ESSAYS AND STUDIES

UDC 327:342(497.1+497.6+496.5)
DOI: 10.5937/spm95-61007
Original research article

Српска политичка мисао
(Serbian Political Thought)
No 1/2026.
Vol. 95
pp. 231-247

Tijana Perić Diligenski*

Institute for Political Studies, Belgrade

THE ANATOMY OF VETTING – BETWEEN LAW AND POLITICS

> *[T]here wants a known and indifferent judge, with authority to determine all differences according to the established law. For … men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases, as well as negligence and unconcernedness, make them too remiss in other men's.*
>
> John Locke

Abstract

The paper examines the phenomenon of vetting in the judiciary in Albania, Bosnia and Herzegovina, and Serbia, as post-communist countries in the European Union accession process. Vetting is not a uniform concept, and it appears in several forms, such as review, reevaluation, and re-election (reappointment) of judges. There is no unique vetting model because it is impossible to apply it to different socio-political contexts. The author of this paper approaches vetting as an anti-corruption instrument useful in systems in which the rule of law is systematically and continuously violated, as well as the independence of judges and public prosecutors

* E mail: tijana.peric.diligenski@ips.ac.rs; ORCID: 0000-0002-2175-9134

is violated. Vetting as a personnel reform programme in the judiciary should be agreed upon by a broad consensus (social, legal, and political actors) based on the constitutional and international norms. As a form and the cornerstone of administrative justice, vetting paradigm experienced a Copernican turn from transitional regimes to weak democracies. In the first case, it was a transitional justice mechanism, while in the second case, it was an instrument of recovery and strengthening the rule of law.

Keywords: vetting, lustration, rule of law, judiciary, judicial independence, corruption, Serbia, Albania, Bosnia and Herzegovina

INTRODUCTION

Vetting procedures as a form of transitional justice in post–communist countries (i.e., Third Wave Democracies) was a mechanism for rebuilding state capacity and restoring trust in the state and its institutions (Mayer–Rieckh 2007). The United Nations defined vetting as a process of "assessing integrity to determine suitability for public employment" (2006, 4), in order to "exclude from public service persons with serious integrity deficits to reestablish civic trust and re-legitimize public institutions and disable structures within which individuals carried out serious abuses" (2006, 9). Vetting as a form of judicial lustration was applied in the Czech Republic, East Germany, and Poland, under the supervision of international organizations, such as the United Nations (UN), the Council of Europe, and the Organization for Security and Co-operation in Europe (OSCE). The aim of this work is to determine, by applying a comparative method, whether vetting is an attack on the professional identity of judicial officials or whether it is a mechanism for strengthening their integrity and independence. For the purposes of the analysis, Albania, Serbia, and Bosnia and Herzegovina were chosen as post-communist states with the highest levels of corruption in Europe and the lowest indices of the rule of law. In addition, the commitment to European integration is another common characteristic of the selected countries. On a theoretical and empirical level, in most post-communist countries, it often came to the conceptual equating of vetting with lustration. At this point, it is necessary to make a historical review of the concept of lustration in order to avoid confusion.

LUSTRATION *VS.* VETTING

The feeling of historical injustice caused by decades of communist torture, in the new democracies, required the implementation of lustration as a mechanism for dealing with the past and holding to account the regime's culprits who ignored human rights and *res publica*. The critical reaction aimed at the communist legacy included restitution, prosecution of members of the former regime, opening of secret police files, and lustration. Of all the mentioned mechanisms, the most controversial and most prone to political deflection is lustration, which implies moral condemnation with a disqualifying political logic. According to credible scientific sources, "lustration is the process of narrowing the field of public influence and political competition by scrutinizing individuals who had been associated with the former regime and by limiting their degree of participation in the new political and civil service positions" (Rožič 2012, 1).

Lustration does not represent a primordial historical measure of institutional purification. Historical counterparts to lustration have always appeared in circumstances when the new elite is not capable of implementing institutional reforms with old personnel solutions. A radical historical example is Sula's proscriptions, in which his ideological-political opponents were sentenced to death on the basis of his orders, i.e., without conducting court proceedings. Sulla's personal purge did not result in real reform, so in the historical sense, Sulla was repeated with more success by political allies from the Second Triumvirate (Octavian, Antony, Lepidus). The Roman and Spanish Inquisitions represent an institutional purification, in the first case of heretics, and in the second of Muslims and Jews as religiously unfit, or as expressed by contemporary discourse – Others. The institutions of Jacobin terror are remembered for their harsh methodology of dealing with opponents of the Jacobin regime (emigrants and Vendée insurgents) who were sentenced to death without trial. In the spirit of Jacobin terror, the proceedings against the accused were reflected in the establishment of his identity and the death sentence.

The creation of the post-war European space was accompanied by Allied denazification as a purification measure, but at the same time, as a criminal law measure. Denazification was intended to remove the Nazis from German public life and to accelerate its transition to a stable liberal-democratic state. In the American occupation zone, the first phase of denazification was being carried out, and the Americans insisted on

involving in it all those who were in any relationship with the Nazi regime, which meant almost the entire adult population (Zidar 1996, 231–233). The aforementioned model of denazification was problematic from a methodological and legal point of view. In a methodological sense, cooperation with the Nazis was determined by filling out questionnaires (*Fragebogen*) in which respondents incriminated themselves. Second, the burden of proof is on the accused, not the prosecutor, which is the biggest legal shortcoming of denazification.

Lustration is exclusion or suspension from the most important public functions of detected individuals who were connected with the previous regime, especially those who professionally and politically demoted themselves in the judiciary and the bureaucratic apparatus (Morgan 2020, 60). Lustration understood in this way is essentially administrative justice, and it is terminologically wrong to equate vetting with lustration of the third branch of power, i.e., lustration of judicial officials. For some authors, there is a "gray area" between these two concepts, because "vetting can potentially blur into purge" (Horne 2017, 428) and become instrumentalized by politics, as happened in the de-Ba'athification case and in lustration practice in the Balkans. The jurisprudence of the European Court of Human Rights is full of judgments confirming the violation of the rights guaranteed by the European Convention on Human Rights due to inadequately implemented lustration regulations. For example, in the case of Sidabras and Dziautas v. Lithuania, the Court found that the discriminatory treatment of former KGB agents, as applicants, led to a violation of Article 14, which prohibits discrimination based on political opinion. The court reasoned that "restrictions imposed by the state on the employment of a person in a private company for reasons of disloyalty to the state cannot be justified from the perspective of the Convention in the same way as if it were to mediate employment in the civil service, regardless of the importance of the private company to the economic, political or security interests of the state" (ECHR, 55480/00, par. 58).

Also worth mentioning is the case of Trendafil Ivanovski, the former president and judge of the Constitutional Court of Macedonia, who was dismissed based on the implementation of the lustration procedure. Namely, Judge Ivanovski was the first subject of lustration in Macedonia, and he was labeled by the media as an alleged collaborator of the secret services (based on the knowledge of the lustration commission, although the procedure was strictly confidential). The aforementioned

lustration procedure was full of legal inconsistencies, and the Court took the position that in this particular case, the right to a fair trial was violated due to the overall unfairness of the lustration procedure (Article 6 of the ECHR). In addition to this, Ivanovski's right to respect for private and family life was also violated (Article 8 of the ECHR) since, by the decision of the lustration commission, he was forbidden to be employed in the civil service or the academic community for a period of 5 years. The possibility of employment in the private sector in accordance with his qualifications was significantly reduced since he was subject to the ban on being a lawyer (ECHR, 29908/11, par. 177). In the European jurisprudence, the Adamsons v. Latvia case represents a precedent that introduces the conditions that the lustration process must fulfill from the aspect of the application of the ECHR. The first condition is the principle of legality, that is, accessibility and predictability of the lustration law. The second condition is related to the principle that the punishment could not be the only purpose of lustration logic. The following condition implies the principle of individual (instead of collective) responsibility while guaranteeing procedural assumptions (ECHR, 3669/03, par. 116).

In order to prevent vindictive scenarios, Horne identified (Horne 2017) "clear process with transparent and legitimate vetting criteria, limiting the procedures in advance of their commencement, basing the process on reliable and verifiable information, and cleaving to the rule of law practices" (428–429). This explanation is partially correct since lustration *per se* is not supposed to be revenge, as evidenced by the legislator's intention expressed in Resolution No. 1096 (1996) of the Parliamentary Assembly of the Council of Europe on the Measures for the Dismantling of the Former Totalitarian Communist System. The purpose of lustration in the spirit of the Resolution is not to pronounce criminal charges against presumed responsible persons, but the protection of new democracies. In short, revenge must not be the *ratio legis* of lustration laws and lustration practice (Perić Diligenski 2023, 320). Lustration, either legislative or executive decision, consists of the following components: 1) suspicion of "alleged" disputed engagement in the past, conceived on collective responsibility for abuses determined under one's lustration program; 2) existence of protected current or future public functions; 3) applying specific screening methods like removal or public exposure (Rožič and Nisnevich 2016, 263).

Since the fall of communism, there is no uniform vetting logic, but forms have changed for political and legal reasons. Originally,

vetting was focused on the previous communist regime and its harmful consequences. In the last two decades, some authors rightly understand vetting as a tool for achieving the rule of law and preserving judicial independence (Miljojkovic 2024, 102). The rule of law as a modern Anglo-Saxon political-legal concept involves: separation of powers, an independent judiciary from political influence, judicial review, equality before the law, right to a fair trial, as well as protection of fundamental human rights (Perić Diligenski 2024, 392). There is consensus in the literature about core principles of the rule of law, which are: superiority of the law, separation of powers (law-making and law-applying institutions), predictability, equal application, just laws, robust and accessible enforcement, independent judiciary, and the right to participate. Additional criteria which complement the theoretical determination of the rule of law are: protection of persons and property, understandable by ordinary persons, resolving disputes without excessive costs and delay, an independent legal profession, and an emerging international rule of law (Stein 2019, 192–201).

In summa, vetting as a form and cornerstone of administrative justice experienced a Copernican turn from transitional regimes to weak democracies. In the first case, it was a transitional justice mechanism, while in the second case, it was an instrument of recovery and strengthening the rule of law. There are opinions in literature that vetting is a suitable mechanism for "democracy with a systemic deficiency" in which "institutions are regularly seen as unable to tackle infringements, due to corruption, unwillingness, institutional weakness, or lack of necessary capacity" (Ioannidis and Bogdandy 2014, 73).

Vetting is not a uniform concept, and it appears in several forms, such as review, reevaluation, and re-election (reappointment) of judges. There is no unique vetting model because it is impossible to apply it to different socio-political contexts. The aim of a review process is to remove judicial officials from public office because of a lack of integrity or capacity, based on the conducted screening (McAllum 2016, 169). The most famous historical review example was undertaken in 1974, in Greece, after the collapse of the right-wing military junta. The review did not give the desired results since "most middle and high–ranking judges were exempted from the screening and remained untouched" (Sotiropoulos 2007, 133). A reappointment process starts from the opposite logic because all employees are first disbanded, then required to reapply for their positions. The main purpose of reappointment is the

selection of quality personnel rather than the removal of individuals (McAllum 2016, 169).

For the author of this paper, vetting is an anti-corruption instrument useful in systems in which the rule of law is systematically and continuously violated, as well as the independence of judges and public prosecutors is violated. Vetting as a personnel reform programme in the judiciary should be agreed upon by a broad consensus (social, legal, and political actors) based on the constitutional and international norms. Also, it should be clear and precise in order to establish legal certainty and avoid ambiguity and political interference (OHCHR Rights 2006, 10).

In transition states that have conducted vetting, there were detailed international guidelines so that the process would not be arbitrary. Global guidelines formed vetting hexagon consisting of: 1) political conditions (the existence of political will to implement vetting); 2) institutional framework (defining which state institutions need to be vetted); 3) mapping of actors that should be subject to vetting; 4) determination of actors who will conduct the vetting; 5) provision of resources necessary for vetting; 6) adjustment of vetting to other social and political processes (UNDP 2006, 11–14). According to UN standards, the process of vetting is in direct correlation with integrity as a crucial determinant for public engagement. Integrity implies someone's adherence to relevant standards of human rights and professional conduct, including their financial propriety (UNDP 2006, 9).

Vetting of judicial officials is a legally and politically sensitive matter due to the constitutional and international principles that guarantee judicial independence, especially the principle of irremovability of judges. Like appointment, dismissal, and disciplinary responsibility, so irremovability should not be understood as Holy Writ, as evidenced by the attitude expressed in the Universal Declaration on the Independence of Justice that "a judge shall not be subject to removal except on proved grounds of incapacity or misbehavior rendering him unfit to continue in office." Judicial independence considers that in performing their duties, judges are free from pressure or influence from other state authorities. Appointment and promotion procedures and dismissals of judges, mandates of judges, and other guarantees that protect against external pressures are barriers against pressures on the third branch of government. *Exempli causa*, the independence of judges is undermined when members of the executive branch seek to directly intervene or

influence the outcome of the proceedings before the court, which was confirmed by jurisprudence of the European Court of Human Rights (ECHR 48553/99, par. 37).

Judiciary is an autopoietic system, based on its own logic and methodology instrumentation. Judicial officials, like all other members of society, have different social roles, preferences, and values, but in their professional activity of interpreting and applying the law, they should be politically blind. Nonpartisan and nonpolitical behavior is an important determinant of courts' legitimacy. Judicial officials, especially judges, must not be "politicians in robes," and once they join the bench, as long as they are the dispensers of justice, they must not favor a political side (Green and Roiphe 2024, 185).

THE VETTING PARADIGM IN ALBANIA

The aim of vetting is personnel cleansing of the judicial system of judges and prosecutors prone to corruption and informal institutional arrangements. This moral, legal, and institutional step, supported by an international commission review, was undertaken in Moldova, Albania, and Ukraine. Political elites of Georgia, Kosovo*[1], and Northern Macedonia are considering reviewing the finances and integrity of judicial officeholders. Under the influence of the EU's conditionality mechanism, which implies certain benefits (primarily financial aid) and an obligation to fulfill specific policies and normative and institutional reforms (Becker 2025, 402), the Albanian Parliament in 2016 adopted the vetting law with the 17th Constitutional amendment aiming to enforce professionalism across the sector, promote the values of independence and impartiality, and increase public trust in the judiciary. The vetting law was adopted by the absolute consensus of all 140 members of parliament as a result of long-term political negotiations between three main political leaders with the political "blessing" of the international community (precisely the "Collective West"). The intention of the legislator was to check the moral integrity and independence of Albanian judicial officials as well as the level of their independence from informal institutions, i., organized crime, corruption, and political influence (Stojkova–Zafirovska, Hadji–Zafirov, and Sopronov 2018, 8).

[1] This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

Although sharp vetting measures could have disturbed judicial independence, the Venice Commission gave the green light to Albania due to widespread corruption in the judiciary. In *Amicus Curiae brief for Constitutional Court*, which refers to the Vetting law, Venice Commission gave opinion on key concerns such as: conflict of interest, respecting the principle of separation of powers, respecting the right to a fair trial (Article 6 of the ECHR) as well as respecting private and family life (Article 8 of the ECHR) (VC 868/2016, 3). Conceptually, Venice Comission marked vetting as transitional, not anti-corruption re-evaluation of judges and prosecutors, which is closer to the original understanding of vetting as a transitional justice mechanism. In Albania, since the start of the vetting process, more than a hundred judges stopped performing judicial duties (lost their jobs) and 110 judicial officials resigned. When it comes to the Albanian Constitutional Court, five judges were dismissed and three others resigned. Jurisprudence of the ECtHR in case Xhoxhaj v. Abania took a strong anti-corruption attitude and denied protection under the ECHR to those actors (judicial officials) who are violating human rights and abusing power for lucrative gains while protecting the status quo of corruption. Unexplained wealth and ethical misconduct are guidelines for determining someone's unworthiness to perform public office (ECHR 15227/19).

At the end of the vetting ballad, the European Union evaluated this process positively because it identified and removed unworthy judicial officials from public space and verified the integrity and professional capacities of new candidates. In literature, one can also find the views that vetting is efficient "only when the legislative and the executive bodies, as the two other pillars of state power, are perceived by the public as bodies free of corruption" (Stojkova–Zafirovska, Hadji–Zafirov, and Sopronov 2018, 17).

JUDICIAL VETTING IN BOSNIA AND HERZEGOVINA

In a deeply divided and politically polarized post-Dayton Bosnia and Herzegovina, vetting programs were shaped and implemented under the influence of international factors. The United Nations was the key initiator and monitor of the vetting programs, which, as a generic term, included many sectors: security, intelligence services, the judiciary, and police. In short, the Bosnian vetting model was primarily focused on the coercive apparatus, along with the dealing with the past narrative, and

closer to the transitional justice concept. *Ratione personae*, this type of vetting included members of the police forces, judicial officials as a guardian of human rights and freedoms, army generals, and candidates for ministerial positions. The Bosnian-specific post-war context demanded that the aforementioned circle of persons be checked for war crime records, moral integrity, capacity, competence, and ownership. For the purposes of this paper, only the process of re-appointing judicial officials in the period 2002–2004 will be discussed here. *Differentia specifica* of the Bosnian judicial vetting paradigm was insisting on the ethnic composition of the judiciary, which could improve the public perception of judicial independence and impartiality. It was necessary because in the post-Dayton milieu, "judicial system all too often depended on an individual's national identity" (Mayer–Rieckh 2007, 190), and it caused failure in putting into the re-evaluation process the serving unworthy judges and prosecutors.

Due to this, international intervention was necessary, and the Independent Judicial Commission (IJC) decided to replace the ongoing re-evaluation process with a reappointment, which considered that judges and public prosecutors re-applied for their (public) office. Additionally, the reappointment logic of re-election was equally related to the professionalization of the judiciary and to redefining the court system, primarily reducing its size and ensuring ethnic representation (Trajanovska and Miska 2022). The constitutional design of entities was changed in order to eliminate the legal possibility of life tenure for judges. The reappointment process started by announcing vacancies for judicial and prosecutorial positions, and all professional lawyers could apply in an open competition, while sitting judges and prosecutors could reapply for any open position. From a statistical point of view, for 953 positions, 2.000 candidates applied. The public had the opportunity to come forward with incriminating information against judicial officials. Due to the abundance of compromising material, it was not possible to conduct a comprehensive review of conflict-related activities for all candidates (Stojkova–Zafirovska, Hadji–Zafirov, and Sopronov 2018, 21). It was unrealistic to expect that all the rotten apples in the judiciary will be removed or as the Venice Commission pointed out "it would have been unrealistic to have insisted on immediate full compliance with all international standards governing a stable and full-fledged democracy in a post-conflict situation such as in BiH following the adoption of the Dayton Agreement" (VC, CDL–AD (2005) 004, 23).

THE SERBIAN VETTING EXPERIENCE

If one were to take a historical step back, one would come to the conclusion that Serbia inherited a short history of the rule of law (from the 1870s until the fall of the first Yugoslavia). The historical periods that followed are depicted in the communist regime, then in the authoritarian populism (hybrid regime), the procedurally democratic regime, and the re-actualized authoritarian one. In all the mentioned periods, the Serbian being rejected the rule of law as a foreign body. There have always been tendencies to circumvent the law, to derive benefits from it, and at the same time to avoid obligations. This attitude towards the state and its laws stems from centuries of Ottoman repression that collected taxes from the subjects. After the struggle for liberation, the state in the historical context had a national and ideological, and not a legal feature. Legal nihilism is the most accurate theoretical term that could be used to describe the legal state of affairs in Serbia. Legal nihilism is reflected in distancing, relativizing, and negating the values incorporated in legal norms (Perić Diligenski 2020, 346).

In Serbia, the rule of the people has always been overshadowed by the rule of law. In other words, the rule of law is a hard-to-achieve ideal even though it represents a constitutional category. According to the Constitution of Serbia, the rule of law is realised through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, independent judicial authority, and obedience of the authorities to the Constitution and the law (Article 3). Partocratic state, abuse of power and law for private purposes, dysfunctional judicial and administrative mechanisms that would prevent the usurpation of power, represent the main obstacles to strengthening the rule of law. Weakly developed legal awareness combined with parochial political culture and tolerance of citizens towards informal institutional arrangements make Serbia a state of lawlessness.

The judicial reform in Serbia (2008–2012) was designed and implemented in order to fulfill the conditions of the EU integration process. The EU promoted the necessity of establishing the Serbian judiciary as independent and continuously identified its weaknesses (Resende and Gomes 2017, 331). Serbian legislator never used the judicial vetting term, which is the crowning evidence of non-lustration intention. Serbian vetting model, according to its anatomy, was closer to the model of "defective democracies" than to the transitional justice

model. The legislator has focused on the general election paradigm (general reappointment), which implied calling for elections for judicial office based on predefined criteria and measures for assessing expertise, competence, and worthiness. For Serbian judicial reform, the re-election concept was used colloquially, though it implies a casuistic approach, taking into account disciplinary or criminal liability of each judge (Perić Diligenski and Mladenović 2012, 51). Inconsistent judicial reform has resulted in further politicization, and consequently, judicial officials were the only lustrated officials. The legal and historical paradox is the fact that they were lustrated by unlustrated authority (MPs of the Socialist Party of Serbia were part of the ruling majority). The main difficulty of this reform was its unconstitutional character since the hierarchy of legal acts was not respected. The Constitutional Law was given supraconstitutional power, which caused a violation of the constitutional principles of permanence and independence of the judicial function. Judges with this inadequate legal logic were equated with legislative and executive public officials, who are periodically subject to democratic legitimacy checks (Perić Diligenski and Mladenović 2012, 50). Gross violations of procedural safeguards have led to the weakening of the rule of law instead of its consolidation, which is noted in the literature as "traumatic experience" (ICJ 2016, 4).

When it comes to the constitutionality of judicial reform, the role of the Constitutional Court of Serbia was more peacemaker and diplomatic than formal-legal. The argumentation of the Constitutional Court was going in the direction of subtly motivating the executive branch to correct the mistakes made. Statistically summarized, 1.531 judges were reappointed, and 837 non-reappointed judges used an appeal to the Constitutional Court. The entire process was politically determined, as can be seen in the inertness of the CC in dealing with these cases. In 2010, the year after the implementation of the judicial reform, only two judgments were issued (the Saveljic and the Tasic case).[2] The actions of the Constitutional Court in the "vetting epopee" conceived as promoting the rule of law, rather than removing unfit personnel, is proof that this institution is a political actor and not an impartial guardian of constitutionality and legality.

[2] Case Saveljic, VIIIU-102/2010 of May 28, 2010, and case Tasic, VIIIU-189/2010 of December 21, 2010.

CONCLUSION

Analyzed negative experiences with the implementation of vetting show that strengthening the rule of law should be a national priority in each country separately, and the core of value gathering of citizens. Far-reaching and radical changes are necessary for establishing the rule of law as a normality, instead of writing various strategies, proclamations, action plans, and empty reforms. This primarily refers to the establishment of the true independence of the third branch of government from political influence, the implementation of lustration as a moral condemnation, the merciless fight against corruption as the most dangerous social deviation and political pathology. This is a prerequisite to create an environment that guarantees equality before the law and the unhindered enjoyment of human rights and freedoms, be they political, religious, or personal. After this step comes the consolidation of democracy, restoring trust in the state and its institutions (Perić Diligenski 2024, 398).

In order to eliminate legal uncertainty and introduce a precise vetting procedure, it is necessary to enact a Law on vetting, which involves checking the assets and income of judicial officials and persons closely associated with them, their possible connections to criminal structures, and an assessment of their professional (in)performance. *De lege ferenda* vetting model would be conducted by an independent body that would examine three key elements: 1. the assets of judicial officials (whether they have increased, whether they have reported them to the competent institution and whether they can prove their origin); 2. connections with organized crime and 3. professionalism (this also includes dignity, number of resolved cases, indictments, acquittals, etc.). The vetting body would be composed of legal experts who enjoy high professional reputation and who are not members or officials of political parties. The body would not determine the criminal liability of prosecutors and judges, but would decide on their dismissal. The aim of vetting is not to impose prison sentences, but rather to prohibit the further exercise of public prosecutorial or judicial functions due to professional unworthiness. All judicial officials subject to vetting would be guaranteed the right to appeal to a second-instance body. If their unworthiness were established, they would no longer be able to serve as judges and prosecutors, nor would they be able to work as lawyers in the public sector. Persons covered by vetting would have the opportunity to practice law and work in the private sector. If there is any suspicion that the listed

persons have committed criminal acts during their activities, they will be prosecuted and held accountable in accordance with domestic criminal laws. Only when vetting is understood as a credible anti-corruption tool, the end result will not be revenge but a professional, independent, and efficient judiciary.

REFERENCES

Ādamsons v. Latvia, No. 3669/03, Judgment of the Court (Third Section) of June 24 2008.

Becker, Peter. 2025. "Conditionality as an instrument of European governance–cases, characteristics and types." *Journal of Common Market Studies* 63 (2): 402–419. DOI: 10.1111/jcms.13580

Green, Bruce, and Rebecca Roiphe. 2024. "Public Confidence, Judges and Politics on And Off the Bench." *Law and Contemporary Problems* 87 (1): 183–212.

Horne, Cynthia. 2017. "Transitional justice: Vetting and lustration." In *Research Handbook on Transitional Justice*, eds. Cheryl Lawther, Luke Moffett and Dov Jacobs, 424–442. Cheltenham: Edward Elgar Publishing.

International Commission of Jurists [ICJ]. 2016. *Serbia's judges and prosecutors: The long road to independent self-governance – A Mission Report*. Geneva: International Commission of Jurists.

Ioannidis, Michael, and Armin von Bogdandy. 2014. "Systemic deficiency in the rule of law: What it is, what has been done, what can be done." *Common Market Law Review* 51(1): 59–96. DOI: 10.54648/cola2014003

Ivanovski v. "The former Yugoslav Republic of Macedonia," No. *29908/11, Judgment of the Court (First Section) of 21 April,* ECLI:CE:ECHR:2016:0121JUD002990811.

Mayer–Rieckh, Alexander. 2007. "Vetting to prevent future abuses: Reforming the police, courts, and prosecutor's offices in Bosnia and Herzegovina." *In Justice as prevention: Vetting public employees in transitional societies,* eds. Pablo De Greiff and Alexander Mayer–Rieckh, 180–220. New York: Social Science Research Council.

McAllum, Rebecca. 2016. "Judicial Complicity in Human Rights Violations: An Exploration of the Judicial Vetting Process from Transitional Justice and Comparative Perspective." *NZACL* 22: 163–178.

Miljojkovic, Teodora. 2024. "Vetting as a Tool for Strengthening Judicial Integrity in the OSCE Region." In *Polarization, Shifting Borders and Liquid Governance*, eds. Mihr Anja and Chiara Pierbon, 99–118. Cham: Springer.

Morgan, Peter. 2020. "Literature and lustration: Rebuilding social trust through literature." *Journal of European Studies* 50 (1): 60–69. DOI: 10.1177/0047244119892864

Office of the United Nations High Commissioner for Human Rights [OHCHR]. 2006. *Rule-of-law tools for post-conflict states Vetting: an operational framework.* New York and Geneva: Office of the United Nations High Commissioner for Human Rights.

Perić Diligenski, Tijana. 2020. „Refleksije o pravnom nihilizmu." *Srpska politička misao* 68 (2): 345–359. DOI: 10.22182/spm.6822020.15

Perić Diligenski, Tijana. 2023. „Postkomunistička lustraciona pravda." *Civitas* 13 (1): 319–329.

Perić Diligenski, Tijana. 2024. "Establishing the rule of law as a national interest of the Republic of Serbia." In *National Interest(s) in World Politics*, eds. Đukanović, Dragan, Saša Mišić and Nikola Jović, 387–400. Belgrade: Čigoja štampa.

Perić Diligenski, Tijana, and Slađana Mladenović. 2012. „Reforma pravosuđa u procesu pristupanja Srbije Evropskoj uniji." *Politička revija* 34 (4): 49–72. DOI: 10.22182/pr.3442012.4

Resende, Teresa Maria, and Cierco Gomes. 2017. "What is hindering the reforms in the justice sector?" *Communist and Post–Communist Studies* 50 (4): 331–337. DOI: 10.1016/j. postcomstud.2027.004

Rožič, Peter. 2012. "Lustration and democracy: the politics of transitional justice in the post-communist world." PhD dissertation. Washington: Georgetown University.

Rožič, Peter, and Yuliy Nisnevich. 2016. "Lustration Matters: a Radical Approach to the Problem of Corruption." *Studies in Comparative International Development* 51(3): 257–285. DOI: 10.1007/s12116-015-9179-1

Sidabras and Džiautas v. Lithuania, No. 55480/00 and 59330/00, Judgment of the Court (Second Section) of 1 July 2003, ECLI:CE:ECHR:2003:0701DEC005548000.

Sotiropoulos, Dimitri. 2007. "Swift Gradualism and Variable Outcomes: Vetting in Post-Authoritarian Greece." In *Justice as prevention: Vetting public employees in transitional societies*, eds. Pablo De Greiff and Alexander Mayer–Rieckh, 121–145. New York: Social Science Research Council.

Sovtransavto Holding v. Ukraine, No. 48553/99, Judgment of the Court of 25 July 2002.

Stein, Robert. 2019. "What Exactly Is the Rule of Law?" *Houston Law Review* 57 (1): 185–201.

Stojkova–Zafirovska, Lidija, Zharko Hadji –Zafirov, and Martin Sopronov. 2018. *Vetting of judges in young democracies Comparative Analysis of Vetting in Albania, Bosnia and Herzegovina, Serbia and Macedonia.* Skopje: Centre for Legal Research and Analysis.

Trajanovska, Vesna, and Entoni Miska. 2022. "Judicial Corruption and Vetting process – comparative analysis from Western Balkan countries." *Journal of Law and Politics* 3 (2): 35–43.

United Nations Development Programme [UNDP]. 2006. *Vetting public employees in post-conflict settings: Operational guidelines.* New York: UNDP Bureau for Crisis Prevention and Recovery Justice and Security Sector Reform.

United Nations Development Programme [UNDP]. 2006. *Vetting Public Employees in Post-conflict Settings Operational Guidelines Publication II*. New York: UNDP Bureu for Crisis Prevention and Recovery.

Venice Commission of the Council of Europe [VC]. 2016. *Opinion 0868 (2016) on Albania Amicus Curiae Brief for the Constitutional Court On the Law on the Transitional Re-evaluation of Judges and Prosecutors (the Vetting Law),* Adopted by Venice Commission on its 109th Plenary Session in Venice, 9–10 December 2016.

Venice Commission of the Council of Europe [VC]. 2016. *Opinion CDL-AD (2005) 004 on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative,* Adopted by Venice Commission on its 62nd Plenary Session in Venice, 11–12 March 2005.

Xhoxhaj v. Albania, No. 15227/19, Judgment of the Court (Third Section) of 9 February 2021, ECLI:CE:ECHR:2021:0209JUD001522719.

Zidar, Andraž. 1996. "Lustration: Removal of Opponents of Democracy from Public Positions" (English Summary). *New Magazine* 231–233, Last accessed on August 8, 2025. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1776359

Тијана Перић Дилигенски*

Институт за политичке студије, Београд

АНАТОМИЈА ВЕТИНГА – ИЗМЕЂУ ПРАВА И ПОЛИТИКЕ

Резиме

Рад истражује феномен ветинга у правосуђу, у Албанији, Босни и Херцеговини и Србији, као посткомунистичким земљама које су у процесу приступања Европској унији. Ветинг није јединствен концепт и појављује се у неколико појавних облика као што су: провера, реевалуација и реизбор (поновно именовање) судија. Не постоји јединствени модел ветинга јер га је немогуће применити на различите друштвено-политичке контексте. Аутор овог рада приступа ветингу као инструменту за борбу против корупције, корисном у системима у којима се систематски и континуирано крше владавина права као и независност судија и јавних тужилаца. Ветинг као програм кадровске реформе у правосуђу треба да буде постигнут на темељу широког консензуса (друштвених, правних и политичких актера) и на основу уставних и међународних норми. Као облик и камен темељац административне правде, парадигма ветинга доживела је коперникански заокрет од транзиционих режима ка слабим демократијама. У првом случају то је био механизам транзиционе правде, док је у другом случају био инструмент опоравка и јачања владавине права.

Кључне речи: ветинг, лустрација, владавина права, правосуђе, независност правосуђа, корупција, Србија, Албанија, Босна и Херцеговина

* E-mail: tijana.peric.diligenski@ips.ac.rs; ORCID: 0000-0002-2175-9134

* This manuscript was submitted on August 28, 2025, and accepted by the Editorial Board for online publication and published *online first* on November 7, 2025. It was accepted by the Editorial Board for publishing on December 8, 2025.