Soviet Embassy in 1951, the abolition of religion in 1967, and killings along Albania's borders. All were found guilty of financial abuses and violating fundamental human rights. However, the trials against the old leadership failed to generate public enthusiasm or wider discussion from the nascent civil society, which at that time was too weak to play a major role and the government made no attempt to open up a wider discussion of the past.

Separate from these processes was the trial of former Socialist Prime Minister and Party leader Fatos Nano. Possibly meant as a means to show the population that the DP was doing something, Nano was charged with corruption and abuse of office in a dubious and highly politicized trial. Nano was convicted in 1994 and sentenced to twelve years in prison. He was freed in the civil chaos of 1997 and subsequently pardoned. The trial against Nano failed to capture the public's attention and seemed to fit in with the general pattern of politicized trials designed to destroy the opposition.

LEGISLATING IN HASTE

In addition to the economic charges, the Democrats conducted a massive purge of the state sectors. When other analysts suggest that Albania went further than most other countries in the former communist bloc, they are generally referring to the virtual emptying of this sector. On December 3, 1991, the coalition government introduced Law 7526 On Labor Relations, amending the country's labor code. The change, which was set out, in official parlance, to strengthen reform, allowed the government to dismiss employees of state-owned firms or agencies without explanation or the right to appeal. This process was often done haphazardly and the vague terminology "allowed for political and personal favoritism to enter the process."⁴ The Socialists suggested that about 250,000 people lost their jobs following the landslide DP victory in the March 1992 elections, many of whom were merely Socialist sympathizers or their relatives with no

connection to the old regime. This tendency, which has been part of Albanian political life since then, has had catastrophic implications for the long term development of a professional civil service.

In 1995, three years after being elected, the DP government introduced legislation decidedly different from what started with the Ruli report – they now could remove communist wrong-doers from the government. However, most analysts conclude that the hasty introduction of legislation was directly linked to the impending election in 1996. There was a real fear that the DP could lose the elections following the defeat of their newly proposed constitution in a public referendum in 1994.⁵

In late 1995, the Parliament passed Albania's first two lustration laws (together, the "Lustration Laws"): Law 8001 of September 22, 1995, On Genocide and Crimes against Humanity Committed in Albania during Communist Rule for Political, Ideological or Religious Motives (the "Genocide Law"), and Law 8043 of November 30, 1995, On the Verification of the Moral Character of Officials and Other Persons Connected with the Defense of the Democratic State, subsequently amended pursuant to a Constitutional Court decision of January 31, 1996 (the "Verification Law").⁶ In their context, scope, and implementation, the Lustration Laws were exploited by the DP to selectively purge Albanian politics not of anti-democratic individuals, but rather of anti-DP individuals, usually belonging to the Socialist or Social Democratic Parties.

THE GENOCIDE LAW

According to its preamble, the purpose of the inappropriately named "Genocide Law" was to assist and accelerate the prosecution of perpetrators of "crimes against humanity" committed under the auspices of the communist regime. Interestingly enough, the government could have laid these same charges even before introducing the Genocide Law. Rather than providing a statutory basis for prosecution, the Genocide Law was the government's way of flexing its political muscles and showing that rather than concentrating on the economic crimes, as it had done in 1993–1994, it was ready to tackle de-communication immediately.

The government was quick to implement the Genocide Law, and by January 1996, the general prosecutor had ordered the arrests of twenty-four former senior communist officials. Many had been accused, arrested, and tried for lesser economic offenses but were now faced with much more serious punishment under the Genocide Law.⁷ The Genocide Law also provided for some political lustration. Article 3 stipulated that those persons who were convicted of being

authors, conspirators, or executors of crimes against humanity and who had held certain positions (including former party members, members of the People's Assembly, presidents of the Supreme Court of Justice, general prosecutors, and full time agents and part-time collaborators of the Sigurimi, Albania's much feared secret police) prior to March 31, 1991, would be banned from being elected or nominated to positions in the upper levels of government, the judicial system, and the media until 2002.⁸

Lustration under the Genocide Law was very limited; former communist officials would only be banned from public office provided they were first convicted by the general prosecutor. Political lustration could not have been a primary purpose of the Genocide Law; a five-year ban from entering public office on someone serving a twelve-year jail sentence was entirely illusionary. Nor could one say that the Genocide Law was aimed to bring the more infamous survivors of the old regime to justice, as genocide and crimes against humanity had been indictable offences under the old Albanian penal code, and, if anything, the evidence would have been fresher in 1992 than it was four years later when the prosecutions finally began.⁹

The Genocide Law did not therefore really serve a legal purpose; it did not effectively lustrate and was superfluous to "genocide" prosecutions. Rather, the law was intended to make the public believe that the DP was taking lustration seriously and associated the most well-known former communists with the DP's de-communization campaign. However, what the law did prove at the time was the "political immaturity" of the DP.¹⁰ A second law introduced only two months later, the Verification Law, would build on this campaign and further the DP's political interests even more.

THE VERIFICATION LAW

The Verification Law provided for a committee (the "Verification Committee") responsible for screening potential and actual members of the government, police, judiciary, educational system, and media to determine their affiliation with the communist-era organs and state police. To this end, the Verification Committee was granted exclusive rights to use the files of the former secret service and the Albanian Party of Labor (the Albanian communist party).

Article 1 of the Verification Law established an extensive list of positions that could be reviewed by the Verification Committee, including members of Parliament, president, member of central government, leaders of local governmental bodies, manager of banking, financial and insurance institutions, army officers, member of the secret services, chief of police, judge or

state prosecutor, member of the diplomatic corps, director or rector of a school or higher education institution, or a director or editor in Albanian state radio or television.¹¹

According to Article 2, the Verification Committee was permitted to screen actual or potential holders of the above-enumerated positions to determine if they had fallen into one of roughly twenty categories of employment between November 28, 1944, and March 31, 1991. Under Article 4 of the same law, the Verification Committee included seven members. Of the seven members, only the member appointed by the National Information Service would not be directly or indirectly appointed by Parliament. Although, once appointed, the Verification Committee was theoretically independent, the composition thereof could be changed at will by Parliament, and the Verification Committee's actual freedom is debatable.

Under Articles 7 and 9, any individual who wished to run in an election for a position listed in Article 1 had to first be reviewed by the Verification Committee. If the Verification Committee found that the candidate had held a position listed under Article 2, the candidate would be restricted from running until 2002. As for candidates for appointment to an Article 1 position, no mandatory review regime was established; no appointment candidates had the option of requesting a review by the Verification Committee. Even Rustem Gjata, who had upheld the law in his capacity as Constitutional Court president, acknowledged that the process was selective and only carried out on requests from certain institutions, resulting in only partial and thus flawed implementation.¹² Many people with questionable pasts escaped scrutiny due to their political allegiance to post-communist ruling parties that controlled the verification process.

Shortly after the Verification Law was introduced, it became apparent that it would be applied to the advantage of the ruling DP and to the extreme detriment of the political opposition. While a complete list of the 139 individuals barred from participating in the May 1996 elections is not available, it is likely that it included a disproportionate number of prominent opposition leaders. It is worth noting that because public disclosure required the assent of the investigated individuals, the names of the barred candidates were generally not released to the public.

The Verification Committee's decisions were essentially final, but the Committee was hardly independent with six of seven members appointed by the DP. Nearly a decade later, DP members such as Sali Berisha and Spartak Ngjela acknowledged that the partisan nature of the Verification Committee had a significant negative impact on its effectiveness and reception by the public.¹³ The low ratio of DP candidates barred from the elections is also suspect.

The opposition parties quickly manifested their dissatisfaction with the Lustration Laws. The Social Democrat Party brought a complaint to the Constitutional Court challenging Article 3 of the Genocide Law, while, at the same time, the SP brought a complaint challenging both laws. The Constitutional Court rejected these complaints on January 31, 1996, and proposed only some relatively minor amendments to the Verification Law.¹⁴ Interestingly enough, the Socialists did not protest publicly or openly, a fact suggesting that the law caused problems for their electoral campaign, likely because if the SP were to challenge the law beyond raising the issue of its constitutionality, they might open themselves to attacks from the DP and the international community for wanting to reintroduce communism.

Instead, the SP and other opposition parties framed their criticism of the DP in the context of the new electoral law introduced by Berisha, Law 8055 of February 1, 1996, on Amendments to Law 7556 On Elections to the People's Assembly of the Republic of Albania (the "1996 Electoral Law"), which amended the 1992 electoral law by including not only specific wording implementing the Lustration Laws in the local and parliamentary elections, but also re-zoning changes and a reduction in the number of proportional seats. These changes were disadvantageous to the opposition parties.¹⁵

On May 26, 1996, the Socialists, the Social Democrats, the Democratic Alliance, and others boycotted the elections, citing flagrant election procedure violations and expressing continued dissatisfaction with the 1996 Electoral Law. However, as Elez Biberaj points out, this boycott may have been to a large degree in response to the Lustration Laws.¹⁶ The opposition parties were able to limit the scope of the Lustration Laws as early as September 9, 1996 due to significant international pressure faced by the DP and the roundtable discussions held by Berisha on September 4, 1996, as a result of which the DP amended the Verification Law to exempt candidates for local council or commune chairs, as mentioned above.¹⁷ Regardless, that year the DP easily won what were Albania's most flawed elections with 122 seats in the 140 seat parliament.¹⁸

QUIET EXPIRATION

With the collapse of several highly integrated pyramid schemes in mid-January 1997 and the violent chaos that followed, the DP government was faced with an economic fallout with which they were unable to cope. By March 1997 anti-government protests had escalated to an armed revolt that pressured Berisha to form a "government of national reconciliation" with ten other political parties, including the rebel-backed SP, and to hold elections by

June 1997.¹⁹ However, the new coalition government could not agree on the terms of the new election.

It was within this context that, on May 9, 1997, an Organization for Security and Cooperation (OSCE) mission led by Franz Vranitsky managed to broker a deal between the parties, drafting the six point “political contract.” The contract called for a new electoral law increasing proportional representation, the appointment of an international election coordinator and, more importantly, significant amendments to the Lustration Laws.²⁰ The scope of the Verification Law was drastically reduced under the new amendments, which saw only former members of the ex-communist Politburo, former agents of the secret police or foreign intelligence agency, and individuals convicted of crimes against humanity included in the lustration process. Many opposition candidates were cleared by the Constitutional Court and the Court of Cassation of earlier charges, and were thus allowed to participate in the June elections. With such a limited application, the intended effect of the Verification Law was seriously undermined.²¹

The Socialists handily won the June 1997 elections, obtaining 101 of 155 parliamentary seats. The DP won only twenty-seven seats, and the former darling of Albania’s fight against communism, Sali Berisha, seemed headed for political oblivion. Moreover, the Socialist coalition controlled a two-thirds majority in Parliament and was given significant power to further alter the implementation of the Lustration Laws.²² Shortly after its victory, the SP began a replacement campaign of DP supporters that virtually mirrored, though less systemically, the DP bureaucratic purges that took place after 1992.²³ However, the SP did not resort to the pretext of lustration.

Berisha’s catastrophic defeat in the internationally sponsored elections sent him and the DP into the political wilderness for the next eight years. In a normal environment, he probably should have stepped down, but in keeping with post-communists politics in the Balkans, retirement was not an option. Borrowing from the Socialists, he alternated between parliamentary boycotts, noisy street demonstrations, and a near-coup in 1998. The Socialists, as noted, never cared about transitional justice. As a result, these projects gradually expired, and talk about the past was merely part of the political infighting between the two major parties. Popular demands for renewing the discussion were noticeably absent, and it was not on the agenda for civil society groups either.

The new Socialist government moved quickly to strike down the effects of the Genocide Law, requesting that the Albanian courts re-examine the accusations of crimes against humanity that had been leveled under the Genocide Law against former communist officials. On October 20, 1997, the Supreme

Court acquitted all the accused, ruling that they could not be held liable for actions that were not illegal at the time they were committed.²⁴ No further convictions were made under the Genocide Law for the remainder of its active life, and it essentially became a dead letter.

Under the new government, the Verification Law also underwent further changes. Shortly after the election, a new Verification Committee was appointed by the predominantly DP parliament, with Nafiz Bezhani as its chairman. At Bezhani's suggestion, on January 15, 1998, Parliament changed the Verification Law again to further narrow the scope of lustration. Most notably, the amendments altered the wording of the previous law, which banned "officers" of the National Information Service (successor to the Sigurimi, abolished in July 1991) and of the Interior Ministry, to include only senior officers and department heads. It no longer called for the lustration of former communist judges and state prosecutors from civil service and changed collaboration with the Sigurimi in general to include only collaboration with the Sigurimi in political trials and investigations.

In 1998, Albania also finished its constitutional project, which contained only a faint allusion to lustration. Its Article 17 allowed for temporary removal by establishing two key points. First, "the limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it." Second, "these limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights."²⁵ However, the Socialist government never applied the article in any context. Article 17 would again re-surface in a new debate in 2008 and 2009 as reason to block new lustration legislation.

By May 1998, Bezhani announced that the Verification Committee had reviewed 3,000 members of civil service and had submitted the names of eighty-one for lustration, including only four members of Parliament (two Socialists and two Democrats). After conducting the review, Bezhani happily announced that the entire Albanian government was "pure" and free of communist influence. There is no record of any further Verification Committee activity until December 31, 2001, when Parliament quietly let the Verification Law expire.

The Socialists governed for eight years (from 1997 to 2005). They won a contested election in 2001 with a strong showing. The 2001 election, with all the accusations of fraud, was by far the longest election in Albanian history with multiple re-counts and re-voting. Despite the fact that Berisha was widely blamed for the collapse of the pyramid schemes, Albania's descent

into chaos, as well as the loss of two elections, he nevertheless stayed on as party leader. Even by Balkan standards, this is quite remarkable. Since Albanian elections produce no losers, only contested results, there is no really compelling reason for leaders to step down. In the 2001 election, the OSCE again noted that Albanians were still a long way off from a truly free and fair election citing ballot box stuffing, biased coverage in favor of the government on state television, and a climate of hostility between the major parties.²⁶ The elections of 2001 solidified Socialist Party rule and pushed transitional justice off the table. Afterwards, the issue disappeared almost entirely from political discourse, and came back only eight years later in a highly politicized context. By 2014, one could only conclude that transitional justice, more off than on again, was dead.

CLOSING A CHAPTER

Separate from lustration and yet an integral component of transitional justice is the issue of file access. In Albania, the first legislative attempt to regulate the use of Sigurimi files was made with the introduction of the Verification Law in 1995. Prior to that law, the files had been illegally used by individuals with connection in government to coerce or intimidate their political opponents. The Verification Law did not significantly improve the situation; the partisan nature of the Verification Committee resulted in only a selective review of the files. Even then, the files were generally only used for political purposes rather than disclosure to the public. This put Albania at odds with some key suggestions from the Council of Europe.

When the Verification Law expired in 2001, so did the only piece of legislation providing for even limited access to the secret files. The most recent public attempt to put the issue of file access back on the table was a bill tabled by three legislators in 2004, and another attempt in 2008. The proposed draft law in 2004 called for a complete, radical, and unconditional opening of files. The proposed scope of the draft law was similar to the Verification Law, but it varied most notably in that it called for a more nonpartisan Verification Committee, and required that *all* state employees or officials might be investigated and that anyone with a communist past be dismissed from public office immediately.

Without the support of the two dominant parties, the Democrats and the Socialists, however, this draft law died almost as soon as it was brought forward. Some might hold up the failure of this law as evidence of the shadowy hand of former communists, for it seems strange to suggest that in a country with a history of pervasive oppression, unjust imprisonment, exile, and state murder,

the public would not demand to know the identities and roles of their persecutors. Yet although the secret files have always remained closed to ordinary Albanians, there is no public clamor to see them opened, and access does not appear to be on the forefront of public debate.

Is it possible that the cause is nothing more than public apathy. Berisha noted that so long after the fall of communism, file access no longer has relevance for most Albanians, who would prefer to close that chapter of their lives. The string of illegal file misuses from 1992–1995 also seriously undermined public perceptions of the files' integrity. The partisan composition of the Verification Committee, its selective review process, and the conflicting findings of its various incarnations did not improve matters either.²⁷ By 2014 it would be very difficult for any Albanian to take the literal content of the files seriously, let alone what a government organ chooses to filter and publish. Not only were the files kept closed, but Albania never experienced what happened elsewhere in the region where individuals simply received access to a secret list of agents and informers and published the names in local media unofficially.²⁸

Many believed that it is not too late for Albanians to be granted complete and unhindered access to the secret files, particularly if the new government led by the Democrats in 2005 brought a “new wave of lustration” fundamentally different than the flawed experience that came before.²⁹ Only an impartial, equal, and non-judgmental approach to Albania's history could effectively dispel its ghosts. Given all the potential pitfalls of opening the files and the grave concerns regarding the integrity and completeness of the files, Arben Imami exclaimed “enough is enough, let us move on” and thus Albania's failed attempt at file access will also be its last.³⁰ This expectation proved to be incorrect.

THE RETURN OF THE DEMOCRATS AND POLITICIZED TRANSITIONAL JUSTICE

Berisha entered the 2005 election campaign as the underdog. The Socialists played up on the legacy of 1997 with lurid footage of Albania's descent into chaos, while Berisha's “Clean Hands” coalition focused on offering a government that would finally deal with pervasive corruption and its lagging bid to make good on its pledge to join the European Union. In what was another highly contested election, Berisha made a comeback and, despite widespread accusations of fraud, he became prime minister in a coalition with one time enemy and former Socialist Prime Minister Ilir Meta, who emerged as a very costly kingmaker.³¹ Berisha's return to power was remarkable. The Socialists, who more or less traded places with the Democrats, headed for the

usual boycott, and Albania's political polarization continued. Once again, the OSCE was disappointed with the election, citing numerous irregularities most notably in the counting of ballots.³²

It is not in the scope of this chapter to examine every detail of the struggle between the two major parties. In short, electoral politics in Albania have been, and remain to a large extent, completely poisoned since the first election in 1991. Democrats and Socialists have used an extraordinary number of illegal and dubious methods to ensure electoral victory. What distinguished the Democrats from their political enemies is that they applied transitional justice and pseudo-lustration along with manipulation during and after elections. The Socialists, still carrying too much baggage from the communist past, were not in a position to do the same.

THE 2009 ELECTION

The year 2008 was 1995 all over again. Fearing for its future, Berisha's DP again brought new legislation designed to undermine the Socialist opposition under the guise of reckoning with the past long after the 1995 legislation had expired. This time around, much had changed. Voters were more savvy, civil society more developed, judges less pliant, and Albania more integrated internationally to simply get away with things. Berisha seemed unwilling to recognize that so much had changed. Moreover, the proposed adoption of new legislation proved the point that if lustration is implemented too late after the regime change, it becomes manipulation and it erodes voter trust in the government and the new democracy. That is at least how opponents inside and out of Albania saw things.

Prime Minister Berisha used much of the same rhetoric that had been deployed in 1995 with one big difference. In 1995, Albania was a mere three years into a flawed democracy and by 2008 and 2009 the salience of the issue had long faded. Nevertheless, Berisha pushed for new legislation. Never lacking in hyperbole, Berisha said, "Albanian society must strive by all manner of means to part for good with its bitter past and do away with the consequences of the most savage dictatorship Europe had known after Hitler's. In 1991, Europe's thirty-seven democratic parties issued a declaration terming Enver Hoxha as the post-war Hitler. This draft was meant to solve some of the bitterest problems inherited from the Communist dictatorship."³³ Berisha went on to praise the 1995 law which he said was implemented with "fairness" and that it was only the Democrats' electoral defeat in 1997 that prevented Albania from becoming "another country."³⁴

The essence of the new law was not radically different from 1995. Act 10034/2008 On the Integrity of High Administration Figures called for new verification of senior officials, elected or appointed, for potential involvement in the communist regime. Based again on the Czech model, the act evaluated only very senior officials and permitted their removal from posts, but no other penalties. If implemented, the new law would also have finally allowed every Albanian access to their personal secret files. That access, the government argued, was in keeping with Council of Europe Parliamentary Assembly Resolution 1096, which stated that the Council “welcomes the opening of secret service files for public examination in some former communist totalitarian countries. It advises all countries concerned to enable the persons affected to examine, upon their request, the files kept on them by the former secret services.”³⁵ However, the Council of Europe did note that their hope was that lustration processes would conclude by the end of December 1999.

The law, which was subject to a very acrimonious debate in the Albanian parliament in December 2008, was passed on January 14, 2009. It was to come into force on January 30, 2009 and stay in force for five years. It was adopted as an ordinary law with the opposition parties boycotting the vote. Its only defense in parliament came from an hour long speech by Prime Minister Berisha. The U.S. Embassy immediately issued a strong statement that said they were “deeply concerned. This law raised serious legal, governmental and constitutional questions among Albania’s international partners, including the United States.” They called on the government of Albania to “take immediate steps in consultation with national and international experts to ensure that this law would meet international standards.”³⁶ The U.S. Ambassador also noted that despite individual interventions from EU states, “EU Heads of Mission in Tirana were unable to come to consensus on a public statement and ended up issuing nothing.”³⁷ The Socialist opposition immediately called the new law a pre-election strategy. More sinister and harder to prove was the accusation that Berisha had more than an election in summer 2009 in mind. For some, it was more an attempt to encourage prosecutors and judges involved in some high level corruption charges brought against members of Berisha’s government to back off or risk their jobs.

Accusations of corruption were leveled against Berisha’s inner circle relating to a road project linking the port city of Durres with Kukes on the northern border with Kosovo which suffered massive cost overruns. These changes targeted Transport Minister Lulzim Basha, who remained in the cabinet in 2009 as foreign minister and was a protégé of the prime minister.

As well, there was the Gerdec fiasco when a military depot blew up in March 2008 killing twenty-seven people.³⁸ While Albanians may have given up on transitional justice, they did hope that someone should be held accountable for the horribly botched government operation to destroy old munitions at Gerdec. The most likely person was Berisha's ally and Defense Minister, Fatmir Mediu. Then U.S. Ambassador John Withers II noted that many see "this as the truest sign of Berisha's growing desperation to shut down [a] number of investigations that threaten to implicate members of the Berisha family as well as members of his inner circle." According to Withers, Berisha was "running out of time and options for shutting down these investigations."³⁹

International observers also picked up the suggestion that Berisha was trying to frighten the courts. By late December 2008, there had already been intense international pressure to abandon the law from the United States, the Council of Europe, and the OSCE. Even the Albanian President Baimir Topi recognized its problems. According to Wikileaks, Topi was afraid to take a strong stand and veto the law due to his fear that Berisha and his allies would "launch unrelenting and even physically violent attacks against" him.⁴⁰ This was an astonishing admission from the country's head of state.

The main criticisms of the law were lengthy. International and domestic experts noted that the law circumvented the Albanian Constitution, especially regarding the dismissal of judges and members of parliament. The law was a party process driven without needed consultation, it was vague and unclear especially on the vetting process, the committee reviewing cases would end up in the DP's control, and it appeared to deny due process to those under investigation. Since the opposition completely rejected the law they were unlikely to take on their two seats on the five member commission, leaving the government naming two representatives and possibly the third member intended to be decided by consensus. With the Socialists boycotting parliament altogether, consensus was therefore impossible.

Already in January 2009 the Council of Europe had offered its assistance to Albania in drafting a law that would meet the Council's standards of democracy – something it explicitly said the new law did not accomplish. The OSCE also suggested the law should be postponed until some compromise was found between Albania's two major parties. Given the overwhelming international opposition, the law went to Albania's Constitutional Court which Berisha wrongly concluded he had in his pocket. Its first step in February 2009 was to suspend the law pending a review. At the same time, the Court also sought an

opinion from the Council of Europe's Venice Commission. For Prime Minister Berisha, this was a huge setback and he did not hide his disappointment with the Court claiming that its judges violated judicial ethics and were in open conflict of interest.⁴¹

The fact that the Court took a stand shocked observers who suggested the judges would eschew challenging Berisha. Nevertheless, it was a victory for judicial independence and Albania's shallow democracy which hitherto had seen only scant victories for the rule of law. The subsequent decision from the Constitutional Court and the opinion from the Venice Commission doomed Albania's last attempt at politicized lustration. Both parties agreed that the law did not comply with Albania's Constitution and with the rule of law. The opinion of the Venice Commission, released in October 2009, cited an extraordinary number of issues relating to the law. Notably, it argued that the law was enacted too long after the communist regime's collapse, that its mandate was too broad and imprecise, and that it was not consistent with the Albanian Constitution. Of particular concern were the processes envisioned for dismissal of key public officials such as the President, Prosecutor General, members of the Supreme Court, and members of the Constitutional Court. In the end, the Venice Commission concluded that the new law "was less protective than the constitutional one."⁴²

The government argued that the law was needed due to certain details specific only to Albania. The key issue, as in the past, was the timing. It seemed obvious to everyone that it was a law that was part of the electoral struggle and the court challenges to some of Berisha's key allies. However, the Albanian government argued that certain facts specific to Albania justified the new law eighteen years after the collapse of the communist regime. Since the Genocide and Verification Laws of 1995 had fallen into disuse and subsequently expired, the process was therefore incomplete when the DP returned to power in 2005. Moreover, the DP argued, there was also renewed interest from the population in gaining access to the files. Despite Berisha's numerous rants, the law was killed by the combined forces of Albania's civil society and Constitutional Court, the international community, and the Council of Europe's Venice Commission. The comparison between 2009 and 1995 is telling. In 1995, Albanians got a very bad law that accomplished nothing, but the law did make it to the books. In 2009, Albania was a different place. Rule of law was securing a foundation, civil society was developed, and the DP was no longer able to simply get away with things like it was in 1995. The most important change was that in 1995, as a strong anti-communist government, Berisha was allowed tremendous leeway; in 2009, his list of international allies had grown much shorter.

CONCLUSION AND LESSONS LEARNED

As noted, Berisha did narrowly win the June 2009 elections without his lustration law or file access. His opponents in the SP cried foul, but he prevailed, putting Albania into another four year long cycle of political polarization. The Council of Europe's October 2009 opinion on the Lustration Law was followed by the Constitutional Court's ruling in March 2010 which annulled the law completely. The Court argued that the law was simply incompatible with Albania's constitution, among other already noted issues. That decision ended Albania's on and off again experiment with transitional justice. Despite his victory in 2009, the often stubborn and combative Berisha did not take up the issue again in his four-year term, which ended in 2013. It is worth noting that none of his loyalists ended up in jail either.

The failure of these laws the second time around was telling. In the first place, the public was once again ignored and the former political prisoners were brought out as cover for an open political agenda. Even file access, which appeared again in 2008, failed to catch the public's attention so much that even the OSCE Office in Albania called for not only more public consultation, but first and foremost some agreement between the two major parties on just what was trying to be accomplished. The experience between 1992 and 2013 tells us that the process in Albania was ultimately about political blackmail since nothing serious ever happened and Albanians never received the reckoning with their past that they deserved. First, they had to endure the show trials of aging former Politburo members, then they got a rigged trial against then SP leader Fatos Nano, to be followed by the 1995 Genocide and Verification Law. By then, it was too late to regain the population's trust in the process. That new laws and new ideas appeared only in 2008 and 2009, at a time when new elections were imminent and Berisha loyalists were facing charges, was simply too much for the Albanians and a whole series of other interested actors.

In the 2013 elections, Berisha's DP suffered a truly decisive defeat – so decisive that for the first time since 1996 the results were not contested. Berisha stepped down as party leader and handed his party to his protégé, Lulzim Basha. Serious transitional justice attempts are finished now. Nevertheless, the pseudo-lustration continues, designed not to root out old regime members, but rather, as had been the case so many times in the past, simply as a tool to create party loyalists in the state administration by tying jobs to party membership. The emptying of the public service when power changes hands remains in place. For the Socialists, the danger posed by those in power between 1944 and 1990 is irrelevant. Should the Democrats ever return to power, it remains to be seen whether or not the horrors of the communist

past can still be hauled out of the closet to fight contemporary political battles against the Socialists. The fact that they failed in 2009 was one of the few positive signals that Albania's institutions were durable in what was an otherwise pathetic transition period.

As noted, Albania's experience with communism ensured that its transition would face all kinds of challenges. The absence of a domestic dissident movement, the relatively strong communist credentials of the early anti-communist opposition, and the political weakness of the formerly politically persecuted meant that transitional justice could not be applied in a serious or sustained way. By the time it was introduced, it was both too late and clearly too tied to domestic politics to be taken seriously, especially after previous trials served to trivialize the past. The second attempt was too late and everyone inside and out of Albania knew that. Timing did prove to be everything, leaving Albanians with at most rumor or conjecture as the only means to understand what happened during their long communist period.

While the Albanian case was unique in many aspects, it does offer some lessons. Obviously, the politicization of transitional justice had a huge price as it meant that ordinary citizens lost faith in it. However, the urge for political actors to politicize the process of coming to terms with the communist past has been hard to resist, and Albania is not alone in falling into that trap. Timing has proven to be key, as post-communist Albania allowed too many years to pass before enacting relevant legislation and designing transitional justice programs, thus making it impossible after 1990 to impartially reckon with communist crimes. Finally, even today Albania lacks a judiciary independent from the executive and legislative branches of the government, and corrupt and self-interested businessmen. There have been some gains in the direction of creating an independent judiciary, which is the key to further integration with the European Union, but Albanian courts were never up to the job of offering impartial transitional justice, including lustration. Given what Albanians experienced in 1944–1990, the absence of a serious and sustained reckoning with the past has represented a major setback and further poisoned an already fraught democratization process.

NOTES

1. For election results, see Robert C. Austin, "What Albania Adds to the Balkan Stew," *ORBIS* 37, no. 2 (Spring 1993): 263.
2. Interview with Rustem Gjata, Tirana, June 24, 2005.
3. Kathleen Imholz, "Decommunization in Albania," *East European Constitutional Review* 4, no. 3 (Summer 1995): 55.

4. Fred Abrahams, *Human Rights in Post-communist Albania* (New York: Human Rights Watch, 1996), 26.
5. President Berisha's government proposed a new constitution that created a powerful presidency. Some 56 percent of voters rejected it.
6. These were the first two laws on lustration, with the exception of a 1993 law (No. 7666) affecting only the certification of lawyers, which was struck down by the Constitutional Court. Unofficial English translations are reproduced in Abrahams, *Human Rights*, 140–149.
7. Abrahams, *Human Rights*, 41.
8. The (unofficial) translation in Abraham's *Human Rights* reads "perpetrators, promoters and implementers." However, the wording "authors, conspirators and executors" was used in an original English submission by the Albanian foreign minister to the Council of Europe and is clearer and more accurate. See *Explanatory Note Contained in a Note Verbale Handed to the Secretary General at the Time of Deposit of the Instrument of Ratification of Treaty No. 009: Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, October 2, 1996, available at: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations> (accessed October 9, 2013).
9. Interview with Rustem Gjata, Tirana, June 24, 2005.
10. Interview with Genc Ruli, Tirana, May 5, 2006.
11. In a subsequent amendment, candidates for election to local councils or to the position of chairman of a commune were exempted from the scope of the Verification Law, while mayoral candidates and municipal prefects were still subject to the law. As a result, the number of prospective verifications on the municipal level dropped from 60,000 for 5,764 posts to just 800 for 64 posts. See discussion of Law 8151 of September 9, 1996, *On Amendments to Law No. 7573 On Elections of the Organs of Local Authorities* in *Explanatory Note contained in a Note Verbale handed to the Secretary General at the time of deposit of the instrument of ratification of Treaty No. 009: Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, October 2, 1996, available at: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations> (accessed October 9, 2013).
12. Interview with Rustem Gjata, Tirana, June 24, 2005.
13. Interviews with Spartak Ngjela, Tirana, June 21, 2005, and Sali Berisha, Tirana, June 23, 2005.
14. Kathleen Imholz, "States of Emergency as Pretexts for Gagging the Press: Word Play at Albania's Constitutional Court," *East European Constitutional Review* 6, no. 4 (Fall 1997): 57–63.
15. Elez Biberaj, *Albania in Transition: The Rocky Road to Democracy* (Boulder, CO: Westview Press, 1998), 289.
16. *Ibid.*, 298.
17. *Ibid.*, 312. See also discussion of Law 8151 of September 9, 1996, *On Amendments to Law No. 7573 On Elections of the Organs of Local Authorities* in *Explanatory Note Contained in a Note Verbale Handed to the Secretary General at the Time of Deposit of the Instrument of Ratification of Treaty No. 009: Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, October 2, 1996, available at: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations> (accessed October 9, 2013).

18. For details on scandalous elections, see Office for Democratic Institutions and Human Rights, *Observation of the Parliamentary Elections Held in the Republic of Albania, May 26 and June 2, 1996, July 2, 1996*, available at: <http://www.osce.org/odihr/elections/albania/13567> (accessed October 9, 2013).
19. Biberaj, *Albania in Transition*, 319–325.
20. *Ibid.*, 331. The amendments were introduced on 13 May 1997 as Law 8215, amending the Genocide Law, and Law 8220, amending the Verification Law.
21. Kahlelen Imholz, “Albania,” *East European Constitutional Review*, 6, no. 2 (Spring/Summer 1997): 2–5.
22. Biberaj, *Albania in Transition*, 335–337.
23. *Ibid.*, 352–353.
24. *Ibid.*, 353.
25. *Albanian Constitution*, 2008, available at: <http://www.ipls.org/services/kusht/cp2.html> (accessed October 9, 2013).
26. Office for Democratic Institutions and Human Rights, *Republic of Albania Parliamentary Elections 24 June-19 August 2001*, October 11, 2001, available at: <http://www.osce.org/odihr/elections/albania/13560> (accessed September 25, 2013).
27. Interview with Gent Ibrahim, Tirana, June 2005.
28. Lavinia Stan, “Vigilante Justice in Post-Communist Europe,” *Communist and Post-Communist Studies*, 44, no. 4 (December 2011): 319–327.
29. Interview with Spartak Ngjela, Tirana, June 21, 2005.
30. Interview with Arben Imami, Tirana, June 24, 2005.
31. Ilir Meta broke with the SP and established a new party, the Socialist Movement for Integration. Meta’s 5 seats ensured he received huge “incentives” to join Berisha’s coalition.
32. Office for Democratic Institutions and Human Rights, *Republic of Albania Parliamentary Elections 3 July 2005*, November 7, 2005, available at: <http://www.osce.org/odihr/elections/albania/16856> (accessed September 25, 2013).
33. “Berisha: All Files Will Be Opened,” *Republika*, Tirana, November 27, 2007.
34. *Ibid.*
35. Council of Europe Parliamentary Assembly, *Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems*, available at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta96/eres1096.htm> (accessed October 9, 2013).
36. Cabledrum for this cable from Ambassador Withers, “Lustration Law Passes, but What Next?,” Tirana, December 23, 2008, available at: <https://www.cabledrum.net/cables/o8TIRANA899> (accessed October 14, 2013).
37. *Ibid.*
38. Sentences were handed down in March 2012. As a member of Parliament, Mediu escaped punishment and blame. “Albania Blast Trial Sentences Disappoint Victims,” *Balkan Insight*, March 13, 2012, available at: <http://www.balkaninsight.com/en/article/light-sentences-in-albania-deadly-blast-trial> (accessed October 10, 2013).
39. Cabledrum for this cable from the U.S. Ambassador in Tirana. “Lustration Law Passes, but What Next.”
40. Cabledrum for this cable from the U.S. Embassy in Tirana, “President Topi Leaning Against Veto of Lustration Law,” Tirana, January 13, 2009, available at: <https://www.cabledrum.net/cables/o9TIRANA18> (accessed October 10, 2013).

41. Albanian Telegraph Agency (ATA), February 16, 2009, as provided by BBC Monitoring.
42. Venice Commission, *Amicus Curiae Opinion on the Law on the Cleanliness of the Figure of High Functionaries of the Public Administration and Elected Persons of Albania*, Strasbourg, October 13, 2009, Opinion no. 524/2009, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)044-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)044-e) (accessed October 14, 2013).