Mt. KOPAONIK SCHOOL OF NATURAL LAW

TWENTY FIFTH ANNIVERSARY CONFERENCE

FINAL DOCUMENT

GENERAL STATEMENTS • INTRODUCTORY ADDRESS • MESSAGES

Mt. Kopaonik, December 13–17, 2012.

Publisher: KOPAONIK SCHOOL OF NATURAL LAW
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Printed by: Futura, Petrovaradin

GENERAL STATEMENTS

The Twenty Fiffh Conference of jurists of the Kopaonik School of Natural Law was held on the Mount Kopaonik on December 13th through 17th, 2012 under the permanent theme *Justice and Law* and with the annual theme *LAW AND MORALITY*.

Several days of Conference activity have followedthe traditionally accepted Hexagon of the Kopaonik School of Natural Law through the following six 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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For the 25th Conference of the Kopaonik School of Natural law held under the heading *Law and Morality* 336 reports have been written both by domestic and foreign autors, out of which 270 have been published. All reports were distributed along the lines of theSchool Hexagon into six chairs and 23 sections. The published reports were presented in four volumes amounting to 4,174 pages.

The 25th Conference was attended, as in previous years, by around 2,000 participants – jurists from various universities, academies of scences, research institutions, members of the Bar, courts and other organizations of administration of justice, administrative agencies and public services, non-governmental organizations and associations of citizens, commercial enterprises and commercial associations, banking and insurance organizations, as well as from other social institutions.

In addition to domestic participants, taking part in the work of the School were some 90 eminent jurists, both theoreticians and practitioners from abroad – as report authors and as direct participants in the activities of individual sections. Foreign participants have come from the following countries: Austria, Belgium, Germany, France, the United States of America, Brazil, Greece, Italy China, Israel, United Kingdom, Russia, the Czech Republic, Hungary, Turkey, Croatia, Slovenia, Macedonia, the Republic of Srpska, Bosnia and Herzegovina, and Montenegro.

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This year as well, all participants to the Conference were presented with the Bibliography containing all published reports submitted at

the School's annual conferences from 1987 to 2012, with the indication of names of the authors and the report titles.

* * *

The Kopaonik School Administration this year too, has received a considerable number of letters with greetings from numerous European and overseas countries addressed by important research and governmental institutions, including those from eminent scholars and professionals of various areas of law. A number of these communications were announced at the plenary sessions of the 25th Conference. The media have covered the activities of the School this year as well.

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

A highly academic and friendly atmosphere was characteristic 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 those from abroad, have expressed their general impression that the 25th Session of the School has traditionally and completely lived up to the expectation.

* * *

The Kopaonik School has continued this year as well to affirm in its work the ideas of Natural Law; in other words, showing respect in this way for the universal human rights based on centuries old philosophy of law and justice, and expressed at present in the codification of these rights by means of documents of the United Nations and other peace-loving international organizations.

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

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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 confidence in the totality of its mission in the world of law were addressed by numerous eminent foreign and domestic scholars who have taken part in School's activity.

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At the opening plenary session of the Kopaonik School, after the words of greetings by domestic and foreign participants, the founder of the Kopaonik School of Natural Law Professor Dr. Slobodan Perović, member of the academy, has presented his introductory address treating the matter of *Natural Law and Morality.* At the concluding plenary session, held on 16th December 2012, a decision has been taken that this introductory address bemade the part of the present Final Document of the 25th Session of the Kopaonik School of Natural Law and be printed as such.

* * *

While 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 presented at the concluding plenary session the results achieved in course of the work. The presentation included basic statements, proposals and suggestions in form of messages which were adopted and the plenary session and which now make, in their entirety, a component part of the present Final Document of the Kopaonik School of Natural Law.

These messages, however, may not be apt to present the whole abundance of ideas, proposals and opinions stated in the reports and in course of the discussions. This is why, in order to at least partially presenting the topics treated, enclosed to the present Final Document is also a List of Titles of all reports, i.e. subject-matters elaborated in these reports. The texts *in extenso* shall be published in the review *Juridical Life* (in Serbian language), in four volumes, in umbers 9 through 12 for 2012 numbering a total of 4,174 pages. Id addition, the same texts shall be published in electronic version.

The entire work of the Kopaonik School has been recorded by means of audio-technique, so that in addition to reports published in the above

mentioned review, complete discussions at plenary sessions and at the chairs and sections will be equally available in electronic form. This audio-visual material will be stored in the Kopaonik School Library in Belgrade and in this way be open to general public as well.

GREETING ADDRESSES

RAJKO KUZMANOVIĆ,
Member of Academy and President of the Academy of Sciences of the Republic of Srpska

Respected president of the Kopaonik School of Natural Law,
Member of Academy and Dear Colleague Perović,

The invidtation to take part at the Kopainik School of Natural Law was a greatsource of joy for me. Out of numerous reasons, the Kopaonbik School of Natural law is the most beautiful and the most significant traditional manifestation. It is a place of gathering of the mmbers of legal science and legal profession making pssible the meeting of jurists from all over the world that compares and coordinates different legal systems and areas of law under the shelter of Natual Law.

Having its foundation on the unique idea ofNatural Law Hexagon, the Kopaonik School has been provoking from year to year an ever greater interest of legal population, but also that of other familiar sciences and professions oriented to perform their activities primarily in accordance with the basic natural law principles. Recognized by UNESCO as such, it has been holding its sessions since 2005 under the moral auspices of that respected organization.

Law and morality – the general theme this year, will gather more than 2,000 eminent scientific and professional participants, who at this anniversary 25th conference of the Kopaonik School , willcome from Serbia as well as from all over the world – Brazil, China, Germany, France, Switzerland, Turkey, Italy, Hungary, Rumania, Republic of Srpska, Bosnia and Herzegov-

ina, Macedonia and some other countries. That very fact demonstrates the fact that natural law is a thing dear to all of us, and that morality has become a social necessity of all nations and all countries – today more than ever before.

Active participation in the work of this School in course of so many years created in me a feeling of permanent belonging to this great family. I am convinced that I am going to be among all those who will warmly receive the echo of the words coming from this session.

I am particularly satisfied that quite a number of members of the Jurists Association of the Republic of Srpska will take an active part in the organization and work of the session this year, and I believe that such cooperation will continue in the future as well.

Respected President,

I use this opportunity, as a colleague and jurist as well as president of the Academy of Sciences and Arts of the Republic of Srpska and of the Jurists Association of the Republic of Srpska, first of all, to express my gratitude to You as the founder of the Kopaonik School of Natural Law, for your perseverance that it becomes a well-known manifestation of jurists in the entire Region, which goes also to your associates who are laboriously working in the preparation and organization of this session.

I do wish that this year 25th anniversary session be a successful one, and be conducted in the spirit of universal natural and social justice.

Professor dr. SIMA AVRAMOVIĆ,
Dean of the University of Belgrade Scool of Law

Respected Professor Perović,
Respected diligent participants in the field of law and justice,

With regret for not being able to use the unique opportunity and honor to address you personally at the25th anniversary session of protagonists dedicated to natural law, I wish that this magnificent and primordial ambiance of Mountain Kopaonik whiteness be your inspiration for another flying off of the law.

Today the student usually learn that classical view of natural law implies the idea of its immanent innateness, that the Middle Ages concep-

tion speaks about its divine origin, and that only the New Age has come to the idea of it as based on reason. However, such artificial classification, although handy for easy remembering, due to its simplicity, does not actually express all the nuances and early existence of awareness about the natural law based on reason that has been so efficiently defined by Aristotle and later on formulated by Roman law in the maxim *nihil est in intelectu, quam prius non fuerit in sensu* – namely, that nothing existed in the reason which previously has not been present in the feeling (experience). This idea of reasonable natural law was built in the very foundations of the Kopaonik School by its primogenitor professor and member of academy Perović, who continues to successfully cherish it for already 25 years.

The culture of natural law has been built through experience, through learning during the entire life, and it must be entertained both at the level of personality and that of the social community. It is in this respect that the role of the Kopaonik School is historical, which includes the indispensable role of its founder – a mission which is essential for Serbian legal thinking and practice in these critical and difficult times of the end of the 20th and the beginning of the 21st centuries. This is the place where already a quarter of a century the natural law emanating of reason is being taken care of and disseminated around the Serbian legal pace from thee mountain peaks; it is here where it teaches about the way to distinguish a natural color of law from the artificial ones, and instructs us what the law should be and what it looks like at present.

Professor Perović has succeeded on these mountain peaks to connect the science of law and the practice of law; he was successful in making possible the encounter between the natural and the positive laws and to develop the awareness of reasonable natural law with those who apply it, but at the same time also to realize a specific philosophical step forward which in many respects surpasses the limits of Serbian legal thinking, raising him to the level of its contemporary leading figures. By accepting the idea of pluralistic character of natural law principles, he has affirmed the conception of equal value of six principles, while creating his unique, and until now already well-known Hexagon which penetrated deeply into the mind of Serbian jurists. In this way he has preserved the permanency and longevity – both his own and that of his creation.

On behalf of the University of Belgrade School of Law I wish you all the best for your work, and personal happiness and advancement for all the participants. *Vivat, crescat, florat Schola iuris naturalis Copaonici.*

Dr. THOMAS MEYER,
Director, Open Regional Sector of the Fund of German Endowment GIZ,
South-East Europe Office for Legal Reform

I think I am here for the eleventh time. We have spoken about the fact that 25 years are somewhat peculiar years. For a man this is a time when all traits of character have already been formed and when no considerable changes are expected any more. As far as the Kopoanik School of Natural Law is concerned – should the above be correct - that the character of this most important gathering around the natural law has already been expressed by the very theme for this year session.

When I was teaching at the university, I had two kinds of students. The ones considered that they might earn a lot of money by studying law, while others where the ones who hoped to be able to find justice.And my experience was best with those who tried to combine these two things. This is a quite difficult relationship because law is always connected with the question of decision. And with decisions you are never able to achieve agreement of all. Still, we should make efforts to come as close as possible to that which is known as the outcome of legal procedure. In such a way we do not have to talk about the tension between law and morality, but rather about this issue as a characteristic moment in our day-to-day activity. Unfortunately or luckily, there is no end to this job. I am particularly proud of being the head of the regional Open Fund Project for South East Europe, and I am especially glad to participate in it, and I do hope to be withyou here at least for another five years.

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

Most respected Chairmanship,
Distinguished colleagues,

I take the chair with great emotion in order to greet our anniversary 25th session and express by particular respect and recognition to the member of academy professor Slobodan Perović – the founder of this School as well as to point out that although we are today not the kind of a formal con-

ference authorized to grant highest rewards, he has our highest recognition for all he has done in course of these 25 years. His splendid orations have reached out far from these spaces to the entire Balkan Peninsula, to the entire region and even further.

By reports delivered by several thousand of experts in the areas of legal science and practice in course of these 25 years, this School was transformed into an institution of the Plato's type having a clear profile, clear content, clear program, exerting in such a way a great influence on the development of legal theory, legal thinking and legal consciousness. All this remains as a legal and civilization *topos* in this geographic area. In such a highly agitated zone of the Balkans – that has gained a negative connotation in the past, this is the way of remedying the situation representing thus great importance of our 25th anniversary session. Perhaps it is not equal to a 50th or 100th anniversaries, but we are all witnesses that all we have done was effected in course of a particularly difficult historical period: the disintegration of a country with all the consequences, including the bloody inter-ethnical conflicts at the end of the 20th century, the change of the system, the transition with all of its misgivings. In all these developments the role of law was sometimes respected and sometimes disregarded risking being totally extinguished exposed to winds of violence, political arbitrariness, and regime actions, etc.

But still remaining was this Kopaonik Star to glitter on the wider Balkan sky, raising hope of people – hope that there exist the law and the justice, that there exists the equality of men, that there exist natural rights which can not be trumped on by any kind of violence and by any kind of hatred and the speech of hatred. I am emphasizing this because we are not at the end of Balkan history. We are near the end of the history of the Balkans in terms of protracted enmities and even conflicts that have marked our period. Our area is still permeated by nationalistic, expansionist and other negative ideologies, ethno-centric conceptions and state systems that are directly contrary to the basic and original precepts of the Kopaonik School of Natural Law covering the natural and equal rights of men and their freedoms. While these ideologies travel along the Balkans, while the speech of hatred and the lack of tolerance still prevail, there is a danger for peace and there remains our duty to preserve the peace and order, the law and the rule of law as well as the respect for human rights. We should do that by invoking tolerance, understanding, dialogue, settlement of social conflicts by applying legal means which are the only way that is rational.

In course of 25 years we have been sending exactly these kinds of messages to all around us, and even further, and we have been preserving the hope that a better future would come one day than is the case now. This future is the integration into Europe of the entire Balkan area. All of us here know that, in addition to the fact that several countries of the region have already joined the European legal circle, other countries still stand before the European Union door. This is why the Euro-Atlantic integration or integration into the European Union is rather important for the countries candidates. Among the primary conditions to be met are the constituting the state ruled by law, namely establishing the rule of law, the independent judiciary and enforcing human rights and freedoms. These are priorities, and these are things we have been insisting on for all these 25 years of this School: rule of law and justice, respect for human freedoms and rights. For all these years we have been working on the topics of affirmation of the European idea of state, on the community based on a just law.

Exactly in this respect it is highly important that this year's theme is *Morality and Law,* and this is again the reaffirmation of the conception according to which moral values in the sphere of law have an universal validity such as goodness, beauty, truth, justice; in addition they have also legal values, such as certainty, security, peace, natural rights of men, equality and so on, and that they are impregnated with morality. That is why this issue is rather important to us right now when it is necessary to reaffirm the moral values of our societies, opening thus the road for their constituting as states based on law and recognition of human freedoms and rights.

With these ideas in mind, let live our eternal institution – the Kopaonik School of Natural Law, so that we may be able to celebrate the 100th anniversary of its existence.

Dr. RODOLFO SACCO,
Professor Emeritus of the Torino School of Law,
Member of the Italian Academy of Sciences

Distinguished Chairman – Professor Perović,
Respected Colleagues,

I have the honor and satisfaction to transmit to you my best wishes for successful work on behalf of the Academy in Torino and on behalf of the Italian Comparative Law Studies Association.

Dr. VITOMIR POPOVIĆ,
Dean, University of Banjaluka School of Law

Most respected mister Chairman and founder of the
Kopaonik School of Natural Law, Member of Academy and
Professor Perović,
Most distinguished Chairmanship,
Respected Colleagues,

I am particularly honored and satisfied for being able, on behalf of the University of Banjaluka School of Law and its professors and associates, and on behalf of its 4,500 students, and in my own name, to greet you and to wish you all the best in holding this 25th anniversary session of the Kopaonik School of Natural Law.

A quarter of a century in the life and work of an institution and of an individual is not a short time. Twenty five years ago our School has been the youngest one. Today it is the most known one through its specific traits both regarding the law and the Kopaonik Mountain. Twenty five years ago we have been young and handsome, and today we are only handsome. Respected colleagues ladies and gentlemen, I wish you all the best and the success in the coming New Year and Christmas holidays and many thanks to you.

Dr. ZORAN RAŠOVIĆ,
Professor, Podgorica School of Law,
Member of the Montenegrin Academy of Sciences and Arts

Distinguished Professor Perović,
Distinguished Professor Orlić,
Respectd Chairmanship,
Dear Colleagues and Friends,

There are already 25 years since we have met for the first time at this snowy mountain. I have a pleasant occasion and honor to express my warm

greetings to organizers and funders of this School, whose views have ripened on the culture of a stormy and fantastically rich experience, for such an important anniversary. The majority of our friends are stilll here. Some of the frined, unfortunately, are no more with us, but I would say only phisically. I am happy because School is joined by a great number of new participants – followers of its principles and laws. An always overfull auditorium through all these 25 years is but a proof that the Kopaonik School is something one loves with the most beautiful and most delicatepart of one's soul. Its ideas are now expressed by newprecision, new splendor, new charm and drinkability. Wide and mighty, our School audaciously enters into unknown areas. In his doing that, it leaves to everybody to have his own way of expression, his own image, and own soul and thought.

Today we have chosen – not accidentally – to inquire into one of the most fundamental issues of legal philosophy: the relationship between the law and the morality. By doing that, we did extend the priority to moral order. We are eager to search for and strive toward general principles and toward the chief justice – namely, toward the very substance of morality conceived as an entirety. Fair dealing and honesty, honor and gentleness of one's nature are but the barriers against ambiguous rules that have produced injustice. We are bringing our law, both the normative and the real one, into accord with rules of common humaneness and equity since these rules are the ones to be preserved by people's consciousness. It is, however, clear that moral systems should be under permanent supervision of general public and be verified by the practice of life. Where the life is becoming shallow, it is necessary to go deeper.

Dear friends and founders of the Kopaonik School of Natural Law, dear organizers and guests, I do expect us to continue to be the poetry of soul and of life and to make more complete the portrait of the great Kopaonik School as well as that, together with its founders,we breath its warmth. You are a visible evidence of the force of the Kopaonik School and of its value, of its invisible strength and dignity. This is also a sign that it does exist for the sake of someone, that we are carrying it in our souls, and that we feel ourselves unified with it, while considering it a real and mutual necessity. And let it be like that for quite a long, long time. Long live the Kopaonik School of Natural Law.

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

Mister Chairman,
Dear Colleagues and Friends,
Ladies and Gentlemen,

All I would like to tell you may be expressed in only a few simple words, and these are – well-done and thank you. Well-done, because I do consider that you are doing, as far as I know, an incomparably good job not found in any other country. Thank you, since you have been, and still are, successful to attract every year to this beautiful place so many jurists from all areas of law and lines of profession, coming from so many nations and countries. Thank you, for giving support to values we all appreciate, such as freedom, fraternity, justice, democracy, rule of law – in a single word: morality. You are giving support to moral. This is a long-lasting and eternal struggle to which you take part with great enthusiasm and energy.

I do thank you also for your being able to surpass all challenges and all problems on your way and to finally celebrate the silver anniversary of this School, which is a driving force for all of us to continue to work along the same lines of its tradition. My thanks go to the organizers, and particularly to professor Perović and professor Orlić who were kind to invite me to take part in this session. My thanks go also to all of you who come here every winter to this holiday of friendship presenting a great joy for me. I am very happy today for being able to transmit to you the greetings of France to Serbia.

I am also very happy for being able to participate to this conference, which I hope to continue in many years to come.

Dr. PENNY BOOTH
Professor, Manchester School of Law

Distinguished Colleagues and friends,

Our Supreme Court in England is known for one of its practices: namely, after many judges have expressed their opinion relating to a given case, and if there is nothing better to be said about the same matter, all the

other members bow down and agree with such opinion without any other comment. Distinguished colleagues, you have already said here the very essence of truth concerning this conference. This is why; I want also to express my gratitude and to try to tell you a few words in Serbian. It is so nice to be here again with you, and thank you for inviting me. It is a great honor to me to be here again, and not only the honor but the pleasure as well.

Dr ANTONIO BENACCHIO,
Professor, Trento School of Law, Italy

Respected friends

Twenty five years mark a rather important occasion for this encounter on the Kopaonik Mountain. This is the fifth time we Italians are present here. The first time was in 2003. We are a delegation represented by professor Sacco, which means that we are greatly interested for your law, for its development and its progressive transformation. We express our gratitude to the organizers, and especially to professor Perović, professor Orlić and all the others for giving to me the opportunity to speak here ad to which you all the best in your work.

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

Distinguished Ladies and Gentlemen

I express my gratitude to all of you not only on behalf of the MK Group but also on behalf of the entire Kopaonik Mountain as a destination; I express my thanks to the Kopaonik School of Natural Law which is already the partof our history.

INTRODUCTORY ADDRESS

SLOBODAN PEROVIĆ

NATURAL LAW AND MORALITY

Respected Colleagues,
You who make the substance of life of the
Kopaonik School of Natural Law,
You, the followers of the philosophy of justice, of moral
Imperatives – this Triad of human dignity as an a priori
Purpose,
Here, in this peak of nature, where your perspective is even wider
Because "the one standing on a hill even for a while – sees
More than the one standing on the foot".
Distinguished guests coming from various parts of the world to
This palace of science to make us stronger in our perseverance
To stay on the road since the classical times until the present, and
until the proclamation and codification of the rational natural law
within the framework of the United Nations Organization and all
other peace-loving associations and forms of integration,
Ladies and Gentlemen,

The word of culture of peace

Permit me first of all to address you with words of highest respect I have for this auditorium of knowledge and conscience in order to express

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The introductory address of professor dr. Slobodan Perović, the founder of the Kopaonik School of Natural Law at the opening session of the 25th Conference of the Kopaonik School of Natural Law, held on 13th December 2012, with the general theme *Law and Morality.* The tex of this oral address is recorded both by shorthand and by means of audio-technique, so that it is here published in the way it was actually 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 author for his determination of the principal title of the text as well.

the ideas of scholarly vocation of law and its originality, ideas of our common wisdom faced with the aggression of diabolic discord of this world of ours, and most of all to address you my wishes and my belief in better and more just days to come, days that will bring to us the joy of totality of life for all the peoples of the world, regardless oftheir natural differences in terms of birth or any other kind of justified belief.

With these words of culture of peace and universal values of rational Natural Law or, as today is more usually termed –*human rights,* permit me to open the work of this year conference of the Kopaonik School, which work will, as I am convinced, joined with former results, enrich our Hexagon – the rights to life, freedom, property, intellectual creation, justice and rule of law. At the same time, we are confirming this year also the permanency of the 2002 Kopaonik School of Natural Law Declaration that was published in six languages.

A Theme that Has Survived the Centuries

The theme of thus year – *Law and Morality* – has come to complete the entirety we have been developing in course of several preceding years: the law and freedom, the law and time, the law and space and the law and responsibility. The relationship between law and morality has moved,at every time and in every space, the intellectual culture as expressed through various disciplines, while in spite of a whole mountain of books and studies of scholars, there still is no adequate and unified answer. Rudolf von Ihering has even said that the problem of the relationship between law and morality was the Cape Horn of legal science, a dangerous point where many systems of legal philosophy have suffered shipwreck. That these words were not just a figure of style depicting the existing difficulties of the issue of relation between law and morality, and that allships were not lost, the entire 20th century serves as a proof and, in the final analysis, thepresent theme of our School.

General Character of Moral Law

The presiding words of the present introductory address are the following: *the starry sky above me and the moral law in me* – an axiom expressing the space and time of the genera; character of natural law and its moral imperative as the most vital part of every individual and social being.

At the same time, with these Kant's words, the Triad has been expressed of factors of material and moral worlds: space and time, natural law, moral order. And each one of these factors will have adequate attention.

Results Achieved within this School

Since this is the 25h anniversary of existence of this School, before I continue with this introductory word, it is necessary to summarily present the principal points of the road we have been traveling. More specifically, the work of the School was conducted along three different directions: scientific results, publishing activity, bringing together of both domestic and foreign jurists.

Scientific results are visible in the achievement and more complete reviewing of the 1994 Hexagon that has brought together all social and legal disciplines around the six pillars of general civilization (life, freedom, property, intellectual creation, justice, rule of law). Along these lines I had the honor and the opportunity to set at the appropriate time and theoretically found the following institutes: the tripartition theory(the relationship between the natural and the positive laws), democratic culture as distinguished from simulated and vulgar democracy, tolerance (a draft theory of tolerance), discord between the proclaimed and non-realised human rights, theory of misuse of human rights, implementation of commutative and distributive justice, implementation of the proclaimed three-fold distribution of power, independent judiciary as an issue of general culture of every community, twelve tables of judge's independence. In essence, an entire scientific movement has been created which was based on the traditional philosophy of justice and the rational conception of natural law.

In addition to scientific results achieved within this School, one should point out at intensive publishing activity which today makes an entire library of more than one hundred volumes (each year we have published some four to five thousand pages of printed text) along the lines of the Hexagon as well as of specific scientific disciplines and sections within the chairs of the School. Also published was the Bibliography of all printed works until now including the names of authors and report titles. Finally, speaking of publishing activity,one should particularly emphasise the publishing of the 2002 Declaration of the Kopaonik School of Natural Law in six world languages. In addition, one should especially mention the issues of Final Documents where, in a synthetic form, yearly messages were presented regarding specific legal issue debated under the general theme.

Finally, the Kopaonik School of Natural Law in course of 25 years of its existence has made possible the gathering of the wide circle of domestic and foreign jurists. Its work was attended by university professors, judges, member of the Bar as well as jurist from judicial organizations, representatives of non-governmental organizations, jurists coming from administrative agencies and public services, associations of citizens, commercial associations as well from many other social institutions. One should particularly stress also the participation of young lawyers from these institutions. In this respect the School has remained consistent with its scientific and professional vocation, protecting itself in this way from any kind of meta-legal and day-to-day political aggression.This saved it from becoming an alienated derivative with entirely different destiny.

This scholarly attitude has made this School not only to be a place of meeting together the adequate scientific authorities but also of enjoying the reputation in domestic and, probably even more, in foreign legal public. All that has been the reason for the School for obtaining in 2005 the recognition by the UNESCO with the explanation that its projects and publications ofwere of special interest for the UN organization by School's advancing in this way the human rights within the system of the United Nations. In 2007 UNESCO has expressed in its greetings that the Kopaonik School has become a natural ally of that Organization in the joint efforts to promote, respect and protect the human rights and equal dignity belonging to all human beings.

The Principle of Good

Morality as a system of social norms indicating and defining what is Good and what is its opposite in the existence of man as a social and natural being is directed by the principle of Good in terms of a given space and time, adjudges many individual and social contradictions, such as love and hatred, truth and falsehood, conscience and temptation, freedom and lack of freedom, beauty of the good and the ghost of evil, culture of peace and lack of culture of war and violence, dogmatic disregard and tolerance as fundamental virtue of the enlightened reason.

That kind of moral order that is apt to settle these contradictions and which always takes part of the Good is the one that is legitimate and entitled to be described as the noblest trait of human nature.

Empire of Just Law

Only such kind of morality as built in the system of legal norms may transform every kind of anti-legal system into the empire of just law which not only proclaims but also realizes in practice the dignity of the "power" of life, regardless of any kind of difference in terms of birth or conviction.

Only then, the right and the morality, through the strength of natural adhesion, are transformed into a higher level category, into a living harmony of the two pillars: i.e. legal and moral civilization of every organised social entity.

Mutual Transformation

When a certain moral norm experiences transformation into a legal norm, it begins to function as a legal norm with all of its elements, and more particularly the element of legal sanction. In the external world it happens frequently that its moral source is forgotten which, however, does not imply that total interruption has taken place between the moral norm derived from morality and the legal norm in its manifestation and its method of application.

Reference

In contrast to the above, legal norms, as a principle or a concrete rule, refer to the application of moral norms; in that case the former norms acquire, in the adequate procedure in practice, the force of a legal norm. Thus, for instance, a contract implying obligations can not be contrary to good usage and the morality of a given society, since otherwise the corresponding sanction will take place.

Common Values

In any case, the combination of moral and legal norms is directed toward common values such as: fair dealing and honesty (*bona fides, honestum*), decency (*decorum*), equity (*iustum*), especially as far as implementation of the principle of"giving to everyone that what belongs to him" is concerned, by applying the attitude of equal treatment of equal matters which reflects the eternal idea of commutative and distributive justice.

Inherent Morality of Law

All mentioned legal and moral categories, as expressed as principles and specific rules, permeates the disciplines of legal systems of the world, and do that to a degree when it becomes difficult to be distinguished as separate without disturbing their indispensable balance. And this is the way natural law of rational orientation realizes the inherent morality of law.

Should legal norms, indirectly or directly, be deprived of their substance and of application of moral norms or, in other words, should the inherent morality be eliminated from the legal system – such law would become an alienated law, having as a result the creation of a bureaucratic and artificial creation of the Kafkian character and bringing about a world of its own which inevitably would cause a "rebellion" of facts against such type of law.

The Three-fold Unity

After these introductory statements let us return to the Three-fold Unity of factors of material and moral worlds, to the "sky full of stars", meaning to treatment of issues of time and space, of natural law, and of moral order.

Since in its former scientific and philosophical opus the Kopaonik School of Natural law was, among other matters, dedicated considerable attention to the significant natural phenomena of space and time followed by natural law as the universal and just one, we are now going to reproduce, first of all,the basic traits in this area. In this way we will be able to introduce this annual subject – *Law and Morality*, into the mentioned Three-fold Unity, and particularly viewed from the aspect of relationship between lad and morality conceived as common rules of conduct of every legally organised community.

Schedule of further Exposition

In that part, in addition to issues of principle relating to the matter relation between law and morality (and especially:equity, appropriate conduct and honesty, public policy, natural obligations), we are going to present numerous concrete cases of legal norms containing a moral norm as well, either as a standpoint of principle or as a component part of the legal norm; we will include also the cases where a legal norm refers to the application of

certain moral norms. This exposition, understandably, should include also the matter of deficiency of morality and its attributes which are necessary in order to formulate the final conclusion.

Homogeneity of Coexistence

Speaking of time and space that are followed by the duality of natural and positive laws where the natural law is of an *a prior*, universal and absolute character, while the positive law is posterior, empirical and relative – one should say that time and space dimensions appear as indicators of the legitimacy of law exactly from the aspect of presence (in various degrees) of natural law in the positive law legal system.

Space and time as natural phenomena are the objects of various philosophical conceptions and observations. It is usually said that if space is an order of various coexistences, then time is the coexistence of successions which are the result of the homogeneity of coexistences.

Observable Sphere of Space and Time

Already Aristotle has raised the question of the very existence of time and space, while we have concluded that there is only their observable sphere, while the substance of these phenomena has still remained out of the reach of man.

After we have exposed various theories covering the phenomena of time and space (Aristotle, Newton, Kant, Leibnitz, Boškovic), we have approached that unsettled issue from a purely practical aspect and from the application of different systems of law in the framework of space. Applying the criteria of time and space we came to the conclusion that there exist the classification indicating five great systems of law, or five families of law, i.e.:European legal civilization (the general character of legal categories), the Anglo-Saxon system of law (casuistics and pragmatic approach), the Sharia legal system (Islamic religion), the Far East legal systems, Indian and Chinese laws.

Bringing Together

There was a considerable process of bringing together of the mentioned families of law that took place especially in the second part of the

20th century. Through numerous international conventions and the processes of unification and codification, the bridges have been constructed that connected these legal systems, so that they now are not any more separate and isolated islands. The implementation and internationalization thus have become the tools of bringing together, but always coupled with the right to one's difference. In this respect one should mention the significant 1948 Universal Declaration of the rights of man which for decades of implementation has become a genuine source of a whole series of international conventions, both regional and universal ones.

Failed Expectations

That whole process has created the hope for a more equitable world, but the golden century has failed to materialize and was postponed for an indefinite time. Consequently, the codification of human rights represents, at one hand, a great endeavor of the contemporary man, but, at the other hand, also the harsh disregard of these rights approaching even the degree of cataclism of law.

The causes of such state of affairs are numerous and rather different, depending on the space and time of specific cases, and they include the geographic and the ideological factors as well as those of religious, philosophical and economic natures – in one word, on the degree of general culture.

However, speaking ofthe lack of realization of human rights within and outside of individual families of law, it seems that these caused could be reduced to the several essential ones, i.e.: extreme poverty of the considerable part of the world where the *disease of hunger* is the prevailing evil;the existence of quite a number of states disregarding the rule of law principle, states with simulated democracy covering the real arbitrariness of owners of power who consider themselves the owners of time; the misuse ofhuman rights expressed by retaliation for their violation that amounts to even greater violation of these rights (democratic bombardment, collateral damage, "the angel of mercy" disseminating deaths while protecting human rights, etc.); political misuse ofhuman rights that reduces their various aspects to the element of political power disguising in fact the various separate interests (territorial expansion, military, economic, ideological and similar aggression); undermining the principles of independence of judiciary, so that the proclaimed three-fold separation of powers is reduced in practice to the unity of powers by way of direct political influence of execu-

tive branch or by way of dictatorship, including some other kinds of international and national meta-legal instruments of power, negating in this way the principle of commutative justice.

Dignity of Judicial Independence

Judicial independence is an indispensable prerequisite in the matter of administration of justice in every state ruled by law. According to Radbruch, this element is a daily bread, and the drinking water, and the air to breath. That is why that issue does not concern the courts only and is not just a question of law; this is a question of general culture of every social community. The institute of judicial independence is one of the greatest cultural achievements of man and his social community. One may also say that it is a criterion of the very level of culture of any country, regardless of the type of the court concerned – national or international. This is also the criterion to be applied to historical evaluation of decisions of such courts and for their distinguishing into universally equitable and those that are not such at all.

Consequently, a further conclusion can be drawn: the independence of judiciary may be realised only in the conditions of the rule of law. The principle independence of judge, who always has to be "a living voice" of the just law, represents the line of demarcation dividing the rich field of law from the desert of injustice and lack of law.

Derivative of a One-way Order

In the conditions of a state without adequate law, where legitimacy and legality of law are under the permitted degree of social tolerance, where the rule of law is replaced with the rule of arbitrary fact of power, passions or narrow interest, illegitimate violence of the ones against others, where the principle of separation of powers into legislative, executive and judicial is eliminated, and where the entire life is reduced to political monism – the judicial independence is reduced to dependence from the party and not the legislative decision.

Such dependence transforms the judge into a derivative of a one-way order (political, national, international, racial or class-wise), so that the judge becomes objectively unable to apply a just law. In such a case just law goes shipwreck and with it the principle of judge's independence as well.

Soiled Hands

It is easy to foul one's hands in the politics since, according to Machiavelli's words, the soiled hands justify the result. But where this is done by a court, and any court – national, regional and especially the international one – then after more than two millenium Aristotle's saying "to go to judge means to go to justice" has unfortunately to be replaced by words "to go to judge with soiled hands means to go to the negation of justice". All that speaks in favor of the truth that independence of judge has to be an indispensable attribute of a state ruled by law and that it represents its organic part.

Twelve Tables

As far as normative expression of independence of judiciary is concerned, I had both the honor and the opportunity to present already in 1997 – when the Kopaonik School, was in its early childhood – in my introductory address the Twelve Tables of independence of judges, which text was introduced later on, in 2002, in the general Declaration of the Kopaonik School of Natural Law which was translate in that same year into six languages (English, French, German, Spanish, Russian and Chinese), becoming thus available to ea great number of those interested.

Consequently, this time naturally I am not going to repeat all these twelve points, but I will summarily mention only a few of them that are somewhat closer to the general theme of this 2012 session of the Kopaonik School of Natural Law. Thus, in pronouncing justice, a judge is independent from any other power except that emanating out of the legitimate legislation; the judge is a personality enjoying the confidence of the general public; performing the judicial duty must not be the object of an kind of undignified influences, external initiation, pressures, menaces or interventions, both direct and indirect; everyone is obliged, within the limits of compulsory legislation, public policy and morality, to respect the independence of judges and to refrain from any act of undignified influencing. And every one failing to behave according to the above rules and violatingthe independence of judges will be punished in conformity with law; the state guarantees such independence by applying consistently the constitutional principle of separation of power into legislative, executive and judicial branch, in terms of which the function of administration of justice belongs to courts;

a judge may not be held responsible for his opinion or his vote cast in the process of performingthe judicial function.

The Factor of Three-fold Homogeneity

Speaking of natural law as one of the several factors of the mentioned three-fold unity, one should present, as a short introduction, the notion, the effect and the evolution of natural law (consequently, only a few necessary and relevant matters) because the Kopaonik School has placed the whole of its activities relating to natural law into the very foundations of its scientific and philosophical opus. With this remark and with referring to the published materials until now, including particularly the 2002 Declaration of the Kopaonik School of Natural Law, as well as to the introductory addresses from all previous encounters are some indispensable facts about the area of natural law that would bring us into the world of morality that makes the inner substance of the positive law as far as moral id concerned.

Part of General Culture

Natural law is the part of general culture: intellectual, spiritual and material as well as supra-national and supra-class one – the culture of every single man and of the entire mankind, regardless of all the difference in terms of birth or dignified belief, including those of race, skin color, gender, language, religion, political or other orientation, national or social origin, property status, birth or any other circumstance. However, man is born free, but he is everywhere in chains (Montesquieu) or, in other words, nobody has taken care of the right that was born with us (Goethe). The chains have been brought to him by that positive law which was based on arbitrariness or violence of those who considered themselves owners of everything, including time and space. The chains are removed by the just law, meaning that kind of law which makes the unity of elements of natural and positive laws. This permanent therapy demonstrates the fact that positive law behaves as a chronic patient as compared to outstanding, general and *a priori* institutes of natural law.

Justice as a Moral Category

Natural law serves the justice that is conceived as a moral disposition of equal treatment of equal matters. The realization of natural law is the ex-

pression of democratic culture which accepts tolerance as the act of spiritual freedom and culture of reason. A law within the system of positive law may be just or unjust and the relevant criterion in this respect is the degree of realization of the proclaimed justice as a moral category.

Eternal Youth

Philosophy of natural law has survived all the centuries and has brought to us today in the form of human rights codified as rational conceptions of natural law within numerous acts and documents of the United Nations and contemporary standards of peaceful integration of the international community. Therefore, to be under the vaults of rational natural law means to be above the efemeraltiy of positive law and its arbitrariness. Therefore, the issue of historical end of the natural law is at the same time the issue of its origins.

Evolution

Classical conception of natural law is based on three fundamental precepts: the law as a part of human will is submitted to higher laws of nature; essential characteristic of natural law is the justice as a moral category that unites the commutative and distributive justices; a law may be just or unjust. The conception expressed in classical philosophy and ethics was used as the foundation for further development of natural law, first of all in the two following directions: theological interpretation, particularly expressed as the scholastics of Thomas Acquinus and then in terms of lay approach in the form of rational explanation (Hugo Grotius). Two conceptions were derived from the latter approach: biologically rational one (Grotius, Puffendorf, and Thomasius), and the purely rational one (Immanuel Kant).

Genus Notion

There is no theory of human rights or theory of rights of man without a theory of natural law which represents a genus notion supported by classical legal and philosophical civilization that continued all the way to the 1948 Universal Declaration of Rights of Man and all other international documents created on the basis of that Declaration. This Declaration, in addition to proclaimed civil and political rights, has included the common points of humaneness such as social and economic and cultural rights.

Postponed Hope

By implementing and making international the natural law as codified in international sources, the authority of that law has increased its legitimacy so that it is even possible to speak about a universal or world law. These developments have raised hopes that our civilization would make possible a so-called golden century where human rights will once and for all completely protected and realised. Unfortunately, that universe of natural law did not take place. Instead, the times of discord and violence have taken place, so that enormous differences occurred between the proclaimed and non-realised natural rights of man – which is a fateful issue of survival of legal and any other kind of civilization.

Moral Tripartition

The realization of proclaimed natural rights of man may not take effect in the near future. Several meta-legal determinants crucially affect the process of realization of natural rights of man, such as: the degree of general and professional cultures, universal conscience and consciousness, political maturity, economic system, moral emancipation and dignity. Lack of realization of and possible directions of putting effect of human rights are two poles of our existence.

In many regions of our world today, the law is returning toward its primitive source – *make evil.* The other part of the world is inspired by the order – *do not make evil.* The law permeated by the spirit and authority of-natural law, the law codified at present in the form of international human rights standards, makes in fact the germ of a third epoch that gives the order – *make good.*

Black clouds above the realization of the proclaimed rights of man threaten to suppress this third epoch of the moral tripartition and to bring us back to the primitive sources of blackmail and personal execution. And only a well organised wisdom would be able to preserve and develop the syntagm – make good.

Permanent Inspiration

This is that possibility for the Kopaonik School of Natural Law on top of which it is building its permanent inspiration. Supported by scholarly

and professional public opinion and by the strength of its spiritual freedom, the Kopaonik School of Natural Law responds to all the evils of contemporary world with the beauty of the good.

Moral and Legal Order

The former exposition of natural law, viewed through the optics of space and time, imposes the need of a wider analysis of the moral order and its relationship to the legal order. In order to better understand that relationship, which is otherwise controversial in many respects, it is necessary first of all to treat the notion of morality in all of its attributes and only then to undertake the analysis of numerous points of attachment or separation in order to reach adequate conclusions.

That need is even more urgent since this issue is rather controversial and characterised by authors who are followers of legal positivism and the authors who belong to the family of philosophy of natural law, although more in nuances than in essence – which is the feature if legal positivists. Consequently, we begin with the notion of morality and its traits that make it universal as a value of organised sociability.

Notion of Morality

By beginning from the general character of social order, of its space and time dimensions as well as from its indispensable presence in almost all areas of life of spiritual, material and normative cultures, and having in mind the whole spectre of wisdom characterising that institute – we are going to try to submit a Draft definition of morality, in order to better perceive its relationship to the Law as a science and practice of the good and the equitable (*ius est ars boni et aequi*).

With this impression in mind, we are going to try to enclose the traits of morality into a single synthesis:

Morality is a norm of social conduct determining or realysing a certain moral Good that is protected by a sanction of autonomous feeling of remorse and/or disdain of public opinion of a given environment.

This definition gives rise to the following attributes of morality: 1. morality is a written or oral norm of social origin regulating behavior; 2. morality determines of realizes the Good as a supreme moral value; 3. morality

is protected by the sanction of of remorse and/or disdain of public opinion; 4. morality implies having the capacity of a reasonable and conscious subject; 5. morality imples a specific degree of freedom of the moral subject in taking over and performing a moral prestation; 6. morality is a word that may have the same or different meaning depending on given space and time.

Moral Norm

In every organised society there exist various kinds of norms setting specific requests which, on their part, imply certain consequences. Depending on the kind of norms and their disposition, the corresponding consequences involve the implementation of adequate measures, beginnng from slight reprimand and, through various reproaches and punishments, up to severe legal sanctions. This circle includes also the norms of behavior and decency, norms of scientific research, fine art creations and, generally,norms of intellectual creativity as well as those connected with technical,medical, legal, economic and all other norms regulating the activities in different professions. Many of them are coupled not only with professional standards, but at the same time with legal and moral dispositions and sanctions as well. The whole mosaics of these social norms, the moral norms – as rules of social lconduct – are specifically autonomous or heteronomous, and they may be found in the spheres of other social norms supplied with their own characteristic sanctions parallel with the moral sanctions.

Most often moral norms are unwritten norms, and they are created through long repetition in a given environment and depending on numerous factors of cultural identity in such environment. They may also be written, for instance, in the form of moral codesof certain professions, associations, courts of honor and other forms and degrees of organized sociability. In any case, and regardless of the area they exist in, moral norms are always easyto discern, both by their disposition ordering always to make that what is good, and by their characteristic sanction of remorse and reprimand, disdain or indignation of social community.

Moral Good

According to many authors in the sphere of ethical philosophy, the moral norms are closely connected with that wich is known as the Good,

and that differs from something which isbad or inappropriate and qualified as Evil.

Moral is, in other words, a common denominator for all activities that enjoy the quality of Good, begining from individual and emotional attributes, for instance sensuous satisfaction, decency and politeness, happiness, honor, health, professional success, friendship as well as the general terms of recognised human values (for instance, dignity, freedom, tolerance, culture of peace) and up to the highest Good meaning the preservation of survival of world on our Planet and, more particularly, of the healthy human environment as an indispensable requirement of life on our Earth. This at the same means also the order emanating out of all social norms (and especially legal and moral ones) that reads as follows: refrain from the use ofa ny kiond of anti-reason production, holdfing and applying various armaments and other means of accumulated energy capable of mass destruction and threating all forms of life on the Earth and the general disaster of mankind.

Many authors trying to define the substance of the notion of Good considered it as being a rather ambigous term. Applying the notion od general Good in order to define the specific – moral Good was ofgetn folowed by the remark relating to its ambiguity that makes more difficult the very understanding of the term to be defined as well as opening the possibility for different interpretation and for various ways of implementation in practice. All that may lead to moral, legal and, generally, tosocial uncertainty. This is the thesis of ethical positivism and moral scepticism.

Arguments of that thesis, it seems to me, are only partially correct. In other words, it is true that the notion of Good is not precise enough in terms of a mathematical dogm which is always reduced to some kind of monism; in fact, the notion of Good does not need to be precise and there is no casuistic that could include all the cases of phenomena we call good and evil.

With the exception of the universal moral norms which have survived the centuries (for instance, do not kill, do not steal, do not testify falsely), the notion of the Good has to be evaluated by the criterion of the *social standard* which, as such, depends on concrete factors of cultural identity of a given social community. These factors are different due to differences in terms of space and time as well as due to their joint effect which determines the substance of the corresponding social standard, including the moral standard.

Here are some of the external appearances of the forms and factors of cultural phenomena and moral originality of organised communities: the

degree of realization of justice and equity as a concretized justice; tolerance as the sign of high degree of reason; science, religion, philosophy, economic system, political maturity, social cohesion, ecological ethics, working habits and working ethics, the quality of family life and the family structure, the culture of peace, the degree od technical and technological education, public opinion, and particularly in the area of media and scientific and professional activities; the degree of realization of the principle of treating equal cases in an equal way, as well as all other related and similar areas of common life.

Let us repeat: the set of all mentioned determinants in a given society defines also the notion of Good that is conceived and applied in terms of a social standards among which the moral standfards take a promient and asignificant position. Their concrete implementation is changing and depends on all relevant circumstances of each particular case, but the standard, in essence, remains the same. In other words, the application of standards or the so-called geneal clauses (for instance, conscience and honesty, *bonus pater familias,* fair usage or custom, reasonable and attentive or caretaking man, dangerous matter or thing and dangerous professional activity) whose substance depends on the above listed factors of general culture of a given community, always implies a concrete case and its similarity or distinction as compared to other cases, but every time observed from the angle of the valid social standard. Consequently, all general rules existing in a social standard have to be applied to the notion of Good as well in their capacity of the component part of the corresponding moralnorm.

Moral Sanction

In contrast to the sanctions for violating other social norms, and especially of legal norms, the sanction for violating a moral norm is specific since it affects the feelings of the moral subject involving his remorse. It is derived, namely, from the awareness of a consciously rational being that he has violated in his activity the provisions of a moral norm. This is why it is said that that remorse is an autonomous and/or inner sanction applied bythe perpetrator of the moral norm to himself. In that sense it is autonomous ("self-legislative"), but as far as disposition of the norm is concerned, it somes from a heteronomous world of norms,since the moral orsm, as aleady said, is always a norm of the social rule of conduct. Otherwise, the remorse is a rather complicated psychological phenomenon composed of var-

ious elements of feeling, such as the sense of shame, fear, spiritual anguish, depression, helplessness, etc., amounting even to the one's owen condemnation because of lack of one's respect or indignity of man as a social being.

The second feature of moral sanction concerns the fact that it may appear, in addition to the above, in the form of didain or reprimand or pulic indignationof a given surrounding. This act is taken in several different permitted ways, such as announcement in mass media, corresponding treatment in public, butwithout resoroting to unlawful means, such as various forms of slander and psychical and physical violence or other similar acts.

In contrast to remorse, this sanction is the expression of external binding force of a moral norm. Each of these sanctions has its own source and way of application, while there are also cases where both sanctions affect the violation of moral norm.

In such a way, all these sanctions "pass judgment" and always stay between that which is called moral Good or moral Evil, moral splendor or moral indigence, moral enthousiasm or moral indignation.

Moral Capacity

In order to be able to act in conformity with moral norms and to bring autonomous decisions in terms of their morality and feeling of remorse, the moral subjects have to possess the moral capacity. This capacity is evaluated in each concrete case according to relevant circumstance sice it is indispensable to determine the actual condition of cosciousness of the moral subject. Relevant in this respect are all kinds of psychical condition of the individual involved. This is, naturally, always the issue of the concrete case at hand. In other words, the moral subject must possess the "moral sense" meaning that he must have the psychical property which enables him to reasonably perceive the effect of concrete acts that enter the field of a given moral norm. Consequently, one speaks here of the capacity of understanding and perceiving his or another's act performed through active conduct or by refraining to act.

Morality and Free Evaluation

Morality implies a specific degree of freedom of the moral subject in course of taking or performing a moral prestation. In fact, in order for a reasonable moral subject to be able to reach the judgment regarding to mo-

rality of a prestation viewed from the aspect of the principle of Good, he must possess a certain degree of freedom. This freedom is not any kind of freedom without limits but only the one free of pressures or violebce that could make his decision more difficult. In other words, the moral subjects must notbe a victim of deception, threat or pressure causing the shortcoming of his will. Along these lines,the free will ofthe moral subject is a prerequisite for makingthe adequate decision as expressed directly or through acts that imply his will. The freedom we are speaking of may of different kinds (existential, status, political, property and market, working or of other character); it also involves specific legal limitations through valid laws and practical tolerance preventing spepcific acts to infringe upon other people's equal freedoms.

Different Meaning of the word 'Morality'

Morality is the word with different meanings depending of specific space and time. The etimology of the word morality deals not only with its origin but also with the comparisonof moral orders. In any case, the value in the morality is the dignity of man.

Morality and Wider Social Units

As I have already said, the moral order is a free common denominator for all individual and social acts that express and enlarge the richness of life, the beauty of Good and the entirety of Justice. Among thesevalues, some include through their substance and wide scope a multitude of individual norms regulating the wider social units: dignity (implying the right to life), freedom, tolerance, culture of peace; these are the prerequisites for the realization of other universal values. All the above speaks about the mutual character and close relationship between the moral and the legal orders.

Relationship between Legal and Moral Orders

After exposing until now some of the characteristic traits of the moral order, it is now necssary to analyze the relationship between the moral and the legal orders. Law and morality are frequently compared in the rather rich literature witnessing different interpretations and opinions. The

opinions include strict separation between the two phenomena – separatist doctrines, then the various nuances relating to their mutual connection and specific theories of law viewed as the ethical minimum as well as those putting together the law and the morality into some kind of higher unity.

Ethical Minimum

According to the theory of law as an ethical minimum (formulated by the German scholar Georg Jelinek already in the second half of the 19th century), legal order must always include a certain minimum of moral norms as unconditional and categorical rules of social conduct. From the legal point of view, that "surplus" above the indispensable minimum amounts to some kind of "ethical luxury" which is not a legally relevant circumstance. Consequently, the morality is a higher order ad the law has to follow it if not in all its norms, then at leastto a certain degree that makes the minimum of morality.

In such a way, this theory, with its numerous followers even now, determines in a general way that "minimum" of morality that must be accepted by the legal order. Still, this theory failed to provide reliable and precise criteria for theelement entering that moral minimum.

It seems to me that the institute of public policy may provide in this respect a certainn assistance because it encompasses not only the compulsory legal regulations, but also the specific moral imperatives. In other words, should one coneive thepublic policy as a set of principles making the basis for the existence and permanency of a legally organised community, as expressed through specific legal and moral norms to be stgrictly respected by the parties in legal relations, then the ethical minimum theory, at least to some degree, makes itself concrete (for instance, prohibited object or purpose of a contract). All the above points to the possibility of using in this debate the analysis of certain number of legal insitutes and principles where moral element is particularly and unconditionally expressed.

Connective Tissue

In order to determine more precisely the relationship between moral and legal norms, in addition to significant theoretical conceptions, it is necessary todesignate and analyze rather concretely certain areas where moral norms are frequently not only the source of legal norms, but are their

connective tissue as well due to having specific principles or concrete provisions that refer to the application of moral norms. Only after analyzing these legislative realities we could determine the relationship between law and morality in its theoretical meaning. Along these lines, we are going to treat first of all the principles of equity, fair dealing and honesty, good usage, as well asnatural obligations; we will then continue by treating concrete solutions, especially in the field of the law of contract and torts.

Equity

We meet with the criterion of equity rather requently in the world of legal norms, both in the formof principles and in the form of specific solutions. In this sense, according to the existing 1978 Law of Obligations, equity is often specified as an element in decision-making process.

The above refers first of all to the matter of liability for damage caused to another by anther perpetrator. The Law of Obligations namely provides for the liability on the ground of *equity* in the case of vicarous liability. In that case thkis is the liability for the one who was responsible to supervise the person who has inflicted the damage.

In the matter of tort liability the equity criterionhas to be applied also in the case ofcompensation of non-material (non-property, moral) damage, where in case of death or serious disability of some person the court may order to the closest family members an *equitable* compensation in money to cover for their spiritual anguish. In fact, this is just one of the aspects of the general rule regulating the non-material loss in terms of which the court may adjudicate that equitable compensation. The prerequisites of such solution are the following: compensation should be based on the existence of physical pains and spiritual anguish suffered by the victim, reduction of his life activities, defacing and violating the dignity, honor, freedom and rights of the individual, death of a close relative and, especially, the intensity of pains and fear and their duration – which element have to be determined by the competent court.

Equity as the decision-making criterion is provided by the mentioned Law also in case of liability for motor vehicle accidents. Should this be the case of only one owner, the rules of fault liability should apply, but where the guilt is mutual, each owner shall be responsible for the entire damage they both have suffered in proportion with the degree of their respective liability. However, should there be no fault at all on the part ofowners, they

shall divide the liability is the reasons of *equity* would not require a different solution.

That rule is also provided for inthe matter of refunding the the payer in the case of several persons lieable for the same damage.

The equity criterion is also involved in the matter of liability for failing to render necessary assistance. The one who, without causingdamage to himself fails torende assictance to a person whose life or healt are obviously exposed to risk, shall be liable for it if he had to foresee it in the concrete circumstance, but, if *equity* so demands, the court may exempt such persons from liability for compensating the loss.

In addition to tort liability, the Law of Obligations provides for the equity criterion also in numerous cases of liability. Thus, as far as the matter of interpretation of contract is concerned, the Law provides a rule ordering the duty to inquire into the intention of the parties in conformity with specific legal and moral imperatives. In that case the unclear provisions of the contract without consideration should be interpreted in favor of the debtor, while in the case of contract with consideration the criterion to apply should be the *equitable* relationship of mutual prestations. What is the equitable prestation of mutual prestations shoukd be assessed by the court by applying the general principles of the law of obligations as specified in the mentioned Law. Clearly, the equity criterion here as well does not mean any arbitrariness because it is connected with certain general principles among which the principle of equal values of mutual prestations is the one which is relevant.

The equity criterion is taken in consideration also in the case of possible rescission or amending the contract due to changed circumstances (hardship), but only in the context of some objective indicators. Thus, a contract may be rescinded or amended due to the above ground only where, due to general opinion, it would *not beequitable* to keep it valid. The contract will not be rescinded should the other party offer or accept the *equitable*amendmentc of the corresponding terms and conditions, or, should thecontract be rescinded, the court shall, at the request of the other party, condemn the party who caused the rescission, to compensate the other party the *equitable* part of the damage suffered due to such action.

In addition, the notion of *equitable compensation* is provided for by the Law in other cases of contractual liability as well, i.e.: should a contract of construction be rescinded by the orderer, he shall be obliged to pay the operator a corresponding share of the stipulated price to cover the already performed works, as well as an *equitable* compensation for the already in-

curred expenses. In the case f a contract of order, unless otherwise stipulated by the contract, theorderer shall owe the usual amou nt of compensation, while should there be no stipulation, the compensation should be *equitable*. In the case of commission contract the Law provides, where the concrete compensation is excessive in proportion to the job performed or the result achieved, that the court may, at the request of the interested party,reduce to the *equitable* amount that compensation. The same ruleapplies also to the contract of commercial representation. In the case of general conditions contracts (adhesive or formulaty contracts) that are determined by one of the parties, the court may deny the implementation of concrete general terms and conditions that deprive the other party of the right to raise objections or otherwise make him losing some other rights relating time the limits as well as other terms and conditions which are *not equitable*. Finally,there is also a provision in the area of public promising a reward according to which several persons meeting the requirements at the same time are entitled to the equal share of the rewaurd, unless *equity* demand otherwise. The usury contract with all the well-knon elements of such type of unlawful contracts is also subject to the criterion of equity.

Good Faith and Honesty

In addition to equity, the moral duties are particularly present in the principle of fair dealing and honesty which, lately, has been expressed also in many respects and concrete forms. This, in conformity wth the Law of Obligations (the 1978 Law of Contract and Torts), the principle of fair dealing and honesty is expressed in the following words: in establishing obligation relations and realizing rights and duties out of these relations, the parties shall adhere to the principle of good faith and honesty.This same formulation is also used in the 2009 first preliminary Draft Civil Code of the Republic of Serbia which is completed by another paragraph reading as follows: the parties may not exclude or limit this duty. This means that the good faith and honesty principle, as a moral norm, was accepted by the legal order as well, as an imperative (*ius cogens*) which, naturaly, involves corresponding legal consequences.

Speaking of making the principle of good faith and honesty more concrete, I am going to mention several relevant examples. According to the Law of Obligations a contract may be used also as an instrument of extending the liabilityof debtor to cover the case otherwise not falling in the sphere

of his liability; however, applying that provision may not be claimed should it turn out that this could be contrary to the principle of good faith and honesty.

The principle of good faith and honesty is included as well in the matter of rescission or amending a contrat due to hardshi (i.e. the situation ofchanged circumstances). In other words, in deciding on the rescission of contract or on its emening, the court shall consideralso the principles of fair trade, and especially the purpose of contract, the normalrisk involving this type of contracts, the interest of general public as well as the interes of both parties to the contract. The parties may renounce in advance by contract their right to claim hardship (changed circumstances), but only if that would not go contrary to the principle of good faith and honesty.

Making concrete this principle may be found also in other specific (nominated) contracts, which is the case of mediation contract where the orderer may revoke at ant time his order for mediation (if he did not renounc it in advance) and provided such action was not contrary to the good faith. One may also mention its implementation in the matter of conditions as well. According to the Law of Obligations, a contract is deemed concluded under condition where its origination or termination depends on an uncertain fact. However, it is considered that such condition did happen where its realization was prevented through violating the principle of good fait and honesty on the part of the party whose duty was specified but was not realized by violating the principle of good faith and honesty by the party who was specified as the one deriving benefit from the contract.

Finally, the principle of good faith and honesty is applied also in the process of evaluation of good faith of a person when such determination is relevant for taking place of numerous legal consequences, among which the duty of compensating damage is the primary one. This, one party may claim the compensation of damage suffered due to entering into contract that is no legally effective because the given legal entity has concluded it outside of its legal capacity. In the case of annulment of contract due to misunderstanding of its purpose, the other partry acting in good faith is entitled to claim compensation of the damage suffered. In the sphere of consequences of the annulled contracts and application of corresponding sanctions, the court particularly takes in consideration the good faith of the contracting parties; it also considers the importance of the value exposed to risk as well as the moral conceptions of the given environment. The objection of apparent existence of a contract may not be raised against a third person acting in good faith. In the matter of acquiring property without a valid ground, the

acquirer shall be entitled to compensation of indispensable and appropriate expenses, but if he acted contrary to good faith such compensation shall be restricted to appropriate expenses only to the amount representing the increase of the value at the moment of retruning the object of contract. In the matter of cession, the party making it shall be liable for sure payment of the ceded claim – where this was stipulated in the contract – but only to the amount of the sum he already received from the one receivinbg the ceded claim, as well as for sure payment of the interest, costs for making the cessio0n and costs of the procedure conducted against the debtor; it is important also that a higher liability of the one making the cession, if he is in good faith, may not be contracted.

Good Usage

In addition to equity and the principle of good faith and honesty, the Law of Obligations, in an effort to correct, through real relations in the practice of life, the strict formal legal application of norms, provides also for the possibility of applying good usage, i.e. god trade customs. The Law does that, first of all, through provisions containing the basic principles, and than correcting them in many an occasion.

In this sense, in the matter of general conditions determined by one party, the Law provides for the nullity of provisions of general conditions that are contrary to the very purpose of contract or to good trade customs, even where such general conditions are approved by a competent agency. In this way the Law protects the contracting party acting according to contract – usually a party weaker in economic terms. Sometimes the Law refers to the implementation of good usage of profession for instance in matters of catering, i.e. of contracts for engaging catering and hotel capacities (allotment contract).

Usage in the Sphere of Legislation

The application of customs and usage is provided for in the Law of Oblgations in several matters of its regulation. Thus, in entering into contract the Law provides that display of merchandise with a price indicated shall bes connsidered as offer, unless otherwise follows frome circumstances of the case or usage. A proposal to conclude a contract made to an unspecified number of persons and containing essential constitutive ele-

ments of contract envisaged by the proposal, shall be valid as an offer, unless something else follows from circumsytances or usage. Should contracting parties, after reaching agreement as to essential constitutive elements of contract, leave out some secondary points to bedecided upon at a later time, the contract shall be considered concluded, while shuch secondary points – should theparties themselves fail to reach agreement thereof – shall be regulated by the court, which shall consider the preliminary negotiations, the established practice and usage. The application of usage is also provided for by the Law in the matter of accepting an offer as well as in thematter effect of an offer in the case of death or incapacity of one of the contracting parties. In the case of matters of validity of identification papers and marks the Law provides for the relevance of common intention of the issuer and the one receiving the issued documents, as well as the relevance of usage. As far as monetary obligations are concerned, in the case of performance prior to the deadline specified in the contract, the debtor shall be entitled to deduct from the amount of debt the amount of interest for the difference in time, but only after being so entitled by contract or usage. In the case of trial purchase, should it be stipulated that a buyer is taking the object on condition that it be tested as to being suitable to his needs, he shall be bound to notify the seller accordingly within the time limit specified by contract or usage, and should there be no such designation or usage – within a reasonable time left to him by the seller. In the case of contract of lease, the payment of rent shall be effected within the time limits specified in the contract or law, while should there be no such designation, within the usual custom as prevailing in the place the object has been handed over to the tenant. The duration of such time limits in the case of that contract may also be determined by applying a logal usage, which applies also to the matter of assessing of whether the relevan object has the appropriate features. Finally, joining the long list of contracts for various kinds of services, the Law of Obligations provides fo usual compensation as a rule of supplementary dispositive nature; this is for instance the case of transportation contract, contract of commercial represention, that coverin mediation, control of merchandise and services as well as the contract of travel oprganization.

Fair Usage and Public Policy

As far as fair usage (*boni mores*) are concerned, one should mention that they are, in terms of many of their features, in fact moral norms and

that, in addition,they enter in to concept of public policy. Making research into the concept of fair usage and public policy and the role they perform in legal systems means having a much wider perspective of the complex of issues of the influence of certain meta-legal norms on specific legal institutions. The crucial matter here is the relationship between the legal and the moral orders, the releationship toward the established rules of conduct in general, and more particularly the rules of conduct in the area of so0called business relations. Attaching points relating to these rules with the legal norms, or even with their transformation into moral norms, is an obvious phenomenon in concrete legal situations.

Fair usage, as rules of social conduct, that are formed in a given environment and that are reproduced in such a way as to become in the minds of people the imperatives,bring with them the imrint of all these principles that serbe as a basis for the organization of a community. However, if the violation of fair usage id followed by a legal sanction (of any kind, such as nullity, compensation of damage, punishment), then these rules of conduct do enter into the world of legal norms. Due to thefact that mentioned principles are in the process of change in course of time and in terms of space, the definition of fair usage too, has to express their relaltivity and/or possibility of change, adaptation and even transformation in conformity with changed social needs and requirements. This, namely, is not an institution characterised by the *numerus clausus* but, on the other hand, it mustot be uncertain and escessively undefined since that would entail an attack on legal certainty. It is therfore necessary to coordinate the general character, polivalence and flexibility of a "caoutchouk" norm with certain dose of legal certainty that must be counted with by every legal order.

In fact, fair usage which enter into the concept of public policy are only one of the aspects of public policy. This is indeed an institute which in terms of its attributes amounts to a specific and rather important phenomenon of life of society. Its component parts, although somewhat heterogeneous, still make the entirety with the existing structure, being especially dominant through the following points: a set of specific social and legal principles;manifestation of these principles is taking place through specific social norms; the relative value of that institution depends on the elements of time and space; the application of the institution of public policy must not put in danger the principle of legal certainty.

Fair usage as one of the factors of the institute of public order represent a cummulative and a genus notion covering all customary rules appearing in certain areas of social and economig life. In various areas of

that life there exist fair usage that are specific and applicable in such areas. Thus, for instance, there are customary rules in areas such as catering business and hotels, tourist trade, construction, maritime activities and the like. Within that series of specific fair usage they manifest themselves, first of all, in the area of trade in goods and service where they are rather frequent in practice. Due to that they are also called trade or commercial usage.

Consequently, one could say that fair usage represent the rules of conduct that, through their long implementation, form in the minds of business people specific norms which competent agencies, by applying theinstitute of public policy, may take as a legally relevant criterion.

This means that not every business customary rule is also a fair usage; such may become only those which meet the necessary public policy requirements, i.e. the mentioned general principles that make the basis of every legally organized social community. Should some business usage be not viewed through the optics of public policy, an inadequate customary rule could enter the pores of social and moral orders. On the other hand, should there be no such optics, a court or some other competent agency would take, at least partially, the role of legislator. In other words, a competent agency would take over a social rule of conduct (not supplied with legal sanction) and give to it, in the procedure of evaluating the validity of a concrete act, a corresponding legal sanction. However, should such agency, within the same procedure, apply the institute of public policy, it does not create the law by such action, because its only duty is to apply the law. To be true, in this case we speak about a rather elastic norm, but still, it remains a legal norm.

Each of the above mentioned usage, including trade usage, expresses specific traits characteristic of a specific line of business, but all of them are connected by an imperative in terms of which they must be *fair* which feature they may acquire only after being viewed and assessed from the angle of public policy.

Natural Obligations

In addition to the above, the relationship between lad and morality in the context of their mutual influence may be observed in other areas of the law of obligations as well; this applies also to areas of civil law as well as of some disciplines of public law.

If we remain for a while in the sphere of obligation law, than we would be obliged to point out at the effect and legal character of natural obligations as well as at the rules of acquirement with ground. Namely, in terms of the Law of Obligations, the performance of certain natural obligations or certain moral or social duties may not be requested on the ground of acquiring without ground (unjust enrichment). In other words, should someone has paid a debt in spite of its being barred by lapse of time as "a debt of honor", it shall be considered that he has just fulfilled his duty, so that he shall not be entitled to claim the restitution. This rule introduces us in the area of civil and natural obligations that are at the same time based on both legal and moral norms. This is the reason they deserve our closer attention.

Civil obligations are the type of obligations possessing the right of compulsory execution to be effected by court. A creditor in this kind of obligation is entitled, just as all other creditors, to file an action with the court requesting the realization of his right protected by the threat of compulsory execution over debtor's property. With these obligations there exists, namely, that direct legal sanction that separates them from other kinds of social relations. Since this is a primary and a crucial feature of an obligation as a legal relationship, the question arises as to whether there is any obligation at all without such legal sanction.

A certain number of obligations are not coupled with a direct legal sanction in terms of being apt to be realized by addressing the court to order compulsory execution; this however does not mean that such obligation remains without any sanction. Exactly due to that different character of sanction, these obligations are classified as a separate group. They are the so-called natural obligations which do not possess the element of their compulsory execution, but should the debtor voluntarily fulfils such obligation, he will not be entitled to claim the restitution of the amount he has paid. It is, namely, considered that he has performed something he was under a moral duty to do.

The creditor, consequently, shall not be entitled to request through court the fulfilment of such obligation (he does not possess the right to file an action with the court in the substantive sense of the word) since such obligation is deprived of the usual legal sanction – but, to be true, not of every sanction. If one does not consider the moral sanction characteristic of that type of obligation, it is possible to conclude that natural obligation is not without any protection by the legal system. The natural obligation law, namely, in contrast to the civil one, still has some traces of legal sanction, although expressing only an indirect interest of the law for it. Here again, as

one can see, like in many other cases too, practical life and legislation reality point at the mutual effect of the legal and moral orders.

Theoretical explanation of natural obligations has produced various conceptions of this particular matter. As the most important ones, it is necessary to mention the one looking atnatural obligation as an imperfect civil obligation (the so-called theory of imperfect civil obligations), and the one which regards them as obligations with moral duties (the so-called moral duties theory). Accepting one or the other theory determines, among other things, also the scope of the circle of appearance of natural obligations. There is no general provision covering the natural obligations in our Law of Obligations, but it mentions them in various places. First of all they are mentioned in the section of the statute of limitations relating to claims where there is the above presented definition of the principle of natural obligations.

Synthesis of the Harmonious

The nature of natural obligations reveals to us, in fact, an area of a rather lively and dynamic penetration of the legal order into the moral one and *vice versa*. We encounter in that area the legal obligations without a compulsory element and also the moral imperatives. Legal norm is under a constant attention of the moral law-maker, i.e. the one they were derived from. There is that synthesis something *harmonious* and *rational*, something that *strives* to respond to the requirement of equity. Why we would therefore cruelly separate these two levers of social life. It seems, contrary to that, that we should find out means which could make them even closer together. In short, speaking of natural obligations, we do think that the well-known institutes of public policy and of fair usage should be a bridge connecting the two separate theories.

Qualified Moral Duty

In order for a moral duty to become a natural obligation it is not enough that it, as such, should be an expression of subjective feeling. The moral duty must be accepted by the social environment as something objective and permissible. This concerns, first of all, the moral principles that make the basis of an organised society, permeating it up to the every pore. They enter in the minds of people as imperative rules regardless of the way

of their manifestation: through written legal norms or oral ethical codes. They protect the general interest of society in a given period of time, so that individuals have to respect them in their relations.

Such principles make the substance of the institute of public policy which represents in the hands of court an important tool in the procedure of application of general norms to specific cases. The question as to whether a specific duty is a moral one and whether it represents a natural obligation must be answered by the court after previously inquiring into its conformity with public policy. In such a way the individual arbitrariness is adequately eliminated from the assessment of the character of a given obligation, showing thus that public policy makes stringer the assessing criterion.

On the other hand, the public policy extends in a way to field of application of natural obligations as compared to the imperfect civil obligations theory, attenuating in such was the corresponding criticism. The institute of public policy, as a legal category, is made at the same time with legal and moral principles, so that it may be rather useful as the "optics" in the hands of court which always has to look at various duties in order to qualify them properly bearing in mind the duality of their moral and legal elements.

The Power of Compulsion

The influence of moral norms on the legal order may be observed also in the matter of contract as an act of moral and legal civilization. Te entire history of law and morality is here to prove that every encounter of two intentions in the sphere of contract has always moved in the spaces of these two worlds.

Every intention of two wills in order to mutually reach the degree of exigency must be followed by some kind of power of compulsion. Such compulsion may be heteronomous, external (*ad alterum*) and prescribed by the power of legal norm, while it may also be autonomous (*ab agenti*) and persuasive in terms of condemnation by the social environment and/or remorse.

Consequently, the intention, the will, of contracting parties, without the power of compulsion – legal or moral – is not apt to create a contractual duty. I may only give rise to a situation, to create a fact in the external world which, *ipso facto,* entails a legal or moral sanction that becomes effecting in the case of failure to perform a given promise. In other words, there is no

outside the moral and legal compulsion any other ground for the feeling of responsibility to keep the word that has been given.

After these two powers of compulsion are concurring and are expressed in the way of juristic dogmatism, we are in the presence of a high degree of adequateness of the legal norm in relation to the moral factor. Then, a compulsory legal norm simultaneously expresses both the moral imperative achieving thus their integrity Along this hypothesis, the awareness that a contract has to be performed and that the word should be kept firm are based on a legal norm as "an ethical maximum", so that further conduct of the parties is effected and assessed according to that united duality of compulsion.

However, where a legal norm departs considerably from the moral life and supports with its weakened sanction the performance of contract, then a conflict is created in the minds of contracting parties between the legal and moral element, a conflict that may degenerate in circumventing the law the law and failing to keep a word that has been given.

Should such legal norm still have a certain "minimum of morality", its function still does not have to be eliminated from the stage of law. However, where the discrepancy between the legal and the moral norm of such a nature as to provoke "a rebellion of fact against the law", we are speaking of the crisis of law and legal order that may have rather various outcomes.

Consistency

As one can see, respecting one's words given in a contract, which means its performance of lack of performance, depends to quite a degree on mutual consistency of legal and moral orders. Where this consistency is within the limits of social tolerance, then we have the firs sign of a legal system that is apt to ensure the rule of the principle of legitimacy and legality; departing from that point toward a state ruled by law is thus rather easy to effect.

Pacta sunt servanda

When the principle of general legal certainty, as an attribute of legitimate and legal system of law, is applied to the law of contract, we are reaching the *pacta sunt servanda* principle in terms of which the contracting parties are under a duty to perform their obligations and are responsible for the

failure to do that. Consequently, the issue of performance and/or failure to perform the contract in a legal system is not an accidental phenomenon; instead, it depends on the stability of legal and moral constitution of a given environment.

In other words, if a social system ensures a high degree of social, economic and legal certainty, then the *pacta sunt servanda* principle as well is positioned on that same degree. On the contrary, where there is no such certainty and where legal and moralinstitutes suffer a crisis or reach a degree of disorganization, then the same destiny is experienced also by the matter of execution and/or failure to execute a contract. The faith in the power of legal and moral compulsion declines and contracting parties behave in a *mala fide* fashion – which is disastrous from the standpoint of the legal and moral orders.

Perhaps all what has been exposed until now relating to general issues of the law of contract, as observed by the theory and practice of the past and of the present, is sufficient to make the following conclusion: performance of contract is a legal and a moral act; as such it shares the destiny of the entirety of legal and moral orders in every social community.

Stable Contract

Should this order be historically determined, constructed and stable, should its norm be based on a necessary degree of legitimacy, and should this norm be implemented in conformity with the principle of legality – then the performance of contract is effected in a safe way and according to rules provided for in advance.

In fact, in a stable state ruled by law, the contract is also stable which includes its performance as well. Social, economic and legal certainty, as inherent in every state ruled by law, represent a wider context of social conditions where the principle of *pacta sunt servanda* assumes its genuine place and its full meaning.

On the contrary, should conditions of crisis of law and morality prevail, including unstable economic relations and social and legal uncertainty perceived by public opinion, the contract and its performance too, may not be guaranteed.

Where, consequently, legal and moral sanctions that ensure the fulfilment of contract are suffering the general crisis of social institutions (lost or considerably disturbed connection between the system and the social in-

tegration of institutions), the contract becomes deprived from the compulsory power and is left over to arbitrariness of contracting parties. In an atmosphere of constant lack of certainty and general disorder there can be no order and certainty in the matter of performance of contracts conceived as an individual act. In such a situation one can not expect assistance either from the *pacta sunt servanda* clause or from any other legal remedy whose purpose is to protect the principle of equivalent exchange of values. The contract is then exposed to elementary powers and total arbitrariness which eliminate the contractual act from the stage of law and morality. Consequently, the principle of *pacta sunt servanda* as well may have its adequate position and its genuine meaning only in a state ruled by law.

Three Concluding Words

At the end of this Introductory Address by which the work of this Twenty fifth annual conference of dedicated participants of the Kopaonik School of Natural Law is opened, permit me, respected colleagues, while following the fair usage, to address to you the words of a general conclusion. This may be done mainly in two ways: by reproducing principal conclusions made in the analysis of specific issues relating to the relationship between law and morality, or by expressing a general thought that resulted from the complete elaboration of that wide theme which has survived all the past centuries. I am in favor of the more difficult approach – to give a most general conclusion, and here it is:

– Legal and moral civilizations, united in a harmonious entirety brought to us by the rational conception of Natural Law, paves the way for applying the three ancient commands: to live honestly, to refrain from insulting a fellow man, to recognize to everyone his due.

– The beauty of Good and the force of Justice and Truth bound together with the total tolerance, as expression of spiritual freedom and the culture of reason, and integrated in the system of Just Law, are the only factors that may save the world from the cataclism of past and oncoming anti-wisdom.

– This is why the immortal spirit of rational natural law must never be extinguished, and with it also the *Universitas iuris naturalis Copaonici*.

MESSAGES

At the concluding plenary session held on 16th December 2012, 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 a general support.

I – RIGHT TO LIFE

1. Life

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

1. Life of man represents the most important value of both the individuals and the society in general and this fact makes it to be a fundamental human and natural right. As such, it was proclaimed in numerous international acts covering human rights and provided for in the constitutions of many countries, including our own Constitution. For the purpose of realizing the implementation of that principle it is indispensable to make safe its full legal protection that has to be put into effect in many a branch of law through the procedure of criminal-law protection and implementation of its provisions.

2. The protection of the right to life is not provided at the national level only, but at the international level as well, particularly as far as the most serious forms of it are concerned, such as war crimes, crimes against humanity and the like. In order to precede such kind of crimes the international law has established also specific courts, and one of them is the so-called Hague Tribunal. Although its work is the subject of rather controversial and even diametrically contrasting opinions, the analysis of relevant statistical data of decisions issued by that Tribunal points at great disproportions in condemning the nationals of different countries – participants in war time activities in the areas of former Yugoslavia. This fact raises serious doubts as to Tribunal's impartiality.

3. Murder is the most serious form of infringing upon the right to life. Our criminal legislation provides for different forms of that criminal offence – beginning with the most serious ones such as serious murders committed out of base motives or murder of a family member, and up to the less serious, the so-called privileged forms as the murder at one draught. Such system of incrimination in our criminal legislation covering the whole series of criminal offences makes possible the different approaches as reaction of society to this kind of delinquency where also the correct interpretation of relevant provisions is a significant instrument in carrying out the penal policy of courts and thus advancing the protection and affirmation of the right to life.

4. Although it is now widely accepted that the right to life includes also the right to death, the suicide is still an exceptionally negative social phenomenon which was intensified lately in our society out of many different reasons. That is why this phenomenon has to be suppressed by all available means, including even those from the criminal law sphere.

5. In protecting the integrity of life and body of people, the element of protection against various forms of violence which, among other things, may be manifested also as a criminal offence of violent behavior. However, its insufficient and inadequate application in criminal prosecution gives rise to the need of making clearer the corresponding legislative definition of notions relating to the elements of that criminal offence.

6. The activities of security services, and first of all of police, have a double influence on the right to man's life:they primarily protect the man, but in some situations they may put him in danger as well. It is therefore necessary to precisely define their tasks and powers, especially in the area of using the means of compulsion, so that exposing to risk of the right to life is

reduced to the minimum, at the same time making possible the realization of functions these services should perform.

2. Health

Prof. dr. JAKOV RADIŠIĆ, Belgrade
Dr. HAJRIJA MUJOVIĆ-ZORNIĆ,
Senior Research Associate, Institute of Social Sciences, Belgrade

1. The right of patients deserves particular attention due to the fact of current discussion on enacting a law on protection of patients' rights. One of the basic rights in this respect is also the right to another opinion so that it should be included in the text of the existing draft law, the more so since it has already been incorporated in the Code of professional ethics of the Medical Chamber of Serbia. The right to request another opinion should belong both to the patient and the physician.

2. The legal regime of using human organs in medical treatment is under the risk of some kind of commercialization of that activity. This points at the need of such regime to be entirely cleared up which include even the liberal solution – all in order to prevent any misuse and prohibition otherwise specified as illegal trade of human organs in corresponding documents. Approach would also introduce equity and equality in the medical treatment of this type. The effect of transplantation in Serbia could be made more efficient by introducing in the system of donation the simultaneously connected statements regarding the right to be a donor and the receiver of organs.

3. Basic criteria in considering the issue of euthanasia are the intention of the patient who makes such request and the qualification of the one affecting the act of euthanasia. It is traditionally considered that passive euthanasia is permitted under certain conditions, while the active and direct one is not permitted and amounts to a criminal offence. However, looked from the moral aspect, there is no difference between these two kinds of euthanasia and this should be taken in consideration in trying to rich the adequate legislative solution. These notions are not sufficiently cleared and this fact is visible also in the current discussion on draft law on patient's rights That is why it is necessary for them to be finally defined as best as possible.

4. Biometric ethics in the research of human body should be based on the well-known ethical principles such as: scholarly level, justified reasons, equity in the approach, independence, voluntary character and benefits. Every one of these principles should be respected and especially the principle of equity, both from the standpoint of individual and that of the society, because in this way the medical research may become also legally permissible. These issues are relevant also in the context of relationship between the research ethics and the medical law, at one hand, and the need for advancing the work of ethical committees.

5. In the sphere of globalization of clinical research, the terms such as "bioethical colonialism" and "moral imperialism" warn us about the need to have in mind the intensification of control and the advancement of work of the ethical committees, especially in the current process of inquiring the matter of their functioning in Serbia.This fact points at the differences between the countries in terms of resources of health-care systems and, through that, in the rights of individuals in such medical procedures. Quite often the lower research costs or the circumstance of impossibility of other kind of medical treatment become crucial in indiscriminate and groundless acceptance of research without apppropriate criticism. It is necessary to empower the Ethical Board of Serbia with greater competences viewing it as a relatively new body, now approaching the end of its first mandate.

6. The area of work of the Agency for Medicaments and Medical Means includes numerous administrative competences but, looked from the aspect of medical law, and/or rights of those using the medicaments, the most important are the ones called pharmaco-vigilance, i.e. monitoring the unwanted effects of medicaments. Serbia should conform to high standards that are provided as rules by the Center for Cooperation and International Monitoring of Medicaments under the auspices of the World Health Organization.

7. In the sphere of health protection Serbia should meet all relevant obligations specified in the Medical Health Code of Rules – a document of the World Health Organization relating to suppression of contagious diseases. Important role in this respect pertains to the National Communication Center as well as to the public health regional institutes.

8. Legal aspects of protection of mental health of people are still not adequately solved through legislation in Serbia and the corresponding public debate is currently on concerning the draft law that is going to cover this specific matter. As far as this context is concerned, it is necessary to support solutions that advance patient's right, coupled with strict exceptions (the

limit of the principle of agreement, keeping in the institution, compulsory medical treatment in thehospital, and the like). Additional protection is also needed of vulnerable groups as well as the rehabilitation more adapted to individual cases of patients with mental disorders. It is also indispensable to reform, reorganize and ameliorate the work of the network of psychiatric services that should be based on contemporary psycho-social principles, permanent education and strengthening of patients' associations in the civil sector – and all this in concordance with international standards. The strategy of the Government of Serbia relating to development of protection of mental health should be supported, but also advances its implementation.

9. As far as criminal responsibility in the sphere of medicine is concerned, a distinction should be made between criminal offences that could be committed by failing to act only, the corresponding example being the failure to render medical assistance by the physician where there is no medical treatment, while, on the other hand, the negligent rendering of medical assistance may be effected, first of all, by acting, but by failing to act as well. That is why these two criminal offences are distinguished through the element of commission between "a genuine" and "a pseudo" commission. This distinction is rather important in order to make a proper legal defining.

10. In the field of civil law liability the notion of physician's (medical) mistake was created by judicial practice (*Behandlungsfehler*, medical malpractice), which is indeed a specificity of medical law. Still, introducing the concept of mistake (fault), or also the legal-theoretical analysis of criminal responsibility is considered superfluous, especially from the point of view of the conception of the notion of guilt. The characteristics of litigation procedure of cases of compensation of damage caused by physician's fault are first of all manifested in determining the existence of fault as a damaging action (which is either a classical fault in the sphere of medical profession or a negligence in treating or informing the patient); another characteristic is the reversed burden of proof depending on the kind of fault and, finally, the liability for fault. The practice of courts in this area should be continuously monitored and made to be based more by the medical law principles.

11. These messages should be added by the earlier ones, especially those relating to the advancement of studies of medical and pharmaceutical law branches, to better cooperation between different branches of law, but also to their cooperation with medical doctors and associations of patients in the civil sector. This is necessary in order to make the sphere of healthcare more efficient through the conception of transparent rights and duties and making adequate advancements in the area of education.

3. Ecology

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1. In international conferences and symposia in course of 2012 a concept of planetary border has been created which, in addition to the existing notion of sustained development, represents now a key turn in international law treatment of climatic changes and preservation of eco-systems. This concept leads to the integrated global institutional framework in the sphere of environmental protection and makes actual in a proper way the moral imperative at level of further survival on the Planet Earth. Along these lines it is necessary to render support to the idea of establishing a Commission on Planetary Borders with the task of preparing a Convention on Planetary Borders, together with a Declaration on Planetary Borders. This kind of conception has been anticipated by the Section "Ecology" in our reports in the nineties of the 20th century which appropriately confirms the creative spirit of the Kopaonik School of Natural Law.

2. It is indispensable to enact in the Republic of Serbia a Strategy of Struggle against climatic changes, together with the Action Plan that would determine the limitations and/or reduction of greenhouse gases. Another priority is also the creation of mechanisms for monitoring, informing, considering and verifying the emission of greenhouse gases as well as taking measures of adapting to climatic changes, especially in the sector of water management.

3. Support is expressed to recognise eco-destruction ("ecocid") as a criminal offence against peace by adopting the Statute of Rome since this type of crime endangers the right to life. Also important is the protection of high values such as: inviolability of life directly affects the finding of solution as to how to establish in terms of law the obligation of preserving the Earth.

4. It is necessary to support at the international level the initiative for adoption of the UN Universal Declaration on the Right of Mother Earth.

5. It is also necessary, both an national and international levels, to take all legislative, administrative and judicial measures to support and apply the new model of legislation covering the crime against environment as we le-

gal framework for defining the elements of that crime and for the obligation of the State to provide for the following: protection and preservation of the Planet Earth against multinational and international exploitation of its components, including the consequences of global climatic changes; promotion of peace and elimination of all nuclear, chemical and biological armaments and facilities for mass destruction; ensuring of long-term energy sovereignty, increased efficiency and gradual inclusion in the energy matrix of clean and regeneration-capable alternative sources of energy; development of balances form of production and consumption and switching to green economy which is an indispensable condition of the sustainable development of society.

6. Also supported is the idea of establishing an International Court for Human Environment that would proceed by applying international law, the environmental cases. Although the practice of the European Court of Human Rights is rather rich in the area of environmental protection, that Court is primarily proceeding the cases of human rights violation guaranteed in the European Human Rights Convention and not the cases belonging to the issues of environment. The introduction of a specific substantive law provision to cover precisely that right would mean to recognize the essential traits of human environment as the fundamental condition for the survival and for the life, as well as to promote human dignity and welfare, including the exercising of all other human rights. In addition, this would make possible the creation of a unified curt practice.

7. The right to a healthy environment as specified in the Constitution of the Republic of Serbia is more than a proclamation but less of an effective and realizable right. That could be achieved by making concrete and specify a norm that would provide for the responsibility of State for preserving, protecting and ameliorating the quality of environment, as well as respecting private and family life and home, including the duty of preservation, protection and advancing the environment, and more particularly of the air and waters as principal determinants of health. By introducing amendments to the Constitution of Serbia in terms of efficient realization of high-level protection of the guaranteed right, it would become possible to make environmental protection a priority of Serbia as one of the future members of the European Union. The existing state of affairs in the part of State administration dealing with environmental protection requires, as an imperative, the carrying out of the reform and the rationalization on the ground of functional analysis (vertical, systematic, and horizontal).

8. With the purpose of establishing a rational and efficient institutional framework in the field of environment, in conformity with the National Strategy of the Republic of Serbia for approximation in the sphere of environmental protection, it is necessary to consider and redefine the jurisdiction of State agencies in the sphere of environmental protection and managing natural resources. The same applies also to the Environmental Protection Agency, while the goal in both cases should be the implementation and application of regulations in this particular area as well as successful use of financial means of the European Union available for the above purposes. Along these lines it is indispensable to revise the laws and other regulations in the sphere of environmental protection from the aspect of functioning of the already established systems of management and/or from the standpoint of amending these laws in order to effect objectives relating to sustainable development andrelating a free economy (for instance, the protection of environment, nature, air, waste disposal, packaging material and the ensuing waste, chemical matters, biocid products and the like).

9. It is necessary to speed up the process of enacting the Law on Efficient Use of Energy since this is rather important in the sphere energy efficiency.

10. For the purpose of protection from noise and vibrations it is indispensable that competent State agencies in the Republic of Serbia, in the autonomous province and in the local self-government units, as well as in other relevant entities, be empowered by law to permanently monitor and control the intensity of noise and vibrations produced from specific sources. In such a way they could take appropriate and timely measures in order to reduce noise and vibrations and/or make them conform to supportable limits. At the same time it is necessary to follow up and complete the national legislation in the matter of noise and vibration protection as well as the regulations relating to various kinds of transportation activity.

11. The new legislative framework covering the organic production of food in the Republic of Serbia is made consistent with the current regulations of the European Union and thus ensures the exports orientation of the Republic of Serbia which is interested for foreign markets of food and agricultural products of the country. From the standpoint of World Trade Organization it is indispensable to reconsider the inconsistent solutions existing in the Law on Genetically Modified Organisms, and the Law on Food Safety, in terms of production and trade in genetically modified food and/or application of restrictive measures that would make possible the assessment of risk and strict control of these products. Establishing a system of deter-

mination or monitoring the influence the GMO have, or might have, on the health of people in terms of organization, requires a special organization that would be competent for collecting data on users of the GMO products and their health condition. Also necessary in this activity is an Expert Council responsible for the assessment of risk in the sphere of food safety.

12. It is also indispensable to amend the Law on Protection of Personal Data in order to create the legal ground for regulating the matter of collection of data significant for research in the areas of social sciences and humanities.

4. Sport

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Dr. HRVOJE KAČER,
Professor, the School of Law, Split

1. The sports law as a relatively young legal discipline is becoming from year to year an ever more important subject. The number of international and national pieces of legislation and other regulations are increasing and, parallel to it, there emerge numerous legal problems in the implementation of norms which, due to substance of the matter they regulate, are becomng more and more complex.

2. Legal systems of various countries at the beginning of the twenty first century recognize and respect as a social reality the law of sports and a multitude of regulations that make it, while the substance of the existing legislation regulating the matter of sports witness to the attempts of states to protect social values the sport is bringin about and promoting.

3. Improper behavior in the area of sports, and first of all the use of doping in the sport, violent behavior at sports events, improper arranging of sporting results, misuse of sportsmen and numerous financial malversations at theoccasion of organizing sports activities more and morethreatento destroy sport as a social value and a legitimate and desirable human activiy. Consistent, equitable, regular and unified implementation of legal norms aimedat strugglingagainst such negative phenomena is the only way for trying to solve these problems.

4. The problem of overlaping of competences of the State, i.e. between judicial and administrative agencies and sports organizations in settling disputes relating to application of legal norms regulating the sporting activities are more and more conspicuous as well as frequent, so that problem should be solved by reconsidering, by corresponding commissions and international sports organizations, the former decison-making practice (settling controversial situations). Decisions of these bodies in recent years have been rather controversial or at least disputable,as viewed through the optics of their legality and conformity to general legal standards, basic human rights and provisions of relevant national legislations.

5. Victimological aspects of violence in sports, and particularly the violence at sport events, are still the matters not yet properly studied and explained. Consequently, these aspects should be inquired in order to find out and use a clear and more specific methodology relating to the number and structure of victims that are put in danger due to such violent behavior in the sphere of sports.

II – RIGHT TO FREEDOM

1. Criminal-law and Procedural Protection of Personality

Dr. MILAN ŠKULIĆ, Professor,
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1. It is necessary to pay particular attention to the acts hat represent restriction of human rights and freedoms in the sphere of criminal procedure. Particularly important is that temporary arrest (custody) be not ordered as an excessively routine matter and without impartial insight to the possibility that it may be substituted with less severe procedural measures. Support is extended to amending the Criminal Procedure Code that would allow the replacement of most custody grounds by the institute of bail. It is also appropriate that it is finally planned to real the *sui generis* "caoutchouk" norm according to which the temporary custody may be ordered in the case of serious criminal offence, when there is a situation of anxiety of general public. That ground for preliminary arrest (introduced by the new 2011 Criminal Procedure Code of Serbia) is rather controversial, especially since

it represents the traditional idea found years back in the legislation of the Socialist Federal Republic of Yugoslav which has been the subject of justified criticism as a rather wide ground for applying the measure of preliminary arrest.

2. Referring to the reform of criminal legislation in Serbia, it was concluded that considerable and constant changes in this important branch of legislation represent a serious problem. Thus, at the one hand, this procedure unnecessarily introduces new solutions that put down the level of already achieved standards, while, at the other hand, it – which is characteristic of amending the matter of criminal procedure – it seriously puts in danger human rights and freedoms.

3. It is generally held that the new Criminal Procedure Code of the Republic of Serbia is a bad text although it is sometimes made better by the Draft Law on amendments to it.

4. According to provisions of article 32, paragraph 1 of the Constitution of the Republic of Serbia (the right to fair trial), everyone is entitled to have an already legally established court of law to equitably and in due time, publicly proceeds and decides on his rights and duties, on the justification of doubt that was the reason for instituting the proceedings as well as on the charges against him. Consequently, it is a constitutional right of citizen, namely the accused being criminally proceeded, that the court determines the validity of the ground for doubt and/or charges against him, and not that this would be the matter to be proceedbefore the court, which in fact is the solution specified in the new Criminal Procedure Code of Serbia. That is why potentially unconstitutional are all the key provisions of that Code which have construed a strictly adversarial criminal procedure and/or by which the burden of proof was primarily transmitted to the parties, while the court is excluded to the maximum from that stage of procedure.

5. If it is a constitutional right of citizen to have the court decide on the grounds of doubt that was the reason for temporary arrest, the provision of the new Criminal Procedure Code in terms of which the investigation has to be instituted by an order when found that there was a doubt that the accused has committed the criminal offence and that such order may not be appealed – is also unconstitutional.

6. In is necessary in the process of all great reform attempts in the sphere of criminal legislation to be much more considerate. Special attention, for instance, should be paid to systematic laws such as the Criminal Code and the Code of Criminal Procedure which should not be changed in a radical way or too hasty, especially in the situation of considerable dis-

orientation of judiciary due to unsuccessful re-election of judges and public prosecutors as well as to failed creation of a new network of courts.

2. Freedom of Personality

Dr. OLGA CVEJIĆ-JANČIĆ, Professor,
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1. With the purpose of proving the establishing and termination of an extramarital union it would be useful to introduce a registry of such type of unions, or a registry of life unions of out-of-wedlock partners. This could make easier the protection of rights of such partners and ensure their legal security. The registration of that type of unions, at the one hand, would also eliminate, or at least reduce, the misuse in this particular area, while at the other hand could contribute to the extension of rights that could be granted to out-of-wedlock partners, in addition to the ones already recognized by the positive legislation. Recently adopted laws of criminal and litigation procedures (2011) have made equal out-of-wedlock partners with regularly married ones as far as rules of procedure are concerned. This represents a significant change of their position in these areas of law, contributing thus to better objectivity of trial. The most important advantage of future registration of out-of-wedlock unions would be in recognizing the rights of inheritance to out-of-wedlock partners in these unions due to elimination of the so-called public, i.e. registered unions of this type. In addition, the registration of extramarital unions would entail significant consequences in the sphere of recognizing the rights to family pension after the death of one of the out-of-wedlock partners because the partner who survived would be made equal with the married partner.

2. Having in mind the Constitution of the Republic of Serbia, the Convention of the Council of Europe on Protection of Human Rights and basic freedoms ratified by Serbia (on 3rd March 2004), as well as the practice of the European Court for Human Rights relating to the protection of rights of transsexuals, our Section proposes that transsexuals, after changing the sex, the right to make correction in recording their sex in the registers of births, marriages and deaths be recognized on the ground of a corresponding decision of the non-contentious court. After filing the data indicating

the new sex in the above mentioned registers, the transsexuals should be recognized without any discrimination all rights otherwise recognized to persons of the same (i.e. newly acquired) sex. This particularly refers to the possibility of concluding a valid marriage with a person of opposite sex in relation to their newly acquired sex.

3. Recognizing the right to a child capable of forming its own opinion to express such opinion freely in every judicial and administrative proceedings deciding on its rights is one of the more recent rights of child that has found its place on the ground of the 1989 UN Convention on the Right of Child, the 1996 European Convention on Exercising Children's Rights, and the 2005 Family Law of Serbia. The realization of that right implies also the right of child to obtain in due time all information necessary for it to make its opinion; after reaching the age of ten, the child is also entitled to address the court or am administrative agency, alone or with the assistance by another person, in order to request the realization of its right to freely express its opinion.

4. In specific cases, i.e. in litigations concerning the protection of the right of child and the exercising and/or depriving of parental rights, the court may deny the child of its right to express its own opinion, including other rights connected with the realization of that right, after finding that this would obviously be contrary to child's best interests.

5. Similar solution is also provided in the case in which a collision guardian or a provisional representative of the child in the litigation for protecting the rights of child, or in the litigation concerning the exercise or deprivation of parental rights, in his capacity of representative of the child able to form its own opinion, finds (determines) that extending such possibility to the child would obviously be contrary to the best interests of the child. In this situation as well the child should be recognized the right to appeal to higher court where its opinion differs from that of its collision guardian or provisional representative.

6. The role and influence of media and contemporary electronic communication devices (and first of all internet and social networks), among other things, also in forming the opinion of the child and adopting certain standpoints and value systems, are today much more intensive than in the past. Due to that, both the State and the family, including particularly he parents, have important duty to control the content of materials available through media to child, so that it could be better protected from receiving damaging information impairing its development as a personality. These issues deserve much more attention than is the case at present, because fami-

ly alone is not able to successfully cope with the flood of cheap TV features that exalt the frivolous stage programs deprived of any value and quality. These issues should be open to public debate but supported with deeper analyses and serious approaches.

3. Administrative-Law Protection of Freedom

Prof. dr. DRAGOLJUB KAVRAN, Belgrade
Dr. DOBROSAV MILOVANOVIĆ, Assistant Professor,
University of Belgrade School of Law

1. It is indispensable to determine in a more precise way the concept and scope of state and public official, bearing in mind the nature and description of tasks and duties they are charged to perform. Consistently to that, one should also introduce precise and clear formulations in all relevant laws.

2. It is necessary to establish a separate institution (or se separate section within an institution) with the task of special training of state officials and those employed in public administration in the wider sense of that word (the officials employed with the status of public officers) in order to ensure in a more organized way the determination of professional and expert programs as well as the operators to be charged with raising the quality of work, equalizing standards of implementation of law and a more effective harmonization and application of European legislation.

3. There is a need to change the legal stand of the Administrative Court according to which the postponing effect specified in article 23 of the Administrative Litigation Law refers only to obligations determined in course of administrative proceedings in relation to the prestation. The change would mean a wider interpretation of the institute of postponed effect of action, so that the postponed effect should also include the elimination of legal effect of the enforceable administrative act.

4. It is necessary to more consistently respect the provision of the Administrative Litigation Law relating to the conduct of oral hearing in an administrative litigation. In this respect permanent education is also indispensable of administrative judges concerning specific matters in the sphere of administrative dispute.

5. The number of judges of the Administrative Court should be increased and their specialization has to be advanced in relation to different areas and kinds of materials they deal with.

6. The Section does support the initiative for making and implementing a project aimed at establishing a Unified Electronic Civil Registry that will include full integration of data bases together with registers of natural and legal persons, property status data base and real estate cadastre data. Such a registry would make easier realization of rights and duties of citizens as well as increase the efficiency and economics of the work of public administration.

7. In drafting future laws it is indispensable to use much more the following elements: consultation of parties interested as well as the general public, the analysis of effects of givenregulations, ensuring by means of transitory and concluding provisions the gradual adaptingto the European Union standards in order to properly consider the legal certainty and to instruct the citizens and legal entities about strategic directions and development perspectives in corresponding areas of social life.

III – RIGHT TO PROPERTY

1. Codifications

Prof.dr. SLOBODAN PEROVIĆ,
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Prof.dr. MIODRAG ORLIĆ,
Honorary President of the Association of Jurists of Serbia
Dr. OLIVER ANTIĆ,
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1. The positive assessment was expressed regarding the former work of the Commission in charge of codification civil law of Serbia which has presented to the general public the results of its work by publishing four reports (on basic conception and on open issues of contents of the future Civil Code, on contracts and other obligation relations, on family relations and inheritance). These publications include numerous alternatives and variants.

2. Also supported was the practice of the Commission that the mentioned normative parts of future Civil Code of the Republic of Serbia should be presented in the form of preliminary drafts to professional public. This

would induce a public debate, together with placing these materials on the site of the Ministry of Justice.

3. It was found that the accepted conception of the Civil Code, as a legislative project of national importance, will considerably contribute to the advancement of legal system of the Republic of Serbia, the increase of legal certainty and raising the level of general culture of law. Such a significant act of codification, namely, will encompass a consistent body of contemporary individual civil rights and duties of all natural persons and legal entities that would be harmonized with international conventions and civil rights in the countries of the European Union.

4. Having in mind the already achieved results of work in the matters of codification of civil law, and the dynamics of work of the Commission and its working bodies, it becomes necessary to attempt, in course of 2013 and until the next conference of the Kopaonik School of Natural Law, to publish, on the basis of suggestions and proposals submitted in public debate, the complete and integrated text of the Preliminary Draft Civil Code of the Republic of Serbia.

2. Property and Other Property Rights

1. Regulation of rights of foreign nationals to acquire real estate ownership should be made brought into accord with security, economic, and social needs as well as national interests and norms of international law that considerably restrict the legislative freedom of European Union member states. In any case the traditionally present condition of reciprocity should be abandoned and replace with the condition of domicile.

2. As far as the issue of acquiring agricultural land is concerned, instead of the general prohibition in this area, it is necessary to enact clear and more detailed provisions which would be made concordant with the existing regulations relating to foreign investments and foreign exchange transactions. These provisions would have to specify the ban against majority capital to be invested into companies whose predominant property consists of agricultural land, forests and areas rich in waters.

3. Restitution and indemnification of foreign nationals deprived of ownership after the Second World War are rather delicate issues that have to be solved on the ground of consideration of all relevant facts and corresponding evidence, including the substance and meaning of bilateral international treaties with various countries where the above issues have been directly or indirectly settled.

4. The Section supports the initiative for assessing constitutionality of the provision of article 65 of the Law on Restitution of Expropriated Property and Compensation with the Constitutional Court of Serbia, which brought about selective discrimination of citizens of Serbia whose property in Kosovo and Metohija was expropriated after the Second World War by means of postponing the restitution until the uncertain time of leaving of international forces from Kosovo and Metohija.

5. The former practice and experience in functioning of the real property cadastre points again to the need of establishing modernized books of title in the entire territory of the Republic of Serbia. These modern books of title should be based on genuine practice, but also on the comparative law solutions, first of all in the sphere of electronic keeping and making public this type of documents as well as of coordination with the land cadastre.

6. There are no impediments in the legal system of the Republic of Serbia to constituting the right of pledge based on contract, to be established on all kinds of intellectual property rights, except the geographic origin identification. The right of pledge on industrial property rights may be established only if registered and in conformity with provisions of the Law on Pawns (i.e. on movables) filed in the register, and with the provisions of special laws regulating this matter. – Namely, by filing in the corresponding register of the Intellectual Property Institution. The property component of the copyright and related rights could be pledged in the form of a registered pawn filed in the register of the Institution of Commercial registries, but also without registration, depending on the intention of the parties, i.e. in the way it may be transferred in conformity with the Law of Contract and Torts and the Law of Copyright and Related Rights.

7. The act of encumbering of a commercial company as an entirety is not regulated in the law of the Republic of Serbia. This way of securing claims is still possible and permitted in accordance with the principle of freedom of entering into contract and the corresponding form could be the contract on so-called financial restructuring.

3. Property and Inheritance

1. It is necessary to consider the possibility of introducing the institute of one-month maintenance whose source would be testator's estate, in combination with the right to use an apartment and domestic appliances. This right could pertain to persons who have lived with the testator in the same

household and were maintained by him. The freedom of disposal of testator's estate, as far as these persons are concerned, must be subject to specific restrictions in order to ensure the minimum of their existential needs.

2. In the matter of interpretation of testator's estate the priority should begiven to the *favor testamenti* rule which favors the successors in law.

3. Reasons of legal certainty and of respecting testator's last will, as expressed in the testament, point to the need for amending the current solutions in the matter of revoking of testament. This should be done in the following direction: regulating the relationship between several testaments; inquiring the effect of a subsequently made illegal testament on earlier lawful one and the influence of subsequently made testament on the previously made testament – in case the successor designated in the subsequent testament is unable or unwilling to take the inheritance, as well as inquiring the effect returning to the property estate the objects that were previously included in the *inter vivos* transactions.

4. In course of public debate relating to actual codification of civil law, it is necessary to reconsider the effect of prohibition of the fideicommissary substitution and, by that very process, to reassess the ruling conception of freedom of testamentary disposal.

4. Contract and Liability for Damage

1. It is indispensable to consistently enforce the Decision of the Constitutional Court of Serbia rendered in 2012 in terms of which further use of the conforming method was madeimpossible in calculations of interest on overdue provided for by law that in fact represented the violation of anatocism by applying the Law on Rates of Interest on Overdue. The amendments of that Law would introduce a clear and simplified solution in the matter of calculations of interest on overdue whose amount should correspond to economic conditions. This could be made possible by expressly regulating the amount of rate of the interest on overdue not only regarding the claims in domestic currency but also in foreign currency. These amendments should be based by considering the existing experience and particularly the legislation at the regional and European, i.e. international levels.

2. The proposed solution in the Preliminary Draft Civil Law of the Republic of Serbia relating to the contract of gift *mortis causa* justly fills up a legal vacuum in the Serbian system of law. In final regulation of this matter it should be made clear that such contract has to be made in the form of public document and that it should have a suspension clause indicating

that the donee has to outlive the donor, since this is the case of an *intuitu personae*legal transaction. Moreover, the *mortis causa* contract of gift should have the quality of revocability. This means that the donor should have the freedom of disposal of the object of gift which includes the simple possibility of revoking it as he wishes, but coupled with one restriction in terms of which the donor may renounce the right of revocation either directly on the occasion of reaching the agreement of intentions or indirectly, by ensuring donee's claim. At the same time, it would be appropriate to grant to donee the right to compensation of damage should the donor, without justified reason, by revoking the gift, inflict damage to donee's property.

3. The existing court practice, otherwise not unified and rather restrictive in determining the monetary compensation for spiritual anguish due to reducing life activities, needs the bringing into accord of criteria of determination of monetary compensation in this kind of mental injury. This could be achieved, for instance, by specifying in the text of law the corresponding lowest amount that should ensure equal and equitable treatment of persons suffering loss.

4. The Section positively assesses significant amendments made to the Litigation Procedure Law (enacted by the end of 2011) which make possible more complete and more efficient protection in cases of realization of compensation of mental injury inflicted by violating the right of personality through failure of acting of State agencies, or through their unlawful and irregular work.

5. Taxes

Dr. ZORAN ISAILOVIĆ, Professor,
Law School in Priština – Kosovska Mitrovica

1. For the purpose of realzying the most effective taxation policy it is indisepnsable to develop a predictable taxation systembased on general rules that should not (except in rather specific circumstances) favorize or discriminate specific taxpayers.

2. It is necessary to reconsider our fiscal legislation and, in order to make possible the best economic and social objectives, realyze essential changes that would be in accordance with achievements of modern theory and practice. What is necessary is aprecise classification of all fiscal forms that existin the system. In relation to that, everything having the character of taxes should be called tax and thus make the clear distinction from ev-

erything having the character of dues and taxes relating to specific property, services or rights. There is quite a number of examples in our practice of some impositions which in their nature represent classical taxes not tied to any kind of return favor – or at least to those who pay them. Consequently, it is indispensable to make a clear systematization of taxes, dues, revenues and all other impositions and in this way terminate the existing practice of introducing various forms of the above mentioned impositionsfor one and the same property, service or right. In addition, the Section strongly suggests the elimination of excessive possibility of introducing fical revenues from numerous entities – State, local self-government units, independent agencies, regulation bodies, institutions, administrative agencies, funds and other entities. Instead of such practice,it is necessary to ensure that the most important fiscal revenuesbe enacted by means of laws of National Assembly, coupled with enactment and implementation of subordinate regulations issued by the Ministry of Finances and Ministry of Economy. In order to realize the transparency in these matters and a more efficient control of public funds, it is necessary to have thesefunds filed and subjected to budget procedures.

3. For the purpose of strengthening taxation morality that will make possible more efficient and more abundant collection of taxes it is indispensable that tax authorities take more care about tax payers' needs and their psychological reactions and standpoints; this should be an essential change compared to former situation toward a cooperative approach in the work of tax authorities.

4. In addition to illegal avoidance of paying taxes, the cause of inconsistent total realization of collection of taxes is also influencedby law-maker's enactment of regulations which in fact make possible inequal position of taxpayers. The law-maker is wrong in enacting regulations on writing off the interes on debts due in certain kinds of taxes and contributions for compulsory social insurance. These regulations specify the conditons, the scope and the procedure of writing off of calculated and not paid of mentioned interest; as such, these regulations can induce irregular collection of taxes due for payment. They, in fact, encourage dowdy payers and punish the law-aviding ones. Because of that, and bearing in mind the conditions of economic crisis, the implementation of regulations must have first priority. In such a way the unjustified practice indicated above should cease also in order to protext those taxpayers wo regularly and on time meet all their duties.

5. In the matter of value added taxt, in order to fully respect the principles of equity and efficient use of collected means, it is necessary to gradu-

aly shorten the list of objetcs of property taxed by lower tax rate; additional resources collected for the budget in such way should be used for financing the programs of social assistance (children allowance, material family aid and the like) as well as for increasing budgetary expemditures in the areas of education and health-care.

6. The excise tax burden of products in Serbia which, in terms of health, are most damaging, to aid the efforts of reducing their consumption, is far under the level otherwise accepted in tax legislation of the European Union member countries. Along the lines of consistently realyzing social objectives, it is necessary to consider also the possibility of extending tby law the list excise tax products since this could be the way of imposing tax onconsumption of other products as well which, in terms of health-care and ecological terms, are similarly damaging just as the actually burdened ones,

7. Without hesitating, the tax authorities of the Republic of Serbia should opt clearly for the tax conception which is indispensable for us in matters of burdening with tax the revenues, since this is dictated by the present economic and social conditions. Settling of this issue is exvceptionally important in order to put into effect the constitutional principle of paying taxes under equal conditions and economic capacity. Consistent realization of mentioned principle has considerable effect the taxation morality of taxpayers as expressed through voluntary payment of tax dues.

8. Due to symbolical fiscal importance, complexity and complicated nature of implementation of regulatuions covering the matter of tax on capital gains, this tax form should be eliminated from the system of taxing the income of citizens of the Republic.

6. Commercial Companies

Dr. MIRKO VASILJEVIĆ, Professor,
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Dr DRAGIŠA SLIJEPČEVIĆ,
President of the Constitutional Court of Serbia,
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1. Following are the basic priorities that should be provided by company legislation: simplicity in founding commercial entities; reducing all the barriers or impediments that make more difficult their development and successful business operation; increasing legal certainty and special

protection of investors and all those interested in engaging their work andcapital in the commercial sphere.

2. In order to reduce the number of reasons for termination of commercial companies by applying the bankruptcy procedure, especially in the conditions of current lack of liquidity and insolvency, it is indispensable to implement in practice as much as possible the legal principles of agreeable financial restructuring of commercial companies.

3. In some future innovation of the Commercial Companies Law it would be desirable, in conformity with contemporary solutions in the law systems of European Union countries, to supplement the currents provision in that Law (found in article 376, paragraph 1, point 5) concerning the right to contest decisions of the assembly of stockholders in the sphere of misuse of the right to vote for the purpose of acquiring benefit at the expense of the company or other stockholders.

4. The issue of equal position of the State as stockholder becomes more and more actual, because its position is often privileged as compared to other stockholders. This is affected through issuing a special kind of shares that follow the privatization procedure. In other words, the desirable position, i.e. the protection of interest of State as a stockholder could be realized through systematic solutions hat would ensure the protection of socially justified interests of the State.

5. The Section has positively assessed the legislative activity regulating the matter of trade secret, first of all because this was for the first time a specific regulation of this matter. In spite of minor shortcomings, this Law still successfully and completely regulates the whole series of issues relating to the matter of trade secret.

6. The Section also found it indispensable to reaffirm the realization of the program of socially responsible performance of commercial activities on the part of companies. This is important not only as far as environmental protection is concerned, but also in some wider sense in order to cover a whole series of issues in the framework of their lines of business.

7. The existing legislative conception relating to business associations regulated in the Law on Commercial Companies should be revised along the following lines: business association should change their name which now should read – economic (commercial, business) interest groupings ; business groupings should be subject to regulations concerning the partners' companies; the line of business of a business association must be connected with the activities of the association members since this is necessary for achieving better business results; a business association should be or-

ganized as profit-gaining legal entity, but the one which does not acquire profit for itself but does that for its members; it is necessary to allow the transformation of a business association into a commercial company, and/or business association; members of business association should also be liable with all their property for association's obligations.

8. It is indispensable to affirm and animate the combination between public and private partnerships in the area of joint investment projects of wider importance. This should be done on the basis of positive experience of comparative practice in the countries successful in their preserving dynamic economic development in spite of conditions of global economic crisis.

9. Legislative provisions covering the transparency of relations between connected commercial entities are not satisfactory settled; this is why it is necessary to adequately regulate the matter of transparency as a separate section in the existing Law of Commercial Companies.

10. The need is obvious for a continued advancement of legislative regulation, which applies to the judicial practice as well, as far as the implementation of the institute of "denying the status of legal entity" specified in the Law on Commercial Companies. In such a way it would be possible to create the corresponding public standards as well as improve the existing ones.

7. International Commercial Contract. Arbitration

Dr. JELENA PEROVIĆ, Professor,
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Dr. THOMAS MEYER, Director General,
Open Regional Fund for South East Europe
– Legal Reform

1. Particularly important in the context of unification and harmonization of the law of contract are three international documents, i.e.: the 1980 UN Convention on Contracts of International Sale of Goods (the Vienna Convention on International Sale – CISG) the UNIDROIT Principles for international trade contracts, and the Principles of European Law of Contract. As far asthe EU law of contract is concerned, one should have in mind the Draft Common Frame of Reference, the principles, definitions and model rules of the European private law, that were made after the proposal of the European Commission. In the area of the EU law of sale, the European Commission has publish in 2011 the Draft Regulations on Common Eu-

ropean Sales Law – CESL),whose solutions are the subject of lively debate and sharp criticism in the doctrine of international sale.

2. Uniformity of customs regulations and regulations covering the elimination of non-customs measures of protection represent one of the basic requirements for the liberalization of and development of international trade. The World Trade Organization (WTO) has considerably contributed to making unified the relevant rules in this field. However, unification of regulations, as such, is not sufficient for eliminating the barriers to international trade. In order to effect unification it is crucially important to ensure their unified implementation. Two most significant conclusions have been reached through the analysis of practice of the WTO Dispute Solving Body. The first one concerns the fact that the regulations relating to freedom of transborder trade of goods, as a rule, are not formulated in a precise way, so that they make possible various interpretation. Secondly, the member states, in order to realize certain goals that are contrary to the spirit and idea of customs harmonization, resort to "creative" interpretation of customs regulations., altering in such a way their very objectives and purpose. The activity of the WTO Dispute Solving Body is therefore of crucial importance for effective prevention of violations of the principles of liberalization of international trade.

As far as Serbian legislation of in the sphere of foreign trade is concerned, it necessary to note that the new Serbian Foreign Trade Law provides that trade relations with foreign partners are free and that they may be restricted only in conformity with the provisions of that Law which are made concordant with the international-law regime based on the WTO law and other international sources of law, and more particularly with the European Union law. Procedures conducted in conformity with the rules of that Law may not be such as to restrict the foreign trade acitivity or amount to a concealed protection of domestic products.

3. The Draft Serbian Civil Code includes the proposal for regulation of contracts of distribution, franchising and factoring, which is formulated as modern types of contract in the sphere of business transactions which until now have not be legally regulated in the Serbian system of law. This Draft includes also a proposal of provisions to cover the contract of leasing, while financial leasing is regulated by a separate Law. The rules of the Draft Civil Code relating to mentioned types of contract are mainly of dispositive character. This approach is based on the principle of freedom of will (parties' intentions), leaving thus to contracting parties a wide freedom to regulate their relation according to their agreement. Certain solutions found

in the Draft, and especially those concerning specific rights and obligations of contracting parties, the ground for rescission of contract and the legal consequences of rescission of contract require wide discussion and extended comparative law analysis. It is therefore necessary in further elaboration of the Draft to have in mind corresponding mode contracts and standard clauses as well other relevant sources of the uniform law of contract.

4. In order for an arbitration clause to be legally effective, contracting parties must reach agreement regarding its essential elements. Essential elements of the arbitration clause should include, according to the existing practice, the terms specifying the competence of the arbitration, the indication of the subject of dispute or disputes to fall within the competence of the arbitration. In addition to essential elements, the arbitration clauses most frequently include other elements as well which, although not being indispensable, significantly contribute to the completeness and precision of the arbitration clause. These secondary elements may encompass the following: place of arbitration, the number of arbitrators, the applicable law, the language of conducting the procedure, characteristics and qualification of arbitrators and the indication of persons authorized to nominate them. All elements of the arbitration clause are interrelated, so that it is important to carefully formulate them in each particular case, combine and incorporate them I so that they make a logical entirety "created" and made to measure of the contracting parties. The standard arbitration clauses of international institutional arbitration tribunals, as made by international organizations, are the expression of the practice considered at the international level as a recommendable solution. Due to that, standard and model arbitration clauses appear asbest the possible solution that one should take in consideration on the occasion of formulating the

Arbitration clauses in the sphere of international commercial contracts.

8. Insurance

Dr. PREDRAG ŠULEJIĆ, Professor,
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Dr ZORAN RADOVIĆ, Research Associate,
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1. The enactment of a Civil Law of the Republic of Serbia requires an answer to the question of imperative and dispositive norms. By having an

insight into the solution of other countries one concludes that there is not a unified answer to that question. The most adequate solution is the following: to formulate in a single norm the provisions of law that may not be altered at all through by the agreement of contracting parties. These in fact are the norms whose purpose is to protect the basic institute of insurance. It is therefore necessary to provide that a general norm may allow departure from all remaining contractual provisions only where such an act dose notharm the interests of the insurance contracting parties – insured persons and those deriving benefit from insurance. The concrete norms, on the other hand, may provide for the prohibition of contrary stipulation in the contract as well as the possibility of extending benefit to either of the parties to the contract. In this way the following would be achieved: firstly, the principle of imperative nature would be preserved and, secondly, the person insured, as a weaker party, would be protected.

2. Middlemen in the sphere of insurance have a traditionally important role to play in this line of business. Their role has often been faced with misunderstanding. The situation in this respect in the European Union is getting better after the enactment of the Directive in the matter of insurance middlemen. The traditional solutin was that the commission was paid bythe insurance company as the part of the premium. Also possible was to reach an agreement on unifiedcommission in Serbia. However, one may ask whethethis was permissible due to the aspect of market competitio. By extending concrete services the mddlemen provide a better protection of the insured persons. The payment of commission for the services rendered should also be made more transparent.

3. The principle of good faith and the principle of indemnification are incorporated in the business of insurance. The principle of indemnification in the sphere of property insurance is ratrher crucial in for performing the business of insurance. Without applying that principle we would obtain a contract relating to games of chance. A policy holder may be only a person who will have material interest that the insured case does not take place. In submitting the indemnification request the policy holder must prove the existence of his material interest. The insurable interest itself does not amount to a crucial element of the insurance contract; it is only a prerequisite fo the validity of contract. The appllication of the principle of good faith and the principle of indemnification in the field of insurance ensures the desirable advancement of the branch of insurance in this century.

4. The rule of business assessment as well as the liability insurance of a director represent the institutes having a common characteristic of pro-

tection persons on that position from personal liability. The rule of business assessment may extend protection only to these directors who are the victims of error and not to directors who made wrong decisions due to negligence and insufficient care. The duty of director is to behave while performing his function with due diligence. The insurance of director's liability extends protection only if his case is included in the category of insured cases. The institute of director's liability is still not sufficiently developed in the Serbian law.

5. The Law on Bankruptcy Procedure has introduced voluntary insuranceof property pf the bankruptcy debtor. The law-maker in Serbia opposed the requests for introducing compulsory insurance in the bankruptcy proceedings either in the form of compulsory liability insurance of that debtor or in the form of liability insurance of the atictivity ofreceiver or of liability insurance in the sphere of professional responsibilityof the receiver.

9. Labor Relations

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BORISLAV ČOLIĆ,
Judge, Supreme Court of Serbia, retired

1. For the purpose of elimination of contradictory judicial practice in the area of labor disputes and of creation of anadequate corresponding mechanism (which is a request of the European Human Rights Court) it is necessary to amend the Law on Litigation Procedure. In other words, a new ground should be introduced for making possible a new trial and enacting a full and valid final decision where the subsequent judicial practice in favor of the employees ones has beenchanged.

2. By beginning from the Constitution of the Republic of Serbia (article 62, paragraph 5) and the Family Law (article 4), it is necessary to recognize to an out-of-wedlock partner the right to family pension in cases of a long-term extramarital union and if it can be rightly compared to a marriage union.

3. In order to more efficiently protect the rights of (un)employed persons, and particularly in order to eliminate the grey economy labor, it is quite indispensable to enact a Law on Labor Inspection whose preliminary drafthas already beenprepared.

4. Due to a rather frequent practice of «working for a definite time period» through concluding successive contracts of work that thransgresses the legally specified twelve month times limit, it is also indispensable to amend article 37 of the Labor Law by prescribing a longer time limit to cover such type of work for a definite period of time (three years at least) as well as by a more precise defining the matter of transforming that type of labor relationship into a permanent work, i.e. work for an indefinite period of time.

5. The unclear situation in interpreting the rule on payment ofterminal benefit where the contract of labor has been rescinded due to so-called technological suprlus and where some employed persons have realized the right to terminal benefit even several times in a row, it is indispensable to amend the Labor Law in its section dealing with that matter in order to bring an end to such practice.

10. Banks and Banking Transactions

Dr. STOJAN DABIĆ, Professor,
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1.Together wth the National Bank of Serbia, the State of Serbia should rather urgently, and in order to protect its foreign currency reserves and prevent the rise of foreign trade deficit, to introduce the measure of connecting the imports to the exports. This indeed means that the importation ofmass consumption goods may be the business acivity only of those legal entitites that obtain foreign exchange means inflow on the ground of their exports.

2. The National Bank of Serbia, in the frame of credit and monetary policy and in order to more concretely support the production aimed at exports and suport the exports as such, must introduce a system of re-discount credits. This means that the National Bank of Serbia should defne in advance the conditions of granting credits by business banks aimed for the production of goods for export as well as for expost itself, including the support of agricultural sector and of processing industry entities especially capable of increasing the production aimed for export. The already granted credits on the ground of the above conditions could be then re-discounted with the National Bank of Serbia.

3. As far as budgetary deficit is concerned, it is quite clear that it can not be solved only by measures such as savings, decrease of number of employed or other similar measures, because the participation of of means obtained by these methods is quite lower than the budgetary deficit. A permanent settlement of budgetary deficit may be achieved, in addition to measures of savings, only by increasing economic acivity that would be apt to create higher budgetar revenues.

4. The existing banks have not enough professional personnel who are able to participate in development programs because, at the request of their founders, such personnel is trained for granting short-term credits only as this type of credit make possible the higest profit. Exactly due to that kind of defined business policy and unisidedly trained personnel, these banks are not able of being used as business banks to deal with programs of economic development.

5. In order to carry out the development plicy of the country it is indispensable, by using the model of predecesors, to establishe an investment state bank which would be vested with all the means found in the deposits of numerous banks, including those means which were set aside for development of economy. That bank would have to be provided with experienced personnel both in the classic banking transactions and in the business projects bank transactions. Such professionals should be able to recognize a good project, to evaluate it and monitor it thrugh stages of construction and exploitation, all the way until the paying off of the credit. That bank should not at all grant classic credits to commercial companies for covering their insufficient turnover means. Through monitoring realization of the transaction it has given the credit for, it would have to ensure the regular repayment of credit from the revenue coming from such transaction.

IV – RIGHT TO INTELLECTUAL CREATION

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1. The right to intellectual creations inspires the technical and technological development. By consistent legal protection of intellectual prop-

erty contributes to the economic stability and lawful utilization of products o human mind in the areas of science, technique, industry, literature, fine arts and all other forms of creativity. The interests of ever society require the motivation for investing in informatics, communications, electronics, creation and transfer of new knowledge and development of software industry and, generally, new technologies. All these activities do contribute to higher employment rate, exports and reduction of leaving the country by young talents and highly educated experts.

2. The intensity of using the internet and availability of technical devices makes easier the exchange of intellectual achievements but also brings about the possibility of violation of personal intellectual property rights. All the above sets numerous challenges for the bodies and agencies enacting and implementing regulations, including for the authors and holders of rights. The use of internet may bring about the violation of intellectual poperty rights as well as unauthorized taking over of another's intellectual creation. Considerable number of issues in thies area is not regulated or, as the case may be, insuffciently regulated, so that there is a need for regulating by law these issues at the national level in the framework of international community. Every aspect of use via internet must protect property and moral rights of authors and/or holders of copyright.

3. The market of pharmaceutical products has become one of the largest markets in the world. This industry is, in terms of business, market- and consumer-oriented and has developed a wide campaign of marketing its products. This activity must be effected in the framework of legal regulation and ethics directed by the constitutionally guaranteed rights to life an health.

4. The existing system of protection of intellectual property is not complete; it also is inefficient in judicial proceedings. In order to ameliorate this situation and make the protection better and more complete, especially as far as court procedure is concerned, it is necessary to amend the Law on Organization of Courts as well as other laws in this particular area. Judges to be planned to proceed in this kind of litigation must have in advance necessary education; this applies also to all other personnel involved in this kind of disputes. For this purpose it is necessary to support the activities of the Intellectual Property Agency as welll as judicial academies. This activity should be assisted by practitioners as well.

5. Review as the procedure stage and an extraordinary legal remedy, should introduce into the law as soon as possible, making it available in all disputes arising in the field of intellectual property.

V – RIGHT TO JUSTICE

1. Court in Connection with Justice

Dr. GORDANA STANKOVIĆ, Professor,
University of Niš School of Law

1. The reform of judicial system in the Republic of Serbia still is an issue of first-classand significant legal, political and, generally, social issue. We are probably nearing the end of a long-term crisis of the judicial reform which did not provide either the rule of law as based on an independent, efficient and available court, or the confidence of citizens in the administration of justice. The ultimate objective of the judicial reform should be conceived in the efficient functioning of that important branch of power and in the prerequisite for realization of political and lawful ideals as foundations of a state ruled by law and the rule of law principle.

2. One has to terminate the concealed and open pressures against the judiciary for the purpose of enacting politically "appropriate" decisions. Independence of the judiciary is therefore a crucial attribute for every state ruled by law.

3. It is necessary to eliminate the long-lasting climate of uncertainty and feeling of insecurity among the circles of judges as far as carrying out of personnel policy is concerned, since that policy often resulted in the loss of highly professional judges.

4. The profession of notary public should finally begin to perform its function.

2. International Relations and Justice

a) International Law – Foreign Elements

Dr. RODOLJUB ETINSKI, Professor,
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1. International community is more a political than a legal union. The relations in the framework of that community are determined more by the relations of power and less by the law as such. Referring to morality is also often in the service of realization of national interests and not in the service of universal welfare. It is a question whether it is at all possible to realize the rule of law within a community of sovereign states.

2. States, however, are showing their ability to denounce certain sovereign prerogatives because of the general good. Briand-Kellog Pact, concluded in 1928, was the instrument by which all states of that time international community has denounced their right to war, meaning that they have abandoned that which was considered the highest expression of sovereignty. After the Second World War the states have accepted various forms of international control in the sphere of human rights, although until the time of the Second World War human rights were treated as a domestic affair of the states.

3. By means of the 1969 Vienna Convention covering the law of contract, the state has accepted the existence of *jus cogens* conceived as the right of community that is above the sovereignty of every single state. In spite of these and other significant in the fame of international order, the international community still remained more a political than a legal union because of incompleteness of the international-law order.

4. The *ius cogens* conception of legal rules should be completed by the procedural component which would mean an important step forward in affirming the international community.

5. Member states of the UN Convention on Climate Change, while negotiating about the new arrangement that should replace the Kyoto Protocol, and when calculating their national gains and expenses, should put on the positive side also the international stability and global development that would result from such new arrangement.

6. It is indispensable that the European system of human rights protection be supplemented by the right to a healthy human environment as well.

7. Also necessary is to bring into accord the regulations of the Republic of Serbia with the European Union legislation as far as tacit extension of prolonging international court jurisdiction is concerned.

b) European Union Law

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1. The European Union is at present in its most considerable crisis since its foundation; the relevant consequences are not yet discernible. In addition to considerable crisis caused by high indebtedness of some member countries, there exists also a political crisis manifested through the rise

of mutual distrust if member states as well as the lack of agreement as to the clear vision of the future Union. In such a situation which is practically present already since the failed attempt to adopt a constitution for Europe, it is difficult to foresee the further development of the European Union. It is for the first time that thequestion is raised not only about the survival of the Eurozone but of the European Union itself as well.

2. The European Union crisis floods also the third countries – non members, which are tied with the European Union by agreements obliging them to implement the *acquis communaitaire* into their legal and political systems. Serbia too, is found herself in such a situation in the process of carrying out the Transitional Trade Agreement and the Agreement on Stabilization and Association. Carrying out the whole set of reforms is often justified by theEuropean Union requests in order to meet as much as possible the requirements for opening the talks on membership with the ultimate goal of being admitted as soon as possible into the Union membership.

3. Bearing in mind that the existing crisis challenges the rationality of further expansion of the European Union before the existing problems are settled, one may challenge also the justification of entering such a community. The same logic applies also to reasons that served in the process of significant reforms in third associated countries. In such a situation when new expansion of the European Union becomes rather unclear, especially regarding the time limit to be set for admission of new members, it is necessary that associated states as well, in the process of further acceptance of *acquis communautaire*, have to take particular care first of all of their own interests.

VI – RIGHT TO A STATE RULED BY LAW

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University of Novi Sad School of Law
Dr. ĐURICA KRSTIĆ, UN Legal Expert, Belgrade

1. According to recent legal conceptions, law and morality are two separate spheres of normative regulation or social control, but they are undoubtedly always in close and constant connection. These two autonomous spheres cut mutually into one another, the touch themselves, complement

one another but also challenge and face one another. They, as independent regulation systems, have their particular discourses and their specific technical elaboration; at the same time they also have their common scope of work and their objective because in their latent background they find common values, first of all expressed in the concepts of law and freedom. The crucial determinants of human nature ands human society in general are but fundamental prerequisites both of the law and of the morality. At the same time, many legal norms within the framework of legal order are positioned on the same rational bases as do the moral norms.

2. The relationship between law and morality is the principal characteristic, but also the most difficult problem, of the entire theory of natural law. Ethically perfect, the ideal content of the natural law is expressed in the form of justice or general, i.e. common Good. Where legal norms fail to include at least the minimum of morality, they will be entirely inefficient, and as such will deserve such name as well. The existing laws oblige one in moral terms provided that they are protecting and advancing the general Good. The law is, in fact, an art or ability to search for justice; more than that, it should be something more too – it must be an accomplished justice and an equitable reality. The conception of inner morality of law that makes this possible is a variant of procedural natural law theory. The principles of such morality represent procedural and insitutional standards of creation and practical implementation of law and, as such, are exceptionally important for the rule of law. Realization of inner morality of law, as the indispensable but not sufficient condition for taking place of a just legal system contributes simultaneously to realization of the external (substantive) morality of law. The inner morality of law and a sysem of law that realizes its principles strive toward justice and human dignity. The condition of validity or the criterion of validity of law has to be, in addition to the authority of its source, also the quality of its substance, and/or its consistency with the morality. Only a law which is harmonizedwith the morals, the one that fills up the moral principles, may be the genuine prerequisite for the realization of a proper legal system and of the rule of law.

3. The influence of morality on the legal order is expressed at three different levels – in the sphere of legislation, in the process of implementation and in the interpretation of law. The foundations of legal order are made out of concrete basic and generally accepted norms by which the procedure of enactment of laws and regulations is determined. The fundamental norms, by their very nature, are moral norms since they derive their efficacity from the general acceptance that rests on the belief in their correctness and indis-

pensability. These norms are the meeting points and specific way of making a community between the law and the morality. There are conceptions where this kind of connection between morality and law is conceived not only as an indispensable but also as a central element in an attempt to analyze the very concept of law. Looked from the viewpoint of implemenation of law, the relationship between morality and law is established through justice as an instrument that is universal as well as crucial legal value. The freedom of work of a judge is, on the other hand, is manifested in the necessity of the process of pronouncing justice, being in such a way and at the same time the most important canon (criterion) of law interpretation. Substantive indefiniteness of basic value principles (moral and legal principles) of legal order, an intentional incompleteness or openess of content of a law may be completed only in relaion to the state of facts of a given case. This is in fact the way of establishing the equity but, on the other hand, this may provoke ambiguity of the canon for interpretation, opening thus the way to the freedom of interpretation which comes to expression mostly in the process of implementation of law. A court decision is taking place by means of applying justice and freedom in the interpretation process. That freedom may be chanelled and methodically ordered through topic jurisprudence as an art of problem-oriented thinking and technique of transfering and using the arguments on the ground of justice as a given point of view.

4. There is in Bogišic's codification (the 1888 General Property Code for the Princedom of Montenegro) a way of expressing the legal text according to which justice, that central virtue of law, is but a golden thread making its very tissue. In this codification justice has several meanings, some of which may be inspirative for contemporary jurists as well, and especially those who deal with property law matters and their implementation in practice. Valtazar Bogišicis one of the founders of the (empirical) sociology of law in world proportions. His ideas, his metod of work and culture of language have strongly influences some of our mlst eminent civil law scholars, such as Mihailo Konstantinović, Slobodan Perović, Miodrag Orlić.

5. A legal norm is the essence of legal phenomenon and represents a genuine subject of research in modern science of law. As a typical logical and linguistic creation, it is at the same time aphenomenon of communication (a social phenomenon) because it must always, and on time, properly be communicated to those it is addressed to. As a specific form of communication (and language is but another term for communication), it is quite considerably neglected in legal theory. The research in the communication dimension of legal norm is rather significant for acquiring new, wider and

deeper insights in the nature of phenomenon of law and in the more exact methods in the area of law.

Constitutional-Law Questions

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Dr. MILE DMIČIĆ, Professor,
University of Banjaluka School of Law

1. The court practice so far in the matter of prohibition of political and other knds of associations demonstrates that this jurisdiction,as widely defined in the Constitution, does not suit to the Constitutional Court. Consequently, in some future amendment of the Constitution, it would be appropriate to reduce that practice to its proper measure,so that the Court should be competent only to decide on the ban of political parties, while the cases of other associations should be entrusted to other state agencies.

2. The decision of the Constitutional Court relating to unconstitutionality of provisions of the Law on Determining Jurisdiction of the Autonomous Province of Vojvodina, rendered in July 2012, in spite of some shortcomings in the text of the assignment of reasons, could suggest a possible turning point in settling the constitutional disputes involving considerable political dimension.

3. The decision of the Constitutional Court concerning the appeals of holders of judicial function must be entirely carried out in practice. Namely, there is no need to undertake a «reform» of the judicial reform; all what is necessary to do is to correct in due time all the erroneous decisions made in course of the failed reform.

4. It is indispensable to insist on proper training and also on ethical and disciplinary liability in course of evaluation of judges' work, as well as on ensuring judicial independence. Along these lines, it is indispensable to raise the level of responsibility and professional expertise of court personnel to a much higher level.

5. There is a necessity as well of establishing and respecting clear criteria for election of holders of judicial function, as well as of providing the system of periodical assessment of their work, including the disciplinary liability.

6. The rule of law, as far as practice is concerned, has not been quite adequately realized, while the theoretical concept of the rule of law is of-

ten used as a disguise or as something carried out arbitrarily and filled with politically motivated content. It is particularly important to strengthen the guarantees and mechanisms of independence of the Constitutional Court and in this sense it is of key importance to insist on consistent enforcement of decisions of Constitutional Court.

7. In some future constitutional refomrit would be useful to consider of a stronger positioning of the Law on the Constitutional Court, so that it might even become a constitutional law. Within that context one should also insist on the more precise definition of relationship between various sources of law in the field of constitutional judiciary and, more particularly, on an all-encompassing and consistent regulation of position of the expert service within the frame of the Constitutional Court.

8. Legal framework of freedom of association, as one of the fundamental political rights in the Republic of Serbia, deserves a positive judgment while creating solid normative prerequisites for the realization of that freedom inconcordance with the corresponsding European standards. However, this framework is also characterised by certain shortcomings that might as well make problems in the matter of protecting this freedom in practice.

9. Constitutional morality is composed of two components: subjective and objective one; the subjective component implies the existence of consciousness of holders of political power about self-restraining. Coupled with this is the awareness of ciitizens as to their duty to adhere to highest, constitutionalvalues (distribution of state powers, rule of law, human rights, miorities' rights). The objective component covers the unwritten rules auxiliary to the constitutional text making it more flexible and more lasting; this category encompasses constitutional customs and usage or constitutional conventions (i.e. rules of conduct). However, there is no constitutional morality in the Republic of Serbia, so that the Constitutional Court, in cooperation with legal science, should try to establish the foundations of the constitutional morality; the same role has to be played also by the constitutional justice at the cross-section of law and morality.

10. The ideal conception in terms of which law whould be a yardstick for the validity of politics, while the legal morality a criterion to apply to the current law, are an inexaustible source from which the Kopaonik School of Natural Law has been getting its power for aleady quarter of a century – a source from which that School is sending its messages and reminders to juridical and general public.

INTERVIEWS

Dr. RODOLFO SACCO
Professor Emeritus, Torino School of Law, Member of the Academy of Sciences of Italy

Firs of all, I would like to express my great pleasure and honor for being able to take part in the work of this great family of participants of the Kopaonik School of Natural Law. It is this year that it has realized full twenty five years of its successful work resulting in numerous scientific achievements that were published in so many volumes of Collection of Works whose authors have come from many different Eurean and overseas countries. All these developments provide this School with international respect which otherwise operates under the auspices of the United Nations Organization for Education, Science and Culture (UNESCO).

Since I come from Italy, I feel free to tell you that the world of jurists of Italy cherishes and entertains the legislative conceptions of other countries; this certainly includes the legal system of Serbia, the more so since it belongs to the families of the European legal tradition otherwise, in many an area, based on classical Roman law.

The Kopoanik School, as inspired by the conception of rational natural law, or as it is now called – *human rights*, was successful in its work until now to provide a scientific analysis of theory and practice of the Just Law that is supposed to respond to contemporary achievements of human rights that are proclaimed in numerous documents of the United Nations and other peace-loving international organizations. The Kopaonik School extends in this respect the well argumented conclusions, especially those regading the right to life and freedom of people in terms of the 1948 Universal Declaration on the Rights of Man, as well of many other international documents relating to the conception of human rights.

Speaking of my personal impression about the work of the Kopaonik School of Naural Law, I feel free to say that I have never seen a cultural event of this kind and on this level, both in my country and in the world at

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large. And whenever I would be able to return to the Kopaonik Mountain, I will come here to encourage and to support the jurists of Serbia.

The results ofthis year annivesary Conference have become particularly significant, especially since they have encompassed to issues related to the general theme *Relationship between Law and Morality.* The communication of jurists participating in the work of the School coming from all over the world is effectedowing to professor Slobodan Perović – the founder of the Kopaonik School of Natural Law as well as to all other people working with him in the organization of the Kopaonik School of Natural Law.

Dr. JELENA PEROVIĆ
Professor, University of Belgrade School of Economics

The Kopaonik School of Natural Law, according to numerous assessions, represents the largest gatheringof juristis both in the country and the region. Already for twenty five years it succeeds to bring together around 2,000 jurists, both domestic and those coming from many Eurpean and overseas countries. Thus, there are jurists fromthe countries of South East Europe, but also those from France, Italy, Germany, Switzerland, Spain, Portugal, Great Britain as well as jurists from the United States of America, Brazil, India, Australia, Russia, China – a total of more than thirty countries of the world. This is an international rally that is significant not only due to themes it elaborates and the number of participants, but also due to the fact that those participating are well-known legal scholars and eminent professionals in the sphere of law. Since 2005, the School is under moral patronage of the UNESCO.

The School is continually dealing with most actual issues in the area of law in general, and particularly with quastions of human (natural) rights as proclaimed in numerous international documents. In terms of organization, the work of the School is arranged and divided according to the Hexagon of the Kopaonik School into six chairs; they are: right to life, right to freedo, right to property, right to intellectual creation, right to justice, and right to a state ruled by law. Within the framework of these six chairs, the School's activities are carried out through twenty three sections debating about the most actual issues from the respecting areas. Finally, at the plenary session, both in Serbian and in foreign languages, the School regularly adopts a Final Document, containing summarlly formulated conclusions,

messages and recommendations addressed to wide juridical circles, both in the country and abroad.

Each year many foreign participants come to Serbia for the first time and get favorable impressions about the high degree of scholarly achievements as well as about the atmosphere and nature of environment at the foot of Pančić's Peak on the Kopaonik Mountain. The entire event thus adds to their firm intention to come again to the traditional December days of the Kopaonik School of Natural Law.

It goes without saying that School's participants are first of all attracted by annual themes (some 200 to 300 reports by competent authors, both theoreticians and practitioners) which, in terms of the matter of human rights are always actual. Thus, for instance, the general topics in recent years were: Law and Freedom; Law and Time; Law and Space; Law and Responsibility, while the 2012 theme was *Law and Morality,* which caused increased attention of all participants of the Kopaonik School of Natural Law.

The Kopaonik School has always been above and outside the daily politics or, for that matter, from any political party. It speaks by the strength of scientific argument. It is important to point out that the Kopaonik School brings together jurists from different areas of legal science and legal practice, i.e.: university professors, members of the academies of sciences, research institutions, courts of law, practicing lawyers and lawyers from different organizations in the sphere of administration of justice, administrative agencies and bodies, public services, associations of citizens, non-governmental organizations as well as other social institutes and entities. Kopaonik is the place where many issues of law are exposed and analysed covering various disciplines, including the treatment of the general system of law and the issues of its accordance with actual needs and international standards,

Along these lines, it is therefore necessary to construct a general conception of a Just Law that would provide a high degree of legal certainty. The work done so far and the scientific and professional results of the Kopaonik School of Natural law do speak in favor of creation of such a general conception.

Dr. DANICA MILADINOVIĆ
Executive Director, Association of Jurists of the Republic of Macedonia

This is the first time that I participate in the work of the Kopaonik School of Natural Law, and right on its anniversary. I do think that the

School is an extraordinary symbiosis of theory and practice since it makes a largest gathering of this type in the entire region. The impressions are splendid because to listen at the same time the very elite of academic community in Serbia – judges, practicing lawyers and other members of legal profession was an exclusive honor and exceptional experience. I am leaving this session enriched with knowledge after taking part in the most interesting debates about theoretical and practical questions.

Mr. BRANKA KOLAR MIJATOVIĆ
Member, Council of Ministers of Bosnia and Herzegovina

This year I had the pleasure to take part in the activities of the Kopaonik School of Natural Law and to be one of this respected family which now celebrates its great anniversary. I was glad to hear all the bards of law and to be present at the corresponding chairs. The thing that is common to all of us here is love, love which unites the participants, both those who have spoken and those who have listened. When you think about 25 years of someone's life, you are reminded that for quite a time he has already been of full age and that he became no able to know much and to do many a thing. After 25 years of the Kopaonik School of Natural Law you have a feeling that it is here the way she always was, but with the tendency that it still has much more to say, to say in perspective, and for the future, because everything that has been said until now has helped and motivated so many authors to write, to work, to be actively engaged. Consequently, as far as I think, great love is standing behind all this. And, as the participants of the concluding plenary session have said – it is the faith that it necessary for that what you work since the faith gives birth to work and the work gives birth the action.

In other words, the Kopaonik School of Natural Law animates one for action. I would now like to say that not only conclusions but also the spirit and the breath of Kopaonik School of Law should be extended to the Republic of Srpska as well, and to Bosnia and Herzegovina and all other countries that have taken place after the disintegration of former Yugoslavia, because we are all a great symbiosis and as such we must continue to work and cooperate. In this sense, the Kopaonik School of Natural Law should be that link and that clasp, that artery through which the positive and the purest blood is flowing, the blood which may be that very link.

I express my gratitude to organizers of the Kopaonik School of Natural Law, to its creators – academic Slobodan Perović and professor Orlić as well as to all other wonderful people who gathered their strength twenty five years ago to establish the Kopaonik School of Natural Law.