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CONFERENCE ON

"PAST AND PRESENT-DAY LUSTRATION: SIMILARITIES, DIFFERENCES, APPLICABLE STANDARDS"

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REPORT

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Introduction

Previous presenters have spoken about the experiences of states which had undergone the lustration process during the nineties of the last century or of the so-called "second wave" of lustration in two states (Ukraine, Georgia) recently. Contrary to those examples, lustration in the true sense was never implemented in Serbia. There was one unsuccessful legislative attempt (in 2003) and there was one debate between the supporters and critics of lustration, which took place over a span of two years (2003-2004) and which can, only conditionally, be referred to as being theoretical.

At least two things are indisputable at this time in Serbia. First, to this day, there do not exist, objective, socio-political and legal conditions for implementing lustration. Secondly, a negative interpretation of the lustration concept has prevailed. Even certain constitutional law experts refers to lustration as politically motivated dismissal of holders of public office.

Historical Background

Until the year 2000, lustration was an entirely foreign concept in the Serbian public life. Following the fall of President Milosevic and his regime, the situation remained unchanged. It was not until 2002 that lustration has become a familiar subject matter. Without much preparation, or familiarization of the people of Serbia with the essence and significance of lustration, on May 30th, 2003, The Law on Responsibility for Violation of Human Rights, better known as The Law on Lustration, was adopted. The Law was adopted in an urgent proceeding, with barely a quorum. The following motives were emphasized in its adoption: 1) overcoming of the authoritative past; 2) continuation of the initiated fight against organized crime; 3) fulfillment of one of the conditions for entry into the European Union.[1]

The Law foresaw a limitation on its being in force to ten years. It was never put into effect. It was a "stillborn" law. I will place emphasis on two entirely contradicting reviews of this law. The first was given by Professor Vesna Rakic-Vodinelic, one of the authors of this law and members of the Lustration Commission. According to her, The Law on Responsibility for Violation of Human Rights (Republic of Serbia "Official Herald" No. 58/2003. of June 3, 2003), was based on the following sound postulates:

"(1) the subject matter of the procedure is to examine responsibility for violation of human rights committed in the capacity of holder of public office;
(2) examination of responsibility solely on the grounds of membership in a political party or group, except a criminal organization, is excluded;
(3) only individual responsibility of a natural person is examined;
(4) the person whose responsibility is being examined has guaranteed right to defense, right to hearing and the right to lodge two legal remedies: objection and appeal; objection may be lodged for any reason, and appeal for all the usual reasons, but when it comes to the state of facts (in appeal) it is allowed only to present those facts and evidence that were not presented in the first degree procedure before the lustration commission or its panel."[2]

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[1] Miodrag Radojevic, "Lustracija u Srbiji – ilustracija nemoći demokratskih promena", *Hereticus* 2/2003, p. 25.

[2] Vesna Rakic – Vodinelic, "An Unsuccessful Attempt of Lustration in Serbia", *Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe (eds. Vladimira Dvořáková, Anđelko Milardovic),* Zagreb, 2007, p. 171.

The second review was given by a leading professor of Constitutional Law at the end of the 20th and beginning of the 21st Century Ratko Markovic, a declared opposer of lustration: "That Law abused the form of law so as to execute a simplistic settlement with political opponents. It aims to execute a political reconstruction of the past under the pretense of stigmatizing the violators of human rights. The Law intends to purify the public scene, but in fact, to punish those who oppose it. All, who have a different political viewpoint then mine, are violators of human rights - that is the 'spirit' of this Law."[3]

Summarily considered, this Law had failed not so much due to its contents - which was partially in accordance, but partially was not with the European standards on lustration established by that time - but more so because the Serbian society, particularly the political elite, which implemented the changes in the year 2000, had begun to "split at the seams", and was not ready to accept lustration.

If we exclude this "legislative mishap" in introducing lustration in the true sense, in Serbia there have been examples of so-called: factual lustration. Factual lustration is not founded on a law and is not implemented in a legislative proceeding as an instrument of actualizing individual responsibility by holders of public office, but is in fact implemented *ad hoc*, by avoidance or possibly misuse of legal norms. That is negation of lustration, its antipode. It is precisely the manifestation which had discredited the idea of lustration in Serbia. Such "lustrations" took place in Serbia. I will give a short overview of those which pertained to the holders of the judicial function. In 1993, the massive parting of judges into advocacy due to poor financial positions, but also political pressures; in 1999 - 30 judges, many of which were eminent members of the Judges' Association of Serbia were dismissed; in 2000 - dismissal of two judges in Pozarevac (small town in Central Serbia), an unlawful undertaking as confirmed by a judicial decision in 2010; in the same year, a number of judges left the judiciary at their personal request following the October 5th political changes; in the year 2001 - the Ministry of Justice set in motion an initiative for dismissing 118 judges and 69 justices of peace; in 2002 - of 120 requests for dismissal of judges submitted to the High Personal Council of the Supreme Court, the National Assembly dismissed five of them; in 2003 - following the assassination of the Prime Minister, the National Assembly dismissed 35 judges with the explanation that they have fulfilled the legal requirements for retirement and a "resignation under pressure" was forced from the President of the Supreme Court of Serbia at that time. Without a doubt, the most illustrative example of "lustration the Serbian way" would have to be the judicial reform that began in 2008, especially in the area that deals with the general re-election of judges from 2009.[4]

The Debate on Lustration in the Serbian Legal Sciences

The "theoretical" debate between the supporters and opponents of lustration in Serbia, which faded rather quickly following the adoption of the Law on Lustration in 2003, did not lead to misapprehension of lustration in Serbia up until today, but it did not contribute to its better understanding or possible acceptance by the public, either.

Supporters of lustration had a firm understanding of its fundamental characteristics. It consists of temporary incapacitation of access to public office functions to those who had in the previous political system seriously wronged the rights of its fellow citizens (A. Zidar, V. Dimitrijevic). It refers to the legal institution *sui generis*, which is of a more preventive then repressive nature. Lustration is a specific type of disqualification qualified by catharsis. That

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[3] Ratko Markovic, "Uterivanje djavola u pakao", *Lustracija u Srbiji,* Beograd, 2004, p. 30.

[4] See: Slobodan Orlovic, "Stalnost sudijske funkcije vs. opšti reizbor sudija u Republici Srbiji", *Anali Pravnog fakulteta u Beogradu* (*Annals of the Law Faculty in Belgrade*), 2/2010, p. 174.

is a process limited in time by law during a transitional period. It is an instrument for effectuating individual and not collective responsibility for violation of human rights.[5]

Numerous arguments can be directed at the supporters of lustration. Firstly, they approached lustration as a necessary resource without which it would be impossible to dismantle the authoritarian past. They refuted prejudices regarding lustration, but not its potential dangers. Secondly, in focusing only on lustration as such, they did very little to examine the relations between lustration on the one and democracy and the rule of law on the other. There was a certain level of idolatry toward lustration. It was a sort of "lustration-centricity" which was a touch to artificial, unprepared to answer to the demands of correct positioning of lustration and its placement into action in a heterogeneous and politically separated society such as is the Serbian one. In other words, the lustration supporters for the most part had forgotten the basic rule of legal and political life: an institution should be modeled in accordance with concrete socio-political circumstances. And those circumstances, in Serbia at the time, particularly following the assassination of Premier Đinđic, worked not in favor of lustration (there was a need for establishing a political "firm hand" again). Finally, legitimizing position of certain supporters of lustration and in general "proven" defenders of human rights was extremely controversial. Many originated from the authoritarian, real-socialist regime and held high positions and functions. Therefore, in essence, the legal argumentation in favor of lustration was not disputable; what was thought was the original ideological and political orientation of those who defended lustration so scrupulously.

On the other hand, those opposed to lustration, amongst which there were exceptional jurists and followers of the Milosevic regime (Ratko Markovic) and his greatest opponents (Kosta Cavoski), skillfully used the rigidity and legal-dogmatic exclusivity of the other side. Some rejected lustration on a global level, and others, lustration for Serbia implemented "the Serbian way". In this way, Professor Oscar Kovac, who was a member of the Parliamentary Assembly of the Council of Europe for two years, depicted the narrow, dogmatic interpretation of Resolution 1096 of the Parliamentary Assembly of the Council of Europe by the political powers in Serbia at that time. He believed that Resolution 1096 does not define lustration as an imperative. He exclaimed that the Law on Lustration of Serbia is "contrary to European Standards". Nevertheless, the most profound criticism of lustration came from Ratko Markovic: "Lustration is an institute which has no connection to the law. It, in fact, contradicts the basic function of law - exclusion of the arbitrariness of the governing and establishment of an objective rule of law. Lustration is a powerful resource for arbitrariness and unquestionable ruling of the rulers. Instead of the will of an objective law, it introduces the arbitrariness of rulers. It is the return to the darkness of prelaw and the unlawful... And for that reason, the story of lustration is like Boccaccio's story of Rustico and Alibech ... And as Rustico had conjured up the story of putting the devil into hell so as to get what he wants from Alibech; all the while remaining a man of moral in her eyes; that is how the Serbian lawmaker thought up the story of lustration so as to get what he wanted, whilst seemingly not getting his hands dirty."[6] From the perspective of Markovic, lustration is putting the devil into hell.

The debate died out very quickly once it had become clear that there is not legal lustration, and that it most likely "has no future in Serbia" (Jovica Trkulja). This controversy, guided by fiery emotions and exclusivity, was left without significant practical effects. All that remains are fairly hazy and particularly wrong understanding of lustration as an instrument of effectuating collective responsibility.

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[5] Jovica Trkulja, "Uvodne napomene", *Hereticus 2/2003,* pp. 9 – 14.

[6] Ratko Markovic, *op.cit*., pp. 33-34.

Eminent jurists, which were on opposing ends and what seems on irreconcilable sides when it comes to the lustration process in 2003, had united following the general reappointment of judges in 2009 and with their intellectual engagement contributed in unveiling and reprimanding unacceptable mishaps in this process. The most discernible example of lustration “a la Serbien” was the general reappointment of judges, also the reforms of the judicial system, the negative aftershocks of which are still felt today.

The General Reappointment Procedure of Judges in the Republic of Serbia - Lustration a la serbien?

The so-called reform of the judiciary, which began with a set of judiciary laws adopted at the end of 2008, led to “a state of confusion in the Serbian judiciary” (J. Trkulja), “destruction of the third state government in Serbia” (V.Rakic-Vodinelic). Even, "the constitutional definition of Serbia as a state was questioned" (R.Markovic). In that process, took part the highest state organs (not only the Ministry of Justice and the Government, as the initiators of reform, and the High Judicial Council as the main “executor”, but also the National Assembly, the President of the Republic and the Constitutional Court, which had at the beginning omitted to return the judiciary reforms on the “constitutional track”). What was achieved was a “disoriented” judiciary with judges who are aware that the permanency of the judicial function as a constitutional principle in Serbia means nothing.

I want to place emphasis on *two questions*. *The first being, did the first composition of the High Judicial Council evaluate the work of the judges when deciding upon the general reappointment?* Did it take into consideration the established criteria and standards for the evaluation of the qualification, competence and worthiness or were the decisions arbitrary, utilizing illegal sources, ways and criteria?

The second question is what was the general reappointment of judges? Was it a blend of political lustration and political appointment of judges? Can this “twisted” process (the Constitution and constitutional principles on the judiciary were “trampled”) give a new “impulse” for implementing a real lustration process? Or will, at least, finally lead to the cessation of the practice of relatively common, political “cleansings” of the judiciary? Therefore*, does lustration as an instrument of establishing the rule of law and consolidating democracy have a future in Serbia or does it not?*

To the first question, it is possible to give an unambiguous negative answer. The first composition of the High Judicial Council, constituted without legal grounds, in April of 2009, announced an open competition for reappointment, 5200 candidates applied. Such composition of the High Judicial Council, without eminent jurists from the ranks of professors and the legal profession alike, with a controversial President of the Supreme Court of Cassation (whose judges at the moment were not yet appointed, consequently she could not have become the President of an non-existent court), considered the submissions for a little over three month period and selected 1532 old and 875 new judges, in a published list of newly appointed judges, on December 16th. Those who were not on the list,were not selected. Neither the selected group nor the ones who were not selected received an explanation as to why have they been selected or in the other case why not. In February, 2010, the rejected group got a decision all with an identical rationale (as if they were all “dismissed” for the same reason).

The High Judicial Council was respecting the regulations of its Rules of Procedure on secrecy. Under such conditions, it was difficult to follow the Decision on establishing the criteria and standards for the evaluation of the qualification, competence and worthiness which was adopted in “cooperation” with the Venice Commission. However, the Venice

Commission had serious reservations, in terms of the Draft of this decision, as well as in terms of earlier set of judicial laws.[7]

How did the first constitution of the High Judicial Council apply the criteria and standards? That can only be speculated, even today. This body had no time and quite possible intention of apply these criteria and standards in each individual case. With respect to qualification, aside from the usual information (length of studies, grade average, success on the bar examination), it was necessary to take into consideration the number of overruled court decisions of each judge. The Venice Commission had correctly warned that this information can be deceiving: "**This is a matter that should be approached with a great degree of caution**. It does not necessarily follow that because a judge has been overruled on a number of occasions that the judge has not acted in a competent or professional manner. It is however reasonable that a judge who has an unduly high number of cases overruled might have his or her competence called into question. **Nevertheless, any final decision would have to be made on the basis of an actual assessment of the cases concerned and not on the basis of a smile counting of the numbers of cases which had been overruled**."[8] The High Judicial Council did not take this into consideration, or perhaps better said, the public was not informed with the results of the evaluation of qualification of the reappointed and non-appointed judges.

When dealing with the competence, which the Decision on the criteria and standards ... defined as "skills which enable efficient application of specific legal knowledge in resolving court cases" (article 1), this criterion could not be degraded to examining only the number of closed cases and the ratio of that number to the orientation norm. The Venice Commission also warned about this subject matter: "With respect to the workload of the judge concerned, where he or she has concluded a lesser number of cases than required by the orientation norm or where criminal cases have had to be abandoned due to delays for which the judge is responsible, there are matters to be considered**.** It is important, once again, that **the actual cases be evaluated. It cannot be ruled out that some judges may be given more difficult cases than others as a result of which their workload appears to be less than that of their colleagues**".[9]

With respect to the worthiness of the judges, that is a parameter that is least of all defined, and as such most susceptible to abuse in interpretation. That is, in fact, a legal standard, which is in the Decision on criteria and standards... better defined in the following manner: "Worthiness encompasses moral traits which a judge should possess and adhere to in their conduct".[10] Correct, but fairly vague defining of this criteria, is more precise in the Decision: "Moral traits which make a judge worthy of this function are: honesty, conscientiousness, objectivity, dignity, perseverance and exemplarity."[11] These characteristics are not quantitatively measurable. It was necessary to become familiar with the personality of the candidate, at least based on verbal exchanges. But there were no exchanges.

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[7] See: Opinion on the Draft Criteria and Standards for the Elections of Judges and Court Presidents of Serbia, **No. 528/2009, CDL-AD(2009)023**.

[8] Opinion on the Draft Criteria and Standards for the Elections of Judges and Court Presidents of Serbia, **No. 528/2009, CDL-AD(2009)023**, p. 6.

[9] Opinion on the Draft Criteria and Standards for the Elections of Judges and Court Presidents of Serbia, **No. 528/2009, CDL-AD(2009)023**, p. 7.

[10] Article 7 of the Decision on establishing the criteria and standards for the evaluation of the qualification, competence and worthiness from 2009 ("Official Gazette RS" No. 49/2009).

[11] Article 8 Alinea 1 of the Decision on establishing the criteria and standards for the evaluation of the qualification, competence and worthiness ("Official Gazette RS" No. 49/2009).

According to the Decision on criteria and standards..., a legal presumption was established on the worthiness of the former judges. The responsibility of proving that certain judges are not worthy of the function was in the hands of the High Judicial Council, which did not offer any evidence in terms of rebutting this presumption in certain cases. It seems that the High Judicial Council applied not only the defined criterion, but the unwritten ones as well.[12] The Judges' Association of Serbia claimed and proved that amongst the unwritten conditions for being appointed a judge was, for example, one that the candidates' spouse cannot be an attorney. Notwithstanding, at first glance it may seem logical and "anti-corruptive", that condition was not announced in advance, instead it was revealed after the competition was over. The rules were changed during the "game". Hence, a candidate was appointed and he had died, two judges were appointed into two spots at two different courts, one person was simultaneously appointed as both a judge and a prosecutor, with at least three members of the High Judicial Council a conflict of interest was found, etc.[13]

It remained unknown and vague as to the criterion the High Judicial Council used to establish which candidates were worthy of the judicial function, and which were not (that pertains to other criterion as well). If in fact it is true that resources of security services were utilized, or perhaps more realistic, that political parties had their own lists of fitting and unfitting candidates, that is an argument that is most supportive of the claim that the general reappointment of judges was a combination of political lustration (with respect to the un-appointed candidates (judges) and political appointment (with respect to the appointed ones). The damage was withstood by both the appointed and those who were not, alike. The latter, were removed not knowing the concrete reasons. The former, were under the "veil of doubt" that they were elected due to their political suitability - enough to create an awareness that they too can in the future be subject to "political" re-elections. *Therefore, one of the effects of lustration 'a la Serbien' is not only the removal (then later return) of judges who did not know the reasons they were not reappointed, but also the appointment of judge who did not know why they were selected and appointed - for the qualification, competence and worthiness or the judgement that they were 'politically suitable'.*

Already, halfway through 2010 it was identified that the reform of the judicial system was moving in the wrong direction. The European Commission, in their Report on the Progress in Serbia in 2010 states the following:

"Serbia made little progress towards further bringing its judicial system into line with European standards, which is a key priority of the European Partnership...

The reappointment procedure for all judges and prosecutors was carried out under the lead of the Ministry of Justice in the second half of 2009 and took effect as of January 2010. The overall number of judges and prosecutors was reduced by 20–25%. More than 800 judges were not reappointed, out of previously around 3.000 judges and misdemeanour judges...

However, major aspects of the recent reforms are a matter of serious concern. The reappointment procedure for judges and prosecutors was carried out in a non-transparent way, putting at risk the principle of the independence of the judiciary. The bodies responsible for this exercise, the High Judicial Council and the State Prosecutorial Council, acted in a transitory composition, which neglected adequate representation of the profession and created a high risk of political influence. In addition, not all members had been appointed to

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[12] Vesna Rakic – Vodinelic, "Reforma pravosuđa u Srbiji", *Sveske za javno pravo* (*Blätter für Öffentliches Recht*), Sarajevo, 9/2012, p. 16.

[13] *Ibidem*, p. 16.

either of the councils. Objective criteria for reappointment, which had been developed in close cooperation with the Council of Europe's Venice Commission, were not applied. Judges and prosecutors were not heard during the procedure and did not receive adequate explanations for the decisions. First-time candidates (876 judges and 88 deputy prosecutors) were appointed without conducting interviews or applying merit-based criteria. The overall number of judges and prosecutors was not calculated in a reliable way and adjusted several times after the re- appointment had already been carried out. The right to appeal for non re-appointed judges was limited to recourse to the Constitutional Court, which does not have the capacity to fully review the decisions. Out of more than 1,500 appeals, only one case has been dealt with. In this case, the Constitutional Court, for procedural reasons, annulled the initial decision.

Overall, Serbia's judicial system only partially meets its priorities. There are serious concerns over the way recent reforms were implemented, in particular the reappointment of judges and prosecutors."[14]

An immediate reaction followed by the bearers of the judicial reforms. In an urgent proceedings, at the end of 2010, amendments to the Law on Judges were passed. The main change was converting of appeals submitted by the un-appointed judges to the Constitutional Court (a total of 837) into objections which were to be decided upon by a body that had in the first degree decided upon the re(appointment) of judges, the High Judicial Council. With these legal changes, a constitutional means (an appeal to the Constitutional Court for cessation of judicial function) was converted to a legal resource - appeal to the permanent membership (appointed members) of the High Judicial Council. With respect to the permanent membership of the High Judicial Council , it was a "cosmetic change": all of the most accountable members up until that point remained as members of this body. The Law was applied retroactively (the Constitution states: "...only certain legal provisions can have a retroactive effect, in cases where the general interest is established at the time of the laws' passing"). The retroactivity of this law extended to another bylaw. The Law foresaw that the permanent members of the High Judicial Council would assess the decisions on the re-appointment of judges in accordance with the criterion and standards for evaluating the qualification, competence and worthiness, which are yet to be established by this particular body. Those criteria should have been established by the permanent membership within 15 days of the election of the members from the circle of judges. That meant that the permanent members of the High Judicial Council would decide on the re-appointment (i.e. appeals of those not re-appointed) based on different criterion then those used in 2009.

In March, 2011, the permanent members of the High Judicial Council were appointed. Hearings are scheduled, however shortly thereafter the beginners "enthusiasm" that the reforms shall be properly concluded, the High Judicial Council loses two members from the ranks of judges (one was arrested and the other tendered his resignation), and finally, at the end of the year, ceases decision-making due to lack of quorum. In January 2012, the Parliamentary Assembly of the Council of Europe adopted the Resolution on Serbia (no. 1858) in which it calls the High Judicial Council to complete the process of reappointment of judges and prosecutors in accordance with objective, uncontested, transparent criterion, and the European standards. In May of 2012, the High Judicial Council concludes the review of objections, by way of which a precedent was formed for submitting appeals to the Constitutional Court. At that time elections took place, and the holders of governmental power changed with the Parliamentary and Presidential elections that took place. This change in "political winds" facilitated the work of the Constitutional Court, which in July and then in October, approved all appeals of the judges that were not re-appointed. Based on

[14] European Commission, Brussels, 9 November 2010, SEC(2010) 1330, Serbia 2010 Progress Report, pp. 10 – 11.

those decisions, which were made in "two sittings", all of the judges whose appointment had ceased were returned to work. Since then, more effort is being put into "mend" the negative consequences of reform.[15] In that spirit, a new National Judicial Reform Strategy was adopted in July 2012.[16]

Concluding Remarks

The process of so-called reform of the judiciary in Serbia has all elements of political lustration of judges, *which is in fact the antipode of true (legal) lustration*. It was implemented by a illegitimate and illegally constituted body on two occasions (the temporary and permanent membership of the High Judicial Council), facilitated by the highest state bodies, including the Constitutional Court; it was a secret process in which the valuation of a judges work was executed based on nominal criterion and standards of qualification, competence and worthiness, but in fact, based on arbitrary, political estimates; it was a form of effectuating collective responsibility, instead of individual.

Was the general reappointment of judges only a form of political lustration? It was initiated by applying the principle: "all judges get out of the court", but it cannot be reduced to corrupted lustration. The result of the general re-appointment shows that many judges were not "lustrated", even though at the time of the great election heist in 1996 they had seriously violated the rights of their people. Also, certain judges who were held in high esteem in the state were not reappointed. Such results best reflect the fact that the bearers of the judicial reform did not have as their goal to lustrate the undignified judges. On the contrary, they were "in search of politically submissive judges".[17] Therefore, *the general reappointment of judges*, as a key segment of the so-called judicial reform process, *was an act of political subjugation of the judicial power under that of the executive power without the precedent* since the constitution of parliamentary democracy with the Constitution from 1990.

It is not, however, *realistic to expect that the negative experience of the general reappointment of judges could reaffirm the idea of lustration in Serbia*. The Serbian constitutional order is like a mixed "cocktail" with elements of democracy and authoritarianism as well as the institutional and non-institutional. "Democratic" and "institutional", slow and laborious, but nevertheless stringently is dominating over the "authoritarian" and "non-institutional".

On a normative plan, in the next couple of years amendments should be expected to the provisions of the Constitution which pertain to the judiciary. Key elements of that reform would be: 1) minimalization of the influence of political powers on the election of judges and their dismissal; 2) establishment of an authoritative High Judicial Council, that has the capacity to be an institutional guarantor of an independent and self-supporting judiciary; 3) reaffirmation of principles of the permanence of the judicial function in two basic ways: a) eliminating the first appointment of judges for a certain period of time (i.e. trial mandate); b) reverting the grounds for dismissing judges from their function from the law to the Constitution. Also, evaluation system for the work of judges should be put into effect. A normative step was made in adopting the Regulations on the criterion, measures, procedures and bodies for evaluating the work of the judges and presidents of the courts

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[15] For more details on the decisions of the Constitutional Court of Serbia, see: Đorđe Markovic, "Doprinos Visokog saveta sudstva (ne)zavisnosti pravosuđa u Republici Srbiji", *Sveske za javno pravo* (*Blätter für Öffentliches Recht*), Sarajevo, 16/2014, pp. 50 – 52.

[16] The National Judicial Reform Strategy, adopted by the National Assembly on the session held on July 1st, 2013.

[17] Vesna Rakic – Vodinelic, *op.cit.*, p. 21.

from 2014.[18] It was said that the "existing system for evaluating judges in the Republic of Serbia, is aimed at implementing the politics of career development for judges, and not the implementation of repressive measures and punishment for unsuccessful execution of the judicial role".[19]

From the perspective of political and legal reality, for normative reforms to have any significance, it is important to further develop the constitutional culture which relies on constitutional morals as the consciousness of all, not only those with political power, also on the respect for constitutional values (for example, the independence of the judiciary). Political accountability of the actors behind the judicial reform was effectuated at election time. They are no longer in power. It would be good if their legal responsibility would be effectuated by way of a legal procedure, which must be individualized, and founded on the assumption of innocence and the right to be heard what and how they have done. Whether, that would be a process of lustration or some other legal format, is less important, but its implementation would mean strengthening of awareness of the fact that "only law can be our weapon against unlawfulness".[20] That remains as a question which raises fears as to whether the practice of "lustration a la serbien" could continue.

[18] The Regulations on the criteria, standards, procedures and bodies for evaluating the work of the judges and presidents of the courts, "Official Gazette" no. 81/2014.

[19] Smilja Spasojevic, "Vrednovanje rada sudija u Republici Srbiji", *Sveske za javno pravo* (*Blätter für Öffentliches Recht*), Sarajevo, no. 19/2014, p. 56.

[20] Đorđe Markovic, *op.cit*., p. 54.