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VETTING AS AN ELEMENT OF INSTITUTIONAL REFORM AND TRANSITIONAL JUSTICE

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Reforming institutions in a countries emerging from conflict or authoritarian rule contributes to achieving a central objective of an effective and legitimate transitional justice policy: the prevention of recurrence of human rights abuses. Therefore, vetting as an element of institutional reform and transitional justice should be considered as a measure to reform institution responsible for human rights violations, thus it calls for individual responsibility of those who were involved in the past human rights abuses. As a key measure of institutional reform, vetting, to the great extent, affects the functioning of the institution to be reformed, thus relates to the other institutional reform processes. I argue in this article that necessity to approach to institutional reform processes holistically and coherently is justified by the convergence and mutual reinforcement of the mechanisms of institutional reform processes. Failing to implement one of measures may instigate failure to implement another. Accordingly, a coherent and holistic approach to transitional justice mechanisms in post-conflict and/or post-authoritarian settings is of great significance for achievement of

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sustainability of transitional justice policy. However, little systematic attention has been paid to the topic of vetting as an institutional reform and transitional justice measure. The main reasons for such lack of the attention and familiarity with the term comes from misconception of the meaning of the process, lack of its clarity in the literature, and minor efforts taken to distinguish it from massive dismissals or purges. The discussion in this article strives to fill this gap by offering a comprehensive approach to the subject of research.

KEY WORDS: vetting / institutional reform / transitional justice

1. INTRODUCTION

Transitional justice embodies an attempt to build sustainable development in the aftermath of armed conflicts and large-scale human rights violations. Transitional justice as a mechanism of restoring the rule of law in the countries emerging from conflict or authoritarian rule, encompasses not only war crimes prosecutions (hitherto given the most weight in the post-conflict settings), but also reparations, truth-seeking and institutional reform as equally important remedying mechanisms. These mechanisms foster the creation of restorative justice, help to end impunity and have a preventive role in post-conflict and/or post-authoritarian recovery efforts. However, it is of great significance for successful implementation of the transitional justice measures, to approach to its mechanisms holistically. These mechanisms are convergent and mutually reinforcing, and failure to implement one may cause failure of another. On the other hand, the multifaceted shortcomings of post-conflict or post-authoritarian public institutions call for a comprehensive approach to institutional reform as well.

Vetting as element of institutional reform and transitional justice processes should be primarily understood as a measure to reform institution responsible for human rights violations. It calls for individual responsibility of those involved in past human rights abuses. Therefore,

vetting is used in this article to refer to processes for assessing an individual's integrity, namely, as a tool to determine if individual's prior conduct warrants his/her exclusion from public institution. In addition, vetting strategies need to address particular historical and political context of the country in question, since different contextual conditions raise different vetting approaches.

Discussion in this article is focused to four major sections. The first defines the notion of transitional justice and vetting as one of its mechanisms. The discussion in the following section is mainly concentrated to vetting in a context of broader institutional reform processes. Simultaneously, the need for a coherent and holistic approach to institutional reform measures has been argued in this section. Further on, the types and design of a vetting process in post-conflict or post-authoritarian settings have been presented in the third section of the paper. Lastly, an overview of the situation related to vetting measures and initiatives in some of the countries of the Former Yugoslavia have been elaborated.

2. VETTING AND TRANSITIONAL JUSTICE

In post-conflict and/or post-authoritarian societies the maintenance of long-term peace and democratic stability can be achieved only if the population is confident that redress for grievances can be obtained through legitimate structures. In situations in which these legitimate structures are absent an element of urgency in the restoration of the rule of law exists. Transitional justice processes, therefore intends to build a sustainable peace after conflict, mass violence or systematic human rights abuses.

According to the UN Secretary General Report on Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, transitional justice comprises:

[...] the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial

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mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.¹

As stated in the definition of the report, the key elements of transitional justice involve war crimes prosecutions, revealing the truth about past crimes, providing victims with reparations and reforming abusive institutions.

The most researched and studied mechanism of transitional justice is, without any doubt, war crime prosecutions. However, truth seeking and reparations to the victims of human rights abuses have generated considerable attention and study as well. On the other hand, vetting as an element of institutional reform mechanism and transitional justice itself, has received the less attention from the academics, transitional justice professionals, and its stakeholders in general. The main reasons for such lack of the attention and familiarity with the term comes from misconception of the meaning of the process, lack of its clarity in the literature, and minor efforts taken to distinguish it from massive dismissals or purges.

At this point, I find necessary to discuss general notion of vetting processes in a transitional justice context and its mutually reinforcing linkages with other transitional justice pillars.

Vetting as a transitional justice mechanism is primarily a measure to reform abusive institutions in post-conflict and/or post-authoritarian societies and as such is very complex phenomenon. Relying on the UN Secretary-General's definition, vetting in post-conflict settings "...usually entails a formal process for the identification and removal of individuals responsible for abuses, especially from the police, prison services, the army and the judiciary"². Therefore, vetting refers to a process of assessing integrity to determine suitability for public service engagement. However, vetting entails not only identification and

¹ *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General*. UN Security Council S/2004/616, 23 August 2004, p. 4.

² *Ibid.*, p. 18.

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removal of individuals responsible for past abuses, but also aims at screening of integrity and capacity of new candidates for public employment. Also, vetting is the process in which criteria of assessment relate to *individual* responsibility, which, thus calls for individual review, and for offering individuals some procedural guarantees.³

However, as a stand-alone measure, vetting is generally insufficient to ensure that abuses are not repeated. A coherent and holistic approach to transitional justice mechanisms is necessary to ensure that systematic and widespread human rights abuses will not recur. Such approach to transitional reform as Alexander Mayer-Rieckh argues "will seek to empower the subject of the state oppression and victims of conflict-related violence to recognize themselves and be recognized as rights-bearing citizens"⁴.

Vetting is a measure of institutional reform, thus an element of transitional justice policy, and as such it can facilitate the application of other transitional justice measures, in particular, prosecutions, truth seeking and reparation to victims of past abuses. On the other hand the process of facilitation is mutually reinforcing. For instance, truth commissions could provide vetting commissions with relevant data on security services employees on its possible involvement in past human rights abuses and vice versa. On the other hand linkages between reparation processes and vetting are significant as well, but less direct. Taken as a form of recognition of state responsibility for past human rights mistreatments, as de Grieff argues, those who are responsible for the abuses are likely to oppose the establishment of reparation programmes. Thus, vet those responsible for the abuses may weaken one of the sources of resistance to reparations.⁵ Finally, vetting may

³ De Grieff, P, "Vetting and Transitional Justice", *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Mayer-Rieckh, Alexander and Pablo de Grieff, eds. Social Science Research Council, New York, 2007, p. 524.

⁴ Mayer-Rieckh, A, "On Preventing Abuse: Vetting and Other Transitional Reforms", *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Mayer-Rieckh, Alexander and Pablo de Grieff, eds. Social Science Research Council, New York, 2007, p. 483

⁵ De Grieff, op. cit, p. 529.

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also facilitate broader scope of institutional reform measures by weaken the sources of opposition and resistance to reform.⁶

3. VETTING, INSTITUTIONAL REFORM AND ITS INTER-LINKAGES

As argued above, transitional justice mechanisms, generally speaking, respond to mass atrocities by punishing perpetrators, establish the truth about past violations and provide victims with reparations, either symbolic or material. It is also necessary to fundamentally change or reform, or in some cases even abolish institutions responsible for human rights abuses. Since this article deals mainly with institutional reform processes as one of the pillars of transitional justice and specifically with vetting as an institutional reform mechanism, I'll concentrate at this point at reforming institution processes with vetting as its cornerstone.

Public institutions that perpetuated a conflict or served an authoritarian regime need to be transformed into institutions that support transitional processes, sustain peace and preserve rule of law. Therefore, effective and sustainable institutional reform is a very complex and challenging task for its implementers. Institutional reform measures, depending on a country's circumstances, may include various mechanisms. Those reform mechanisms may be as follows: creation of oversight, complaint and disciplinary procedures, the reform of establishment of legal frameworks, the development or revision of ethical guidelines and codes of conduct, changing symbols that are associated with abusive practices, etc. However, effective institutional reform might also have to review the functioning of an entire public sector,⁷ and consider merging, disbanding and creating public institutions.⁷ These mechanisms, depending on the conditions in the specific context, may be used separately, but most

⁶ Ibid, p. 30.

⁷ Rule of Law Tools for Post-conflict States, *Vetting: an Operational Framework*, Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 2006.

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usually the case is that its combination will have the most effect in the reform processes.

As a key mechanism of institutional reform, vetting, to the great extent, affects the functioning of the institution to be reformed and thus relates to the other institutional reform measures. Taking into consideration linkages among vetting and other institutional reform processes and adopting a coherent reform approach can help to ensure the effectiveness of the vetting process itself and the institutional reform as a whole.

As Mayer-Rieckh argues, vetting process usually have significant effect on the overall functioning of public institution by, for instance, resulting in removal of a great number of public employees, or even by focusing in removal of senior management structures at the key positions. The potential negative effects of vetting on the institution and society as a whole, particularly the risks of governance gaps and increased criminality, as this author argues, need to be strictly considered in the process of the vetting design, and to possibly ensure conditions for vetting processes to go alongside with other institutional reform measures in order to prevent these possible negative effects⁸. In the situations where other institutional reform measures target the same public positions as vetting process, the mutual impact of these processes could often be unfavorable. In transitional settings depending on concrete situation, either whole or some parts of public institutions may be changed in order to meet the requirements of the state govern by the rule of law. Institutions might have to be merged, reduced in size or enlarged, newly created or fully abolished. In any of these cases personnel composition of an institution might have to be modified. Taking stated into consideration, vetting processes that are not in coordination and cohesion with such reforms may result in failure, for instance, screening the posts for positions that no longer exist, or have different job requirements. Therefore, the importance of great level of coordination and cohesion among vetting and other

⁸ Mayer-Rieckh, A, op. cit, pp. 486-487.

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institutional reform processes is more than evident and need to be brought to the attention of the bodies responsible for institutional reform processes in transitional circumstances.

However, other institutional reforms may act in favor and safeguard of vetting process outcomes. Reform measures that help to prevent reversals and strive to include vetting outcomes in the context of broader institutional reform process will enable realization of efforts to establish merit based recruitment, appointment and dismissal procedures, and other measures as well in order to stop political interference and to provide genuine separation of governmental powers.⁹

Finally, vetting as stand-alone institutional reform measure is generally insufficient to prevent recurrence of abuse and has to be coordinated with other institutional reform measures to ensure filling the void of past mistreatments. Consequently, the multidimensional character of the transitional context requires complementing vetting with other institutional reform processes and thus requires a holistic and comprehensive approach to institutional reform process.

4. APPROACHES TO VETTING PROCESS: TYPES AND DESIGN OF VETTING PROCESSES

Vetting process may be implemented in a different situations or scenarios and in certain sectors of administration, most usually in security sector and judiciary, and in this context it may address various issues. Namely, it is of great importance for successful vetting to clearly assess what institutions and positions within the institutions will be subject to vetting.

4.1. Institutions and Positions that are Subjects to Vetting

It is more than obvious that in post-conflict settings, vetting procedures tend to focus on the institutions that have been involved in human

⁹ Ibid.

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rights abuses, notably in the security sector and judicial sector institutions. I will focus my discussion on how vetting processes have been implemented in police sector and judiciary when presenting case of Bosnia and Herzegovina in the part on Western Balkans overview. However, in post-authoritarian settings such were in Czech Republic, Poland, or Hungary¹⁰ where less violent misconducts took place, vetting had been focused at the broader range of targets, including electoral posts, universities, and the media. In the Czech Republic, for instance, lustration procedure reached as Jiri Priban argues "wide range of public offices"¹¹ such as all ranks of the judiciary and prosecution office, civil service, all ranks of senior administrative positions in all constitutional bodies, the army, the police, all intelligence service specialized in political surveillance and prosecutions, state media, press agencies, state corporations, university administrative positions of head of academic departments, etc. In Hungary, subject to lustration were members of parliament, ombudsmen, members of Constitutional Court, the president and vice president of the Supreme Court, the chief prosecutor, the public administration of highest level, including the president and the members of the cabinet, the police and the media. In Poland, the lustration statute stated that persons holding public offices had to make lustration declarations.¹²

In addition to the assessing what institution and position should be subject to vetting, the individuals to be vetted should be identified as well. A failure to identify a target group prior to running vetting

¹⁰ In Eastern and Central, post-communist Europe, lustration refers to vetting processes, thus those two terms are used interchangeably to refer to the same process. The term lustration derived from the Latin *lustratio*, an act of purification and reconciliation in Ancient Rome during which a solemn sacrifice was offered.

¹¹ Priban, J, "Oppressors and Their Victims: the Czech Lustration Law and the Rule of Law", *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Mayer-Rieckh, Alexander and Pablo de Grieff, eds. Social Science Research Council, New York, 2007, p. 311.

¹² *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Mayer-Rieckh, Alexander and Pablo de Grieff, eds. Social Science Research Council, New York, 2007, p. 21.

process would allow circumvention and might render the whole process obsolete. Personnel identification will also assist in planning realistic and feasible reform process and might be used for establishing a proper personnel management system for the institution in question. However, identification as a sole measure is not enough. Reliable records about the *integrity* of the persons subject to vetting are condition of any successful vetting process and thus need to be established. In order to collect reliable integrity data, background information might have to be collected from variety of sources which include, among others, personnel files, court records, truth commission reports, media reports, party files, United Nations reports and NGO reports available. On the other hand, public should be given opportunity to come forward with information as an useful tool for checking on the integrity serving public employees.

4.2. Conditions that Determine the Design of a Vetting Process

Resistance to reform is a regular feature in the countries emerging from conflict or authoritarian rule. Individuals and groups that risk losing power and influence through reform process often resist its implementation. However, any particular transition has its own characteristics and context in which it operates that might make it either more or less open to vetting. Vetting processes regulate access to ruling positions and are highly political undertakings, notably in the post-conflict settings.

In order to assess external conditions to implement vetting process, it is necessary to screen concrete *political conditions* and assess possible risks that might obstruct the vetting process. Namely, the nature of transition should be carefully analyzed, potential resistance to the vetting process should be considered in advance, and reform oriented human capacities that may assist in the design and implementation of a vetting process should be identified.

Furthermore, a firm *legal* basis is necessary for establishment of vetting processes. Depending on specific settings in which vetting processes are to be implemented, international or national legal frame should be followed in order to run the reform processes. As argued above, any

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vetting process will be contested and will create political resistance, but if an explicit commitment to vetting in a peace agreement or Security Council resolution exists then it will be far more difficult to circumvent vetting process. If special national legislation is required, which is the most regular case, it should be clear, precise and in compliance with constitutional requirements and international standards.

Vetting processes are complex, time-consuming and resource-intensive, in particular when they concern institutions with large number of employees. Therefore, the success or failure of the process to the great extent depends on thorough evaluation of operational requirements and external factors that will influence it as well as the provision of adequate time and resources. The timing and duration of vetting process will usually reflect political circumstances of the country in question, but they will also be determined by other characteristics of the process, such as number of institutions, positions and individuals to be vetted.

It is of crucial importance, though, to avoid possible undesirable consequences of a vetting process such are political misuse, governance gap and destabilization. Vetting process can be misused in political purposes. Removals of the public servants can be based on group or party affiliation, rather than on individual conduct, target political opponents, and even degenerate to political purges. On the other hand, vetting, by removing larger number of public employees (notably, senior or expert) may create governance gap if the functioning of the institution is disrupted. Thus, vetting processes if they are likely to cause the risk of governance gap, should be implemented in phases in order to prevent this risk. Furthermore, the potential risk of destabilizing effects of removals from public service should be assessed prior to designing a vetting process. In particular, if large number of security sector employees has been removed they may turn to armed opposition or organized crime and create security threat.

4.3 Types of Vetting

The type and scope of vetting process can vary considerably. However, in transitional settings, two basic types of vetting stand out:

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review and reappointment. Review and reappointment can be distinguished by scope and category of persons they intend to target: serving employees of a public institution or applicants for service in a public institution.¹³

A review process aims at excluding from the public service individuals who were involved in serious abuses. Simultaneously, removing abusers can weaken sources of resistance to institutional reform and facilitate implementation of other transitional justice measures. Review as a measure of reforming abusive institutions can contribute to providing recognition to victims of violence and state repression by disbanding those responsible for abuses. However, in addition to the presence of abusive public servants, existence of the individuals that lack capacity is another recurring cause of the malfunctioning and lack of legitimacy of a public institution in transitional contexts. Therefore, this process may be used in order to replace incompetent public employees and thereby making another contribution to effective reform.

In a review process, special transitional mechanism is usually established to screen serving public employees with the aim of removing those who lack integrity and capacity to hold the position. In general, special ad hoc commission is to implement a vetting process, since regular disciplinary mechanisms can not be used in a setting of broader institutional reform where great number of individuals is to be screened. In a review process, basic due process standards apply, the burden of proofs falls on the review commission and balance of probabilities will be the appropriate standard of proof.

On the other hand, a reappointment process reverses the fundamental dynamics of a review. The public institution in question is first disbanded, a successor institution is established, and there is a general competition for all posts with the aim to select the most suitable. In this context, all serving employees have to reapply if they want to continue working, and simultaneously, new candidates will be taken into consideration. However, in order to avoid governance

¹³ Mayer-Rieckh, A, op. cit, p. 487.

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gap, the serving employees may remain at the positions until final decision about their future status is made. While the general aim of the review process is to remove from the positions individuals who lack the integrity and capacity, the aim of a reappointment process is to select for the office the most suitable and qualified candidates.

However, applicants in a reappointment process do not enjoy due process protections of serving employees in a review process, but have an equal access to public service. These procedural simplifications streamline the vetting process significantly. In a country emerging from conflict or authoritarian rule, reappointment process facilitate the selection of most suitable individuals, rather than just weeding out those who are clearly unacceptable. Reappointment process, however, may cause several serious risks. It could enable political interference by the executive branch of government in otherwise independently operating sectors, undermine basic due process rights, and leave a governance gap while the process is ongoing. Having said this, the reappointment process should be limited to circumstances when the institution is fundamentally dysfunctional or compromised, and needs to be changed significantly. Consequently, the process should be performed as quickly and as early as the circumstances allows in order to avoid the protracted periods of legal uncertainty.

The most commonly, though, the vetting processes in the countries in transition are understood in terms of a review process.¹⁴ The examples of transitional vetting cases in the transitional countries generally represent processes of *screening out* individuals involved in the past mistreatments.

4.4. Vetting Process Design

Vetting as a measure of institutional reform is very complex process that needs to be adapted to the reform requirements of a specific transitional situation, complemented by other reform measures, and

¹⁴ Ibid. p. 488.

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integrated in a coherent institutional reform strategy. As Mayer-Rieckh argues, design the vetting process should include normative criteria and contextual conditions¹⁵. In that regard, normative dimension refers to the aims of transitional vetting and the basic legal standards relevant to the practice of vetting, while contextual conditions relate to the opportunities, risks, reform needs, resource requirements and sustainability considerations. Therefore, normative criteria provide a framework for design of a vetting process in response to the requirements of contextual conditions.

Normative dimension is intended to streamline vetting process in three different levels in order to acquire a holistic and coherent dimension of overall transitional reform processes. Firstly, while designing vetting processes, normative criteria helps that the design stream to ensure that the vetting process itself contributes, to the greatest extent, to set institutional reform goals. Secondly, as Mayer-Rieckh argues, the vetting process need to be incorporated in a comprehensive institutional reform framework and coordinated with other institutional reform activities in order to commonly stream to the reform goals. And, lastly, vetting processes, as argued above, share its reform related aims with other transitional justice measures, therefore it is crucial in vetting design process to coordinate and relate vetting with other transitional justice mechanisms in order to achieve desired aims more fully, and thus contribute to the effectiveness of a vetting process itself.

Basic legal standards required for vetting to be performed affects design choices. As elaborated above, they include the principle of individual responsibility, due process guarantees, and guarantees to the right to access, on general terms of equality, to public service. Depending on selected type of a vetting process different legal standards will be applied.

Normative criteria provide a broader frame for design of a vetting process. However, contextual conditions further determine design strategy. It is necessary to consider specific transitional context,

¹⁵ Ibid. p. 504.

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whether post-conflict or post-authoritarian, or even both, to assess possible risks that might arise as to adapt concrete vetting measures. The importance of consideration and assessment of specific political condition, such as, for instance, political will for reform to take place, are essential for vetting process design. Failure to map these conditions may lead to a failure of vetting process as a whole. In addition, other than politically driven condition, contextual conditions include specific reform needs, resource requirements and sustainability considerations. While some of external conditions that affect vetting process have been elaborated above, this section will discuss specific resource requirements which as a question has been often underestimated, and sustainability of the measures undertaken.

Successfulness of a vetting process to the great extent depends on availability of adequate resources, human and financial. However, resource capacities in transitional context are usually scarce. Various reform projects apply for the same resources, and requirements for vetting processes are usually underestimated.¹⁶ Furthermore, the specific resource needs of a concrete vetting process depend largely on the transitional context and reform needs, and vary between different variants of vetting. The amount of the resources needed for the vetting to be realized is determined by the number of cases to be processed, infrastructure of the country, the amount and availability of background information, and its verifiability. For instance, lack of reliable information, necessary for vetting processes is characteristic for post conflict settings. Resources needed for obtaining reliable and verifiable information in such context might be not available. In such settings, the implementation of a vetting process has to be postponed or phased, or on the other hand its design has to be adopted to limit the resource needs. A less ambitious vetting process, in order to adjust

¹⁶ The international organizations and donor agencies may play significant role in enabling realization of vetting processes by providing human and financial resources. This was the case in Bosnia and Herzegovina, which will be further discussed in the following chapter.

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to the limited resources, may be concentrated at screening the senior staff of an institution.

Finally, *sustainability* of vetting outcomes should be considered in a design process. Since vetting is an institutional reform tool which has one-off character it is of great importance to ensure its sustainability, namely transfer of vetting outcomes and capacities to the relevant permanent state structures. Therefore, all decisions made during the process should be recorded by the informational system of the institution, vetting outcomes should be incorporated in the personnel files, and acquired know-how and lessons learned should be transferred as and incorporated into permanent institutional structures. Hence, importance of the inclusion of sustainability factor during the design of a vetting process is, without any doubt, essential for the effective institutional reform in the transitional settings.

5. VETTING PROCESSES IN SOME COUNTRIES OF THE FORMER YUGOSLAVIA¹⁷: AN OVERVIEW

The lack of progress with respect to the issue of the vetting in the countries of the Former Yugoslavia resulted in scarce and unsuccessful attempts to address the issue through legislative reform. On the other hand, some countries in the region have passed the laws on lustration¹⁸, and other have, with the assistance of the international actors, made some progress in the domain.

The following paragraph will discuss efforts in the domain of vetting processes in each country separately.

¹⁷ For the purpose of this article, the scope of this paragraph is limited to Bosnia and Herzegovina, Croatia, and Serbia.

¹⁸ As I argued above, the vetting processes in the post-communist countries are marked lustration. This affiliation has been accepted in the countries of the Former Yugoslavia, as countries with post-communist and post-conflict historical background.

5.1. Bosnia and Herzegovina

Given the special role of the international community in Bosnia and Herzegovina, there were several attempts to carry out the review of the past records of public servants. Such review involved police forces, judiciary, candidates for the ministerial positions and army generals. The review was carried out on the different grounds: moral integrity, capacity, property and financial status, and war crime records.

As regards vetting of the police forces, United Nations Mission to Bosnia and Herzegovina (UNMBIH) issued five policies that determined the maximum strength and ethnic composition of the police services, and established a three-step personnel reform process: registration, provisional authorization and certification.¹⁹ The reform process started in November 1999, and close to twenty-four thousand law enforcement personnel had to be vetted over the period of three years.²⁰ According to the Center for Democracy and Reconciliation In Southeast Europe (CDRSEE) report's "Disclosing Hidden History: Lustration in the Western Balkans", approximately two thirds of the persons vetted were provisionally certified to exercise police power, and over 90 percent of them were later granted full certification. Different criteria were considered during the review process according to which the police officers were deemed unfit to serve in the police; among them were unclear property status, forged diplomas, the existence of a criminal record or a current criminal proceedings, including accusations of violations of international humanitarian law.

Judicial reform in Bosnia and Herzegovina took place to its great extent in early 2001 when the Independent Judicial Commission was established as the lead international agency to lead the reform

¹⁹ Mayer-Rieckh, A, "Vetting to Prevent Future Abuses: Reforming Police, Courts, and Prosecutor's Offices in Bosnia and Herzegovina", *Justice as prevention: vetting Public Employees in Transitional Societies*, Mayer-Rieckh, Alexander and Pablo de Grieff, eds, Social Science Research Council, New York, 2007, p. 188.

²⁰ Ibid.

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process.²¹ The Commission developed a strategy for judicial reform, proposing the reappointment process to be implemented as a type to vet the judiciary in order to ensure, not only the suitability of judges and prosecutors, but also as a tool to restructure the court system, reducing its size and ensuring proportional ethnic representation. Since the reform of the judiciary is still ongoing, it is early to assess if the reappointment process has actually led to an improvement in the administration of justice in Bosnia and Herzegovina. However, whatever the concrete impact on the functioning of the judicial system, implementation of the reappointment process established conditions that are generally considered necessary for an independent and professional judiciary.

In the context of the reform of the armed forces, the NATO-led SFOR, carried out the review process of the General Staff of the future Army of Bosnia and Herzegovina.²² Around fifteen generals were vetted by SFOR and the vetting process was completed in 2004. As a result, due to the allegations of war crimes four generals were banned from being appointed to senior posts at the Head Quarters of the Bosnia and Herzegovina.

5.2. Croatia

In Croatia, however, vetting measures in order to reform institutions have not been applied to date; hence discussion at this point may be focused to some minor attempts for vetting to be performed.

A vetting proposal was introduced in Parliament twice by the Croatian Party of Rights, in 1998 and 1999. The draft law proposed by the Croatian Party of Rights was removed from the agenda by a vast majority of the deputies of the Parliament both times. However, the draft law proposal entitled Draft Law on Removing the Consequences of the Totalitarian Communist Regime was limited to the communist

²¹ Mayer-Rieckh, A, op. cit, p. 195.

²² Available at: <http://www.nato.int/sfor/trans/2004/p040615a.htm>

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era abuses occurring from 1945-1990.²³ Its character, thus, was nearer to a broader de-communization than to a pure vetting approach. It aimed mainly at a systematic disabling of a rather broad range of "privileged members" of the former regime from holding high-ranking offices in the new state.²⁴ To date, there were no other attempts to apply vetting process to restore abusive institutions.

5.3. Serbia

Institutional reform as a transitional justice mechanism has been given the less attention in comparison to other transitional justice mechanisms. Consequently, the vetting processes have not been implemented to the public institution, even though some initial efforts have been made to this end. These efforts compromised passing the "Accountability for Human Rights Violations Act"²⁵ in the Serbian Parliament. Serbian Parliament passed the law in May 2003. However, the law has never been implemented even after four years of its adoption by the Parliament.

The law, modeled on a Hungarian lustration law, makes provisions for an independent Commission to review *individual* responsibility for the past human rights violations by the public servants. Under terms set out by the law (Article 4), the law covers all human rights violations occurring after 23 March 1976, the day that the International Covenant on Civil and Political Rights came into effect. The law is explicitly retroactive to that date, although there was some discussion as to whether this will be disallowed by the Supreme Court.

²³ Aucoin, L. and Babbit, E, *Transitional Justice: Assessment Survey of Conditions in the Former Yugoslavia*, UNDP Serbia, Belgrade, 2006, p. 103.

²⁴ *Manual on Lustration, Public Access to Files of the Secret Services and Public Debates of the Past in the Western Balkans*, Hatzichikjan M. ed, CDRSEE, Thessaloniki, 2005, p. 6.

²⁵ Published in the *Official Gazette of the Republic of Serbia*, no.58/2003; correction in no. 61/2003. Available in Serbian at: http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?id=98&t=Z

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Following the adoption of the law, the National Assembly appointed eight out nine members of the Commission. Although the ninth member has not been appointed, the Commission held constitutional meeting on 20 October 2003. However, there was no vetting of candidates in the December 2003 parliamentary elections. The Commission to date has not implemented the measures introduced by the law.

One particularly interesting aspect of the law is that vetting proceedings are to take place in private, and only rarely in public. This aspect of the law undermines one of the aims of institutional reform such as restoring public trust in institutions.²⁶ On the other hand, the law fails to create a mechanism for citizens and NGOs to provide the information and evidence which may affect the reliability of information for vetting proceedings. The sources of information and evidence are to be gathered by security services agencies and other government bodies, which may be unreliable.

The design of a comprehensive vetting process in Serbia, regrettably, has failed, even though the basic legislative conditions for vetting to take place have been created. However, neither normative nor contextual criteria have been fully taken into consideration while attempting to design vetting process in Serbia. Misconduct regarding the timing of the process is evident. It appears that the main obstacle regarding the implementation of the law is lack of political will. Currently, it is unclear whether the vetting measures will be implemented at all, and whether the Commission will be re-formed, even the issue has been raised by some members of the Serbian Parliament recently again.

6. FINAL CONSIDERATIONS

According to the discussion in this article, several conclusions could be draw related to vetting as a transitional justice and institutional

²⁶ See "Serbia and Montenegro: Selected Developments in Transitional Justice", available at: <http://www.ictj.org>

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reform process, including an overview of vetting process in some countries of the Former Yugoslavia.

Firstly, vetting as a transitional justice mechanism is, as argued in this article, primarily measure to reform abusive institutions in post-conflict or post-authoritarian settings. However, reforming abusive institution in the context of vetting processes calls for individual responsibility of public servants responsible for gross human rights violation. Therefore, vetting should not be considered as a measure that calls for collective responsibility of all members of the abusive institution, or party in question. Furthermore, in order to design and implement vetting processes, a great level of coherence with broader institutional reform and transitional justice programmes need to be ensured. Vetting, as a standalone measure will be generally insufficient to ensure that abuses will not be repeated. Therefore, a coherent and holistic approach to transitional justice mechanisms and institutional reform processes is necessary to effectively prevent abuses from recurring.

Secondly, vetting, to the great extent, affects the functioning of the institution to be reformed and thus relates to the other institutional reform measures. Taking into consideration linkages among vetting and other institutional reform processes and adopting a coherent reform approach can help to ensure the effectiveness of the vetting process itself and the institutional reform as a whole.

Thirdly, there is no "one-size-fits-all" response to vetting and institutional reform in transitional contexts. Therefore, a comprehensive approach based on normative and contextual conditions of the transitional settings, realistic assessment of reform needs, timing and resources needed as well as its vetting measures sustainability, is a basic condition for effective reform.

Fourthly, the practice and attempts to instigate vetting processes in some countries of the Former Yugoslavia show a significant trend of failure. The reasons differ depending on country in question. However, lack of political will is the main obstacle in reforming abusive institutions in the countries of the Western Balkans. Other than that,

failure of vetting processes in these countries is a result of both normative misconceptions and operational miscalculations related to vetting process. However, not engaging in the processes that are likely to result in uncertain outcomes and possible failure should certainly not be dismissed a priori as a possible course of action.

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VETING KAO MERA PROCESA REFORME INSTITUCIJA I TRANZICIONE PRAVDE

Procesi reforme institucija u zemljama u tranziciji doprinose postizanju osnovnog cilja efikasne politike sprovođenja tranzicione pravde: ispitivanje odgovornosti i prevenciju kršenja ljudskih prava. S tim u vezi, veting predstavlja meru reforme institucija odgovornih za kršenje ljudskih prava i kao takav zasniva se na ispitivanju individualne odgovornosti. Autor ovog članka ističe da su procesi reforme institucija konvergentni i međusobno uslovljeni, i da je, s tim u vezi, holistički pristup institucionalnoj reformi neophodan. Istovremeno, holistički pristup u sprovođenju politike tranzicione pravde je od velikog značaja za dugoročan efekat, dakle održivosti mera neophodnih za sveobuhvatnu reformu društava u tranziciji. Međutim, veoma malo sistematske pažnje je posvećeno izučavanju pojma vetinga kao mere institucionalne reforme i tranzicione pravde. Osnovni razlozi za to mogu se naći u nedostatku interesovanja, zatim nerazumevanju značenja samog procesa, nedostatku jasnosti pojma u postojećoj stručnoj literaturi, kao i minimalnim naporima da se uvede razlika između vetinga, procesa zasnovanog isključivo na individualnoj odgovornosti za kršenje ljudskih prava, i masovnih "čistki" koje podrazumevaju kolektivnu odgovornost. Prema tome, namera autora je, između ostalog, da doprinese otklanjanju prethodno navedenih nejasnoća vezano za procese predmeta ovog istraživanja.

*KLJUČNE REČI: veting / institucionalna reforma /
tranziciona pravda*