

FINAL REPORT ON THE SECOND PANEL OF THE INTERNATIONAL CONFERENCE “THE RELATION BETWEEN THE CITIZEN AND THE STATE IN A DEMOCRATIC RULE-OF-LAW STATE”

The topic of the second panel of the International Conference “The Relation between the Citizen and the State in a Democratic Rule-of-Law State” organized by the Friedrich-Ebert-Stiftung, Office Macedonia and the Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit E.V. from Bonn, Germany was dedicated to the process of Lustration- 20 years after the fall of communism and democratic transition of the former Eastern and SEE socialist societies and states.

Guest speakers on this panel were: Mr. Suad Misini, NGO “Center for research of the civil society”- Macedonia, Prof. Wojciek Simicek, Faculty of Law in Brno and Supreme Administrative Court of the Czech Republic and Mr. Jens Hutmann, Federal Foundation for lustration of the injustice committed by the State during the socialist regime, Germany. Moderator of this panel was Mr. Aleksandar Lj. Spasov, Faculty of Law / Progres-Institute, Macedonia.

On the second panel, beside the panelists, took part representatives of the civil sectors, politicians, representatives of the academic community and all members of the newly established State Commission on Lustration (State Commission on Verification of the Facts).

The topic of the second panel by coincidence matched with the reopening of the debate on lustration in Macedonia. This debate was reopened due to two main reasons: first, a year after the Law on Lustration voted by the Macedonian Parliament (official: Law on additional condition for executing public authority) entered into force the Commission on Lustration (Officially Commission on verification of the facts) was established and effectively started its work. The second reason was the recent public hearing organized by the Constitutional Court of the Republic of Macedonia that followed the initiative to check the compliance of this Law with the Constitution.

However this panel was not just contribution to the recent political debate in Macedonia. The topic and the debate was designed as experts contribution to the general debate on democratic transition in the society and sharing of experiences with representatives from countries that much earlier started with the lustration than Macedonia and are advanced in the implementation of the process. The key point of the panel was not the history of the injustice in the former communist societies but the treatment of the past and the injustice during 20 years of democratic transition.

After the presentations of the speakers and the discussion that followed, three critical challenges (dilemmas) in the implementation of the Law on Lustration were identified. The first challenge are the political problems that (may) occur during implementation of the Law, the second challenge are the legal dilemmas and the third challenge are the technical difficulties during the implementation.

Main political problems of the Macedonian society that may affect the effective implementation of the lustration are the democratic deficit (weaknesses) of the Macedonian democracy (problems in protection of the human rights and freedoms, lack of political tolerance, weak political dialogue). The main task of the Commission on

Lustration and the state institutions is not to create revenge justice and political divisions and by that to create new victims (“victims of the victims”) but to provide fair reconsideration of the “work” of the collaborators of the secret police (State Security) and to bring moral satisfaction to the victims of the regime. Very important challenge is also to identify the real victims of the regime having in mind that Macedonia started with the lustration 18 years after the political change.

The main legal dilemma is the compliance of the Law with the Constitution. It was disputed by eminent experts, politicians from the opposition and representatives of the civil sector. This dilemma exists due to several reasons: the question of legality (the “work” of the collaborators was legal and encouraged by the former regime). The main question is whether this, in a way, retroactive law, is not creating legal insecurity that is in opposition to the democratic legal order? Second problem is the question who should implement the Law- State Commission which is part of the executive power or regular Court? If the Commission is in charge to implement the Law (as Macedonian law states) the problem of protection of presumption of innocence is a huge challenge. Next question is who should be “lustrated”- only those who are holding positions in the political institutions or also university professors, businessmen, activists in the civil sector etc.

The technical difficulties in implementation of the Law are raising by the fact that Macedonia does not have any experience in such processes and especially the lack of well trained and skills individuals that will in professional basis work in the Commission. Second problem that is tight connected to the legal and political disputability of the whole project is the relevancy of the archives of the secret police after 18 years of democratic transition. Namely, these archives are the only verification whether an individual was collaborator or not and they remained (and are) in the hands of the police (Ministry of Interior). No one can be sure whether some of the archives were not destroyed or falsified after so many years.

The final conclusion of the debate is that the process of the lustration has to be implemented very carefully having in mind all stated challenges. The panelists and the participants also concluded that the panel fulfilled the expectations. Members of the Commission on Lustration also proposed to the organizers to continue supporting these kind of debated and expressed their readiness to cooperate in its planning and organization.

The report is prepared by Aleksandar Lj. Spasov, Faculty of law, Skopje