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Limited Reckoning in the Former Soviet Union

Some Possible Explanations

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Twenty-five years after the collapse of the Former Soviet Union (FSU), it is evident that the fifteen successor republics have engaged in only limited reckoning with the mass human rights abuses perpetrated by the communist regime in 1917–91. The Baltic republics represent the only exception because they made considerable strides by adopting a wide range of transitional justice methods, programs, and practices. By contrast, the other former Soviet republics have done relatively little to reckon with the communist past, therefore demonstrating indifference toward the plight of the former victims and the possibly negative impact on the rule of law from the continued impunity of former communist-era victimizers. In a surprising move, postcommunist Russia and some of its FSU client states have adopted a number of measures designed to counter the very necessity of what the Germans call *Vergangenheitsbewältigung* by negating, justifying or even extolling communist human rights violations.

This chapter reviews the literature available to date to identify the reasons why the FSU has lagged behind the Baltic republics and Central and Eastern Europe in its efforts to come to terms with the legacy of communist crimes. The focus here is on lustration, access to the secret files compiled on ordinary citizens by the KGB, and court trials against communist party officials and secret agents, as well as other nonjudicial transitional justice methods, including history commissions, rehabilitation, property restitution, unofficial truth projects, and public holidays, in order to provide a fuller picture of reckoning in the post-Soviet context.

The chapter is divided into two main sections. The first one pieces together the postcommunist record of transitional justice measures implemented in the successor states to show that those states fall behind Central Europe, and to identify variations within the post-Soviet space. Attention is then given to explaining this weak reckoning effort and the differences among countries.

The incomplete democratization experienced by some successor republics, the continued political clout of former Communist Party leaders, as well as KGB officers and informers, the postcommunist balance of forces between the pro- and antireckoning camps, the role of political leadership, the weakness of civil society groups free of nationalist goals, the indifference of international actors, the timing of the worst human rights violations relative to the ousting of the communist regime, and a local legal culture still rooted in socialist legality explain the relative scarcity of state-led reckoning efforts in the FSU.

Note that this chapter focuses exclusively on programs and methods designed to reckon with the crimes of the communist regime, not with the human rights violations of the Nazi occupation forces or the human rights abuses perpetrated by state agents after 1991 (during the so-called “colored revolutions” or the various wars that have plagued the region). Tables 1.1 and 1.2 visually groups transitional justice measures in both the Baltic states (Table 1.1) and the other FSU states (Table 1.2) to date.

THE TRANSITIONAL JUSTICE RECORD OF THE FSU

Before explaining differences across the postcommunist region and within the FSU, let’s first document them. An overview of court trials, file access, and lustration in all postcommunist European countries I conducted in 2008 with some colleagues established the lead of the Baltic states over all of the other successor republics in terms of implementing those three measures, and the FSU’s handicap relative to Central and Eastern Europe.¹ Since then no dramatic changes have occurred in the non-Baltic republics that would significantly alter the ranking of these three regions. In addition, the ranking seems to remain largely robust, if additional, nonjudicial transitional justice measures are also considered after surveying the data presented by the Transitional Justice Database Project,² legislation published in the region, and the local press.

Ironically, the FSU had an earlier start at transitional justice than its European satellites. Mikhail Gorbachev’s policy of *glasnost* (openness), enacted in 1987, challenged some widely held certainties of the communist regime and encouraged the Soviet citizens to denounce the abuses of the regime at a time when Central and Eastern Europeans could only dream of doing so. As a result, Memorial became an important grassroots organization “concerned with history and political symbols, engaged in discovering and revealing the truth, and dedicated to preserving the memory of the victims of successive waves of Soviet repression.”³ Supported by the relatives of the former victims, its regional chapters in the Baltic republics, Russia, Ukraine, and

TABLE 1.1. *Transitional justice measures in the Baltic republics, 1987–2016*

| Transitional justice measure | Country program |
|--|--|
| Access to KGB archives for ordinary citizens | Estonia 1994, Law on the collection, conservation and use of materials, inventories of security and intelligence services |
| | Latvia 1994, Law on the preservation and use of documents of the former state security committee and the determination of individuals' collaboration with the KGB |
| | Lithuania 1994, Law on the preservation and use of documents of the former state security committee and the determination of individuals' collaboration with the KGB |
| Lustration, screening, and vetting | Estonia 1992, The Constitution of the Republic of Estonia Implementation Act (§ 6-7) 1992, The law on the procedure for taking the oath (amended 1994 and 2001) 1994, Election law on city and town councils, district councils, and pagasts councils 1995, Law on procedure for registration and disclosure of persons who have served in or cooperated with intelligence or counter-intelligence organizations of security organizations or military forces of states which have occupied Estonia 1995, Citizenship law |
| | Latvia 1994, Election law on city and town councils, district councils, and pagasts councils 1994, Citizenship law 1995, Saeima Election Law |
| | Lithuania 1991, Decree no. 418 banning KGB employees and informers from government positions 1991, Law no. I-2115 on the verification of mandates of those deputies accused of consciously collaborating with special services of other states 1991, Law no. I-2166 on the security and spy agencies 1994, Law no. 23 on the background checks of individuals holding certain important positions 1999, Law no. VIII-1436 on registering, confession, entry into records and protection of the persons who have admitted to secret collaboration with special services of the former USSR (amended 2010) 1999, Law on the assessment of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the current activities of the staff members of this organization |

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TABLE 1.1 (continued)

| Transitional justice measure | Country program |
|---|--|
| Court trials resulting in a court verdict | <p>Estonia 1999, J. Klaassepp, V. Penart, K.-L. Paulov, V. Beskov, M. Neverovski, V. Loginov, and R. Tuvi 2003, A. Kolk, P. Kislyiy 2006, V. Kask, J. Karpov</p> <p>Latvia 1993, A. Rubiks 1996, A. Noviks 1999, M. Farbtukh 2000, Y. Savenko 2003, N. Tess 2004, V. Kononov 2005, J. Kirsteins, N. Larionova</p> <p>Lithuania 1992, Algis Klimaitis 1995, K. Kurakinas, P. Bartasevicius, and J. Sakalys 1996, M. Burokevičius and J. Jermalavičius 1998, K. Gimzauskas 1999, P. Raslanas; six convicted for involvement in January 1990 events 2000, B. Viater, K. Kregzde, A. Lapinskas, P. Preiksaitis, and I. Tamosiunas 2001, R.J.S., V. Vasiliauskas, and M. Zukaitiene 2002, V. Misiunas 2003, J. Dabulevicius 2004, A. V. 2005, A. Dailide 2006, J. Juskauskas and J. Navickas 2007, Z. D. 2008, J. S. 2009, P. A. Povilaitis 2010, M. Bulatovas and V. Kojalis, T. P. 2011, V. Vasiliauskas and K. Mikhailov 2012, P. Preiksaitis and M. Tabakajev 2013, V. J. Petronis 2014, M. Misiukonis</p> |

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TABLE 1.1 (continued)

| Transitional justice measure | Country program |
|---|---|
| Commissions | <p>Estonia 1992, State Commission for the Examination of Repressive Policies Carried Out during the Occupations 1998, International Commission for the Investigation of Crimes against Humanity</p> <p>Latvia 1992, Commission for the Investigation of Totalitarian Regime Crimes 1998, Commission of the Historians of Latvia</p> <p>Lithuania 1998, International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania</p> |
| Rehabilitation and compensation of former victims | <p>Estonia 1988, Law acknowledging the irremediable suffering caused by Stalinist terror 1990, Decree to rehabilitate all individuals convicted for political crimes in the Soviet Russian criminal code 1992, Law on the rehabilitation of persons extra-judicially repressed and wrongfully convicted 1995, Law concerning the determination of repressed status for persons who suffered under the communist and Nazi regimes (amended in 1997, 1998, 1999, 2001, and 2004) 2003, Law on persons repressed by occupying powers</p> <p>Latvia 1990, Law concerning the rehabilitation of illegally repressed people 1991, Law concerning amnesty for persons punished for military crimes 1995, Law concerning the determination of repressed status for persons who suffered under the communist and Nazi regimes (amended in 1997, 1998, 1999, 2001, and 2004)</p> <p>Lithuania 1990, Law on rehabilitation of persons repressed for resistance to occupation regime (amended 2008) 1997, Law on the legal status of the people of the Republic of Lithuania who fell victims to the occupations of 1939–90 (amended 2007) 1997, Law on state support to the participants of armed resistance 1998, Law on state support to families of the fallen participants of the resistance against the 1940–90 occupations 2000, Law on compensation of damage resulting from the occupation by the USSR</p> |

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TABLE 1.1 (continued)

| Transitional justice measure | Country program |
|------------------------------|--|
| Property restitution | <p>Estonia 1990, Decision of the Supreme Soviet of the Estonian Republic on the restoration of ownership continuity 1991, Principles of Ownership Reform Act 1991, Land Reform Act</p> <p>Latvia 1990, Law concerning lands reform in the rural areas of the Republic of Latvia 1992, Law concerning the denationalization of private real estate in the Republic of Latvia and law concerning the return of real estate to lawful owners</p> <p>Lithuania 1991, Law on the restoration of the rights of ownership of citizens to the existing real property 1997, Law on the restitution of remaining immovable property rights of the citizens of the Republic of Lithuania</p> |
| National Days | <p>Estonia 1998, June 14 as Day of Mourning 2009, August 23 as Day of Remembrance for Victims of Communism and Nazism</p> <p>Latvia 1990, March 8 and June 14 as Remembrance Day to the Victims of Communist Genocide (renamed in 1998) 1998, March 16 as Latvian Soldier's Remembrance Day (removed in 2000) 1998, First Sunday in December as Day for Victims of Genocide against the Latvian People by the Totalitarian Communist Regime 2009, June 17 as Soviet Occupation Day 2009, August 23 as Remembrance Day for the Victims of Stalinism and Nazism</p> <p>Lithuania 1991, January 13 as Defenders of Freedom Day 1997, Third Sunday in May as Day of Commemoration of Partisans and Unity of the Army and Society 1997, June 14 as Day of Mourning and Hope 2002, May 14 as Civil Resistance Day 2005, May 8 as World War II Remembrance Day</p> |

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TABLE 1.1 (continued)

| Transitional justice measure | Country program |
|------------------------------|---|
| Other | <p>Estonia 1992, Basic principles for developing the Estonian secret services 1992, KGB Cells Museum in the Grey House, Tartu 1994, Viru KGB Museum in Tallinn early 2000s, Patarei Prison in Tallinn 2003, Tallinn Occupation Museum 2005, Public apology delivered by Prime Minister Andrus Ansip 2008, Law creating the Memory Institute 2008, Maarjamäe memorial and museum in Tallinn</p> <p>Latvia 1991, Decision concerning the anticonstitutional activities on the Latvian Communist Party in the Latvian Republic 1991, Decision on the cessation of the activities of the security services of the USSR in the Republic of Latvia 1993, Law on registering public organizations 1993, Museum of the Occupation of Latvia, Riga 1993, People's Front Museum, Riga 2005, Declaration on condemnation of the totalitarian communist occupation regime implemented in Latvia by the Union of Soviet Socialist Republics early 2010s, Tornakalns Deportation Memorial, Riga</p> <p>Lithuania 1992, Law I-2477 on responsibility for the genocide of the residents of Lithuania 1992, Genocide Victims' Museum (KGB Museum), Vilnius 1995, Public apology by President Algirdas Brazauskas 1997, Law establishing the Centre of Research of the Genocide and Resistance of the Lithuanian Population 1998, Law on the assessment of the U.S.S.R. Committee of State Security (NKVD, NKGB, MGB, KGB) and present activities of the regular employees of this organization 2000, Vilnius international public tribunal on the evaluation of communist crimes</p> |

Source: Lavinia Stan, ed., *Transitional Justice in Eastern Europe and the Former Soviet Union* (London, Routledge, 2009), Chapters 10–11; Peter Hohenhaus, *Dark Tourism*, 2016, available at: www.dark-tourism.com, accessed December 27, 2016; Eva-Clarita Pettai and Vello Pettai, *Transitional and Retrospective Justice in the Baltic States* (Cambridge: Cambridge University Press, 2015); “Estonia,” “Latvia,” and “Lithuania,” *Transitional Justice and Memory in the EU*, 2013, available at: www.proyctos.cchs.csic.es/transitionaljustice/, accessed October 19, 2016.

TABLE 1.2. *Transitional justice measures in other former Soviet states, 1987–2016*

| Transitional justice measure | Country program |
|--|--|
| Access to KGB archives for ordinary citizens | Russia 1991, Commission on the transfer of the CPSU and KGB archives to state use 1993, The fundamentals of legislation of the Russian federation on the archival corpus of the Russian federation and on the archives |
| | Ukraine 1991, Law 962-XII/1991 allowed access to files that contained no information that presented other persons in a negative light 2006, Government creates the Ukrainian Institute of National Remembrance 2009, Presidential Edict no. 37 on declassifying and publishing materials related to the Ukrainian liberation movement, political repressions and Holodomor 2015, Law no. 2540 on access to the archives of repressive bodies of the communist totalitarian regime from 1917 to 1991 |
| Lustration, screening, and vetting | Georgia 2011, Liberty charter (includes lustration provisions, unimplemented) |
| | Ukraine 2014, Law on government cleansing (lustration law) 2014, Law on restoring confidence in the judiciary in Ukraine |
| Court trials | Ukraine 2009, Criminal case is initiated against the Soviet functionaries who carried out the Holodomor. The Kyiv Appellate Court found in 2010 that Stalin and other Soviet functionaries planned and committed genocide, but the case was shelved because defendants were deceased |
| Commissions | Azerbaijan 1990, Parliamentary investigative commission into the Black January events |
| | Moldova 2010, Presidential commission for the study and evaluation of totalitarian communist regime in the Republic of Moldova |
| | Ukraine 1997, Commission on the study of the activities of OUN and UPA, created by Council of Ministers. Final report produced in 2004 |
| | Uzbekistan 1999, Presidential commission for the promotion of the memory of victims |

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TABLE 1.2 (continued)

| Transitional justice measure | Country program | |
|---|--|---|
| Rehabilitation and compensation of former victims | Azerbaijan 2006, Presidential pension for surviving family members of Black January martyrs | |
| | Moldova 1992, Law no. 1225-XII on rehabilitation of victims of political repressions (amended 1994) | |
| | Russia 1987, Politburo Commission studied repression of the 1930s–50s, and rehabilitated 840,000 individuals 1991, Rehabilitation Commission oversaw the implementation of Law of Rehabilitation 1996, Law enabled the children of “enemies of the people” to claim victim status | |
| | Ukraine 1988, Rehabilitation commissions are created, attached to the regional Communist Party committees 1991, Law no. 962-XII on rehabilitation of victims of political repressions in Ukraine 1993, Law on the status of war veterans recognized UPA members who fought against the German-fascist occupiers of Ukraine in 1941–4 and did not commit crimes against humanity 2014, Law no. 2538-1 on the legal status and honoring of fighters for Ukraine’s independence in the twentieth Century | |
| | Property restitution | Azerbaijan 1991, Law on returning confiscated houses to the owners |
| | | Moldova 2010, Government allocates compensation funds, no commission to distribute them |
| | | Russia 1994, New procedures for returning or paying for illegally confiscated property |
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TABLE 1.2 (continued)

| Transitional justice measure | Country program |
|------------------------------|--|
| National Days | Georgia 2010, February 25 as Occupation Day |
| | Moldova 2010, June 28 as the Day of Remembrance of Soviet Occupation (canceled) |
| | Russia 1997, President Boris Yeltsin proposes November 7 as Day of Agreement and Reconciliation. Proposal abolished in 2005 by Putin 2007, October 30 celebrated as Day of Victims of Political Repression |
| | Ukraine 1993, May 18 becomes the Day of Memory of Victims of the Deportation of Crimean Tatars 1998, Last Saturday of November becomes the Day of Remembrance of the Victims of the Holodomor, later renamed the Day of Remembrance of the Victims of the Holodomor and Political Repressions 2005, October 14 becomes the Day of the Ukrainian Army and the Foundation of UPA |
| | Azerbaijan 1994, Parliamentary condemnation of Black January events as a criminal attempt 1998, Presidential decree on “The Martyr of 20 January” for victims of Black January |
| Other | Georgia 2006, Museum of Soviet Occupation |
| | Kazakhstan 2011, KarLag, Museum of Political Repression Victims’ Memory of the Dolinka Settlement |
| | Moldova 2010, President Mihai Ghimpu unveiled commemorative stone to the victims of totalitarianism |

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