

UDK 316.334.4(497.7)

ORIGINAL SCIENTIFIC ARTICLE

THE TRAUMATIZING POLITICS OF TRANSITIONAL JUSTICE POLICIES: THE MACEDONIAN CASE OF LUSTRATION¹

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Abstract This contribution analyzes the political aspects of the ways in which the Republic of Macedonia deals with some traumatic fragments of its history. The main object of analysis are the measures (policies) undertaken by the state aimed at dealing with the effects of traumatic experiences of Macedonian citizens from the communist persecutions (during the communist period and immediately after the independence).

The analysis argues that, by politicizing certain limited traumatic experiences, the political circles traumatize transitional justice policies. They transpose individual and generational traumatic experiences into collective and memorable trauma. Thus, instead of a politics of truth and forgiveness (without forgetting) in the name of building a common future, transitional justice works as a politics of retaliation, i.e. as politics of fear, of a possible unforeseen future of approved and unpunished violence.

Theoretically, this interpretation of the Macedonian transitional justice relies on the political-sociological concept of trauma. According to this concept, for understanding the trauma and especially the traumatic syndrome, the trust in the institutions of power is of crucial importance, and in this case, in the institutions of political power of the Republic of Macedonia.

Seen from this perspective, the policies for dealing with traumatic experiences and the subsequent transitional justice appear mainly as issues of the political unity in the Republic of Macedonia.

Key words: collective trauma, politics of trauma, transitional justice, truth establishment, Macedonian lustration

¹ Paper presented at International Scientific Conference *Facing Social Traumas: A Challenge for Sociological Research*, Faculty of Philosophy – Skopje, Ss. Cyril and Methodius University in Skopje, Skopje 23-24 April 2015.

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INTRODUCTION

In the last two and a half decades, the Macedonian society has been affected by another aspect of transition – the transitional justice. Through the phenomenon of transitional justice, the social transition appears as a truly total social phenomenon. No sphere of the social reproduction of human life is without a proper transitional story. Not only does the transition affect all spheres of social life, including, of course, justice, but it also takes an unexpected and unbearably long duration - a real 'horror without end'. In that sense, while in the earlier reflections about social change, the transition was described as a dynamic feature of some societies, from today's perspective it seems more feasible to determine it as a structural characteristic. The transition not only of Macedonian society, but also of a growing number other societies, seems to be a permanent, structural feature, and not a temporary condition, or phase of the social change. Therefore, instead of a society in transition, it is more feasible to talk about a transitional society, such a type of society whose main characteristic is that it is searching constantly for stability, law and order, a society where everything is temporary and transitional.

This is especially true for the Macedonian as well as for the other post-communist societies. In the time before the current transition from communism to democracy, capitalism, etc., these societies were discussing for a long time the historic nature and character of the new social system established after the takeover of the state by the communist party. The orthodox Marxist interpretations argued that socialism is only a transitional, transitory, condition or stage of movement, shifting those societies from capitalism to communism. The other option was that socialism is a special social combination. But in both variants the key feature of socialism was the dictatorship of the proletariat, established in reality as dictatorship of the Communist Party, i.e. as a socialist democracy.

That transitional condition produced by the dictatorship of the Communist Party has changed into a new transitional situation which is produced by ethno-national dictatorship, dictatorship implemented by illiberal ethno-nationalist parties, or illiberal democracy. The subject matter of the present analysis are the measures (policies, in English), processes, mechanisms of post-communist, or decommunization of, transitional justice implemented in the country.

At the time of writing this contribution to the conference, I found that Macedonian society went through two transitions and implemented two transitional justices. The first is the post-communist one or decommunization and the second is the post-conflict one or demilitarization. Formally, as examples of

transitional justice, both are aimed at tackling the effects of past massive traumatic experiences of Macedonian citizens (in the first case dealing with traumatic experiences from communist persecution during communism and immediately after independence, and in the latter case with traumatic experiences of the armed conflict in 2001). But the most recent proposals for amnesty announce the probability of a third transitional justice! It remains to be seen if it comes into existence and is given a name.

Our contribution elaborates on the thesis that the illiberal political elites, by undertaking certain measures and mechanisms, and in particular in the manner of implementing such measures, collectivize certain limited and individual and generational traumatic experiences and transpose them into collective and unforgettable traumas, embedded in the collective memory of sectarian collectivities.

Methodologically, the analysis is performed as a critical comparative evaluation of the political aspects of processes and mechanisms of the Macedonian transitional justice. The normative model of transitional justice policy developed by the United Nations is used as the basis for evaluation.³ In this direction, the contribution defines first the concepts of transitional justice and collective trauma, and then presents the main elements of the process of traumatization of transitional justice in the country

1. The transition and dealing with traumatic experiences

1.1. Transitional Justice

Those familiar with the history of transitional justice generally agree on the following things: that the initial promotion of the notion of transitional justice happens in the late 1980s and early 1990s; that the term 'transitional justice' was coined in the mid-1990s (Clara Sandoval Villalba 2011: 2); that it is associated with the political transition after the fall of authoritarian regimes in Latin America, Africa and Asia; and that the content of it was structured around several major themes related to the transition. According to Clara Sandoval Villalba (2011: 2), "The term 'transitional justice' was coined in 1995 thanks to the publication of the book *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, edited by Neil J. Kritz. According to Paige, the term was conceived before the publication of this book. He attributes the

³ Among the most important documents are: *The rule of law and transitional justice in conflict and post-conflict societies- Report of the Secretary-General*, UN Security Council 2004 S/2004/616; and the *Guidance Note of the Secretary-General - United Nations Approach to Transitional Justice*, March 2010.

authorship to several authors, but the most significant amongst them stands Ruti Teitel, who herself claims to be the author of the term. Paige finds other even earlier uses of the term simultaneously with Teitel. According to him, the philosopher Milton Fisk used this phrase in 1989 in a discussion of the transition to socialism. (Paige 2009: 330).

Paige suggests another aspect of the notion of transitional justice, which is more important than the issue of the origin of the term. According to him, the emergence of transitional justice coincides with the period of transition of a society from one state to another, from one arrangement to another. Therefore, his argument that the definition of transitional justice is strongly related to the understanding and the definition of the transition seems logical. He shows that conceptual modeling and the very naming of the field called transitional justice 'is conditioned by a certain way of understanding the transition', that the knowledge about what is meant by transition helps to understand what is considered to be an appropriate measure of justice. That also explains why measures such as criminal prosecutions, truth establishment, restitution and reform of unfair state institutions - and not some other measures of justice, such as those related to distributive justice - had been recognized as legitimate demands for justice in time of political change (Paige 2009: 325)

The initial definition of transitional justice is a result of the liberal understanding of the transition - in terms of a political transition (from an authoritarian regime or dictatorship) to a democracy. Such initially liberal conceptual frameworks was widened, and updated, but not radically changed after the fall of the totalitarian regimes of the Communist kind in Eastern and Central Europe and after the end of armed conflicts or wars. Consequently, later on, the transitional justice was defined under the influence of differently - primarily peace and socio-economically - inspired interpretations of the social transition. In this sense, according to one very general definition, 'transitional justice' is an 'umbrella' term used to cover different "approaches dealing with the past after the end of a violent conflict or dictatorial regime" (Buckley-Zistel et. all. 2013: 1). Bearing in mind this broad definition, transitional justice is defined as a set of measures and mechanisms undertaken in a period of transition, which are aimed at tackling legacies from previous certain systematic violations of human rights during a repressive regime or during a violent conflict.

Legacies of the past or the challenge of coping with them is the point where the term transitional justice converges with the term trauma (collective trauma). Dealing with the past is not simply a matter of punishing the perpetrators of past crimes, but even more importantly a matter of paving the way for the future development of a civilized society. Transitional justice in terms of coping with the past is an answer to the question of how to live together again

with the burden of fear and pain from the past? And it is this moment where the importance of the concepts of collective trauma and trauma politics, comes into being. From a political-sociological perspective, the transitional justice is less about the handling of individual traumatic experiences from human rights violations during armed conflict or authoritarian regimes, and more about reconstruction of processes of collective identity, political unity.

1.2. The collective trauma

The relevance of the notion of trauma for the politics of transitional justice stems from its sociological conceptualization. It starts from the fact that, for example, traumatic experiences of Jews in World War Two have become a collective trauma during the 1960s – meaning, not at the moment when individuals were concretely suffering and despite their huge number.

The sociological concept of trauma developed by Jeffrey Alexander is critical of the naturalistic error upon which rests common sense and the psychoanalytic concepts of trauma. For sociology, the events themselves are not collective trauma. "The trauma is socially mediated attribution and attribution can be done at the same time as when the event takes place, before the event or after the event..." (Alexander 2004: 8). Attribution, construction, imagination are social processes of reconstruction of traumatic experiences, i.e. of traumatization. The process of traumatization consists in constructing a collective trauma through the reconstruction of collective identity. The collective identity and the community are traumatized by shocking and horrible meanings assigned to concrete or imaginary events. It results from activities of the human factor, from successful "imposition of a new system of cultural/political category. This cultural process is strongly influenced by the structures of power and the respective qualifications of reflexive social actors." (Alexander 2004: 9).

Social actors of the process of traumatization have their own political agendas, their own interests, and their own audiences. It depends on their politics, their interests and their goals not only on how a social event will be reconstructed, interpreted and presented – especially through the mass media - but also whether it will ever evolve into a collective trauma. Certainly, people have a number of collective identities, not just one. The collective identity in question here is the one that in modern society, according to international law, functions as a source of justice or the law. Such a collectivity today is the State community or nation (nation state). In our particular case, it is the state of the

Republic of Macedonia.⁴ It is important to emphasize here that from a political-sociological perspective, decisions about justice as well as decisions concerning the collectivities are not made by the collectivity themselves. Collectives do not decide alone. The decisions are made by their agents/representatives. The theory of trauma influenced by Max Weber recognizes them as trauma carrier groups (Degloma 2009). These "groups .., thanks to their speaking and other symbolically communicative capacities and positions imagine the meanings of potentially traumatizing events or that ... broadcast symbolic representations – characterizations – of actual social events, past, current and future." (Alexander 2004: 11).

These groups have their own ideals and concrete material and other interests and they strongly implant them in the collective identity, in the collective trauma and certainly the in the policy of transitional justice. Among them, the elites (mainly political and cultural) certainly occupy the most prominent place. This is exemplarily illustrated by the knowledge about the main obstacles to reconciliation efforts (national, inter-party or otherwise) in many countries, including the Republic of Macedonia. Such a role of political elites in the traumatization of the transitional justice in Macedonia has been pointed out in numerous media texts, according to which "The political elite is the main factor that hinders the process of reconciliation between the peoples in Macedonia and in the former Yugoslavia" (Beuep 2012).

2. The Transitional Justice of the Republic of Macedonia

Formally and legally speaking, the law on handling records of citizens surveyed by the State Security adopted in 2000⁵ can be considered as the first measure of transitional justice undertaken by the Republic of Macedonia. This measure was nominally aimed at discovering the truth and, basically, was intended to prepare the ground for lustration, which would wait until 2008. Therefore, the Law on special rights of members of the security forces of the Republic and the members of their families and the Amnesty Law adopted by the Parliament in 2002⁶ could be treated as the first practical measure of transitional justice in the country

⁴ This premise does not overlook that in addition to the State there are into the Macedonian society also other strong tendencies to produce justice and law by non-state collectivities - such as certain ethnic, religious or illegal communities.

⁵ Law on on handling records of people kept by the National Security Service, *Official Gazette* no. 52 July 2000.

⁶ Law on special rights of members of the security forces and members of their families, *Official Gazette* no. 2/2002 and no. 17/2003. Amnesty Law, *Official Gazette* 18/2002.

But the law is one thing, and public discourse, i.e. public reflections and construction of social reality and collective trauma, is something else. The first public promotion of the concept of transitional justice in the country occurred several years later, in 2006.⁷ They are, firstly, related to the measures prepared in connection to dealing with the trauma of the Communist past.⁸ The reason for such dating is that the laws and other measures that were undertaken four years earlier (in 2002) in connection to the implementation of the *Ohrid Framework Agreement* were not interpreted and rationalized within the theory and practice of transitional justice. That framework was implemented later in function of the first lustration law.⁹ The presentation of measures oriented towards dealing with the traumatic experiences of the armed conflict from 2001 in public discourse as measures of transitional justice was achieved only ten years later.¹⁰

2.1. Traumatizing the decommunization transitional justice: the effects of lustration

In 2008 the Parliament adopted the first law on lustration. From the perspective of the sociological theory of trauma, the application of this law and later its amendments, and then in 2012 the adoption of the new law appears as a process of traumatization or as creating a collective trauma. In connection to this process, the thesis argues that the traumatic character of the lustration does not stem simply from the controversial nature of the lustration itself as a measure of transitional justice, but from the manner in which the law was applied. The traumatic nature of the process of implementation of the lustration law can be recognized through several key elements. *First*, the politicization of the composition and chairmanship of the Commission on Verification of Facts (nine months until the establishment of the Commission); *Second*, lustration of persons on the basis of data in "collaboration record" and not based on written agreement for cooperation; *Third*, lustration of persons who, in one way or another, had previously criticized or challenged certain policies and decisions of the governing party, not always connected to the lustration (Trendafil Ivanov, Vladimir Milčin);

⁷ According to our search through the electronic archives of three daily newspapers (*Утрински весник*, *Дневник* и *Нова Македонија*) in the period 2006-2015 it emerged in total six times. For the first time it appeared in 2006 in the text of Zvonimir Jankulovski dedicated to lustration.

⁸ In general the discussions on this topic have been articulated by number of academics and journalists. Among the academics this topic most systematically has been treated by Jasna Koteska, Biljana Vankovska, Zvonimir Jankulovski, Mirjana Najchevska Despina Angelovska and others.

⁹ Law on Additional Criteria for Public Office, Official Gazette 14/2008. Formally and legally, as the beginning of transitional justice in Macedonia can be taken either the year 2000 (with the adoption of the Law on handling the files) or the year 2006 when the Assembly adopted the Declaration of apology to the victims of repression by the regime between 1945 and 1990.

¹⁰ In 2010 and 2011 within the framework of regional activities to promote regional coalition for RECOM (Regional Commission for establishing the facts about war crimes and other serious violations of human rights in the territory of the former Socialist Federal Republic of Yugoslavia).

Fourth, selective "establishment of facts" by the Commission by a vote according to party instructions and criteria for truth (re-run of same documents, revote and supplementation of additional documents after denouncing decisions of the Administrative Court, etc.); *Fifth*, the emergence of the so called 'inter-party' or 'street lustration' (finding of 'collaboration records' into private house yards - the case with Professor Shpend Ljushi, reporting records from private archives); *Sixth*, withdrawal of support for the implementation of the lustration law by several initiators of the law on the grounds of its ill implementation (Stojan Andov, Nikola Mladenov, Jadranka Kostova and others); *Seventh*, no execution of decisions of the Constitutional Court in connection to certain articles of the lustration laws or their political bypassing by adopting amendments to the law, and at the end by adopting a new law, but this time without consensus, but by agreement between the parties of the government coalition.

Based on all this, some analysts have concluded that the lustration brings more disputes than reconciliation, that it incites possible future conflicts rather than deals with past injustices. "The ink of the Constitutional Court has not properly dried yet, and the ruling party comes up with a new quick proposal. More restrictive and wider in scope than the previous one, in which the disputed provisions annulled by the constitutional judges again miraculously returned to text. What is the message you are sending? Who cares about the Constitutional Court? Vozi, Misko" (Дувњак 2012). In the process of implementation of the lustration law, the initial consensus on the lustration as a measure of transitional justice was damaged and finally completely disappeared. The consent persisted until the end of 2010 (last time manifested in consensual adoption of the *Declaration on the implementation of lustration in Macedonia*), then it was completely disturbed and disappeared with the new *Law on Additional Criteria for Public Office* from 2012.

With this act, the lustration was no longer constructed as a measure for building trust in the new democratic political institutions of national unity based on the liberal values of individual freedom and rights. Certain sectarian communities and, above all, those of party type, but also some other micro communities within the ruling political parties themselves, based on illiberal values would profit - figuratively and literally - at the expense of national state community. With the weakening of social consent and unity for the lustration measures, they traumatized the social collectivity, and strengthened and mutually antagonized the above-mentioned illiberal party communities. The perceptions and representations of these illiberal communities of the past and the future are imposed on the society in general.

Constructed in this way, the collective trauma that is present in the Macedonian society in recent years is certainly not the only consequence of the

traumatizing nature of the implementation process of lustration. Such effects have also been produced by many other measures of the post-communist transitional justice. The traumatic reduction of national unity to a party of sectarianism is visible in many other measures undertaken in the name and with resources of the state of the Republic of Macedonia. I will mention just some of them: Quasi-scientific reconstruction of national history and its inauguration; Policies of memorization expressed through the laws of memorial monuments and memorials and public holidays; The politics of renaming of streets, institutions, settlements etc. (Дерала и Шонефелд 2014).

The policy of renaming, for example, imposed on inter-State plan which is vehemently condemned by the people and by the State has been easily practiced in internal relations with greater violence and in authoritarian manner. The pressure which comes from outside for a far reaching compromise on the name issue of the nation, is diverted repeatedly by the state leadership and reinforced on the internal opponents. Moreover, the domestic criticism not only of the process of lustration, but also of other internal policies (social, economic, cultural, etc.) has been reconstructed as a continuation of external factors and of course, of the foreign 'security services'. The reaction on traumas streaming from the pressures for renaming the nation is suppressed when it concerns the outsiders, but is increasingly manifested when it concerns the internal opponents. Street names, for example, considered by many as part of their personal and collective (neighborhood) identity were changed, according to strict partisan criteria and by ignoring the views of affected residents and citizens more broadly.

Those measures of transitional justice, and especially the way the lustration has been implemented, come into conflict with some of the basic principles of the model of transitional justice normed by the United Nations: here we have in mind the principle of focusing on the victim, the principle of taking into account the political context and the adoption of measures of transitional justice through a process of broad national consultation and listening to all the different voices, and, above all, it is in conflict with the principle of coordination and harmonization of the measures of transitional justice with the broader – and for the consolidation of democracy more significant – project of rule of law.

The adoption of the new *Law on Additional Criteria for Public Office in 2012* without support from the opposition is the strongest indicator that lustration is introduced less as a measure of transitional justice and more as an instrument of party politics. The traumatizing effects of this change in the objectives of the lustration law arise from its impact on the loss of public trust in the power of social institutions, entrusted with ensuring the values underlying national unity in the Republic Macedonia - undermining the validity and power of the Constitutional court, for example.

All these actions brought fears and mistrust towards the new democratic institutions. Instead of contributing to the strengthening of democratic unity through general trust in the institutions, lustration contributes to arbitrariness and unpredictability of social developments. According to many, the Macedonian society has lost confidence in the lustration (Анжеловска 2013: 61). Lustration, according to Trajanovski, from an instrument of transitional justice is reconstructed as an instrument of injustice. Hence its further application creates more new traumatic experiences rather than treating past traumatic experiences. Despina Angelovska's analysis, for example, reveals that the Macedonian lustration deviates from statutory objectives characteristic of transitional justice. Its initially detraumatization goals have been lost because of the fact that, during the application process, the same dangerous or traumatic "authoritarian logic of supervision and treatment is used" (Анжеловска 2013: 52).

Measures and processes of the decommunization transitional justice implemented by the Republic of Macedonia are shown as measures and processes by which past traumatic experiences are reconstructed into collective trauma. Instead of a policy of responsibility for establishing the truth (without forgiveness), of rehabilitation of victims aimed at building of a common peaceful and prosperous future of the Macedonian society, the transitional justice in our society functions as a traumatizing factor of revenge, as a politics of emotions of fear and intimidation with future possible and unforeseen collectively approved violence and impunity. Instead of democracy, rule of law, peace and development, it is aimed at keeping the transition as a permanent condition, i.e. to maintain the ceasefire until a subsequent 'final' resolution between the now traumatically reconstructed sectarian collectivities.

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