

The Middle East & North Africa (MENA) and the Balkans: Challenges of Transformation

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Transitional Justice in Egypt: A Comparison

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Abstract: *This paper aims to evaluate the progress of Egypt's transitional justice process, using Bulgaria as a reference point. Bulgaria experienced a bloodless regime change in 1989 following a wave of anti-communist protest across Eastern Europe. Similarly, Egypt overthrew a 30-year-old dictatorial regime in February 2011 and is two years into its transition. At this point, an evaluation of the progress of transitional justice in Egypt is not only possible but also necessary in order to make conclusions about the nature of the country's transition in the near future. This paper uses Bulgaria as a comparative base since it seen largely as a failure in transitional justice. A comparison with the Bulgarian case can demonstrate how far along Egypt is on a few major elements of transitional justice including the trials of the head of state and regime officials, investigations into regime violence and economic crimes, and lustration declassification.*

When the Arab Spring swept through the majority of Arab countries, Eastern European observers immediately made an analogy with their own experiences from 1989-1990, when communist regimes were overthrown across the region. The similarities between the protest movements are undeniable: the speed of the protest wave, its scale, the existence of both violent and peaceful transitions, the fall of an anachronistic mode of government, the inter-movement solidarity, and other factors. One has to be careful, however, and avoid pushing this analogy too far and neglecting the fact that there are major historical, economic and geopolitical differences between the two regions that render the forces and process of change quite different.

The aim of the present paper is not to explore how similar Egypt and Bulgaria are in their transitions to democratic regimes. In fact, the two countries have quite dissimilar profiles in terms of population and demographics, economic development and organisation, social forces and structures, civil society and, most importantly, position and importance on the international geopolitical map. The internal politics and circumstances of the two countries upon the fall of the oppressive regime diverge significantly, and Egypt will most likely have quite a distinct path of development, compared to any other country in transition whether in Eastern Europe, Africa, Asia or Latin America.

Instead, what this paper proposes to do is evaluate the progress of Egypt's transition, specifically in terms of transitional justice, based on a comparison with that of Bulgaria. An evaluation of Egypt's progress in bringing its former regime to justice is not only possible, given that Egypt has recently commemorated the

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second anniversary of its revolution, but also necessary in order to analyse the lively public debate on the direction Egypt's transition is going.

The Bulgarian experience provides a good base for comparison because the transitional justice process is largely seen as a failure.¹ Thus, setting the Egyptian post-revolutionary judicial process against the Bulgarian experience not only provides insights into its progress, but also reveals what challenges to the democratic process Egypt may face in the near future.

It is important to analyse the progress of transitional justice in Egypt at this moment because the delivery of justice for the previous regime's crimes is not only one of the main demands of the revolutionary movement, but also an important building block for democracy. A justice system that brings to trial and delivers impartial verdicts for the previous regime's crimes not only manages to build public trust in the system, but also lays the foundation of strong and independent judicial institutions that are able to guide the democratic transition and stabilise it.

There are a few common factors that characterise the transitions of Bulgaria and Egypt and build a similar set of circumstances that have shaped transitional justice in the two states. First, both countries had a relatively peaceful transition that did not involve violent civil conflict; thus, the transitional justice cases could be handled by regular civilian courts. Second, there was no radical overhaul of any of the state institutions and hence the justice system that was to prosecute former regime crimes remained largely the same. Third, the head of the former regime remained in the country after being deposed and therefore there was a need and urgency to organise a high-profile trial to respond to pressure from the general public. Fourth, in both countries, there was an absence of public consensus on the demonisation of the former regime and some social structures of the former regime retained their social and economic power and influence. Thus, although the paths of transition in the two countries are different, they are forced to address the same urgent issues of transitional justice: the trials of dictators and former regime officials, regime violence (including oppression of minorities), economic crimes and lustration.

Transitional Judicial Reform

One of the most pressing problems that every transitional government faces is how to tackle judicial reform after regime change. In recent history, as much as authoritarian regimes have used arbitrary violence and oppression to control their populations, they have relied on the judicial system to both institutionalise and legitimise acts of repression. Therefore, bringing the judiciary under direct control of the regime through political pressure, special legislation and targeted appointments has been essential to them. When such a regime is overthrown, but there is no forceful purge of state institutions, the new regime has to deal with a

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judicial system with a long track record of controversial rulings and a long list of employees who have been complicit with, if not drivers of, repression.

The urgency of this problem puts judicial reform at the top of the agenda of transitional regimes right next to transitional justice. Thus, these two processes often run in parallel and influence each other's outcomes. The central question of transitional judicial reform is how to execute them so that the judiciary is discouraged from continuing corrupt behaviour from the previous regime and encouraged to develop objectivity and independence while avoiding politicisation. One of the essential dilemmas is then how much to purge the staff and change the structures of the system in order to achieve this goal and how to establish a balance between control over the judiciary and its full independence.

In Bulgaria, judicial reform was rather unsuccessful. The first democratically elected government of the Union of Democratic Forces (UDF) undertook a campaign of decommunisation which included purges of public administration, interior ministry and the judiciary from what were deemed cadres loyal to the previous regime.² Sources differ on how many judges, prosecutors and investigators were removed or pressured to leave, but the number is somewhere between a few hundred and over a thousand.³⁴⁵ As a result, in the first years of transition, the judiciary system suffered from severe understaffing, which hampered its work on transitional justice cases.

The constitution created two new entities, the Supreme Judicial Council and the Constitutional Court, which aimed to build judicial independence but instead resulted in its politicisation, dependence on the executive and general ineffectiveness. According to the Bulgarian constitution, half of the members of the council are elected by the parliament⁶ and two thirds of the members of the court are appointed by the parliament and the president.⁷ The SJC, in turn, is responsible for appointing the Prosecutor General. This setup has rendered the judicial system largely ineffective by disabling mechanisms for control over the professional qualities and integrity of magistrates and enabling channels of corruption, influence peddling and political control of appointments. This has been the severest point the European Commission's criticism of Bulgaria and successive Bulgarian governments have not been able to cope with it. Having firm ties to the political elite, the judiciary was also influenced in its dealing with transitional justice cases and trials of former regime officials. Changing political alliances between anti-communist forces and the presence of the Bulgarian Socialist Party (the successor of the Bulgarian Communist Party) in the political scene has tamed and hampered the transitional justice process, which has been branded as a "witch hunt" by socialists.⁸

Although it is only at the beginning of judicial reform, Egypt is already facing not only the same issues that Bulgaria had to resolve but also a severe wave of opposition by political forces which see reform attempts as the breach of judicial

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independence. Although Egyptian judges had managed to develop their own movement for judicial independence during the Mubarak era, the judiciary was nevertheless highly politicised and at the beck and call of the National Democratic Party.⁹ The new Egyptian regime now faces the problems of purging magistrates with connections to the previous regime who might favour their former political allies in court cases and reforming the legal provisions that guard it against political dependence.

The most pressing issues that President Mohamed Morsi encountered when he came to power in July 2012 were failure to deliver justice in court cases against former regime officials and security personnel and a series of controversial decisions by the Constitutional Court (including the dissolution of the parliament and the cancellation of a lustration law). In September 2012, a Cairo court acquitted the defendants in the 'Camel Battle Case,' which triggered widespread public outrage. The president took the opportunity to dismiss the prosecutor general, who was appointed by Hosni Mubarak in 2006 and whose resignation had already been demanded by Egyptian revolutionaries.¹⁰ However, the tense and complex political situation in Egypt was unfavourable for a decision that resulted in repercussions for the president, as he was accused of infringing on the independence of the judiciary.¹¹

This political impasse and the threat of a positive constitutional court verdict on the dissolution of the Constituent Assembly, which at that time was drafting the constitution, pushed the president to issue a presidential decree immunising his decisions against legal challenges, protecting the assembly from dissolution and appointing a new prosecutor general.¹² The decree provoked a public uproar and mobilised protesters across the country, as it was largely perceived as an authoritarian move by the president.¹³ In early December, anti-regime demonstrations backed magistrates who claimed that the presidential decree is breaching judicial independence, while pro-regime protestors gathered in front of the constitutional court building to prevent judges from holding a session on the case for the dissolution of the constituent assembly.¹⁴

The new constitution that was voted in through a referendum in December 2012 cancelled the presidential decree and set up the relationship between the executive and the judiciary. It stipulates that the president is responsible for appointing judges to the constitutional court and a law will be drafted to establish the legal mechanism for it. The president will also directly appoint the prosecutor general. Thus the new constitution does not change significantly the executive's prerogatives to influence the judiciary, which existed during the previous regime and were used by Mubarak to tame the judiciary's movement for independence.

As a result of the new constitution, seven judges of the constitutional court were dismissed to accommodate the provision that it should be composed of 11 judges instead of 18 as it was before. The provisions of the new constitution also

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resolved the legal side of the crisis of the appointment of the new prosecutor general, Talaat Abdallah, although some magistrates still challenge his authority. His objectivity has been questioned, as the opposition has criticised some of his decisions as being influenced by the ruling party. Abdallah took the controversial decision to forward a complaint against opposition leaders for “plotting” to overthrow the regime¹⁵ and tried to remove a prosecutor who released protesters that clashed with supporters of the ruling party in front of the presidential palace during protests against the presidential decree.¹⁶

The current crisis in the judiciary and the distrust between judges and the new regime may just be temporary, resulting from the current polarisation of the Egyptian society and politics. However, if the constitutional provisions for executive appointments of key positions in the judiciary are used for political purposes and vendettas, and if the upcoming parliament puts together laws that provide even more opportunities for political infringement on judicial independence, then Egypt runs the risk of repeating Bulgaria’s mistakes and failing to deliver justice to its citizens.

Trials of Dictators

In November 1989, Todor Zhivkov, the head of the politburo of the Bulgarian Communist Party (BCP), resigned under pressure from a group of elite officials in November 1989. In the early 1990s, Zhivkov was investigated for his role in the forced labor camps, the “Revival Process,”¹⁷ military aid to socialist regimes (in Africa, Asia and Latin America), murder of dissidents, and embezzlement of state funds, but he received a sentence only for the latter.¹⁸ During his jail sentence of 7 years, he was allowed to serve under house arrest at his granddaughter’s home until he was eventually exonerated by a court decision in 1995.¹⁹

Former Egyptian dictator Hosni Mubarak was arrested in April 2011. He was indicted in a trial for the killing of protesters during the 25 January revolution and after nearly a year, he was sentenced to life in prison for failing to prevent the killing of protesters on 2 June 2012. In January 2013, his appeal of the sentence was granted and the process for a retrial was launched.²⁰ The former dictator has also been charged with the embezzlement of public funds. After spending some time in jail, he has been transferred to a military hospital.

Trials of Former Regime Officials

The first UDF government launched investigations against a few dozen former regime officials.²¹ Of all of them, very few reached the court and even fewer received verdicts. This is a list of the most prominent figures who received sentences:

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- Georgi Atanasov, Former prime minister: 10 years for giving party officials money from the state budget to build apartments. Got presidential amnesty.
- Stoyan Ovcharov, Former minister of economy: 9 years for giving party officials money from the state budget to build apartments. Served some of the sentence.
- Milko Balev, Member of the BCP politburo: 2 years for the abuse of power and embezzlement. Sentence was suspended.
- Grigor Stoichkov, Former deputy PM: 2 years in 1993 for putting the population in danger by ignoring abnormal levels of radiation during the Chernobyl disaster.
- Chavdar Shindarov, Former head sanitation inspector: 2 years in 1993 for putting the population in danger by ignoring abnormal levels of radiation during the Chernobyl disaster.
- Nanka Serkedzhieva, Former head of state security archives: 2 years for destroying 100,000 files in 2002. Sentence was overturned in 2003.
- Atanas Semerdzhiev, Former minister of interior: 4.5 years for destroying 100,000 files in 2002. Sentence was overturned in 2003.

In Egypt, investigations against former regime officials started within weeks of the deposition of Hosni Mubarak.

- Alaa and Gamal Mubarak, Sons of Mubarak: Currently in custody standing trials for corruption and illicit gains; acquitted in trial for killing protesters.
- Habib El-Adly, Former minister of interior: Life for failing to prevent the killing of protesters. Sentenced to 12 years and 7 years for profiteering.
- Ahmed Nazif, Former prime minister: 3 years in jail and 1 year suspended sentence for illegal enrichment.
- Ahmed al-Maghrabi, Former housing minister: 5 years for illegal land deals, but sentence was suspended; awaiting retrial. Also acquitted for Palm Hills land deal.
- Anas El-Fiqqi, Minister of information: 7 years for corruption; acquitted on charges of squandering of public funds. Released and standing retrial.
- Zohair Garranah, Minister of tourism: 5 years for land sale and 3 years for corruption.
- Sameh Fahmy, Former petroleum minister: 15 years for gas deal with Israel.
- Hussein Salem, Businessman: 15 years for gas deal with Israel; acquitted for giving villas in Sharm Al-Sheikh to Mubarak's sons. Currently residing in Spain.
- Ahmed Ezz, Former senior member of the National Democratic Party (NDP): 10 years for graft and corruption but sentence was suspended and is now awaiting retrial; sentenced to 7 years for money laundering.
- Amr Assal, Head of Industrial Development Authority: 10 years for corruption.

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- Safwat El-Sharif, Former speaker of the Shura Council: Standing trial for embezzlement, graft and illegal land deals; acquitted for Camel Battle trial; released on bail in December 2012.
- Fathy Sorour, Former NDP secretary: Under investigation by Illicit Gains Authority for corruption; released from custody in October 2012.
- Zakaria Azmy, Presidential chief of staff: 7 years for abuse of power.
- Youssef Wali, Former agriculture minister: 10 years for squandering public funds; sentenced overturned in January 2013.
- Rachid Mohamed Rachid, Minister of trade: 20 years in absentia for profiteering and squandering state money; currently residing in the Gulf.
- Youssef Boutros-Ghali, Minister of finance: 10 years in absentia for corruption and 30 years for profiteering; acquitted on graft charges; currently residing in the UK.

The prosecution is currently allowing former regime officials convicted on graft and corruption charges to negotiate a deal with the court in exchange for the return of various amounts of illegally acquired funds. Some of the officials who have negotiated with the prosecution so far are Zakaria Azmy, Safwat El-Sharif, Habib El-Adly, Rachid Mohamed Rachid and others.²²

Regime Violence

Regime brutality in Bulgaria has largely remained unpunished. There has been no official investigation of the repression and killings of the early years of the regime. In the early 1990s, trial proceedings were launched against two regime officials and two guards for the camps in Lovech and Skravena, which closed in 1962. The trial was renewed four times since 1989, the last time in 2002, when the court decided that the statute of limitations had expired. The only punishment that the two guards received for the murders committed in the camps was 3 years under custody during the proceedings of the trial. There were no judicial procedures for the Belene camp, which closed in 1959.²³

There has been no justice rendered for the killings of Bulgarian dissidents either. The prosecution launched an investigation of the famous case of the murder of Georgi Markov on 7 September 1978 (Todor Zhivkov's birthday) in London. The secret services' file on Georgi Markov was destroyed shortly after the deposition of Zhivkov and, as a result, the investigation stalled. The former head of intelligence, Vladimir Todorov, and former deputy minister of interior, Stoyan Savov, were put on trial for that. Savov committed suicide, while Todorov was sentenced to 10 months in prison. Despite existing evidence of his direct involvement in the murder, Todor Zhivkov was never put on trial for it.²⁴

The most severe case of oppression of the last decade of the communist regime was the "Revival Process." In the early 1990s, there was a push to bring those responsible for the repression of hundreds of thousands of ethnic Turks to justice.

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In 1991, the prosecution started proceedings against Dimitar Stoyanov, Todor Zhivkov, Pencho Kubadinski, Georgi Atanasov, and Petar Mladenov. The court case faced a number of difficulties and eventually stalled. With the exception of one individual, all of the defendants in the case have died.

In Egypt, the focus of transitional justice has been on the cases of regime violence since 25 January 2011 despite the existence of numerous cases of forced disappearances, torture and killings carried out by the security apparatus before 2011. The two cases of pre-revolution brutality have received widespread public attention and verdicts. One was the trial for the death of Khalid Said (which has largely been seen as one of the catalysts of the 25 January Revolution) in which two police officers were sentenced to 7 years in jail.²⁵ The second was for the death of Sayed Bilal in police custody after he was wrongfully arrested in connection with the Alexandria church bombing; four policemen received life sentences and one 15 years in jail.²⁶

Despite all the investigations of the violence that occurred during the revolution, no one has been punished for the killings of protesters. The sentences of Hosni Mubarak and former interior minister Habib Al-Adly have in a way exonerated the regime from responsibility, since they were convicted not for ordering the killings but for failing to prevent them. In October 2012, the acquittals of 24 former officials in the 'Camel Battle' case further smothered hopes that those responsible for the deaths of civilians during protests will be brought to justice. There have also been a number of local court cases against police officers in Cairo, Alexandria, Suez and other cities. So far, there have been only 5 police officers sentenced to 10 years of prison and 11 have received one-year sentences that were suspended anyway.^{27,28} In addition, three soldiers were sentenced to two or three years of jail for the unintentional killing of Coptic protestors during the Maspero Massacre, in which 28 people were killed.²⁹ This was the only instance in which military personnel were punished for violence against civilians during the revolution.

Economic Crimes

In the early 1990s, the Bulgarian prosecution tried to investigate the embezzlement of capital that was transferred outside the country through companies established abroad in the former regime's later years. However, its efforts did not produce any results.³⁰ Investigations for economic crimes were carried out into former regime companies including Expomed, Balkan Holidays, Balkan Airlines, Vinimpex, Infosport, Paton, Inko, and others, but no actual sentences were handed out.

Capital outflow continued into the 1990s as privatisation was delayed. After the fall of the communist regime, effective control over the management of state enterprises was lost. As a result, senior and junior management started running

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state-owned companies for their own personal profit, sometimes bringing them down into bankruptcy.³¹ When privatisation was finally launched, the process was marred by the participation of these same managers, corrupt government officials and shadowy financial institutions. According to the current Bulgarian president, state companies worth EUR 30 billion were sold for 3 billion.³² So far, there have been no major court cases bringing those responsible for the failure of the privatisation process in Bulgaria to justice.

In Egypt, a few former regime officials have been indicted for their role in economic crimes. The most high-profile case was launched against Ahmed Ezz for his illegal acquisition of shares in Dekheila Steel Company.³³ Another source of major corruption cases have been land sales by state entities or officials to real estate developers close to the former regime. A land deal with one of the biggest real estate developers, Palm Hills, was cancelled by a court decision in April 2011 and another – with developer Talaat Moustafa Group (TMG) – is threatened with cancellation after a court recommended that it is scrapped.^{34 35}

There has also been some progress in challenging faulty privatisation deals. In 2011, the court cancelled the privatisation deals of retail chain Omar Effendi, Shebin Al-Kom, Al-Nasr Company for Steam and Boilers and Tanta for Linen and Derivatives, all of which were sold for 2-3 times less than their market price.³⁶ A year later, the court ordered that Assiut Cement be returned to the state.³⁷ These court decisions have paved the way for 90 other cases of disadvantageous privatisation deals that have yet to be reviewed.³⁸

Lustration

In Bulgaria, there were several attempts to pass lustration legislation to limit the access to political and institutional power for former regime officials. The efforts of the democratic forces in the country were met with limited success. In 1992, during the first UDF government, the parliament managed to pass a law blocking communist party leaders and secret service agents from assuming posts in the banking system and academic institutions.³⁹ Later in the same year, the UDF proposed a bill to extend lustration to communist party officials and employees and collaborators of the secret services in leadership positions in the executive, state-owned companies and institutions and mass media. However, the draft law was shot down by the president who justified his opposition by claiming that this law posed a threat to national reconciliation.⁴⁰ In 1998, the second UDF government managed to pass a media law forbidding secret service agents and collaborators from joining the New Media Regulatory Council, but failed to pass any other substantial lustration legislation.

When a governmental commission opened the archives of the secret services of the communist era, it reported that all governments and parliaments since 1989 have had secret service agents in them.⁴¹ Because the commission was disclosing

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the names of public figures, it was clear that no government since 1989 had had an active policy of avoiding the appointment of secret service agents or former communist party members in state institutions.⁴² As a result of the lack of stringent lustration laws, the system of corruption and influence of former regime officials remained intact, which hampered the democratic process and hurt the country financially (especially since a lot of former party apparatchiks were heading state-owned companies and took part in corrupt privatisation practices).

In Egypt, there has not been any discussion of lustration for secret service members for two reasons: first, as it will be discussed below, there has not been any attempt at interior ministry reform; and second, the network of secret service agents in totalitarian states such as communist Bulgaria was much more extensive and infiltrated into the society than that of the authoritarian police state that Hosni Mubarak was maintaining. In terms of former ruling party members, there have been several attempts for lustration legislation. Prior to the first free parliamentary elections in 2011, the then-ruling military council amended a law from 1952 to extend a ban on regime officials charged in a criminal court from running for office.⁴³ The move was largely seen as ineffective. In April 2012, the newly formed parliament passed a law that excluded any president, vice president, prime minister or leader of the now-dissolved National Democratic Party from running in the presidential election. The law targeted presidential candidates Omar Suleiman and Ahmed Shafik.⁴⁴ The constitutional court ruled that the law was unconstitutional and allowed Shafik to run for president. The new constitution includes a whole article on lustration, excluding "everyone who was a member of the Secretariat of the Party, the Policies Committee or the Political Bureau, or was a member of the People's Assembly or the Shura Council during the two legislative terms preceding the 25 January revolution" from running in elections for 10 years.⁴⁵ It remains to be seen in the upcoming parliamentary elections how this article will be implemented and whether lustration will be extended to more former regime officials and more state institutions.

Conclusion

In the two years since the Egyptian revolution, Egypt has made more progress in delivering transitional justice in certain areas than Bulgaria has in 24 years. However, this does not mean that the transitional justice process in Egypt has been successful, but rather that it is close to achieving the bare minimum. There are still many regime crimes that have not been addressed and the road ahead might prove even more challenging than in these first two years.

Three major factors can threaten the further progress of transitional justice in Egypt: faulty judicial reform, absence of interior ministry reform and the intervention of the military. Egypt, in some ways, is repeating Bulgaria's mistakes in allowing the executive to politicise the judiciary and runs the risk of having an

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ineffective, corrupt and self-serving judicial system. This path is not inevitable and can easily be corrected with legislation, which is one of the major tasks for the soon-to-be-elected parliament.

The lack of reform in the interior ministry has propagated the feeling of impunity amongst its employees despite the initial scare and loss of morale at the start of the revolution. Cases of torture and death in custody continue and some human rights activists claim they have even increased since Mubarak's time. One of the many grievances from the former regime that pushed Egyptians into the streets to protest in January 2011 was police brutality and oppression. In order for the revolutionary and democratic processes to enjoy popular support and for transitional justice to deliver verdicts to hold the security apparatus accountable, interior ministry reform has to happen.

Finally, the political involvement of the military in the political process can be one of the main stumbling blocks for justice. After the military council took over political power from the deposed president, military forces were involved in violence against protesters. Not only has there been no progress in bringing members of the military accountable for the violence, but for the past two years, the army has conducted military trials of civilians. Unfortunately, the new constitution has a loophole in article 198 which allows civilians to be tried by military courts for "crimes that harm the Armed Forces."⁴⁶ Closing the loophole through a parliamentary vote and isolating the military from political power is central to a successful transition in Egypt.

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