

## LEGAL CAPACITIES OF SERBIA FOR EUROPEAN INTEGRATION

Ministry of Science of Serbia / Belgrade University Faculty of Law  
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### THE INFLUENCE OF THE SOVIET DOCTRINE OF STATE AND LAW ON THEORY OF ADMINISTRATIVE LAW IN SERBIA

*Abstract:* Resistance to accepting a modern concept of administration as public service (rendering public services to citizens) is the result of a theoretical concept based in the so-called Soviet doctrine of state and law. In the field of Administrative Law this directly results in the concept that administrative action is exclusively based on "the exercise of state power". The influence of the Soviet doctrine of state and law on the theory of state and law in Serbia was very massive. In particular, this can be seen in works related to state and law theory by professor Radomir D. Lukić and his "class" concept of the state as the organization that has the monopoly of physical force and law as the will of the ruling class. The influence of the Soviet doctrine, indirectly through the works of professor Lukić, spread throughout the theory of administrative law in Serbia. This can be seen clearly in the works of professor Pavle Dimitrijević and his concept of the administration as the "executive and order-giving" power of the state. The Soviet model of the administration continues "to live on in our theory of administrative law" in writings, and in particular the textbooks of administrative law professor Ratko Marković, Zoran R. Tomić, Nevenka Bačanin and others.

*Key words:* Influence of the Soviet doctrine of state and law on the theory of administrative law in Serbia. Class concept of state and law. Marxist-Leninist theory of state and law. Administration as executive and order-giving function of state power. A.I. Denisov. Radomir D. Lukić. Pavle Dimitrijević.

#### 1. INTRODUCTION

1.1. In the context of addressing the subject of the legal capacities of Serbia for European integration, the question of Soviet doctrinal influence on theory of state and law in Serbia is significant, and within this context, its influence on the theory of administrative law in Serbia.

1.2. In most of our author's academic works in the field of administrative law published in the previous period there is considerable doctrinal confusion and theoretical wandering when it comes to the study and scientific inspection of the theoretical bases of administrative law. The reasons for this condition are twofold. On one hand, it is about supporting the concept of administration as a repressive instrument of the state *and resistance* to the conceptual nature of contemporary models of administration as public service. On the other hand, it is about the still present (although not always obvious) influence of the *Soviet doctrine of state and law* in the writings of our lawyers, especially law professors dealing with administrative law. It can be said that these two reasons are directly interdependent, but also that they are, from the point of the primary cause and its consequence, in a time inversion. In other words, the resistance to accepting the contemporary model of administration and administrative activity as public service (rendering public services to citizens) is basically a consequence of the

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theoretical dependence of these authors on the so-called Soviet doctrine of state and law. In the field of administrative law, these circumstances are in direct connection with a concept of the administration which some authors define exclusively as "state power".

**1.3.** On this occasion, having in mind that they were translated and for some time used as official textbooks, and that due to this had the most influence on our academics, as references for analysis of basic Soviet concepts of the theory of state and law and administrative law, we will take the works of Soviet authors S.A. Golunski, M.S. Strogovich, A.I. Denisov and S.S. Studenikin. In this context, we will also present the concept of the "class essence" of state and law and administration as state power in the most important works of our authors, particularly professor Radomir D. Lukić in the field of theory of state and law and professor Pavle Dimitrijević in the field of administrative law. These two professors from the Faculty of Law in Belgrade, during their several decades long university careers, have directly influenced almost fifty generations, - thus, tens of thousands of lawyers in Serbia (including Montenegro and ex-Yugoslavia) have been exposed to the concepts according to which:

- The state is an organization of the ruling class with the monopoly of physical force.
- Law is the expression of will of the ruling class.
- Administration is a particular form of state power.

**1.4.** We will see that the perceptions of professor R. Lukić on the class essence of state and law, as well as professor P. Dimitrijević's views on the nature of administrative activity as exercise of power, was originally developed on the basis of the so-called Soviet doctrine, and are, through professor Lukić's and Dimitrijević's works even today present in the writings of many legal scholars, including scholars dealing with administrative law.

**1.5.** Further on, we will also show the results at which we arrived based on published research and performed analyses that had two goals. On one hand, they determined the *influence* which the so-called Soviet doctrine had on the development of theoretical views and concepts of our authors in the *field of theory of state and law*, and on the other, they started from the Soviet influence in the works of our authors in the field of theory of state and law. Thus we will show the consequences of the influence of the Soviet doctrine on the views and concepts of our authors who deal with *administrative law*.

## 2. ORIGINS OF THE SOVIET DOCTRINE ON THE CLASS ESSENCE OF STATE AND LAW AND THE AUTHORITATIVE NATURE OF ADMINISTRATIVE ACTIVITY

### 2.1. THE CHARACTER OF SOVIET LAW

**2.1.1.** The reason that Soviet theory of the class essence of the state and law is often preceded by the labeling "so-called" is because this doctrine did not

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originate in scientific and expert works of Soviet and Russian authors of that time, but was first formulated as a *political view of the leaders* of the October Revolution in 1917 (above all Lenin and Stalin) after which it was *articulated* into “theoretical concepts” by Soviet legal authors, especially after the Soviet Constitution was adopted in 1936.

**2.1.2.** In foreign research on comparative world legal systems it is emphasized that Soviet law “finds a compass in Marxist-Leninist ideology”. In that respect René David and John Brierley stress the following:<sup>1</sup>

- “Basically, Soviet law does not have the aim of establishing the rule of order by setting up principles for solving disputes. Before all, it is a *tool of change*, and in the sense of directing society towards the ideals of communism, outside of which there is no true freedom, equality or morality. Law is basically a tool in the hands of the ruling class.”
- “Leaders and lawyers in the Soviet Union, on the other hand, have found a *compass* in Marxist-Leninist ideology; judges, administrative officials and citizens have sure guidelines in interpreting the law. Soviet law, thus, is not like other laws; it is obvious that the study of it cannot be separated from the Marxist-Leninist doctrine which sets its goal and directs development, interpretation and application.”

**2.1.3.** The essence of the Soviet model of the *class essence of state and law*, especially the state as an instrument of repression, is stated by *V.I. Lenin* in his famous lecture at Sverdlov University in 1919 on “The State” in which, among other things, he pointed out:<sup>2</sup>

- “The question of state, in the study of state, in the theory of state, you will always find, when you become better acquainted with it and understand it better, a struggle of different classes among themselves, a struggle which is manifested or expressed in the struggle of the views on the state, evaluating the role and the importance of the state.”
- “The methods of repression changed, but whenever there was a state, there existed in every society a group of persons who ruled, who commanded, who dominated and who in order to maintain power possessed an apparatus of physical coercion, an apparatus of repression, with those means which corresponded to the technical level of the given epoch.”
- “The state is a machine for maintaining the rule of one class over another.”

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<sup>1</sup> René David and John E.C. Brierley, *Major Systems in the World Today*, Third Edition, Stevens & Sons, London, 1985, pp. 176-177.

<sup>2</sup> V.I. Lenin, *The State*, Lecture delivered at Sverdlov University (June 11, 1919), pp. 47, 50, 56-57. See: Collection of Works of V.I. Lenin and J.V. Stalin, *O socijalističkoj državi i sovjetskoj demokratiji*, Institut Marksa-Engelsa-Lenjina pri CK SKP (b), Kultura, Biblioteka Marksizma-Lenjinizma, Belgrade, 1946.

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### 2.3. THE STALIN CONSTITUTION OF THE USSR (1936)

**2.3.1.** From the same view on class essence of state and law, J.V. Stalin in 1924 stresses, among other things:<sup>3</sup> “The state is a *machine in the hands of the ruling class for suppressing resistance* of its class enemies.” (...) “The Soviet government is the *state form* of the dictatorship of the proletariat.” (...) “In short, dictatorship of the proletariat is legally *unlimited and supported the by repressive rule* of the proletariat over the bourgeoisie, the rule which enjoys sympathies and the support of the working and exploited masses.”

**2.3.2.** Based on Lenin’s and Stalin’s ideological-political views stated above, the legal framework of the Soviet concept of state and law were *set by the Soviet Constitution (1936)*, whose main instigator, promoter and creator was *Stalin himself*. The basis for the action of a new constitutional project was Stalin’s thesis that the socialism in the USSR had finally and conclusively beat “the internal enemy”, i.e. all remains of capitalism, and that the dictatorship of the proletariat as “state administration of society” now constitutes the basis of the Soviet state and law project.

**2.3.3.** The extent of Stalin’s influence on Soviet legal doctrine can be seen in the fact that the term “Stalin’s constitution” was used literally in Soviet legal textbooks of the time. Here is a quote from S.S. Studenikin’s textbook “Soviet Administrative Law” which refers to the *role and influence of the Party on the work of administration*.<sup>4</sup>

- “According to the Article 126 of *Stalin’s Constitution*, the SCP (b) is the leading force of all organizations of the working people, both public and state. *Party leadership* guarantees the unity in activity of the state apparatus as a whole and all mass organizations of the working people. The Party develops the general line of struggle, unites the activity of the government bodies, the courts and the *administration*, gives direction to their activities and, by using its high authority, spurs all organizations to firmly and constantly implement the *general line of the Party* (...) Comrade Stalin teaches that *SCP (b) manages the state apparatus*.”

### 2.4. CREATION OF SOVIET DOCTRINE OF STATE AND LAW AND SOVIET ADMINISTRATIVE LAW

**2.4.1.** Starting from these ideological-political views of Stalin and Lenin, and based on the so-called Marxist-Leninist method of dialectic and historical

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<sup>3</sup> J.V. Stalin, *The Foundations of Leninism – Dictatorship of the Proletariat*, Lecture delivered at Sverdlov University (April, 1924), p. 79, 82, 79-80. See: Collection of Works of V.I. Lenin and J.V. Stalin, *O socijalističkoj državi i sovjetskoj demokratiji*, Institut Marksa-Engelsa-Lenjina pri CK SKP (b), Kultura, Biblioteka Marksizma-Lenjinizma, Belgrade, 1946.

<sup>4</sup> S.S. Studenikin, *Sovjetsko administrativno pravo - opšti deo* (Published for the needs of the students of Faculty of Law in Belgrade), volume: Pravna izdanja Narkomata pravosuđa SSSR - 1945 (udžbenik za pravne škole odobren od Uprave škola Narkomata pravosuđa SSSR), published by Odbor za udžbenike stručnog udruženja studentata prava, Beograd, 1947, p. 7.

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materialism, the appropriate theoretical and legal concepts of state and law, as well as the role of the administrative activities were articulated as the so-called Soviet doctrine of state and law, with the main premise that the state is an organization with the monopoly on physical coercion for achieving class interests, and law as the formalized expression of the will of the ruling class.

**2.4.2.** In a technical sense, the Soviet doctrine of state and law appears in a specific mode, mainly with the *appearance of writings* (including textbooks) in the field of state and law in the period after the 1936 Constitution was adopted. The same influence of Stalin's Constitution is present in Soviet administrative law.

**2.4.3.** Here is how the emergence of Soviet legal theory and doctrine of state are described by some of our authors. Professor Andrija Gams states:<sup>5</sup>

- In the Soviet legal theory and in particular in the history of Soviet legal theory there are two important names: Stuchka and Pashukanis. (...) Stuchka and Pashukanis had an especially *difficult task*. That task was to provide a *new legal theory*, and to some extent a new theory of the social system for the first country that achieved a socialist revolution, for a new society which intended, especially in the first stages of the revolution, to end the old bourgeois law and other bourgeois social institutions and to establish new social institutions and new law. (...) They had a particularly difficult task: to give a *new legal ideology* for a new society with great historical goals. (...) For them law are not rules of conduct, but *relations of power*.”
- “According to the Stalinist lawyers, *Soviet law is specifically different from bourgeois law*. It was more suitable for them that the basic and most important branch of law is *state and administrative*, and not civil law.”

**2.4.4.** In his famous work “The New Class”, written in the mid-1950s, Milovan Đilas wrote:<sup>6</sup>

- “The communist theory of the state, developed by Lenin, and added to by Stalin and the others; fit the totalitarian dictatorship of party bureaucracy. (...) Lenin reduced the state to power, more precisely: to a organization of repression which one class uses to suppress other classes (...) and for this, historically speaking, the very significant writings of Lenin (State and Revolution) indicate what is typical for all communist theories, i.e. that starting from the immediate needs of the

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<sup>5</sup> Andrija Gams, *Shvatanje Stučke i Pašukanisa o pravu i državi*, "Pola veka sovjetske republike", Arhiv za pravne i društvene nauke, br. 3-4, 1967, pp. 221-233, 237-238.

<sup>6</sup> Milovan Đilas, *Nova klasa*, Narodna knjiga, Belgrade, 1990, p. 83-86. Translation of the original Milovan Đilas, *The New Class - An Analysis of the Communist System*, Frederick A. Praeger Publisher, New York, 1957. We will use this opportunity to remind the reader that „The New Class“ was listed this book as one of „100 most influential books after WW II“, as well as that there is no basis for the attempts to question its authenticity (Source: The Times Literary Supplement, Oct. 6 1995).

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party, they create general, seemingly scientific conclusions and theories, declaring half-truths as full truths.”

- “If the communist theory of state, and in particular the practice, is reduced to its essence, i.e. force and coercion as the main, if not the sole function of the state, then from the Stalinist theory we could conclude that the police have an increasing, maybe even educational role.”
- “Because of this contradiction, and the inevitable and constant need of the communists to treat the state, if not exclusively, then primarily as an organization of repression, the communist state could not and cannot become a legal state (...).”

**2.4.5.** On the influence of Stalin’s Constitution on the Soviet administrative law, professor Dragaš Đ. Denković says:<sup>7</sup>

- “The 1936 USSR Constitution contributed to the development of Soviet administrative law when the proclaimed constitutional principles regarding administration and the theory of administrative law began to be studied.”

**2.4.6.** In relation to Soviet concepts of administrative law, professor of administrative law Slavoljub Popović expresses his critical view:<sup>8</sup>

- “In relation to determining the subject of Soviet administrative law it should be pointed out that most all authors who deal with this problem determine the subject of the administrative law by determining the *concept of state administration*.”
- “What is common in some views of the concept of administrative law and its place in the theory of USSR is that the concept, and administrative law itself, is determined by the concept of state administration, and state *administration is marked as an executive and order-giving activity*, which consists mainly of practical implementation of the laws (...).In our legal system, this concept of the subject of administrative law, i.e. the concept of state administration is *unacceptable*, having in mind that our law does not accept such a concept of state (...).”

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<sup>7</sup> Dragaš Đ. Denković, *Razvoj sovjetskog upravnog prava*, "Pola veka sovjetske republike", Arhiv za pravne i društvene nauke, br. 3-4, 1967, p. 313.

<sup>8</sup> Slavoljub Popović, *Sovjetska teorija o predmetu upravnog prava i nauke o upravi*, "Pola veka sovjetske republike", Arhiv za pravne i društvene nauke, br. 3-4, 1967, pp. 303, 309.

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### 3. SOVIET TEXTBOOKS ON STATE AND LAW AND ON ADMINISTRATIVE LAW USED IN OUR COUNTRY IN THE PERIOD BETWEEN 1946 AND 1952

As to *referable illustrations* of the influence of the Soviet doctrine on our authors, we will present concepts from *Soviet textbooks of theory of state and law* (S.A. Golunski, A.S. Strogovich, A.I. Denisov) and *administrative law* (S.S. Studenikin), mainly because those textbooks were translated and for a period of time used in our country as official university textbooks.

#### 3.1. S.A. GOLUNSKI, A.S. STROGOVICH: THEORY OF STATE AND LAW (1946)

3.1.1. Immediately after the WW II the first book used in our country was the translation of S.A. Golunski's and A.S. Strogovich's "Theory of State and Law". This textbook had all the characteristics of the Soviet doctrine, which can be seen from the parts of the text which are related to the questions of methods, the concept of state, the concept of law and administrative law:<sup>9</sup>

- "Marxist-Leninist theory of state and law is based on the laws of development of society established by *historical materialism*. (...) Marxist-Leninist theory of state and law applies the *only correct scientific method*, the method of Marxist-Leninist dialectics."
- "The main goal of every state – to protect by *organized coercion* the interests of the ruling class – can be achieved only when it has a specific mechanism, the whole system of institutions, organizations, diverse material means (arms, prisons). (...) The Socialist state is a *tool for repression* only in relation to the exploiters and their agencies, i.e. insignificant minorities. (...) The State with all of its work, fulfilling the *will of the ruling class, which has the power*, protects and secures the interests of that class. (...) In that way, the law consists of rules of conduct whose respect is guaranteed by the coercive force of the state."
- "Socialist law is inextricably connected with socialist legality – a method of *fulfilling the dictatorship of the proletariat* and socialist building, which is expressed in securing a strict and permanent respect of the Soviet government laws by all bodies of the Soviet state, civil servants and citizens."
- "Administrative law represents the set of legal norms which regulate the organization and the activities of the state administration and bodies of local government. Administrative law is in the most rigid way connected with state law and is its part in the sense that it encompasses the organization and activities of a part of the state

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<sup>9</sup> S.A. Golunski, A.S. Stogovič: *Teorija države i prava*, edicija: Pravna izdanja Narkomata pravosuđa SSSR - 1944, published by Odbor za objavljivanje predavanja na Pravnom fakultetu u Beogradu, Beograd, 1946, pp. 3, 22, 129, 133, 183, 254.

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administrative bodies. In this way, administrative law represents a part of the *state law*, extracted in a separate branch of law.”

**3.1.2.** However, in our country this textbook was quickly *replaced* by a newer Soviet textbook (by professor A.I. Denisov) with the following explanation:<sup>10</sup>

- “For the study of the question of theory of state and law in our country, immediately after the liberation, in faculties, and other schools and courses, the textbook “Theory of State and Law” by Soviet authors S.A. Golunski and A.S. Strogovich was used. This textbook is *not in use* today and its republication would not be justified for reasons that it is in many of its ideas and parts outdated. The textbook was written before 1940 and was translated from the last Soviet edition in 1940. In the meantime, in the USSR, responsible *scientific workers have been given a task* of compiling a new textbook on the theory of state and law, especially *after the CC SCP (b) decision* on improvement of legal education.”

### 3.2. A.I. DENISOV: THE BASICS OF MARXIST-LENINIST THEORY OF STATE AND LAW (1949)

**3.2.1.** For our research, *professor A.I. Denisov's* book is of *particular importance*, both for its *direct influence* on our legal doctrine in the field of theory of state and law, in particular on the concepts of professor *Radomir D. Lukić* on the class essence of state and law, and the influence which it had on our authors in the field of administrative law through the works of professor Lukić, before all *Pavle Dimitrijević* and his concept of the authoritative nature of administrative activities, i.e. the concept of “administrative activity as the exercise of state power”, and on authors dealing with administrative law whose works were under the influence of professor P. Dimitrijević.

**3.2.2.** Professor *A.I. Denisov's* textbook “The Basics of Marxist-Leninist Theory of State and Law” was published in the Soviet Union in 1948, and next year, in 1949, was translated for our needs. In the text “Notes to the Reader”, our translators and editors (signed only by “Archive for Legal and Social Sciences”) state:<sup>11</sup>

- “From the liberation to this day *we were unable* to give a Marxist-Leninist theory of state and law done by our scientists. However, teaching at law faculties, other schools and courses demands that students have a textbook or some other teaching aid for the scientific study of the system of state and law. This is what *determined* us to translate professor Denisov's textbook “The Basics of Marxist-Leninist

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<sup>10</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, “Napomene čitaocu”, Arhiv za pravne i društvene nauke, Beograd, 1949, p. 3.

<sup>11</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, “Napomene čitaocu”, Arhiv za pravne i društvene nauke, Beograd, 1949, p. 4.

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Theory of State and Law”, because it is the newest and practically the only textbook in this scientific field of law which was published in the socialist world in the last ten years, and as a whole, it is so far the *most successful Soviet textbook in the field of legal sciences.*”

**3.2.3.** The author himself, A.I. Denisov, in the “Foreword” of his textbook, calling upon and quoting Lenin and Stalin, briefly and clearly draws the *ideological-political premises* on the class essence of state and law, on which Marxist-Leninist (read: Soviet) theory of state and law rest. Professor Denisov not only points this out, but emphasizes that the work is dedicated to these (ideological-political) premises:<sup>12</sup>

- “Marxist-Leninist theory of state and law, to whose basic premises this work is *dedicated*, is *the only scientific theory* of state and law. It is a science of the *class essence*, types and forms of state and law.”

**3.2.4.** For reasons of more efficient *analytical comparison*, especially for understanding the basic similarities with the concepts which are later (and even today) found in the works of our authors on state and law, as well as administrative law, we will present the *concepts* from professor Denisov’s textbook which refer to the following questions: a) study *method* of the theory of state and law; b) class essence of the *state*, c) class essence of the *law* and d) the nature of *administrative law*.

**a)** Regarding the question of *study methods of the theory of state and law*, Denisov writes:<sup>13</sup>

- “The *Soviet science* of state and law is diametrically opposite to the bourgeois legal science. Soviet legal science is materialistic, while bourgeois is idealistic. Soviet legal science has a *true revolutionary and critical method* of knowledge and research – materialistic dialectics whose application enables a deep and comprehensive study of the state-legal life, regardless how complex it is.”
- “*Marxist-Leninist theory of state and law uses the dialectic method*. Its characteristics and principal differences from the metaphysical method are completely explained in the classical work of *comrade Stalin* “Dialectic and Historical Materialism”.

**b)** Regarding the question of the *class essence of the state*, Denisov writes:<sup>14</sup>

- “The State is an *organization*. However, every organization is not a state. (...) What is the *essence of the state*? It is a political

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<sup>12</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, “Predgovor”, Arhiv za pravne i društvene nauke, Beograd, 1949, p. 18.

<sup>13</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, Arhiv za pravne i društvene nauke, Beograd, 1949, pp. 26, 27.

<sup>14</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, Arhiv za pravne i društvene nauke, Beograd, 1949, pp. 58-59, 59-60.

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organization; this makes it different from all economic, cultural-educational and other similar social and semi-social organizations.”

- “*The party of the ruling class* is a part of the class which leads its struggle and defends its interests. However, the state is an organization of the whole ruling class of a given country or given society with which that class realizes its *dictatorship* (state control over society). The scientific concept of dictatorship does not mean anything else but that the government has no restrictions that it is not acquired by law or absolute rights and that rests *directly on repression* (Note: V.I. Lenin, Works, Vol. XXV, p. 441, in Russian).”
- “The State is the specific organization with which the class realizes its legally unlimited power – *dictatorship*. The classics of Marxism-Leninism define the state as a machine “...for maintaining the *rule* of one class over another” (Note: V.I. Lenin, Works, vol. XXIV, p. 369, in Russian), or – *which is the same* – as a *machine* “...in the hands of the ruling class *for suppressing resistance* of its class enemies” (Note: J.V. Stalin, Works, Vol. VI, p. 114, in Russian).”

**c) Regarding the question of *class essence of the law*, Denisov writes:<sup>15</sup>**

- “The same as the state, law is closely connected with *classes* as well. (...) Soviet socialist law originated as a result of establishing the *dictatorship of the proletariat* of the working class. It developed in direct connection with working class dictatorship and is the *pillar* of this dictatorship.”
- “Soviet law is a socialist law, i.e. *the will of the ruling class translated into the law*, which in cooperation with the working peasantry performs state power in Soviet society in conditions of capitalist surrounding the country from the outside.”

**d) Regarding the question of *administrative activity* and administrative law, professor Denisov writes:<sup>16</sup>**

- “The concept of *public government* in the sense of state power logically comes from the essence of the state itself as *concentrated class rule*. Public government is manifested in legislature, *administration* and court. These are its main forms.
- “*Administration* (...) is the organizational activity of the state (Note: K Marx and F. Engels, Works, Vol. III, p. 12, in Russian). This form of the manifestation of public government includes: collecting taxes from citizens, *political repression* (prosecution and exile, arrests, etc), army management, organization of *espionage and counter-espionage*, *protection* of social order and *state security*, etc.”

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<sup>15</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, Arhiv za pravne i društvene nauke, Beograd, 1949, pp. 31, 282, 284.

<sup>16</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, Arhiv za pravne i društvene nauke, Beograd, 1949, pp. 164-165, 370.

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- “In his speech at the XVIII SCP (b) Congress, J.V. Stalin directly pointed out how the army, *penal organs, intelligence service, jails*, and such institutions of the state presuppose and realize its power. All these bodies make up a mechanism or a *state apparatus*.”
- “*Administrative law* is a branch of law which has Soviet state administration as the object of its study – *executive and order-giving activity* of different state bodies, directed to completion of its functions and goals – is the principle of this administration.” (...)

### 3.3. STUDENIKIN: SOVIET ADMINISTRATIVE LAW – GENERAL PART (1947)

**3.3.1.** Apart from the Soviet textbooks in the field of the theory of state and law, for the needs of our students another textbook was translated. This was professor S.S. *Studenikin's* “Soviet Administrative Law – General Part”. This textbook, too had the *general premises of the Soviet doctrine on the class essence of state and law in its basis*, but it also developed some organizational (e.g. democratic centralism, socialist planning), legal-technical (e.g. acts of the Soviet state administration), and other (e.g. securing of legality in state administration) questions related to Soviet state administration, state service and acts of the Soviet state administration. According to Studenikin, *administrative activity is understood as an authoritative function of Soviet state power*. In that context, the *subject* of Soviet administrative law is “state administration” understood in the sense of an *executive order-giving activity* of the Soviet state bodies.<sup>17</sup>

- “State administration is the *widest form of state activity*. In the USSR state administration is the name for the *executive order-giving activity* of the state bodies, whose goal is everyday realization of the will of workers and peasants expressed in the law, as well as strengthening and developing of the social and state system of socialism. Executive order-giving activity is the practical realization of record, control, selection and personnel assignment, organization, planning and supervision.”
- “In any *administrative-legal relationship* one side, in other words the subject of relationship is a state body. An administrative-legal relationship cannot exist between two citizens. (...) In order for the administrative-legal relationship to exist, there does not need to be consent between the two sides.”
- “*Soviet administrative law* is a branch of socialist law which regulates the *executive order-giving activity of state bodies and determines rights and obligations of the citizens* in the sphere of this activity, as

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<sup>17</sup> S.S.Studenikin, *Sovjetsko administrativno pravo - opšti deo* (štampano za potrebe studenta Pravnog fakulteta u Beogradu), edicija: Pravna izdanja Narkomata pravosuđa SSSR - 1945 (udžbenik za pravne škole odobren od Uprave škola Narkomata pravosuđa SSSR), published by Odbor za udžbenike stručnog udruženja studentata prava, Beograd, 1947, pp. 6, 9, 10.

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well as organization, jurisdiction and responsibility of the state administration bodies.”

### 4. THE INFLUENCE OF SOVIET DOCTRINE ON WORKS OF OUR PROFESSORS OF THEORY OF STATE AND LAW

#### 4.1. RADOMIR D. LUKIĆ: MATERIAL FOR THE STUDY OF THEORY OF STATE AND LAW I-II (1952)

**4.1.1.** The influence of the Soviet doctrine of state and law on our legal theory is present in the works of many of our authors, most of all university professors of law. However, this influence is nowhere as *obvious and direct* as in the works of professor *Radomir D. Lukić*. This especially applies to his works and textbooks in the field of theory of state and law, and to the textbooks for the subject of "introduction to law". From the first editions of these textbooks, with various modifications, concepts and formulations remain which in an unambiguous way demonstrate how the so-called Soviet doctrine of state and law as the class essence of state and law is in the *foundation* of the concept of professor Lukić on state and law. During over four decades, professor Lukić articulated the basic Marxist-Leninist *premises on the class essence of state and law* in some *30 editions* of his textbooks, which were basic legal education for over *50 generations* of our lawyers.

**4.1.2.** As mentioned, professor Lukić's concepts about the class essence of the state and law had a powerful and immediate influence on authors in other legal fields, among others, on the works of professor *Pavle Dimitrijević* in the field of administrative law, as well as on the works of those authors of administrative law who later adopted professor Dimitrijević's concept, in particular professors *Ratko Marković, Zoran R. Tomić, Nevenka Bačarin* and others.

**4.1.3.** Professor Lukić's "Material for the Study of Theory of State and Law", and the textbook "Theory of State and Law" some time later, resulted as a consequence of the need ("task") to, instead of a Soviet version, create a *domestic textbook* for this field, especially for reasons of falling out between our country and the Soviet Union after the 1948 Politburo Resolution. From that starting point, the *task* to begin work on *our* textbook of theory of state and law professor *Lukić* announced in a publication entitled "Material for the Study of Theory of State and Law" (1952) which included extensive quotes from the "classics of Marxism" on state and law in the first volume, and dealt with the theme of law in the second. In the "Note" to this edition professor Lukić states:<sup>18</sup>

- "Having lacked our own textbook in theory of state and law (whose production is one of *main goals of scientific workers* in this field) so the students would have in one textbook gathered basic material for

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<sup>18</sup> Radomir D. Lukić, *Materijal za izučavanje teorije države i prava - izbor tekstova i beleške sa predavanja (skripta)*, I sveska - Uvod i teorija države, "Napomena", p. 2; i II Sveska - Teorija prava, Pravni fakultet Univerziteta u Beogradu, "Naučna knjiga - izdavačko preduzeće Narodne Republike Srbije, Beograd, 1953.

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preparing the exam in these subjects, here such material is compiled. The material consists of basics from selected and systematized texts from the *classics of Marxism-Leninism and our theorists of Marxism-Leninism*, texts which deal with the state (part one)."

### 4.2. RADOMIR D. LUKIĆ: THEORY OF STATE AND LAW I-II, FIRST EDITION (1953-54)<sup>19</sup>

4.2.1. According to the needs and announcements, professor Lukić *took it upon himself* to prepare that domestic textbook for the theory of state and law. In the "Foreword" to the first edition of "Theory of state and Law" (1953) professor Lukić writes:<sup>20</sup>

- "This is the first complete textbook of theory of state and law in this country after the liberation. (...) However, bearing in mind the urgent need for this textbook for students, the author dared *to perform his task – to write such a textbook* – regardless of all difficulties. (...) There are very few quotes of the classics of Marxism. First of all, because the author tried to offer a systematic account, and also because for more extensive quotes the reader can use the author's "Material for the Study of Theory of State and Law" (1952)."

4.2.2. However, it should be mentioned that although professor Lukić's textbook had "very few quotes of the classics of Marxism", his basic premises *undoubtedly came from* the application of Marxist-Leninist method, as well as the doctrine of the *class essence* of state and law. There are no doubts in this respect, and are clearly demonstrated from the following view of professor Lukić:<sup>21</sup>

- "Even though *Marx and Engels* gave basic *scientific postulates of the theory of state and law* in their works, these postulates are not sufficiently used or systematically developed. Also, neither is Lenin's work "State and revolution" used sufficiently for further development of the Marxist theory of state and law. (...) Within Soviet legal literature there is *not a single* systematic Marxist work in the field of theory of state and law. (...) According to that, a *materialistic-dialectic method can be made equivalent to a scientific method, because it is one and the same*. (...) We do not need to dwell longer on the explanation of the *correct* view of the state, from the standpoint of *historical materialism*, because it is well known from previous statements."

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<sup>19</sup> Compare: Radomir D. Lukić, *Teorija države i prava I-II*, first edition (1953-54); *Teorija države i prava I-II*, second edition (1956-57); *Teorija države i prava I-II*, third edition (1958); *Teorija države i prava*, new edition (1964); *Teorija države i prava*, second edition - reprint (1976).

<sup>20</sup> Radomir D. Lukić, *Teorija države i prava, I - teorija države*, Univerzitet u Beogradu, "Naučna knjiga - izdavačko preduzeće Narodne Republike Srbije, Beograd, 1953, pp. 3, 4.

<sup>21</sup> Radomir D. Lukić, *Teorija države i prava, I - teorija države*, Univerzitet u Beogradu, "Naučna knjiga - izdavačko preduzeće Narodne Republike Srbije, Beograd, 1953, pp. 48, 155, 159.

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- “The *State* is an organization with a *monopoly on physical force*. From this essence of the *state as an apparatus of class repression* stems the difference between the state and other class organizations. The state is a tool used, ultimately, by the *ruling class* to maintain its power, without which it cannot survive.”

### 4.3. RADOMIR D. LUKIĆ: INTRODUCTION TO LEGAL SCIENCES (1960), INTRODUCTION TO LAW (1961) ETC.

4.3.1. After the curriculum for the subject “Theory of State and Law” was separated for the needs of postgraduate studies, professor Lukić worked on a textbook for undergraduate studies of law under the title “Basics of the Science of State and Law”,<sup>22</sup> and then “Introduction to Legal Sciences”,<sup>23</sup> and finally under the title “Introduction to Law”.<sup>24</sup> The textbook was approved as a “permanent university textbook” by the Textbook Committee of the University of Belgrade in 1960. There is no foreword in the textbook, but parts of the text show that professor Lukić’s concepts on the method and class essence of the state and law remained the *same*. Professor Lukić’s textbook also included special parts on administrative law which, according to him, “include only relations of power”.<sup>25</sup>

- “Thus, the most general scientific method, which is applied in all sciences – even though, it is understood, with various modifications in each one of them – is a dialectic-materialistic or *historical-materialistic method*.”
- “*Class essence of state and law*. We determined this to mean the preservation of the interests of the society torn apart by class conflicts (and before all conflicts in the very process of production), *repression carried out with the assistance of state and law*. (...) The *State* is an organization which has at its disposal the *monopoly on physical force* i.e. sovereign power, and which serves to maintain the means of production that is *in the interest of the ruling class*. (...) *Law* is a set of social norms which are sanctioned by the state apparatus of repression and which serve to maintain the means of production which is in the interest of the ruling class.”
- “The *Administration* is created to (besides performing various material acts which are in the jurisdiction of the state, first of all *acts of violence*) adopt individual acts which determine dispositions.”

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<sup>22</sup> Radomir D. Lukić, *Osnovi nauke o državi i pravu*, Savremena administracija, Beograd, 1958.

<sup>23</sup> Radomir D. Lukić, *Uvod u pravne nauke*, Univerzitet u Beogradu, Zavod za izdavanje udžbenika Narodne Republike Srbije, Beograd, 1960.

<sup>24</sup> Radomir D. Lukić, *Uvod u pravo*, first edition, Naučna knjiga, Beograd, 1961. The last, twelfth edition (1995). Also compare: Radomir D. Lukić, Budimir P. Košutić, *Uvod u pravo*, twenty second edition, Pravni fakultet univerziteta u Beogradu, 2005, kao i Radomir D. Lukić, Budimir P. Košutić, Dragan M. Mitrović, *Uvod u pravo*, thirteenth edition, Javno preduzeće Službeni list SRJ, Beograd, 1999.

<sup>25</sup> Radomir D. Lukić, *Uvod u pravo*, peto izdanje, Naučna knjiga, Beograd, 1968, pp, 11, 51-57, 262-264, 419.

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- “When we determine an *administrative act*, according to its content, as an individual act which determines disposition, and we have in mind that in that respect it is identical to civil legal matter, a question arises whether it is possible to distinguish between them according to their contents. We think it is possible. If we bear in mind that legal power (including adopting binding norms for a subject regardless of his will, i.e. against his will) is performed by the state, and not non-state subjects, the administrative act according to its content could be determined as an individual act which specifies the disposition which is *binding* for the subject, whose behavior it regulates even against his will. This would differentiate it from civil legal matters as an act that would be binding for the subject, whose behavior it regulates only with his consent. (...) It is understood that, due to the non-execution of an administrative act, in addition to its direct execution with the *use of force by the administrative body*, a sanction can be also applied on the subject who refuses to execute the act, and the sanction is determined by court.”
- “*Administrative law* is a set of legal norms which regulate the organization and activities of *state administration*. (...) When one states that administrative law regulates the activities of administration, then it is clear that it regulates relations between the administration and other subjects. At the same time, as we said, administrative law includes *only relations of power* (...) *Our administrative law developed simultaneously with the development of our state organization, and our administrative bodies.*”

**4.3.2.** The "Note" professor that Lukić gives for the *tenth* edition of is "Introduction to Law" textbook from 1993 is very interesting. He there points out that the sections removed from the textbook, are the ones which became unnecessary bearing in mind the "*disappearance of the socialist system*".<sup>26</sup> Nevertheless, the "disappearance of the socialist system" did not mean the "disappearance" of professor Lukić's views on class essence of state and law and administrative law. On the contrary, they still remain, unchanged, the foundation of his concept.<sup>27</sup>

- “The *State* is an organization which has the monopoly on physical coercion, i.e. sovereign power, and which serves for maintaining the way of production which is in the interest of the *ruling class*.”
- "*Law* is a set of social norms which are sanctioned by the state apparatus of coercion and which serve for maintaining the way of production which is in the interest of the *ruling class*.”
- *Administrative law* is a set of legal norms that regulate the organization and activities of the state administration. (...) When it is said that administrative law regulates the activity of administration,

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<sup>26</sup> Radomir D. Lukić, *Uvod u pravo*, deseto izdanje, "Napomena", Naučna knjiga, Beograd 1993.

<sup>27</sup> Radomir D. Lukić, *Uvod u pravo*, deseto izdanje, Naučna knjiga, Beograd 1993, pp. 13, 63, 350.

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then it is clear that it regulates relationships between administration and other subjects. It, as we said, includes only the *relations of power*.”

### 5. THE INFLUENCE OF THE SOVIET DOCTRINE ON THE WORKS OF OUR PROFESSORS OF ADMINISTRATIVE LAW

#### 5.1. PAVLE DIMITRIJEVIĆ: ELEMENTS OF ADMINISTRATIVE LAW (1980)

**5.1.1.** As in the field of the theory of state and law, the influence of the Soviet doctrine of state and law, i.e. Soviet theory of administrative law, is present in the works of many of our legal authors, mainly university professors of law. However, unlike the immediate influence that the Soviet doctrine had in the field of theory of state and law (in particular in the concepts of professor Radomir Lukić), in the field of administrative law this influence, although with the same consequences, was more indirect, mostly based on the influence of professor Lukić's concepts of state and law, and in that context, the influence of professor Lukić's concepts on administrative law. The main point of the influence of the Soviet doctrine on our authors in administrative law, comes down to defining the administration exclusively as “a function of state power” and pointing out authority (order-giving) as a main characteristic of decision-making in administrative matters. This “Soviet model” of administrative law, adopted by professor Pavle Dimitrijević, taken from the concept of professor Lukić on the class essence of state and law, is still at the *heart* of the administrative law concepts of some of our authors who have, in one way or the other, been under the influence of professor Dimitrijević's. In administrative law, they include *Ratko Marković*, *Zoran R. Tomić*, *Nevenka Bačanin* and others.

**5.1.2.** Based on the concept of the class essence of state and law, i.e. professor Lukić's concept of administrative law as state power, professor Pavle Dimitrijević formulates his own views on the “authoritative nature” of administrative law. Professor Dimitrijević presents this in an article titled “Administrative Law as a Branch of a Legal System” (1976).<sup>28</sup> Here he adopts the so-called “narrow concept of administrative law”, i.e. the concept of administrative law as an “unique form of state power”, which he further developed in a publication entitled “Elements of Administrative law” (1980), in which, among other things, he states the following:<sup>29</sup>

- “*The science of administrative law* uses appropriate scientific methods in learning and explaining the problem it is dealing with. In the study of the problem of administrative law in the first place, a method of *dialectical materialism* is used as a method of learning and explaining reality – and then the method of *historical materialism* as a form of

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<sup>28</sup> Pavle Dimitrijević, *Upravno pravo kao grana pravnog sistema*, Arhiv za pravne i društvene nauke, br. 3-4, 1976

<sup>29</sup> Pavle Dimitrijević, *Elementi upravnog prava*, Savremena administracija, Beograd, 1980, pp. 29, 83

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dialectic material method is adjusted to the subject of social scientific research.”

- “*Exercising administration as a legally regulated exercise of state power in the administrative matters.* Legal norms on exercising administration as a basic subject of administrative law (in addition to legal norms on “organization of administration” and legal norms on “control of exercising administration”).”

**5.1.3.** The same formulations on “exercising administration” are included in subsequent expanded editions entitled “Basics of Administrative Law” (1983, 1989), in which professor Dimitrijević in the “Note” says that “Basics of Administrative Law” are a *second edition* and expanded version of the material which was published in 1980, under the title “Elements of Administrative Law”.<sup>30</sup>

### 5.2. PAVLE DIMITRIJEVIĆ, RATKO MARKOVIĆ: ADMINISTRATIVE LAW - I (1986)

**5.2.1.** Professor Pavle Dimitrijević and professor Ratko Marković “join forces” and create “Administrative law – I” published in 1986 (“Administrative Law – II and III never appeared). This textbook, however, does not represent a “joint work” in the full sense because in every part, out of four, the author’s name, who worked on the subject, is indicated separately (professor Dimitrijević – part I Administration, part II Administrative law and part IV Science of Administrative Law, and professor Marković – part III Sources of Administrative Law). Although the authors themselves in the “Note” say that this work was “aimed mainly at the students of law to serve as a textbook for preparing exams”, the idea was to “round out the system of administrative law” on premises of theory of state and law of professor Radomir Lukić and his concept of administrative law as a branch of law regulating “only the relations of power”. In other words, professor Pavle Dimitrijević’s concept of administrative law, in cooperation with professor Ratko Marković, and initiating from professor Lukić’s model of “class essence of state and law”, was that administrative law is determined as a branch of the legal system whose main characteristic is the “*executing state power*” in individual situations which have the character of administrative matters. Sure enough, the “Foreword” of this textbook was *written by professor Radomir Lukić himself*.<sup>31</sup>

- “A state and its administration grow in our country *despite* self-management and the expectance of the withering of the state. (...) However, after the war and revolution, there have been important changes in the administration, as well as in the country and society. This sets *new goals* before administrative law – there was a need to build, on new foundations, both that law and the study of it.”

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<sup>30</sup> Pavle Dimitrijević, *Osnovi upravnog prava*, Savremena administracija, Beograd, 1983, pp. 3, 217. Pavle Dimitrijević, *Osnovi upravnog prava*, second edition edited by prof. dr Dragoljub Kavran, Savremena administracija, Beograd, 1989, pp. 225.

<sup>31</sup> Pavle Dimitrijević, Ratko Marković, *Upravno pravo - I*, Predgovor, Novinsko-izdavačka ustanova “Službeni list SFRJ”, Beograd, 1986, pp. 3-6.

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- “It cannot be denied that the study of administrative law still progressed and performed many tasks. (...) This Administrative Law by professor Pavle Dimitrijević and his co-authors will complete that large and important task, judging by the first out of three books. Even though this is only the first part of the expected system of administrative law (...).”

**5.2.2.** About the method used in the study of administrative law, professor Pavle Dimitrijević writes.<sup>32</sup>

- “In the *study of administrative law* the conclusions on legal norms which are the object of the study are reached by applying a series of general and specific methods of scientific work. (...) Among general methods, the *most important place* belongs to the *method of dialectic and historical materialism*. (...) There are many events in law, and especially in administrative law, which would be impossible to explain in a satisfactory manner if we did not start from the premises of the dialectic and historical materialism. Conclusions reached by applying this method, i.e. conclusions reached by other methods of scientific work and amended and completed by the conclusions enabled by this *method*, represent an *important part of knowledge provided by the legal sciences today in general, and the study of administrative law in particular*.”

**5.2.3.** However, this approach to the method in administrative law was subject to criticism. As professor *Slavoljub Popović* points out.<sup>33</sup>

- “In former socialist countries the *basic scientific method* was considered to be the method of dialectic and historical materialism. Therefore, the authors dealing with administrative law in those countries pointed out that the method of dialectic and historical materialism is the *main method* in the *study of administrative law*. This is because this method has been used as a main method, especially in social sciences. Dialectics is, according to Engels’ opinion, understood as a science on general laws of movement of both the outside world and human opinion. (...) Coming back to the study of administrative law the authors from *socialist countries* thought that by applying the method of dialectic and historical materialism they could reveal elements of contents and knowledge which should be included in the study of administrative law.”

**5.2.4.** In professor Dimitrijević’s writings on the contents of the administrative function as a function of executing state power, we recognize all elements of professor Lukić’s views on administrative law:<sup>34</sup>

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<sup>32</sup> Pavle Dimitrijević, Ratko Marković, *Upravno pravo - I*, Novinsko-izdavačka ustanova "Službeni list SFRJ", Beograd, 1986, pp. 345-346

<sup>33</sup> Slavoljub Popović, Branislav Marković, Milan Petrović, *Upravno pravo - opšti deo*, Službeni glasnik, Beograd, 2002, p. 112

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- “One of the main functions of state power, constituted by authoritative activities which are regulated by specific legal norms that as a whole make a unique “regime of administrative law. (...) *The activities which do not represent exercise of power are not administrative* and are not regulated by the norms which organize the exercise of power in the society.”
- “The “*administrative function*” comes from a special legal regime to which, in our law, the *exercise of state power* is subjected – and in particular from the legal regime of exercise of administration as one of the functions of state power, and it consists of: (1) adopting individual legal acts – *administrative acts* – which determine the “primary disposition” (primary rules of behavior) for certain subjects in concrete situations for performing general commands written in laws and other regulations; (2) performing actions (“material operations”) of applying coercion or limitation – “*administrative actions*” – with the aim of immediate realization of general and individual commands written in laws and other regulations as well as individual acts – as well as fulfilling public interests if the need arises.”
- “The *concept of administration* as a category can be identified only based on elements of an appropriate *legal regime* and they point to the fact that this word can signify *only one specific function of state power*. (...). In that sense, administrative law could be defined as a “*set of legal norms which regulate organization, execution and control of administrative power*”. According to our view, if administrative law should be an “autonomous” branch of our legal system, it can have only “*more narrowly defined subject*” – one that is in the definition stated above.”

**5.2.5.** Contrary to a narrow standpoint on the subject of administrative law advocated by professor P.Dimitrijević, professor Dragaš Denković, says:<sup>35</sup>

- “Social development will show and determine whether the subject of administrative law will encompass only the narrower view (...) or the wider view which would then include in the subject of administrative law regulations on activities of administration (...) when it *does not exercise stronger will*. (...) A narrower view is, of course, *easier and simpler* for theoretical treatment, but there are reasons to believe that a wider view is more suitable to contemporary developments.”

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<sup>34</sup> Pavle Dimitrijević, Ratko Marković, *Upravno pravo - I*, Novinsko-izdavačka ustanova "Službeni list SFRJ", Beograd, 1986, pp. 47-48, 109, 216-217

<sup>35</sup> Dragaš Denković, *Preobražaj predmeta upravnog prava...*, Matica srpska, Novi Sad, br. 67, 1979, pp. 113, 112.

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### 5.3. RATKO MARKOVIĆ: ADMINISTRATIVE LAW (1995)

**5.3.1.** In his textbook on Administrative Law, professor Ratko Marković clearly states his view that administrative law is the “executive and order-giving” branch of state power, and also that the exercise of power is an administrative matter. On the other hand, in his brief reflection on Leon Diguít’s concept of the administration as public service, professor Marković chooses “administration as state power” (the Soviet model), even though he is familiar with Diguít’s views.<sup>36</sup>

- “Administration is an occurrence most commonly connected with *state power*, in other words, it is the expression of that power. The word administration is connected to state more than any other state power.”
- “*Administration is a special branch of state power.* (...) It is the power of resolution in so-called administrative matters. Administration is the *power of resolution with prerogatives of state power* and is based on the rights, obligations or legal interests of a subject (party) by immediate application of regulations in a concrete individual administrative matter. (...) As the exercise of rights includes, as *ultima ratio* the use of physical coercion, *the concept of administrative power includes the use of physical coercion* in concrete situations where there is a lack of voluntary exercise of rights, i.e. compliance with the law.”
- “For the material concept of administration what matters is the substance of the administration as an activity. The material concept of administration is twofold. Administration is understood either as one of the powers of the state or as a public service. In the basis of these different views of administration are *two different views of state – as public power or as public services* (services necessary for fulfillment of the daily needs of the whole community, hence their classification under a separate administrative-legal regime). Diguít’s famous functional definition of administration would be a part of the second group of attitudes, since state itself is, according to him, a public service.”

**5.3.2.** In this context, here is an illustration of how the official Soviet doctrine in the textbook by A.I. Denisov “theoretically handled” Leon Diguít’s concept of social (thus, not class) function of state and administration. “The theory of social functions as an ideological weapon of the imperialist bourgeoisie and its agencies. (...) The French Law professor Diguít is the largest representative of the pseudo-scientific theory of social functions.”<sup>37</sup>

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<sup>36</sup> Ratko Marković, *Upravno pravo*, Službeni glasnik, Beograd, 1995, pp. 41, 42, 45. Also, Ratko Marković, *Upravno pravo*, drugo popravljeno i prošireno izdanje, Slovo a.d., Kraljevo, 2002.

<sup>37</sup> A.I. Denisov, *Osnovi marksističko-lenjinističke teorije države i prava*, Arhiv za pravne i društvene nauke, Beograd, 1949, pp. 340.341.

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### 5.4. ZORAN R. TOMIĆ: ADMINISTRATIVE LAW (1998)

**5.4.1.** Professor Zoran R. Tomić published his first major work in administrative law on the subject of “administrative control of the administration”. In the author’s note, Z. Tomić says that he “Dedicates the book to the memory of the deceased Dr. Pavle Dimitrijević.” In the first, and later in the second edition of “Administrative Law - Administrative Control of Administration”, as well as in later works, professor Tomić too clearly states that the administration is the function of state power. This can be seen from both the foreword written by professor Ratko Marković and from the texts of the author himself.<sup>38</sup>

- “The subject of this work, originally a doctoral dissertation, and now a monograph, is the administrative control of the administration (...). *Administration is the pure extract of state power.* (...) the work docent Dr. Zoran Tomić gives to the reader is a truly deepened monographic study.”
- “*Administration as a mean of exercising state power* has the main goal of implementing public (general) interests. (...) Administrative work (administrative function) has, we consider, two basic forms: one is legal – “administrative act”, and the other real (“material”) nature – administrative action. (...) Legally envisaged *instruments* at the disposal of the administrations for accomplishing goals are numerous and various. (...) It follows that administrative quality is only contained in those legal instruments which have an authoritative nature, and at the same time is directed at individual out-of-court life situations (concrete situations and distinct or distinguishable persons).”<sup>39</sup>

### 5.5. NEVENKA BAČANIN: THEORY OF ADMINISTRATIVE LAW (1994)

**5.5.1.** Like professor Tomić, professor Bačanin dedicates her work “to the memory of professor Pavle Dimitrijević”. In her work “Theory Of Administrative Law” (1994), professor Bačanin, in the section entitled “Problems of defining the concept of administration in Yugoslav law” (p.117-217), gives an overview of the most important concepts of administration in the 1918 to 1990 period. This overview is particularly interesting because the author, among other things, clearly shows that the “influences of foreign legal theory and Soviet in particular, can be seen in post-war concepts of the administration among domestic authors”, but also because, she says, of our authors: “*special attention is drawn* to the concepts of the administration by R. Lukić and P. Dimitrijević.”

**5.5.2.** Based on the overview of views in newer works by our authors in the field of legal theory and the theory of administrative law, professor Bačanin reveals to us, in a convincing way, that the original Soviet influence is still present

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<sup>38</sup> Zoran R. Tomić, *Upravno pravo - upravna kontrola uprave*, pp. VIII-IX, 26-27, Savremena administracija, Beograd, 1989

<sup>39</sup> Zoran R. Tomić, *Upravno pravo - sistem*, treće novelirano i prošireno izdanje, JP "Službeni list SRJ", Beograd, 1998, p. 63, 258. Also, Zoran Tomić, *Upravno pravo - sistem*, četvrto doterano izdanje, "Službeni list SRJ", Beograd, 2002.

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as a starting point for their concepts of the administration, predominantly in the works of the professor Radomir Lukić and professor Pavle Dimitrijević (but others as well), whose concepts she finds to be “original teachings”.<sup>40</sup>

- “Yugoslav legal theory in the period between 1946 to 1953, in defining the concepts of administration, acted in a habitual way. Our legal authors incorporated in their concepts of administration the dominant views of foreign legal theorists on this issue. The *influence of the Soviet* legal theory is particularly dominant, because of the enormous *importance* which the practice and theory of the USSR, as the first and largest socialist state, had on the establishment of the economic and political system, and also the *legal theory* of all countries which embarked on building socialism.”
- “The true material concept of the *administration as a function of power*, as well as other state functions, in this period of development of the Yugoslav legal thought (1963-74) was provided by R. Lukić. (...) Lukić, under the *administrative function* understood the function of power which consists of activities in adopting administrative acts in the material sense and activities of exercising certain material operations. (...) Based on all of this it can be concluded that in the Yugoslav legal theory of this period, the concept of administration of R. Lukić is the *only true* material concept of *administration as a function of power*.”

**5.5.3.** In order to understand professor Lukić’s administration as a function of power, professor Bačanin juxtaposes this with the concept of our *world renowned* professor of administrative law *Nikola Stjepanović*, the fact that the administrative function *cannot* be brought down to only one modality of exercise of power. From these brief polemics, the conclusion is that the special quality of professor Lukić is in the fact that he “*does not give up*” his views, while the view of professor Stjepanović is “*unacceptable*”.<sup>41</sup>

- “While Lukić fully *remained true* to his original attitude that the administrative function is manifested in adopting legal acts and exercising certain material operations, Stjepanović changed his positive-legal concept of administration in SFRY insomuch that he partially adjusted his theoretical views. According to him the administrative function from the aspect of *theory* is still “that way of exercising *power* and performing *basic and other tasks* of the state, other social-political communities and other public organizations, formulated in legal regulations, which consist of adopting subjective acts-conditions and material acts.”

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<sup>40</sup> Nevenka Bačanin, *Teorija upravnog prava*, Poslovno-ekonomski biro, Beograd, 1994, pp. 176, 199, 200-201. Also, Nevenka Bačanin, *Upravno pravo*, Pravni fakultet Univerziteta u Kragujevcu, 2000

<sup>41</sup> Nevenka Bačanin, *Teorija upravnog prava*, Poslovno-ekonomski biro, Beograd, 1994, pp. 209-210.

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- “The positive-legal concept of administration by N. Stjepanović is derived from constitutional provisions of the Constitution of 1974, which determined the possible work and tasks of the administration bodies. This concept embraces, in his opinion, all activities of the administration bodies – *authoritative and non-authoritative, legal and material*. Practically, that would mean that, unlike in theory, in positive legal regulations the administration manifests itself not as a function of power, but as an activity of state, which is *not acceptable*.”

**5.5.4.** Among more important authors in the field of administrative law who committed themselves to the concept of administration exclusively as exercise of power, professor Bačanin includes professor *Ratko Marković*, although, as she says, he “is not directly involved in defining the concept and content of administration in our law”, thus, his concern can be reached only “indirectly”.<sup>42</sup>

- “Although Ratko Marković *was not directly involved* in defining the concept and content of administration in our law, his concept of administration is also material in nature. The concept of administration of this author can be reached *indirectly*, through the analysis of his views of the concept and nature of executive power and sources of law in our legal system.”
- “Administrative function, according to Marković, does not include only adopting administrative acts, but also exercising administrative actions. In that sense, and in the framework of interpretation of the sources of administrative law, this author points out: “...by *sources of administrative law* we mean general legal acts which serve as a basis for exercising administrative activity, i.e. *exercising of administrative power*, or for adopting administrative *acts* which determine the primary disposition for the behavior of certain persons in certain situations and for exercising administrative actions, like operation of the use of *coercion and limitation* towards certain persons in certain situations.”

**5.5.5.** As pointed out earlier, professor Bačanin pays special attention to the concept of *professor Pavle Dimitrijević*, whose results she finds as “one of rarely successful attempts of harmonizing the theoretical and positive legal concepts of the administration”, as professor Dimitrijević’s concept “represents *the only possible, scientifically correct and acceptable way* of defining the concept and contents of administrative function”. From the following quote we will see that the “theoretical” concept of administration proposed by professor Dimitrijević in fact is derived in such a way that those options which are not a part of the legal regime of exercising power in individual cases are excluded from the so-called positive-legal concept of administration. The theoretical concept of administration, according to professor Dimitrijević, does not include administration activities that are not authoritative, as well as those which are, but

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<sup>42</sup> Nevenka Bačanin, *Teorija upravnog prava*, Poslovno-ekonomski biro, Beograd, 1994, pp. 211-212.

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which do not apply to an individual situations (e.g. adopting sub-legal general acts: rules, etc). That is why the theoretical concept of administration by professor Dimitrijević “does not fit in” with the positive legal concept of the administration, which means that the concept of professor Dimitrijević lacks a “theoretical framework” in the role of administration (i.e. state and law) in society. Further, this means that the “theoretical concept of the administration” by professor Dimitrijević is produced in the same way as the concept of administration was produced in the Soviet doctrine of state and law, i.e. that is comes down to exercising of state power. Here is how professor Bačanin analyzes professor Dimitrijević’s concept of administration.<sup>43</sup>

- “If one wants to determine a legal concept of administration which can be only relevant in the study of administrative law, professor Dimitrijević thinks that one *must start from positive law* and determine the concept of an administration which is accepted in the legal system of the observed country.”
- “What to say about professor Dimitrijević’s concept of administration except that it is one of the *rare successful* attempts of harmonizing the theoretical and positive legal concept of administration in SFRY. It looks as though it indicates *the only possible scientifically correct and acceptable way* for defining the concept and contents of administrative function, and other functions of the state as well, in our legal system, if one has in mind the manner in which this author approached the definition of the concept of administration, the depth of legal analysis he performed and the conclusions he reached in the process.”

**5.5.6.** In the end, it is left to the arguments of professor Dimitrijević himself to counter the views of professor Bačanin. The concept of Pavle Dimitrijević is a consequence of the application of the so-called normative model, which has a formally-logically constructed category of a “single legal regime” as the main criterion in determining the subject of administrative law. So, “...administration in the functional sense does only those activities which according to their legal features (...) make a whole which expresses coherence of a legal occurrence.”<sup>44</sup> Even though the view stated above may seem unambiguous and clear at first glance, professor Dimitrijević’s statement is very confusing regarding the value and reach of normative, i.e. legal-dogmatic methods in the study of administrative law. Professor Dimitrijević’s text reads: “The legal method was created out of practical needs in order to enable determining behavior which is demanded from the people by legal norms. This is why this method has been most often applied. Its goal is to describe the contents of legal norms in the way they are articulated. (...) it does not explain legal norms for what they are, does not evaluate them, nor does it suggest their replacement or improvement. (...) This reveals the limits of the legal method to a full understanding of law, hence the administrative law as

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<sup>43</sup> Nevenka Bačanin, *Teorija upravnog prava*, Poslovno-ekonomski biro, Beograd, 1994, pp. 213-214.

<sup>44</sup> Pavle Dimitrijević, Ratko Marković, *Upravno pravo - I*, Novinsko-izdavačka ustanova "Službeni list SFRJ", Beograd, 1986, p. 27.

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well.”<sup>45</sup> From the stated text the conclusion is that professor Pavle Dimitrijević (as well as professors Ratko Marković, Zoran R. Tomić Bačanin) promoted a narrower view on the subject and contents of administrative law. Although at first glance consistent and coherent, these views are actually conceptually and logically inconsistent.

### 6. CONCLUSIONS ON THE INFLUENCE OF THE SOVIET DOCTRINE OF STATE AND LAW ON OUR THEORY OF ADMINISTRATIVE LAW

**6.1.** Our research and analyses indicate the following. First that the influence of the so-called Soviet doctrine of state and law on our legal theory was direct and very intensive regarding the content: This is based on the works in the field of theory of state and law by professor Radomir Lukić and his concept of the class character of state as an organization with a monopoly on physical coercion and law as the expression of will of the ruling class. Second, that this influence, indirectly through the works of professor Lukić, has spread throughout our theory of administrative law, which is seen in the works of professor Pavle Dimitrijević and his followers (professors Ratko Marković, Zoran R. Tomić, Nevenka Bačanin and others) and the concepts of the administration as an “executive and order-giving” function of state power.

**6.2.** Even though the authors in the field of administrative law do not directly call upon the Soviet model of administration as an “executive and order-giving state power”, in the works of professor Dimitrijević and his followers this model is taken as a starting point in determining the theoretical constructions of the concept of the administration and the contents of administrative law, with a joint characteristic that the “functional concept of administration in the material sense” can be exclusively defined as an “administrative function of state power”, i.e. as “authoritative” decision-making in individual cases regarding rights and obligations (“administrative act”), and the performing of material actions of coercion (“administrative action”). The intensity and volume of the influence of the Soviet doctrine on our theory of administrative law is particularly obvious in the fact that even today it is present and that it serves as a starting theoretical point in administrative law textbooks by Ratko Marković, Zoran R. Tomić and Nevenka Bačanin.

**6.3.** How large of an obstacle the “Soviet model” poses for Serbia on the road to social and economic recovery is made very clear from a document titled “Strategy of state administration reform in the Republic of Serbia”, in which, *inter alia*, it is stressed that in the field of administration there are “trends which cannot be avoided”, and among them there is a “change in the attitude” that the administration is a public service of the citizens and not an instrument of power.<sup>46</sup>

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<sup>45</sup> Pavle Dimitrijević, Ratko Marković, *Upravno pravo - I*, Novinsko-izdavačka ustanova “Službeni list SFRJ”, Beograd, 1986, p. 347.

<sup>46</sup> Government of Serbia *Strategy of state administration reform in the Republic of Serbia* (oktober 2004). Source: <http://www.prsp.sr.gov.yu/dokumenta.jsp>.

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- “*Reform of the state administration* is a complex and long term process, especially in countries in transition, in which the administration, both on the central and on the local level, is weak, burdened by a number of problems piled up over several decades. (...) A general overview of the reform processes which are ongoing in other countries, show certain trends which *cannot be avoided*, and which concern the following processes:
- *Changes in understanding of the position of the public sector in the society* and searching for the optimal level of its regulation from the standpoint of public interest;
- *Understanding of state administration as a service for the citizens, and not as a powerful tool of government.*
- De-concentration of state administration on the central level, delegation of power from the central to the lower level and decentralization, handing over the power to the lower levels, all of it with the aim to bring *public services* closer to the citizens (...) etc.”

**6.4.** The Soviet model of administration, which is the starting point in the works of professors P. Dimitrijević, R. Marković, Z. Tomić and N. Bačanin, is based on the concept that the administration is a politically loyal “executive and order-giving state power”, and not a non-political professional public service. This means that the administration does not have only “one function” (task) in the sense that it executes laws by, for example, “issuing individual commands” and perform actions of coercion (in the way it is envisaged according to the Soviet model of “executive and order-giving state power”), but that administration has “more functions” (activities and tasks) that in addition to executing laws it performs other actions, such as the “rendering public services” which contribute to economic growth and increase the quality of life of citizens (in the way it is envisaged in the model of “administration as a public service and a service for the citizens”).

**6.5.** Our contemporary authors, who start from the Soviet model of administration, maintain their theoretical construction of the administration as an “executive and order-giving state power” even in circumstances where it has lost ground in our legal reality. The model of administration as an “executive and order-giving state power” is unusable as a theoretical starting point for the analysis of real situations if we compare the concept of “one function administration” (i.e. authoritative execution of laws) with the model which is the starting point of the legislator. By means of analyses we can see that the “executive functions” (adopting regulations, resolution of administrative matters) is only one, and not even the most important segment, of a wide range of “state administrative actions”. The illustration of this view becomes clear when one looks at the “state administrative actions” as prescribed in the Law on State Administration (Official Gazette RS, no 79/2005):

- *Participation in shaping the governmental policies* (Art. 12). State administrative bodies prepare drafts of the laws, other regulations and

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general acts for the Government and give proposals of development strategies and other measures to the Government, which shape the Government's policies.

- *Monitoring of conditions* (Art. 13). State administrative bodies monitor and determine conditions in fields of their expertise study the consequences of the determined condition and, depending on jurisdiction, either take measures on their own or suggest to the Government the adoption of regulations and taking of measures in their authority.
- *Implementation of laws, other regulations and general acts* (Art. 14). State administrative bodies implement laws, other regulations and general acts of the National Assembly and the Government by adopting regulations, solving administrative disputes, keep records, issue public documents and perform administrative actions (executive actions).
- *Inspection supervision* (Art. 18). By inspection supervision state administrative bodies investigate the implementation of the laws and other regulations by direct inspection of business performance and conduct of physical and legal entities and, depending on the result of the supervision, pass a measure in their authority. Inspection supervision is determined by a special law.
- *Care of public services* (Art. 19). State administrative bodies take care that the work of public services is done according to the law.
- *Development affairs* (Art. 21). State administrative bodies aid and direct development in fields in their scope, according to the Government policies.
- *Other expert's work* (Art. 20). State administrative bodies collect and study the data in fields in their scope, conduct analyses, make reports, collect information and other materials and perform other expert affairs which contribute to the development of the field within their scope.

**6.6.** We have seen that the Soviet model of administration advocated by some authors does not have the necessary capacity when it comes to real legislative practice, which is clearly seen by the narrowing down of the numerous and various administration affairs to power and coercion. However, the Soviet model of administration promoted by our authors shows a special weakness in the theoretical plain, when it comes to its authoritative nature.

- For example, professor Ratko Marković states: "The administrative act is always adopted in an authoritative manner. Through it, a one-sided act power performs one-sided legal binding. Through the administrative act, the administrative power orders something, permits or prohibits. (...) The immediate consequences of authoritative nature of the administrative act are its immediate applicability and external nature of the administrative act. The immediate applicability of the

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administrative act means that the obligations from that act can be enforced by coercion and against the will of the addressee of the act. (...) Disposition from the administrative act is enforced by coercion, and there is no sanction for not fulfilling the obligation."<sup>47</sup> However, the extent to which professor Marković's claim that coercion is the feature of every administrative act is unfounded and can be seen in the fact that these views are irrelevant when it comes to administrative acts which grant the party rights (the one they request). Hence, from this theoretical standpoint it was not possible to explain how the disposition of the administrative act will be "executed by coercion" if by the administrative act a right has been acknowledged (e.g. right to pension). With an acknowledged right (e.g. pension), force for its implementation cannot be exercised, which means that the disposition from an administrative act like this one, contrary to what professor Marković claims, cannot be enforced by coercion.

- Professor Zoran R. Tomić has similar theoretically inconsistent claims: "It brings us to a conclusion that the administrative quality is carried exclusively by those legal instruments which have an authoritative nature, and at the same time are directed to individual out-of-court life situations (concrete situations and distinct or distinguishable persons). (...) With the aforementioned administrative goals and by determining adequate administrative instruments the main subject of administration, administration work, is established. It comes down to the application of regulations in out-of-court individual situations."<sup>48</sup> As we can see, professor Tomić makes the authoritative nature of an administrative act absolute and extends it to cases where there is obviously none of this nature, because every administrative decision-making is not authoritative. According to the Law on Free Access to Information of Public Importance (Official Gazette RS, no. 120/2004) on the procedure before the government body "the provisions of the Law managing the general procedure are applied" (Art. 21). In connection with this (Art. 15, 16), the requester of the information files a written request to the body for exercising the right to access information, and the body is obliged to notify the requester on having the information or provide him with a document that entails the requested information. If it meets the request, the body "will not issue a special decision, but will make an official note of it." This means that the body in the executive procedure decides on the request of the party (or "solves the administrative matter") without acting like a "power which gives orders, permits or prohibits", but as a subject which "provides public service to the citizens".

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<sup>47</sup> Ratko Marković, *Upravno pravo*, drugo popravljeno i prošireno izdanje, "Slovo a.d.", Kraljevo, 2002, pp. 249-250.

<sup>48</sup> Zoran Tomić, *Upravno pravo - sistem*, četvrto doterano izdanje, "Službeni list SRJ", Beograd, 2002, p. 63.

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**6.7.** Legal experts, especially professors of law, of course, have the privilege to choose theoretical concepts, but entire generations of lawyers have the right to know the real causes and real consequences of the views these experts advocate. Bearing this in mind, one can conclude that the influence of the so-called Soviet doctrine of state and law on our legal theory was very massive, particularly seen in works of professor Radomir D. Lukić in the field of theory of state and law and his concepts of the class character of the state as an organization with the monopoly on physical coercion and law as an expression of the will of the ruling class. The influence of the Soviet doctrine spread, indirectly through the works of professor Lukić, to our theory of administrative law, especially seen in professor Pavle Dimitrijević's concepts of the administration as an "executive and order-giving" function of state power. Thus, the Soviet model of the administration still "lives in our theory of administrative law", i.e. in the textbooks of administrative law by professors Ratko Marković, Zoran R. Tomić Nevenka Bačanin and others.