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THE DEFICIT OF TRUST IN LAW INSTITUTIONS – BETWEEN PROBLEM AND DECISION

The research done by the World Values Survey and the European Value Study surveys outlines a social phenomenon that is common for almost all Central and East European countries – *the lack of trust in the existing legal system* (Delhey, J. K. Newton (2003). Who trusts? The origins of social trust in seven societies, European Societies, 5 (2), 93- 137).

What explanations can be given for that phenomenon?

Generally the answers and the explanations to this paradox are looked for in several

1. The obvious inefficiency of the law regulations and the legal institutions is explained with personal deficiencies i.e. the system problems are understood, confined and qualified as personal guilt and personal responsibility.

2. The efficiency, authority and trust in the law and the legal institutions are understood as function of the quality of the formal legal techniques. This technocratic approach is dominating in the context of the European integration and the solutions it proposes are misleadingly simple – all boils down to an adequate reception and adaptation of the respective European models and regulations.

3. The efficiency, authority and trust in law and the legal institutions are also understood as function of the increase of the “administrative capacity” of the law-adopting and law-implementing institutions. These explanations are standing very close to the previous ones i.e. they take the institutions as self-sufficient autonomous instruments indifferent and independent from the social context. At the same time they treat the law only as a normative continuation of a concrete organizational infrastructure.

4. And last but not least the very low level of trust in the legal system is often explained with the existence of a special anti-legalist mentality typical for some of the post – communist societies and mostly for Russia and the Balkan countries. It is obvious that when the researcher fails to capture the structural and historical factors, whose logic and specific features can provide resource for explanation of the outlined phenomenon, then he is apt for presenting the social psychology and the “enigmatic” Russian (or Bulgarian, or Serbian, etc.) soul as an universal and suitable explanation for all discovered discrepancies between the already articulated “Western” social model and the societies in Eastern and South – Eastern Europe. We are quick in stating that the specific cultural “accumulations”, the historical tradition and the existence of a specific national, group or other mentality cannot be easily disregarded in the name of universalistic institutional and structural explanations. But on the other hand, the apprehension of the psychological and/or

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cultural factor as the sole and universal explanatory model cannot be supported.

In fact most of these schematically given explanations for the low level of trust and authority of the legal regulator are stemming off from the understanding of the law as a formal normative system – a corps of legislation that is autonomous and self-explanatory. In other words, they extrapolate a historically produced phenomenon – the one of the modern law and its institutions - as a universal one. In this way the historical genesis of the modern law remains hidden as well as the social logic that has led to the domination of the juridism in Western Europe and North America. From there this domination is preexposed and started to be understood as the "natural" role of the law in many paradigms of rule of law and the constitutional state (Dezalay and Garth, 1997; Hayek, A.F.v., 1973, 1976, 1979; Gordon, R.W. 1983 – 1984; Commons, J., 1924; Berman, H.J., 1983). In this sense the "supremacy of law" has turned into an ideological postulate rather than remaining a true explanatory principle for the place of law in most of the post – socialist societies.

In the present research we start from the assumption that the adequate explanation for the level of authority and trust in the legal regulator in the post-socialist societies has to be based on the fundamental objective and methodological prerequisite of the social character and origin of the law. If we agree with this then the legal system cannot serve as an explanation to itself out and away from the social context whose product it in fact is. Therefore the dominating technocratic or juridico-positivistic approaches in analyzing the place and role of the law in Central and Eastern Europe do not take into account the social essence of their subject and the historical origin of the separate regulative institutes. When describing this historical origin several fundamental circumstances have to be taken into consideration.

The first group of circumstances is associated with the common totalitarian past of the majority of the Central- and Eastern European societies, which comes to show that there are some common grounds for the genesis and peculiarities of the legal regulator which can be understood and explained by the specificity's of the so-called "real socialism". That is, the understanding of the common features of the socialism in Central and Eastern Europe is a key to the understanding of the role and the special place of the law in these societies. Some of these common features are the dominating role of the state – understood as centralized conducting administration, the instrumentalization of the law and its confinement to a technical means of political legitimization. At the same time the specific symbiosis between legal and party regulation of the social processes should not be disregarded. This comes to say that the socialist societies (states) in Central and Eastern Europe were not lawless. But their "lawfulness" was quite peculiar, subjected and inferior to the logic of the complete party-state control. That is why the very low level of trust in the legal system in most post-socialist societies can be treated as a historical heritage of this etatist profile of the legal regulation.

The second group of circumstances is based on the assumption that the common totalitarian past does not predetermine a common present – i.e. there is no social unification of the societies in Central and Eastern Europe. It is obvious that although Central and Eastern Europe "enjoyed" living in the common socialist system, it only concealed the profound historical, social, cultural and political differences between the different societies. And because they were only suppressed and "hidden" but not eliminated by the impact of outside factors, it was shortly after the Soviet block collapsed that the differences between the Central European states, the South–East European and the former Soviet republics were revealed. And because these differences are historically predetermined and inherent to each separate society subjected to analysis, the researcher has to analyze them in order to be able to explain the place of the legal regulator and its strength in every society (state). Indeed the low level of trust in the legal system is a common phenomenon for all

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post – socialist states, but this can be a result of entirely different factors.

Therefore, the research of the level of trust in the legal system and the authority of the legal regulator in Central and Eastern Europe has to be preceded by analysis, outlining and comparison between the common features as well as the differences in the cultural and structural profiles of the post-socialist societies. This would necessitate the performance of a comparative socio–historical analysis focused on:

- historical genesis, contemporary role and place of the law and the law institutions in the Central European countries - Poland, the Check republic, Slovakia, Hungary;

- historical genesis, contemporary role and place of the law and the law institutions in the post-Soviet countries – Russia, Ukraine, Buelorussia;

- historical genesis, contemporary role and place of the law and the law institutions in the Eastern European states – Bulgaria, the former Yugoslavian republics, Romania.

The last decade was marked by tremendous social change for the former Soviet Union and the other Eastern European countries: apart from the unbelievable fact that the USSR ceased to exist as an integral state, almost everywhere in the former Soviet zone the single-party monopoly was abolished and replaced by a pluralist, multi-party political and parliamentary system; the economy passed through privatization and in the majority of the countries now dominant is the private sector in the economy. In view of the integration with the European Union of the majority of the former Soviet satellites, a large-scale reception of the European legal acts and regulations is under way. However, the more this process unfolds, the more evident a very acute social problem becomes – *the formal establishment of the institutions of the political democracy and of the market economy does not at all guarantee real functioning of the political democracy and the market economy.*

However, a belief persists (especially in the specialized legal and politological literature) that the very fact of adoption of a new legislation by means of direct reception of ready-made models from the western democracies is entirely sufficient for the reproduction, through the legal mechanisms only, of their social practices. And should it become clear that there are problems in the implementation and social functioning of the "imported" legal acts, this fact is either neglected or an outcome is sought by either increasing of the administrative capacity of the legislative and/or law-implementing

institutions, or by allocating more financial resource that would secure "breath of life" of the legal regulations.

Thus the problem with the real efficiency and social functioning of the legislation is tackled on a purely technocrat-administrative and financial-organizational plane, without any desire to discover whether there are any fundamental social reasons for such "malfunctioning". In my opinion such an approach (no matter how widely adopted) cannot be accepted for it does not give an argumented explanation to the problems we see. Moreover – whether deliberately or not – the adoption of this approach hinders the way towards a true diagnostics of the existing social contradictions and is unable to offer alternative strategies to overcome them.

Indeed, beyond the many national peculiarities, there exists a rather stable social configuration that adds to the social inefficiency of the legal system in most former socialist countries.

In the first place there is the new party-political elite which in all Eastern European countries has a serious problems with its true social representation. To put it in other words – very often the group interests, which this elite indeed represents cannot be openly manifested and those which are manifested openly are not their real interests. In this sense it will be wrong to justify that there is transparency of the political representation and a real interest of this

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representation in the existence of efficient legislative regulations.

Secondly, the economic elite which emerged in the last decade is founded mainly on the basis of distribution and re-distribution of the state property in the economy, which often is done on the edge (or even beyond the edge) of the law. While this process is unfolding the elite members have no interest in a really functioning, stable and what is most important – foreseeable legal system.

In the third place, the law-creating and law-protecting state authorities – the prosecution, the judiciary, the police etc. - were constructed in an entirely different social media: of centralized state control and state interference in all spheres of social life. Placed in the new conditions they are objectively unable to regulate the ever growing and developing civil and commercial transactions and the drastic boom of criminal activities, some of which are completely novel as a form, nature and appearance (e.g. terrorism, racketeering, tax and banking fraud etc.)

In the fourth place, despite the existence of a big number of civil organizations that function in different spheres, the majority of them lack sufficient resource and are not participating in the formulation and adoption of substantial executive and legislative models as well as in monitoring of their implementation.

As a result of the above the following problematic situation can be outlined: the legislation and the implementation of the legal acts in most of former communist countries are not a function of the existence of true fundamental social interests, different from the interests of the ruling political elite, which seek their realization through parliamentary representation. And the ruling elite has no interest in a stable and foreseeable legal system. This, in turn, logically leads to the lack of empathy of the addressees of the legal acts to the legislation and from there – to its practical inefficiency as a social regulator.

The social unauthenticity of the legal institutions and of the legislation is further strengthened by the fact that a considerable part of it (above 50 %) is a result of a direct reception of the common law of the EU. This secondary mass process of imposing of an external legal model confronts a multi-sided opposition. One is from the side of the state administration that is bound to implement it but neither has the knowledge, nor the tradition to do so. Secondly – the opposition is coming from social groups for whom the legal regulations of the EU are contradictory to their interest. This dynamic complex of structural reasons, supplemented by the profound crisis in the judicial system and the very low level of legitimacy of the representative law-adopting institutions results directly into the almost complete absence of trust in the law institutions and the legal regulations produced by them. This deficit of trust finds solid grounds in the existing mass anti-legalist culture. The social amalgam produced by this process creates the very low level of social efficiency of the law as a social regulator.

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