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SIMILARITIES, DIFFERENCES, APPLICABLE STANDARDS”**

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REPORT

“LUSTRATION: EXPERIENCE OF POLAND”

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I. In each of the post-Soviet-bloc states the process of political transformation to a greater or lesser degree included the issue of settling accounts with the communist past. In the post-Soviet states such account-settling was perceived as an instrument of specific historical justice, a break with an undemocratic past and the introduction of mechanisms of transparency to public affairs. That process clearly involved two aspects: a political and legal one. Often, however, politicians approached it as a purely political process and displayed far less concern for respecting all the principles connected with the proper enactment of vetting legislation. It is beyond any doubt that in a law-abiding democratic state the settlement of the communist past, regardless of the political nature of that process, may be carried out solely through legal methods and means, with the key role played by human-rights guarantees.

The process of settling accounts with a communist or, more broadly speaking, authoritarian past (as is the case of present-day Ukraine) as a rule assumes various forms. Three forms are usually considered: decommunisation, verification (vetting) and lustration. In the decommunisation process individuals are evaluated on the basis of their membership of various communist organisations. Lustration is a narrower category which involves checking whether a given individual was registered by the interior ministry as a collaborator of secret services.

It is a practice of lustration to reveal information about such collaboration. One gets the impression, however, that such division has not always been any too precise amongst the architects of the relevant legislation. Legal acts have frequently regulated matters of various character. Difficulties have arisen primarily round precisely differentiating between vetting and lustration.¹

The element linking all those procedures, which in general terms may be referred to as verification or screening measures, was defining the relationship of the new post-1989 authorities to people linked to the former political system. The nature of dependence and linkage may vary, and it is up to the current authorities to verify those situations and consequently the people connected to that those undemocratic political arrangements.²

In the most general of terms, the procedures applied in this respect, i.e. the most broadly defined vetting procedures can be aimed at either:

– revealing historical truth, i.e. disclosing public information on people's connections to the previous system (with no sanctions envisaged for their erstwhile conduct), described in literature as historical “clarification”, or:

– application of a system of sanctions against those being screened as a result of the negative evaluation of their behaviour under the former system. That evaluation takes place after the fact. The legal situation is complicated by the fact that people are evaluated and sanctions are imposed for behaviour which as a rule had not been crime. Individual post-communist states have adopted various solutions in that area. They tackled the problem of lustration at different times in relation to the beginning of their transformation process.

¹ One has the impression that likewise in the work of the Venice commission the demarcation between vetting and lustration was not always clear. In its opinions it tended to use the term lustration for situations described also as “vetting law”.

² The question of banning communist symbols transcends the scope of these considerations. Although often viewed within the context of account-settling, even in a broad sense it should not be regarded as a lustration-related issue. Those matters were also dealt with by Polish jurisprudence in a Constitutional Tribunal ruling on 19th July 2011 (sig. K 11/10).

II. When its transformation process was initially launched, Poland found itself in an unprecedented situation. It was the first country whose political transformation had resulted from Roundtable talks. That process involved representatives of the then communist authorities and the Solidarity opposition sitting down to common discussions which led to agreements and consequently to the election of 4th June 1989.

In that situation, it would have been difficult to start with a de-communisation process aimed at one's discussion partners. As a result, a call for de-communisation or lustration did not appear among the demands contained in the Roundtable agreements, signed in April 1989. That in fact was criticised by certain political groups.

The problem of settling accounts with the past began emerging with growing intensity in parliamentary debates following the 4th June election. The de-communisation process became closely linked to the need to implement principles of justice. According to those principles, everyone who had reaped benefits from their support of the political system should now be deprived of those benefits by being removed from the positions they held and banned from holding them in future.³

Those were extremely radical demands of a political nature. Parliamentary attempts were made to adopt a de-communisation **resolution**, but to no avail. Numerous difficulties were encountered when their legal verbalisation was attempted. In the first parliament elected on 4th June 1989 (known as the "Roundtable" parliament) no efforts were made to prepare a lustration draft. The term in office of this parliament was cut short, and new elections were held in 1991. Attitudes towards lustration or more precisely to the lack thereof clearly began to politically divide the hitherto unified Solidarity camp. That division became amply clear after new parliamentary polls when advocates and opponents of lustration lined up on opposite side of the proverbial barricade.

On 28th May 1992, quite unexpectedly without its prior inclusion on the agenda, then MP and now MEP Janusz Korwin-Mikke submitted a draft resolution on lustration to parliament and upon his motion, this resolution was voted on the very same day. That marked the first clear, sharp clash over lustration which would make its imprint on things for many years to come. MPs of the Democratic Union, Tadeusz Mazowiecki's party, vainly sought to undermine the required quorum in an attempt to prevent a vote on a legislatively ill-prepared surprise draft resolution. Principal reservations pertained to the legislative procedures used and the legal form of the measure introducing a specific brand of lustration. But the vote could not be blocked, and the resolution got accepted the same day. 186 MPs were for, 15 against and 32 abstained.

That is how this draft was passed in fast-track style. The resolution obligated the interior minister to reveal the names of Members of Parliament, senators, ministers, voivodes (provincial governors), judges and prosecutors who had been clandestine collaborators of the secret police (UB and SB) between 1945 and 1990. That was obviously a clearly political account-settling measure. After the resolution had been passed, parliamentary experts expressed the critical opinion that it was adopted in violation of parliamentary regulations, contained imprecise formulations and was not in line with existing law.⁴

³ H. Suchocka, Problems surrounding demands for justice in post-war Europe in: On human rights on a dual Pact anniversary. Commemorative book honouring Professor A. Michalska, edited by T. Jasudowicz and C. Mik, Toruń 1996, pp. 273-275,

⁴ The opinion of parliamentary experts (Z Galicki, J. Mordwiłko, W. Sokolewicz) of 29th May and supplementary opinion of 2nd June 1992

The parliamentary resolution, which had a form of Act of Parliament but not law, was referred to the Constitutional Tribunal (CT) as unconstitutional by a group of MPs who charged that the resolution set a constitutional minister, in this case the minister of interior, a task contrary to the law and thereby in violation of the Constitution of the Republic of Poland. Those referring the matter to the Tribunal additionally accused the resolution of failing to specify any premises for determining who had been a secret collaborator. They maintained the state authorities would thereby risk functioning in an arbitrary manner in matters pertaining to citizens' personal rights. Neither did the resolution specify what procedures should be followed in such cases nor did it guarantee a citizens' right to defence. The MPs petitioning the Tribunal pointed out that the regulation contained in the resolution did not constitute the resolution's substance. In a state governed by the rule of law such issues should be regulated by a legislative act, not by a resolution (act of parliament), they maintained.

In its ruling of 19th June 1992,⁵ the Constitutional Tribunal shared the accusations levelled by the complainants. It ruled that the lustration resolution was contrary to the Constitution of the Republic of Poland by virtue of violating the rule of law, in particular by failing to ensure legal protection of the individual and violating his/her dignity. The CT also ruled that the resolution was unconstitutional because it had imposed upon the interior minister the non-legislated obligation to encroach on citizens' rights and to engage in activities violating existing laws.

It is indeed the Sejm (lower house of parliament) that defines ministers' powers but may do so only through laws adopted by the Sejm. Ministerial powers are obviously legislatively sanctioned and not regulated by parliamentary resolutions. On 19th June 1992 the President of the Constitutional Tribunal announced that the resolution's implementation had been suspended and subsequently, on 20th October 1992, that the binding Sejm resolution of 28th May 1992 had been repealed.

The resolution of 28th May 1992, adopted three years after the start of political transformation, marked Poland's first attempt to formally confront the challenge of account-settling, and a painful experience it turned out to be. On 4th June 1992, the right-wing government of Jan Olszewski was overthrown by President Lech Wałęsa in cooperation with a parliamentary opposition. The resultant political rifts have left their imprint on Poland's political life and are reflected by the country's party structure to this day.

III. The CT's lustration ruling focused primarily on the form of the legal act and its lack of procedural guarantees for an individual's rights. It also expressed its opinion on the subject of lustration itself which was of great importance to future legislative activity in that area. The Tribunal first and foremost called attention to "the social significance of information pertaining to collaboration with security organs in view of the universally negative assessment of those institutions, which information if publicly revealed (even in relation to a limited circle of individuals) would in practice constitute a specific form of infamy." Whereas normally laws may concretise or supplement constitutional regulations pertaining to civil rights and liberties, in the generally held view of Polish and international scholars they may not violence the essence of those rights,"⁶ the Tribunal stated. It gradually becomes obvious that the question of de-communisation or lustration should be approached not only in terms of demands for corrective justice, which in certain situations may be poorly substantiated. The issue of ensuring **state security and the functioning of a fledgling democracy**

⁵ U 6/92 Constitutional Tribunal Rulings (OTK) 1992, part I, item.13.

⁶ U. 6/92, in: Constitutional Tribunal Rulings (OTK) 1992, part. I, item 13.

should also be taken into account. And it is the latter objectives that should be served by any de-communisation or lustration processes carried out in the country.⁷

A concrete result of the lustration debate within the context of the 1992 Sejm resolution was the requirement that candidates vying for parliamentary seats in the 1993 election should declare any past collaboration with the special services of the Polish People's Republic. Elements of lustration were thereby introduced to Poland's legal order for the first time not on the basis of a lustration legislation but election laws. Declaring such collaboration or making false declaration did not entail any legal consequences for a prospective candidate. The decision was left up to voters. Practice was to show that an admission of collaboration did not affect voter behaviour. A majority of voters did not regard collaboration with special services as a factor disqualifying a candidate from acquiring a parliamentary seat. Apart from voter evaluation, a political process aimed at cleaning up the past was set into motion and could not be stopped. The attitude towards lustration became an elements of the political agenda.

In the subsequent parliamentary election held in September 1993, parties rooted in the former system and opposed to the lustration process won a majority. Nevertheless, during that period several new lustration drafts were submitted to the Sejm. In 1996, a special parliamentary commission was set up to draw up a uniform draft law which was adopted on 11th April 1997.

And so the first law on lustration entitled "On disclosure of work or service for state security bodies or cooperation with them in the period between 1944-1990 by persons performing public functions"⁸ was adopted in Poland, eight years after the transformation has launched. And then a law on Institute of National Remembrance – Commission of the Prosecution of Crimes against the Polish Nation was adopted in 1998⁹.

Basic premise of lustration law was the intention to prevent possible blackmail of people performing important public functions who in the past had had links to secret services. The law obligated candidates for important public offices as well as those already holding such positions (born before 1st August 1972) to formally declare whether they had been functionaries, employees or secret collaborators of special services from 22nd July 1944 to 31st July 1990. The law on lustration from 1997 encompassed a broad catalogue of people required to make such declarations. Subject to lustration were the president, MPs, people holding key state posts, judges, prosecutors, Constitutional Tribunal justices, lawyers (including candidates for those positions) as well as public-media chiefs – all told some 27,000 people.

The truthfulness of the statements was verified by a special independent office of the Public Interest Spokesman. A lustration court was established to review suspected falsehoods in lustration declarations.

The law was a classic "clarification" law whose goal it was to clarify a past situation. But, contrary to its title suggesting the disclosure of work or service in state security organs or collaboration with them in 1944-1990 by people performing public functions, it did not monitor the past of candidates or public officials but merely verified the truthfulness of their

⁷ One should bear in mind that Poland's Constitutional Tribunal was formulating its ruling before the Council of Europe had adopted its resolution titled "Measures to dismantle the heritage of former communist totalitarian systems", No. 1096 of 1996.

⁸ Dz.U. 1997, nr 70, poz. 443.

⁹ Dz.U. 1998, nr 155, poz. 1016.

lustration statements. The law did not entail any penal or quasi-penal consequences for past collaboration with state security organs. Declaring collaboration produced no legal consequences for an individual's conduct in the previous political system. The law did not bar those who had admitted collaboration with former security organs from holding public office and left the decision up to those appointing people to office or voters. It envisaged sanctions only against those making false declarations.

Article 30 of the aforementioned law stated that submitting false statements by the person whose background is being checked is tantamount to the forfeiture of the moral qualifications required to hold public office, described by individual legal acts as impeccable character, unblemished reputation, irreproachable character, good civic stature or adherence to basic moral standards. The court's legally binding ruling that the person being vetted had made a false declaration led to the forfeiture of the position or function whose performance required the above-mentioned traits. The lustration court's ascertainment of false testimony resulted in a 10-year ban on performing public functions.

That law was referred to the Constitutional Tribunal by a group of MPs. They questioned the very institution of declaring collaboration, the imprecise definition of collaboration, the lack of procedural guarantees regarding the initiation of proceedings and access to files.

In its ruling of 10th November 1998 (K 39/97), the Constitutional Tribunal did not share the charges levelled by the complainants. The CT did not contest the legitimacy of lustration (in reference to Council of Europe resolution 1096), emphasising the general principle that "the lustration process, conceived as a legally defined mechanism to verify the connections and dependence of people holding or aspiring to the highest state functions or holding other public positions involving a high degree of responsibility as well as public trust, in principle raises no doubts as to its constitutionality, in particular as to the concept of a democratic state governed by the rule of law as expressed by Article 2 as well as in term of international standards" (...). In the case of lustration, the object of verifying constitutionality will be the question whether the choice of constitutional values is not of an arbitrary nature, especially whether individual liberties and rights are sufficiently safeguarded and whether the procedures specified by the legislation comply with the requirements of a democratic state's rule of law.

The Tribunal found the law to be in compliance with the Constitution. A precise definition of the term "collaboration" turned out to be the main bone of contention. In response to the petitioners' charge, the CT redefined the concept of "collaboration" saying that:

1. Such "collaboration" had to involve contacts with security organs and supplying them with information;
2. It had to be conscious collaboration, meaning that the collaborator had to be aware that he/she had established contacts with representatives of one of the services mentioned in Article 2, section 1 of the law;
3. The collaboration had to be secret, hence the collaborator had to be aware that the establishment and conduct of the collaboration had to remain a secret especially vis-à-vis persons or circles to which the relayed information pertained;
4. The collaboration had to involve operational intelligence gathering by the services mentioned in Article 2 of the law;
5. The collaboration could not be confined merely to a declaration of intent but had to involve concrete, consciously undertaken activities which made said collaboration a reality. By the same token, simply agreeing to cooperate and to a given scope of activity that future collaboration would entail was insufficient grounds to qualify as collaboration – that would require concrete activities corresponding to the above-indicated criteria and constituting real cooperation with security organs.

IV. The lustration debate assumed new momentum in 2005 when a verified catalogue of the Institute of National Remembrance (IPN) appeared online. It contained 160,000 names of functionaries and agents as well as people marked out for collaboration (known as the "Wildstein list"). The list appeared on the Internet without providing any guarantees for the listed parties. It included both those who were collaborating as well as those who were not but had been short-listed for possible future cooperation. After the list had been made public, the IPN created a fast-track procedure for those whose names had appeared.

On 18th October 2006, a new law was adopted on "The disclosure of information about state security documents from 1944-1990 and the content of those documents." In accordance with Article 66, its adoption repealed the law of 11th April 1997.¹⁰ The new law was adopted by the parliament elected in autumn 2005 in which parties advocating broad lustration won a majority. From the moment it was adopted, the new law began generating considerable controversy and protests chiefly because: 1. The category of individuals subject to vetting was considerably expanded. In addition to previously vetted individuals performing important state functions, those subject to lustration were to also include all scientists and scholars as well as journalists and media owners, all local councillors down to the administrative district level, the heads of listed and state firms, all school directors, tax advisers and auditors. Owing to the list's expansion, the number of people subject to lustration grew from to several hundred thousand. 2. Lustration declarations were to be replaced by IPN certificates concerning the content of communist-era secret service files which a given individual could appeal against in civil proceedings (penal procedures as well as all their guarantees were eliminated). 3. The office of Public Interest Spokesman was abolished and replaced by IPN's lustration section. The Lustration Court was also dissolved and cases were transferred to district courts. 4. IPN was to publish lists of people collaborating with the services of People's Poland.

When he signed that bill into law, President Lech Kaczyński predicted that it would be amended. The declaration of collaboration was to be restored, and a penal mode of procedures was to be used to verify it. The openness of the files was to be restricted to some extent. And such imprecise terms as "personal source of information" for one category of collaborator was to be done away with. The Sejm adopted the amendment in February 2007. Predictably, the law was referred to the Constitutional Tribunal.¹¹ The petitioners contested the entire law as oppressive and in violation of Article 2 of the Constitution regulating the democratic state's rule of law.

The main reservations to the law were that:

- it violated the standards of a democratic state's rule of law through disproportionate lustration mechanisms which frequently transcended such goals as protection of democracy laid down by Council of Europe resolution 1096;
- the law's preamble was incompatible with the principle of legislative decency by virtue of collective treatment of activities that merited individual evaluation in each case;
- the law encompassed too broad a scope of individuals subject to lustration;
- lustration proceedings were not regarded as penal proceedings despite their repressive sanctions which stripped them of the indispensable element; the civic court mentioned in the law was not the proper court;
- the law presumed the guilt of those who worked for or assisted state security organs and sanctioned collective liability;

¹⁰ Dz. U. 2006, nr 218, poz. 1592.

¹¹ The constitutionality of the law was challenged both by MPs representing the left (Democratic Left Alliance) as well as ombudsman J. Kochanowski, known to sympathise with pro-lustration groupings.

- it barred those who had failed to submit a lustration declaration from holding public office;
- a catalogue of names of those obligated to make lustration declarations was published.

In the view of those lodging the constitutional complaint, the principle of presumed innocence was undermined by the fact that the possibility of negating the authenticity of information published in the catalogue depended on a court ruling.

The Constitutional Tribunal's proceedings themselves were exceptional and took place amid dramatic circumstances. To forestall possible charges of lacking impartiality, the Tribunal began by excluding from its panel two judges believed to have had ties with communist secret services.

Following a several-day session in May 2007, the CT handed down its ruling. It declared 39 of the 77 points under review to be unconstitutional. The complexity of the issues being evaluated was attested to by the fact that 10 of the 11 participating judges had issued dissenting opinions with regard to individual points. Initially, the CT upheld its view on the significance of lustration: "The lustration procedure, understood as a legal mechanism to investigate connections and relations of persons holding or aspiring to hold important state offices, or already holding other public offices that entail a particularly high degree of responsibility and require public confidence, must not, as a matter of principle, give rise to doubts both from the perspective of the conformity thereof to the Constitution, particularly to the principle of a democratic state ruled by law."¹² CT repeated main lines from the Council of Europe 1096 Resolution on the role of lustration.

But the CT did contest i.a. the lustration of all journalists, scientists (rather than just those performing managerial functions) and directors of non-public schools as well questioning the publishing of a catalogue of agents by the IPN. The CT also defined the conditions under which IPN archives may be opened, emphasising that only the files of individuals performing the highest state functions may be disclosed. Sensitive IPN data may not be revealed without the consent of the parties involved.

The Tribunal confirmed that the lustration process may not be abused by becoming an instrument of revenge or retribution or serving political or social ends. Neither should it affect private and semi-private positions. A lustration ban on holding specific positions may be binding only within a reasonable time-frame and result from individual guilt pertaining to grave violations of human rights.¹³

The CT underscored the importance of individualised liability whenever lustration procedures involve sanctions, and such was the case of the 2006 law. Poland's Constitutional Tribunal stated that "*the prohibition on discharging a function may be imposed against persons who gave commands to perform acts that constituted a grave violation of human rights, performed such acts themselves or overwhelmingly supported them*", stressing the need for a precise definition of the "conscious collaborators" who would be the object of lustration measures.

¹² CT ruling of 11th May 2007, sig. act K 2/07, Journal of Laws, 2007 No. 85 item 571.

¹³ By the end of 2013 a total of more than 299,000 lustration declarations had been registered by the IPN's lustration section. They included 2,785 declarations whose authors had admitted their links to the security services of People's Poland. In 2013, the section concluded its review of more than 10,700. declarations. In 2013, courts handed down 183 binding lustration verdicts, of which 135 pertained to false lustration testimony.

Following a successive parliamentary election, the law was amended in 2010. The purpose of the amendment was to de-politicise the IPN (The Institute of National Remembrance).

V. The issue of lustrating judges merits separate attention. Judges became subject to lustration on the basis of the 1997 law. Owing to the exceptional status of judges, the Law on Judiciary was amended on 17th December 1997.¹⁴ That piece of legislation contained a number of detailed solutions regarding the lustration of judges as well as the legal consequences of a judge's collaboration under the previous political system.

On 5th February 1998, the President of the Republic of Poland moved to have the entire amended Law on Judiciary of 17th December 1997 declared unconstitutional. Aside from the procedural irregularities that occurred when the amended law was being adopted, he contested the very concept of the separate lustration of judges which in his view violated the principle of equality. He also questioned the authority of the National Judicial Council to take administrative decisions defining the circumstances in which collaboration commenced, which decisions could cause judges to forfeit their retirement rights and consequently their judicial or family emoluments.

In its ruling the Constitutional Tribunal did not share the reservations about changing principles regulating the statute of limitations in disciplinary procedure. It stated that such abuses of judicial independence occurring prior to 1989 still needed to be disclosed and clarified. Solely in regard to events pre-dating the 1989 turning point may the general principles of judicial responsibility, applied to the conditions of a democratic law-governed state, prove to be an inadequate mechanism.

(...) Violation of judicial impartiality was a particularly drastic abuse of duties stemming from judicial independence. That may involve bending the substance of rulings or verdicts to suggestions or orders from without or anticipating such suggestions with a view to the resultant benefits they may provide. That leads to the phenomenon of "servilistic judges" who are not qualified to administer justice.¹⁵

The Tribunal found the solutions contained in the amended Law on Judiciary to be in accordance with the constitution, emphasising the particular importance of rebuilding the principle of judicial independence. The CT held that the dignity of the administration of justice in a democratic state governed by the rule of law required the departure from the courtroom of those who had subordinated basic judicial values – independence and impartiality – to the cause of political reprisal.¹⁶ The Constitutional Tribunal invoked its ruling of 9th November 1993 which stated that "the transition from an authoritarian state to one governed by the rule of law may in exceptional cases assume forms which would not be justifiable under normal conditions."¹⁷

The problem of disciplinary responsibility of judges was formally regulated by separate Law "On disciplinary responsibility of judges which in years 1944-1989 violated the judiciary independence" This law excluded the time limitations in disciplinary proceedings against

¹⁴ Dz. U. 1998 nr 98, poz. 607.

¹⁵ K03/98.

¹⁶ K03/98.

¹⁷ K. 11/93, Constitutional Tribunal Rulings in 1993, part. II, p.361.

judges for offences outlined in the aforementioned regulation whilst judging cases in the period 1944-1989. This exclusion was valid till 31 December 2002.¹⁸

The question of judges' lustration declarations has re-emerged recently in connection with a query submitted to the CT by one of the district courts. The question was whether the immunity from penal liability to which a judge is entitled as a specific form of guarantee on the basis of Article 181 of the Constitution of the Republic of Poland also applied to lustration proceedings.

The Tribunal recalled that the intention of legislators enacting lustration laws was that a judge who had made an untrue lustration declaration would forfeit the moral qualifications to sit on the bench, Judicial immunity does not protect a "lustration perjurer", nor does it mollify the sanctions which lustration falsehoods entail or the penalty of infamy for undisclosed clandestine collaboration with the security service. The purpose of judicial immunity is to protect a judge from the initiation of hasty or instrumental proceedings against him, including lustration proceedings, as well as from the threat of such proceedings. Such a situation brings about a state of uncertainty, and the harm caused by it is usually permanent and can adversely affect a judge's independence and courage in the administration of justice. Since instituting lustration proceedings may adversely affect judicial independence, and immunity is an instrument protecting said independence, the Tribunal found it fully justifiable to assume that immunity also protects a judge in lustration proceedings.¹⁹ That means that the same guarantees should be maintained as when a judge faces penal responsibility. Considering the repressive nature of the lustration law, regardless of the decision of the lustration court, also required is the prior consent of the disciplinary court as when a judge faces prosecution in accordance with Article 181 of the Constitution.

VI. This extremely brief analysis of the challenges Poland faced when grappling with lustration over the past 25 years clearly shows changing axiological evaluations of lustration depending on shifting political configurations. It also shows the difficulty of enclosing the political aims of lustration within a legal framework. The CT's extensive activity is the best proof thereof.

As the CT emphasised in its latest ruling: "Lustration legislation has frequently changed in Poland, as has the axiological justification of the solutions adopted. The consequences of what is known as the lustration lie have varied but should primarily be evaluated in a historical context. (...) Divergent definitions of the legal consequences of lustration rulings in the 1997 lustration law and that of 2006 have resulted from the changing visions of lustration, its objectives and axiological assumptions held by successive legislators.

In the light of the 1997 law, the aim of lustration was to incline people who had collaborated with state security organs in the past to admit it and submit to public evaluation. Cooperation with communist state organs, if ascertained, did not produce any negative legal consequences for those being screened. That type could be termed "clarificational" lustration. Individuals found to be lustration liars forfeited their moral qualifications to perform specific public functions, although initially they were not deprived of the posts they held. Only in time did lustration court rulings become more penal in nature. First the principle was introduced that lustration liars obligatorily forfeit their positions and subsequently that they also may not vote in presidential elections. The new lustration law adopted in 2006 arose in a different normative and axiological context defined by the Constitution and CT rulings. Mindful of past experience with the functioning of the 1997 lustration law, lawmakers decided

¹⁸ Dz. U. 1999 nr 1, poz.1.

¹⁹ CT ruling of 2nd April 2015, P31/12.

to set different objectives for the lustration process. Their point of departure was the assumption that public functions requiring high moral qualifications may be performed only by individuals who never collaborated with state security organs and had a certificate to prove it. At present, lustration is not limited to determining the veracity of lustration declarations but – as set forth in the preamble to the 2006 lustration law – its aim is to <<entrust positions and professions requiring public trust to people whose conduct to date provides guarantees of integrity, high-mindedness, a sense of responsibility for words and actions, civil courage and righteousness>> and ensure citizens the right <<to information about people performing such functions, holding such positions and practising such professions.>>²⁰

VII. Poland's Constitutional Tribunal clearly stated²¹ in accordance with Council of Europe resolution 1096 that: “the principal aim of lustration should be to protect democracy from the remnants of the totalitarian system, whilst its secondary objective is to punish those who had engaged in collaboration with the totalitarian regime.”

One may observe that lustration emotions in the Poland's public debate have abated to some extent. That is undoubtedly due to the passage of time. As the CT has pointed out: “Lustration measures should cease to take effect as soon as the system of a democratic state has been consolidated. In this way the time scope of the Lustration Act's binding force and application shall be specified by a criterion that determines the attainment of minimum democratic standards by the State.”²²

²⁰ CT ruling of 2nd April 2015, P31/12.

²¹ CT ruling of 11th May 2007, Ref. No. K 2/07.

²² K2/07.