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# *Modernizing Local Community in Southeast Europe*

July 30 - August 19, 2000
Palić, Yugoslavia

## Textbook


- Mijat Damjanović, Ph.D, Director of PALGO Center, Belgrade
- Vojislav Stanovčić, Ph.D, Full Professor, Faculty of Political Science, Belgrade University
- Snežana Đorđević, Ph.D, Assistant Professor, Faculty of Political Science, Belgrade University
- Miroslav Prokopijević, Ph.D, Senior Resercher, Institute for European Studies, Belgrade
- Nadija Skenderović-Ćuk, Ph.D, Agency for Local Democracy, Open University, Subotica
- Stevan Lilić, Ph.D, Professor, Faculty of Law, Belgrade University
- Ilija Vujačić, Ph.D, Associate Professor, Faculty of Political Science, Belgrade University
- Joseph Julian, Ph.D, Chairman of The Joint Eastern Europe Center for Democratic Education and Governance, Budapest
- Vučina Vasović, Ph.D, Full Professor, Faculty of Political Science, Belgrade University
- Milan Vukomanović, Ph.D, Research Fellow, Institute for Philosophy and Social Theory, Belgrade
- Damir Jurić, Center for Local Democracy, Osijek, Croatia

Stevan Lilić, Ph.D, Professor, Faculty of Law, Belgrade University

selected texts:

1. Stevan Lilić, "Challenges of Government Reconstruction: Turbulence in Administrative Transition (From Administration as an Instrument of Government to Administration as Public service), Facta Universitatis, Series: Law and Politics, Vol. 1, No 2, 1998, pp. 183 – 193

2. Stevan Lilić, "The Rule of Law, Democracy and Human Rights"

3. Stevan Lilić, "Bringing Cases to Court – Legal Aspects of Fighting Torture"

DR STEVAN LILIC
PROFESSOR OF ADMINISTRATIVE LAW
AND PUBLIC ADMINISTRATION
BELGRADE UNIVERSITY LAW SCHOOL

SUMMER SCHOOL PALIC 2000
MODERNIZING LOCAL COMMUNITY
IN SOUTH-EAST EUROPE
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# SELECTED READING

## LEGAL ASPECTS OF LOCAL COMMUNITY MODERNIZATION

Second Week, (August 7 - 12)



BELGRADE
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# THE RULE OF LAW, DEMOCRACY AND HUMAN RIGHTS

Dr Stevan Lili}, Professor of Law, Belgrade University

## I.

The principle of the *Rule of Law* and the concept of the *Legal State* are paramount moral and legal values that are incorporated in the very foundation of the Western, and particularly European civilization *(Lord Lloyd, Freedman, 1985)*. In respect to human rights their significance is essential for implementing the notion of *legality* of government decisions, as without the framework of the rule of law and the legal state, no modern political and legal system can be conceived.

Originating in the mid-19th century, the concept of the *Rechtsstaat* rests on a *normativistic legal model* of regulating social relations. According to this model, general legal norms (formalized in general legal acts, *e.g.* statutes, laws, regulations, *etc.*) prescribe the rules of social behavior. General legal norms are subsequently decomposed into concrete legal provisions contained in individual legal acts (*e.g.* administrative decisions, judicial ruling, *etc.*) that directly effect the behavior of individuals and other legal entities. The main feature of the normativistic model is that the legitimacy of legal action (including the legitimacy of legislative, judicial and administrative decisions), *derives* from the *legality* of the legal acts. In other words, a legal decision (*i.e.* legal act) is legitimate by virtue of its legality *(Blankenagel, Galligan, Lili}, Levison, Sajo, 1997)*. This model in its initial form, however, cannot be implemented today without peril to the idea of fundamental human freedoms and rights and the concept of political pluralism and democracy - one needs only to have in mind any racist or other totalitarian regime that rests on so-called "law and order"*(To{i}, 1948)*. As consequence, the values of the *Rechtsstaat* concept today can only be seen as a *precondition* of democratic political and legal systems.

As opposed to this formal concept of legality, modern concepts of legal legitimacy base their fundamental principles on the *idea of the rule of law and human rights*. The legality of government and administrative action, therefore, does not *ipso facto* include the legitimacy of these actions. In order to achieve legitimacy, government bodies, courts, administrative and para-statal agencies must also achieve *in concreto* legitimacy of each action they undertake or decision they render. This is done through various instruments and mechanisms of parliamentary, judicial and administrative control (*e.g.* parliamentary debate, hearings, judicial review, ombudsman interventions, *etc.*). Consequently, modern concepts of legal legitimacy, based on the idea of the rule of law and human rights derive from the premise that a governmental action is legitimate not by virtue of the status of the subject or legality of the procedure, but by *virtue of substantial democratic values incorporated in these actions and decisions (Mescheriakoff, 1990)*.

Modern concepts of the legal system rest on models of government as a complex and dynamic system of human inter-action *(Pusi}, 1985)*. In this model the government is projected as a complex and dynamic "relatively closed" system of structures and procedures within itself, as well as an "open system" that communicates with other segments of the global social system (*e.g.* the political and economic system) active in the social environment surrounding it. As a system of human inter-action that derives from the fact that individuals in society achieve their interests either through *mutual cooperation*, or through *mutual conflict*, the main *social function of the legal system*, actively integrated into various patterns and forms of human behavior, is to regulate social processes. As realization of individual or group interests can either be achieved by domination or by compromise, the function of social regulation of a legal system plays a essential role in *neutralizing contingency* effects of illegitimate social behavior or conflict *(Luhmann, 1984)*.

## II.

The rule of law and the modern concept of the legal state based on substantial democratic legitimacy and human rights are particularly reflected within the framework of *government administrative action*. Traditional political theories define administrative action as *an administrative function*. Administrative function is defined as one of the legal functions of the state, as a normativistic modality of *Staatsrecht, i.e. "State Law" (Jellinek, 1914)*. According to these concepts, the administrative function is a specific, legally regulated, function of state power that features the formulation of individual compulsory orders and commands and is authorized to perform acts of legally permitted (*e.g.* political) repression. This traditional concept of *state law*, modified by the Marxist definition of the role of state and law "after the proletarian revolution" has been widely circulated in all Central and Eastern European countries under communism, particularly under the influence of the Soviet legal theory *(Collins, 1976)*.

On the other hand, the concept of the administration as a *public service* originated at the turn of the century in conditions of social, cultural and economic development of highly industrialized nations of Western Europe. Administrative activity is now perceived, not as a function of state political power, but as a complex system of *public services*, *i.e.* activities focused on development, democracy and general welfare of society *(Unger, 1976)*. This lead to the concept that the essence of administrative activity is to *render public services*, *i.e.* activities that play a "vital" role in the everyday life and work of individuals (*e.g.* education, medical care, *etc.*) and society as a whole (*e.g.*

transportation, communication, *etc.*) *(Diguit, 1913)*. According to this model of the administrative system, in conditions of developed social structures and functions, government administration undergoes a substantial transformation, as administrative activity no longer represent only a (legal) *instrument of government*. Administrative activity is now a product of a complex *public* administrative system charged with rendering *public services* with the goal of undertaking actions aimed at securing the welfare of its citizens, as well as the cultural development and economic progress of society.

III.

Western European integration and transition processes in Central and Eastern European post-communist contries cannot be interpreted only as compulsory responses to economic and technological competition and pressures *(Baker, Raadschelders, 1990)*. Integration in Europe is also the result of autonomous development patterns of both economic and political systems in this region. The developed countries in Europe have achieved the level of democratic, social, economic, human rights and technological development, that sets them within the general framework of modern post-industrial *(Galbreith, 1979)* and information societies *(Bell, 1973)*.

On the other hand, post-communist countries in Europe still on levels of mid and late industrial development, as well as those in early stages of social and economic developments, will doubtlessly need to consider present European integration tendencies, not only in respect to their general social and economic development strategies, but also in regard to their governmental systems and actions as well. Within this dynamic social and economic environment, the recognition of the need of the social systems of European post-communist countries to adapt to integration processes is prerequisite for the active participation, cooperation and integration of these systems into European integration processes. In this context, in the Central and East European post-communist countries governmental and legislation reforms and their compatibility with West European integration processes should be the basis for future transformation of the respective post-communist social systems and their organizational and functional development *(Lili}, 1990)*. Comparatively speaking *(Timsit, 1987)*, the transformation of each respective legislative, judicial and administrative system should also be aimed at undertaking functional and organizational *(Emery, 1969)*, as well as technological *(Baquiast, 1986)* and personnel *(Reinemann, 1987)* reforms that are in line with achieving higher standards of democracy and human rights protection *(Buergental, 1995)*.

Another result of the transition process, is the consequent de-centralization and de-concentration of centralized government administrative systems into organizational and functional forms of a higher order. This is due to the fact that increased complexity, and particularly the "informatization" of society, have practically rendered centralized directing, management and control of social processes obsolete, as the traditional government structure is inflexible and inefficient to adapt to the dynamics of the changing environment *(Baquiast, Donk, 1986)*. To achieve substantial integration of legal and political systems that are compatible with tendencies in the developed European countries, hierarchical models must be substituted by new forms of organizational, functional, technological, human resource and financial integration patterns that enable multiple communication, not only with the internal governmental subsystems, but with the external international political, economic and legal systems, as well *(Simon, 1961)*.

Transition and integration processes in Europe also have a significant impact on the perception and quality of human rights, that should be taken into account in the present and future reforms of these systems *(Rosas, Helgesen, Gomien, 1990)*. The legalistic principle of legality, expressed through the ideal "that all citizens are equal before the law", has historically played a crucial role in institutionalizing (particularly in regard to judicial and administrative procedures) the relation between the citizen and the administration *(Lili}, 1990)*: the greatest moral value and practical effect of the "equality" principle being the (legal) protection of the citizen from the foul actions of the state *(Schmid, Jongman, 1992)*. Today, however this traditional principle is considered one-sided: it is argued that for the principle of legality to be legitimate in a modern political and legal environment, apart from the law, the consent of the citizen is also needed. This is the result of the higher level of information and knowledge the citizen has access to, as well as ideological and economic independence of the citizen in communicating with the legislative, judicial and administrative system.

IV.

Due to the need of efficient regulation of social, economic and technological processes, modern government administrative action show a general tendency towards substituting traditional authoritative instruments of administrative power, with higher forms of achieving micro and macro level social regulation *(Pusi}, 1989)*. *Grosso modo*, it may be concluded that the use of administrative force is counter-proportional to the level of general social and economic development *(Moharir, 1989)*. It can be said that government and administrative repression today is a feature of underdeveloped social and economic systems that leads to the phenomena of "*vicious bureaucratic circles*": once applied, repression leads to more repression, which agitates the problem even more, then more repression is applied, and so on *(Crozier, 1963)*. Thus, the tendency of development of modern government action is less and less oriented toward the use of force and repression, as there is objectively less possibility of compulsory social regulation.

A specific question to be addressed in the context of post-communist governmental and administrative reforms is the issue of efficiency. Generally speaking, the more there are technological factors present in government action, the higher the level of the efficiency of the legal and administrative system. Nevertheless, particularly in countries that are experiencing political and social "turbulences", an opposite tendency in the development of governmental and administrative systems can be detected. Times of crisis generate a tendency of extensive "administrating", primarily due to the general inefficiency of the social and economic system. Inefficiency gives rise to the need of more authority, but authority itself does not resolve the problem. This model, logically, requires authoritative government action, as authoritative decisions can only be implemented by means of political force and repression. Consequently, authoritative government action cannot substantiate and resolve the economic, social turbulence by mere "authoritative administrative efficiency". Such situations, particularly receiving active political support, can easily become the main obstacle for general social, political, economic, legislative, judicial and administrative reforms (as is the case with present Yugoslavia).

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Belgrade, September 1999.

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*Dr Stevan Lilic*
*The Yugoslav Lawyers Committee For Human Rights*
*Center Against Torture*
*Belgrade*

## BRINGING CASES TO COURT
## LEGAL ASPECTS OF FIGHTING TORTURE

I.

Legal aspects of fighting against torture rest on the concept of the *Legal State* and the principle of the *Rule of Law* - the paramount moral and legal values that are incorporated in the very foundation of Western, and particularly European civilization[1]. In this respect their significance is essential for implementing the notion of *legality* of governmental decisions, as without the framework of the legal state and the rule of law, no modern governmental system can be imagined.

As opposed to this formal concept of legality, modern concepts base their fundamental principles on the idea of the rule of law and human rights. The legality of government and administrative action, therefore, does not *ipso facto* include the legitimacy of these actions. In order to achieve legitimacy, government bodies and administrative agencies must also achieve *in concreto* legitimacy of each action they undertake or decision they render, through various instruments and mechanisms of government and administrative control (e.g. parliamentary debate, hearings, judicial review, ombudsman interventions, etc.). Consequently, modern concepts of legitimacy, based on the idea of the rule of law and human rights derive from the premise that a governmental action is legitimate not by virtue of the status of the subject or legality of the procedure, but by virtue of substantial values incorporated in these actions and decisions.[2]

II.

Regrettably, even today, torture remains as one of the most frequent breaches of fundamental human rights. As stated, "...throughout history in many civilizations all over the world, torture has been used as a legal means of extracting confessions and punishing convicted persons. Only at the beginning of the 18th century did European states abolish the use of torture. (...) In actual fact, whether prohibited or not, torture and other forms of ill treatment have never ceased. Innumerable conflicts and tensions all over the world foster their continued widespread use."[3]

As torture represents a serious violation of human rights that still has not been suppressed in a satisfactory manner, it is necessary to fight torture not only within the nation or regional scale, but also on a wider international scope. This particularly implies, apart from dealing with physiological, psychological and social aspects of the consequences of torture, the need of legal intervention and protection of the torture victim, including rendering justice, i.e. definitely resolving the matter by bringing torture cases to court.

Having this in mind, a number of international documents related to the protection of human rights *explicate* include the prohibition of torture and other forms of ill-treatment. The prohibition of torture is regarded as an imperative of international law. To make it effective, specific international, European and national mechanisms have been devised to fight against torture.[4]

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[1] Lord Lloyd of Hampstead, M.D.A. Freedman, *Lloyd's Introduction to Jurisprudence*, Stevens Carswell, London/Toronto, 1985.

[2] Serge Alain Mescheriakoff, *The Vagaries of Administrative Legitimacy*, International Review of Administrative Sciences, vol. 56, no. 2, 1990.

[3] Didier Rouget, *The Prevention of Torture in Europe*, APT, Geneve, 1998, p. 9.

[4] *Ibidem.*

On the international level, the most prominent of these documents is the United Nations *Universal Declaration of Human Rights* (1948), that states that. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Art. 5). Deriving from the Universal Declaration, several other international documents under UN auspices have been adopted. The *Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (1987), in Article 1. gives a detailed legal formulation as to what torture implies. Also, this Convention established a *Committee Against Torture (CAT)* as a operative instrument of fighting against torture. The Committee examines national reports and may make whatever general comments on the reports followed by recommendations to the states that submitted the reports. Another important international document is the *International Covenant on Civil and Political Rights* (1967). The Covenant also *explicate* states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subject without his free consent to medical or scientific experimentation" (Art. 7). The Covenant established the *Committee for Human Rights* as a operative instrument for the protection of various breaches of human rights. To these UN documents and instruments, also the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), the establishment of the institution of *Special UN Human Rights Rapporteurs*, as well as the *UN Voluntary Fund for Victims of Torture*, should be added.

On the international level, other organizations, apart from the UN have also in other respective ways joined the struggle against torture. These include the *International Committee of the Red Cross (ICRC)*, the *United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labor Organization (ILO)* and the *Inter-Parliamentary Union.*

On the European level,[5] The Council of Europe adopted the *European Convention on Human Rights (1950)*, that, *inter alia,* states that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (Art. 31).

Deriving fron this idea and motivation, the Committee of Ministers, acting on a motion from the Parliamentary Assembly of the Council of Europe. adopted the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1987). The Convention set up a non-judicial preventive mechanism based on visits and an operative body called the *European Committee for The Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* that is authorized to visit all places at all times.[6] Subsequently, other European institutions set up their respective mechanisms and operative instruments related to torture prevention; e.g. the European Union provides that a person may submit a *petition to the European Parliament* (Art. 138-D of the Maastricht Treaty), while the *Organization for Security and Co-Operation in Europe (OSCE)* provides assistance though its *missions (of experts and monitors)* and the *Office for Democratic Institutions and Human Rights (ODIHR).*

Particular activity in Europe on torture issues is undertaken by the *Association for the Prevention of Torture (APT)* that was founded in 1977 and its *Committee for the Prevention of Torture (CPT)* founded in 1990.[7] The APT is particularly active in supporting universal, as well as regional mechanisms for the prevention of torture.[8]

III.

One of the most difficult aspects of torture is the presentation of torture cases in legal and court procedures. In relation to the Committee for the Prevention of Torture, it is pointed out that: "...The CPT is not a

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[5] Cf.: *The Prevention of Torture in Europe - Collected Texts,* APT, Geneva, December 1997.

[6] For essential distinctions between the Committee Against Torture of the UN (CAT) and the Committee for the Prevention of Torture (CPT) of the APT see: Bent Sorensen, *NGO's and International Monitoring Mechanisms,* Discussion paper presented at the Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe,* Athens, October 1999.

[7] For more information and details, see: Association for the Prevention of Torture (APT), *Annual Report,* Geneva, 1998; *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),* APT, Geneva, November 1997.

[8] "The APT would like to stress that the negotiations for a universal mechanism are still going on within the UN. The APT is actively involved in this project of an Optional Protocol to the UN Convention Against Torture. The UN, as a universal organization, could give real credibility and legitimacy to a visiting mechanism on an universal level, as it does indeed to other existing instruments for the defense of human rights. Developing and non-European countries actively participate in the negotiations within the working group of the UN Human Rights Commission. At its last session in October of this year, under the direction of a new chair, the working group reiterated the need for a universal mechanism that is preventive in nature." (Cf.: Marco Mona, *The Prevention of Torture at The Dawn of a New Millennium,* Strasbourg, November 1999, APT On-line, www.apt.ch).

judicial body and it is not bound by the jurisprudence developed under the European Convention for Human Rights (ECHR), although it is, of course, able to draw guidance from it.[9] Since it is not the role of the Committee to establish whether there has been a breach of Article 3 of the ECHR the CPT has no formal need to set out its approach to its key terms - *torture* and *inhuman or degrading* treatment or punishment. The Committee is concerned with prevention, with the future rather than the past. This is the theory. (...) In reality, there is a two-way relationship between the CPT and the Court: decisions made under the ECHR guide the CPT and the findings of the CPT may both stimulate petitions and on occasion may directly influence the application of Article 3. For these reasons it is important to consider how the CPT has used the words *torture* and *inhuman and degrading* treatment."[10]

Legal aspects, referring to case law of the European Court for Human Rights has also come under complex examination: "...The European Court of Human Rights addresses torture and torture prevention in a variety of ways. Most obviously, Article 3. contains an outright prohibition of all forms of "torture or inhumane or degrading treatment or punishment", but this is also complimented by a variety of the convention provisions which touch upon the enjoyment of this right. The clearest examples of these are articles 5 and 6 which concern the right of liberty and security and the right to a fair trail. (...). In a sense then, just as it is wrong to suggest that torture and torture prevention is addressed only by Article 3, it is equally wrong to suggest that by adding Articles 5 and 6 to the list completes the picture. It does not. At the same time, it is true that when moving beyond these articles one is entering into (new) borderlands of protection (...).[11]

The complexity of legal aspects on torture are not only pointed out in European experience and cases, but other as well.[12] Torture related issues frequently come under immigration cases.[13] E.g. the UN Committee Against Torture (CAT) ruled that the petitor, a Zairian, had demonstrated that there were substantial grounds for believing that she would be in danger of being subjected to torture in Zaire and held that, therefore Sweden had the obligation to refrain from forcibly returning her to Zaire.[14]

IV.

In the area of South-Eastern Europe, the Balkans and particularly in Yugoslavia, human rights violations, including torture and ill-treatment have been in increasing in the past period. The role of the NGO's is a very significant one. As stressed: "...NGO's, both national and international are voices of civil society and therefore play an important role in the promotion and protection of human rights in UN body system. Since they defend specific interests, their views are often more focused than the governments'."[15] On the subject of torture respective regional NGO reports (e.g. Albania,[16] Bosnia and Herzegovina,[17] Bulgaria,[18] Croatia,[19] Macedonia,[20]

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For a comparative examination of their various approaches to Article 3 of the ECHR see Peukert, W. (1999): *The European Convention for the Prevention of Torture and the European Convention on Human Rights* (in Morgan and Evans, *Protecting Prisoners*, Oxford, 1999, Chapter 3).

[9] Malcom Evans, Rod Morgen, *Hidden Secrets at the Heart of the CTP*, APT On-line, www.apt.ch.

[10] Malcom Evans, *The European Court of Human Rights: The Impact of Case-Law on the Prevention of Torture*, Report presented at the Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe*, Athens, October 1999.

[11] Cf.: Kristen Rosati, *The United Nations Convention Against Torture: A Detailed Examination of The Convention as an Alternative for Asylum Seekers*, Immigration Briefings, February 1998.

[12] Cf.: Elisa Massimino (Director, Lawyers Committee for Human Rights, Washington), *Relief From Deportation under Article 3. of the UN Convention Against Torture.*

[13] Cf.: *Decision of the Committee Against Torture*, UNHCR, May 8, 1996.

[14] Cf.: *Background Information*, Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe*, Athens, October 1999, p. 3.

[15] Cf.: Albanian Center Rehabilitation Center for Torture Victims, *Totalitarian Communist State and Torture in Albania (Consequences, Rehabilitation and Prevention)*, Report presented at the Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe*, Athens, October 1999.

[16] Cf.: Sabina Popovic, *Torture, Consequences and Rehabilitation*, Center for Torture Victims, Sarajevo, 1999.

[17] Dinko Kanchev (Bulgarian Lawyers for Human Rights), *The Role of the NGO's in Drafting New Legal Rules Related to Visiting Places of Detention: The Experience of Bulgaria*, Report presented at the Association for

Moldavia,[21] Romania,[22] etc.) point to this. Also active in this area is the BAN (Balkans Network) established in 1997.

V.

One of the active NGO's in Yugoslavia and Serbia is the *Yugoslav Lawyers Committee for Human Rights* and its *Center for Torture Victims.*[23] Owning to the armed conflicts in the former Yugoslavia which is ongoing almost a decade there are emerging reports on gross human rights violations, including torture and other forms of inhuman, degrading and cruel treatment. These include the physical and psychological trauma of individual victims of violence, torture, and rape. Reports of physicians and other health professionals have proved to be extremely useful in determine and verifying both individual cases and broader patterns of abuse through medical histories and physical examinations of former prisoners and detained who suffered due to any other form of deliberate violence. These can often produce legal evidence of abuse more credible and less vulnerable to challenge.

Both the Constitution of Yugoslavia (Art. 23-24) and the Constitution of Serbia (Art. 26) have provisions prohibiting torture, inhuman treatment and punishment. This is further elaborated by the respective criminal laws. The federal (Yugoslav) Criminal Law (1976, 1944) proclaims that criminal legislation protects from "violence, arbitrary decisions, breach of legality and constitutionality, as well as the fundamental human rights and freedoms". In a separate chapter (No. 19) the Law prescribes felonies (related to possible torture) that are explicitly sanctioned: unlawful deprivation of freedom (Art. 189); extortion of confession (Art. 190), ill-treatment in performance of duty (Art. 191), etc. The Criminal Law of Serbia contains similar provisions, including a provision that "...to a the convicted person no physical pain may be induced nor may his human dignity be breached" (Art. 2). The federal Criminal Procedure Law also contains provisions that prohibit torture and ill-treatment.

The Yugoslav Lawyers Committee For Human Rights, in its activity on human rights protection has had several torture-related cases. Of the most recent, they include the so-called "Vranic case", i.e. a trial of a group of 12 Albanians before the court in (the southern Serbian town of) Prokuplje during which prccedures, *inter alia*, one of the accused stated that "he was beated in such a way that he lost conciousness at least three

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the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe,* Athens, October 1999.

[19] Cf.: Zoran Pusic (Civic Committee for Human Rights, Zagreb), *Some Examples of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in Croatia,* Summary report presented at the Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe, Athens, October 1999.*

[20] Cf.: Branko Naumovski (Public Attorney - Ombudsman - of the Republic of Macedonia), *The Role of the Public Attorney (The Ombudsman) in the Prevention of Torture and Other Forms of Humiliating and Inhuman treatment and Punishment of Persons Deprived of Freedom,* Report presented at the Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe, Athens, October 1999.*

[21] Cf.: Stefan Urito (Moldavian Committee for Human Rights), *International Human Rights Instruments - Instruments in the Hands of Non-Governmental Organizations: The Moldavian Experience,* Report presented at the Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe, Athens, October 1999.*

[22] Camelia Doru, *Redress and Compensation of the Victims*, Abstract presented at the Association for the Prevention of Torture (APT) International Conference *NGO Empowerment in Preventing Torture in South-Eastern Europe, Athens, October 1999.*

[23] Legal aid activity of the *Center Against Torture* of the *Yugoslav Lawyers Committee for Human Rights* (and its planned forensic team) include: a) identification of torture or other forms of deliberate violence victims, their registration and referring to forensic examination.; b) forensic examination of refereed torture or deliberate violence victims in according to a pre-set protocol which includes detailed case histories; c) in cases where applicable, medical examination will be followed by laboratory testing and other necessary diagnostics; d) preparation of documentation, medical records, photo documentation and legal documents as evidence material; e) legal and social interventions that include assistance to beneficiaries to identify and realize their legal and social rights through social support and information giving, etc.

times"[24], and a case reported to the Committee on the sexual ill-treatment and abuse of women prisoners in the Serbian city of Leskovac.[25]

As coclusion, it can be said that in the concrete case of Yugoslavia, the rule of law, although proclaimed in the Constitutions of Serbia and Yugoslavia, practically does not exist. The official establishment ignores both "positive" and "negative" obligations to which it has committed itself by signing and/or ratifying international conventions. It has failed to harmonize existing legislation with European and/or international standards. Nor will it provide efficient protection against human rights violations or remedies for victims against human rights violators. The tragic and dramatic events in Kosovo and parts of Serbia proper where massive protest against the regime took place in recent months, clearly demonstrate that the Federal and Serbian Governments remain unwilling to embark on substantial democratic, political, and legal reforms. However, growing public dissatisfaction and pressure on the existing governments have opened a window of opportunity for substantial political changes and concrete legal reforms in the near future.

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Prof. dr Stevan Lilic

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