

**UNIVERSITAS IURIS NATURALIS COPAONICI  
AD PERPETUUM HEXAGONUM CONCEPTA  
vita-libertas-proprietas-humanitas-iustitia-ius**

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**DECLARATION  
OF THE KOPAONIK SCHOOL OF NATURAL LAW**

(Mt.Kopaonik,Serbia, 13-17 December 2002)

***Prologue***

Nature is a measure of all things  
Natural law is a measure of all rights

***Preambulum***

*Starting* from the principles of natural law proclaimed and codified in numerous documents of the United Nations and in particular the 1948 Universal Declaration of Human Rights, and confirmed and elaborated in other international enactments, both general and regional,

*Reminding* that all human beings are a part and the creation of Nature, equal in coming to this world and departing from it,

*Recognising* that all human beings have a natural right to life, freedom, property, intellectual culture, justice and a state ruled by law,

*Developing* the theory of justice as a cardinal virtue of man ever since the ancient to modern times and promoting the praxis of justice as a reality of contemporary man in all the forms of his sociability,

*Adopting* the rational conception in the plurality of general philosophy of natural law according to which the source of law is found in the legitimacy of common wisdom, and not in the arbitrariness or the instinct of sensuality, due to which that conception becomes able to ordain, through the absolute idea of law, the all-encompassing

natural and social justice, establishing in such a way a universal, supranational and just law,

*Whereas* a high degree of rapprochement between traditionally separated great legal systems of the world (European continental law, Anglo-Saxon law, Sharia law, Hindu law, Chinese law), is realised right through the implementation and internationalisation of natural rights, as codified within the framework of the United Nations activity,

*Concerned* that there exists a disharmony between proclaimed and unrealised natural rights of man and his communities, and worried because of great antinomy of contemporary legal civilisation: a high degree of culture in the sphere of codification, and a high degree of lack of culture in putting into effect of genuine natural rights of man, within the unequal treatment of equal things,

*Aware* of the fact that the relationship of disproportion (*laesio enormis*) between the ratified and the non-performed, threatens the idea of law conceived as justice, and to bring about the rule of legal uncertainty, as well as to continue to keep us all within a closed destiny, that is a real contrariety of the conception of natural law,

*Having in mind* different causes of such a situation, and in particular three aspects of it: extreme poverty of one fifth of the entire mankind, the existence of a considerable number of anti-legal states, the phenomenon of misuse of human rights expressed in applying them contrary to the objective of their establishing or recognition,

*Considering* that the existing state of affairs of insufficient realisation of proclaimed natural rights of man can not be solved by any kind of momentary decision, but only by a permanent social process, where meta-legal social factors would be the instruments of bringing a given state and non-state community to a higher degree of general culture and legitimate justice,

*Convinced* that the right to tolerance, as an expression of a sublime feeling of the individual and the common mind, is an indispensable property of democratic culture, and one of the conditions of realisation of natural rights of man; and at the same time convinced that every kind of dogmatic intolerance (political, economic, racial, class) is nothing but a negation of democratic culture and the state ruled by law and,

as such, makes a fertile ground for taking place of all kinds of violence and, in particular, of that of spontaneous or organised terrorism,

*Noticing* that the separation of powers into legislative, executive, and judicial is but one of the indispensable attributes of state ruled by law, and more particularly the principle of independence of judges, according to which the judge is autonomous in pronouncing justice in relation to any kind of power, except the power of the legitimate law,

*Emphasising* that the phenomenon of dominance of political impcrium in relation to all other determinants of law (morality, philosophy, economy, tradition, custom, religion, science) brings about considerable violation of the harmonious relationship which should exist between the various factors of law,

*Pointing out* the fact of considerable separation in results between natural and social sciences, where the high level of technical mind is not always matched with the corresponding development of the social mind, which, among other things, have caused us to speak about brilliancy and indigence of contemporary man,

*Emphasising* the disharmony: while technical thought strives for the skies, the social thought, and especially practice, remain unable to disentangle from the eternal discords: love and hatred, egoism and altruism, consciousness and temptation, law and justice, statutory non-law and supra-legal law, morality and anti-morality, democratic culture and tyranny, universal and separate values, equality and discrimination,

*Evaluating* contemporary trends of spiritual and material culture, as expressed in the world process of globalisation, where the World Order, on the one hand, brings about an general emancipation of locality and provincialism, interconnec-tedness and complementariness of social institutions, supranational creations and inter-cullural permeation, but, on the other hand, also a whole specter of political domination and financial totalitarianism, possessivity and dogmatic intolerance, as the antipode of the culture of reason,

*Basing* its theoretical and professional ideas on the rational conception of natural law which, in fact, is a genus concept of the present-day codification of human rights, i.e. of rights of man - *droit de l'homme*, the Mt. Kopaonik School of Natural Law, that

was created fifteen years ago within the organisation of the Association of Jurists of Serbia, is today a place where, through universal values, one is endeavoring to establish the belief in that kind of law whose meaning is to serve justice, as a fundamental virtue of man, and not to serve the will of a ruling class or assist in violation exerted by some against others; at the same time, the School is a guide for action by opening the way of uniting the joint energy for ordaining the permanent rule of a just law,

*Whereas* being, both in terms of space and symbolically, on a peak of Nature (Kopaonik is a mountain range in Serbia of over 2000 meters above sea level, at the distance of 250 kilometers from Belgrade), the Ml. Kopaonik School is every year, in the middle of December (12th to 17th), a place of bringing together of two to three thousand of jurists from all over the world, and in particular from European countries, and this number includes jurists from the universities, academies of sciences, research institutions, courts, the Bar, as well as from other judicial organisations, State administration and public services, economic entities and companies, banking and insurance organisations, governmental and non-governmental organisation; all that jurists' world, starting from the beginners, experienced lawyers, and up to jurists of highest theoretical and professional authority, makes a unified family, regardless of the differences of their political, religious or other affiliation; all of them are *sui iuris* and inspired by self-confident freedom and tolerance, as an element of democratic culture,

*Building up* its library, amounting today to 44 volumes of published reports (each volume in recent years has about one thousand pages, with 300 new reports every year) written by numerous authors coming from different language areas, as well as with a Final Document, that is published each year in English and French as well, the Kopaonik School presents today a special international university of natural law which, on the ground of theoretical and professional argumentation, sends its appeals, messages and proposals for settling many general and particular legal issues,

*Spreading* the idea of natural law according to which all human beings are born free and equal in dignity and rights, and who, while endowed with reason and consciousness, should treat one another in the spirit of brotherhood, the Kopaonik School at the same time is disseminating the awareness that no legal system is a

self-sufficient entirety, just as no man is an island for himself; consequently, an unjust law in any part of the world is unjust for all of us, since we all belong to humanity; the tyranny of an unjust law, just as the death of any member of brotherhood as a victim of such tyranny diminishes all of us for one dimension of humanness,

*Condensing* its idea of plurality and integrity of natural rights, the Kopaonik School has built the Hexagon of Natural Rights (in 1994), which includes six fundamental elements of legal and moral civilisation: right to life, right to freedom, right to property, right to intellectual creation, right to justice, and right to a state ruled by law; in this way the School has affirmed its theoretical and organisational identity; each of six angles of the Hexagon, and more precisely, each of the six chairs, contains particular or wider disciplines that, by their character, are separate or interdisciplinary ones; consequently, the work of the School is conducted within 25 to 30 sections which belong to the corresponding chairs,

*While encompassing* the above mentioned natural rights through the synthesis of the Hexagon, and at the same time expressing the principle of their integrity, contrary to a pragmatic hierarchy of the so-called generation-wise classification of rights into the ones of higher and lower levels (economic and social and cultural sphere of man's personality cannot be separated from his civil and political personality), the Kopaonik School points out at the completeness and complementariness of all natural rights of man collected around the six poles of one and single bridge, connecting separated civilisations; along these lines the right to life and the right to freedom are prerequisites for the realisation of all other rights, but do not mean their separateness in terms of equal legal protection of all natural rights; in that sense, the Hexagon is but an open system for all the points of such gravitational forces that are apt to reduce the mosaics of rights to common denominators, where different disciplines find their special positions, but also their original and genuine generality,

*While meeting* the theoretical and professional requirement of the Hexagon and while adhering to the rational conception of natural law and the theory of justice, the Kopaonik School has constructed in the course of preceding 15 years of its life, its own theoretical attitude about numerous issues of universal and regional values of law and legal order: it has stipulated the tripartition theory, which concerns to the relationship between the natural law and the positive law (exemplary, subsidiary,

and corrective relationships); it has designed the dividing lines between the legitimacy of natural rights and the legality of their putting into practice; it has nominated the determinants of the culture of law and has determined the degrees of democracy as a requirement for constituting a state ruled by law; it has brought about the criteria for distinguishing statutory non-law from the supra-statutory law;

it has applied the categories of commutative and distributive justice in the present-day conditions and has raised its voice against every violence, considered as the opposition to wisdom; it has formulated XII tablets of independence of judges; it has drafted a theory of the law of tolerance as a separate individual right, and an indispensable requirement of democratic culture; it has established the theory of misuse of human rights and has identified the general points within a deeper sphere of the causes of disharmony between the proclaimed natural rights and their implementation in practice; it has introduced more light in the actual terminology of human rights and/or rights of man, and finally, it has shown the border between the rule of law and the rule of legal uncertainty.

*Confirming* once again its deep conviction in the idea of law that originates in justice and which serves the justice *erga omnes*,

*Determined* to insist in its intention to contribute by its opus to a greater degree of realisation of the proclaimed natural rights of man, and

*Whereas* deciding to express its fifteen years of experience in a general act, the Mt. Kopaonik School of Natural Law, at its regular plenary session held on 16th December 2002, has adopted and proclaimed

# **THE DECLARATION OF THE KOPAONIK SCHOOL OF NATURAL LAW**

First Part

## **GENERAL PROVISIONS**

### ***1. Force of Life***

- 1.1 "Man is born free, while everywhere in chains he is".
- 1.2 Natural law, based on the authority of a developed reason and common wisdom, provides to him a rational freedom in all the forms of his sociability.
- 1.3 Chains are brought to him by a positive law, the one law that is based on the volition, on arbitrariness or violence committed by some people against the others. The chains are taken off by the law which is based on the paradigm of natural and social justice.
- 1.4 Consequently: the existence of just law does not separate, but instead connects. Although natural law has never and nowhere been established as an integral system which would be applied under the positive law method, it nevertheless has everywhere and all the time acted, and is actually acting, as some sort of substratum, of model or sample and, in fact, as a criterion for evaluating the positive law in terms of its good or less good or bad solutions.
- 1.5 Such permanent therapy is a proof that positive law behaves as a chronic patient towards the distinguished, general and basic institutes of natural law. There exist, in other words, some higher principles governing the very laws and statutes, too.
- 1.6 The strength and the authority of mind prevents, or should prevent, this separateness and that antagonism, instead leading to a composition of the transcendental and empirical characteristic of law, where rational and intellectual nature creates an evolution of law in terms of its justness, universality and supranational character.

## **2. The Culture of Natural Law**

- 2.1 Natural law is a part of the general culture - intellectual, spiritual and material, supranational and supra-class, the culture of every man and of all men together, regardless of all the differences that exist in terms of their physical and intellectual characteristics, their associations and wider communities, including State entities and their alliances.
- 2.2 A law that is laid down through joint volition or arbitrariness, as a variable, limited in space, and imperfect - which we call positive law, reaches by its origin and implementation, that degree of its culture which is determined and confirmed by the experience of life through the cultural identity of natural law.

## **3. Power of Natural Law**

- 3.1 Since all human beings are born equal in terms of dignity of life, the natural law is universal and belongs to all people. Differences in race, skin color, sex, language, religion, political and other kinds of belief, national or social background, property or other similar circumstances, may be a component part of the positive law only, while the natural law is created on the unity of all these differences.
- 3.2 Natural law serves to justice as a moral disposition expressed in equal treatment of equal things and unequal treatment of unequal things, in proportion to their inequality..
- 3.3 The sphere of natural law is a sphere of freedom, but that kind of freedom which finds itself in a mutual interdependence with the freedom of others, meaning that the freedom of man is limited by the freedom of other people; it is therefore full of integrity, it is rational, and results in the justice which is achieved through the proportion of freedom.
- 3.4 The realisation of natural law is but an expression of democratic culture presupposing tolerance as an act of spiritual liberty and culture of the reason.
- 3.5 There is no state ruled by law without an established and applied natural law, of course, within the borders of the social reason.
- 3.6 Natural law ensures and develops ecological ethics as a prerequisite of preservation of life on our Planet.

#### **4. Permanency of Natural Law**

- 4.1 The age of the native home of natural law is counted by centuries and the oldest era is its homeland.
- 4.2 The natural law philosophy has survived all the centuries in order to present itself to us as a rational conception through human rights or rights of man in the codified mosaics of United Nations documents and standards of international community.
- 4.3 To find oneself under the vaults of natural law means to be above the ephemerality of the positive law, above the scarcity of present time; and in this respect, the issue of the historical ending of natural law is an issue of its beginning.

#### **5. Evolution of Natural Law**

- 5.1 Ancient conception of natural law having its origins in the teachings of Greek sophists, to develop itself later on into the philosophical system of Aristotle and Plato, as well as through the Roman Stoic School, has been founded on three fundamental postulates: the law, the statute - as an act of human volition is subordinated to higher laws of Nature; substantive characteristic of natural law is the justice, justice conceived as a moral category which unites the commutative and the distributive justice; and the law, the statute may be just or may be unjust.
- 5.2 The natural law conception as expressed in ancient Greek and Roman philosophy and ethics has served as the foundation of further development of natural law; first of all, this was effected into two directions: theological interpretation, particularly in terms of mediaeval scholastics (Thomas Aquinas), and the interpretation according to which natural law is separated from theology, i.e. making it a lay category, while reducing it to rational explanation (Hugo Grotius),
- 5.3 Within the framework of rational conception of natural law again two basic directions appear, i.e.: the one according to which natural law is reduced to a biological and rational explanation, and the second one interpreting natural

law solely through the authority of reason, because of which it is called rational or intellectual explanation of natural law.

- 5.4 Biological and rational doctrine, beginning with the seventeenth century explains the natural law through the correlation between the biological characteristic of man and his mind. These characteristics are either man's instinct of sociability (Hugo Grotius), the survival instinct (Thomas Hobbs), the state of helplessness (Samuel Puffendorf), or an immanent feature of man - the striving for life that is governed by the mind (Christian Thomasius), or man's feeling of justice (Herbert Spencer) or, finally, the coherent theory of the biological and intellectual nineteenth century conception (Henry Ahrens).
- 5.5 Through the evolution of the rational and biological doctrine, the natural law theory has come to the purely rational conception according to which the mind, the intellect is a source of the entire body of knowledge - which was the result of the general ideas of the seventeenth century philosophy of rationalism (Rene Descartes).
- 5.6 Rational conception has gained its philosophical sublimation in the eighteenth century in the works of Immanuel Kant, that until now in essence has remained one of the principal sources of explanation of natural law. Through the theory of cognition which encompasses both the sensual area (empirical cognition) and the non-sensual field (transcendental cognition) one has come to a synthesis of pure reason by which transcendental cognition was acquired, as well as the cognisance of the sensuous area. According to that philosophy, our senses are the ones presenting to us the existing objects, while the reason is an instrument of imagining them. On the ground of that supposition, the moral and the statutory imperatives come out of the mind, leading to the conclusion that human mind is a law-maker of the natural law; because of this, according to that philosophy, it is called the intellectual natural law.
- 5.7 Theoretically elaborated, the rational conception of natural law has experienced its widest implementation in the second half of the twentieth century; this is visible in numerous documents of the United Nations and the standards of international community, so that we may at present speak not only of a renaissance of natural law, but also of one of the most complete codification of natural law of man that has been effected in the history of legal and moral civilisation.

- 5.8 Numerous declarations, charters, conventions, final documents and general enactments within the frame of activity of the United Nations, by which a new world of law has been created, have their common denominator in the culture of reasons and the virtue of justice, those two pillars of the intellectual palace of rational conception of natural law.
- 5.9 Such a developed opus of the natural law has been coupled with the rich literature in various languages, mainly under the title of human rights or rights of man.

### **6. *Natural Law as a Genus Concept***

- 6.1 There is no difference between the term "rights of man" and the term "human rights" as far as the meaning is concerned. Man is an individual which makes a human entirely within the elements of some kind of numerousness. Just as there is no human rights without a man, there is no rights of man without sociability.
- 6.2 Both the above terms come out from different legal and linguistic areas. Thus the term "human rights" is used in the wide field of the Anglo-Saxon law, while being extended to other areas in particular the European ones, where the term "rights of man (droits de l'homme)" is traditionally used.
- 6.3 Regardless of the difference in terminology, the philosophy of natural law is shared by both of those terms. Consequently, there is neither a human rights theory nor a rights of man theory - without the theory of natural law.
- 6.4 Every doctrine and every practice of human rights or rights of man has to be based on the treasury of natural law, and particularly of that kind of natural law that finds its source in human reason and authority of the intellect as a sublime natural characteristic of man.
- 6.5 The term "natural law" is a genus concept, and the one backed by the legal and philosophical civilisation from Aristotle and before him, and up to Kant, and after him - all the way until the adoption of the Universal Declaration on Rights of Man (1948), and after it.
- 6.6 In general usage all these three terms are at present applied and there is no theoretical reason which would prevent this trichotomy.

## **7. Two Ways of Expression**

- 7.1 The idea of natural law, in terms of its expression, had two aspects of its existence: one philosophical and the other - legal and normative expression which was made visible in numerous charters and declarations, such as Magna Charta Libertatum (1215), Bill of Rights (1689), Declaration of Independence of Thirteen American States (1776), the Charter of Rights of Virginia (1776), the French Declaration of Rights of Man and the Citizen (1789).
- 7.2 All these historical enactments have only partially regulated some issues in the sphere of natural rights of man; in principle, they include those rights which we would call today the classical political and civil rights, while economic and social rights, conceived more widely, have remained outside the sphere of regulation of mentioned conventions and charters.
- 7.3 Natural rights of man, in contrast to the above mentioned declarations and charters of the past, have experienced their completeness and almost total codification in the United Nations documents and in corresponding international organisations, whose extensions and proclamations represent today the main body of joint consciousness, but, on the other hand, carrying out and practical realisation of these rights make a chronic difficulty faced by contemporary world.

## **8. Common Points of Humanness**

- 8.1 Universality of natural rights of man is proclaimed above all and first of all in the international documents, in the General Declaration of Rights of Man, of 1948, which in terms of the number and contents of rights of man represent a most complete piece of codification of natural law in the history of culture of law. In addition to classical political and civil rights, it has encompassed a whole series of economic and social rights, which is an adequate way of making complete the circle of dignity of man as a social being.
- 8.2 This Declaration has become within its half-century existence (and some more years) a genuine source out of which swarms of various documents, universal or regional, have flown everywhere: the international pact on civil and political rights, the international pact on economic, social, and cultural rights (1966), the European convention on protection of human rights and fundamental

freedoms (1950), the American convention on human rights (1969), the African charter on rights of man and nations (1981), the charter of the European Union (2000); the process of protection of human rights in the European continent has been carried out via final documents of numerous conventions on European cooperation in the matters of human rights; these include final enactments from Helsinki. Madrid, Vienna, Paris, Moscow.

8.3 The 1948 General Declaration on the Rights of Man, by its basic and introductory provisions, has adopted the rational conception of natural law; it is the foundation for building up the edifice of human rights: "all human beings are born free and equal in dignity and rights; they are endowed by reason and awareness and should treat one another in the spirit of brotherhood; everyone has the right to life, to freedom, and to security of personality".

8.4 The horizons of the Declaration, in addition to these basic natural rights of man, include also other rights which, according to modern terminology, are called "political and civil ones". These are the following: right to the freedom of thought, of consciousness and religion, right to the freedom of peaceful gathering and association, right to the freedom of movement and the freedom of choice of residence within the borders of a given state, and the right to leave a given country, including one's own, and including the return to own country; here come also the right to asylum against prosecution, the right to one citizenship. The Declaration furthermore proclaims the following rights: right to legal subjectivity, right to equal treatment by the law and to equal protection by the law, right to a fair trial, right to the presumption of innocence, right to legality in criminal proceedings.

8.5 The Declaration provides also a whole series of social rights, as well as those originating on the ground of work. These include: right to social insurance benefits, right to work, free choice of employment and adequate work conditions, right to equal pay for equal job, right to join the trade union, right to education (school), right to a standard guaranteeing health and well-being, right to participate in the cultural activity of the community, right to copyright protection, right to enter marriage and found a family, everyone's right to possess property.

8.6 All these natural rights of man, proclaimed by mentioned Declaration, have found their place in an adequate way in the Hexagon of the Mt. Kopaonik School of Natural Law, which within its six chairs studies, theoretically and

professionally many issues, elaborating them and proposing solutions, and all this under the conception of rational approach to natural law.

### **9. Encouragements**

- 9.1 By the implementation and internationalisation of natural rights that are codified in mentioned documents, the authority of natural law was enriched by legitimacy and width, so that it is possible to speak about the beginnings of a universal or world law.
- 9.2 All this has increased the hope that our civilisation may experience the so-called golden century, where natural rights would be realised and protected once and for all.

### **10. The Time of Discord**

- 10.1 However, that universe of just law has not yet come about. Instead, the practical putting into effect of the codified and natural rights we are witnessing at present the time of discord and violence; the time has come of an enormous gap between the proclaimed and unrealised natural rights of man, and this is today a fateful issue of survival of our legal and every other kind of civilisation.
- 10.2 The antinomy is complete: the codification of natural rights represents a magnificent intellectual edifice of contemporary man, but at the same time we see the trampling over such edifice.
- 10.3 In other words, the high level of culture of natural law in its source, in its codification, legitimacy - on the one hand, and the high level of lack of culture in the sphere of these rights, on the other. Instead of equal treatment of equal things, the time has come of unequal treatment of otherwise equal things; this is but a genuine contrariety of the virtue, conceived as a foundation of the rational conception of natural law.

## **11. Trilogy of Lack of Realisation**

- 11.1 Causes of such a situation are numerous and various, depending on the location and time, geographic and ideological factors, religious and philosophical ideas, economic possibilities and economic system, as well as on the degree of general and juristic culture.
- 11.2 However, speaking generally of the lack of realisation of natural rights, within and outside of individual families of law (great legal systems), numerous causes may be reduced just to three: extreme poverty of a considerable number of countries, considerable number of anti-legal states, misuse of human rights.
- 11.3 Proclaimed natural rights experience "the fate of an underground stream" in that part of the world where there exists extreme poverty and where objectively it is not possible to realise many human rights, and particularly those that have been determined as economic, social, and cultural human rights. This is a genuine attack on the elementary human dignity and physical existence, where the norms of the General Declaration of Rights of Man, or norms of any other declaration, simply have not met the corresponding reaction and justification. In such cases there is a risk of serious humanitarian catastrophe of lack of realisation of human rights.
- 11.4 In the considerable part of the world that does not belong to the part of extreme poverty, human rights are mainly accepted on paper, by ratification or their implementation through national legislations. However, in such states there is a lack of legality in putting into effect of human rights, since the rule of law has been replaced with the rule of arbitrariness of the illegitimate holders of power.
- 11.5 These include the states that may not have the name of states ruled by law because the principle of legitimacy and legality of law in these states is below the degree of social tolerance. We speak in this case of a lower level of culture of law and this is not a field where human rights may succeed and grow.
- 11.6 The cause of lack of realisation of human rights may also be seen in the fact of their misuse, which sometimes takes place even in the states ruled by law.
- 11.7 There is a misuse of human rights where they are put into effect contrary to the purpose of their establishment or recognition. We have today rather often the taking of measures of protection of human rights that in essence mean

either retaliation (the "eye for eye" system or equivalence of violence) or achieving specific political, military, national or economic objectives. In any case, such "protection" causes new and frequently even more serious violations of human rights than those that are supposed to be protected.

- 11.8 The disproportion between proclaimed and unrealised human rights leads to an unpermitted degree of legal uncertainty, which may be the sign of crisis of such law.

## ***12. Possible Directions of Realisation***

- 12.1 Beginning with the causes of lack of realisation of the proclaimed human rights in the world, that vital issue of international community cannot be solved in the near future; this is a social process that will last for an indefinite period of time.
- 12.2 Specific meta-legal determinants crucially affect the realisation of legality of human rights, and primarily the degree of general and professional culture. They are also relevant for the state of affairs in the universal awareness and consciousness, in the public opinion sphere, in the media, theoretical and professional observations, in the political maturity and enlightenment, in moral emancipation, in economic inspiration and work ethics, in the social capital and social cohesion, in the family structure, in the general usage of conduct, in the reliability of joint norms, in the level of technical education...
- 12.3 All these determinants in a contemporary organised society have some degree and some standard, and right these elements are important for the level of realisation of human rights. By raising that standard to a higher degree of humanness, the issue of the realisation of human rights may enter the area of satisfactory or supportable social and legal tolerance.
- 12.4 It is our duty, individual and general, to take part in the process of approaching the legitimacy to the legality of human rights. Should we fail to do that, the existing codification of human rights will remain recorded in history not only as illusions and unrealised wishes, but also as an act of joint responsibility of those who are departing to those who are coming.
- 12.5 The same social coordinates of realisation of human rights we find also the factor of organisation of a given society on the foundations of democratic

culture, that presupposes the right to tolerance too. There is no doubt that this is not either a vulgar rule of the majority that could lead to a tyranny of the minority, or a simulated democracy whose democratic proclamations are but mere paper; moreover, such type of democracy where, in addition to notorious features of democracy, the tolerance represents a *conditio sine qua non* of the realisation of rights of man; it is, in other words, a point of the high reason and legitimacy of a state ruled by law.

- 12.6 If the degree of development of a given society is enslaved by a dogma of any kind (race, skin colour, language, religion, political and other belief, national and social background, property), then we have an antipode of a democratic culture, regardless of the law of majority that is characteristic of every democratic society.
- 12.7 Tolerance and dogmatic intolerance are but two fellow-passengers of man's life, i.e. of man conceived as a social being.
- 12.8 And therefore, if the determinants of legal order of a given society lead through evolution to tolerance, while ever more abandoning dogmatic intolerance, then this is at the same time a sign of a greater degree of realisation of human rights.
- 12.9 One aspect of influencing the realisation of legality of human rights is also the reacting and insisting of the general public that all the factors of law, and in particular the independent judiciary, apply the human rights norms in a just and efficient manner, and especially those stemming from international conventions and generally accepted international standards of the enlightened communities.
- 12.10 Along these lines, the legality in the implementation of human rights requires the depth of the philosophy of commutative and distributive justice, which ever since the classical times has lived through all the centuries, only to appear today as a fundamental determinant of the culture of law.
- 12.11 Any other pragmatic and non-philosophical treatment in the concept of realisation of human rights leads to short-term results, both in terms of space and time.

### **13. Possible Ways Out**

- 13.1 The trilogy of lack of realisation and possible directions of realisation of natural rights of man are two poles of our subsistence.
- 13.2 In many an area of contemporary world the law is returning to its primitive source: *do evil*; some other part of the world is inspired by the order: *do not make evil*.
- 13.3 The law that is inspired by the authority of mind of the natural law character, and which is today codified into international standards of human rights, makes the origin of the third epoch, which makes the order: *do good*.
- 13.4 Black clouds over the realisation of proclaimed natural rights of man threaten to enslave the third epoch of this moral tripartition and to bring us back to the primitive source of retaliation and personal execution.
- 13.5 Only more efforts on the part of organised wisdom is an instrument of preserving and extending the life of the syntagm: *make good*.
- 13.6 This is a possibility the Kopaonik School builds its permanent inspiration on. Vested with the confidence of academic and professional public, through the strength of its spiritual freedom, the Kopaonik School responds to all the evils of contemporary world by the beauty of good.

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## HEXAGON CHAIRS

First Chair

### RIGHT TO LIFE

#### ***14. Life***

- 14.1 Life is a part of the nature. Towards that act, the law, the statute, may have a different approach. Those statutes which are characterised by a higher degree of wisdom do respect this fact of nature, and extend in the same degree the protection of the holder of the right to life. Just the contrary, those other ones, where sensuality is above the wisdom, protect that holder's right to life only to a degree allowed by their sensuality.
- 14.2 All other questions that are directly connected to this basic right, such as the question of capital punishment, depriving of life prior to birth, euthanasia, are regulated in the way that is related to the mentioned criterion. The degree of culture of a given people, among other things, is determined in these points.
- 14.3 Right to life is both a statutory and supra-statutory right. It is a prerequisite of existence and the realisation of all other rights of man and of all other forms of his sociability.
- 14.4 Right to life enjoys many-sided effects of legal, moral and religious order of every enlightened community.
- 14.5 No one can be deprived of life arbitrarily, and no one may have the power over the life of another. Consequently, the right to life is a *ius cogens* of national and international law.
- 14.6 Among the numerous barriers which in terms of their scope and catastrophic outcome are outstanding, we have three antagonists of the right to life in the present-day world: nuclear and chemical arms, genocide, and terrorism.
- 14.7 Nuclear and other accumulated energy have to be in the service of the right to life. Never and under no circumstances may they become the instruments of mass annihilation or jeopardising of the right to life. Anyone doing otherwise must not only be under greatest of sanctions due to the biggest crime, but

also under historical condemnation because of vandalism against the natural law civilisation.

- 14.8 Production, testing or spreading, just as the very possession of nuclear armaments, is one of the greatest possible dangers for the survival of the right to life. A danger facing the present-day universe.
- 14.9 That fact creates a climate of suspicion among the states, which leads to the "right" of first attack; it creates a general legal, economic and social insecurity, provoking a situation genuinely contrary to the constitution and realisation of the natural right of man.
- 14.10 Consequently, all forms of the use or possession with the intention to use the nuclear armament represent a crime against humanity, regardless of the size of the state at issue, or its character - a state ruled by law or the one without such a rule.
- 14.11 The genocide committed in times of peace or in times of war is the crudest negation of the natural right to life. Willful, complete or partial annihilation of a national, ethnic, racial or religious group, is but an unnatural act that is treated as a crime under the norms of national and international law. It must be prevented by all the means of social factors that make a systematic and social and cultural integration of a given society.
- 14.12 One of the more important attacks against the right to life of people, practiced today more than in the past, is the organised terrorism, which is founded on violence and blackmail as a form of direct conduct. Violence and blackmailing as attributes of terrorism are two dark points of hatred or wish for an undeserved benefit; these points make the hell of human soul. When they dominate over some group, be it a state or not, then we have burning up of books only to be followed by burning up of people.
- 14.13 Terrorism as an evil of contemporary society is often committed in the proportions that surpass the borders of one country, so that its successful suppression needs an international cooperation of all the factors of social community. That cooperation and the entire struggle against terrorism should not be reduced to vulgar retaliation, but should involve the application of a legally organised instrumentarium, because a disease is cured more effectively in the causes than in its consequences.

- 14.14 The right to life initiates also the question of justifiableness, or abolishment, of capital punishment. Both in the past and at present, the issue of capital punishment has been viewed from various aspects: juristic, criminological, philosophical, medical, sociological, so that there is no need to add anything new to these efforts. It is up to each and every legislature to either accept or refuse the already submitted arguments; this to quite a degree depends on the meta-legal determinants and their influence in solving this matter.
- 14.15 Documents of the United Nations strongly suggest the abolishment of capital punishment, since it is considered that this, too, is a way of promoting the protection of the right to life. However, and in spite of the Second Facultative Protocol to the International Pact on Civil and Political Rights (1991), which provides that no one under the jurisdiction of the state - party to this Pact may be executed, the majority of states has not abolished capital punishment. It seems that the standpoint still prevails according to which that issue has to be solved within the framework of national sovereignty.
- 14.16 The capital punishment issue has an important position also from the standpoint of philosophy of natural law and penal justice. Regardless of possible conclusions that could be reached along the lines of that philosophy, it seems obvious that at present the danger for the right to life from the use of nuclear and chemical arms, from genocide and terrorism, is today enormously greater as compared to the issue of justifiableness or abolishment of capital punishment.
- 14.17 Consequently, one universal social capital with its cultural mechanism should be more occupied with the issue of elimination of mentioned causes of mass destruction of the life of people, than with the issue of pronouncing individual capital punishment for serious crimes. This, undoubtedly, would contribute to a greater promotion of protection of the right to life.
- 14.18 The life of man enjoys legal protection from birth to death, but such protection includes also a prenatal period of life. An unborn child is legally protected from the moment of the foetus becoming able to survive. That protection is mainly effected through relevant regulations covering abortion and, viewed comparatively, the line of thinking goes from liberalisation to the prohibition of abortion.
- 14.19 The right to be born should be considered within the framework of the right to family planning. Also relevant in this respect are relevant medical, social,

demographic and other reasons of the cultural constitution of a given environment.

- 14.20 The right to life initiates also the issue of the right to death. While suicide in contemporary criminal law is not considered a criminal offence, suicide is viewed from religious aspects as well as from the aspect of a given moral order.
- 14.21 Murder out of pity in the form of active or passive euthanasia is left over to national legislatures, combined with measures aimed at preventing various misuses that may happen. However, the passive euthanasia (refraining from providing therapy) in comparative law is treated more favourably or, under certain circumstances, is even permitted; on the other hand, the active euthanasia (acting for the purpose of putting to death) is prohibited.
- 14.22 From the standpoint of the right to life, euthanasia remains an incriminated act, with the possibility of less heavy penalties.

## **15. Health**

- 15.1 Health is a prerequisite of life. Everyone has a natural right to health which protection is adequate to his or her needs in this respect.
- 15.2 Health service includes both the prevention and the adequate medical treatment.
- 15.3 Health service is regulated by national legislation and medical practice, in accordance with professional and scientific standards in the area of medicine and other related and complementary disciplines.
- 15.4 International cooperation is indispensable in the area of health service so that the entire mankind could be able to draw relevant benefits, including those of accelerated development of science and technology in this field.
- 15.5 All the measures of health protection have to be based on the principle of preservation of human dignity and the basic rights and freedoms from the aspect of applied results of a corresponding science, and more particularly biology and medicine.
- 15.6 In the above respect, the practice is not permitted which is contrary to human dignity, such as reproductive cloning of human beings. In fact, and in spite of

thorough discussion, the majority considers that all interventions should be prohibited whose purpose is the creation of a human being which would be genetically identical, wither alive or dead, particularly by means of dividing the embryo and transfer of cell.

- 15.7 According to provisions of the General Declaration on Human Genome and Human Rights (1997), no research or application relating to human genome, especially in the fields of biology, genetics, and medicine, may prevail over the observance of human rights, of fundamental freedoms and human dignity of individual and of groups of people.
- 15.8 Positive effects of developments in the spheres of biology, genetics, and medicine, as far as human genome is concerned, are at the disposal of all, while due attention is paid to human rights of every individual.
- 15.9 Freedom of research which is necessary for the progress of knowledge is but a part of the freedom of thought. Applying the results of research, including the applied biology, genetics, and medicine, as far as human genome is concerned, is aimed at attenuating the sufferings and ameliorating the health of individuals and the human species in general.
- 15.10 Every regime of health protection should make possible the equal approach to such protection (including the corresponding quality of service), while taking in consideration relevant needs and available resources.
- 15.11 It is necessary to develop the medical law as a multidisciplinary theoretical, professional and educational branch of law, so that dignity and identity of people in this vital field of common life could be promoted.

## **16. Ecology**

- 16.1 Every man is entitled to a healthy and productive life in accordance with nature. Healthy human environment is a prerequisite of that right. Consequently, everyone, and particularly the state, is obliged to take adequate measures for the purpose of preserving, protecting and restoring the environment and the ecosystem unity of the Earth.
- 16.2 Ecology and economic objectives have to be connected through the "social capital", the legal and moral order, as well as through the determination of people to promote by joint efforts the general development of their

environment, at the same time meeting the needs of a healthy environment for the present-day and future generations. In other words, the protection of environment is an integral part of the development process.

- 16.3 Armed conflicts, various kinds of organised violence over people and over nature, the misuse of different types of accumulated energy, and in particular the chemical energy, and generally every anti-human conduct threatening massive annihilation of people, are not an atmosphere where the development and the environment may find their home. Such times, by the very nature of things, is destructive for the symbiosis of development and human environment.
- 16.4 And consequently, peace based on the intellectual and moral solidarity of mankind, the development founded on legitimacy of economic and legal constitution, the protection of environment permeated by the substratum of natural law, are three mutually dependent and inseparable phenomena.
- 16.5 Cumulative nature and the entirety of these phenomena reaches a high degree of ecological ethics which is the only means apt to preserve the Nature, with all its secrets, the Nature we belong to and which is the source of life.
- 16.6 Or, in Goethe's words, we are encircled and embraced by nature, without the power to leave it, and without the strength to enter more deeply into it; without being asked and not warned, it takes us into the circle of its dance, and it deals with us until we become tired and drop out of its embrace; it eternally creates new forms; that what exists now did still not exist before, and that what has been will never come again; everything is new and, nevertheless, it is always old; we are living in the middle of it, and yet are alien to it; it permanently speaks to us, but does not reveal its secret to us; we incessantly act upon it, and yet have no power over it.
- 16.7 Contemporary world and its technical civilisation at the beginning of the so-called planetary era, multiplies by a dreadful progression the damaging events that rather often, by their scope, transgress state and natural borders, threatening with ecological catastrophes (the example of damage due to nuclear energy). Ours is the time of realisation of unprecedented technical progress, but a progress to which we permanently bring new sacrifices, both in terms of numbers of people and of disturbed balance of goods of nature.

- 16.8 Lack of scientific control of the use and excessive exploitation of natural resources, large-scale application of various kinds of energy, uncontrolled utilisation of different technologies, as well as a general automation of life of contemporary man, even in the times of peace and relatively free social institutions, bring about serious risks for the environment and endanger the biosphere - where man is a first victim. That Gordian knot of progress and danger, benefits and loss (often irreparable) amount to a large-scale epidemic rather hard to be cured by the world.
- 16.9 Antropogeneous activity leaves behind it numerous and serious consequences: drinking water is becoming more and more scarce, while other waters - underground and surface ones, including the waters of lakes, rivers, seas, and oceans, become more and more polluted; we are witnessing today enormous diminishing of cultivable land, endangering thus the needs for food for billions of people; there is a disturbance of the ozone layer ; forests and virgin forests are devastated causing thus climatic disturbances; fauna and flora are in danger and abrupt disappearance of some species is a fact of the day; there is ionising radiation, as well as emission and introduction of many dangerous matters in the soil or water, causing unfavourable consequences for people; unlawful creation of noise is but another problem in this respect; the same applies to illegal dumping of waste and in particular of nuclear waste; all this endangers excessively the environment and the measure of social and legal tolerance has been surpassed.
- 16.10 The above are elements causing concern for the existing state of affairs in our biosphere. Instead of global healthy human environment we have got global pollution and global degradation of environment.
- 16.11 Possible way out may, first of all, be seen in a more energetic role of all relevant social factors (from the individual up to various associations, such as the state, as well as the cooperation at the international level) in order to free the mankind from the threatening ecological catastrophe. Every possible measure has to be taken in order to preserve and protect natural resources and the environment.
- 16.12 The above measures no doubt include important criminal law and administrative law protection. Along these lines it is necessary to carry out the provisions of international conventions for the environmental protection, both on the national and international levels. A significant position in this respect is

taken by the wide application of preventive measures in order to realise a general protection of environment.

- 16.13 There should be a general awareness concerning the need for developing an ecological ethics, which may not be just a matter of positive law (in spite of preventive, penal and compensation measures).
- 16.14 Only a high degree of reason as an attribute of the rational conception of natural law may raise hope for an ecological ethics of the future, that would be able to preserve the values of the Nature and to hand them over to future generations.

Second Chair

## **RIGHT TO FREEDOM**

### ***17. Rational Freedom***

- 17.1 According to rational conception of natural law, freedom is understood as a self-confidently limited phenomenon, since the field of freedom of one holder of the right is a border of the equal freedom of the other holder.
- 17.2 The sphere of the self-confident freedom, organised by the system of positive law norms, that is created along the model of natural law, presupposes that man's life is lived in a community, and that every man, in terms of the natural law, is entitled to live in the community. This is a consequence of social instinct emanating out of his biological characteristic.
- 17.3 By the very fact of living together, in a community, man's freedom is limited by the freedom of others, meaning that it is restricted through the coexistence of freedoms. It is a possibility for him to do everything that does not harm the other individual, which means that borders of effecting natural rights are determined by the borders of these same rights that are in possession of other individuals.
- 17.4 Where a law (statute) lays down these borders in the above manner, then we may speak of the survival of rational freedom as a natural property of every man. In the contrary case, the law (statute) would be an expression of violent power, motivated by some illegitimate interests (various kinds of discrimination), which is contrary to the idea of and philosophy of natural law.

- 17.5 Consequently, the sphere of law is a sphere of freedom, but that kind of freedom which depends on the freedom of others; this is the way of achieving the proportion of freedom, and right that kind of freedom should be the goal of every legal system.
- 17.6 While beginning from such a definition of freedom, as an eternal human striving, from the self-confident freedom, viewed as a rational symmetry of freedom, one comes to the conclusion that there are two axiomatic rules: there is no freedom under violence, and there is no freedom without responsibility.
- 17.7 These are two crucial points that determine the field of freedom in its rational meaning. Violence, as an alien coercive arbitrariness is but an antipode of freedom, just as a limitless freedom is an antipode of social group. Violence as a manner of behaviour or as a system of government, transforms the freedom of another into a slavish obedience; an absolute freedom changes the man into a Robinson. Between violence and indeterminism, the freedom should be seen as a total high-strung state of mind of personality, but which carries with it also the responsibility towards other holders of right to freedom. Conceived in the rational sense, freedom is inseparable from responsibility.
- 17.8 The central scope of freedom is regulated by international conventions and other general enactments, as well as by national legislations, and this makes an all-encompassing tractate of freedom of the contemporary man. Beginning with the rational conception of natural law as a foundation of universal and regional declarations of freedom, the freedom is proclaimed for all persons, regardless of differences in terms of their characteristics of birth: national origin or any other feature or belief whatsoever.
- 17.9 Various aspects of proclaimed freedoms make today an entire juristic world which expresses deep faith in those basic freedoms that should be the foundation of justice and peace in the world, and which can be best realised through democratic culture and through common adherence to natural rights of man.

## **18. Criminal Law and Procedural Protection of Freedom of Personality**

- 18.1 The right to freedom of personality is thoroughly protected by the norms of criminal substantive and procedural law, but in the way as to always preserve the dignity of the perpetrator or the suspect, and more particularly, to protect them from mutilation and other cruel, inhuman and humiliating penalties or procedures. Consequently, every act of an official is prohibited and punishable which may inflict pain, serious physical injury or spiritual anguish to the perpetrator or the suspect, which applies to the act of intimidation in order to obtain confession or information.
- 18.2 Since every man has the right to freedom and security of own personality, no one may be arrested arbitrarily or temporarily detained, i.e. deprived of liberty, except on the ground of legal provisions and in accordance with the procedure laid down in advance.
- 18.3 Every person deprived of liberty or the one being prosecuted, all procedural and substantive rights are guaranteed, that are provided for by ratified international conventions and corresponding provisions of national legislation, and in particular: the right to fair and open trial in a due time limit, and before an independent and impartial court of law, that has been established on the ground of law.
- 18.4 Presumption of innocence, according to which everyone accused for committing a criminal offence shall be considered innocent until his/her guilt be proved on the ground of law, represents a great achievement of legal civilisation and one of the basic freedoms and instruments of defence in the criminal proceedings. Although constituted in the legislative enactment, the presumption of innocence is frequently violated in mass media, either due to lack of knowledge of law, or because of malicious striving to some goal - and in both cases with an unpermitted and punishable effect.
- 18.5 Admission of guilt on the part of the accused in criminal proceedings, in spite of various solutions found in comparative law, should not remain the one and only factual ground for adjudication, since the admission of guilt may involve an analysis of all relevant circumstances in order to reach a lawful and just decision.

- 18.6 Penalty of imprisonment, as a drastic limitation of freedom of movement and other freedoms, should not be conceived as an ideal measure, and still less as an irreplaceable form of criminal punishing. Depending on the degree of incrimination and the purpose punishment, it is possible to have other penalties as well, i.e. various alternative sanctions, such as: work to the benefit of the community, extending suspended sentence institute, fines, etc. This specter may include also the measures of prevention for infractons in the area of safety of public traffic, where preventive steps may achieve satisfactory effects, bearing in mind the degree of social danger of the infraction and the purpose of punishing.
- 18.7 The regime of serving the sentence in a penitentiary, although left over to national legislation, has to be in accordance with the general standards of international community, as proclaimed in corresponding conventiones, in terms of which no one may be subjected to torture, inhuman or humiliating treatment or punishment. Along these lines, it is necessary to pay particular attention to the analysis of psychic disturbances in penitentiary conditions, because the purpose of punishment is not, and cannot be, the creation of psychopaths and asocial people.
- 18.8 Special regime of criminal sanctions relates to minors; it has to be conceived so as to express the independence and social and psychological function of the policy of punishment. Applying the educational and correctional measures or the regime of separation of delinquent minors from the given surroundings should be apt to find the ways of suppressing further delinquent conduct, but at the same time, and first of all, to rehabilitate young people and to make their return to normal life possible.
- 18.9 Drug addiction as a pathological phenomenon that more and more affects the youngs, is a general problem that cannot be solved only through criminal legislation. However, solutions found in that legislation, and in particular in the area of illegal manufacture and trade of narcotics, may help in suppressing, at least to a certain degree, this social pathology. It must be cured primarily by means outside of law and by introducing various social factors of relevance.
- 18.10 The legal system of rehabilitation of individuals who have served their sentence in prison should be instituted in such a way as to make them able to fully reintegrate in society and to become again holders of natural rights that have been restricted to them in course of serving the sentence.

### ***19. Freedom of Personality Relating to Family***

- 19.1 The family as a natural and basic cell of society enjoys the protection of both society and the state; therefore everyone is entitled to have a family and a healthy family life.
- 19.2 According to the character of various cultures, different conceptions are recognised relating to the family life and the kinds of family, in terms of preservation and development of dignity that is inseparable from man's personality.
- 19.3 The right to conclude a marriage and establish a family belongs to persons under the terms and conditions, and in the manner, that are provided for in national legislation; it is presumed that national legislation applies the universal and regional general enactments of international community, and in particular the Universal Declaration of the Rights of Man (1948), the International Pact on Civil and Political Rights (1966), the Convention on the Rights of Child (1989), and the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950).
- 19.4 All children have the same rights, regardless of marital status of their parents. A contrary standpoint of primitive mind is not only in violation of natural law, but also contravenes all the other above mentioned general enactments of international community.
- 19.5 For the purpose of complete and harmonious development of personality, children should grow up in a family environment, in an atmosphere of happiness, love and understanding, so as to be entirely able and prepared to live independently in the society as protagonist of peace, dignity, tolerance, freedom, equality of positions, and solidarity. Due to that, childhood should be under constant and special care and assistance in various aspects of material and moral existence; it is necessary to ensure the protection of child against all forms of discrimination or penalty based on status, activities, opinion or belief of parents, legal guardians and custodians, or, as the case may be, of members of child's family.
- 19.6 Child's interests are always of primary importance, regardless of whether specific activities in connection to life, raising and education of the child are

under the charge of public or private social protection institutions, courts, administrative agencies or legislative bodies.

- 19.7 Legal and social measures are the instruments of preventing the separation of child from its parents, who otherwise are jointly responsible for raising and development of the child, unless a competent judicial agency, in conformity with the corresponding regulations and procedure, decides that such separation is indispensable for the purpose of protecting child's interest (for instance, the case of gross maltreating or neglecting the child by the parents, divorce, separation of parents, etc.). A child who is separated from one or both parents is entitled to maintain personal relations and direct contacts with both parents, unless this proves to be contrary to child's interests.
- 19.8 No child, regardless of whether living with parents, may not be exposed to arbitrary or unlawful meddling in its private and family life, in his home or personal correspondence, as well as to illegal attacks against its honour and reputation.

## ***20. Administrative Law Protection of Freedom***

- 20.1 The right to freedom enjoys protection also in the area of public administration, whose lawful activity represents one of the pillars of the rule of law and social justice.
- 20.2 Public administration, which involves the administrative jurisdiction of public authority has to be organised as a system of efficient, responsible and highly professional service, based on the contemporary conception of administration, which is in the function of realisation and protection of rights and freedoms of citizens, but at the same time in the function of protecting public interests.
- 20.3 In order to put into effect the above functions, public administration must be established on the principle of democratic culture, with a built-in mechanism of legal control. It has to be free from bureaucracy's chains, from corruption and political and party dogmatics.
- 20.4 Such an activity of public administration requires also an organised training of personnel in government agencies, in local administration and in the public sector, through various degrees of education and innovation of already acquired knowledge and skills. Development of public administration as an

attribute of the state would be enhanced through establishing a specific public administration institute which, in addition to professional and theoretical research, would be engaged in cooperation with the corresponding international institutions, in drafting a code of ethics of public administration, as well as in developing an information system.

- 20.5 By introducing in the legal system the institution of ombudsman, who is an independent factor in relation to the executive power, a higher degree is achieved of protection of freedoms and rights of citizens; this institution is already functioning efficiently in quite a number of states.
- 20.6 Legislation in the area of public administration must include statutory norms aimed at a thorough prevention of corruption in all of its aspects, together with providing conditions for responsibility of holders of public functions, and in particular of ministers, which generally makes an atmosphere of preventing the conflict between the public and the private interests.
- 20.7 For the purpose of applying contemporary electronic standards in the process of realisation and protection of rights and freedoms of citizens and their associations, an important place is taken also by a specialised and single public information center, that has to function on the principles of the so-called electronic government (E-Government).
- 20.8 In the conditions of the privatisation process and the free market economy, public administration, viewed from the aspect of its jurisdiction, has to be adapted to the trends of such development, which means that it should get rid of arbitrary control and repression, which is the characteristic of administrative and not the market economy.
- 20.9 Modern public administration, in addition to the above, is characterised also by an ever more intensive transfer of specific rights to the agencies of local self-government, which are closer to specific relations to be taken care of; this is a way of better realising the principle of legality in the process of application of law.
- 20.10 Legitimacy of regulations covering the matters of election system at all levels requires an adequate readiness and responsibility of competent agencies and bodies, in terms of adhering to the election procedure rules. Since the volition of people is a foundation of the state power, such will should be expressed at periodical and free elections, that have to be carried out by a general and

equal suffrage, by secret ballot or a corresponding procedure that ensure the freedom of voting.

- 20.11 For the purpose of wider and more detailed administrative law protection of freedoms and rights of citizens, specialised administrative tribunals are recommended; on the ground of the general court procedure rules, they would settle administrative disputes between citizens and government authorities, but would also apply specific rules which justify the introduction of that kind of courts.

Third Chair

## **RIGHT TO PROPERTY**

### ***21. Ownership***

- 21.1 Everyone is entitled to possess property, alone or jointly with others, and no one may be arbitrarily deprived of his property. The holder of property right is entitled to unhindered enjoyment of his property, the only restrictions being expressed through public interest, and under the conditions provided for by laws and general principles of international law.
- 21.2 Ownership as an absolute right of holding, using and disposing gives to his holder the widest powers in the conditions of sociability and mutual recognition. No one may be deprived of the right of ownership, except as required by an obviously established public need, and provided a just and prior compensation be given to the owner.
- 21.3 Ownership freedom as a part of general freedom shares the destiny of that freedom: the former freedom is restricted by that same freedom of others, regardless of the difference in status of relevant holders.
- 21.4 A man, in order to survive and fulfil his right to life and freedom, is entitled to create the conditions of life by using his physical and intellectual strength. He thus has a natural right to utilise objects and natural resources and to acquire through his labour the material parts of the nature.

- 21.5 Organised coexistence of freedoms of men in the form of state creation confirms that right to him, in terms of ownership as a category of positive law. The ownership freedom is thus protected by the positive law norms, because it appears only in the conditions of sociability and always means the mutual recognition as expressed in legal norms.
- 21.6 Consequently, differences in ownership and social differences based on them may be maintained only through the common benefit, and not at the detriment and discrimination of others. Everything that is outside such provision, is not any more within the frameworks of the natural law conception.
- 21.7 It stands to reason that a question arises as to where are the limits of ownership freedom and/or lack of freedom, or where are the limits of ownership justice and ownership injustice? Moreover: what is the degree and where is the area of social tolerance in property differences, as well as whether ownership freedom may be extended beyond that what has been created by the holder of the right through his work, or one should understand ownership as an order that everyone should be given that what belongs to him (*suum quique tribuere*).
- 21.8 Ownership that is greater or smaller than the circle of one's own activity is a motive of the evolutionist and revolutionary distribution and redistribution of social and individual wealth. Is, then, only one's own work a legitimate ground of the property relationship, or such ground may include also the work of another within the context of different status of parties of such relationship?
- 21.9 All answers may be reduced to two basic ones: collectivistic, state ownership norm, or competition between abilities in the conditions of free market economy. There is no ideal justice in this respect because of the nature of man as an imperfect being and of the imperfect organisation of community he belongs to. This is confirmed by the history of the ownership issue.
- 21.10 However, if an ideal justice is impossible to achieve, it is possible to realise an area of individual and social tolerance in applying the ownership justice and/or injustice.
- 21.11 In that respect, the state ownership ideological dogma giving to the state, as a holder of right, the public law and political powers, and/or a legal and out-of-law imperium, did not provide its historical justification, and in the present

world it gives up its position to the competition of abilities, which express themselves in the conditions of market economy, for which it is believed to be the instrument in establishing economic and political democracy that is characteristic of the state ruled by law.

- 21.12 It is therefore necessary to emphasise the difference between state ownership, in terms of the public law and political imperium (feudal, state and socialist ownership) and that state ownership which is a dominium, where the state as any other holder of rights is subjected to the laws of the market, with all pertinent successes and risks.
- 21.13 The above is an ownership position that almost has no connection with that other one (state imperium), and where the ownership appears only as a secondary phenomenon, while the primary one is the political power in all the spheres of life.
- 21.14 Regarding, then, the category of ownership in the conditions of market economy, the crucial issue arises as to where are the limits of that freedom and what is the degree of tolerance towards the ownership differences?
- 21.15 When in a legal system where there are more sensuality than wisdom, the ownership freedom grows over the border of social tolerance - which is an empirical question, threatening thus the freedom of others and making intolerable the property and social differences, then and in that degree, the ownership is no more a natural right, but rather a result of an unjust and illegitimate right. So, the crucial question does arise: revolution or evolution?
- 21.16 Beginning with the rational conception of natural law, every violence (revolution) is here, on the ground of that very conception, absolutely excluded. Violence and revolution are the expressions of sensuality, while natural law is an expression of wisdom. The unjust law that may bring about a considerable social conflict cannot be repaired by violence, but by a higher degree of wisdom and evolutionary measures (for instance, economic and taxation policies) in the context of general development of culture.
- 21.17 Along these lines, ownership may be defined as a guaranteed right, but it also gives rise to obligations, and its use may not be detrimental for the entirety, for the whole. Substance, scope and limits of ownership are determined by laws as an expression of rational strength of the common volition.

- 21.18 Due to the fact of existence of ownership systems in the present-day world, including those which keep ownership under the auspices of state imperium, the processes are obvious of transformation of such type of ownership that mean the departure from the state ownership dogma.
- 21.19 Keeping such type of ownership, giving to the state the imperium of political and every other power, is contrary to the universal conception of human rights that has its deep root in the philosophy of justice of the natural law teaching. Therefore, preserving even one single point of the state ownership mosaics of political and public law imperium means also the keeping back of time, and a prolonged delay regarding the implementation of international standards of human rights in that particular area.
- 21.20 A transformed system of ownership freedom in terms of mentioned international community standards, enables all the holders of rights (individuals, their associations, state) to participate in the ownership status within the conditions of legitimate and organised, and legally implemented competition of abilities in the market economy.
- 21.21 Acquiring and exchange of material and intellectual goods on such an organised market, coupled with mentioned care of a just and reliable legislation (taxation policy and the like), points at a greater opportunity of realisation of the commutative and distributive justice, as an indispensable requirement and a feature of the rational conception of natural law.
- 21.22 In such conditions the state as an equal and a totally unprivileged partner and a market entity may, just as all the other participants, be the actor in acquiring the results of ownership, but at the same time a bearer of risks if not doing business as a *bonus pater familias*. The experience has shown that in such conditions the state tries to free itself from the burden of direct participation in the market competition, so that it transfers ownership by various means to other entities, and this is today called the process of transformation of state ownership. That ownership transformation, however, is essentially different from that transformation in which the state ownership and political imperium are transformed in the market-type ownership.
- 21.23 The process of competition in the market in the conditions of market economy has to be coupled with the corresponding legislation. Legislative acts here must be inspired by distributive and commutative justice, and not by some momentary interest of political, national, religious, racial or class origins. As

such, they have to be attentive towards everyone's ownership freedom, regardless of difference in status of the holders of right (both individual and collective ones), so that the enjoyment of that freedom should be free of threatening the freedom of others over the limits of individual and social tolerance.

## **22. Denationalisation and Privatisation**

- 22.1 Collectivistic type of ownership which took place in the socialist countries by means of compulsory transfer of private into state ownership (nationalisation), did not manifest its economic justifiability. In the majority of such countries the process is now under way of denationalisation by which the nationalised property is restituted to former owners, by means of natural restitution or monetary compensation. That process corresponds to the principles of social justice.
- 22.2 Private ownership with the predominant social function in the conditions of market economy represents today a model to be followed by an enormous number of countries.
- 22.3 From the standpoint of rational conception of natural law, the process of privatisation must be founded on the legitimacy of equal treatment of equal things and guided by the coexistence of impartial approaches to the ownership status, including all the rights and duties stemming from private ownership.
- 22.4 Organised in such a way, private ownership stimulates entrepreneurship as the natural right of man and his commercial associations; in such a way and by legally permitted activity the man creates material and intellectual goods with the aim of accumulating property and utilising it, but the ownership at the same time obligates through the act of its sociability; these obligations are expressed in various aspects of their scope, realising thus their social functions.
- 22.5 Entrepreneurship as a motive of the individual and of the social necessity, as an indispensable symmetry of that motive, are but two pillars around which the process of privatisation is going on. Final result of that process should not bring about a social conflict as a consequence of the disturbed balance due to enormous property and social differences. Moreover, that process should not

cause lethargy of equality that eliminates the entrepreneurship motivation; it should create, instead, an environment where legitimate and legal property and social differences, based on such property, would move within the borders of individual and social tolerance.

22.6 Ownership freedom covers all objects as material parts of the nature - immovable, movable, immaterial, such as intellectual creations. However, ownership freedom relating to immovable property is characterised by numerous specificities, such as recording in the books of title, the regime of the urban building sites, the foreign element, the execution procedure, and the like. Exactly due to such specificities, the ownership freedom relating to immovables is mainly regulated by the provisions of national law.

### ***23. Taxes and Taxation Policy***

23.1 Taxation policy is an instrument of redistribution of social wealth. Ownership structure and property sphere of natural and juridical persons, on the one hand, and the needs of financing public expenditures as an unavoidable obligation of state community, on the other, make the basis for, and a motive of the tax legislation.

23.2 For the purpose of covering public expenditures or achieving other economic or social objectives, the state on the ground of its legislative imperium compulsorily collects from its tax-payers the monetary means in the form of taxes and other dues and contributions. In such a way, in addition to direct financial effect, the state, through the taxation policy, may decisively influence the establishing of balance between property differences that threaten to cause, or in fact do cause, considerable social conflicts and organised violence.

23.3 From the standpoint of rational conception of natural law, the state has a duty to prevent conflicting social situations, while taking all the measures that are necessary to improve the general and real respect of human rights and freedoms.

23.4 In matters of taxation policy the state is under an obligation to enact and to carry out such kind of legislation which should be based on achievements of distributive justice, general approach, equality in treatment and stability,

while endeavoring not to weaken or threaten the motive and the principle of entrepreneurship.

23.5 Tax legislation with the above mentioned features may not be effective in the conditions of state and planning imperium in the sphere of economy, where experience has demonstrated that the motive of entrepreneurship is lost as a natural right of man to be inventive and to create. Just the contrary, where an economic system is based on the competition of human abilities in the conditions of legitimate field of market relationships that are in their entirety covered by the just law, then this becomes also a place for the tax legislation with the above mentioned characteristics.

23.6 Since the majority of present-day states is oriented towards the institutions of market economy, tax legislation is more and more acquiring common and unified forms and standards of regional and even of universal significance.

#### ***24. Contract and Tort Liability***

24.1 Contractual freedom is a part of the general freedom conceived as a natural right of man. Freedom of contract of the one is at the same time the limit of freedom of another individual. In addition to ownership freedom that affirms its holder in the act of the acquired right, the freedom of contract as a reality of ownership ensures to its holder the possibility and certainty that have to mediate in the act of exchange of material and intellectual goods. Consequently, contractual freedom is regulated by the rules of self-confident, rational and limited freedom.

24.2 Freedom of contract is not reduced to the issue of negation or absolute effect of freedom, instead being an issue of determination of the measure for an adequate position in the duality of claims of two social necessities: the one relating to the freedom of individual activity, and the other concerning the indispensable element of protection of general goods of a given community.

24.3 The solution may not be established arbitrarily; it depends on the degree of development of a given social environment, on its cultural status, economic constitution and organisation, on the philosophical conception, on moral emancipation, and the like. Differences between these features outside the sphere of law are obvious in various environments and various times. That

fact explains the limits marking the field of freedom of negotiation that are not the same in all legal systems. They are a changing category, both in terms of their essence and the principle of expression, although there exists also some degree of common attributes, at least as far as certain institutions carrying out such limit are concerned.

24.4 In the entire system of protection of general interests, the institution of public order and fair usage are of utmost importance. These institutions appear as a demarcation line separating the space of permitted from that of the prohibited entering into contract. The fact of various legal and moral imperatives in various state communities is a distinguishing point also for different public orders in terms of their content.

24.5 However, although public order of each and every country is specific and characteristic, it may not be at present an island for itself, because its borders are extended and, to a degree, integrated in international standards relating to human rights. In such a way, contractual freedom is today moving within the limits of an expanded, codified and, to quite a degree, unified concept of public order.

24.6 That conclusion is subject to three reservations as far as the issue of human rights is concerned, which depends on the degree of culture of legality of the state and legal system of a given country. In any case, the legitimacy in the source of public order and the legality in its application, are the fundamental pillars of the expanded national public order in present times.

24.7 Causing damage, i.e. tort, and the issue of compensation of loss represents, in addition to contractual, the other branch of liability that appears as a consequence of some damaging event. Legal organisation of that kind of liability is, in essence, based on the principles of commutative and distributive justice that are found in the very foundation of rational conception of natural law.

24.8 Finding the ground of that liability in the element of fault has represented a great improvement in the development of legal civilisation, where Roman law had its particular say. However, fault as a ground of liability, in the conditions of contemporary world and of highly developed technical mind, turned out to be insufficient to encompass, in terms of law, a great number of cases where the cause of loss remains unknown. Enormous technical progress is characterised by an accelerated progression of damaging events, where it is

not possible to discover the fault, because rather often there is no fault at all, since loss and damage are but inevitable fellow-passengers of the general progress and way of life of modern man. Every year more than one hundred thousand people die only in traffic accidents!

24.9 In such a situation, the beginning of the twentieth century has given rise to the rule according to which there is no investigation at all in the case of damage caused by the so-called dangerous objects, since the corresponding liability is not based on fault. The party liable to compensate the loss is in such a case the owner or holder of the dangerous thing, i.e. object, or the operator of dangerous activity (strict liability, or liability without fault). Experience of life and the reality of the twentieth century man have introduced in the matter of liability two criteria: one is the impartial, i.e. objective, and based on the category of risk, while the other is individual, i.e. subjective, and based on the category of fault. This duality of the ground of liability in contemporary law corresponds to the general justice in Aristotle's terms of the concept.

24.10 If the strict liability emanated out of actual degree of development of the technical mind and of the request for a higher social justice, then its presence today is just an introduction into a more intensive phase of socialisation of liability for loss, which originates from the "general fault". Just as at the beginning of the twentieth century, the liability for fault (i.e. subjective liability) was unable to encompass the new relationships that took place with damaging effects of dangerous events, today - at the beginning of the new millenium, the strict liability has remained weak to respond to numerous claims of persons suffering damage and distress, and particularly those who became victims of damaging events that, by their scope often surpass all limits: we think of unforeseeable consequences even for the descendants and future generations, of nuclear energy damage, for instance.

24.11 Great dangers of that kind of damage and the issue of relevant liability are the subject matter of international regulation. This is the case with the Vienna 1977 Convention on Civil Liability for Nuclear Damage, with the additional Protocol (1992); the 1972 Convention on the International Obligation of Redressing the Damage Caused by Outer Space Objects; the International Convention on Civil Liability for Damage Caused by Oil Pollution (1969); as well as the establishment of an international fund for managing compensation of loss due to oil pollution (1971).

- 24.12 In the case of such kind of damage it is obvious that both the liability for fault and the strict liability have remained unable and powerless in terms of reparation, and still less in terms of integral compensation; it is therefore recommended to have a socialisation of liability as a possible way out in solving that question. Only strong social funds that are organised at the level of certain collective bodies, be it a state or an inter-state entity (and, to a lesser degree, also insurance companies) may in some cases be efficient and equitable, while in other cases of great catastrophes they may only partially make up the loss; the third cases, however, will unfortunately remain unsettled entirely. In this last case (which is fortunately rare) the law is completely powerless, so that ensuing damage should be accepted as an Act of God, as the case of fate that remains without compensation.
- 24.13 Mentioned trichotomy of a legally organised liability corresponds to the present-day complexity of sources of danger and the specter of the corresponding damaging consequences. Therefore the socialisation of liability could be the only reasonable answer to the issue of future relations in the mentioned trichotomy in the twenty first century legal life.
- 24.14 In all this the classical concepts of commutative and distributive justice do not lose their importance. If we begin from the liability for fault, and continue with strict liability, and then come to the socialisation of liability, we notice certain trend in relation towards the distributive justice. The integral compensation ordered by arithmetic logic of the commutative justice remains as a claim also under the conditions of socialisation of liability. But, the concerns of distributive justice, ordered by the logic of geometric progression, adapt that compensation to the possibilities and needs of contemporary man who, to quite a degree, becomes a victim of his own way of life.
- 24.15 This is why the requests of commutative, and particularly of distributive justice are transformed today into the foundation of the theory of socialisation of liability. That building is more and more becoming inevitable in modern society of developed technology and technique, in a world that succeeded to reach the outer space, while remaining unable on the Earth to defend itself from epidemics of general damage and loss caused by man himself.
- 24.16 And therefore we read the words on the globe of contemporary legal world that are the same as the ones written twenty centuries ago: there are two fields of general justice - commutative and distributive, while the border-line

between them is moving. Only the rational conception of natural law holds the optics by which it is possible to recognise both those fields of liability.

## **25. Commercial Companies and Commercial Contracts**

- 25.1 Economic system is based on the competition of abilities of economic entities in the conditions of economic and legal legitimacy of the market; it is characterised by a whole specter of various commercial companies as holders of rights in the sphere of economic and legal relations. On the contrary, an administratively planned state economy provides a different picture of holders of rights in the sphere of economy in the form of state and socially-owned enterprises which, in essence, make derivatives of the ownership and state and political imperium.
- 25.2 Due to the fact that a major part of modern world accepts and develops at present the market and not the administrative economy, the system of commercial companies, both in terms of status and business operation, we speak of a prevailing *modus vivendi* of market relations.
- 25.3 Complexity of these economic entities expresses the invention and the need of economic and legal developments and life for a whole series of various forms of subjectivity that have their own legal regimes, depending on the kind of economic relations and functions to be realised in the market.
- 25.4 Companies of persons and of capital are today a *summa divisio* in the numerosness of commercial companies. Along these lines, a joint-stock company, as a company of capital, represents a typical form of subjectivity of the market economy, followed by other types, such as partnership, limited liability company, limited partnership, public law and mixed company. Special commercial companies are the banks and credit companies and they have their own regime of operation and a whole body of relevant rules.
- 25.5 From the standpoint of rational conception of natural law, the status and complexity of commercial companies as holders of rights in economic and legal transactions, are justified to a degree in which they effect the natural right of man to be an entrepreneur, alone or jointly with others, in the form of the above mentioned associations. It goes without saying that all this is valid under the condition that ownership differences created in such a way are

moving within the borders of social tolerance, so that they do not become a *casus belli* of antagonistic social groups.

- 25.6 Contemporary market economy, in addition to classical contracts, more and more requires legal regulation and new types of commercial contracts; they in most cases are of a mixed character. Especially in international practice they have been already affirmed, so as to become regulated in national legislation, or in the legislation of the European Union, and/or in the form of unification under the auspices of the International Institute for the Unification of Private Law (UNIDROIT), especially through making so-called model laws for various types of contract.
- 25.7 General rules concerning the freedom of contract relating to the limits of that freedom and fair usage are valid in this case too.

## **26. Insurance**

- 26.1 Our life, individual and common, is today characterised by the presence of various risks and dangers for life and property around us. The institution of insurance by applying its own regime reduces the consequences of loss insured, by way of payment of the insured amount.
- 26.2 Efficiency and security of this way of reparation out of the common fund that is mainly formed out of insurance premiums, contributes to greater legal certainty, at least as far as monetary equivalent for the insured case is concerned, and under the condition of solvency of insurance fund and of respecting the terms and conditions of the insurance contract and general terms of insurance business.
- 26.3 The institution of compulsory insurance becomes more and more important in the modern world, which is dictated mainly by the increased risk in some spheres of social life and traffic. With the enormous and massive losses, compensation becomes a crucial matter which, to a rational degree, must be sure and efficient as well as free from classical categories of court procedure, and this may be achieved only through the establishment of strong funds of compulsory insurance. The burden of contributing and the right of compensation should be arranged under the principles of commutative and distributive justice.

## **27. Labour Relations**

- 27.1 Right to work and all relevant elements connected with it belong to every man. Ownership structure and general culture determine the dimension and quality of that right. Conditions enabling the benefits of work for everyone make the ideal of a man as a free being of Nature.
- 27.2 International law standards that relate to labour and labour relations, as primary and fundamental areas in the economic, social, and cultural spheres of mankind represent the indicators of the real situation as far as proclamations and realisation are concerned of the totality and integrity of human rights.
- 27.3 The codification of labour law and social justice, beginning with the 1948 Universal Declaration of Human Rights and the 1966 International Pact **on** Economic, Social, and Cultural Rights, as well as an enormous number of international documents of general and regional character, and particularly the regulations of the International Labour Organisation (ILO) and the 1996 European Social Charter, make at present not only the central body of consciousness and rational wisdom but, before everything else, also a source of internationalisation, which is the final aim of various national sovereignties that are striving to meet their needs for implementation of these rights into their own legislation.
- 27.4 That *Corpus Iuris* of social justice begins with the dominant words: everyone has the right to work, to free choice of employment, equitable and satisfactory work conditions, and to the protection against unemployment; furthermore, everyone has the right to equal pay for equal work, and all employed are entitled to a just and adequate compensation, apt to provide to him and to his family a dignified existence, and as the need be, to be supported by additional means of social care.
- 27.5 These general provisions have found their specific paths in a whole series of rights connected to the right to work and to equitable pay, such as the following: the right to safe and healthy work conditions; the right to organise into associations; the right to collective negotiation of labour conditions; the right of children and young people to protection; the right of the employed women to protection of maternity; the right to professional orientation; the

right to professional training; the right to health care service; the right to social insurance; the right to social and medical assistance; the right to social insurance benefits; the right of handicapped persons to independence, social integration and participation in the life of society; the right of the family, children and young people to social, legal, and economic protection; the right of migrants and their families to protection and assistance; the right to equal treatment in obtaining employment and professional position without discrimination on the ground of sex; the right to information and consultation, in particular in case of collective loss of jobs; the right to participate in determining and improving work conditions and work environment; the right of older people to social care; the right to protection in case of termination of employment; the right of workers to protection of their claims in case of insolvency of their employers; the right to dignity at job; the right of workers with family obligations to equal possibilities and equal treatment; the right of workers' representatives to protection in the company and to corresponding benefits; the right to protection against poverty and exclusion from social community.

- 27.6 In the context of these rights significant position is taken by the principle of trade union freedoms, that have to be combined with additional and mutually dependent legislation, especially that covering the regulation of matters of rights and duties of relevant associations of employers and the state.
- 27.7 In the conditions of market economy and through the corresponding legislative acts and professional standards, wider place should be accorded to the so-called flexible forms of employment, which are not connected with the traditional attributes of labour relationship (employment) in terms of its establishing for an indefinite and definite period of time, full-time job, and other categories stemming from such relationship.
- 27.8 Due to the nature and scope of employment relations in the present-day world, which is implemented in national legislation, it is recommended to leave over the settlement of disputes in this area to specialised courts and arbitration tribunals, supplied with built-in mechanisms for peaceful finding of solutions of disputes,
- 27.9 From the standpoint of rational conception of natural law, the sum of rights stemming out of labour relationship (employment) characterised by economic and social aspects, is a separate area where all other natural rights of man are

reflected, and more particularly, the right to life, freedom, and property. Consequently, the issue arises as to the disproportion between the proclaimed and realised, and/or failed to be met, natural rights. This is an indication of the state of affairs in this area.

Forth Chair

## **RIGHT TO INTELLECTUAL CREATION**

### ***28. Freedom of Creation***

- 28.1 Everyone is entitled to create, by the strength of his mind, the works from the field of intellectual culture.
- 28.2 The area of general freedom of personality, particularly property and contractual ones, relates to intellectual creations as well. The right to intellectual creation is subject to the general rules of freedom as a regulated coexistence of people, i.e. the freedom whose borders are set by the same freedom of others.
- 28.3 Intellectual creations whether expressed through creations of literary, scientific or artistic works, or creation of works in the area of industrial property, enjoy the protection of moral and substantive interests of the creator of the work.
- 28.4 Everyone has a natural right to use, in the limits of laws, all the achievements of civilisation - scientific, artistic, technical, technological, and, in general, cultural. These already exist as a result of creative work of previous generations, so that everyone is entitled to freely participate in the cultural activities of the community, to enjoy the arts, to take part in scientific progress and share to corresponding benefits.
- 28.5 International standards in the field of copyright and related rights, as well as those in the area of industrial property, facilitate the spreading and protection of spiritual creation, while contributing to better understanding between people. Along these lines, works published by citizens of each country that has adhered to the 1971 World (Universal) Copyright Convention, as well as works that are published for the first time in the territory of such states, enjoy in any other member-state the protection otherwise extended by that other country to the works of its own citizens, published for the first time in its territory; this

includes protection that is particularly recognised by the mentioned Convention.

28.6 The universality of the right to intellectual creation that is expressed, among other things, also through the establishment of the Union for Copyright Protection and the Union for the Protection of Industrial Property, causes an ever wider internationalisation of that right, which represents a genuinely positive element in terms of universality and preservation of the integral nature of human rights.

Fifth Chair

## **RIGHT TO JUSTICE**

### **29. General Issues**

- 29.1 When the law is conceived and realised in the category of justice, when the general constitution of a community accepts justice as a "crucial and central virtue", then the law of such a community becomes legitimate in its very source, and legal in its application. In that case the law becomes less violent, becoming instead a wider area of self-confident freedom. These are the spaces of the rule of law conceived as an act of culture.
- 29.2 A legitimate law should realise the relations under equal conditions on the ethical principle of equal treatment of equal things (*iustitia commutativa*), but such treatment includes a correction of the arithmetic proportion by the geometric one that is expressed as a distributive justice. This corrective and complementary act in the procedure of application of law takes in consideration the nature and specificities of personality; it recognises the value or merits of personality, accepts its relevant characteristics, realising in such a way the equalisation (*iustitia distributiva*).
- 29.3 Both these proportions make an entirety of justice. The one is formal, but at the same time also absolute in maintaining the principle of identity and total equality of relations (*ius strictum*), and as such it makes a static part in the concept of justice. The other one - distributive, is not absolute in the heteronomous system of positive law, because it expresses the principle of recognising the individual characteristic, as viewed through the optics of

specific social assessment (*ius aequum*), and as such represents a variable (i.e. dynamic) part of the concept of general justice.

- 29.4 Accepting these two proportions of justice is characteristic of the entire world of jurists, with its centuries-long development of categories of the objective and subjective laws.
- 29.5 Limitations in terms of space and time of a given legal norm, as well as its abstract character in terms of universality of application to an unlimited number of cases, compel one to be aware of the fact that the commutative justice, as a rigid and uncompromising arithmetic proportion, cannot be always applied equally to equal cases; it is necessary, in other words, to make a preliminary assessment as to which things are equal and/or to what a degree they may be unequal.
- 29.6 The application of the principle of commutative justice necessitates a previous selection and qualification of individual cases by the method of comparing and ascertaining the issue of equality and/or inequality. In this respect an ideal and detailed complementarity of two particular cases, as two identities, is not that frequent in practice. In addition to possible gross equality of two cases, there would often be also such "secondary" inequalities which have to be taken an adequate account of.
- 29.7 In order to apply the mathematical principle of equal treatment of equal things, it is necessary to call for help the distributive justice and its principle of honouring individual characteristics; in such a way by a joint step it is possible to come to the equality of relations in terms of proportion as a mark of the achieved equity. At play here is, in other words, the entirety of a category where it is possible to discern its static and its dynamic component elements.
- 29.8 Commutative justice is of a formal character, but at the same time it is also absolute, since it is an expression of the "iron" quality of the principle of identity; as such, it represents the static portion in the concept of the general justice, conceived as a complete virtue and complete equality of relations. Distributive justice, on the contrary, is not absolute within the system of positive law, since it is an expression of the principle of honouring the individuality that is observed through the optics of specific social evaluation.
- 29.9 The rules of commutative and distributive justice are applied both in the national legislations and in international relations expressed through various

documents of international community, which otherwise are the subject of implementation in individual countries. In that sense we have numerous institutions of general or regional character, and in particular the European Union law, that is developed over the achievements of the European legal civilisation and universal international human rights standards. Many European countries that are not European Union members are now in the process of harmonising their national legislation to that of the Union.

### ***30. Court in Connexion with Justice***

- 30.1 By performing their duty the judges take stand on the life and freedoms, as elementary natural rights of men, and on all other rights and duties stemming out of the former ones, making a specter of human rights and being within their jurisdiction on the ground of laws and statutes.
- 30.2 By solving specific life situations in the scope of determined competence, the judges, through their professionalism and conscience, carry and reveal the voice of laws, but not on the ground of the principle of positivist mechanism and automatism, but rather as a necessity of application and interpretation of legal norms in terms of the legitimate justice.
- 30.3 The monism of the statutory norm when it pronounces the arbitrariness of an insupportable injustice, if not being eliminated by the wisdom of the law-maker, may only be prevented by the pluralism of interpretation of the norm on the part of the judge. In that process the judge, as a third power, is but a last barrier and defence of the just law against the aggression of the statutory non-law.
- 30.4 By adhering to the principle of legality of the positive law, the judge by means of interpreting the laws, becomes an actor of the adjudicated equity, as the expression of the universal justice.
- 30.5 Independence of judges and their impartiality is a crucial prerequisite of the institution of judiciary. The issue of judge's independence is not only a legal question. This is a question of general culture of a given community. In that wider circle of developments of law and justice, the principle of independence of judges is but a line of demarcation dividing the field of law from the desert of non-law.

30.6 In the conditions of a state without the rule of law, where legitimacy and legality of law are below the permitted degree of social tolerance, where the rule of law is replaced by the rule of the arbitrary fact - i.e. government power, passions or interest of the individual or the group, and where the principle of separation of powers is eliminated, reducing the entire life to political monism and its strict hierarchy - the independence of judges is reduced to dependence on the party and not on the legal decision. Such a dependence transforms the judge into a secondary instrument of a one-way order (political, national, racial or class), so that judge in such a situation becomes unable to apply the just law. Thus the law comes to disaster, and together with it there is no more principle of independence of judicial power. Going to this direction means going towards a non-law. Just the contrary, if the democratic principle is organised under the principles of constitutionality and legality, the independence of judges is provided by the very action of the state ruled by law. Independence of judges, as crucial attribute of their function, represents an organic part of the state ruled by law.

30.7 A higher culture of legality is expressed by the rational conception of natural law, just as the entire civilisation of law and judiciary remind, point out, and teach us that it is necessary to open the doors wide to judicial independence, since the law is a phenomenon of the good and equitable; it is not, and cannot be an arbitrary fact of violent volition of the ones against the others.

30.8 On the ground of the above it is possible to to formulate the Twelve Tablets of judicial independence.

- I. in administering justice, the judge is independent of any kind of power, except the power of legitimate law;
- II. the judge renders impartial decisions on the ground of procedure provided by law, on the ground of evaluated facts and understanding the law in terms of realisation of the commutative and distributive justice;
- III. the judge applies also the norms relating to human rights that stem from the confirmed and published international treaties and generally accepted international standards which are a component part of the internal legal order of every enlightened community;
- IV. the judge is a personality of public confidence;

- V. judicial duty is based on a high level of juristic and general culture, so that the judge has to be given the opportunity of permanent improvement of his knowledge;
- VI. the judge, just as any other citizen, enjoys the general freedom of opinion, speech, of expressing his views and beliefs, of professional association, meeting and moving, but always coupled with the need to keep the dignity of his profession and impartiality and independence of the judiciary;
- VII. performing the judicial duty may not be a subject of undignified influence, instigation, pressures, threatening or interventions - both direct and indirect, on the part of anyone, or out of any reason whatsoever;
- VIII. everyone is bound to respect, in the limits of compulsory regulations, public order and morality, the independence of judges, and to refrain from any act of improper influencing. Every person by putting in danger, by contravention of the above, the independence of judges shall be punished according to law;
- IX. the state guarantees the independence of judges through a consistent application of the constitutional principle of the rule of law and the principle of separation of powers into the legislative, executive, and judicial, according to which the administration of justice belongs to the courts;
- X. the judge may not be responsible for his opinion or vote given in the performance of his duties. The immunity of judges is regulated by law;
- XI. the judge may not engage in other business activities that compromise his judicial independence or dignity;
- XII. the judge must be exempted from conducting proceedings in specific case where there are grounds for questioning his impartiality, as well as where there is a risk of the conflict of interests which is incompatible with the performance of judicial duties and the independence of judge.

30.9 Judicial independence is expressed also by the attributes of the judicial status.

Judicial duty is performed in the conditions of permanency of judicial profession. Due to the specificity of the profession, this status carries with it certain properties finding their expression in the permanency of the judicial function, according to which the judge may not be deprived of his position and

function through anyone's free will, except at own request or on the ground of reasons for termination of judicial function specified by law.

- 30.10 Immovability of judicial function, just as other attributes of the profession relating to status, means that the judge may not be removed to another court without his consent.
- 30.11 In addition to judicial independence in the procedure of implementation of law, as well as to his status independence, there exists a number of other guarantees of such independence, whose aim is to ensure a genuine and effective application of judicial independence in practical life situations. These guarantees include: the way of election of judges, material position of judges, immunity of judges, the mode of promotion in the career, continued advanced education, conditions of work, distribution of cases to be dealt with, the right to a natural judge.
- 30.12 In order to render justice independently of any power, except the power of a legitimate law, the judge must have the knowledge of substance and the scope of rational conception of natural law; he must apply it in terms of the rule of commutative and distributive justice. Without the natural law there is no judicial independence.

### ***31. Legal Protection of Refugees***

- 31.1 Everyone has the right of free movement and the choice of residence within the laws of individual state. Moreover, everyone is entitled to leave any country, including his own, as well as to return to his country.
- 31.2 No restrictions may be set in putting into effect of these rights, except those limitations that are in accordance with laws, and are necessary in a democratic society in the interest of national security or public safety, in order to preserve the public order, to prevent crimes, to protect public health or the rights and freedoms of other people.
- 31.3 Everyone is entitled to request and enjoy in other countries the asylum in order to save himself from prosecution, except in case of criminal acts which are not of a political nature, or the case of contravention of imperative provisions of the rights of man to life and freedom.

- 31.4 In accordance to these general principles of the rational natural law, national legislation, by way of implementing the corresponding international standards, must extend full protection to refugees, and in particular in the humanitarian and social spheres; in such a way the problem of refugees will not become a problem of strained relations or conflict between the interested states. Significant position in this respect is taken by the 1951 Convention on the Protection of Refugees.
- 31.5 This protection includes particularly the following: non-discrimination in terms of race, religion or country of origin; regulation of the personal status of refugees, coupled with the respect of the previously acquired status, and more particularly as far as the spouse of the refugee is concerned; applying the same legal regime in the sphere of property which is valid for foreign citizens in general (acquiring of real estate and movables, and other rights, including the right to home); the right to intellectual and industrial property; legal regime of associations of refugees that have no pecuniary or political objectives, which again should be the one otherwise applied to foreign citizens; freedom and easy access to the courts of law; general education and public assistance should be organised on the principles applied to domestic citizens; labour legislation and social insurance should, in principle, be the same as the one applied to domestic citizens, and in accordance with the existing international treaties and inter-state agreements, as well as corresponding specificities.
- 31.6 Along the lines of the rational conception of natural law, legal regime of refugees has to be consistent with the requirements of social justice and general coexistence of all the freedoms of men, where the right to freedom of movement and safety of the personality have the presiding position.

## **THE RIGHT TO A STATE RULED BY LAW**

### ***32. Legitimacy and Legality***

- 32.1 A state ruled by law is a state which, in its legal system, has provided such a degree of rule of the principles of legitimacy and legality, which make possible to these principles to develop within the limits of social tolerance.
- 32.2 In a state ruled by law the state authorities and the arbitrariness are stopped by the constitution and the laws, so that fundamental human rights and freedoms are fully protected. In the moment in which legality is replaced by the principle of appropriateness, in which some interests are placed above the natural rights of man, the state loses the attribute of the entity ruled by law. When one adds to such a situation the illegitimacy of the agencies of power, which means alienation of the state from its citizens, then the state and its legal order are the negation of the legitimate law and democratic system.
- 32.3 The order of a state ruled by law must stem from democracy and its culture, from the system of human rights and freedoms. When the politics become arbitrary and alienated, when it imposes itself by its force and dictatorship over the law and the legal order, then the legal system loses its legality. We enter in this case into an area of political appropriateness in the negative sense of the word, where the dominant role is taken by the revolutionary conscience or political subservience, opening the way to the agony of law and giving rise to an anti-law state.
- 32.4 The rule of law and/or a state ruled by law are realised through the requirement of legality. When "obedience" to a just law is transformed into a duty of all, when, in other words, all people are equal before the law so that the law is applied equally to equal cases, then this is the other feature of the state ruled by law. That feature does not exist in a separate field, and it is not closed in itself, but is understood in the cumulative sense, i.e. together with the requirement of legitimacy.
- 32.5 The principles of legitimacy and legality must be positioned in such a way so as to prevent that the departure from them threatens the area of social tolerance, which may be determined by an exact manner. In that sense legal

certainty as an element of justice makes the crucial attribute of the state ruled by law.

32.6 The school of natural law of rational orientation, as accepted and realised in the democratic culture, and a sure and reliable legal order designate the area where the state ruled by law lives.

