

**DEPENDENCE PATH IN THE PROCESS OF ACHIEVING
TRANSITIONAL JUSTICE ON THE POST-SOVIET AREA.
COMPARATIVE STUDIES ON THE TRANSITION IN
ESTONIA, GEORGIA, AND POLAND***

*Joanna Piechowiak-Lamparska***

ABSTRACT: The aim of this article is to present the dependence path and the number of factors which influenced its shape in the process of achieving transitional justice on the post-Soviet area. In comparative studies carried out in Estonia, Georgia and Poland, it has been demonstrated that there were a number of factors that diversified the process of transformation from the authoritarian to democratic system. The need to settle accounts with the Soviet authoritarian regime was diverse and depended on historical and geopolitical conditions, as well as on the political system which was adopted by individual states after the dissolution of the Soviet Union. It has been observed that in Georgia the process of achieving transitional justice was not initiated but replaced, after consolidating the democratic system, by the process of achieving historical justice; however, in Estonia and in Poland, the problem of settling accounts with the outgoing authoritarian regime constituted one of the key issues of the transformation.

KEYWORDS: post-Soviet area, transitional justice, dependence path, the politics of memory, transition, Estonia, Georgia, Poland

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** Nicolaus Copernicus University in Toruń, Faculty of Political Science and International Studies.

INTRODUCTION

The landscape of the world after the Cold War was highly diversified. The countries which emerged as a result of the dissolution of the Soviet Union or were freed from its influence faced a situation in which they had to decide about the direction of their future actions. From the perspective of the last 25 years, it is possible to distinguish three alternative paths: 1) returning to an authoritarian system; 2) creating authoritarian-democratic hybrid of a political system; 3) creating a democratic system. The countries from the second and third group faced the necessity of settling accounts with the previous system (Bukalska, Sadowski & Eberhardt 2009: 2–3). Such actions did not have to reach the level of complete squaring accounts with the representatives of the outgoing regime, and mostly those were partial processes. Achieving transitional justice on a level which would be acceptable for a given society constituted one of the conditions for transition (David 2011).

The aim of this paper is to present the level of determinism in the process of achieving transitional justice on the post-Soviet area. In this context, dependence path, understood as a set of objectively existing and historically present dependencies, influences all changes occurring during transition. However, it should be noted that the theoretical perspective which is represented by the dependency theory does not presuppose an identical course of changes, it only sees the existence of determinism and the inevitability of changes (Greener 2005: 62–72; David 2000: 15–40). The comparative studies conducted in Estonia, Georgia, and Poland aim at covering the possibly widest spectrum of dependencies in question. The post-Soviet area is not homogeneous; there were differences in social and political changes between the Baltic states, the South Caucasus, or Central and Eastern Europe. Nevertheless, the thesis advanced in the article assumes that despite the different timeframes and the background of transition, there is a certain dependence path which determines the process of achieving transitional justice in the transition period.

The studies were based on the comparative method which aims at comparing the way and the level of achieving transitional justice in three post-communist states. This is a part of the scientific project “Politics of Memory as the Constitutional Factor of New Identity during the Transition from Authoritarian Regimes”, conducted at the Nicolaus Copernicus University in Toruń, under the academic supervision of Prof. Joanna Marszałek-Kawa. The project focuses on the cases of Chile, Estonia, Georgia, Spain, Poland, and the Republic of

South Africa. The research procedure was based on the analysis of texts that were written during the period of transition by state authorities responsible for settling accounts with the authoritarian regime. The analysis concerned mostly state documents, documents of organisations and committees which were established in order to reveal and document violations of human rights, as well as some reports and analyses created by governmental and non-governmental organisations.

The issue concerning transitional justice is broadly discussed in humanities and social sciences. Many-sidedness of this problem leads to researches conducted in a variety of disciplines: historical (e.g. David 2000: 15–40; Torbakov 2011: 209–232), legal (e.g. Hayner 2010; Czarnota 2009: 11–21; McAdams 1997; Snarski 2010: 211–228), or political (e.g. De Brito, Enríquez & Aguilar 2001; Kroker 1998: 225–247; Skąpska 2007: 7–31; Teitel 2000). The complex studies on transitional justice are conducted by truth and reconciliation commissions tasked with providing documentation for offences and crimes committed by the outgoing regimes. In Poland, there is a scientific institution with investigatory powers called The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (*Instytut Pamięci Narodowej – Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu*) whose main tasks include providing and administering documentation, prosecuting Nazi and communist crimes, and performing an educational role in this regard. In Estonia, the corresponding institute, the Estonian Institute of Historical Memory (*Eesti Mälu Instituut*), carries out research on the history of Estonia under the German and Soviet occupation. The predecessor of this Institute was the Estonian International Commission for Investigation of Crimes Against Humanity (*Inimsusevastaste Kuritegude Uurimise Eesti Rahvusvaheline Komisjon*), which was established in order to prosecute Nazi and Soviet crimes against the Estonian nation. The institutes from Estonia and Poland are also members of the Platform of European Memory and Conscience, which is an educational project of the European Union. However, in Georgia, no official institution which would settle accounts with the communist regime has been established. Comprehensive studies on transitional justice are conducted by the International Center for Transitional Justice in New York. This organisation was founded in order to give help to states in which historical injustice together with any kind of abuse result from the actions of the previous regime.

DEPENDENCE PATH IN THE PROCESS OF DECOMMUNIZATION. DETERMINISM VS. TRANSITIONAL JUSTICE

According to Lech Nijakowski (2008: 138), the concept of dependence path includes 'a broadly understood context of social institutions which makes citizens of a given state dependent on the past of their nation and on the choices made by their predecessors, even if they intend to implement fundamental reforms' [own translation]. This suggests that 'the direction and significance of social changes established in the past decide about the here and now as well as about the future of nations' [own translation].

One of the most important processes which belong to a wide process of transition from an authoritarian to democratic system on the post-Soviet area is the very process of decommunization. It includes a number of activities aiming at departing from political, social, scientific, and cultural patterns of communist regime.

Dependence path in the process of achieving transitional justice may be defined as a set of all these contexts that influence and determine the course of this process. In the case of states which emerged as a result of the dissolution of the Soviet Union (Estonia, Georgia), and states which regained sovereignty (Poland), certain elements of common past which influenced the course of the decommunization process can be observed (Stańczyk 1997: 27–43; Forest & Johnson 2011: 269–288). The metaphor of a path or a railway track perfectly conveys the importance and the role of determinism in the theoretical orientation such as historical institutionalism. Colin Hay (2002) shows that the analysis of historical processes allows to explain processes of political evolution. Deep institutional and historical tradition influences the direction of further development (Hay & Wincott 1998: 951–957).

Sven Steinmo (2008: 127) suggests that "historical institutionalists understand that behaviour, attitudes and strategic choices take place inside particular social, political, economic and even cultural contexts. Rather than treating all political action as if fundamentally the same irrespective of time, place or context, historical institutionalists explicitly and intentionally attempt to situate their variables in the appropriate context. Thus, by deepening and enriching their understanding of the historical moment and the actors within it, they are able to offer more accurate explanations for the specific events that they explore than had they treated their variables outside the temporal dimension? In this case, the most significant historical, social and economic context is the dissolution of

the Soviet Union and consequently, the end of the Cold War and of the bipolar distribution of powers in the international arena. Regaining independence and sovereignty was, however, only the first step on the new path. States such as Belarus, or the Central Asian states, are still under the influence of the Russian Federation, an international and legal successor of the Union of Soviet Socialist Republics. They depend on Russia mostly in the economic, but also political and military dimensions. Since 1990s, some of these states have been creating a specific political hybrid. Ukraine may serve here as an example of a state where full democratic standards have not been introduced (Prokop & Galewska 2013: 19–32). The third group of states, where the case studies in question belong, despite the seemingly different contexts, decided to complete the transition. One of the elements of transition from an authoritarian to democratic system was settling accounts with the outgoing regime.

On one hand, the process of squaring accounts with the authoritarian regime on the post-Soviet area took the form of decommunization. On the other hand, those actions aimed at achieving transitional justice. It is necessary to explain here the concept of transitional justice. According to International Center for Transitional Justice, this term is understood as ‘the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms’ (*What is Transitional Justice?*). Achieving transitional justice aims to bring the oppressors to justice and to compensate victims.

The idea that there exists a need for achieving transitional justice originated in the second half of the 20th century. It was strongly connected with the social need for settling accounts with the outgoing authoritarian regime. With time, this concept evolved and was broadened by the necessity of dealing with war crimes and any other violations of human rights during military conflicts (Czarnota 2009: 11–21). Adam Czarnota mentions the crucial role of law in the process of achieving transitional justice. He points out that ‘(...) on one hand, law serves as a tool of achieving transitional justice as it creates particular legal institutions in order to achieve particular political goals. On the other hand, as the analysis of particular cases shows, the aim of transition is achieving a state in which human rights are respected and protected. Such situation means that we talk about a legal state which has its English name: the rule of law. This suggests that there is a need for establishing a stable legal system in which human rights are protected. If we use law instrumentally – and transitional justice itself is based

on using the law instrumentally – it is hard to achieve the stability of law’ [own translation] (Czarnota 2014). This implies that law and transitional justice are merged.

It is necessary to underline that the process of achieving transitional justice occurs exclusively during the transition. It is not possible to talk about transitional justice after the transition, which means after forming a new political system (in case of the states in question, it means the transition from an authoritarian to democratic system). One of the most frequently cited criteria is establishing a new system (McAdams 1997; Snarski 2010: 211–228). This formalism refers to legal and political criteria, which means enacting a new constitution that acts as a point of reference for a legal system of a new state. After finishing the process of transition, only a certain post-transitional or historical justice can be achieved. However, as it is mentioned by Czarnota (2014) and David (2011), it only occurs within the frames of an already stabilized legal system.

THE PROCESS OF ACHIEVING TRANSITIONAL JUSTICE ON THE POST-SOVIET AREA

On the post-Soviet area and the near abroad, the states approached the process of achieving transitional justice in various manners. Undoubtedly, the need to settle accounts with Soviet authoritarian regime was diversified and depended on historical and geopolitical conditions as well as on a political system which was adopted by individual states after the dissolution of the Soviet Union (Forest & Johnson 2011: 269–288). The post-Soviet area includes, apart from Russia, four groups of states: 1) the Baltic states, 2) the Central Asian states, 3) the South Caucasus states, 4) the Central and Eastern European states; whereas the near abroad (*ближнее зарубежье*) expands the area of Russian influence as it comprises the states which belonged to the Council for Mutual Economic Assistance and the states that were the members of the Warsaw Pact. Therefore, it is justified to assume that the states affected by the Soviet authoritarianism include the area of the former Soviet Union as well as the states which were under direct control of the Soviet Union and therefore lost their sovereignty.

The aim of comparative studies is to present the differences in the process of achieving transitional justice in Estonia, Georgia and Poland. However, it is also crucial to analyse the reasons for these differences. The factors which influence the process of achieving transitional justice are, first of all, of historical character

(such as the tradition of own statehood, national identity that is established in a particular society, and the sense of being different from other nations, which in this case means separateness from the Soviets), but also economic (such as the level of economic independence or economic growth) as well as legal and constitutional (such as the pace of introducing legal changes and the consolidation of a new political system).

The states in question are undoubtedly linked by a historical moment of the dissolution of the Union of Soviet Socialist Republics which acted as the trigger for the transition (Bernhard 1996: 309–330). However, the history of Estonian, Georgian and Polish nations together with economic and legal differences caused a different course of this process. First of all, it is necessary to take into account the legal and constitutional factor – the new constitution in Estonia was enacted one year after regaining independence; in Georgia, this happened after four years; and in Poland, after eight years. Nevertheless, each of these states during the period from regaining sovereignty to consolidating the new political system had to address the problem of settling accounts with the authoritarian system, both in the material dimension (damages, compensation and verification of the documents of repression) as well as in a political and moral sense (shaping the politics of memory carried out by the state, determining the status of the victims of the system and of those who were responsible for repressions).

ESTONIA

The Republic of Estonia, a state established after the transformation of the Estonian Soviet Socialist Republic, is a democratic country. Although the Democracy Index categorises Estonian political system as flawed democracy (Campbell, Pözlzbauer, Barth & Pözlzbauer 2013), there are no major reservations in this regard. The process of transition in Estonia was initiated in 1988 when the Popular Front of Estonia was established. Already in 1989, action groups began the process of creating civic committees whose activity intended to achieving independence (Smith 2013). On March 30, the Supreme Council of the Estonian Soviet Socialist Republic started the transitional period, in which the state was renamed back to the Republic of Estonia and the Baltic Assembly was reactivated. Those actions allowed to prepare the ground for the actual transition which began together with the dissolution of the Soviet Union and with proclaiming independence

on August 20, 1991, and finished on July 3, 1992, when the new Constitution was adopted. The relatively short transitional period resulted from the fact that Estonia was one of the most developed Soviet republics (Mole 2012). The Constitution of Estonia refers to previous documents, but is based on standards created by democratic states (Marszałek-Kawa et al. 2013: 6–7).

In the years 1991–1992, during the period of actual transition, the need of settling accounts with the authoritarian system was clearly visible. The beginning of the long-standing process of vetting is marked by the date of August 20, 1992, when the obligation of taking the oath of conscience was introduced (Mole 2012). It was based on a written declaration that a person who was to assume a public function did not have any relationships with the Committee of State Security of the Soviet Union. The main goal of the law was to eliminate from the public and political life former agents and collaborators (also secret ones) of the intelligence agency, and the vetting was to include all agents and collaborators. It was also necessary to verify people cooperating with the Nazi in the years 1941–1944, as well as with the Soviets in the years 1940–1941 and 1944–1991 (the Centre for Eastern Studies 2009: 22).

The specificity of Estonian vetting was the result of several vital factors. Firstly, it was a very poor condition of the archives of the intelligence agency which functioned in Estonia. Most of the KGB archives (*Комитет Государственной Безопасности*) was brought to Moscow or destroyed (Tamm 2013: 651–674); therefore, it was impossible to institute proceedings on the basis of documents. Secondly, it was the instability of the state caused by the necessity for creating institutional structures based on new personnel (the Centre for Eastern Studies 2009: 21). Thirdly, there was a sense of national injustice due to the German occupation during the World War II and, later, the dependence on the Soviet Union (Melchior & Visser 2011: 33–50).

The process of achieving transitional justice in Estonia was distinctively marked by the need for immediate reconstruction of the state in the times of political crisis. It resulted from the changes of personnel and institutional modifications mainly in the political and administrative spheres. Decommunization was a direct result of the decision about creating an independent, democratic state. The process of vetting was one of the first and most important elements of settling accounts with the previous regime.

GEORGIA

The Democratic Republic of Georgia, similarly to the Republic of Estonia, was established as a result of the dissolution of the Soviet Union, and is both a legal and international successor of the Georgian Soviet Socialist Republic. The political system adopted by Georgia is a democracy which is assessed by Economist Intelligence Unit as a hybrid regime. It is important to underline that in Georgia there are noticeable democratic aspirations (Campbell, Pözlzbauer, Barth & Pözlzbauer 2013). The changes in Georgian political system were initiated in 1991, when the referendum on regaining independence took place. Independence tendencies were displayed a decade earlier during the process of perestroika. The proclamation of independence and establishing the Democratic Republic of Georgia occurred on April 9, 1991 (Gogishvili, Gogodze & Tsakadze 1996). The stabilization of the state was, however, endangered by the internal conflict between the followers of Zviad Gamsakhurdia and Eduard Shevardnadze, as well as by the 1991–1992 South Ossetian War and the 1992–1994 Georgian-Abkhaz Conflict. The process of transition was finished on August 24, 1995, when the Constitution of the Democratic Republic of Georgia was adopted (Marszałek-Kawa et al. 2013: 7). It is necessary to underline the complicated process of transformation which, according to a number of scholars, was finished during the Rose Revolution in 2003 (Tatum 2009: 156–171).

The process of transition in Georgia in the years 1991–1995 had a different character than the processes in Estonia and Poland. The characteristic features of the first stage of democratization of the Georgian state were both the initial chaos caused by the two domestic wars (Gogishvili, Gogodze & Tsakadze 1996), as well as the continuation of institutions and personnel of the Georgian Soviet Socialist Republic by the administration of Eduard Shevardnadze (the former USSR Minister of Foreign Affairs). Until the time of the Rose Revolution, it is not possible to talk about any attempts to settle accounts with the Soviet regime (Shatirishvili 2013; Tatum 2009: 156–171). Despite some partial changes of personnel after 1995, in the period of actual transition the process of achieving transitional justice was not initiated.

It is justified to advance a thesis that in Georgia it is not possible to talk about the category of transitional justice. The Freedom Charter, a collection of laws aimed at dealing with authoritarian regime, was passed only on May 31, 2011. In such time frames, it is acceptable to define the actions of Mikheil Saakashvili's administration as initiation of the process of achieving transitional justice

(Jones 2013). The Freedom Charter was to solve the problem of the presence of agents and collaborators of the intelligence agency in political life, as well as to remove Soviet symbolism from public awareness.

POLAND

After the dissolution of the USSR, the Republic of Poland regained its sovereignty. Although the state did not enjoy full independence, it did not have the status of a Soviet republic and its territory was not incorporated into the Soviet Union. Nevertheless, the Polish People's Republic after transforming into the Republic of Poland regained the right to self-determination, which had been lost due to the results of the World War II (Bernhard 1996: 309–330). The political and economic transition in Poland began relatively early (Stańczyk 2010: 27–43). A number of changes were initiated in the 1980s, or even the 1970s (strikes caused by carrying out central economic planning). The activities undertaken by a huge social movement “Solidarity” (“*Solidarność*”) led to the Polish Round Table Talks, which started in February 1989 and finished in April 1989, and later to the parliamentary elections in June 1989 (Bernhard 1996: 309–330). In 1990, there were presidential elections, and in 1991 Poland had the first fully democratic parliamentary elections. The constitution was being changed gradually. First, the Constitution of the Polish People's Republic was significantly amended in 1989. Then, the Small Constitution was passed on October 17, 1992. Finally, the current Constitution of the Republic of Poland came into effect on October 17, 1997. Transition in Poland was focused mainly on constituting a new democratic state, introducing free market, and creating civil society following the example of western states (Marszałek-Kawa et al. 2013: 7–8).

The process of achieving transitional justice in Poland was based mainly on vetting of public officials and cleansing the public sphere (e.g. decommunization of street names, removing communist symbols) (Kącka 2014: 277–292). At the beginning, Tadeusz Mazowiecki's government supported the thick line policy (*gruba kreska*), which regarded vetting and historical justice as disadvantageous for Poland (Kuglarz & Sułek 2001). In the years 1991–1997, five bills on vetting were presented in the Sejm. However, the law which regulated the vetting procedure was not passed until April 11, 1997. It seems that at first there was a “wild” vetting, based on incomplete, partially destroyed or falsified archives of

the Security Service of the Ministry of Internal Affairs. Until 1997, those actions constituted a particular form of political fight. Undoubtedly, dealing with those affairs suggested a strong need for settling accounts with the officials of the socialist regime.

In Poland, the symbolic sphere played an important role in creating sovereignty of the state (Kącka 2014: 277–292). That symbolism included mostly independence traditions (Nijakowski 2008). Apparently, the problem of achieving transitional justice was one of the most frequently discussed goals of the transition, apart from the economic and political ones. This issue is still present in public debates; however, it refers more to historical justice and defining coherent historical policy of the state.

CONCLUSION

Comparative studies conducted in Estonia, Georgia and Poland indicate that it is not possible to talk about a uniform, the same for all the cases in question, dependence path in the process of achieving transitional justice. The reasons behind the ensuing divergence include historical, economic and cultural differences. As a result of a number of diversified factors, states such as Georgia did not initiate the process of achieving transitional justice, but substituted it with a form of historical justice after consolidating the democratic system. However, both in Estonia and in Poland, the problem of settling accounts with the outgoing authoritarian regime remained as one of the crucial issues of the transition.

Therefore, dependence theory can be applied to similar cases, which are characterized by a similar set of dependencies. Nonetheless, all the states which emerged as a result of the dissolution of the Union of Soviet Socialist Republics faced the problem of either accepting or rejecting the socialist representatives and symbols. In none of the researched states transitional justice on the post-Soviet area has reached a satisfactory level. As a consequence, settling accounts with socialist regime is continued. It is possible to advance a thesis that there is a high probability that the level of settling accounts with the past will not reach a satisfactory level (partially due to the incomplete archives or no definitive legal solutions). However, it is necessary to notice that the post-totalitarian trauma remains an important social problem.

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