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THE RELATION BETWEEN THE STATE AND THE CITIZENS FROM THE ASPECT OF ADMINISTRATIVE LEGISLATION IN MACEDONIA

When it comes to the relation between the state and the citizens, it is the relation between the administration and the citizen that is primarily taken into account. Therefore, the public administration reforms are an endless source of topics for discussion, ideas, measures and activities initiated by the state institutions, and in countries with a highly developed civil society they are often initiated by the citizens themselves.

Legal acts in RM in the area of administrative law which regulate the relations between the state and the citizens could generally be placed in two groups:

1. Substantive laws, most significant of which are the Law on Organization and Work of State Administrative Bodies (LOWSAB) as well as the Law on Local Self-government. Understandably, this group also includes an entire range of laws regulating the relations between the citizens and the state, such as the Law on Institutions, the laws on primary, secondary and higher education, the Law on Health Care, etc. However, due to the time limitations, I will focus only on the first two in my presentation.
2. Procedural laws or the laws of process nature, which are the Law on General Administrative Procedure and the Law on Administrative Disputes.

With regard to historic development of administration in RM from the '90s onwards, I will state the characteristics only briefly. Namely, from 1991 to 2000 the executive branch of government in our country was not legally constituted by the Macedonian national laws. Pertaining to the issues of organization and competences of the Macedonian administration, the legal regulations from SFRY were applied, both in terms of central and local self-government.

In 1992 a Decision of the Government of RM was made by which the previously abandoned communal system, instead of growing into a local self-government system was simply centralized, by declaring all municipal bodies as local offices of the ministries.

The first Law on the Establishment of Local Self-government in RM was enacted in 1996, in which the previously set up local offices of the ministries were not mentioned, and local self-government units were formed, which comprised the mayor and the council as local government bodies, but without any factual competences. The true decentralization in RM took place in 2002, with the enactment of the new Law on Local Self-government, according to which the municipalities and the City of Skopje had two types of competences: original and entrusted ones.

The central government in our country was regulated for the first time only in 2000, when the LOWSA was enacted. By that year in RM there was neither a Law on Government nor a Law on Civil Servants. Up until the enactment of the Law on Government (2000), the Government drew its competences directly from the Constitution. This package of laws was preceded by a Government Strategy for Reforms of the State and Public Administration, which was the starting point for enacting all of the subsequent legal acts.

Today, nearly 10 years after the enactment of LOWSA, unfortunately, the situation regarding the organization and competences of state administration is still not completely regulated. This is a systemic law enacted with a 2/3 majority in Parliament, and most probably this was the obstacle, or one of the main obstacles, for its serious and thorough amendment and complementation. Namely, in accordance with this Law, as well as the aforementioned Law on Local Self-government of 1996, the state administration in RM has become and remains to be on one level. This brought about numerous problems in regulating the relations between the citizens and the administration, especially in terms of carrying out second instance administrative procedures, in cases in which the first instance administrative acts (decisions) are rendered by the highest central bodies, i.e. the ministries or their local offices. This way of organizing the central government in RM is precisely the reason why the citizens are facing a legal as well as a factual vacuum in a situation where there is no higher, i.e. second instance body in the state to control the first instance acts.

All of this is closely related to the enactment of the procedural laws, such as LGAP and LAD which regulate the procedure of exercising citizens' rights before the bodies of the state. The LGAP was enacted as a national (Macedonian) regulation in 2005, and up until that time the old Yugoslav regulation had been applied, which dates back to the '50s. On this occasion I would like to point out that the Law on General Administrative Procedure of 1956, although enacted in a different socio-political system from the today's one, greatly differed from the laws that regulated administrative procedure at that time in the other countries which had a similar social and political system (the Soviet Union and the other Eastern Block countries). Civil freedoms and rights and legal protection from their misuse by the state bodies were firmly grounded in that Law of 1956. Thus, for example, all of the basic principles of administrative procedure, widely accepted in the developed countries, were contained in that law: the principle of

lawfulness, the principle of implementing a two-level system, the principle of effectiveness, the principle of hearing out the party, the principle of assisting the ignorant party, etc. This is exactly the reason why the new LGAP in RM of 2005 took on the existing concept incorporated in the previous Yugoslav law, certainly upgrading it with novelties that correspond to the needs of today's living. Hence, the new LGAP of 2005 contains several new, modern principles – the principle of a service oriented administration, the principle of urgency, the principle of accountability. Also, certain problems that hindered the efficient functioning of administration were additionally regulated in the LGAP of 2005. Here, I mostly mean the problem with the service of process (service of writs) to the citizens, which is now regulated precisely and in detail.

The fact that the LOWSA contains numerous gaps and issues which are not regulated by this law causes problems which are also reflected on the implementation of the LGAP. On the one hand, in accordance with the LGAP, the appeal is a regular legal remedy in the administrative procedure, on the other hand, however, in many cases from practice it cannot be used by the citizens because there is no higher, second instance body that would rule upon it. There was an attempt by the legislator to resolve the insufficient clarification of this issue in the LOWSA in 2000, through the provisions of the Law on Government of RM, which envisages the establishment of second instance government commissions in charge of deciding on the appeals of the citizens, against the first instance acts of the highest administrative bodies i.e. the ministries. This legislation enables upgrading of a house that does not stand on solid ground or building a house starting from the roof downwards. The citizens go around a labyrinth of procedures, and the exercise of the rights guaranteed by the Constitution and law within the administrative procedure is described best with the idiom 'to be judge, jury and executioner'. The same administration officers who had prepared the first instance decision participate in the work of the so called second instance government commission along with high political officials (ministers and deputy ministers, members of the government) which completely overthrows the principle of expertise and competence, because the expert administrative issues related to the exercise of specific rights and legal interests of the citizens are decided on by politicians.

The second issue that is of very high interest for regulating the relations between the citizens and the state is the issue of 'the silence of administration'. A fundamental rule that is accepted in our system of administrative and legal protection of the citizens is that not responding by the administration to the request of a citizen within a deadline determined by law is in fact a denial of such a request. In such cases the citizens have the right to an appeal to a higher instance body, i.e. a lawsuit for the initiation of an administrative dispute. Since the reform of the public administration in recent years in RM has become a trend, apart from necessity, in 2008 amendments were made to the LAP, which were presented by the current government as a large reform that was even named 'a regulatory guillotine'. The novelty is in the fact that in the amendments of 2008 it

was said that the silence of the administration shall mean an approval of the citizens' requests, however, only after the fulfillment of numerous conditions which are impossible to fulfill in practice. Henceforth, in practice, i.e. in reality, not a single citizen in the country has obtained any kind of right, guaranteed by law or the Constitution, via administration silence. Although it sounds nice, it is perfectly clear that not a single citizen in any country can build a house, get a passport, start a business activity, obtain a weapon, get financial assistance, a scholarship, etc. without the proper license, in other words without a decision issued in writing by the competent state body.

As far as the LAD is concerned, it was first enacted in RM in 2006. This law, just as the LGAP, continued the concept of procedure for administrative disputes grounded in our legal system by the federal law on administrative disputes from the period of SFRY, enacted in the 1970s. However, the 2006 law brought in a tectonic change in the Macedonian court system by the establishment of an Administrative Court, as a court that specializes in resolving citizens' disputes pertaining to decisions issued by state bodies. There are a number of problems that occur in the implementation of this law as well. Primarily, the issue of the right to an appeal against the decisions of the Administrative Court is problematic. A part of the legal minds in this country consider these decisions as first instance decisions, however, a part of them believe that this is a third level of protection, having in mind the two procedures that precede the administrative dispute within the administration itself. The LAD does not resolve this issue, and there is a great need, both for the citizens and for the state bodies whose administrative acts are the subjects of the disputes, and for the Administrative Court itself, for this issue to be resolved as soon as possible. The organization of the Administrative Court, as well as its expanded competences that realistically overburden the existing composition of the Court and greatly influence its timeliness and efficiency, are also problems we encounter on a daily basis.

In order to overcome the everlasting gap between the state and the citizens, in the past few years numerous attempts have been made to approximate the institutions to the citizens, so that they are treated as real clients or users of state administration services. In this sense, several significant laws have been enacted: The Law on Free Access to Public Information, the Law on Protection of Personal Data, the Law on Acting on Submissions and Proposals, etc. These are new legal texts, and their content is completely harmonized with the standards set by the EU, and they are legally grounded in the Constitution of RM. Nevertheless, the full implementation of these laws is prevented or impeded, again due to the shortcomings in the LOWSAB. So for example, there are numerous rules that regulate the entire procedure for the exercise of the right to free access to public information, and this entire procedure could be replaced simply by the citizens going online, if there was a legal obligation stipulated in the LOWSAB for all by-laws, reports, job systemization, plans, programs, even the specific administrative acts adopted by them to be posted on the websites of the state administration bodies. Furthermore, there are countless state bodies,

agencies, directorates, etc. established by special substantive regulations (laws) whose number even the top lawyers of the country do not know, let alone the average citizens, and all of these bodies could be placed into one single systemic law – SOWSA.

The competences and the scope of work of the ministers, as heads of departments, and especially the competence and scope of work of the category of high officials, invented solely for Macedonian purposes i.e. 'deputy ministers', are only partially or not at all regulated by LOWSA. The overlap of the competences between two, three and more departments is also a phenomenon that hinders the efficient work of the administration, and it should be regulated precisely by LOWSA. Finally, the dispersion of the functions of the Minister among the managing civil servants is neither mentioned nor regulated in this law, so the citizens of RM are led to a situation in which for almost all of their problems or matters of interest the government ministers shall make decisions. The function decentralization, i.e. the transfer of competences from the ministries as state bodies onto expert agencies and their bodies is another key issue that should be regulated by LOWSA.

In conclusion of my presentation, I can state that RM has a solid legal basis to implement a thorough reform of the state and public administration in the direction of its approximation to the citizens; however it must start from the basic legal text, so that it can lead to true implementation of the amendments. In order to accomplish this, there needs to be a strong political will in the first place, as well as expertise and knowledge. This is why the training of civil servants and the overall public administration in general is an issue of extreme importance for the improvement of quality of service the state offers to its citizens, and to which the Macedonian competent institutions do not pay sufficient attention and resources.

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EXPERIENCES AND LESSONS LEARNT FROM THE CHANGE IN THE RELATIONSHIP BETWEEN THE CITIZEN AND THE STATE IN THE 20 YEARS HISTORY OF TRANSITION

The transition from eastern to western legal system 20 years ago in Eastern Germany unfolded differently than in other socialist countries in Europe. While in those countries an exhaustive discussion was taking place about the principles of the rule of law in a liberal and democratic system, and they were harmonized with the legal traditions of the respective countries, Eastern Germany leaned towards the Federal Republic of Germany, with which she was going to unite in as short a period of time as possible. Only one small group was of the opinion that a second liberal German state should be formed, other than the Federal Republic of Germany. This attitude sounded misconstrued then, as it does now, because there is only one German nation.

In the German Democratic Republic, the transition from one legal system to another was introduced at the beginning of 1990, by the People's Chamber, which was gained legitimacy for the first time, though it ended with the unification of Germany, i.e. with the accession of the German Democratic Republic to the Federal Republic of Germany. Thus, Eastern Germany embraced the legal system of Western Germany, and primarily this referred to the Constitution. Of course, there were discussions about transitional provisions, which were also a result of the extensive Unification Treaty of FRG and GDR. However, fundamental issues could no longer be discussed, because GDR was subsumed by FR Germany and transformed into its legal system.

During my 11 years of service for the High Supreme Court and for the Regional Constitutional Court in Saxony-Anhalt, I witnessed this transition. In this context, please allow me to explain the recruitment of judges, structure of the judiciary and the characteristics of jurisprudence that I observed.

1. Recruitment of judges

The fact the GDR joined FRG, which had a fully functional judicial apparatus, resulted in assessment of the suitability of judges there by commissions

comprising of judges and Members of Parliament. Speaking from personal experience, I can say that what was significant was that in the decision-making bodies, which were deciding about the future activity of eastern judges, the left oriented commission members applied stricter rules, probably because they remembered that the judges of the national socialistic period after World War II ended were subject to very weak examination. On the other hand, the conservative members of the commissions voted more conservatively, i.e. in favour of keeping the judges in service. When eastern judges were leaving service to retire, they were substituted by many judges from Western Germany who were seconded to Eastern Germany. The percent of judges with a western origin differed from district to district and depended on the type of court. Having in mind the proximity to the western district Lower Saxony, in Saxony-Anhalt the percentage of 'western judges' was very high. In criminal and civil courts it stood at around 60 percent, and in the administrative courts it went even up to 95 percent. The reason for this is that in GDR prior to the unification there were hardly any administrative court procedures.

At a later stage, the eastern and western quota no longer played a part in the recruitment of judges, and the differences became increasingly smaller. The young candidates for judges studied law at universities in Western or Eastern Germany; they came from Saxony-Anhalt or other districts. At the end of the 90's there were a great number of applicants in our institution who had enrolled on a Faculty of Law before the unification of Germany, because they were politically suitable, and then they left for the compulsory four year military service as professional officers in the East German National People's Army, and after the unification they studied westetern law. Their political background played no role in the employment process.

2. Establishment of administrative judicial system

The working group for establishment of the administrative judicial system in Saxony, which was sent from the west even before the unification, made efforts, when the administrative courts, which did not exist at that time, to tread new paths. However, in reality, the chances for a completely new remodeling were only theoretical. Apart from the limited technical and spatial opportunities, there were also legal framework conditions that did not provide a lot of room for innovation. With the Unification Treaty, the Law on Courts and the Law on Administrative Courts became binding. In this way, the three tier administrative court system was fundamentally envisaged. Given mind the territorial vastness of the district, the initial thoughts for establishing only one first instance administrative court were abandoned. The plan for merging the Upper Administrative Court with another high court from another district, as was later on the case with Berlin and Brandenburg, was also abandoned in light of the 'feeling of independence of the Saxony-Anhalt district'.

3. Characteristic of jurisprudence

The jurisprudence of the administrative courts started very slowly. The reason for this was not the compliance of the citizens with the state rules, but the fact that the administrative courts were largely unknown to the citizens, and there was a shortage of adequate attorneys that would represent the interests of the citizens.

Most of the decisions of administrative courts were with respect to the petitions filed by municipalities, for example, for financial participation of the citizens for disposal of waste water or participation in the construction on new streets and roads. Previously, such funds were not paid by the citizens in GDR. This is why it was difficult for them to understand why they should pay for public institutions. Since the municipal rulebooks for payment of taxes were often flawed, the lawsuits of this kind were successful at the beginning, however in the long run the citizens were not spared from paying the funds.

Other important reasons for filing lawsuits came from the field of property law, of denationalization of property that was confiscated by GDR and its return to the owners. In order to speed up the procedure, with these cases, there was a right to appeal directly before the Federal Administrative Court, so for us, the Higher Administrative Court, there was little work pertaining to those issues. Nevertheless, we dealt extensively with return of the land which was merged to the agricultural production cooperatives (kolkhoz), to its rightful owners. This was especially difficult in cases when the agricultural cooperatives built houses on land that was then supposed to be returned to the owner. Since according to western legal understanding the ownership of the house and the ownership of the land have to match, the resolution of these cases took more than just knowledge of the law.

It is not easy to say what kind of reputation the judiciary system has after the unification in 1989. It is true that with the import of judges from the west, lawyers with expertise and experience were brought in the eastern districts. However, the population assessed this import from the west as an alien body, actually so did the old judges with their ideology. Besides, the great expectations of the judicial system could not be fulfilled completely; hence this circumstance inspired the supporter of civil rights, Bärbel Bohley, to give the following statement: 'We wanted justice, and we got the rule of law'. This sentence expresses disappointment, as well as lack of understanding of the lawful, thus democratically legitimized legal system and its mandatory control exercised solely by courts, and a lack of understanding of the very important principle of legal safety, and apart from that slight arrogance in the sense of the following: justice is only what we believe it to be. The acceptance of the judicial system is encouraged with a proper questioning of those concerned, balanced offers for settlement which will ensure legal peace, passage of reasonable sentences, and also the participation of lay judges that are elected in the municipalities and the counties and have equal voting rights. They, most often in their own bases, explain how court decisions are brought, the time and effort necessary and how difficult it is to unravel a case and find the law. Viewed overall, I believe that the

transition of the legal system in Eastern Germany, in terms of the relationship between the citizen and the state in the past 20 years, has been successful.

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CHANGING LEGAL RELATIONS BETWEEN THE CITIZEN AND THE STATE – CZECH EXPERIENCES

1. Unlike our German colleagues, in Czechoslovakia it was impossible for us to rely on 'imported' jurists (especially judges). Therefore, the overall transition process was exclusively in the hands of those who grew up in communist times. For various reasons I deem that this is both a strength and weakness; viewing it from an expert aspect it was a weakness, since due to ignorance and lack of experience a range of mistakes were made. The strength lied in the authenticity and legitimacy in dealing with the past.

2. Early nineties already saw a major mistake in judiciary which we are still trying to tackle; first of all, the legislator significantly raised the fees in the private sector (particularly lawyers' fees) and only after that did it increase judges' salaries. This resulted in many good and especially young judges to leave judiciary right after that, in 1990 and 1991. They were not replaced with jurists from the Law School coming from among the best ones, but first of all, with very low reputed, both in expert and professional sense, enterprise officers and lawyers of the middle and oldest generations. Later on, when judiciary jobs gained social and financial reputation and acknowledgement, unfortunately, virtually all of the judicial positions were taken so in that way generation change was significantly stopped.

3. A very positive role in the Czech Republic was played by the Constitutional Court, which was nominated by the that time President Watzlav Havel in 1993 in an extremely successful manner. This Court of 15 members was composed of former political prisoners, emigrants, as well as very good, professionally successful judges and lawyers with an impressive practical experience. This harmonious composition was good both from a viewpoint of its legitimacy and especially power and persuasiveness of its decisions. These judges, in fact, could not be simply compromised as people with communist experience. By no means is it an accident that among all of the state bodies, precisely the Constitution Court predominantly enjoyed the greatest public trust throughout the nineties.

4. In parallel, up until mid nineties it was well known that this Court paradoxally enough, encountered major problems as regards other courts,

although Constitutional Court decisions were assessed extremely positively by the general public. In some cases, courts publicly disregarded the Constitutional Court decisions and the journalists wrote about it using the hyperbola 'war of the courts'. From a today's perspective I can say that this war is already over with an absolute victory of the Constitutional Court. Its decisions nowadays are fully and completely observed by the courts; these courts work with them and refer to them. In that sense, there is one more other problem, i.e. lack of single case practice of the Constitutional Court whereby courts oftentimes do not know which one of the controversial opinions of the Constitutional Court is relevant. Nevertheless, this is a topic for itself and we will not address it here and today.

5. Regarding the acceptance of the Constitutional Court by the other courts, a particularly large role was played by the circumstance that all of the courts decisions may be challenged by the Constitutional Court using a Constitutional Appeal. This has a practical importance because none of the judges makes a willful decision against the legal opinion of the Constitutional Court. At the end of the day, the judge knows that against his/her decision a Constitutional Appeal may be filed, where most likely the Constitutional Court will reverse that Decision. In that way, not only do the judges face additional work, but they might lose their prestige among the expert audience.

6. The greatest merit of the Constitutional Court in the Czech Republic I see in the fact that it very clearly and firstly rejected the idea of collectivism. This idea was at the foundations of the entire judiciary. The Czech Constitutional Court disassociated itself from Jean Jacques Rousseau's theory of general good and general will of the community. Contrary to that, it revived the theory of social agreement in the sense of giving clear priority to the individual over the state. This idea of priority of the individual over the state represented a leading principle by which the Constitutional Court decided upon various specific cases starting from restitution processes through housing rents regulations up to returning citizenship taken away in communist times, criminal cases as well as tax cases.

7. Thus, the Constitutional Court has created the conditions for establishment of full Administrative Judiciary. Still, this happened only after ten years of the Constitution effectiveness, i.e. only on 1 January 2003. Precisely in Administrative Judiciary I see the other essential step towards individual empowerment over the state. Currently, the number of actions before public government bodies is increasingly going up and they can be challenged by the Administrative Courts. Not only is it possible now virtually to undertake judicial measures against all the decisions encroaching the legal field of the plaintiff, but the citizen can defend himself against non-acting of the administrative services and their other measures, i.e. against non-formalized factual actions. In legal practice we even find cases where Administrative Courts have cancelled the Decision of the President, Government or Parliament for example. It is impressive that Administrative Courts have managed to give advantage to the administrative services to make decisions again and to convey the message that

in a lawful state willfulness shall not be allowed in performing public power. Regarding the details, I refer you to my presentation held last October here in Skopje.

8. As current and certainly most convincing practical evidence for the fact that in the last 20 years the position of the Czech judiciary has changed, I would gladly remind you of the fact that the Constitutional Court less than one month ago repealed the Constitutional Law in which the legislative period of the Parliament was shortened by eight months (initially, the elections were supposed to take place tomorrow and the day after tomorrow, on 9 and 10 October). Still, the Constitutional Court had done this less than one month before the envisaged election term, so thus it aroused huge complaints on the political scene. Therefore, this Decision was observed, so now Parliamentary Elections will be held in the course of the regular term (June, 2010). The Constitutional Court arguments in this case also rely on their idea about the difference between the power that constitutes and the power that is constituted. Hence the possibility for the constitutional majority of parliamentarians and senators to break more than once the substantive core of the Constitution. Frankly speaking, such a thing could not even be imagined in the second half of the nineties.

COMPENSATION FOR THE INJUSTICE DONE BY THE STATE AGAINST ITS CITIZENS IN THE COURSE OF SOCIALIST RULE OF THE 20 YEARS OF TRANSITION HISTORY – THE CZECH EXAMPLE

1. Towards the end of 1989 and early 1990 the issue of legal continuity with communist law was discussed. The political elite were following the concept of judicial continuity. The Constitutional Court defined this concept quite precisely (Judgment Pl. ÚS 19/1993, on: www.nalus.usoud.cz) so that our new Constitution does not rest on neutrality of values. This means that it recognizes the principle of legality as an integral part of the overall concept, which links to formal legality not only the positive law, but also subordinates the explanation and application of legal norms to their content and substantive sense. This is also applicable to the continuity with the 'old law' and the value discontinuity with the 'old regime'. The Constitutional Court has used the comparison "as if you were pouring new wine in old barrels".

2. The principle of formal continuity with the communist law has certainly caused a range of public injustices. As one example among the many I can mention the comparison between the former political prisoners and the officers of state security who are nowadays retired. The state security officers tortured the political prisoners every now and then. Since the level of pension is in principle orientated in accordance with the revenues of the receiver, the former police officers often have double the pension of their victims because prior to the new system they had had the best paid positions. Still, here we have to be aware that

the judiciary cannot suppress all of the injustices existing in society. Because of that, the legislator is at least trying to settle the injustice with various financial benefits given to the politically persecuted people.

3. It is a sad fact that the real punishment of those who during 1948–1989 period had committed crimes even under the that time applicable criminal norms has never happened in the Czech Republic. Although in 1993 the Legislator expressed its will to punish those crimes (Law No. 198/1993 Slg. on Illegality of Communist Regime and Resistance against it) because it established that “the time from 25 February 1948 to 29 December 1989 shall not get a Statute of Limitation if for political reasons those crimes cannot be linked to the basic judicial principles of a democratic state and if no effective judgment followed with a punishment or acquittance”, it minimized the number of appeals filed regarding the Statute of Limitation in criminal cases (and the Constitutional Court came to a conclusion that this regulation shall not be retroactive). In spite of that, practice showed that police officers, lawyers and judges were not ready to punish these cases. Criminal Verdicts in the Czech Republic were issued only in vary rare cases.

4. The limited access to people who had collaborated with the communist regime of state security has two meanings: (1.) penal and (2.) protective. The former is a form of punishment of respectable persons in the past regime; the latter is a manifestation of a ‘defending democracy’ where the democratic state is defending itself from the jeopardy of compromised people who could be blackmailed and who oftentimes have very dangerous contacts overseas as well.

5. It is a fact that the Czech Republic (even Czechoslovakia) has never created legal barriers regarding access to people connected with the communist regime in the private sector. Practice has shown that precisely these people took part in robbing the state owned enterprises and especially in undermining the banks. [Unfortunately, the term ‘undermining’ is the second most significant word after the term ‘robot’ of the writer Karel Czapek, invented by the Czechs. In practice it means taking away other people’s property for one’s own account applying many different methods.]

6. The process of preventing the people connected with the communist regime from having access to state service positions has to be divided into several model methods: (1.) factual, legally non-regulated departure of these people from state services – here I particularly have in mind 1990 when most of the compromised teachers under students’ pressure voluntarily left faculties, when newly appointed Ministers left the communist leadership of Ministries, when a range of judges and lawyers under public pressure moved to the private sector etc. (2.) the most important fundamental element on whose grounds the communist elite were prevented to continue their activities in public services was the Law on Lustration (Law No. 451/1991 Slg.).

7. The logic of the Law on Lustration is based on the fact that a certain group of public offices (administrative services, judges, public representatives, public and legal media, the army, the police) establishes negative evidence for lustration as a prerequisite to perform these competencies. Hence, we can speak of a group of 'protected functions'. With regard to that, one should say that the word exclusively goes about leadership functions, i.e. this does not count for the functions of the regular officers. Therefore, there are many cases known for getting round the Law on Lustration, such as for example the person who did not meet the requirements of the Law on Lustration being elected Head of Department and performing the function for several years as a result of a simple Approval. As opposed to that, it is interesting that the Law on 'Protected Functions' does not cover the elected functions in the representation bodies, nor even at the national level (unlike Poland and Lithuania). Negative lustration evidence must not be granted to a person, who prior to 1990 had performed a 'suspicious function', i.e. if the person worked as:

- A state security officer;
- In the state security documents was registered as a staff member;
- A senior official of the Communist Party of Czechoslovakia;
- An officer of the People's Militia, i.e. of the armed authorities of the Communist Party.

8. This Law was first limited to five years (until the end of 1996). Later on, its applicability was determined until the end of 2000, and currently there is no time limitation on its application whatsoever.

9. On two occasions already the Constitutional Court has dealt with the constitutionality of the Law on Lustration (the first time this Law was still a federal law, i.e. a Czechoslovakian law, and later on it became a Czech law). In both cases the Court came to a conclusion that this Law was not in collision with the Constitution. However, it is a fact that the argument of the Constitutional Court in these decisions was very problematic in several places: for example, one of the decisive arguments of the Federal Constitutional Court in 1992 was the time limitation of the Law on Lustration while on the other hand, the Czech Constitutional Law of 2000 did not view this time limitation as a decisive factor.

10. The greatest issues in the assessment of the Law on Lustration are as follows:

- Time limitation, which does not exist any more;
- Crudeness (collective guilt) of the Law, which does not take into consideration the specific circumstances of the case;
- Presumption of guilt applied in this Law instead of the usual presumption of innocence;
- The implementation of the Law relies on non-credible grounds, especially regarding the archives of state security. The effect of that is that the persons concerned were virtually successful in all of the cases if the positive lustration evidence was challenged before the court. Former state security officers were

giving statements in their favor and most of the archive acts were destroyed by the state security even in the course of November 1989 (shredding). Of course, this affects the legitimacy and credibility of the entire lustration process.

11. Final part:

➤ In the Czech Republic, a real process of punishment of crimes committed in the communist period did not happen. On the other hand, great practical impact was achieved by the publication of the crimes of communism, which had great reverberations in the general public.

➤ At the end of the day, I assess the Law on Lustration as a positive measure which contributes at least a little to the legitimacy and effectiveness in the process of transition.

➤ Regarding this positive assessment I still recommend (in harmony with the judicial practice of the European Court of Human Rights) adherence to the following steps:

- The Law on Lustration should exclusively relate to the functions in the public sector, but not to the functions in the private sector;
- The Law on Lustration should enter into force immediately after the fall of communist totalitarianism. In fact, its legitimacy greatly arises from the fact that it is an urgent and efficient solution. The later the Law on Lustration is implemented, the greater the reduction of its legitimacy and as opposed to that, the greater the danger of it being challenged by the new political elite and abused by certain groups of people.
- Court scrutiny of the specific application of the Law on Lustration must inevitably be guaranteed. Only then can the crude application be excluded even in the cases where this application was obviously unjust (removal of inappropriate crudeness of the law).

➤ The Law on Lustration as an interim measure should be superceded by a standard Law on Public Sector. This Law has been in existence in the Czech Republic even since 2002, however its entry into force was postponed for 2012 as a result of the large burden over the state budget. According to this Law it has been established that a private individual may be appointed in the public service if without proving it can be assumed that during their service they will adhere to the democratic principles of the Constitution of the Czech Republic and that they will perform their service in due manner. This requirement for loyalty to the state I reckon is completely normal and legitimate and I am of the opinion that by entry into force of this Law there will be no sensible reason why the Law on Lustration should exist. If in a specific case with the respective person, as a result of their activities prior to 1989, there is a serious risk of that person to represent a threat to the state, then that person even after repealing the Law on Lustration should not be appointed to work in the public sector. Certainly, today we still do not know how this Law will indeed be implemented in practice.

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STATE INJUSTICE AGAINST THE CITIZENS DURING THE SOCIALIST RULE IN MACEDONIA

- The legal and political context in the Republic of Macedonia up to 1990
 - * The constitutional context of the Socialist Republic of Macedonia
 - * The dilemmas of legal organization in Macedonia from the end of World War II, within SFRY

- Information on non-democratic practices in SR Macedonia, as indicators of social trauma that has persisted until the present day
 - * The Party as an alpha and omega of citizens' life
 - * Persecution, torture, discrimination

- Missed opportunities for the new Macedonian democracy
 - * Has the 'Berlin wall' fallen in Macedonia?
 - * Legislative and legal bravados from the old system

- Clash of ethnic Macedonian's concepts and civil Macedonian's concepts
 - * Integration versus separation

- The principle of active citizenship versus party membership
 - * What are the foundations of state organization and constitutional order?

- Dealing with the socialist past
 - * Capacities to bring down one's own walls

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THE PROCESSING OF THE SED DICTATORSHIP AFTER 1990: SCIENCE, POLITICAL MORALE AND LAW

After 1990, there was a wide political and social consensus in FR Germany concerning the fact that the discussions regarding the SED dictatorship would have to be much more intense than those in the '50s regarding the crimes of national-socialism. At the same time, conflicts may be observed even nowadays that are related to the double dictatorship past of Germany. Often, in reminiscence, the culture pertaining to national-socialism and the SED dictatorship are perceived as if they are opposed to one another. A frequently quoted compromise was suggested by the historian Bernd Faulenbach: 'The crimes of national-socialism must not be relativized by confronting the events in the post-war period; however, the injustice of the post-war period must not be trivialized by pointing to the national-socialism crimes.'

All things considered, an overall social will for processing the topic of SED dictatorship may be witnessed until the present – at the 20th anniversary of the peaceful revolution and self-democratization in the German Democratic Republic – even in largely differing, yet strongly linked fields such as science, moral and law. This is how a research boom came to be, not only at the universities. Numerous actors and institutions were involved. The precisely 2,000 scientific projects since 1990 are an impressive confirmation of this. In the 19 years after the fall of the wall, much more research activities were undertaken with regard to GDR than in 1964, after 19 years of research on national-socialism. As formulated by Hans-Peter Schwarz, a historian from Bonn, GDR has become 'a Bonanza of the historiographical research of history'.

SED processing was by no means limited to science alone, although it undoubtedly provided significant impulses regarding the processing of issues of morale. Thus, with the end of the revolution "(The tacit less) and silence of the victims of the Soviet regime of siege and of the SED dictatorship, which was strictly imposed to the east" also ended. Politically rehabilitated and partially compensated were those that had been persecuted by the councils due to political, social or economical reasons. A prerequisite for this was the opening of the files. Especially the Stasi files, which were available since January 1992 and which allowed for the identification of the persons that cooperated with the Stasi. The victims of the State Security got a clear image of their personal fate, and the fact that the GDR society was run by the Stasi was documented. Nonetheless,

the debate which was centered in this manner - especially in the first half of the 1990s – is now in the past. The consequence was that the structural responsibility for SED for the development in GDR was often in the background of the public debate.

In the meantime, the Act for Rectification of SED Injustice was enacted in 1992, and it has been amended many times since. However, it was not until June, 2007 that the German Bundestag decided to introduce a special pension for the victims of SED dictatorship, who had been imprisoned for more than six months and who exceed a certain income limit. The critics of the creation and practice of the rectification of the injustice inform that this is an example of the treatment of the victims of SED dictatorship in the public memory of United Germany as 'second class victims.'

The admittance and compensation for the suffering and injustice is just one side of the legal dealing with the SED dictatorship; the issues of political persecution are on the other. The statement of Bärbel Bohley, the respectable civil rights advocate: 'We wanted justice, and we got the rule of law' underlines the failure to understand that the previous opponents or victims of the SED regime brought about the processes against the members of the Politburo through processes that often took too long and that were against the lethal darts from the lines of the border troops of GDR. In any case, there was no 'victorious jurisprudence' in FR Germany after 1990, as is often claimed by former SED officials. It is precisely the procedure against the former Minister of State Security Erich Mielke that points to the restrictions of the possibilities for dictatorship crimes to be penalized by the criminal law. The rule of law of the Federal Republic of Germany gave resistance to all humanly understandable attempts at penalizing public injustice even without legal grounds.