Mt. KOPAONIK SCHOOL OF NATURAL LAW
TWENTY FOURTH ANNIVERSARY CONFERENCE

FINAL DOCUMENT

GENERAL STATEMENTS • INTRODUCTORY ADDRESS • MESSAGES

Mt. Kopaonik, December 13–17, 2011.

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GENERAL STATEMENTS

The Twenty Fourth Conference of Jurists of the Kopaonik School of Natural Law was held on the Mount Kopaonik on December 13th through 17th, 2011 under the permanent theme *Justice and Law* and with the annual theme *LAW AND RESPONSIBILITY.*

Several days of Conference activities have followed the traditionally accepted Hexagon of the Kopaonik School of Natural Law through the following chairs:

I Right to Life

II Right to Freedom

III Right to Property

IV Right to Intellectual Creation

V Right to Justice

VI Right to a State Ruled by Law

The following sections have worked within the framework of the above chairs:

Life, Health, Ecology, Sports (First Chair).

Criminal-law and procedural protection of personality; Freedom of personality – general freedom and family-law freedom of personality; Administrative-law protection of freedom (Second Chair)

Codification, property and other property rights, property and inheritance, restitution and privatization, taxes and taxation policy; Contract and tort liability; Commercial companies, International Commercial Contracts, Arbitration; Banks and banking transactions; Insurance, Labor relations (Third Chair).

Industrial property; Copyright (Fourth Chair).

Court in connection with justice – court practice, procedure, enforcement; International relations and justice – international law – foreign elements; European Union law (Fifth Chair).

State ruled by law – theoretical and practical experiences (Sixth Chair).

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495 reports have been written, out of which 240 reports were published for the Twenty fourth Conference of the Kopaonik School under the title *Law and Responsibility,* both by domestic and foreign authors. All reports were distributed along the lines of the School Hexagon into six chairs and 23 sections. The published reports were published in four volumes containing 4000 pages.

The 24th Conference was attended, as in previous years, by more than 2,500 participants – jurists from various universities, academies, research institutions, courts, administrative bodies civic associations, the Bar and other public organizations and services, including NGOs, commercial companies and commercial associations, banking and insurance organizations as well as from other social institutions.

The School was attended by over 80 eminent jurists from abroad– theoreticians and practitioner, both as report authors and direct participants in the activities of the sections. Foreign participants have come from the following countries: Austria, Germany, France, the United States of America, Brazil, Greece, Israel, Great Britain, Russia, Belgium, Czech Republic, Hungary, Turkey, Croatia, Slovenia, Macedonia, the Republic of Srpska, Bosnia and Herzegovina, and Montenegro.

* * *

All participants have received the Bibliography of all works published by the School (1987-2011), with authors' names and report titles.

* * *

The Kopaonik School's Administration, this year too, has received a considerable number of greetings from quite a number of significant European and overseas research and governmental institutions, including many legal experts and eminent theoreticians and professionals from all areas of law. A number of these communications was read at the initial Plenary Session of the 24th Conference. The media have covered all activities of the School.

The work was conducted at plenary sessions and at specialized working sessions at the chairs according to Schedule in terms of the Hexagon of the Kopaonik School of Natural Law.

A highly academic and friendly atmosphere was characteristic this time again of the entire work of the Conference. In the evening hours there were programs and shows of artistic content.

Editors, authors, and other participants, and particularly the foreign ones, have expressed their general impression that this Conference has, this time again, traditionally lived up to their expectations.

* * *

The Kopaonik School has continued this year as well to affirm the ideas of natural law, i.e. the universal human rights based on centuries-old philosophy of Law and Justice, and today expressed in codifications through the United Nations documents and those of other international organizations.

The School this year as well has reiterated the fact that a considerable gap did exist between proclaimed human rights and their realization. This gap may be reduced or surpassed to quite a degree only by applying the attributes of the rule of law, of democratic culture and tolerance as expressions of spiritual freedom and culture of reason. There still exist considerable differences in various fields of life, depending on the level of development of general culture of a given community.

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At the opening and the concluding plenary sessions of the Kopaonik School of Natural Law, the words of academic honor, recognition and con-

fidence in the totality of its mission in the world of jurists have been addressed by numerous eminent foreign and domestic participants.

* * *

At the opening of the plenary session of the Kopaonik School, after opening addresses of domestic and foreign participants, the founder of the Kopaonik School dr. Slobodan Perović, member of academy and professor, has presented his Introductory Address under the title *Natural Law and Responsibility.* A decision has been taken at the concluding plenary session on 16th December 2011, that this Introductory Address be made the part of the of the Final Document of the Twenty Fourth Session of the Kopaonik School of Natural Law and be printed as such.

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Continuing the tradition of the Kopaonik School of Natural Law to present in a summary way to the general public the results achieved at the respective chairs and sections of the School, all section editors have reported at the concluding plenary Session the basic statements, proposals and suggestions in form of messages which were adopted at that Session and which now make an integral part of the present Final Document of the Kopaonik School of Natural Law.

The messages, however, may not comprehensibly include the whole abundance of ideas, proposals and opinions stated in the actual reports and in course of discussions. This is why, in order to at least partially present the topics treated, enclosed to the present Final Document is also a list of all titles, i.e. subjects elaborated in the reports. The texts *in extenso* shall be published in the *Juridical Life* periodical, in four volumes, in numbers 9 through 12 for 2001, in about 4,000 pages.

The entire work of the 24th Conference of the Kopaonik School of Natural Law has been recorded by means of audio-technique, so that in addition to reports published in the above periodical, complete discussions at plenary sessions and at the chairs and sections are also available in electronic form. This audio-visual material is stored at the Kopaonik School Library in Belgrade and is thus accessible to the public.

Message from
Ms. Pilar Alvarez Laso,
Assistant Director-General for Social and Human Sciences,
UNESCO, to the participants of the Twenty fourth Conference
of the Kopaonik School of Natural Law dedicated to the topic of
"Law and Responsibility"
(Mt. Kopaonik, the Republic of Serba, 13–17 December 2011)

Distinguished Professor Perović,

UNESCO congratulates to the Kopaonik School of Natural Law for its choosing such a significant and actual topic for its 24th annual Conference.

Relationship between fundamental principles and values such as human dignity, justice, equity, freedom, solidarity and the like, and the individual and joint responsibility is a primary concern of UNESCO.

UNESCO has adopted at its 1997 General Conference the Declaration on Responsibility of the present generation to future generations, where it was emphasized that the present generation must have in mind also the interests of future generations, and that UNESCO must play a particular role in general widening and promoting of that idea.

I wish you most successful work at your 24th Conference, hoping that cooperation between the Kopaonik School of Natural Law and UNESO will continue to develop.

Dr. VLADO KAMBOVSKI,
President of the Academy of Sciences and Arts of Macedonia

Respected Colleagues,
Honorable Chairmanship,

I am greatly honored to be able to attend this great conference of jurists, representatives of legal science and practice form the region and the

European and overseas countries. This time again, an interesting topic has been chosen for the debate. It is perhaps even the most actual theme since the 21st century is a century of knowledge, research and science, but also the one of humane and sustainable development of society that implies responsibility of all of us and a guarantee that such development will be liable so that future generations too may count on natural and other resources and decent conditions of life and at the same time on the humane development of society. There is no need to particularly point out at the importance of law in realizing such a concept of society, of communities and of states taking place as legal communities, i.e. on the ground of law and with all the guarantees provided for by law for members of these communities.

Speaking of responsibility in the sphere of law, we have to speak first of all about our own responsibility as jurists for such development of society; we have to speak about responsibility of legal science to envisage and clearly define new concepts in this area, in addition to traditional ones, in addition to retrospective and prospective responsibility on the part of State primarily, and especially regarding the misuse of power, otherwise rather modestly considered by legal science and without courage to openly engage in the matter and to formulate it. In this context I think that one of the first points on the agenda is to call on the society, i.e. State to provide for the development of legal science which should have an autonomous status in order to be able to develop the above conceptions for the future, which includes also all other areas of science, arts and creativity in general. Along these lines of hope, we will try, as far as our strength permit, to communicate our messages, rational as they are, to the ones who decide. Consequently, I do think that this Conference as did the previous ones, would make a considerable contribution to the development of the concept of responsibility, of initiating theoretical, practical and legislative questions covering the important aspects of this concept.

I do wish to all of you successful work and fruitful conclusion of the debates.

Dr. THOMAS MEYER,
Director, Open Regional Fund
Sector of German Organization for East Europe

Unlike in previous occasions, I am going to use this opportunity to present the symbol of replacement in managing the Legal Reform Project

in Serbia. Attentive observer surely noted that we changed the name and that instead of the letter "T" we put the modest letter "I". But names are not crucial; it is important for us that we have been present at the Kopaonik School for the tenth time in a row. We represent here the bilateral cooperation with the Republic of Serbia and at the same time the regional cooperation of Germany with the entire South East Europe.

We all live in a difficult time. After looking at the German magazine "Spiegel" I see long lamenting over the market, but always in these texts the issue of responsibility of market towards society is the topic. We are therefore faced with the dilemma: shall we look to our own responsibility? I sincerely hope that I am well aware of the scope and weight of responsibility entrusted to me by the German Government to continue with extending assistance to legal reforms in South East Europe.

We will continue to follow the road we have already chosen – and this is the road along which we are not going to stick stubbornly to solutions prepared in advance and that we are going always to consider the needs of the host, hoping that such approach will correspond to requirements of development and changes of legal system, not only in this part of Europe but also in the continent as a whole.

Concluding, I want to say that I am particularly honored to express my gratitude for being with you this year again.

IRENA MOJOVIĆ,
President of the Association of Jurists of the Republic of Srpska

Distinguished Academicien Perović,
Honorable Profesor Orlić,
Respected members of the Working Chairmanship,
Esteemef Colleagues and dear friends,

With greatest of respect and exceptional friendly and collegiate pleasure I do greet you on behalf of the President of the Republic of Srpska, Academician Rajko Kuzmanović as well as on behalf of members of our Association of Jurists and on my own behalf and in the capacity of president of the Association of Jurists of the Republic of Srpska and president of the Notary Public Association of the Republic of Srpska.

I transmit to you greatest greetings and warmest wishes for the success of this year, 24th traditional Meeting of jurists of the Kopaonik School of Natural Law being being conducted on the peaks of this proud Mountain.

Every year the founder of this School, Academician Slobodan Perović presents us with a particular theme to work on which offers to legal science and legal profession a dignity and the width of thought. The present annual thme *Law and Responsibiliy* reveals that we, as lawyers and scientists, are especially responsible that the matters we are dealing with be constitutinonal, legal and ever more just. We are particularly responsible as individuals and as persons of integrity, in facing the challenges of the New. Preserving what is acquired and valuable in our legal tradition, and looking for the new solutions – if being good – are both the right approaches. We lawyers have to always search for was and means in order to make the big ones to understand our views regarding the rights of numerically small peoples. And I quote our great poet Mika Antić: „that a handful of sand, if you want, is more valuable than a whole desert, and some water on the palm is worth more than an ocean".

I send you my greetings once again on behalf of the friendship we created here and which is extended by Kopaonik School among the jrists of the world.

Dr. MIRKO VASILJEVIĆ,
Dean, Faculty of Law, Belgrade

Respected Chairmanship,
Respected Colleagues,

Law and responsibility – theme of the 24th Session of the Kopaonik School of Natural Law, is a genuine theme and a real place and real time for Kopaonik to ask from itself the genuine questions – the questions requiring real answers.

Kopaonik asks – why there is no legal responsibility for the defeat of international law all over the Planet and particularly as far as our eternal wound – Kosovo and Metohija are concerned. Kosovo asks why there is no legal responsibility for the twilight of the institution above all institutions – the United Nations, anchored in bare politics of force menacing to destroy the foundations of the very idea of law. Kopaonik demands legal responsi-

bility for a hypocrisy of its kind to proclaim a state initiating and leading all the wars after the Second Word War, but to be sure on alien territory, as leader in the struggle for human rights. Kopaonik is asking – why there is no legal responsibility of the creator of liberalism faulty of the economic crisis of planetary dimensions. Kopaonik asks – why there is no legal responsibility of creators of a model of brainless privatization which erased from the Earth numerous national economies, making them dependent on the centers of financial power. Kopaonik asks why the Tashmaydan why' happened at all, and why it went off without responsibility. Kopaonik asks - why there is n0 legal responsibility of the media for continuous and steady creation of so many "truths" serving the interest of various power centers which in fact poison human souls and human destinies. Kopaonik asks why there is no legal responsibility for the enduring falling in of the education system of the country, and particularly of degrading the university schooling to the level of education provided by training courses institutions. Kopaonik asks – why there is no legal responsibility for demolishing the legal system of the country, for pushing back the European civilization of law and uncritical taking over of the Anglo-American system of law. Kopaonik asks the law itself – is the law that impotent when faced with the necessity of having the legal responsibility and whether the cause may be found in the fact that the law as such is not a genuine law. Finally, Kopaonik asks Kopaonk itself: why for all these twenty four years of meetings on the Mt. Kopaonik – meetings of so many members of academic community of jurists, and particularly of those of Serbia – it fails to ask in a more severe form these and other questions of law and to demand in more severe form the answers. For, there is no a more natural obligation of natural law than to respond to these and similar questions. Kopaonik is asking the law – why?

Dr. XAVIER BLANC-JOUVAN,
Professor Emeritus, University of Pars I, Pantheon, Sorbonne

Mr. President,
Dear Colleagues and Friends,
Ladies and Gentlemen,

Once more, I am happy to have the opportunity to express the great pleasure and the privilege I feel at being here with you for this twenty fourth

Conference, as well as my consideration and admiration for the superb work carried out by you all at the initiative of Professor Perovic and with the active cooperation of Professor Orlic.

It is true that I have already had many occasions to voice these feelings since participating for the first time in your proceedings (in 1997 on the occasion of the eleventh Conference, at a particularly difficult time for your School and for the ideals you defend). These feelings are reinforced and confirmed as time goes by from year to year, so much so that it becomes difficult for me to find new words to reflect them.

Let me therefore repeat, once again, how much I enjoy this annual rendezvous which is for me, above all, a celebration of friendship. We all know that, in coming here to this incomparable site of Kopaonik, we can be sure to meet friends and colleagues in a warm atmosphere conducive to traditional exchanges as well as to unexpected discoveries. This is what I consider as unique to your institution, that I have never felt to the same extent anywhere else and which I shall call "the miracle of friendship". The holy scriptures teach us that miracles are wont to happen on mountains, and the mountain of Kopaonik appears particularly apt to produce them. That miracle, you must not ask me how it is brought about - it can only be experienced at first hand. I think quite simply that we all owe it to each one of you.

But there is something else : we are also united by our passion for the law and above all by the conviction that the law's mission is to safeguard the values to which we are all attached. These are the values of our common western civilization, based on the ancient concept of "natural law" to which you have for the last 25 years been giving a renewed blossoming. Each of our encounters singles out one of these values to be especially celebrated (and of which Professor Perovic will be speaking to you soon). More than a simple theme, it is a guideline, a landmark, an inspiration. And I shall admit to you that I am especially sensitive to the fact that our 2011 get-together is placed under the sign of "responsibility". This is because responsibility is more than a mere legal notion - fundamental though it is -, it is a mral value and a pillar of our culture. It is the price of freedom, the necessary counterbalance to authority and to solidarity, the condition of justice and democracy – it is, in fact, the very basis of human dignity. I am happy to see it consecrated in Kopaonik today.

And this is why, while renewing my congratulations and my thanks to Professors Perovic and Orlic as well as to you all, and on speaking, I am sure, on behalf of you all, I reiterate my warm and fervent wishes for

the success of this twenty fourth Congress of the Kopaonik School of Natural Law.

Dr. ZORAN RAŠOVIĆ,
Professor, Faculty of Law in Podgovica
Member of the Academy of Scinces and Arts of Montenegro

Distingished professor Perović,
Distinguished professor Orlić,
Respected Chairmanship,
Dear colleagues and friends

Almost for a quarter of a century, armed with sufficient stock of arguments, we have been meeting here to have conversation and to debate, to make out, to look from all sides and to explain all that has been growing in our countries in the field of law and to se see how and why it grew, how and why it has developed. Numerous are witnesses of that endeavor and that wide field of activity. For so long we had the opportunity and honor to present at this School the results of our work. The material was collected in the real life and elaborated in hundreds of thousand of pages of the *Juridical Life* review. In such a way we may clearly assess the enormous size of work of the associates of the Kopaonik School thoroughly engaged in performing their particular tasks. I am happy, this time again, to be witness to that.

In course of this quarter of a century quite a volume of questions we considered useful to be elaborated has been achieved, done by such professional people as the associates of this School. The argument is quite reliable. We were supported in our work by jurists of this country, by our friends, some of which have high positions in the sphere of legal science – and this was a privilege for us. I have no doubt that healthy grains in these works deserve debate among the able theoreticians and practitioners, considering in the process the principles of justice and law.

Dear friends, this School is maturing. Together with its front-men, it is worth of the peak of Mt. Kopaonik, that famous Pančić's Peak where a man feels almost able to fly… Without this School our life structures would not be complete. It is the one which continuously turns us towards forgotten roads, great roads.

Most respected professor Perović, dear friends of the Kopaonik School of Natural Law, would you please accept my deepest respect and gratitude for being a member of this great School. Its estate is inviolable and it is sacred. Our deepest intention and energy to support it continue, and remains strong as in the beginning. This is the responsibility and the law of this great natural School.

ANDREW POTE,
Attorney-at-Law, London and Oxford

Mr. Chairman,
Respected guest, friends and colleagues,

Greetings from the United Kingdom. In some parts of Europe it is currently not popular to be British. But do not worry about that because we are used to be alone and independent; in fact we like to be like that. However, judging from the warm welcome I met here, it seems that Mt. Kopaonik still gladly receives the Englishmen Thank you for inviting me for the second time to take part in the work of your Conference.

Last year I had the privilege to address the audience at the Concluding Session and for those who had some doubts about my words, in the obligation I assumed then – I am here again. I do hope that you will enjoy the work of this Conference and that you will take the opportunity you are offered to discuss and deliberate various reports as well as to participate fully in this extraordinary chance.

I am not familiar with answers to the questions posed by my learned colleague from the University of Belgrade, but what I do know is – that we all bear the responsibility for the things we do. Judges are responsible in accordance with statutes for correct administration of justice. Practicing lawyers are in charge and are responsible to proceed with cases entrusted to them in the best possible way they can, while professors and members of the academic community have special responsibility towards their students. As already said, students are our future. However, and first of all, we must give account for out mistakes, mistakes we make during our lives.

I hope that you will find this Conference stimulating and I thank you for providing translators who made our participation here possible.

Dr. JAMES KLEBA,
Professor, Faculty of Law of the Loyola University
New Orleans, U.S.A.

I am very glad to be able to address you again. This is the fifth time that I attend the Kopaonik School of Natural Law since 2004. I teach law as a professor at the Loyola University in New Orleans.

Today I would like to inform you on a unique possibility opened to young lawyers from Serbia. It is a matter of fellowship which probably will be interesting to many of you. However, perhaps due to some financial reasons you are not able to avail yourselves that chance. We, at our University of Loyola have established a special fellowship only for lawyers from Serbia. The fellowship includes expenses for tuition and all living expenses, covering meals and insurance. I think that a small number of universities have such a generous fellowship which is intended particularly to student from Serbia. This fellowship is funded by the Gregory Rusovic family – a family whose origins are in Serbia and I which in the meantime grew rich in the business of forwarding. Gregory Rusovic is at the same time an Honorary Consul for Serbia in New Orleans region. Should you be interested for more details about that fellowship offered to you, please give me your calling cards, so that I may send to you the information required. Should you have no Serbian citizenship, there still exists the possibility for obtaining such fellowship, but not identical, not the one strictly intended for persons with Serbian citizenship. For you who were acquainted with the recently deceased professor of the Belgrade Faculty of Law Obrad Stanojević, I would like to tell you that he gave a great contribution to the realization of this fellowship.

Dr. LINDA D. ELROD,
Professor, Faculty of Law of the University of Washburn

I would like first of all to express my gratitude to the respected professor Perović and respected professor Orlić, and particularly to professor Olga Jančić, for their kind invitation to attend the 24th annual Conference on the Mt. Kopaonik.

When I was invited for the first time, I had to take a map to see where the Kopaonik Mountain was situated, although I did know where Serbia was – buy I was not aware of the mountain. I have to say that it looks more

magnificent than I expected. I am exceptionally pleased for being able to participate to this Conference dedicated to the topic of responsibility, because we now live in the times when a few people assume the responsibility for the things they do. Consequently, I do think that a conference dedicated to issues of responsibility and law represents quite a significant event at this moment, and in this historical time.

They say that we do not remember days, but that we recall moments, and this week is full of pleasant moments I have experienced. The first impression was when I saw Kopaonik Mountain, and then the hotel, which is better than I expected. I went to the skiing grounds but I must say that they are not that magnificent. Then the entire event with the opening session, that intellectual motivation and programs within which people have exposed their learned ideas and reflections. Later on I had the occasion to see how your cuisine is prepared and that is something that I will remember forever – these are warm experiences, warm people I have met at this Conference. Naturally, I will remember all friends I found here in course of the work. Thank you again for giving me this opportunity to come and take part in the Conference.

Dr. PENNY BOOTH,
Professor, Faculty of Law in Manchester

Respected friends and colleagues,

Kopaonik is a family. In this family members are welcome even when we are not together; we hold each other in our hearts. And now I will try to speak Serbian: thank you for inviting me and I am very pleased to be here on the Kopaonik Mountain. This is an honor to me for which I tank to the organizers.

Dr. ZEHRA ODYAKMAZ,
Professor, Faculty of Administrative Sciences
Gazi University in Ankara, Turkey

Respected participants of the Conference,

I have been attending this Conference for ten years already. At times it comes to my mind that what I gain by coming to these encounters are,

first of all, my nice friends since I established good friendships on Kopaonik with eminent colleagues from Serbia as well as from other countries; and secondly, I have a rather rich library in my office made full of books I have obtained here. These precious volumes in my cabinet, and my friends professors look at them and read them. They are really surprised at how valuable this Conference is and how interesting are articles presented there. And, thirdly, the themes proposed to us every year represent exceptionally important conceptions such as: law and culture, law and human future, law and time, integration, space, responsibility, etc. They direct me in preparing my papers for other conferences and other articles, both national and international.

These considerably valuable and actual works and important notions, however, come to their full value only after being carried out in the state ruled by law. Consequently, after receiving these conceptions and ideas, we become motivated to write new contributions of our own, becoming thus good producers as well. And when we come here and listen to reports and other statements, we go back to our countries full of energy and continue to transmit that knowledge to others. I am here, in this atmosphere, really motivated, both through reading the reports and listening to friends' discussions.

Thank you again, first of all, to professor Perović and professor Orlić, to the Managing Board and to all those who invited us and brought us together here as every year. Many thanks!

Dr. WALTER PINTENS,
Professor, Faculty of Law in Leuven, Belgium

Respected professor Perović,
Respected Professor Orlić,
Ladies and gentlemen,

I want to thank you for the kind invitation which made possible, for the second time, my inclusion to the work of the Mt. Kopaonik Conference. I am also grateful for the opportunity extended to me to address this honorable auditorium. I am sure that I speak on behalf of other participants when I express my great pleasure for your hospitality and kindness. We will never forget the days spent on the Mt. Kopaonik, because this is, practically, for us the principal event in 2011. We listen each other here and we learn from

each other, and all this in the spirit of tolerance when expressing our views. These are dialogues between practicing lawyers and professors of law, dialogs between those who teach and those who work in the sphere of theory – and this is rather important.

As jurists, we are particularly responsible to work on improvement of our codifications and our practices in order to provide a better protection of those needing it, and in order to better serve the society and to ensure justice. Consequently, we must never forget the well-known words uttered by a French lawyer – that the law does not exist only for itself, but that it exists for the sake of humanity. And I do think that this is exactly the spirit characteristic of this Conference. I thank you most cordially, and wish many happy returns for Christmas and the New Year.

NIKOLA AVRAM,
Chairman of the MK Group Managing Board,
Mountain Resort Kopaonik

Respected ladies and gentlemen,

I whish you warm welcome and at the same time I am grateful to the Kopaonik School of Natural Law for being this year again with us, and I promise that we are going to make next year a great party for the 25th anniversary of the School. Thanks, and enjoy it!

INTRODUCTORY ADDRESS

SLOBODAN PEROVIĆ

NATURAL LAW AND RESPONSIBILITY

Distingushed representatives of Just Law

You, who at this mountain top of nature construct the Twenty fourth annual biogrphy of the University of Justice, as expressed by mainstream words Universitas iuris naturalis Copaonici

You, the followers of culture of peace, of universal tolerance and integrity-wise and disciplined freedom, who find in the institution of Responsibility your rational symetry

Friends coming from various parts of the world, please be sure that you have come into our scientific domus where all of you are the first among the equals, because we all united here by national conceptions od Natural Law as the fundaments of proclaimed natural (human) rights codified by the United Nations and other international organizations

Ladies and gentlemen;, you, relatives by vocation and permanency of our juridical authenticity

Reminder

A year ago, in our traditional December days, we have been gathered here around the general theme *Right and Space*, while a year before that, the subject has been *Right and Time.*

The introductory address of professor dr. Slobodan Perović, the founder of the Kopaonik School of Natural Law at the opening session of the 24th Conference of the Kopaonik School of Natural Law, held on 13th December 2011, with the general theme *Law and Responsibility.* The text of this oral address is recorded by shorthand and by means of audito-technique, so that it is here published in the way it has been actally pronounced.

The Editorial Board has asked the author to indicate the subtitles in the text for the purpose of better reference, hoping that this would not undermine the continuity of the matter exposed. The Board is grateful to the authr for his determination of principal title of the text as well.

As we see, time and space have presided over our thoughts dedicated to these essentially indiscernible natural phenomena. Beginning with Aristotle who was the first to ask did the time and the space exist at all, and then with numerous eminent philosophers (let us mention only Newton and Kant) and their various observations and research, until our very days.

Speaking of law and its time and space dimensions, we have reached specific conclusions in accordance with our Hexagon and we have published them in the Final Document editions which have enlarged the law literature in this field. We have marked on that occasion certain general paragraphs and points of connection between so many particles making the ocean of just law.

Naturally, we did not discover the core of these two eternal natural phenomena, the purpose of their existence or nonexistence, but only their external, visible quantitative feature – counting of time units and space around us accessible to senses. And we have found nothing more than that: rational act and the empirical fact. Because, if human cognition were able to discern all essential features of time and space, we would discover all natural secrets of Earth and of Outer Space; but they permanently remain unknown to contemporary man.

I have pointed out all this in the present introductory address only to remind you on the road we have traveled and to make a sort of continuity between our previous work and this year's theme *Right and Responsibility*. The institute of responsibility, namely, is rather an important element in the general mosaics of legal science, legislative dogmatic, practice and "power" of life in general. Let us now begin with elaboration of the theme of this year.

Two Pillars

Law and responsibility are two words continuously present with us, two marks of space and time in the universe of past and in the reality of the present; they are two pillars of the culture of reason supporting the human future.

That duality is the space housing the fields of positive law and of natural law. All features of these two systems, their original separateness but also their mutual dependence and practical complementariness find their expression in the institute of Responsibility as well. This institute, enriched by

experience of life more than two millenniums old, presents by its moral and legal organization the achieved level of individual and general civilization.

Law as an act of culture is made of two basic properties: transcendental and immanent property. The first one is a *priori,* universal, absolute, while the second one is *a posteriori,* empirical and relative. The transcendental property expresses the absolute idea of law that provides it with permanency and universality, while the empirical property is the substance of positive law, a law which, in terms of time and space, is relative and changeable. Consequently, it is also national, while the transcendental law is supranational.

Composition

The law in the external world never exposes its absolute presence by only one of its properties. It is always an element in the composition of both these properties, in the balance between them or, as the case may be – in the lack of balance, which depends on the degree of the general culture of a given community.

The relationship between positive and natural law may be considered from different angles of their source, effect and practical implementation. Natural law as the just law *by itself*, has never and nowhere been established as an integral system of law that would be applicable by using the positive law method. Natural law is effective as a kind of a model or a pattern, the criterion and the means of comparison in assessing the positive law's good and bad solutions. This is the basis of continuous modifications and reforms of positive law.

Scale of Tolerability

However, the process of positive law revision may take another direction too, which even departs from natural law, and in this case the positive law, as a result of arbitrariness of a minority or of an individual, becomes unjust law (according to Radbruch – supportably tolerable or insupportably intolerable) which finds its end in the flood on non-law. Whether a positive law system would take the road of just law or the road of unjust law, depends on the philosophical standpoint, economic and political constitution, moral emancipation.

Tree-fold Relationship

Beginning with the above mentioned antinomy, but also with the complementariness of positive and natural laws, the relationship between these two kinds of law could be expressed through the following three-fold classification: (1) natural law is a substratum and the model to positive law; (2) natural law is a subsidiary and direct source of law; (3) natural law is a corrective factor in the implementation of positive law. In short, natural law may be a model, a subsidiary element, and a corrective one as far as relationship with the positive law is concerned.

Speaking of natural law as the model for positive law, one should emphasize that a considerable number of institutes and categories of natural law have their source in the natural law. Thus, for instance, the biggest part of contracts in the sphere of obligations is governed by the rule of equal value of mutual prestations, and that rule is protected by means of numerous instruments of the obligation law, such as protection in case of physical shortcomings of the thing and eviction, excessive damage and other kinds of damage, the *rebus sic stantibus* clause. The same rule of equivalence may be traced in the matter of torts, i.e. compensation of direct loss, where the principle of integral restitution is the one which applies. In a word, all the above are the forms of implementation of commutative and distributive justice making the basic features of natural law. As a matter of fact, the entire positive law is but its striving to become a just law.

As the second point of this three-fold division one should mention the fact that natural law is in some strictly defined cases a direct and subsidiary source of law. These are the cases of so-called legal *lacunae* and the ones where a concrete case may not be subjected to the analogy rule, as one of the method of interpretation of legal norms. In this case natural law exists as a direct source of law. That rule has its own general historical dimension which may be found in our legal tradition as well (1844 Serbian Civil Code, 1888 Bogišić's Civil Code). The same rule shall find its place also in the Draft of the future Civil Code of Serbia, whose parts were published in 2011.

The third form of relationship (in addition to the model and the subsidiary form) between natural and positive laws, as already mentioned, may be called as the corrective one. In other words, the legal norm as norm of space and time general dimension, may sometimes disregard the difference existing between the two cases which should be regulated by it. In this case the question arises as to how to settle specific social relations without infringing the formal legal implementation which requires the equitable so-

lution, i.e. without risking that the equity requirements endanger legal certainty. It seems that the solution may be found in some kind of equitably medium solution or similar criteria, but only where the nature of the specific rule allows such approach; on the other hand, the court may not adjudicate some kind of its own equity, but only the one which appears in its objectively determined form. This, among other things, can be achieved through various ways of interpretation of legal norm, among which one should opt for the purposeful interpretation of the legal norm, i.e. by taking into primary account the purpose of the norm.

Since we have spoken about the three-partition theory several time in our introductory reports and since it has found its place also in the 2002 Declaration of the Kopaonik School of Natural Law (so that it is a station we have already crossed over), we are not going to continue about this theory useful in achieving a law as an art of good and equitable, but only to a degree necessary in the context of elaborating the elements of the institute of responsibility.

A Living Vault

The exposed duality of natural and positive law under which we live our lives and realize our individual and common intentions, our activities and vital needs, represents a living vault and a horizon of our enlightenment, level of education, social harmony or disharmony. But above all, under that vault we find also the culture of peace and the non-culture of war as well as all kinds of blackmail and violence of ones against the others.

It goes without saying that this is also a place where our natural right to freedom resides, because the sphere of law is a sphere of freedom, but only that kind of freedom which is self-conscious, rational, disciplined and limited by the equal freedom of other subjects of the right to freedom. It also goes without saying that there is no freedom under the rule of violence and there is no freedom without responsibility. Conceived in a rational way, freedom is inseparable from responsibility as the state condition of punishableness.

Degree of Realization

Whether the institute of responsibility will succeed to place the freedom in the framework of universal multicultural tolerance and whether it

will be effective as the defense in the wider field of unlawfulness and of *ex delicto* and *quasi ex-delicto* liability, beginning with individuals and all kinds of national and international associations, including state institutions and their alliances – depends, first of all and above all, on the level of realization of natural rights of man, which rights have been proclaimed and codified, particularly after the Second World War, within the framework of United Nations and all other peaceful integration at international level.

The Question is now

Is contemporary world, represented in the form of states and international organizations, responsible for putting in danger our natural right to life and freedom which is a source of all other human rights as well? This aggression is particularly expressed through the following occurrences: nuclear energy as a means for mass destruction of people and natural resources; genocide as an unnatural phenomenon; menacing ecological catastrophe; intentionally disseminated diseases; organized terrorism; enormous ownership differences that lead to the *illness of hunger* causing death of an unbelievable number of children all over the world – are but only some of the developments speaking about responsibility of specific subjects – national, regional, global.

Exposition Plan

Beginning from these introductory issues and statements, the plan of exposition of the present report should include the institute of responsibility in all of its numerous aspects, such as its general meaning, its various kinds of and, finally, the concluding summaries in the context of duality of positive and natural laws.

Along the above lines, first to be exposed is the general notion of responsibility, and particularly the ethic responsibility in the conditions of contemporary technical and technological civilization. This will be followed by an analysis of specific kinds of responsibility, such as moral, ecological and legal responsibilities, with their numerous types which mainly stem from the nature of individual disciplines, as well as from the violations of public policy as an institute established for the protection of general welfare of every community.

In addition to the above, the notion of responsibility should be looked at also from the standpoint of numerous international documents, conventions and declarations enacted by the United Nations and other international associations and integrations – all the way until the idea of a world federation of states.

All that, as already said, should be viewed not only from the standpoint of positive law, but at the same time also through the optics of rational conception of natural law whose evolution has been the subject of analysis in previous basic reports submitted at the Kopaonik School of Natural Law.

General Concept of Responsibility

After we have spoken about the basic features of positive and natural law and pointed out at their differences and complementariness, it is necessary to determine in that context the concept of responsibility, and then turn to numerous areas where this institute appears as the condition and a consequence of impermissible behavior of certain legal and moral entities.

Beginning from the universal character of that institute, from its space and general dimensions as well as from its presence in almost all disciplines of natural and social justice and equity as a concretized justice, it seems that it would be possible to define it in the following way:

Responsibility is an institute of legal, moral and every other civilization which takes place after violating a specific rule of conduct, and which is followed by sanctions established in advance, and whose conditions and substance are conformable to the nature and kind of value that was violated.

The definition specified like this, if decomposed, points out at the following elements: (1) responsibility is an institute of the corresponding degree of civilization, enlightenment and general culture; (2) responsibility is an institute of wide scope of various forms of expression of organized sociability; (3) responsibility is an institute of natural and social, legal and moral order; (4) responsibility is an institute that assumes the existence of violation of a given rule of conduct committed by a specific entity/holder of right; responsibility is an institute that expresses the condition of punishableness through sanctions established in advance, (6) responsibility is an institute whose sanctions are adapted to the kind and significance of the individual or social value.

After these statements it is possible to say that different social determinants of a given space and a given time affect the constituting of responsibility in all of its dimensions / kind, scope, substance, way of implementation.

In other words, the essence of responsibility is determined by all those factors which decisively influence the general culture of every community; and these are particularly the following:

– the state of consciousness and conscience in terms of justice and equity as a concretized justice;

– tolerance as a capacity and sign of spiritual coming of age and high degree of reason, as well as the institution of democratic culture based on universal harmony of differences in origin, birth or in any legitimate belief, i.e. inter-cultural tolerance – political, class and religious tolerance, national, linguistic, in terms of ownership and contractual, tolerance in all forms of respecting the dignity of man and his inviolable rights;

– general state of development of science as a cognitive and empirical discipline, religion as a supra-empirical teaching about the highest being and the philosophy as a rational system of wisdom and *Weltanshauung* as well as the question of relations between the opinion and the being, between the spirit and the matter, i.e. substance;

– the state of moral integrity, ethical culture, tradition and established rules of conduct;

– economic constitution in terms of the choice of economic model – administrative or free-market economy, and market order with of its characteristics and particularly the system of property as a central institute of social and legal orders;

– state of affairs of political maturity and enlightenment in terms of respecting democratic institutions in the system of rule of law and state ruled by law, and more particularly of the separation of state powers and independence of judges and judicial function;

– legal, economic and social security on the ground of which stem and take shape the legal and moral consciousness and confidence in common norms of conduct;

– state of affairs in the area of general level of education, of arts and intellectual culture in general, and more particularly as intellectual creations in the copyright and invention rights;

– social cohesion in terms of system and social integration;

– environmental protection and the condition of ecologic ethics and, more precisely, ecologic philosophy;

– health protection as the condition of life and as the natural right of every man to that kind of protection which corresponds to his or her needs;

– labor habits and labor ethics in terms of respecting the labor-law and social justice;

– the state of affairs in the sphere of family and family structure as the basic cell of society;

– the culture of peace as the basic determinant of every community that opposes various aggressions that put in danger our planet, such as: menacing danger posed by nuclear and other arms of mass annihilation of people, genocide and organized terrorism;

– the general condition of public opinion, especially in the area of media, scientific and professional observation;

– the degree of technical and technological development;

– the degree of achieved natural rights and fulfillment of the principle of equal treatment of equal matters.

Human Dimension

If it is clear that the sum of the above mentioned determinants is made out of cultural identity of a given community that organizes the institute of responsibility in concordance with that identity, and if in all that the natural law is not only an ideal but also a real determinant, then the institute of Responsibility will gain its human dimension which in that case will represent an adequate response to the violation of rule of conduct in various areas of life of society.

The above situation means that cultural identity of a community is crucial for the realization or tolerable lack of realization of proclaimed natural rights, which makes one to conclude that in the world frameworks this vital issue may not be settled in near future and that the process is going to last for an indefinite time.

In following that road only the organized wisdom of mankind may open up the door to human future, meaning the total realization of human rights which are proclaimed and codified in the whole mosaics of international conventions, charters, declarations and other documents as the expression of common conscience and justice as the central virtue.

Kinds of Responsibility

Having in mind the various degrees of the above mentioned determinants affecting cultural identity of a community, the institute of responsibility, ever since the first written sources of ancient times, until the contemporary highly developed technical and technological civilization, as well as social and legal order, has become an indispensable element in all sectors of organized communities both within national and international frameworks.

This, first of all, refers to legal and moral orders, but also to ethics, economic constitution, philosophy, science, religion, family structure, labor habits, fine arts, education and intellectual culture in general. In essence, the responsibility depends on the degree of realized natural rights, on their legitimacy and legality of the achieved in the conditions of the culture of peace.

In other words, all these determinants in an organized society have a degree and standard of their own, so that exactly this degree is a crucial factor for the scope of the field of realization of proclaimed civil, political, economic, social and cultural rights, which are unavoidably followed by responsibility in case of violation of specific rules of conduct in various areas of social life.

The above is the source of different kinds of responsibility, such as: legal, moral and ecological responsibility, and then economic, scientific, religious responsibility, together with state, inter-state and the responsibility of international organizations and their associations and integrations.

Legal Responsibility

Speaking of legal responsibility, one should say that it takes place in almost all legal disciplines, and especially in the civil and criminal laws, followed by family law, constitutional and administrative law, law of infractions, financial law, copyright and inventors' law, public international aw and private international law. Naturally, the list is completed by other disciplines too stemming from principal disciplines or those of an inter-disciplinary character.

In any case, the institute of responsibility, both in the past and at present, both within national borders or in comparative legislation, practice and legal theory, holds one of the central positions which is adapted to the specific nature of various legal disciplines. Due to the scope of field of implementation of the institute of responsibility, we are going now to try only to

point out at basic aspects of that institute, and particularly those in the area of traditional legal disciplines.

Along these lines we shall consider the following matters: (1) civil-law and moral responsibility, (2) relationship between the civil-law and criminal-law responsibilities; (3) contractual and tort liability; (4) grounds of tort liability; (5) responsibility of states and international organizations; (6) responsibility for violating the public order (public policy); (7) responsibility in the field of environmental protection; (8) other issue that are directly connected with the mentioned kinds of responsibility. All this, let us repeat, will be analyzed through the optics of complementariness between the positive law and the natural law, as the law that is just *by itself*, which makes it *a priori* purpose that, by its universality, encompasses also the context of responsibility in the various areas of society and law.

Civil-Law and Moral Responsibility

The history of legal civilization is standing before a basic tenet: contract and delict (wrongful act) are but two branches of the same tree of life. Intentional act and unintentional act, an act that is permitted and an impermissible act. These are component parts of the entire horizon of human obligations. For Gaius' Institutions the contract and the delict are a *summa division* of all sources of obligations, of all relations which, under the principles of mathematical proportions, are expressed by the juridical formula of legal connection entitling one party to demand from the other party to hand over something, to do something or to refrain of doing an act. In this synthesis – *dare, facere* and *non facere* is homed the whole substance of a life indispensability called obligation.

But it was not only the ancient Rome which has considered this indispensability. The Hellenic philosophy too did that and, before anyone else, Aristotle and his followers. The consenting minds of the parties as a principle as well as the compensation of the damage caused, were not only legal categories but at the same time norms of equity as well, by which a moral standing is indicated and determined. Obviously, there exists some proportion here.

The awareness of obligatoriness to stand for a given word is based cumulatively on morality and on prescribed legality in the matter of contractual liability (responsibility). In fact, every intention of an individual, in order to reach the level of exigency, obligation, must be followed by some

kind of coercion. Accordingly, the will, the intention of the contracting parties, if without the power of legal or moral coercion, may not create contractual obligation.

Where these two powers of coercion are concurring and expressed through legal grammar, than this amounts to a sigh of the high degree of adequacy of a legal norm regarding the moral fact. In such a case the coercive legal norm at the same time expresses the moral imperative creating thus their integration, i.e. the ethical minimum. As one may see, respecting one's word given in a contract depends to quite a degree on the coordination between the legal and moral orders. Thence the principle of *pacta sunt servanda.*

In essence, the same question arises in case of wrongfully inflicted damage. Causing damage by an illegal act or by omission to do an act has also its legal and moral dimensions. Namely, everyone is under a duty to refrain from taking an act that may cause damage to another. The principle *alterum non laedere* has been established already in the Roman Stoic School which has raised the principles of morals to a higher level of social standard.

Accordingly, all parties in a relationship of obligation-law character, regardless of whether at issue is a contractual or a tort relationship, have to carry out their obligations and are responsible for their fulfillment, both from the standpoint of a moral and that of a legal norm.

Equality of Relations

Accordingly, in matters of civil-law and moral responsibility we must address the general concept of justice as a total and central values made of commutative and distributive justice exposed, first of all, in the works of Aristotle.

For Aristotle, that what is just is always in some sort of proportion, and proportion means equality of relations. Looked from that point of view, equity may be either commutative or distributive – *iustitia commutative* and *iustitia distributiva*

When equity is achieved by applying the absolute middle through arithmetic proportion, when, in other words, from the damage-feasor one takes just the quantity equal to the damage done, and that value is transferred to the one suffering damage – than we have a *commutative justice.*

However, if justice is reached by means of geometrical proportion which takes in consideration the nature and specificity of the person, when, in other words, the members of community are recognized for their value, their contribution or some other individual feature – we are in the presence of a *distributive justice*.

The commutative justice is based on the ethical principle of equal treatment of equal matters, namely of unequal treatment of unequal matters, proportionally to their inequality. Proceeding according to laws of formal logic, everything conformable to that principle represents justice, while everything that departs from it has to be qualified as injustice. In the procedure of applying the legal rules the justice conceived like that is expressed by arithmetic proportion, and every party in the specific legal relation is accorded comparably, realizing in such a way the equality between that what is given and that what is received. In fact, the essence is in the equality of prestations, which is expressed in Roman law by the *do ut des* formula.

Justice conceived in the above manner, as applied to contract and to the delict (wrongful act) means the following: as far as all bilateral contracts are concerned, the obligations of the parties are set in the relationship of equality; in the case of all wrongful acts, the principle of integral compensation is the rule, i.e. a person causing damage to another is responsible to compensate it integrally.

Individual Features

Commutative justice does not consider individual features of the actors (parties) of a relationship; it is essential that in this case the justice is achieved by equalizing. Therefore, according to Aristotle, in case of dispute, people come to the judge who is supposed to restitute the equality by looking the arithmetical mean between the "too much and too little"; he takes in consideration the distributive justice that takes into account the individual features of the parties (everyone gets proportionally to his merits). Therefore, *going to judge means going to justice*, because, in Aristotle's words, the judge should be the personification of equity.

After these five classical words that express the entire civilization of judiciary, the question arises as to whether they may survive in the conditions of aggression of armed injustice, violence, dogmatic intolerance, political and every other kind of blackmail?

Field of Law and the Desert of Law

Independence of judge and his impartiality are an indispensable prerequisite of the institution of judiciary. The issue of judicial independence is not only a question of law; this is a question of general culture of every community. Within that wider circle of developments of law and justice, the principle of independence of the judge represents a demarcation line between the field of law and the desert of non-law.

In the conditions of a state not ruled by law, where legitimacy and legality of law is under the permitted level of social tolerance, where the rule of law is replaced with arbitrariness of power, passion or individual or group interests, where the principle of separation of power is eliminated, and where the entire life is reduced to political monism and its strict hierarchy – the judicial independence is reduced to being dependent on party decision, and not on the decision by legislative act. Such kind of dependence transforms the judge into a servant of the one-way order (political, national, racial or class) in various meridians of this world of ours, regardless of all democratic, sovereign, freedom looking masks, so that the judge objectively becomes unable to apply the just law.

Shipwreck

In such case the law suffers a shipwreck, and with it goes to the bottom also the principle of independence of judge, together with classical words of Aristotle – "going to judge means going to justice". Instead of these sunken words, coming to surface the dogmatic tolerance is drifting with the words – "going to such sunken law means going to injustice".

State Ruled by Law

On the contrary, where democratic principle is not only proclaimed but is put into effect as well in the tolerant degree, where the principle of legitimate constitutionality and legality is the rule as well as that of commutative and distributive justice – then the independence of judge is ensured through attributes of the state, becoming thus a component part of a state ruled by law.

The higher culture of just law, both in its source and its implementation, as expressed through rational (intellectual) conception of natural law,

reminds us, warns us and teaches us that judicial independence and judicial responsibility should be given wider spaces, because law is a phenomenon of the good and the equitable, and is not – and may not be – an arbitrary fact of violent intention of the ones against the others.

Therefore, in pronouncing his justice, the judge is independent from any other authority except the authority of the legitimate (just) legislative act. A judge is a person enjoying public confidence. Performance of judicial function may not be the subject of undignified influences, pressures, suggestions, menaces or interventions – direct or indirect – by anyone or for any reason.

Reciprocity

Let us, for a moment, go back to the general value of justice since it is one of those "most brilliant" notions of our spiritual universality. In fact, commutative and distributive justice, each for itself, makes a separate philosophical concept and a special logical totality. However, when they are put to their practical function of legal life, its seems that they must be complementary and act through some form of philosophical and practical symbiosis. The entire juridical world is here to confirm to us this statement. While commutative justice provides equality of relations in terms of equivalence of prestations, the distributive justice introduces in the field of contractual relations and torts the *spirit* of life, enabling thus that the principle of commutative justice to be implemented in the way corresponding to the *dignity* of man, and not to computer technique of numbers and their proportions.

Observations

The entire past of legal and moral responsibility is in fact constructed in such sort of encounter of these two justices. And not only the past, but also the responsibility organized *de lege lata*. Naturally, the place of encounter of these two kinds of justice depends on dimensions of space and time which determine their mutual relationship too.

But regardless of wider or narrower field of their implementation in the history of contractual or tort relations, it is important to remark that, as far as civilized nations are concerned, they have never been conceived as dogma of the system of retaliation (talion, system of revenge) that was so characteristic of the period of cultural childhood in the development of

moral and legal civilization. With the development and influence of human reason, they have approached more an more the richness of life, so that in contemporary law the commutative justice is put into effect not only by applying mathematical operations, but also by taking in consideration the legally relevant features of persons appearing in the roles of creditors and debtors. This is exactly the merit of the distributive justice that is always reached by means of deeper and purposeful way of interpretation of its essence. This justice is, namely, "our human justice" which really considers individual characteristics of a responsible person to make us possible to adequately apply the commutative justice, and that means – a complete justice.

This is, in short, what I had in mind to tell you regarding the relationship between legal and moral responsibilities, as looked through the optics of these two kinds of justice and equity conceived as individualized justice.

Relationship between the
Civil-law and Criminal-Law Responsibility

However, when speaking of legal responsibility, we should dwell for a while on the relationship between the civil-law and criminal-law responsibility. Both these responsibilities have had a rich evolution from Ancient Times until the present. The law found in the first legal sources of European legal civilization, namely, did not know of the institute of compensation of damage conceived as reparation in modern terms; it knew only of private revenge through the principle "the same for the same" (talion, law of retaliation), and later on of private punishment which again did not amount to compensation of damage in modern sense, instead meaning a buying off in return for refraining from revenge.

Still, the evolution in the sphere of torts has abandoned this legal system or damage repair, while gradually and more and more accepting compensation as an organized legal sanction for the wrong done, where the impact and development of the notion of fault has been rather important.

Consequently we have in Roman law, already in the3rd century B.C., the establishment of the institute of compensation of loss as a reparation, and this was a crucial point in the development of that kind of responsibility which is connected with the *Lex Aquilia* according to which the damage-feasor was obliged to pay to the one suffering the loss a specific value and that amount was not the punishment, but the compensation of damage.

Simultaneously with the development of compensation of damage in terms of the above *Lex*, one should mention also the evolution of responsibility that was based on fault (fault) of the person causing damage. Only in the classical Roman law we see the gradual taking in consideration the subjective responsibility based on fault, which won absolute priority over the remnants of old-time concept of responsibility – i.e. development of the degree of fault: *dolus* and *culpa*.

The full sense of the responsibility based on *fault* takes place at the beginning of 19th century when, under the influence of individualist philosophy, it has been conceived as an indispensable condition for every compensation. This is particularly formulated by the sentence – "it is not the loss as such, but the fault, which obliges to compensation" (Ihering). This formula symbolizes the centuries-old evolution of fault as the requirement and the ground of civil law liability, beginning from the *Aquilian* law of damage, and all the way until the second half of 19th century when, in addition to fault, the stage was taken also by the responsibility without fault, i.e. objective liability for dangerous objects and dangerous activities.

Separate Entireties

Civil-law and criminal-law responsibilities, id addition to common points in their historical development, are today rather separated entireties which are distinguished both in their nature and, even more, in the purpose of punishableness.

Essential differences are expressed in the scope of the circle of responsibility; in various sources of responsibility; in different purposes of responsibilities; different features of compensation and fines; different characteristics of responsibility; and different effects of the procedural nature.

The scope of field of the civil-law responsibility is much wider than that of the criminal responsibility, where the principle of no fault (guilt) without the specific legal provision to that sense is the rule, while in case of civil-law liability the general governing rule is that everyone should refrain from acts that could harm another. Consequently, the criminal responsibility is limited by the *nullum crimen, nulla poena sine lege* rule, while the civil-law responsibility is established in a general way according to the rule – "the one causing damage to another is obliged to compensate it".

In addition to distinguishing these two kinds of responsibilities regarding the scope of circle of their implementation, as well as regarding

their source of origin, there is a particular distinction regarding their very purpose. The general purpose of legislating in the criminal sphere is the suppression of criminal offences which violate or put in danger the values protected by criminal legislation. On the contrary, the substance and the purpose of civil-law liability is the repairing, the compensation of damage caused, which is owed to the person suffering damage. The purpose is to repair the disturbed property balance which balance has existed between the damage-feasor and the party suffering damage before the act of causing the damage.

Furthermore, monetary compensation in terms of civil-law liability differs from the fine as a punishment in terms of criminal-law responsibility, first of all in its purpose as well in terms of other elements. While in criminal law it represents just one of the possible punishments that may be imposed both as a principal and a subsidiary punishment, and whose amount is determined by law – all as a means of realizing individual and general prevention of crimes – the pecuniary compensation in civil-law liability is a sort of monetary reparation, i.e. restitution of previous conditions (material or property damage); it may also have the character of satisfaction (non-material or moral damage) and its amount is determined on the criteria prescribed by law. In addition to that, in the sphere of criminal law it is possible that a pronounced fine may be replaced by imprisonment should the condemned fail to pay the fine within the time limit set, or pays it only partially, which situation is not possible in the sphere of civil-law liability, where the adjudicated compensation on the ground of loss suffered is governed by the execution procedure rules.

In the context of numerous differences between these two kinds of responsibilities one should also mention the circumstance that criminal liability is strictly related to the personality of perpetrator of criminal offence and that there is no punishment without the individualized guilt. On the contrary in the sphere of civil-law liability, besides the subjective liability, there may be responsibility without fault, i.e. strict, objective liability, as well the liability for another – vicarious liability. In contrast to criminal responsibility, in this case the fault of damage-feasor is not only determined but is frequently supposed, while in the case of dangerous objects or dangerous activities, the fault is not determined at all; it is therefore called also liability without fault.

Finally, differences between the civil-law and criminal-law responsibilities may be followed also in the field of their procedural effects, and first of all in the matter of legal effect of the judgment of the criminal court in

litigation proceedings conducted in the case of compensation of damage. Various solutions do exist in that respect, both in legislation and in legal theory and in judicial practice. In our law of procedure there is a rule that the civil court is bound in its proceedings by the finally valid verdict of the criminal court regarding the existence of criminal offence and criminal responsibility of the accused.

Deduction

Civil-law and criminal-law responsibilities, besides certain common points which primarily stem from some distant history, are today distinguished in many a legal issues, beginning with the circle of their implementation, their sources and purposes as well as their specificities and procedural effects. All these differences speak of "independence" of these two categories of responsibility, but at the same time of integrity of the general responsibility within the universal legal system as an organized entirety of every social community

Contractual and Tort Liability

There are two theories in this particular matter: monistic and dualistic. According to the first one, responsibility is always based on the violation of some previous obligation, regardless of its source, so that contractual responsibility is only a part of the general responsibility. In the case of liability for wrongful acts, the obligation is provided by statute, while in the case of contractual responsibility the obligation is specified by the contract itself. This difference is irrelevant since responsibility is connected with the fact of violating an obligation, so that it is irrelevant whether such obligation is specified by contract or by statute. For followers of this theory the term "contractual responsibility" is the erroneous way of expressing because responsibility is always delictuous. In fact, this monistic thesis is to quite a degree the consequence of conceiving the notion of fault in the context of so-called theory of unity of fault where the violation of some previous obligation is presumed in advance.

Contrary to the thesis of unity of these two categories of responsibility, the old and already classical dualistic thesis remarks in this matter a certain limit that separates the contractual responsibility from the tort liability. The contractual responsibility is only a consequence, or possibly an aspect

of the obligation created by contract. Compensation of damage owed due to failure to perform a contractual duty is but a transformation of that same duty – one possible way of its execution in case the duty is not fulfilled as originally stipulated

According to that conception, the differences between these two kinds of responsibility are particularly expressed in the following elements: source, fault and burden of proof, and then regarding the tort liability and contractual capacity, strict liability, i.e. liability without fault in the sphere of dangerous objects and dangerous activities, the clause of excluding and limiting the responsibility, debtors' solidarity, jurisdiction of court, scope of obligation to repair the damage (foreseeable damage in the case of contract), and particularly the question of claims falling under the statute of limitations.

Statements

Should one look generally to the numerous differences between the contractual and the tort responsibility, one must conclude that they are not absolute, categorical and consequently carried out to the end. The most important points in that mosaic of distinctions are set in such a way that they do not look the same if viewed from different angles.

Sometimes they are clear and on would say – sovereign. By looking closer, they seem to gradually vanish, permeating each other and even disappearing. All that directs one to think that neither the monistic nor dualistic theory should be conceived literally and be applied stubbornly even in cases where that would be hard to conceive.

Consequently, it is possible to conclude that that both contractual and tort responsibility have quite a number of common elements. The space they meet on is constructed of entirely simplified elements, i.e.: both kinds of responsibility assume the damage, its compensation as well as the violation of some obligation. The unique element is certainly observable in such generalized impressions, and it is there that the monistic thesis may find its justification. But, by inspecting more closely the concrete rules we have tried here to expose, it is possible to conclude that they, to quite a degree, are not same for both kinds of responsibility. Dualistic thesis may be defended from this standpoint, but again, not in an absolute manner because the differences pointed by this thesis are not always of such a character that

they may be accepted without any reservation. That is why one has to conclude that it is necessary, as far as this matter is concerned, to have more doubts than in some other matters as well as that one should be aware that every rule should be thoroughly distinguished from other rules.

Grounds of Responsibility for Wrongful Acts

The issue of the grounds of responsibility for wrongful acts had also its evolution which today expresses the threefold division of these grounds, i.e.: subjective liability on the ground of fault: objective, i.e. strict responsibility regardless of fault in the case of dangerous objects and dangerous activities; and finally, the socialization of responsibility as a possible direction of responsibility in the conditions of contemporary technical and technological civilization.

After the rule of subjective responsibility which survived centuries, the late years of the 19th century, and especially our time, which is characterized by the high degree of development of technical reason (means of electronic and satellite communication, various kinds of transport and of organized production), has compelled the legal doctrine and the jurisprudence to finally depart from the millennium-old dogma of responsibility which is always based on fault.

For a long time it seemed that noting could happen to shaken the confidence in the theory of subjective responsibility based on fault of the one who caused the damage. That suited both to legal and moral feeling that there is nothing more natural than to be responsible to another for the damage caused through one's fault. Whenever in given circumstance someone behaves in an inappropriate way, causing thus certain damage to another, such person must pay the corresponding compensation. Even today it would be difficult to completely challenge the grounds of the responsibility rule based on fault. And therefore fault as the ground of responsibility for the damage caused is not abandoned in modern law and it is possible to believe that it will always follow, in some way or another, the rules of responsibility. But the fact that it continues to live as a ground in our times does not mean that it remains the only criterion to be taken in consideration in judicial determination of compensation.

Anonymous Fault

In the conditions of highly developed technical reason of the contemporary world, the fault proved to be insufficient and weak to legally encompass the whole new world of cases where the cause of damage remains anonymous.

In the times of realization of unprecedented technical progress becoming more and more intensive in the beginning of 21st century, magnificent as it may be from the standpoint of progress, it undoubtedly takes with it an enormous number of victims, putting in danger in such away the very essence of natural resources as well.

Detrimental events multiply every day and it becomes impossible to find the accompanying fault because it simply does not exist; damage is, then, an unavoidable follower of the general progress and way of life of modern man. Each year more than 100,000 people perish in traffic accidents only. That number is fifteen or twenty time higher in the case of bodily injuries as the consequences of such accidents.

Progress and Danger

The above facts point out at an antinomy brought by the high level of development of modern civilization: contemporary man was successful in creating for himself enormous technical progress, but at the same time that progress is partly annihilating him.

This symbiosis of progress and danger, of progress and victim, amounts to genuine epidemics which is hard to suppress. The number of victims of such epidemics is today larger than that caused by many disasters in the history of mankind we are used to mention as rather large. It goes without saying, that this does not mean that technical and all other progress should slow down until some humanitarian problems are solved. But it is obvious that law, on its part, has the deal with these problems and to follow technical progress, which concretely means that in addition to subjective responsibility one must accept also the strict liability, i.e. liability without fault in the sphere of dangerous objects and dangerous activities.

Due to all of that, legal responsibility for damage had to go through essential changes. Classical school of a fault that is proved as the requirement for compensation was unable to stand the strong wave of technical progress and leave the victim without repair in the process. Law, by its very vocation, had to react to new phenomena and new developments which in

fact are vitally important for social community. New theories have emerged, new solutions proposed, and courts have adopted in their practice the rules in terms of which the damage caused by so-called dangerous objects is not based on fault, but on the risk that was created. The debtor, the one owing compensation, under prescribed condition becomes the owner and sometimes even the holder of dangerous object, i.e. the person engaged in dangerous activity. Determination of the concept of dangerous object practically means establishing the framework for the functioning of responsibility (liability) without fault. This duality of responsibility grounds in contemporary law opens up, among other issues, also to the question of realization of general justice as the indispensable feature of every state ruled by law.

Socialization of Responsibility

If strict (objective) responsibility (liability) originated from of actual degree of development of technical reason and the requirement of higher social justice, then its presence today is just an introduction into the more intensive phase of socialization of responsibility for damage emanating out of "general fault".

Just as at the beginning of 20th century the subjective responsibility was unable to encompass the new world of relations created through detrimental effects of dangerous activities and objects, the objective responsibility too became, at the end of the same century, and particularly today, at the beginning of 21st century, unable to respond to numerous demands of those suffering damage or any other mischief.

The socialization of responsibility theory should include that area of wrongfully inflicted damage which comes as a consequence of group or individual dangerous activity which to *a higher degree* put in danger numerous personal and material values. In this case, by the very nature of the matter of taking place and of effect of dangerous object and dangerous activities, the fault of the perpetrator becomes lost as the ground of responsibility. In contrast to "usual" dangerous objects and activities, in this case the consequences and damaging effects are such, that they impose risk for personal and material existence of considerable number of people – all the way up to the degree of natural disaster. This may be caused both by a single use and effect (for instance, a source of accumulated energy, especially the nuclear one) and the continuing exploitation of dangerous objects which in most cases may lead to enormous material and moral damage (for instance,

transportation and particularly the automobiles) or various kinds of enormous environmental damage.

In the case of such enormous and massive damage it is necessary to have an organized compulsory insurance and establish social funds to ensure compensation, according to appropriate rules, to every person – victim of a foreseeable damaging event. In such case compensation of damage would be separated from the responsibility for damage. This approach would be hard to understand from the standpoint of classical responsibility rules, but from the viewpoint of survival and imperative of modern world, this is easy to grasp. Fault as a relevant circumstance would then remain only as the ground in the process of demanding redress aimed against an intentional perpetrator of damage, as well as the regime to be applied to bonuses of insurance premiums.

In all other cases of damage caused by dangerous objects or dangerous activities the already classical theory of objective (strict) responsibility would apply according to established principles and rules. And finally, the old and really ancient theory of subjective responsibility with fault as its required ground for compensation, would keep its place in all other areas of causing damage where loss does not appear as the consequence of dangerous objects and dangerous activities.

This possible threefold division of the legally organized responsibility for wrongful acts (tort liability) seems to correspond to the modern diversity of sources of danger and the relevant damaging consequences. That is why one might be tempted to predict that socialization of responsibility is waiting for its chance to come through the wide doors in the legal life of the 21st century.

In this whole development the ancient notions of commutative and distributive justice do not loose their actuality. That is why the globe of modern world of law still bears the words "responsibility for compensation of damage" embellished by two fields of one and general justice as a complete virtue. On one of this field larger place is taken by the commutative, and the other by distributive justice – both with their changeable borders. For us jurists, the choice is already made: to reach justice by means of law.

Responsibility for Violating Public Policy

Parties may, on the ground of their freedom to enter into contracts, execute all named and non-named contracts, but this freedom has its limits

within the frameworks of the institute of public policy which protects specific public interests as expressed by compulsory legal provisions and moral imperatives.

Transgressing these limits entails the responsibility which is first of all expressed by the sanction of nullity followed by various legal consequences. These are in fact the limits of the autonomy of intentions, while the framework and substance of the public policy institute depends on the space and time dimension.

One should immediately emphasize that the public policy institute is today enlarged and to some degree integrated by the effect of international rules and standards relating to human rights. In such a way, the freedom of entering into contract is not realized in the sphere of an extended, codified and to quite a degree unified concept of public policy. And this is done by taking over, i.e. implementation of human rights from the sources such as international documents and international community standards.

Consequently, the classical concept of public policy today acquires at present a wider and a more coordinated content. Let us see, summarily, the developments of that concept in legal theory and legislation. There exist here numerous theories that can be expressed in the following way. A number of authors argue that it is neither possible nor necessary to establish a definition of public policy which would be eventually be accepted for practical implementation; the other group of authors would say that some directives still should be given, such as public welfare, interest of general public and similar categories; the third group of authors suggests the thesis in terms of which the law-maker should list legal provisions which belong to the public policy institute; the fourth group of authors suggests precise definition of public policy, but here too, the conceptions differ.

One could therefore say that public policy is a set of principles that serve as the ground of existence and continuity of a given legally organized community, which find their expression through specific legal and moral norms that have to be respected by the parties and that impose nullity of their act as the sanction for failing to do so.

International Aspect of Responsibility

In addition to the above elaboration of the kinds of responsibility, it is also necessary to consider the issue of international aspect of the matter since this is today rather important to the existing condition of insufficient-

ly realized of codified human rights as proclaimed by the United Nations and other peaceful organizations and forms of integration.

As a matter of fact, a whole series of international documents include numerous natural rights expressed in the form of international declarations, conventions and other international documents, as well as rules of responsibility which follow, or should follow, the violations or disrespect of these right committed by states and international organizations.

Conventions

Speaking of codification of human rights in the sphere of rights to life and freedom, as fundamental natural rights giving rise to all other rights that are organically connected with life and freedom, one should say that this area is regulated by numerous universal and regional documents containing an enormous number of legal and social norms based on the culture of reason and the virtue of justice.

Here is, first of all, the 1948 Universal Declaration on the Rights of Man, the 1966 International Pact on Civil and Political Rights, the 1966 International Pact on Economic, Social, and Cultural Rights, the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms, the 2000 European Union Charter on Basic Rights, and many other conventions.

The Universal Declaration on the Rights of Man, in terms of number and substance of the human rights, represents the most comprehensive codification made until now as far as human rights are concerned. In addition to classical political rights, it encompasses also a whole set of economic, social and cultural rights, completing in such a way at least, the philosophical and normative dignity of man as a social being. In course of its 63 years of existence, this Declaration has become a genuine source for many subsequent international documents, both universal and regional.

By beginning with principles proclaimed by this Declaration, the 2002 Declaration of the Kopaonik School of Natural Law reaffirms that natural law is established on the authority of a developed reason and joint wisdom which ensures to it its rational freedom in all forms of man's sociability. And all this is placed under the syntagm "man is born free but everywhere he/she is in chains" (J.J. Rousseau). According to the text of Declaration of the Kopaonik School of Natural Law, these chains are brought to him/her by the positive law, and that part of positive law which is based on arbitrariness

and violence of the ones against the others, but these chains are removed by that kind of law which is based on the paradigm of natural and social justice expressed as rational conception of natural law.

Lack of Realization of Proclaimed Rights

In many countries of the world it is objectively impossible to exercise many rights and especially those that are established as economic, social and cultural ones.

One billion of people live today in conditions of extreme poverty amounting to an attack against human dignity. This has resulted into the disaster of *hunger disease* which takes hundreds of thousand of human victims, so that it is impossible to speak in such a situation about realization of social rights.

The causes might be seen also in the misuse of human rights which takes place when some violation of human rights is answered by retaliating which provokes frequently even larger initial violations. Furthermore, as far as causes of lack of realization of the proclaimed human rights is concerned, one has to mention also he existence of large number of states not ruled by law – anti-law countries as well as *blackmail* as an instrument of reaching certain goals, beginning from the armed ones and all the way until the territorial and economic – which speaks clearly of excessive domination of politics in the sphere of human rights.

Invasion of Anti-Wisdom

In the contemporary world we have at one hand an enormous number of conventions and philosophical tractates, but, on the other hand there is a fateful issue of disregarded promises, brutal violence of the ones against the others, the menacing armed and ecological disaster, genocide and other unnatural phenomena; in short, the armed injustice in many parts of the world is not only *ante portas* but it has already penetrated in all pores of individual and common life.

The force and the organized physical power, that dangerous conception of Hiroshima-like anti-wisdom multiplies from day to day its responsibility before the constructed edifice of human thinking that was proclaimed and codified by peaceful international organizations.

In the context of the above, we have to be aware of the fact that in addition to legal, moral and any other kind of responsibility, there exists also a *historical* responsibility which often may be even more fateful than the conventional and momentary ones.

Responsibility of States and International Organizations

Speaking of responsibility of states and international organizations for illegal acts, it is necessary to talk about also on the circumstance that the International Law Commission of the UN General Assembly was charged to make a text with the title *Responsibility of International Organizations* (2011). Relating to that issue, i.e. to rules of responsibility of states, that Commission had such a task imposed already in 1955. The Draft Rules on Responsibility of States for Illegal Acts was adopted in 2011 by the UN General Assembly, but the text has remained in the form of draft only, and did not become an international treaty.

This Draft includes formulations of rules relating to responsibility, i.e.: an internationally illegal act of an international organization may consist in the fact of acting or failing to act, and there are two elements in this respect – such an act may be *ascribed* to a specific international organization, and that it amounts to *the violation of an international obligation provided for by international law.*

As one can see that text is by far insufficient to cover all kinds of responsibility of states and international organizations. One may ask – was it necessary to work since 1955 on such formulation of responsibility of states and international organizations – meaning more than 50 years, so that the responsibility was defined only as an act of violating an international obligation?

Looking from the standpoint of legal theory, and particularly from the viewpoint of reality of life, it is hard to understand why several decades were necessary to make a text which practically did not bring about any result in the matter of responsibility of states and international organizations.

Environmental Responsibility

One of the most significant kinds of responsibility is the responsibility in the sphere of environmental protection. It consists of the need of pre-

serving a healthy human environment as an indispensable condition for maintaining life and health of people on our planet.

Consequently, everyone has the responsibility and the duty and, more particularly, a state and an international organization, to take adequate measures and acts for the purpose of preserving, protecting and restoring the human environment and the unity of the eco-system of the Earth.

Environmental responsibility, in contrast to the other kinds of responsibility, has another dimension as well which is expressed in the responsibility to future generations succeeding us on this same planet Earth.

Responsibility Towards Future Generations

According to the 1997 UNESCO Declaration, the present generations have the duty and responsibility to hand over to future generations an Earth that would not be undesirable because of disturbance of its natural substance.

Such responsibility should not be conceived as a concrete compensation which is, for instance, connected with the liability for wrongful acts of specific individuals or entities, i.e. *inter vivos* parties; it is rather a higher duty and a responsibility that emanates out of the *natural law* in terms of which all people on this planet come to it and depart from it in the same way, so that in that sense we all have the same right to life in the supportable human environment. This is also a historical responsibility of all.

Exactly that universal human responsibility is the basis in the existing national and international system for establishing numerous quite specific dispositions and sanctions whose purpose is to bring into life that responsibility which, without corresponding legal protection (administrative, criminal, civil-law and that of other disciplines) could be treated as only a quite abstract and imprecise.

This is also exactly the reason for the opinion that responsibility towards future generations does not exist, because we do not know who they will be, whether they would exist at all, how they will look like or what their needs, desires and interests would be like. Since we have so little knowledge about them, it becomes almost senseless to speak about any kind of duties to be owed to them.

One may conclude along these lines that there is a great difference between legally regulated responsibility for protecting the existing human en-

vironment that has the features of positive law with its usual individual liability and punishing on the ground of violating a legally protected value, on the one hand, and the area of responsibility towards future generations who, after being handed over a devastated planet impossible to live on, on the other hand – which would be contrary to natural law.

Obviously, the word *responsibility* in this hypothesis has a different meaning as compared to that emanating from the current legislation.

We speak in this case of a responsibility of conscience and consciousness, o historical responsibility and the care for the survival of man as a being of Nature and of his/her generational solidarity.

Mankind Dimension

No man is an island for him(her)self; he(she), as the part of this planet, is encompassed by mankind, and from that point of view it is irrelevant when he(she) has come to it or has left it.

And therefore, according to words of philosophical responsibility, the existence of mankind simply means that – that people should live, that they should live a good life and that they should continue to live (Hans Jonas).

Difficult Consequences

Anthropogenic activity entails numerous and difficult consequences: drinking water is becoming more and more deficient and other underground and surface waters reach a high degree of pollution; enormous decrease of arable land; disturbance of the ozone layer; devastation of forests and virgin forests which causes detrimental changes of climate; putting in danger of flora and fauna which causes the disappearance of rare plants and animal species; ionizing radiation; excessive noise; inadequate waste disposal, and especially the nuclear waste, as well as other kinds of ecological infractions.

All the above are the elements of a disturbing image of the existing state of affairs in our bio-sphere. Instead of a healthy human environment we have gained global pollution and global degradation.

A possible way out of the existing situation may first of all be found in the energetic engagement of all social factors – from the individual and various associations to the cooperation on the level of governments and international community – to strive towards the liberation of mankind from the

menacing ecological disaster through taking all kinds of measures aimed at preservation and protection of natural resources and the endangered human environment.

Criminal-law and administrative-law protection takes in this context an important place. Along that line it is necessary to carry out the provisions of international conventions both at national and international levels. Important are also the preventive steps whose aim should be to eliminate possible damage in the area of ecology.

It is also necessary to develop general awareness of environmental risks, together with the ecologic ethics which positive law is unable to realize. Only a high degree of rational conception of natural law may raise the hope to an ethical future that would be apt o preserve the vales of Nature and to hand them over to generations that still have to come.

Three Indivisible Obligations

Peace based on intellectual ad moral solidarity of mankind; development based on legitimacy of economic and legal constitution; as well as environmental protection permeated by the natural law – are but three mutually dependent and indivisible phenomena. The unity and the entirety of these phenomena reaches a high degree of ecologic ethics which is the only means for preserving the nature with all of its secrets, the nature we belong to and which is our source of life.

Our Law

After concluding with elaboration of the institute of responsibility in its numerous forms of expression, it is necessary to have a look at our law in the general context of positive and natural law. The settling of that issue, namely, is rather important for answering many questions of law, including that of the institute of responsibility.

In previous general reports at the Kopaonik School of Natural Law these issues have been elaborated in detail, so that now, in order to remind the auditorium, I am going to mention again several relevant points that characterize our law in general and which affect also some legal categories and institutes that make the entirety of legal system.

In that sense one should emphasize several characteristic features of our legal system such as: crisis of statehood looked at through the optics

of the past and of the present; lack of coherence of the legislative opus; legal uncertainty as a central point of weakness of the entire legal system; the process of harmonization with the European Union law; lack of philosophical conception that would ensure, by the logic of argument, the life of the Just Law; imperium of political power as the antipode of democratic culture and of universal tolerance as expressions of culture of reason, self-awareness and general level of education; state of affairs of science in general, and insufficient investing in the development of science which makes the foundation of the entire process.

It goes without saying that, in addition to these areas, there exist other similar issues that make the entirety of our legal mosaics – which is the subject already elaborated at previous sessions of the Kopaonik School, so that the author of the present report, in order to avoid unnecessary repetitions, refers to these texts which are otherwise published in the monographic edition *Orations from Kopaonik (1990-2010)* in Serbian language.

Finally, as far as current state of affairs of our law is concerned, one should emphasize this time again that it has always belonged to, in terms of its source and its substance, to the family of European legal civilization. In the circle of other families of law, our law was always characterized by the philosophy of universality of legal categories, and not by casuistry and non-theoretical pragmatism, as is the case with some other families of law outside Europe. This does not mean any qualification of the value but only an account of characteristics of our law which differs considerably from other families of law in the world in terms of formal and substantial sources. However, in recent decades one may observe the phenomenon of implementation of human rights that are codified within the framework of United Nations and other international organizations which in fact leads to a process of harmonization of different legal systems in some areas of legislative solutions.

Conclusion

After analyzing the institute of responsibility from the standpoint of various philosophical conceptions and theoretical argumentation, and especially from the standpoint of responsibility in various legal disciplines, it is possible to conclude that the nature, substance and field of implementation of the institute of responsibility depend on the degree of development of relevant social factors, i.e. expressions of cultural identity of a given

community as well as on the realization of proclaimed and codified human rights of man and all his peaceful organizations and integrations in the conditions of a legally organized sociability.

Beginning from rational conception of natural law which was the basis for adopting the 1948 Universal Declaration of the Rights of Man, which represents the source of the entire mosaics of international declarations, charters, conventions and other similar international documents of general, regional and national legislation – the philosophical opus of the School of Natural Law has been accumulating, from the classical times until our era, its living confirmation and practical efficiency, so that it is possible to state that we now have yet another renaissance of natural law in the contemporary general and specific developments.

However, the modern world along almost all meridians is still unable to enter the "golden age" of worldly civility and to practically realize all universal values that were so strongly and completely formulated and established as pillars of the central virtue and culture of peace.

The institute of responsibility in the above context should acquire his human and adequate dimension in accordance with basic categories of natural law of rational orientation, and all that with the purpose of reaching a higher degree of realization of universal human values, because all human beings are born free and equal among themselves in dignity and rights. They are endowed with reason, consciousness and conscience and therefore have to treat each other in the spirit of brotherhood.

And for this reason the Kopaonik School of Natural Law sends from this 24th plenary session the message directed to widest public – *Nature is a measure of all matters, while natural law is a yardstick of every law and every responsibility.*

So, let be blessed only that law which makes us brothers with all the people of the world!

MESSAGES

At the concluding plenary session held on 16th December 2011 and after several days of intensive engagement of all participants, the editors of particular chairs and sections have announced the following messages that have met general support:

I – RIGHT TO LIFE

1. Life

Prof. dr. MIROSLAV ĐORĐEVIĆ Belgrade,
Pprof. Dr. ĐORĐE ĐORĐEVIĆ,
Criminalistic and Police Academy, Belgrade

1. The right to life in modern civilized society, as a basic human and natural right, recognized by all international acts covering human rights, and established by the Constitution, must have widest and most complete legal protection. It is put into effect by all legal means among which the criminal-law one is most important. This protection is manifested not only through direct action of protecting the life as such, but also of its quality which, in the conditions of recognized human rights, must reach a certain level.

2. Criminal-law protection against most serious attacks on man's right to life is realized through the system of incrimination specified in the Crim-

inal Code that covers various forms of criminal offences of murder. Particular problem from the criminalistic point of view is posed by the so-called ordered murders where there is no direct connection between the victim and the one ordering the murder. Due to that circumstance as well as due to (as a rule) professional way of perpetration, such kinds of murder represent the highest percentage of unsolved cases of criminal offence of murder. Additional problem is the fact that these murders provoke special attention of the public, the feeling of disgust towards the murderer and the one ordering the crime, so that their delayed discovering frequently creates worries of citizens for their own security.

3. Various forms of violence put in great risk the proclaimed right to life. Violence does appear in almost of walks of man's life and work, but such sort of conduct has been escalating even within family and in partnership relations, while on the other hand, there often occur at public meetings, particularly at sports events. Although new sanctions have been introduced in our legislation for suppressing this kind of violence, the results are not satisfactory. It is therefore necessary to engage in taking preventive measures in order to neutralize the existing factors of risk and to promote real values and healthy relations in the family and the society.

4. Suicide represents a significant social problem and according to research the highest number of cases of suicide relates to older persons. Here again preventive activity should apply, not only in the family but also within the framework of local communities. In this respect programs inspired by insisting on preventive factor should have priority, such as participation in some organizations, clubs and the like that could extend the net of social care for older persons.

5. Although the Serbian 2006 Criminal Code of Serbia has been a step forward in ameliorating our criminal legislation, its further development marked by the 2009 Amendments, unfortunately did not meet the expectations. Frequent changes, prescribing new criminal offences, hasty solutions and departing from some basic criminal law principles transform our legislation into quite an incoherent system characterized by the decline in terms of its essence and technique. This requires the efforts to establish legitimate, adequate and precise borders of the criminal-law protection. Solving certain social, economic and political questions must be found outside of criminal law since it is neither legitimate nor efficient instrument for the task.

2. Health

Prof. dr. JAKOV RADIŠIĆ,
Dr.HAJRIJA MUJOVIĆ-ZORNIĆ,
Senior Associate, Institute of
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1. *Responsibility in the sphere of medicine.* – Responsibility before the courts of honor of the medical chambers is an autonomous form of responsibility due to violation of provisions of ethical codes. The relevant example is Germany. In Serbia this kind of courts is faced with numerous problems, so that it is necessary to raise the quality of their work by applying comparative examples that point out at greater role of lawers in their proceedings.

2. *Rights of patients.* – The principle of informed consent is today a predominant rule in the sphere of medicine. For a long time it was considered that its application in psychiatric tretament was not possible. But with modern developments this princple has become the rule in psychiatry especially in case of patient with marginal capacity for decision-making, while the compulsory treatment and hospitalization became treated as exceptions and special legal qualifications. This element should be considered in the debate of the draft Law on protection of mental patients in the Republic of Serbia.

New models – the so-called P4 medicine (predictive, preventive, personalized, participatory) raise many questions of legal nature in the area of health protection relating to patient's rights. This area should be made known in Serbia in order to make actual and improve the basic rights of this kind. The issue is also important in the efforst for making more rational the entire health protection system.

In the sphere of health protection one should pay particular attention to the young generation which and their reproductive health thus should be a priority. Realization of relevant rights should therefore be the duty of state and requires the engagement of society in several areas. The action should be done in conformity with directives established by the United Nations Family Planning Agency (UNFRA).

3. *Special medical procedures.* – Elaborated by taking the example of Croatia, was the legal aspect of so-called cryonic (medicine applying the freezing technique) where a brain death body or anencephalus may be preserved in extremely low temperatures. It is necessary to legally define such new medical procedures, which bears also on regulation of brain death as well as of anencephalus; i.e. these provisions should be adequately amended.

Present in the legislative approach to the *post mortem* transplantation of organs and tissues are so-called opt in and opt out systems. The comparative analysis by using also the solution of the law of Bosnia-Herzegovina shows that these systems approach each other because they become reduced to consent, i.e. agreement, but in the first case the consent has to expressly stated, while in the other it is only presumed. According to Serbian legislative solution both elements of this system are accepted which requires explanation. It was concluded that cadaverous transplantation should be more present in the practice of medical treatment in Serbia.

The role of ethical committees should be rather important in medical research, especially in treating the adequacy, scientific value and legality of research protocols. In their work ethical committees should follow the international principles and EU recommendations, while erroneous decisions and failures in following the current clinical explorations should be subject to responsibility.

4. *Rights of members of medical profession.* – In order to preserve the professional freedom and independence of physicians working in custody hospitals, the regulation of their service should be primarily related to the health institutions network and the Ministry of Health. Decentralization of this service is also necessary along the model of the developed countries with higher standards in this area.

Addition work in the sphere of health-service causes certain irregularities and misuse, so that one should allows it only in specific fields. By eliminating the existing weaknesses the work would be better organized and the discipline enforced which would prevent corruption and open the possibility for wider employment.

Medical filing is rather important in many ways. It should make easier the communication not only between the doctor and patient, but also that between various specialist and other medical personnel, representing thus an indicator of quality of work and an element in making various analyses in this field. It is a must to respect legal provisions covering the right to insight in medical documents, regardless of the age of the patient.

5. *EU law and health.* –- In Europe the evaluation of impact of damaging elements on the health of people and the trans-border health protection are done through instruments providing for a higher level of protection as the goal established in the leading EU legal acts. These instruments may be useful also in countries such as Serbia with the candidate status. Therefore domestic legislation should introduce the corresponding modern solutions in this area.

3. Ecology

Mr. GORDANA PETKOVIĆ,
Senior Adviser, Ministry of Human Environment and Urban and Country Planning of the RS, Belgrade

1. *Responsibility of international community.* – This responsibility in the sphere of environmental protection is ever more accentuated in the context of searching for an international framework of the struggle against climatic changes, possible use of nuclear armaments and the pollution risk for the states, including the ever more frequent natural disasters.

2. *Changes of climate.* – States, as international law subjects, are responsible for the protection of climatic systems important for the present and the future generations. There still is no international consensus regarding the decrease of the concentration of greenhouse gases in the atmosphere which would prevent dangerous influences on the living world of the changes of climate, involving even the survival of the Planet.

Developed countries which have taken the leading role in the above process obstruct the implementation of international duties coming from the Kyoto Protocol, and especially the providing of financial sources necessary for covering the expenses of the developing countries.

The Kopaonik School of Natural Law encourages the international community actions for finding the solution, while beginning from the principle of equality and the joint but differentiated responsibilities and available capacities.

3. *Global management of human environment.* – The new vision of global management of human environment promoted by UNEP requires the change of the existing conception of sustainable development. Three main elements – economic, ecological and social shall be treated on an equal basis because the established disproportion between these three dimensions is detrimental for the ecological vault. It is therefore expected that the RIO+20 Conference will affirm the new concept of the "three-fold" spiral that would reflect the new paradigm of mutual dependence of climatic changes, economic development and social dimension. Together with this, the idea has become ripe about establishing a new world environmental organization, conceived as the master institution charged with unification of disunited elements at the institutional, financial and organizational levels.

4. *Responsibility for implementing legal provisions.* – It is necessary that national strategy should follow the program whose aim should be the change of conduct of responsible subjects regarding correction of direct and serious risk to public health and human environment caused by its pollution.

The basic element of this program is a continuing training of inspectors and judges with the aim of promoting the efficiency of decision-making, application of international treaties and the relevant national legislation.

5. *Climatic changes and bio-diversity.* – National and international efforts should be directed to implementation of trading with GFG emissions and particularly with mechanisms of clean development through the realization of CDM projects in the area of energy production, waste management, agriculture and other areas of generating the certified decrease of emissions.

In this respect it is indispensable to consider the legal framework of clean development on the Republic of Serbia in order to establish a consistent and transparent legal regime that would contribute to reduction of risks and elimination of uncertainty in investing into CDM projects.

Air pollution, both in the trans-border and national contexts, requires in the Republic of Serbia taking of continuous measures for implementing the Convention on Long-Distance Transportation of Polluting Matters, including the Protocol on heavy metals and the Protocol on POP substances, as well as for monitoring the implementation and/or revision of the current legal provisions on protection of air from pollution. It is also necessary to reassess measures for encouraging wider use of lead-free gas in accordance with the European practice.

Legal provisions of the Republic of Serbia relating to evaluation of the impact of plans and program-projects in protected areas of nature should by all means be assessed from the standpoint of jurisdiction and scope of application as far as protected natural areas of rare flora and fauna are concerned.

6. *The law of energy production.* – Globalization of markets and trans-border integration of energy production networks of individual countries point at the way of development of the law of energy production as an international-law category as well as to the connection and coordination of specific national legal systems into an international system in that sphere.

7. *Production of organic products.* – Having in mind that consumption of organic products is constantly raised as well as that the Republic of Serbia has already coordinated its legal framework with the corresponding European legislation in the sphere of producing organic products, it becomes indispensable that the Government of the Republic of Serbia increases the incentives for engaging in organic production.

This would mean the increase of exports of organic products not only to the European Union but also to the U.S.A and Japan as well as a greater placement on domestic market, including positive effects for the people and the environment.

8. *Civil-law and criminal-law responsibility.* – Certain significant international treaties in the sphere of liability for compensation of damage inflicted on human environment through dangerous activities have not yet entered into force exactly due to lack of political consent, failure to meet legal, economic and other requirements established by these treaties that have to be carried out by states as responsible international-law subjects.

The following is necessary for the development of the system of responsibility in the sphere of environmental protection:

– an analysis of justification for adhering to and confirming the international treaties in the areas of civil-law and criminal-law responsibility for the protection of human environment within the UNECE system (industrial accidents) and the system of the Council of European (the Lugano Convention on Civil-Law Liability for Damage caused by activities dangerous for human environment as well as within the Convention on Environmental Protection by means of criminal law);

– to approach to the European Union provisions covering the responsibility for human environment relating to prevention and elimination of environmental damage by means of criminal law;

– to revise the legislation of the Republic of Serbia in the sphere of civil-law and criminal liability from the standpoint of environmental protection.

9. *Participation of public.* – It is necessary to intensify the participation of general public in the public debates in course of enacting laws and other regulations, in the decision-making process as well as in exercising the right to legal protection in matters relating to human environment.

4. Sport

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1. In the framework of its legislative and executive powers the state has to extend all possoble assistance to sports as an activity of special social significance. This is provided for not only by constitutional but also by legislative provisions such as the Strategy of Development of Sport until 2013 according to which sport is an element of representing the state in the world, of affirming its cultural richness and strengthening national cohesion. On the basis of such legal framework, the state, i.e. its bodies and agencies, are bound to determine and design the goals, the criteria and the priorities in investing budgetary means into the sports. In addition to financial aspect, the state must take other measures as well for the purpose of increasing the reputation of sport, of its normative and logistic activities.

2. Sport, as a social and cultural activity which, if practiced correctly, enriches the general culture and friendship among nations. Along these lines the European Sports Charter points out that sport is a social and cultural activity based on voluntary choice, which motivates the contacts between European countries and their citizens; it strengthens the relations between peoples, develops the awareness of the European identity and plays one of the principal roles in the realization of goals of the Council of Europe. In this sense national legislations in the area of sports have to be coordinated with comparative legislation and be in conformity with the sports ethics Code of the Committee of Ministers of the Council of Europe.

3. While beginning from international standards in the sphere of sports, the actual state of affairs of the national law of sports must not be left to subordinate legislation and normative insufficiency. Such situation must be changed in the shortest possible time by enacting adequate legal norms that would take in consideration the specificities of sports as compared to

general legal solutions. It is necessary to prevent a condition where suspension becomes the principal punishment, making in some way all other measures superfluous.

4. It is necessary to further develop the work of the National Olympics Committee as the international Olympic forum that is based on Olympic Charter. Consequently, all necessary measures have to be taken in order to implement, as efficiently as possible, the provisions of the Statute of the Olympics Committee of Serbia (2011).

5. Consistent implementation of the provisions of the Law on Preventing Violence and Unseemly Conduct at Sporting Events (enacted in 2003, 2005, and 2007) as well as those of the Law on ratification of the 1990 European Convention on Violence and Unseemly Conduct of Spectators at Sporting Events, and particularly at football matches.

6. It is necessary to consistently apply the provisions on the 2005 Law on Doping Prevention in Sports as well as those of the 1991Law on ratification of the European Convention against Doping in Sports. Along these lines the activity has been supported of the Anti-Doping Agency of the Republic of Serbia which is active in the framework of the World Anti-Doping Agency.

7. It is also necessary to stimulate the development of Sports Arbitration as a specialized arbitration institution which, by its very nature and character, is closer to the rules of sport and sporting activity in general, as compared to the regular courts. This Arbitration may be organized in various ways, such as: *ad hoc* sport arbitration tribunal; permanent tribunal at the Olympics Committee of Serbia competent for Olympic and para-olympic sports; permanent sports tribunal at the Sports Association of Serbia for non-Olympic sports; International Sport Arbitration. Jurisdiction of sports arbitration is based on the consenting minds of parties (according to the Sport Arbitration Agreement), while the procedure before that arbitration is provide for by rules that are applied taking in consideration of general rules of the Law on Arbitration Tribunal. Bearing all that in mind and especially the advantages or such way of dispute settling in relation to regular courts, it is necessary to support with more intensive consistence and authority the sport arbitration as an important institute in this area for settling the disputes with better chances of reaching adequate results.

II – RIGHT TO FREEDOM

1. Criminal-law and Procedural Protection of Personality

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1. Right to freedom is a supreme right which must be respected in a state ruled bz law. Every deprivation or restriction of the right to freedom must be justified in order to be lawful.

2. Temporary detention and other forms of deprivation of liberty are regulated in our Criminal Procedure Code, both old and the new ones, in the classical way, similarly to solutions existing in other continental European countries. It is particularly significant in the normative sense that our Code includes also numerous alternatives to temporary detention as the strictest measure for ensuring the presence of the accused in criminal proceedings, but the problem s in the fact that these measures are not sufficiently applied in practice. Consequently, it is necessary to develop the awareness of judges that temporary detention has, factually and not only formally, to be the last means and never a routine measure.

3. It is necessary to respect the assumption of innocence because it is obvious today that in practice the accused ones are frequently condemned as criminals in advance by the mass media and even by some irresponsible politicians, which is impermissible. Public arresting and photographing and especially its urgent emission by television, followed by messages from the world of politics is in practice reduced, as a rule, to direct violation of the assumption of innocence and to the pressure on the court, which is not isolated from external world, so that such conduct may be manifested also as a violation of the right to fair trial.

4. One should be particularly careful in reforming our legal system, especially in the sphere of the new Criminal Procedure Code, which establishes some normative solutions that are entirely incompatible with our traditional conceptions about the purpose of criminal procedure in the spirit of equity and trying to reach the truth or a least to do one's best to determine it.

5. Totally adversary construction of the main trial does not correspond to our criminal procedure since it may lead in practice to enormous problems. In such procedure the parties are only formally equal in their positions, while in practice, and as a rule would harm the accused especially the one without a lawyer, since according to provisions of our criminal procedure compulsory defense attorney is provided in a limited number of cases,

6. Elimination of the principle of truth in the criminal proceedings is particularly detrimental. It goes without saying that truth is not "a sacred cow" even in our current criminal procedure – which is also the case with legislation of the majority of countries of continental Europe where this principle is applied and where it is considered as a superb principle. The truth is not to be reached at any price, but it should always be strived at, while where it can not be determined, the principle of *in dubio pro reo* is the one which applies.

7. Elimination of the principle of truth in criminal proceedings is contradictory to numerous other criminal procedure rules. It is senseless that the new Criminal Procedure Code makes possible, just as the old law did, an appeal against the verdict also on the ground of erroneously or incompletely determined state of facts – in other words due to an untruth as the ground of verdict – while the court still having no duty to determine the truth and that such determination by relevant evidence, meaning the creation of the ground for determining the truth, is primarily entrusted to the parties. What are the chances of a party to challenge the verdict because of erroneously or incompletely determined state of facts, when it alone is procedurally responsible for determining the state of facts?

8. Limitation of the principle of truth in criminal proceedings is in essence also immoral because the goal of criminal procedure may not be mechanically and artificially separated from the general context of the criminal law and morality. If we consider, as a matter of principle, that committing criminal offences is immoral, and that only in criminal proceedings one may determine that an offence is committed, then such issue must not be left over to purely legal technicalities, such a construction some sort of "evidence duel" where the parties would present their arguments and counterarguments, while the court would be exempted from the "burden" of determining the truth, or at least from trying to find it and would be reduce to a simple arbitrator deciding who the winning party is in such duel.

2. Freedom of Personality

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1. On the occasion of publishing of the Preliminary Draft Civil Law of the Republic of Serbia, i.e. the third volume dedicated to family relations, the Section supports the proposals of the Commission charged for drafting the Civil Code, and especially the part relating to introduction of demographic allowance, ban on physical punishment of children, surrogate maternity and alimony funds to assist parents in collecting children alimony from the other parent owing it.

2. Having in mind the exceptionally unsatisfactory (alarming) demographic situation in our country, we do consider that it is necessary to introduce measures for animating births by public measures of "financial, taxing, labor-law, economic, social and similar character for the purpose of motivating higher birth-rate". Influencing the change of reproductive behavior of parents is a long-term and rather complex procedure that requires perseverance, engagement in many fields of activity, and stability of the system of measures that would guarantee to parents an adequate assistance in raising a more numerous family. The Preliminary Draft Civil Law provides that such motivation should be regulated by particular provisions, but one of the advantages in this respect is specified through "demographic allowance" to mothers giving birth to a third child, which lasts until coming of age of the youngest child. The amount of such allowance is to be determined each year by the Ministry of Finances depending on financial possibilities. The intention of draft-makers was not to animate women to dedicate only to giving birth in order to get that allowance, but to motivate those families with two children which consider the third one, to reach the decision more easily while being aware that they would get state assistance. Setting apart financial means for this purpose should be a primary priority.

3. Also supported is the ban on physical punishment of children, which is also the result of implementation of the UN Convention on the Rights of Child which is precise in this respect. Every state signatory is bound to take all measures for protecting children from all forms of physical violence. Traditional (patriarchal) attitude in this sphere, both in our country and abroad, was for a long time treated the child as the object of

parents' power and of their rights. The Convention changes this and the child becomes a holder of rights. The Committee for the Rights of Child as a supervisory body in matters of implementation of the Convention is strict in its view that such punishment is not permitted.

4. Support is extended also to the way of regulation of surrogate maternity (giving birth for another) as a method of surpassing woman's infertility, which is in accordance with the constitutional principle of free decision on giving birth as well as with the standpoint that state is bound to motivate parents and to assist them in this area, Traditional prejudices towards woman and her unequal position in the reproductive sphere as well has long been the feature of our society and our legal system, but modern scientific achievements make possible the progress in this respect. Woman does not have any more to be the victim of health, inborn and other circumstances preventing her to conceive and to bear and give birth to a child; instead she may establish parental relationship with the help of another consenting woman.

5. A rather important novelty in the proposed Preliminary Draft Civil Code is the introduction of mentioned alimony funds to finance the maintenance of children on the ground of a finally-binding court decision in case the parentowing the alimny tries to avoid his obligation.

That fund should also assume the burden of compulsory collection from suc parent, while the means paid from the alimony fund would be refunded from the debtor parent who would then be obliged to pay some 15 to 20% more on the ground of cost of such procedure. In such away the parent keeping and maintaing the child would be in a better fi nancial position.

6. Lecturing on religion in the schools should be reconsidered, i.e. regulated in a new way, in the sense of introducin also lectures on other great religions of the world. This is particularly important in order to have pupils informed about religious conceptions of other nations, leading thus to better mutual understanding and tolerance towards different views, contibuting in this way also to raising the level of their personal culture. Such new course could be called religious culture and should not be an alterantive to civil education since pupils might be interest to follow both courses.

7. he problem of abduction of a child by one parent and moving to another country as well as denying the right tthe other parent to see the child and have regular contcats with it is not a problem specific for ourcountry only. It is an universal problem that exists in almost all countries in the world. Many such case were proceede by the European Court for Human Rights in Strasbourg. There also exist interatuionkl conventions in these

matters, but until now no solution did prove sufficiently effective both in preventing and setling this problem. We think that solution could be found in the preparation for marriage and family in the secondary school education because marriage and family are still the most important cells of society, while the yong ones are totally unprepared for their rules in the future as marriage partners and parents. No legal sanction can be sufficient to prevent unseemly and damaging conduct in mariage and family. Much bettrer way is the adequate education and informing of possible problems and crisis that ma occur in this particular area. Many family conflicts would certainly be avoided or attenuated if people enter marriage and parenthood with more information about these important issues.

3. Administrative-Law Protection of Freedom

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1. It is necessary that the status of public servants be regulated by uniform legal grounds. A uniform public servants code would establish general principles of the employees in the public sector. This code could also specify norms covering the status of specific categories of public servants (in the government services, education, health service, etc.).

2. The principles of procedure of administration are harmonized with achievements of the European Union. In considering the principles of forecasting and consistency in the work of administration one should pay attention to: material and personal prerequisites for its realization as well as the current laws and actual practice in the sphere of administrative judiciary. In relation to that, the decisions of higher courts must be accessible to the government agencies in electronic form.

3. In conformity with the European Union standards and bearing in mind a more complete protection of parties in administrative litigation it is recommended that a multiple-instance administrative-judicial protection be introduced, i.e. that a superior (supreme) administrative court be established.

4. In order to protect citizens' rights to access to court, in terms of article 6 of the European Human Rights Convention it is indispensable to re-

consider the provisions of the Law on Amending the Law on Planning and Construction, according to which a party losing an administrative dispute, conducted due to evaluation of legality of a construction permit that has been issued, is obliged to compensate the damage to the investor who was unable to begin the building works after the ruling became full and valid. It is also necessary to ensure the equal positions of the parties before state agencies in the legalization proceedings where one of the parties empowers the state agency (and concludes a contract with the municipality authorities) to provide on party's behalf in line of duty the necessary evidence for using in the legalization proceedings.

5. Having in mind the protection of parties' rights and the public interests, one should carefully regulate the situations in which the institute of silence of administration means the recognition of party's claim, i.e. the denial of such claim.

III – RIGHT TO PROPERTY

1. Codifications

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1. The Commission for drafting the Civil Code of the Reopublic of Serbia, established by the Government of Serbia, has published in 2011 the 3rd and 4th volume containing preliminary drafts of parts of the future Cvil Law which relate to matters of family relations and inheritance. The boos are published in 600 copies (in 2009 the 2nd book has een published in 1,600 copies and with 450 pages). Most of these boos habe been distributed to participants of the Kopaonik School of Natural Law, relevant institutions, judicial bodies and other interested jurists. The publication of these books has marked the six-month long public debate about the formulated statutory solutions and their alternative proposals. Special public presentation of the 3rd and the 4th book will be organized by the Ministry of Jus-

tice in March 2012, as was the case with the presentation in 2010 of the 2nd book. Particular interest was provoked by innovative proposals in the area of family relations.

2. The third book of the Commission that includes the preliminary draft of provisions dealing with family relations has 380 articles and they include significant new solutions in the current Family Law. Many new solutions are drafted in accordance with contemporary tendencies in the European comparative law, the adopted international conventions and scientific achievements and experiences with the implementation of actual Family Law in the judicial practice. In the discussions and written reports not only within the framework of the Kopaonik School of Natural Law but also in public media, particular positive attention was extended to proposed solutions aimed at the following: measures for efficient motivation for giving birth; advancing of mutual relations between parents and children; introducing in our legal system the contract of giving firth for another (surrogate maternity); ameliorating the institute of adoption and guardianship as well as establishing an alimony fund with the purpose of protecting children whose parent-debtor avoids the payment of alimony. These proposals are supported in corresponding sections of the Kopaonik School of Natural Law.

3. The 4th book which is published immediately before holding the 24th Session of the Kopaonik School of Natural Law includes the preliminary draft of the part of future Civil Code relating to inheritance. The Commission has acknowledged with pleasure the Law on Inheritance of Serbia, enacted in 1995, was the first law in the classical civil law matter designed in the spirit of reform, and that, according to assessment of scientific and professional circles, it has been successfully applied ever since in course almost a decade and a half. As already known, the 1995 Law on Inheritance of Serbia has introduce in our legal life numerous novelties, returning in a way the traditional values that adorned our inheritance law – provisions that extend many possibilities to achieve high level of justice and legal certainty in every concrete case; this, in other words, means the meeting of high standards of protection of inheritance and by that very fact of other property rights of the former holder and his/her legal successors, i.e. his/her universal and singular inheritors. Having in mind the relevant changes taking place in our legal life since entering into force of the Law on Inheritance and until the present, the Commission suggested also certain changes of the existing statutory text. Significant novelties in the preliminary draft re relating to inheritance cover the following: introducing – in addition to two ex-

isting inheritance grounds – of a third one in the form of contract of inheritance; reasons for determining the unworthiness for succession; bequest; contract of maintenance for life; scope of successor's liability for debts and measures protection of domestic citizens – inheritors, life maintenance beneficiaries and creditors – where the probate proceedings are conducted by an international institution. The proposed preliminary draft relating to inheritance, in its article 243 specifies other new legislative solutions as well whose purpose is to ameliorate the existing ones.

4. It is generally assessed that the work of the Commission charged with drafting the Civil Code of the Republic of Serbia has met particular attention for the codification of civil law in former Yugoslav republics – now independent states. This especially refers to the Republic of Macedonia which, inspired by the experience and publications of the Commission for the civil law codification in the Republic of Serbia, established (on 28th December 2010) its own commission whose chairman is professor dr. Gale Galev. At the Section for Codification the subject and the method of civil law have been exposed as basic determinants and directives in the preparation and drafting of the Civil Code of the Republic of Macedonia which should become one of the pillars of the entire modern legal system and legal order in that republic, compatible and coordinated with the legal system of the European Union. In this way in the Republic of Macedonia and the Republic of Serbia the codification would contribute not only to internal and external harmonization, but also to an ever greater legal certainty as well as strengthening of the rule of law. A good codification, at one hand, will result in a high degree of stability, while, on the other, it would enhance the progressive development of day-to-day civil-law relations based first of all on the equality and autonomy of intention of their participants.

5. On the subject of whether the European Civil Code is an utopia or a reality, it was suggested that the institutions of the European Union have taken a series of steps aimed at unification of private law coupled with special intention to draft such civil code in accordance with the Resolution on harmonization of specific sectors of private law, adopted by the European Parliament in 1994. Within the activities of its legislative program, that Parliament has provided in 2000 a more intensive harmonization in the area of civil law. These endeavors are expressed through publishing, after adequate comparative research, the principles of the European Law of international contract (UNIDROIT principles), the principles, the principles of the European law of contract (the Lando principles), principles of the European law o damages (torts). This was a result of adequate comparative studies. In

contrast to the law of contract and, to a degree, of the law of compensation of damage (torts), where first steps have been made towards an indispensable harmonization, in the area of property-law relations and other parts of civil law (family, inheritance), the absence of harmonization is understandable due to the nature of the matter and existing national differences which differences which cause special difficulties in legal relations. These parts of civil law would remain in the future too, the component parts of national legislation. The present degree of harmonization of the European civil law provokes different opinions about the need and possibility of enacting a European civil code. However, according to the prevailing view in the European Union, it is still necessary to work on the project of the European civil code as a long-term endeavor whose realization in near future is completely uncertain.

2. Property and Other Property Rights

6. One of the most actual issues in the area of property relations is, by no doubt, the issue of restitution, i.e. turning back the property taken from their former owners in the 1945 – 1958 period. Parallel to the undoubtedly affirmative attitude and effort in realizing partial restitutions, it is positive to state that finally the intention of the Republic of Serbia has been put into effect, at the end of September 2011, by enacting a complete Law on restitution. However, there are objections against some solutions of that Law. The are the following: insufficiently precise and unclear provisions and, first of all, restrictive application of the principle of priority of natural restitution, lack of possibility of real substitution in cases where natural restitution is impossible, inequality of positions of holder of right of natural restitution and holder of the pecuniary compensation. In spite of these and other shortcomings in the text of Law, it is possible to conclude that its enactment and efficient implementation may have a positive impact on legal and economic security and investment climate in the Republic of Serbia.

7. In course of drafting the section on property relations in the Civil Code it would be useful, in conformity with the accepted conceptions of civil law codification, to particularly consider the normative regulation of specific property-law institutes (the right of construction and fiduciary ownership) which already existed as component parts of property and other property-law systems (in the Republic of Montenegro, the Republic of Croatia and the Republic of Srpska). It is particularly useful to assess wheth-

er their introduction into the Civil Code one may expect positive effects in meeting the legitimate interests and justified social needs.

8. Regarding the Law on Amending the Law on Planning and Construction (April 2011) which introduces in our law the so-called commassation, it was concluded that this measure in relation to building sites has to be economically beneficial and justified for all participants in the transaction.

3. Property and Inheritance

9. Protection of beneficiaries according to the rules of maintenance for life is successfully realized through the institutes of rescission and annulment of the relevant contract which are regulated by the Law of Contract and Torts and the Law on Inheritance.

Raising the quality of existing legislative solutions concerning the protection of beneficiary of maintenance for life may also be put into effect by extending the circle of persons which, after the death of grantor of maintenance, may take over his contractual obligation. Another way to do that is to introduce the conversion of contract of maintenance for life into a contract of rent for life where mutual relations between the parties of the former contract are disturbed to the insupportable level. Judicial practice too may contribute to the above respect by a more restrictive interpretation and application of legal norms concerning rescission of contract of maintenance for life due to hardship (entirely changed circumstances),

10. Successor's actual possession as a special form of actual possession undoubtedly provokes numerous dilemmas, both in theory and the practice. The basic question is related to the relationship between legality of possession of the successor and the legality of intestate's possession. Due to the basic function of protecting the successor's possession, that issue should be settled in the oncoming legislative regulation of property-law relations. It would be a positive novelty if legality of that type of possession be evaluated independently of legality of the intestate's possession.

11. The issue of acquiring ownership in case of multiple abalienation of one and the same immovable property (by selling it, by giving as a gift or by multiple disposal on the ground of contract of maintenance for life) is not regulated by law, but is left over to judicial practice which, otherwise, is not uniform. Until such regulation, it seems that the stand of principle of judicial practice according to which a person failing to behave *bona fi-*

dae may not be considered owner of immovable property that was alienated several times to various persons. However, in the case of several contract of maintenance for life where all regular grantors of maintenance are in good faith and none is recorded in the books of title as owner, it would be rational that all grantors of maintenance acquire co-ownership whose parts should be determined by court by considering all circumstances of the given case and especially the length of the prestations performed.

4. Contract and Liability for Damage

12. In order to harmonize the practice in dealing with letters of credit that transaction should be kept and regulated the basic questions connected to it in the Civil Code of the Republic of Serbia in conformity with modern needs of internal and international practices.

13. Comparative analysis of provisions and principles of the European law of contract relating to agency and the corresponding legislative solutions in the countries of continental law points at considerable differences relating to regulation of transgression of authority, acting for another without authority and conflict of interests between a direct agent and a person engaging the agent. In order to make advancement of legal provisions one should evaluate the need and the possibility for harmonization of these solutions with the European law of contract.

14. Positive grade is given to the efforts of the law-maker in strengthening consumers' protection, to harmonize domestic legislation with the European law specified in the corresponding directives of the EU bodies and agencies. This has been already achieved through enactment of the 2010 Consumer Protection Law which, among other matters, the conditions are regulated for putting into effect the right of consumer to unilateral rescission of contract and also the relevant procedure of exercising that right, including all relevant legal consequences.

15. The following requirements have to be fulfilled in order to functionally improve the development of electronic trade and electronic transactions by means of electronic contracts: clear and precise identification of contracting parties, precise identification of the subject of contract, of the period of validity of electronic contracts as well as making the electronic signature valid.

16. Positive grade is also given to proposals of the Commission for drafting the Civil Code of the Republic of Serbia relating to legislative definition of fault and of the notion of damage. This refers also to the proposed

provisions covering responsibility in case of violation of protected rights of personality and of right of legal entities to monetary redress of damage due to undermining the reputation or other values emanating out of the nature of their status and position.

17. It is also necessary too surpass the legal inconsistency that took place after the enactment of the Law on Compulsory Insurance in Traffic (July 2009) and of the Governmental Decree on Compensation of Loss suffered by persons. That inconsistency considerably alters the concrete and rather standardized judicial practice of implementation of provisions of the Law of Contract and Torts relating to determination of the property and non-property (moral) damage. The mentioned Decree unjustifiedly undermines that practice to a considerable degree especially in cases of liability of owners of motor vehicles as the prerequisite of insurer's duty.

18. In the cases of violation of the right to freedom due to unjustified condemnation or deprivation of liberty without legal ground, as a rule, there exists also the infringement of the right to honor and reputation since these are closelly connected, although independent, rights of personality. In order to more completely and just protection of these rights of personality it is necessary (instead of imposing a single amount of damages in case of violation of the right to freedom and the right to honor and reputation) to determine separate exisence of violation of these rights, the scope of violatuion as well as relevant circumstance influencing the determination of the pecuniary compensation.

19. The analysis of the practice of interest on overdue payments points ot that alreadyfor a long time the way of its calculation makes possible excessive profit for creditors which surpassesm several times the amount of principal debt, which is an unjustified relict from the hyper-inflation period. Suuch calculation is alsonot compatible with European Directive regarding suppression of late performance of contracts in trade transactions as well as with equitable and just protection of creditor's interests. In order to avoid the unjustified priority of creditors and ensure a just protection of debtors against excessive and enormous burden, it is necessary to revise without further delay the current and unjust system of determination ofthe interest on overdue payments. This could be done by specifying the annual rate of that interest inb an indirect way, i.e. on the ground of a corresponding rate that would be increased by certain number of percentage points.In addition to the general one, it would be useful to provide also for a special inteest rate that would be alid fro contracts n the sphere of economy. Otherwise, this type of interest should be calculated by applying the simple inter-

est account combined with the amount of the rate which, in its total value, would not, as a rule, exceed the amount of the principal debt.

5. Taxes

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in Kosovska Mitrovica

1. The efficiency of taxation system depends not only on optimal taxing laws and conduct of taxpayers, but also, to quite a degree on the successful work of Tax Administration. The practice has shown that there is no efficient taxation policy without an adequate tax administration. With suck kind of work abundant tax revenues would become possible together with the decrease of high tax rates and attenuation of the existing inequalities of various groups of taxpayers. However, many prerequisites are necessary, both in theory and practice. Fist of all, it is indispensable to develop the attitude of tax administration towards taxpayers, then to increase professional qualifications of personnel, including their specialization and mastering of interdisciplinary knowledge, and the like. In addition to that, a successful tax reform requires to establish a transparent and simple tax structure. But in order to reach that goal one should take into account the need for essential simplification of tax system by introducing simple tax forms, for decreasing or abolishing numerous tax benefits, for reducing the need for documentation and for as well as assisting taxpayers in carrying out their obligations.

2. The actual mixed system of taxing citizens' income in Serbia is characterized by numerous weaknesses: horizontal and vertical iniquity by applying unequal effective tax rates depending on the kind of income, which negatively affects the prices causing thus an inefficient allocation of resources. Moreover, the current system of taxing citizens negatively affects the demand for labor force, it is insufficiently effective and technically too complex. Due to the above reasons it is necessary to abandon that system and replace it with a new model of simplest global (synthetic) taxing system.

3. Taxpayers should be granted the possibility of paying the value added tax only after receiving payment for the delivered goods or services. This is indispensable since according to current practices the companies failing to collect are obliged to take loans from banks in order to bridge the lack of their liquidity.

4. The Law on Taxing the Profit of Legal Entities should be thoroughly amended in order to reduce, in essence, the relevant tax benefit which would result in the increase of financial revenues without considerable negative repercussions on the realization of established economic goals. This view is compatible with modern theory standpoints according to which tax benefits, i.e. departure from the general taxation regime represent inefficient and unjust solution because: (a) causes inequality in the sphere of economic decision-making (disturbing thus the adequate neutrality of taxes), (b) creates the surplus of burden of subventions because the majority of investor would in that case realize their investments even is there was no such incentive, and (c) implies differentiated sensibility to tax burden of companies of the same economic strength.

5. In taxing the property the law-maker must consider the fact relating to considerable impoverishment of citizens and already paid tax by the taxpayers through the income tax of citizens on the ground of indirect taxes. Consequently, it is necessary in this particular area to consider numerous social moments which dictate the need for moderate taxing and optimal social differentiation that would be accepted by most citizens.

6. Finally, particularly unfavorable is a widespread avoidance to pay social security contributions resulting in the need for setting apart considerable amounts in the budget in order to cover for indispensable needs in this sphere of social life. According to the adopted opinion such avoidance of payment could be prevented by obliging the banks engaged in payment transaction to stop the payment of salaries before these contributions have been paid in.

6. Commercial Companies

Prof. Dr. MIRKO VASILJEVIĆ,
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Dr. DRAGIŠA SLIJEPČEVIĆ,
President of the Constitutional Court of Serbia, Belgrade
MIROSLAV NIKOLIĆ,
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Following conclusions are prposed in the matter of bankruptcy:

1. As far as special proceedings in cases of long-term incapacity for payments, the so-called «automatic bankruptcy», are concerned the Bank-

ruptcy Law shluld be amended in order to regulate the way of obtaining security, of recording and of procedure of transfering the property to the ownership of the Republic of Serbia. The amendment should also include the way of realization of distinguishable rights and taking over the already initiated litigations or, otherwise, entirely erase chapter X of the above Law.

2. It is also necessary to amend the part of chapter XI covering reorganization regarding formation of classes and voting within them by determining a different method of voting within the framwork of class itself, for the purpose of preventing manipulation through simple majority.

3. Make more precise the provisions relating to international bankruptcy in order to make them more applicable due to great importance of international bankruptcy both for existing and future investments in Serbia (the current provisions are not applied in practice).

4. Increase responsibility of the privatization agency in its capacity of curator.

5. Introduce the mechanism of protecting the consumers from damaging consequences of unlawful work of the curator in the procedure of sale of property and not only from those relating to liability for damage ensued.

7. International Commercial Contract. Arbitration

Dr. JELENA PEROVIĆ,
Professor, Faculty of Economics,
University of Belgrade
Dr. THOMAS MEYER,
Director General, Open Regional Fund for
South-East Europe – Legal Reform

1. In course of the performance of contract, the relevant obligations are often disregarded or only partially fulfilled which, as a consequence, entails economic loss and most frequently signifies the introductory steps into a dispute. This is particularly important for the international trade contracts which are anyhow more complex and rather often involve more money and, consequently, more economic loss and more difficult litigation. Risks of violations of contract may be reduced by adequate approach to the contract itself. Such approach begins already in the stage of negotiations to enter into contract by acquiring a more favorable negotiating position, by cautious ne-

gotiating and by introducing into contract the corresponding clauses. In executing the contract the following should be carried out: introduction of protective clauses and clear and precise formulation of contractual rights and duties; utmost attention to choose the optimum clauses through combining and harmonizing the interests of contracting parties in every concrete case; precise listing of all rules relevant for rescission of contract, beginning with the right to rescission, the way of realization of rescission and legal consequences of rescission; introduction of the clause on the possibility of rescission or amending the contract due to hardship (change of circumstances that have existed at the moment of entering into contract) as well as the Act of God or *vis major* clause; correct choice of applicable law and of court jurisdiction in case of dispute.

2. The issue of harmonization and unification of the law of contract becomes one of the most actual matters raised in the area of international trade. Three international documents are particularly important in that context, i.e.: the 1980 UN Convention on International Sale of Goods (Vienna Convention), the UNIDROIT principles of international trade contracts whose new version was published in 2010, and the Principles of the European law of contract as an instruments contributing to a considerable degree to harmonization and unification of the law of contract. As far as the EU law of contract is concerned, it is necessary to have in mind the Draft Common Frame of Reference containing principles, definitions and the model of rules of the European private law made at the proposal of the European Commission whose first version was published in 2008. Applying these grounds, the European Parliament has adopted also the corresponding resolution (of 8th June 2011): "European Parliament resolution of 8 June 2011 on policy options for progress towards a European Contract Law for consumers and business". This resolution represents a significant step in the direction of development of the European contract law. Speaking of the EU sales law, particular attention should be paid to the Common European Sales Law as proposed by the Parliament and the Council of EU in 2011 in the form of a Decree.

3. In introducing clauses on exclusion or limiting the liability in international commercial contracts, a specific problem might arise from the fact of existence of various kinds of damage which in comparative law have different meanings and different terminological features. In this way a ground may be created for different interpretation of these clauses leading sometimes to solutions that might be contrary to parties' intentions at the mo-

ment of entering concrete clauses. A special problem might also arise when parties in international contractual relations fail topay sufficient attention to the international character of of their contract, namely to differences that exist in different (comparative) law systems, so that they automaticaly introduce in the contract specific concepts existing in their national law whose meaning they think familiar and understandable, but this does not have to coincide with the concepts applied by court and/or arbitration tribunal in a potential international litigation. Due to the above reasons, when formulating the clauses on exclusion or limiting liability in the international commercial contracts, one should avoid general and abstract notions and instead opt for determining concrete cases of damage that could serve as grounds of exclusion of limitation of liability. Additional attention is necessary as well to validity of such clauses from the aspect imperative rules of the law applicable to the contract.

4. On the second day of session of the Section, a round table has been held which was dedicated to solutions of the draft Serbian Civil Code relating to regulation of (modern) contracts of trade and commerce. The round table was attended by German experts of the Foundation for International Legal Cooperation – IRZ, who submitted reports and took part in the discussion about the matters concerning liability in international sale, contracts of distribution as well as the issue of manufacturer's liability for defective products – all from the aspect of relevant EU rules as well from the standpoint of German law and judicial and business practices.

It was also acknowledged that a contract of distribution and contracts of franchising and factoring are introduced in the text of the Draft Serbian Civil Code. Also proposed are provisions of the contract of leasing, while the financial leasing is regulated by a special law. Along these lines, it was acknowledged first of all that the rules of the Draft relating to mentioned contracts are mainly of dispositional character, so that, on the ground of autonomy of intention, contracting parties have wide freedom to regulate their relations by mutual consent. It was further concluded that certain solutions in the Draft, and particularly those which encompass specific rights and duties of contracting parties, the rights of rescission of contract and legal consequences of rescission, require wide discussion and additional comparative law analysis. In course of further elaboration of Draft's rules it was particularly emphasized at the round table that it is necessary to consider corresponding model-contract and standard clauses as well as other relevant sources of contract law.

8. Labor Relations

Dr. BRANKO LUBARDA,
professor, Faculty of Law of the
University of Belgrade
BORISLA ČOLIĆ,
Retired judge of the Supreme Court
of Serbia, Belgrade

1. It is necessary to strengthen international-law, constitutional, legislative and all other kinds of protection of rights of employees, together with providing consistent respect of equal protection without any discrimination.

2. The practice of courts and other governmental bodies and agencies points at the need to enact a new law on labor inspection in order to achieve more efficient implementation and performance of supervision of work of employers and employees as well as realization of complete protection of employees. The same conclusion relates to enactment of a law o administrative inspection.

3. There is a need for legislative regulation of jurisdiction of inspection and delimiting the jurisdiction among other kinds of inspection such as jurisdiction of social protection inspectors as determined in the Law on Social Protection.

4. Judicial practice and practice of other governmental bodies and agencies points at the need of a more efficient protection of employees against different kinds of discrimination and molesting on the work place. According to the practice it seems that the procedure of conciliation with successful conclusion may solve more permanently the complex relationships that have taken place after the ban on discrimination and molesting on the work place.

9. Banks and Banking Transactions

Prof. dr. STOJAN DABIĆ,
International Center for Financial
Market Development, Belgrade

1. Having in mind most recent data, in a situation of the existing financial and economic crisis, it is not possible to conclude that economic ac-

tivity has recovered. One can not see prospects for betterment of negative trends in industrial production, foreign trade and total balance of payments as well as in the dynamics of rise of salaries and domestic market.

2. Inflow of capital in Serbia is almost non-existent reaching the critical value even if compared with previous crisis years. Should this situation be maintained for a medium-term period, serious consequences may be expected if the entire state of affairs in Serbia. Basic cause of halting the inflow of capital to Serbia is the crisis in the European banking system. In other words, parallel with the increase of public debt of Greece, a decision is passed at the European Union level on re-capitalization of European banks.

3. The market of capital probably would not generate a significant additional capital for European banks so that they will be compelled to accept governmental assistance, or will eventually decrease their placements. Should the strategy of such decrease be dominant, Serbia may be seriously affected since it is already highly dependent on the import of capital.

4. The expected consequence of halting the capital inflow on a short-term basis will be the reduction of domestic placements of banks, deepening of the liquidity crisis as well as further decrease of dynamics of activity in the real sector. This short-term effect may be neutralized for instance, through withdrawal of resources coming from the MMF, but as far as the medium-term perspective is concerned, it will still remain actual.

5. Participants in the work of the Section were not able to find an answer to the question as to how and in what way and modality of its surpassing the European banking crisis will affect the state of affairs in Serbian banking activities, as well as whether the decrease of liquidity caused by withdrawal of foreign credits from banks could be compensated by increased inflow of direct investments.

6. It is already very well known that that 80% of banks doing business in the territory of Serbia are owned by foreign banks (mostly from Greece, Italy, Austria and France), and that they are therefore obliged to follow the business policy of their master banks. The motive of coming of these banks to the area of Serbia is primarily to gain profit through crediting on a short-term basis the population and legal entities and not to invest in the economic development of the country. Its is consequently possible to conclude that neither the state nor the National Bank of Serbia have no financial mechanism by which they could invest in the development of industrial production as a basic factor of economic development. Due to such policy of mas-

ter banks, the banks in Serbia have fewer problems than their master banks, so that they have no need either for direct intervention of the State of Serbia.

7. Due to the existing ownership system in the banks doing business in the territory of Serbia, the Government of Serbia and the National Bank of Serbia have no possibility, as well as means, to direct the business of banks in the way done in the U.S.A. and in European countries. What is only left to the State in that respect is a technical protection of users of banking services against banks' arbitrariness in determining terms and conditions for using credits and other banking service.

8. It is possible to expect that in the conditions of decreased liquidity of banks, and by that very fact, of the economic sector, the commercial entities will be forced to accept new debts at the banks under high interest rates. In order to keep their profitability at the achieved level, the banks will tend to realize that level by increasing interest rates and charges for their services in the situation of decreased scope of credits and other banking transactions.

9. For the purpose of protecting clients (users) against the expected policy of banks, the Law on Protection of Users of Financial Services was adopted and entered into force on 4th June 2011, while its practical application began from 5th December 2011. The purpose of that Law is the protection of clients and the improvement of good faith business practices and fair relations towards users of financial services, as well as the creation of frame of regulation which would ensure this protection in terms of: equality of relations of contracting parties and of rights to be protected from discrimination. The Law regulates many matters with the aim of protecting the users of financial services, providing the following rights: the right to abstain from credit; the right to early payment of entire credit; the right to apply the same type of the rate of exchange (medium rate of exchange of the National Bank of Serbia); the right relating to credit cards; the right to cede their claims; the right to equal position of users and providers of services; the right of precisely defined contractual obligation or making possible that the obligation may be defined; the right to be protected against discrimination; the right to protection of rights and interests.

10. Aware that it has no possibility to influence the policy of banks and direct it to supporting the development of the country, the State did the only thing it could – to impose strict sanctions by this Law to be applied both to banks and responsible employees in the banks for violation of estab-

lished norms that would harm the users of financial services. For all the rest regarding the regulation of conduct of banks n the sphere of amounts and kinds of credits, the State is powerless in the existing distribution of powers.

IV – RIGHT TO INTELLECTUAL CREATION

Dr. MILENKO MANIGODIĆ,
practicing lawyer, Belgrade
DIMITRIJE MILIĆ,
practicing lawyer, Belgrade

1. Development of science, new technologies, informatics, communications, electronics, transporation means, creation and transfer of new knowledges and all forms of creativity, significantly contribute to development of every society. Protection of intellectual work and of intellectual property rights as well as of relevant incentive must be the concern of the State. Such an attitude means the contribution to economic and cultural development of the country. Respect and protection of creativity and intellectual property rights in conformity with world standards also motivate foreign investments in our country and acceleration of its admittance to the World Trade Organization. Particularly significant in the realization of the above mentioned goals are the legal system, and especially its implementation in practice.

2. This Section proposes amendments in the Law regarding the part covering the organization of judicial norm and judicial jurisdiction. It is necessary to determine by law hat these disputes be settled by the superior or commercial courts in Belgrade, Novi Sad, Niš and Kragujevac. Special chambers should be established in the courts as well as specialized judicial panels that would decide in the first- and second-instance proceedings and in the proceedings processing the appeals on the ground of extraordinary legal remedies.

3. It s is also necessary to regulate by law that decisions passed by the Intellectual Property Institution may be responded by an application as a regular legal remedy, as well as to provide a second-instance agency competent for deciding on such applications. According to existing provisions the application are decided by the Administrative Commission at the Govern-

ment of Serbia. A more just solution in this respect would be the Ministry encompassing the Intellectual Property Institution.

4. Education of personnel for working on matters of intellectual property rights should be a permanent measure. The Section proposes that this message, i.e. conclusion, be addressed to the minister of justice of the Republic of Serbia and to the president of the Supreme Court of Cassation in order to take measures in accordance with law.

5. Due to expansion of problems in the area of intellectual property rights we hereby repeat our proposal for establishing a National Intellectual Property Council.

V – RIGHT TO JUSTICE

1. Court in Connection with Justice

Dr. GORDANA STANKOVIĆ,
Professor, Faculty of Law of the
University in Niš

1. Contemporary moment is characterized by a paradox situation: judicial power and unfinished reform of judiciary are constantly in the focus of political debate and legislative process, while the courts are becoming burdened with cases as a consequence of various failed political steps and legislative attempts, first of all in the field of privatization and then in misuse in many a sphere of state power, and the like.

2. After the unsuccessfully performed process of so-called general election of judges where European standards have not been followed, under the pressure of international public opinion, the amended Law on Judges has brought back to the beginning the entire procedure of election of judges. The original Law, by applying the retroactivity principle, the judges who were not elected were deprived of yet another acquired right – the right to file a constitutional complaint as a legal remedy provided for by law and by Constitution. The procedure of repeated election of judges is still not over, while the High Judiciary Council is again deciding without the complete number of its members.

3. Judiciary, as an instrument for defending and maintaining the established legal order is taken by such changes which provoke almost its par-

tial paralysis. Permanent burden of unfinished cases as the consequence of failed legislative steps and erroneous reforming measures point at the inefficiency of our judicial system. General public as well is under impression of disturbing state of affairs in the administration of justice, one of the reasons being pressures, actions and statements of representatives of executive power. Excessively long duration of judicial proceedings may not be searched for either in legislative solutions or errors of judges, but only in failed reform actions, organizational shortcomings and sometimes also in insufficient professional capacity of personnel in some courts.

4. Statistical indicators relating to number of completed judicial cases, to the decrease of number of "old" cases, to percentage of decisions confirmed by a second-instance court or to number of denied extraordinary legal remedies decided before the highest judicial body may probably satisfy the administration of justice or the executive authorities. The basis for satisfaction of citizens in civil law litigation cases may be only a legal, genuine, cost effective and sure legal protection in judicial decisions that are just and passed in a reasonable time limit.

5. New legislative solutions in the sphere litigation procedure which still wait their evaluation in practice are not only a new challenge for judges, but bring about rules by which the possibility of their disciplinary responsibility is increased for the work that does not meet the needs for an accelerated legal activity and efficient settlement of disputes. These rules make possible also the deprivation of office.

6. Certain pieces of legislation that regulate the out-of-court dispute settling methods considerably reduce the positive effects of reform in the area of some branches of substantive law since, as a rule, they fail to ensure an adequate and functional basis for such type of dispute settling.

7. It is concluded that final objective of judicial reform, regardless of all difficulties, will bring about a more effective and functional judiciary, as the prerequisite for realization of political and legal categories making the foundation of he ideals of a state ruled by law.

8. In order to reach these goals it is necessary to consistently apply the constitutional principle of separation of powers according to which the judicial power is independent from any state power except the one of a legitimate law. In this sense the carrying out of judicial power must no be the subject of any kind of undignified influences, direct or indirect.

2. International Relations and Justice

(a) International Law – Foreign Elements

Dr. RODOLJUB ETINSKI,
professor, Faculty of Law of the
University of Novi Sad

1. We call all states to consider and adopt in form of an international treaty the Draft Rules of Responsibility of State for unlawful international acts which Draft has been prepared by International Law Commission and which the UN Genaral Assembly has forwarded to all member states by its Resolution 56/83 of 12 December 2001. By assuming a formal and express responsibility to respect these rules, the state would make a step forward to strengthening the rule of law in international relations.

2. Having inmind a continuous increase of activity of internationa organzations, we hereby greet the work of the International Law Commission in the sphere of codification of rules covering the matter of responsibilty of international organizations for unlawful international acts.

3. Due to specificity of international order, it is necessry to further develop and improve the mechanism of peaceful settlement of disputes and the implementation of rules of responsibility of states and international organizations. Particularly imprtant in this respect is establishnig a mechanism of settling disputes between international organzations and other emtities.

4. Establishing the rules of responsibility of international organizations and developing international mechanism for implementing these rules is siginificant particarly in the context of peace-making operayions of the United Nations that are organized in some cases as temporary territorial administration as well as in the context of responsibility of the Organization charged for protection of civilians in course of armed conflicts.

5. We do repeat that there is no rule of law without respecting the suman rights because such respect is the very essence of law. We therefore appeal to all states to take this element in consideration n all their activities. In that context it it indispensable for states to further engage in matters such as adequacy of reservations in international human rights treaties or in efforts of searching for balance between the environmental protection and protection of domestic and foreign investments.

6. We also call all states and relevant international organizations to be more active in suppresing the traffic of peope since this is a most serious form of violation of human rights which is intensified especially in the time of global economic crisis.

7. We call the International Red Cross Committee to further invest efforts in devleloping the rules of international humanitarian law which rules will make possible a more efficient distingushing between civilians and fighters in armed conflicts.

8.We also call the governments of Serbia and Croatia relating to deciding on further conducting of proceedings before the International Court connected with the Convention of Preventing and Punishing ofthe Crime of Genocide, or on desisting from the action and counter-action – to be motivated only by the interests of justice and not by political interests. In other words, to consider the historical aspect of this dispute, politial circumstances dominating in 1999 when the action was lodged and, first of all, the necessity for further development of mutual friendly and good-neighbour relations.

(b) European Union Law

Prof. dr. RADOVAN VUKADINOVIĆ,
Director of the EU Center Law

1. Euroean Union is now in its most serious crisis.

2. Except in financial and economic spheres, it is diffcult to foresee the impact and the consequences of settling the crisis regarding future foreign policy of the EU, and particularly as far as its extension towards Western Balkan states is concerned.

3. There exist justified doubts in the countries of that region that the existing crisis, but also the previous considerable extension, further action in that direction, as far as Western Balkan countries are concerned, would be slowed down to quite a degree or be put into effect under different conditions.

4. The anxiety was expressed tthat the existing crisis will also have negative effect on the entire *Acquis Communautaire* and particularly on preservatio and efficiency of legal system.

5. However, the hope has been expressed that, regardless of the whole complex of interconnection of economy, politics and law, the already acquired achievemnts would steay in place regardless of the way of settling the crisis, and particularly in the sphere of general civilizational values and in that part of general European heritage what would continue to exert significant influence on national legal systems.

VI – RIGHT TO A STATE RULED BY LAW

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1. Contemporary responsibility in the sphere of law is expressed in enlarging it efficiency and insisting on ethics. Experiences with dictatorships in our times, as well as with modern technologies, require the restoration of practical philosophy on new grounds. For the new attitude of practical philosophy and law or more efficient establishment of legal ethics, the key concept is the concept of responsibility. Its new conceptualization may not be based as before on the classical, deontological ethics of intent, but on the teleological ethics of responsibility where emphasis is placed on positive and negative consequences of our decisions and our actions. The ethics is no more restricted to moral duties of individuals and results of previous actor (individual and retrospective responsibility); instead, it is oriented towards future generations, to mankind and to the life as such (prospective and collective responsibility). However, the extension of the concept of responsibility to prospective and collective responsibility is carried out without clear philosophical and legal grounds.

2. There are two basic philosophical conceptions which serve as the foundation of debates about bio-ethics and law of ecology? Anthropocentrism of responsibility for human life only, and bio-centrism or responsibil-

ity for all forms of life. According to basic thesis of anthropocentrism, only people have intrinsic or internal values that are subjected to moral evaluation, while the rest of the nature has only an instrumental value that is used for human purposes. From the standpoint of bio-centric ethics, life as such has the value as such, because the sense of its existence is to be found within its very existence, so that the field of validity of the morals should be extended to all other parts of the world, and to the nature in its entirety, because they have autonomous, independent validity, so that the center of ethical debate is no more the man, but the nature, i.e. the eco-system. While in anthropocentrism the man is a moral constant of every ethical judgment, life as paradigm is a moral constant of the future. This extension of the field of ethical validity requires new concepts of the notion of legal responsibility and of contemporary legal regulation.

3. The contemporary crisis of legal responsibility, which is situated in the very center of the crisis of law, is to quite a degree a result of lack of consistent philosophical and legal approach to the development of the system of responsibility. Therefore establishing an efficient concept of legal responsibility is critically important for surpassing the existing crisis of law, particularly in the societies in transition.

4. Law must not stay indifferent to consequences of its impact, especially in the situation of a continuing and ever deeper social crisis. In the countries of successful transition the basic institutional reforms have been carried out before and not after the privatization. According to some sociological and legal research, legal cultures in Serbia manifest some tendencies in terms of which the implementation of laws and regulations at the local level depend selectively on informal assessments done by influential individuals in a given local community who are sure that lack of implementation of laws shall not be punished and that there exist readiness to justify the violation of laws as well as the expectation that laws will not be applied. A genuinely responsible law must be not only efficient but also effective and should institutionally support and strengthen the roads of social development as well as the ways of coming out of the existing crisis. Concentration of authority of legal responsibility to an independent and impartial judiciary, but also the struggle against corruption in administration of justice and in the society as a whole, are conditions that are indispensable for functioning of institutions of a state ruled by law.

5. An essential component of a state ruled by law is also an intensified responsibility of state for damaging consequences that may take place through irregular work of its bodies and agencies. That is why, as far as our crisis situation is concerned, there is an ever urgent need for legislative elaboration of a stricter material individual, collective and joint and several liability of the state, governmental agencies and bodies and other public institutions and holders of public functions for property and non-property damage caused by their unlawful and irregular work. A component part of a consistent system of responsibility is also a positive affirmation of extending various kinds of prizes and recognition for creative contributions of individual or collective bodies which through their engagement do advance the quality of humane development and culture of life.

6. The rule of law, in addition to its rather well-known aspects, has but another aspect as well which has become more and more visible in the world literature only at the end of the last century. This aspect by all means deserves the attention of the Kopaonik School of Natural Law since it relates to significant influence of the institution of a state ruled by law on one rather important activity of human activities, i.e. on the sustainable and efficient development of economy. A state cherishing the rule of law and its role is expressed in stimulating the economic activity by applying four specific approaches: first of all, such state must not exist only through declarations but also as a living practice. Secondly, a legal system must guarantee the inviolability of private ownership as a genuine prerequisite of free and competitive market whose participants are independent, innovative and personally responsible individuals. The third approach is expressed in the efficient way of functioning of institutions and regulations as far as day-to-day life of economically active people is concerned, while the fourth aspect relates to the culture and conduct of actors in the process of establishing formal and informal institutes in the sphere of economy. That culture – which is otherwise rather different in the countries of the world, gives us the answer to the question why some countries with formally same or similar legal and economic systems, are by far more successful than other countries. This question should be given more consideration in future Kopaonik School sessions, particularly when applied to countries in transition and in difficult economic situation, such as ours in the late decades of the 20th and the first decade of the 21st century.

Dr. VLADAN PETROV,
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Universitz of Belgrade
Dr. MILE DMIČIĆ,
professor, Faculty of Law in
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1. Relationship between a parliament member and a political party may be exclusively political and not of legal nature. Consequently, this is not a relationship between a mandatory and the one receiving the tenure. however the power of political parties be considerable, they are not a sovereign authority. In a democracy this is the people, i.e. the body of electors within a constitutional system, and this is the way it must remain such. In a contrary case, there is no democracy, but a partocracy.

2. It is necessary to further promote the role of democratic elections and participation of citizens in the decision-making process. In that purpose one should search for adequate forms of election, for amelioration of democratic relation in society, for strengthening tolerance, cooperation and democratic compromises.

3. Having in mind the importance of legal practice and the role of judges as protagonists of judicial power, it is indispensable to point at the role of legal methodology (hermeneutics) in raising the level of dignity or legal profession.

4. In some countries with developed constitutional system, such as Germany, Italy and Russian Federation, the constitutional court in recent decades have transgressed their constitutional authority while taking over the function of an "active" law-maker through enacting the so-called interpretative decisions by which they add to the text of laws and make more precise their meaning. In such a way the constitutional courts transgress into the sphere of parliament, doing that for the purpose of keeping in force of "problematic" laws. In this way the become quasi-political bodies which act in conformity with the opportunity principle. It would not be proper for the Constitutional Court of Serbia to follow the practice of passing interpretative decisions, the more so since the legal ground for such an action may not be found either in the Constitution or the statute.

5. Although being of a specific legal nature, the Constitutional Law for carrying out the Constitution is an act of lower-level legal validity than the Constitution, but still is above regular statutes. It may be the subject of control of constitutionality, although the Constitutional Court of Serbia remained with its holding that this matter does not fall within its jurisdiction. The Constitutional Court should reassess this holding – otherwise pronounced in 1995 and confirmed in 2011, by rejecting the proposal for assessment of constitutionality of the so-called carried out Constitutional Law.

6. The State is bound to respect the principle of neutrality in religious matters, and to ensure tolerance, while treating all religious communities in an equal manner. The equality of positions of churches and religious communities prohibits to the State to grant privileges only to specific religions. A State where there are different religions may guarantee the peace among them only after being neutral in religious matters.

7. Representative democracy is a form of governance which, in order not to be debased and transformed into a tyranny, either of individuals or groups, requires responsibility. Responsibility is not only something that relates to protagonists of power only; it is a duty of citizens as well. A political society where general elections do not decide almost anything, where citizens vote only out of sense of duty, may not be considered democratic. Such society makes a chain of irresponsibility. Responsibility as a principle, but also as the awareness of responsibility of all social groups and individuals and not only of political figures, is a guarantee of democratic future and of the rule of law.

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GENERAL REPORT

Natural Law and Responsibility

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First Department

RIGHT TO LIFE

1. Life

1. **Verbal conflicts and endangering life and limb** – Đorđe Đorđević, LL.D., professor, Criminaslistic and Police Academy, Belgrade
2. **Victims of criminal justice system** – Đorđe Ignjatović, LL.D., professor, Faculty of Law, Belgrade
3. **Endangering security** – Jovan Ćirić, LL.D., Institute of Comparativ Law, Belgrade
4. **The criminal responsibility and punishment for crime against humanity** – Dragan Jovašević, LL.D., professor, Faculty of Law, Niš
5. **The crime of ciolent behavior at sport events or public meetings (art. 344a)** – Nataša Delić, LL.D., professor, Faculty of Law, Belgrade

6. **Suicide in the elderly** – Branislava Knežić, LL.D., research associate, Institute of criminol. and sociol. studies, Belgrade and Maja Savić, LL.M., Institute of criminol. and sociol. studies, Belgrade
7. **Femicide** – Slađana Jovanović, LL.D., assistant professor, Union University, Faculty of Law, and Biljana Simeunović-Patić, LL.D., assistant professor, Crim. and Police Academy, Belgrade
8. **Criminal investigations of contract killings** – Darko Marinković, LL.D. assistant professor, Crim. and Police Academy, Belgrade and Saša Mijalković, LL.D., professor of the same Academy
9. **Inappropriate attempted murder** – Nikola Memedović, LL.D., practicing lawyer, Belgrade
10. **Complicity – important characteristics of organized crime** – Mile Šikman, LL.D., associate professor, Administration of the Police Ecudation, Banjaluka

Editors: Prof. Miroslav Đorđević, LL.D.; Đorđe Đorđević, LL.D., professor at the Criminalistic and Police Academy, Belgrade.

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2. Health

1. **Physician's disciplinary responsibility before courts of honor in Germany** – Jakov Radišić, LL.D., retired university professor, Belgrade
2. **The principle of consent (informed consent) applicability by the medical treatment in psychiatry** – Hajrija Mujović-Zornić, LL.D., senior associate, Institute of Social Sciences, Belgrade
3. **Ethics committees that assess on humans from the biomedical, ethical and legal perspective** – Vesna Klajn-Tatić, LL.D., senior associate, Institute of Special Sciences, Belgrade
4. **Determining death through the legal status of cryogenic body and anencefalus** – Blanka Ivančić-Kačer, assistant, Maritime Faculty, Split
5. **Right to decide about post mortem organ and tissue donation for transplantation** – Maja Čolaković, LL.D., assistant professor, Faculty of Law, Mostar
6. **Legal aspects of the transition from reactive to prospective medicine – P4-medicine** – Marta Sjeničić, LL.D., researsch associate, Institute of Social Sciences, Belgrade
7. **Health care and patients' right in our daily life** – Ljubomir Kecman, LL.D., medical doctor and jurist, Belgrade
8. **To respect, protect and fulfil the reproductive health rights of young people in Serbia** – Mirjana Rašević, research adviser, Institute of Social Sciences, Belgrade
9. **The right to insight into medical documentation** – Ivana Stojanović, LL.D., medical doctor patologist, Pathology Institute, Niš

10. **Key principles and instruments of protection and promotion of public health in EU legal system** – Ljiljana Slavnić, LL.D., professor, Faculty of Law for economy and judiciary, Novi Sad
11. **Professional freedom of doctors** – Dragana Maletić, LL.M., jurist, medical law specialist, Beograde

Editors: Prof. Jakov Radišić, LL.D., Hajrija Mujović-Zornić, LL.D., research associate of the Institute of social sciences, Belgrade.

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3. Ecology

1. **Responsibility for the implementation of environmental law** – Gordana Petković, LL.M., senior adviser, Ministry of Environment, Mining and Town and Country Planning, Belgrade
2. **Implementation of Kyoto protocol: regulation of certified emission reduction of carbon dioxide** – Slavko Bogdanović, LL.D., professor, Faculty of economy and judiciary, Novi Sad
3. **Climate changes and responsibility in international law and EU law** – Dragoljub Todić, LL.D., Megatrend University, Belgrade
4. **Strenghtening of the international institutional framework in the field of environment** – Slobodan Prošić, LL.M., minister-adviser, Foreign Affairs Ministry, Belgrade
5. **Environmental penalty law, specific regulator of responsibility** – Vladan Joldžić, LL.D., research adviser, Institute of Criminall and Sociol. Studies, Belgrade
6. **Circumstances precluding wrongfulness of an act harm-ful to the environment** – Bojana Čučković, LL.M., assistant, Faculty of Law, Belgrade
7. **Air pollution and protection against pollution with emphasis on international and national regulations** – Dragiša Gajić, senior adviser, former Federal Secretariat for labor, health and social security, Belgrade
8. **The energy law as a special part of the legal system** – Branislava Lepotić-Kovačević, LL.D., special adviser, Transnafta Co., Pančevo
9. **Legal framework of biodiversity protection** – Mirjana Drenovak-Ivanović, LL.M., assistant, Faculty of Law, Belgrade
10. **Organic production in Serbia under the new rules** – Dušan Dabović, LL.D., senior adviser, Ministry of agriculture, trade, forestry and waters, Belgrade

Editor: Gordana Petković, LL.M. senior legal adviser, Ministry of Environment, Mining and Spatial planing of the Republic of Serbia.

4. Sport

1. **International sports organizations** – Edita Kastratović, LL.D., professor, High School for Economy and Entrepreneurship, Belgrade
2. **Some current news in Croatian sports law** – Hrvoje Kačer, LL.D., professor, Faculty of Law, Split
3. **The criminal act of doping substances and methods usage** – Dejan Šuput, LL.D., research associate, Institute of Comparative Law, Belgrade
4. **Implementation of the international standards in prevention of violence at sporting events in the Republic of Serbia** – Branislav Simonović, LL.D., professor, Faculty of Law, Kragujevac; Zoran Đurđević, LL.D., assistant professor, Crim. and Police Academy, Belgrade, and Božidar Otašević, LL.M., Interior Affairs Ministry, Belgrade
5. **Sports arbitration** – Marko Perović, teaching Associate, Belgrade.

Editor: Edita Kastratović, LL.D., professor at the College of Business Economics and Entrepreneurship, Belgrade.

Second Department

RIGHT TO FREEDOM

1. Criminal-law and procedural protection of personality

1. **The reasons for detention in criminal procedure** – Milan Škulić, LL.D., professor, Faculty of Law, Belgrade
2. **Procedural nature and structure of the new Criminal Procedure Code of Serbia** – Vojislav Đurđić, LL.D., professor, Faculty of Law, Niš
3. **Selection and mete out a penalty against juveniles** – Nikola Milošević, retired judge, Supreme Court of Serbia
4. **Judicial notice in criminal procedure** – Vanja Bajović, LL.M., assistant, Faculty of Law, Belgrade
5. **The analysis of DNA and its application in criminal proceedings in Serbia** – Veljko Delibašić, LL.M. and Bojana Panić, LL.D., practicing lawyer, Belgrade; and Bojana Panić, LL.D., biologist, DNA Genetics Center, Begrade
6. **New penology – consequences and perspectives** – Snežana Soković, LL.D., professor, Faculty of Law, Kragujevac

7. **Interception and retention of telecommunications data** – Tatjana Lukić, LL.D., assistant professor, Faculty of Law, Novi Sad, and Dragiša Drakić, assistant professor, same Faculty
8. **Aspects of mechanism of plea bargaining in Anglo-american law** – Miodrag Simović, LL.D., professsor, Faculty of Law, Banjaluka
9. **Consensual models of decision-making processes in the preliminary proceeding and criminal trial proceeding** – Saša Knežević, LL.D., professor, Faculty of Law, Niš
10. **Deprivation of freedom and suspects hearing from the point ov view of criminal-procedure and criminalictic rules** – Velimir Rakočević, LL.D., assistant professor, Facultz of Law, Podgorica
11. **Prosecutorial investigation** – Darko Radulović, LL.D., assosiate in teaching, Faculty of Law, Podgorica

Editors: Prof. Živojin Aleksić, LL.D.; Milan Škulić, LL.D., professor at the Faculty of Law, Belgrade.

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2. Freedom of personality

1. **Draft Civil Code of Serbia** – Olga Cvenić-Jančić, LL.D., professor, Faculty of European Studies, Singidunum University, Novi Sad
2. **Annulment as a family law sanction** – Zoran Ponjavić, LL.D., professor, Faculty of Law, Kragujevac
3. **Parental responsibilities** – Walter Pintens, LL.D., professor, Leuven (Belgium) and Saarland universities (Germany)
4. **Hearing the Voice of the Child in Hague Abduction Cases** – Linda D. Elrod, LL.D., professor, Washburn University Sachoolk of Law
5. **Parental Responsibility: Main principles and rules applicable in Macao Special Administrative Region (MSAR) of People's of China (PRC)** – Paula Nunes Correia, LL.D., professor, Faculty of Law, Macau
6. **Principles applied in cases involving a parent moving with their child to another country** – Andrew Pote, LLB., barister, Great Britain
7. **Some considerations about Brazilian experiences in alimony obligation** – Lydia Neves Bastos Telles Nunes, LL.D., professor, University of Sao Paulo, Brazil
8. **Concept and legal consequences of adultery** – Slobodan Panov, LL.D., professor, Faculty of Law, Belgrade
9. **Law on the rights of the child** – Nevena Vučković-Šahović, LL.D., professor, Faculty of Law, Union University, Belgrade
10. **The child's right to participation in the proces of education in kindergarten** – Tatjana Devjak, LL.D., professor, Faculty of Pedagogy, Ljubljana

11. **The religious identity of the child** – Olga Jović, LL.D., assistant professor, Faculty of Law, Kosovska Mitrovica
12. **Forms of child neglect in the family and their consequences** – Nadežda Ljubojev, LL.D., assistant professor, Novi Sad University
13. **The school as a space of perception, respection and teaching of children's rights** – Alenka Polak, LL.D., assistant professor, Faculty of Pedagogy, Ljubljana
14. **The European court of human rights** – Melanija Jančić, assistant, Faculty of European legal-political Studies, Singidunum Univ., Novi Sad
15. **Best interest of the child - joint custody** – Uroš Novaković, assistant, Faculty of Law, Belgrade

Editor: Olga Cvejić-Jančić, LL.D., professor Faculty of European Legal and Political Studies, Novi Sad.

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3. Administrative-law protection of freedom

1. **Administration's responsibility in terrorist incidents** – Zehra Odyakmaz, LL.D., professor, Faculty of Law, Gazi University, Turkey
2. **Legal mechanisms for protection/non protection against mobbing in the public sector in Macedonia** – Borče Davitkovski, LL.D. and Dragan Gocevski, LL.M., professor and dean, Faculty of Law, Skoplje, and Dragan Gocevski, LL.M., assistant of the same Faculty
3. **Basic principles in police conduct** – Dragan Vasiljević, LL.D. professor, Crim. and Police Academy, Belgrade and Dobrosav Milovanović, LL.D., assistant professor, Faculty of Law, Belgrade
4. **The legal regime of selection of the highest-ranking civil servants** – Gregor Virant, LL.D., assistant professor, Faculty of Public Administration, Ljubljana
5. **Implementation of the law on administrative procedure in the construction and legalization of facilities** – Ljubodrag Pljakić, long-time judge, Supreme Court of Serbia, Belgrade
6. **Extraordinary rescinding of an order in an administrative procedure** – Jelena Ivanović, judge, Administrative Court, Belgrade
7. **The implementation of guidelines of the OECD for corporate governance of state-owned enterprises in transition countries** – Srečko Devjak, LL.D. and Jože Benčina, LL.D., professor, Faculti of Administsration, Ljubljana and Jože Benčina, LL.D.
8. **The law on administrative disputes and administrative matter** – Nevenka Bačanin, LL.D., professor, Faculty of Law, Kragujevac
9. **The verbal hearings in administrative dispute** – Zoran Lončar, LL.D., assistant professor, Faculty of Law, Novi Sad

10. **Administrative silence between protection of rights of parties and public interest** – Polonca Kovač, LL.D., assistant professor, Facuulty of Administration, Ljubljana
11. **The Principles within the European Administrative Space** – Ana Pavlovska-Daneva, LL.D., professor, Faculty of Law, Skoplje, and Elena Davitkovski, LL.M., assistant, Faculty of Law and Political Science Facultz, Skoplje
12. **Depolitisation of senior civil service in Serbia** – Aleksandra Rabrenović, LL.D., research associate, Institute of Comparative Law, Belgrade
13. **E-government in the Republic of Serbia** – Marko Davinić, LL.D., assistant professor, Faculty of Law, Belgrade, and Igor Todoroski, LL.M., development coordinator, Ministry for Human and Minority Rights, Public Administration and Local Self-Government, Belgrade
14. **The standards of public official's status in the European union institutions** – Zorica Vukašinović-Radojičić, LL.D., Criminal. and Police Academy, Belgrade
15. **Normative authority of the city and municipal police word** – Zorica Urošević, Town Inspection Office, Novi Sad
16. **Functions of local self-government in Croatia in the context of decentralization reforms and the principle of subsidiarity** – Mihovil Škarica, assistant, Faculty of Law, Zagreb

Editors: Prof. Dragoljub Kavran, LL.D.; Dobrosav Milovanović, LL.D., Senior Lecturer at the Faculty of Law, Belgrade.

Third Department

RIGHT TO PROPERTY

A. Codification

1. **The subject-matter and the method of the civil law as basic determinants and chief guidelines for drafting and preparation of the Civil Code of the Republic of Macedonia** – Gale Galev, LL.D., professor; Jadranka Dabović-Anastasovska, LL.D., professor; Neda Zdraveva, LL.M., assistant and Nenad Gavrilović, LL.M., assistant – all, Faculty of Law, Skoplje
2. **The influence of roman law in the codification of civil law** – Emilija Stanković, LL.D., professor, Faculty of Law, Kragujevac
3. **Collective responsibility in Dushan's code** – Nina Kršljanin, assistant, Faculty of Law, Belgrade
4. **European Civil Code** – Angel Ristov, LL.D., assistant, Faculty of Law, Skoplje.

B. Ownership

1.a. Ownership and other property rights

1. **Property and its transformation, guaranty and protection under the constitutional system of the Republic of Croatia** – Petar Simonetti, LL.D., retired professor of law, Rijeka
2. **Construction right in the law of Republic of Srpska** – Duško Medić, LL.D., judge, Constitutional Court of Republic Srpska
3. **Denationalization in Serbia in the light of the new law on restitution and compensation** – Vladimir Todorović, diretor, Restitution Institution, Belgrade
4. **Comments and suggestions on the draft law on property restitution and compensation** – Đurđe Ninković, practicing lawyer, Belgrade
5. **Ownership and fiduciary ownership in the new property law of Montenegro** – Miroslav Lazić, LL.D. professor, Faculty of Law, Niš, and Nina Planojević, LL.D., assistant professor, Faculty of Law, Kragujevac
6. **Urban redistribution of land** – Mirjana Vulić, Head of the Town Property Administration, Kragujevac

Editors: Prof. Slobodan Perović, LL.D. President of the Association of the Mt. Kopaonik School of Natural Law; Prof. Miodrag Orlić, LL.D., Professor University; Oliver Antić, LL.D., Professor at the Faculty of Law, Belgrade.

1.b. Ownership and inheritance

1. **Historical development and the rationale of the spousal right to elective (forced) share in USA** – Dragica Živojinović, LL.D., professor, Faculty of Law, Kragujevac
2. **The protection of recipients according to the rules on the cessation of the lifetime care agreement in Serbian positive law** – Miloš Stanković, assistant, Faculty of Law, Belgrade
3. **Hereditary possesion** – Tamara Đurđić, lecturer associate, Faculty of Law, Kragujevac
4. **Multiple disposition of real estate on the basis of lifetime maintenance agreement** – Novak Krstić, assistant, Faculty of Law, Niš

Editor: Oliver Antić, LL.D., professor at the Faculty of Law, Belgrade.

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2. Contract and Liability for Damage

1. **An essay on the relationship between civil and criminal resposibility** – Miodrag Orlić, LL.D., professor, Faculty of Law, Belgrade

2. **Fundamentals of Directive 85/374/EEC on Liability of Defective products and its implementation in Germany** – Soledad Bender, LL.D., prosecutor, German Ministry of Justice, and Johannes Steinbach, LL.D.,judge, Regional Court, Stuttgart
3. **Law in liability** – Branko Morait, LL.D., professor, Faculty of Law, Banjaluka
4. **Is there a place for letter of credit in new Serbian Civil Code** – Radovan Vuka-dinović, LL.D., director, EU Law Center, professor, Faculty of Law, Kragujevac
5. **Liability of the insured party as a precondition of the insurer's duty to indemnify** – Marija Karanikić-Mirić, LL.D., assistant professor, Faculty of Law, Belgrade
6. **Development of liability for eviction** – Vladimir Vuletić, LL.D., assistant professor, Faculty of Law, Belgrade
7. **Ersatz immaterieller schäden im Österreichischen entwurf des neuen schadensersatzrechts** – Aleksandra Vučić-Milovanović, LL.D., assistant professor, University of Vienna
8. **Aktuelle fragen zum begriff des sachmangels** – Đuro Đurić, research associate, Institute of Economic Sciences, Belgrade
9. **Default interest and default interest rate in Serbian law** – Đorđe Nikolić, LL.D., professor, Faculty of Law, Niš
10. **Indemnification of groundlessly convicted and groundlessly imprisoned persons in court practice** – Jelena Borovac, judge, Supreme Court of Cassation, Belgrade
11. **The agency in the principles of European contract law** – Snežana Miladinović, LL.D., professor, Faculty of Law, Podgorica
12. **Consumers' right to unilateral breach of contract** – Dragan Vujisić, LL.D., professor, Faculty of Law, Kragujevac
13. **Some aspects of electronic contracts** – Igor Kambovski, LL.D., assistant professor, Dean of the FON University, Skoplje
14. **Insurance of lawyer's professional liability** – Nataša Petrović-Tomić, LL.D., assistant professor, Faculty of Law, Belgrade
15. **New moments in the regulations on the levels of default interest rates** – Milan Milović, long-time judge of the Superior Commercial Court of Serbia, Belgrade

Editors: Prof. Slobodan Perović, LL.D.; prof. Miodrag Orlić, LL.D.; prof. Oliver Antić, LL.D.

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3. Taxes

1. **Tax entities in contemporary law** – Zoran Isailović, LL.D., professor, Faculty of Law, Kosovska Mitrovica (Priština)
2. **Critical review of some decisions in the tax system in Serbia** – Miroslav Vrhovšek, LL.D., professor emeritus, research adviser at the Commercial Academy, Novi Sad

3. **Tax procedure in the Republic of Serbia** – Predrag Stojanović, LL.D., professor, Faculty of Law, Kragujevac, and Snežana Stojanović, LL.D., assistant professor at the same Faculty
4. **Tax law under modern society demand** – Marina Dimitrijević, LL.D., assistant professor, Faculty of Law, Niš
5. **The main features and the limitations of the separate entity/arm's length** – Danica Tasić, LL.M., assistant, Faculty of Law, Belgrade
6. **Fiscal responsibility** – Marko Ćulibrk, LL.D., director general Atex Co., Begrade
7. **Taxing and setting up investment funds in accordance with legal regulations** – Radica Šipovac, LL.D., assistant professor, Faculty of Law for Economyand Judiciary, Commercial Academy University, Novi Sad

Editor: Zoran Isailović, LL.D., professor at the Faculty of Law, Kosovska Mitrovica, Priština.

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4. Commercial Companies

1. **Civil law and business judgment rule** – Mirko Vasiljević, LL.D., professor, Dean, Faculty of Law, Belgrade
2. R**ules of procedure of shareholders meeting** – Zoran Arsić, LL.D., professor, Faculty of Law, Novi Sad
3. **Autonomous legal ground for additional payments by members of private company** – Stevan Šogorov, LL.D., professor, Faculty of Law , Novi Sad
4. **Agreed financial restructuring or recovery of commercial companies** – Miodrag Mićović, LL.D., professor, Faculty of Law, Kragujevac
5. **Disputable deletion of commercial companies from the court register** – Šime Ivanjko, LL.D., professor, Faculty of Law, Maribor
6. **Inheritance of company's parts and shares according to the law of the Republic of Macedonia** – Goran Koevski, LL.D., professor, Faculty of Law, Skoplje and Darko Spasevski, LL.M., assistant at the same Faculty
7. **Three reasons for ineficiency of independent directors** – Vuk Radović, LL.D., assistant professor, Faculty of Law, Belgrade
8. **Directors' responsibility to creditors in the vicinity of insolvency** – Tatjana Jevremović-Petrović, LL.D., assistant professor, Faculty of Law, Belgrade
9. **Protection of minority shareholders** – Sonja Bunčić, LL.D., professor, Faculty of Technical Sciensces, Novi Sad
10. **Family capitalism and corporate governance** – Nada Todorović, LL.D., professor, Faculty of Law, Kragujevac
11. **Golden shares in EU law** – Vladimir Savković, LL.D., assistant professor, Faculty of Law, Podgorica

12. **Some aspects of the representation of shareholders under the Macedonian company law** – Marko Andonov, LL.D., assistant professor, Faculty of Legal Sciencs, Ameridan College, Skoplje, and Zoran Mihajloski, LL.D., judge, Appelate Court, Skoplje
13. **Business concentration responsible enforcement** – Sanja Danković-Stepanović, LL.D., professor, Faculty of Policial Siences, Belgrade
14. **The legal status of secured creditors in bankruptcy** – Marijana Dukić-Mijatović, LL.D., assistant professor, Faculty of Law, Commerdial Academy University, Novi Sad, and Miloš Mijatović, practicing lawyer, Belgrade

Editors: Prof. Mirko Vasiljević, LL.D., dean of the Faculty of Law, Belgrade; Dragiša Slijepčević, LL.D., president of the Constitutional Court of Serbia.

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5. International Commercial Contracts, Arbitration

1. **Force majeure clauses in international commercial contracts** – Jelena Perović, LL.D., professor, Faculty of Economics, Belgrade
2. **The optional instrument and its impact on legal reforms in South East Europe** – Thomas Meyer, LL.D., Head of the Open Regional Fund for South-East Europe – Legal Reform
3. **Protection of foreign investments and investors of the Republic of Srpska and Bosnia and Herzegovina** – Vitomir Popović, LL.D., professor and Dean, Faculty of Law, Banjaluka
4. **Services as an object of international trade** – Aleksandar Ćirić, LL.D., professor, Faculty of Law, Niš
5. **Capetown convention on international interests on mobile equipment** – Jelena Vilus, LL.D., European Center for Peace and Development, Belgrade
6. **Dispute resolution in domain of international concessions** – Marija Krvavac, LL.D., professor, Faculty of Law, Kosovska Mitrovica (Priština)
7. **Overriding mandatorz provisions in the EU law and the new private international law of Montenegro** – Maja Kostić-Mandić, LL.D., professor, Faculty of Law, Podgorica
8. **General agreement on tariffs and trade (GATT 1994) and environmental protection** – Drago Divljak, LL.D., professor, Faculty of Law, Novi Sad
9. **On public contracts** – Karel Marek, LL.D., professor, Faculty of Law, Brno
10. **Development of the conflict of law norms for delicts in Republic of Macedonia** – Biljana Puleska, LL.D., assistant professor, Faculty of Law, FON University, Skoplje
11. **Buyer's right to damages for breach of delivery obligation in international and domestic law** – Sandra Fišer-Šobot, LL.D., assistant, Faculty of Law, Novi Sad

12. **Claim for specific performance under the Vienna convention on contracts for the international sale of goods** – Katarina Jovičić, LL.M., research associate, Institute of Comparative Law, Belgrade
13. **Incoterms 2010: Risk and costs defined** – Mišo Mudrić, assistant, Faculty of Law, Zagreb
14. **Protection of foreign direct investments between EU member states and third states after the entry into force of the Lisbon treaty** – Marko Jovanović, assistant, Faculty of Law, Belgrade

Editors: Jelena Perović, LL.D., professor, Faculty of Economics, University of Belgrade; Thomas Meyer, LL.D., Sector Fund Manager, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Open Regional Fund for South East Europe – Legal Reform.

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6. Labor Relations

1. **Protected disclosure of employee whistelblower** – Branko Lubarda, LL.D., professor, Faculty of Law, Belgrade
2. **Non-discrimination in employment and civil legal liability** – Osman Kadriu, LL.D., professor, FON University, Skoplje
3. **Unobservance of prohibition of discrimination and maltreatment at work** – Borisav Čolić, retired judge of the Supreme Court of Serbia, Belgrade
4. **Flexible labor market in globalised economy** – Radoje Brković, LL.D., professor, Faculty of Law, Kragujevac
5. **International framework agreements as a form of social dialogue at a global level** – Bojan Urdarević, LL.M., assistant, Faculty of Law, Kragujevac
6. **The position of women in terms of ensuring employment rights in Montenegro** – Vesna Simović, LL.D., lecturer, Faculty of Law, Podgorica
7. **Mobbing as labor law and labor and social phenomen** – Lazar Jovevski, LL.M., assistant, Faculty of Law, Skoplje

Editor: Branko Lubarda, LL.D., professor at the Faculty of Law, Belgrade.

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7. Banks and banking affairs

1. **The independence of the European central bank and the national bank of Serbia** – Ljubica Nikolić, LL.D., professor, Faculty of Law, Niš
2. **Protection of financial services users** – Nikola Cicmil, legal advise, Medo Agency, Belgrade

3. **Protection of the credit user from the consumer's rights aspect** – Zorica Tucakov, judge, Commercial Court, Belgrade
4. **The credit contract – critical issues** – Miroslav Vitez, LL.D., professor, Faculty of Economics, Subotica
5. **The responsibility for assets in banks** – ero Petrović, LL.D., research advisor, Institute for International Politics and Economy, Belgrade, and Aleksandar Živković, LL.D., professor, Faculty of Economics, Belgrade
6. **Systemic risk regulation** – Vladimir Petrović, supervisor, National Bank of Serbia, Belgrade

Editor: Prof. Stojan Dabić, LL.D., International center for development of the financial market, Belgrade.

Fourth Department

RIGHT TO INTELLECTUAL CREATION

1. **The consequential protection of intellectual property before courts necessitates the change of law and practice** – Dimitrije Milić, long-time judge, Supreme Court of Serbia, practicing lawyer, Belgrade
2. **Reasonable Evidence** – Milenko Manigodić, LL.D. and Đuro Manigodić, practcing lawyers and patent agents, Belgrade
3. **International conference as the source of the trade mark** – Pavle Tijanić, retired judge, Superior Commercial Court, Belgrade
4. **Justifications for intellectual property** – Katarina Damnjanović, LL.D., professor, Faculty of Law, Union University, Belgrade, and Goran Dajović, LL.D., assistant professor, Faculty of Law, Belgrade
5. **Im wesentlichen biologische verfahren und ihre erzeugnisse in der praxis EPÜ** – Božin Vlašković, LL.D., professor, Faculty of Law, Kragujevac
6. **The conditions and procedure for granting rights on industrial design in Republic of Serbia** – Zoran Miladinović, LL.D., professor, Faculty of Law, Kragujevac, and Siniša Varga, LL.D., assistant professor, Faculy of Law, Kragujevac
7. **Significance of public order and morality for the ability of patent protection of invention** – Jelena Nikolić, lawyer, Town Cleaning Service, Kraljevo

Editors: Milenko Manigodić, LL.D., lawyer in Belgrade; Dimitrije Milić, lawyer in Belgrade.

Fifth Department

RIGHT TO JUSTICE

1. Court in connexion with justice

1. **Notes on delivery in legal proceedings** – Gordana Stanković, LL.D., professor, Faculty of Law, Niš
2. **Admissability of review according to the law on amendments of the law on litigation procedure of Republic of Macedonia from 2010** – Arsen Janevski, LL.D., professor, Faculty of Law, Skoplje
3. **Out-of-court settlement of consumer disputies in Serbian law** – Nevena Petrušić, LL.D., professor, Faculty of Law, Niš
4. **E-document and e-title** – Dušica Palačković, LL.D., professor, Faculty of Law, Kragujevac
5. **Enforcement on movables** – Ranka Račić, LL.D., professor, Faculty of Law, Eastern Sarajevo
6. **Extraordinary legal remedies in non-contentious procedure of the Republic of Macedonia** – Tatjana Zoroska- -Kamilovska, LL.D., assistant professor, Faculy of Law, Skoplje
7. **Objection in new enforcement and security law** – Nikola Bodiroga, LL.D., assistant professor, Faculty of Law, Belgrade
8. **Critical analysis of some regulations of law enforcement and insurance law** – Nebojša Šarkić, LL.D., professor, Faculty of Law, Union University, Belgrade and Mladen Nikolić, judge, Commerdial Appelate Court, Belgrade
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