

Highlight 2. Blueprint for the (Near) Future: Functional State Administration as a Condition for Establishing the Rule of Law in Serbia

Dr. Kori Udovički¹

The fall of the canopy in Novi Sad brought to the fore the topic of responsibility and the rule of law in Serbia. The focus of the society is precisely on the judicial system, because it is the one that is currently failing - it is not investigating the financial circumstances that most likely played a key role in the unprofessional and irresponsible reconstruction of the train station, and it is not bringing to justice the persons ultimately responsible.

The legal and fair operation of the judicial system is the foundation of the rule of law. It primarily deters, and ultimately punishes any illegal behaviour, whether it is the protection of human rights or people's work in the articulation of the socio-economic system.

However, here I want to draw attention to an additional, if not deeper, certainly more complex problem in the management of social and economic flows in Serbia. This problem will be a key and difficult challenge in any attempt to free Serbia from partocracy as a special form of state management that characterises it. And partocracy is characterised by the absence of the rule of law by definition. Please note that this text is not a scientific study, but a description of experience based on which I invite experts and practitioners to address this topic in preparation for establishing a better state.

It is about the fact that in the administrative system of Serbia, the division (assignment) of responsibilities for the tasks (decisions) it performs (makes) is often not clear, or their performance is not possible in realistic conditions. If the responsibility for doing a job or making a decision is not clearly defined, it is not clear what is right or just. In that case, not even the fairest and most disciplined justice system can help to perform that job (make a decision) correctly and fairly.

Take, for example, a small part of the responsibility of a local self-government. It's job is to manage the agricultural land in its territory. However, LGUs must submit plans for the use of this land to the Ministry of Agriculture for approval. At the very least, it is an additional step that takes time and hinders the work of LGUs, because the opinions of the ministry do not come promptly. But the essential question is - who is then responsible for the management of agricultural

land in Serbia? The alleged reason for this intervention is that the republic owns all agricultural land in Serbia. But normal property relations would regulate these powers differently. On the other hand, responsibility may sometimes be clearly assigned, but the organisation of parts of the system or how equipped it is such that it is not possible to perform the work as prescribed.

In such cases, the judicial system can only be drawn into a labyrinth of shifting and sharing of responsibility from which it is either impossible to get out, or it is possible to get out in several reasonable ways, none of which has a clear legal basis.

Partocracy

Before I explain what this has to do with partocracy, I will clarify that in Serbia I define partocracy as a system characterised by two forms of thwarting democracy. One form concerns the legislative system that is well known and considered by the Serbian public. It is about the fact that due to the proportional election system (but also centralised parties), once the elections are over, the individual parties in the assembly of the republic act monolithically and often represent their own interests more than the interests of the citizens who elected them.

But here, I am dealing with another form of thwarting democracy. It is about the fact that the party in power in Serbia, as a rule, can use informal channels to replace and frustrate the legally valid process of institutional work, or it can "override" (i.e. cancel and replace) decisions already made by that system. They can also leave the formal legal process untouched, whereby the subjects of the institutions act as puppets. Then the essence, the purpose of institutions is thwarted - which is that its subjects decide in accordance with some rules or guidelines. It is crucial here that we are talking about informal channels of influence. Because if the channels of influence were formal, then we would be talking about a normal democratic (or usual autocratic) system of government in which the elected (or imposed) party in power gives political guidelines for the work of the administration. (In both of these cases it is possible, but not necessary, that it is a rule of law).

During the reign of the current regime, this aspect of partocracy manifests itself as the fact that the President of the Republic selectively replaces state institutions in decision-making (through informal channels), and at the same time uses arbitrary criteria both in the selection of decision-making areas and in the matter of the content of decisions. His personal power has become so great that it even slows down or paralyses the work of institutions when they do not receive clear guidelines for their work. However, the key function that gives

¹ CEVES President and Director

him that power is the leadership of the party in power, even if it is – at the moment – informal.

Dysfunctional Administration and Its Roots

However, partocracy and its symbiosis with a dysfunctional administrative system have their roots in the self-governing socialist Yugoslavia (at least since 1974). Namely, the Communist Party actually ruled the country informally, because the formal administrative institutional system imitated self-governance. The system ensured broad participation, and the state was legal, in the sense that officials and courts followed regulations. But the regulations were such that they did not leave the essence of decision-making to the system lightly. The essence of policies, the goals of measures and regulations, were decided by the Communist Party.

So what is the point here? Perhaps it is already clear to the reader. A system that organises tasks in a fragmented way, that does not assign either clear responsibility, or clear authority to complete a task, that often does not assign the resources for someone to do all the tasks assigned to him (nor the criteria to choose what the priorities are) – such a system cannot function. This system was formed in such a dysfunctional way over time, because it developed with and under the informal leadership of someone outside the system who “moved the strings”, defined priorities and the ultimate goal of action. But now, as it is – it needs puppet intervention in order to function.

It is important to note that although a number of responsibilities and jobs were fundamentally changed since the era of Yugoslavia, the aforementioned fragmentation and blurring of responsibilities continued afterwards for several reasons. In particular, great ambiguities and conflicts between responsibilities were created by the adoption of the Law on Assets Owned by the Republic of Serbia in 1996. It essentially carried out the “expropriation” of the property of local self-governments and public enterprises. That law was not repealed by the new government in the 2000s, but the Law on Public Property (2011) was adopted, which transferred the burden of proving ownership rights over expropriated property to LGUs. This is one of the reasons why the Government of Serbia still regularly considers about seventy items on the agenda, among which the vast majority are decisions on the disposal of marginal funds.

The system was not reformed/redesigned after October 5 because then we acted according to the models that our eastern neighbours had passed – and here we are talking about the specificity of post-Yugoslav societies. The problem has many aspects. Two have already been

mentioned, and both place a particular burden on the relations between LGUs and the Republic. Jobs are fragmented between several institutions or organisational units, and the republic has a particularly frequent habit of “assigning” jobs to LGUs without assigning them the source of funds from which they will perform them. Therefore, LGUs in Serbia have a significantly more limited degree of de facto autonomy than would be expected from the Constitution and key regulations.

Another, special aspect of the problem is that responsibility, when it does exist, usually exists for doing work, not for achieving a certain result. In other words, the administrative culture is distinctly and unusually prescriptive. Regulations and procedures describe in detail the operational steps used to perform tasks, evaluate criteria and the like – instead of introducing, at least to some extent, the purpose, goal, and desired outcome of the assigned action. In this sense, the attitude of the Serbian administration towards the collection and processing of data is interesting. As a rule, officials collect data from their areas by “receiving” data, and then process it automatically, even when the accepted processing methodology is meaningless. For example, the Institute of Public Health collects data submitted by hospitals, but if in some months some hospitals do not submit data, they are treated as zero submissions. This means that they consider it their job, i.e. responsibility to “collect data” rather than provide data for monitoring trends in public health.

And this aspect is essentially a holdover from the time of Yugoslavia, when the prescription of actions ensured that “self-governance” did not go beyond the desired limits. And it worsened in the transitional decades because such regulations protect the administration from voluntarism in political behaviour and possible persecution. The less space there is for reasoning and reasonable interpretation of a regulation, the less space there is for decision-making under political pressure. Unfortunately, in that case there is also less room for reasonable policy direction.

The job of correcting these problems will be painstaking, but not impossible. The most important thing is to analyse and work out the problems in more detail, and then create a consensus on the principles on which their solution must be based. The key to establishing a responsible and professional state administration is not (only) their difficult removal from office, but also the existence of awareness in the public, the expectation that they must work professionally, legally and fairly – but also using reasonable judgment. This requires a systematic “redesign” of the administrative decision-making system, which it has never been subjected to with that goal in mind.