Slaviša Kovačević, Ph.D.[1]

Reflections on Constitutional Culture of Transitional Societies

Abstract

The paper represents an illustration used for understanding constitutional culture in transitional, post-communist societies. Using the perspective of constitutional hermeneutics, constitutional sociology and constitutional political science in the approach to this problematique, and being inspired by the practice of the abstract constitutionality outside the social and political milieu, the author starts with an integrated understanding of a constitution as a constitutional culture. A social and legal interpretation of the constitutional framework does not depend only on the linguistics of the constitution but also on the constitutional hermeneutics, and primarily, on the social and political prerequisites and the perception of constitutional legal culture of the subjects of social life. A reduced and one-dimensional interpretation of the constitution in post-communist societies is determined by an inherited anti-liberal tradition, which takes the form of ethnocentrism, paternalism and totalitarianism, supported by the transitional experience of the authoritarian legal populism.

Key words: the constitution, constitutional culture, constitutional democracy, constitutional patriotism, ethnic and civic identity, culture and consciousness about human rights and freedoms.

Constitutional Culture of Society

The basic theoretical and methodological starting point of the discussion about constitutional culture is the difference between the normative-prescriptive and the empirical-descriptive understanding of the law, i.e. the constitution, as the difference between (a) a dispositive constitutional text or the "written constitution", (b) the interpretative level of meaning of denotations and connotations used for comprehending and understanding the constitutional norm or, in other words, the "constitutional hermeneutics", and (c) the real, practiced, effective, applied, hypostasised in the behavior of the subjects of the social and political practice or the "real constitution". The above-mentioned threefold distinction leads us to an integrative understanding of the constitution as a structure made of linguistic, hermeneutic, institutionally-operationalized and empirical layers, which, viewed as a whole, represent the formation of constitutional culture.

The constitutional history of post-communist, transitional countries is characterized by the existence of the constitution without the existence of the constitutional and legal state, i.e. the practice of a mono-ideological reduction of the meaning of the constitution. This also

[1] Assistant Professor, Faculty of Law , University of Niš

represents the main starting point for the questioning of the empirical and socialist, i.e. transitional, constitutionality, on the one hand, and a theoretical inspiration for the construction of an integrated notion of the constitution as the constitutional culture, on the other hand. Our next step is to analyse this three-level characteristic of the constitutional culture.

The first layer of constitutional culture refers to the linguistics of the constitution and represents a written norm of "how it should be done", that is, a disposition which is used for the normative prescription of the behaviors connected with the basic, typical, characteristic, interest-based and value-based social relations. Even though a constitutional norm has a binding effect, in the socialist-communist systems, it often had a political and ideological, and, therefore, a declarative character; and, it did not perform the primary function of a constitution. The formal abstractness of legal norms which did not have a realistic possibility of being applied was particularly present. The compulsory character of norms had a very selective aim of sanctioning the so-called anti-social attitudes and behaviors, but only when that suited the stability of the will of a single-party system or the bureaucratized power, and, during the transitional period, the norms were used for sanctioning or quasi-criminalization of political opponents. Therefore, the constitution only had the instrumental function of increasing the power and authority of the ruling party. The primary norm, which was practiced in this manner, originated from the nature and the character of a totalitarian ideology of the Communist regime, which had colonized not only the constitutional and the legal system, but also the whole compound of opinions, attitudes and behaviors which refer to different areas of the society. Instead of limiting the authority and power, the perception of the constitution had the quasi-logic of the subordination of the constitution and its arbitrary interpretation and practice.

The second layer of constitutional culture referred to understanding and comprehending the spirit of the constitutional text. Studies and researches in the Eastern-European countries show that legal culture was servile, populist, inspired by a rigid understanding of the class interest and, nowadays, the national interest, without a proper understanding of the role and the significance of the constitution in the society. The gloomy processes of the consolidation of democracy occur within the circumstances of forgotten, lost or unknown (non-acquired) interpretations of civilizational norms and values. The processes of political and legal indoctrination made the contents of political life senseless, and they completely reduced the process of the interpretation of democratic ideas, principles and practices. The mono-ideological norm had the status of a command and an order.

The basic aim, function and purpose of a constitution are to establish certain written or unwritten, and socially adopted rules of life, especially the rules according to which the authority and political government are conducted. The constitutional content is not only political, but it also has a broader sense; namely, the constitution is not only the highest legal act which regulates the relations of governing, but also a basic, primary, valid norm of society, that is, a normative act

which contains general rules of the mutual life of people on a certain territory. The basic idea and the essence of constitutionalism is the limitation of power, the balance of government, the autonomy of law, the independence and individuality of legal institutions. On the level of legal culture of society, the constitution presupposes the fundamental liberal principle of the individual freedom of individuals and groups, their protection by the court, and especially the autonomy of society in relation to the government and the guarantee of subjective public rights. This is the basis for the distinction between constitutional culture of the government and the constitutional culture of society.

The third layer of constitutional culture refers to the behavior of various subjects of society towards the spirit of constitutionalism and the circumstances which favor the constitutional norm. The constitutions originate, function and live in certain traditional, cultural, economical, and international conditions and circumstances. In other words, the constitutional norms are applied and applicable, and they perform their different roles and functions only, and only if, they are supported by a set of other cultural, political, economical, traditional, social and situational conditions. Therefore, the actual assumption of the effectiveness of the constitution is the liberal and democratic political culture of society. This means that constitutions are the products of political and legal culture in the same manner as their normative creator. This explains a large number of "written" liberal-democratic constitutions in post-communist systems. The norms, which prescribe the individual rights and the political competition, the division of the government and political pluralism, have become mostly insignificant in the societies with a deep-rooted anti-liberal, populist tradition with collectivist values and a practice of manipulating the notions and interests of society.

The incongruity between norms and reality has three levels: the first level is a singular, sporadic incongruity which exists in all societies; the second level is a frequent incongruity which is typical for certain sections of the society; and, the third level is a prevalent disparity which makes the existence of the constitution and the laws senseless. The post-socialist law is mostly incongruent with the spirit of the constitutional framework due to the relapses of the heritage which is interiorized within the processes of the political and legal socialization of an individual. If the constitution does not reflect the political culture of a certain environment, this calls for re-socialization, that is, a gradual change in the political and legal culture which is congruent with the nature and the spirit of the new social and political formation of the society. The process of the political and legal re-socialization implies the process of learning on the level of the elite and legal professionals, as well as on the level of legal culture of people. The process of re-socialization has to set an integrated notion of the constitution as the unity of linguistic, hermeneutic, institutionally operationalised and empirical elements of the term.

However, the constitution is not only a mechanical normative explication of social needs which serves to legalize reality, but also a normative construction which should also enable the transcendence of the existing reality. It is not possible to overcome reality and to develop

without the constitutional norm, which should be the starting point of every transitional society. That is why it is important to distinguish the degree of distance between real social relations and the normative structure of the constitution.

Transitional reforms which lead towards European integration have to enjoy a high degree of consensus, which is possible only if the values which they are based on are deeply rooted in the predominant model of political culture and only if there is an adequate framework of social, economic, cultural and other necessary opportunities.

At this point, I will briefly focus on the meaning and the interpretation of the notions of equality and freedom. During communism and through the following transitional period, the principle of equality was understood and comprehended as an arithmetic equality, that is, as a formula which implies that everyone is equal in everything. However, the idea of equality has three meanings, where the first meaning refers to the legal equality. The second meaning refers to the formula of proportional equality which implies that equal things should be treated equally and unequal things - unequally, that is, that everyone should get as much as he/she has contributed, whereby there is the lowest social, i.e. rightful, threshold of existential dignity. The third meaning of equality refers to equal social opportunities. This meaning implies the existence of traditional, cultural, economic, that is, material, political and legal opportunities for the real practice of equality. For example, a low material status, i.e. standard of citizens, disables the realization of the right to residential equality. On the other hand, a collective anti-liberal pattern which prevails in people's thoughts disrupts the understanding of the individual concept of human rights and freedoms.

The right to freedom, which, in its widest sense, is understood as the heritage of the liberal tradition, is transformed into a diffuse, melancholic, unproductive freedom within the communist practice. It is also understood and applied as the freedom without limits in relation to the rights and freedoms of other people.

The right to property is not understood due to inertia of the state, i.e. social, property and the negative practice of privatization. The concept of the "limitation of material goods" was the dominant and the ruling model which had been hypostatized (instilled) in the consciousness of many generations for decades. The economic culture, that is, the culture of the market economy, is the great unknown and it significantly makes it difficult to rationalize the economic awareness. Also, the acquisition of material goods in post-communism resulted in the uncontrolled and criminalized privatization and the quick acquisition of wealth under the auspices of corrupt political elites and experientially created a negative image about the notion of private property.

The Heritage of the Authoritarian Law and the Need for the "Constitutionalisation of Democracy"

The law of the socialist and communist regimes was the authoritarian law. The octroyed, arbitrary truth of the society was transposed to an abstract legal text. The monopoly of the interpretation of interests and aims of the society belonged to the ruling single-party government. The socialist constitutionality was characterized by the factual powerlessness of the constitution. The power of the bureaucratized party leadership, which enjoyed uncritical support by the people, led to an actual devaluation of the constitution and the law. The "revolutionary justice", as an abstraction, was a constructed will of the ruling party-bureaucratic class and the expectations of workers. All socialist constitutions were a specific "catalogue" of rights and freedoms, which was highly discrepant with the real level of their actualization.

The authoritarian anesthesia of the law, used by parties, extended throughout post-communism and made the legal system and especially the judiciary system dependent on the executive and legislative authority (legislature and the executive). The prevalence of the power of the party over the law, the prevalence of the executive authority over the law and the dependency of the institutions are, in general, a very important part of the post-communist constitutional and legal order. The functioning of the legal system is not, by itself, an implied and automatic application of the law, but it always requires an external, heterogeneous "prosecutor" who influences the legal processes, whether in the form of encouragement or discouragement. That is the essence of the authoritarian application of the law; namely, there is always a need for "a nod of approval", the favourable political context or the current constellation of interests.

The legal culture within the transition also has a populist character, and it is reflected in the process of labeling political opponents as being criminalized. Such populist manners have an excellent acceptance within the society which is torn apart by the "feeling of injustice" and dissatisfaction with the achievements of the transitional politics. A demagogic exclusion of justice outside and contrary to the institutions in charge, under the circumstances of the deprivation of rights of individuals, becomes the real and possible way of fighting against crime and corruption. Therefore, in this way, the authoritarian populists "earn points" in the society which does not have legal culture.

The heritage of the factual powerlessness of the constitution and the law is visible even in the time of the so-called "constitutionalisation of the revolution" (Podunvac, 2006), when it is necessary to create legal assumptions of the democratic transition. The constitution did not take hold as the basic form of normative integration of the new political system after the change of the old system, and the agreement in regard to the basic values and goods or the "constitutional agreement" did not mean the beginning of the formation of the new collective and political identities. The power of the constitution in post-communism signifies the

impossibility of the formation and implementation of the new order, the impossibility of the creation of the institutional conditions for the democratic political behavior. The assumption of the legal transition is the autonomy of the legal system. Those who have colonized the law, and the society as a whole, have to be the ones who will liberate it.

The constitutionalisation of the transition and democratic consolidation is an integral and the most important part of every normative strategy of society. It cannot only be an abstract normativity, but it must also recognize the preparedness of society and project desirable social and political behaviors. The constitution shapes and reaffirms the chosen value and interest systems of society. The constitutional political culture refers to the constitutionalisation of the political behavior and governance, as well as to the constitutional culture of human rights and freedoms.

Understood as the instrument of governance and the normative stabilization of authority in the shifting political power relations, the constitution has become the measure of political interest, and the electoral legislation has become an authoritarian legalism of the acquisition, stabilization and consolidation of authority and power. The majority of post-communist constitutions are short-term normative tactical calculations of the interests of the elites and criminalized market monopolists, without the long-term anticipations of clear, real and rational visions of development.

The power of the constitution and legislation is bordered by the factual relations which are often above or outside their regulatory function. In that way, constitutional political culture is formed outside the basic principles of the rule of law. Consciousness about human rights and freedoms and consciousness about the need for the constitutional and legal limitation of authority and power are a part of legal, i.e. constitutional, culture. Political and party authoritarianism, with the exception of liberally individual democratic tradition, represents a great legacy of socialism which disrupts the abandonment of the rule of arbitrariness and the transition into the rule of law.

Constitutional Democratic Culture

The constitutional democratic culture will be problematized through three lower operational terms: constitutional democracy, constitutional patriotism and the civic identity, which represent the most problematic issues of the arduous process of democratic stabilization.

(a) *The constitutional democracy* implies two levels. The first level is the framework of political behavior and the "rules of the game" of political participants within the political process as well as within the framework of institutional behavior. Formal or informal rules of the game without a presumed content cause negative effects. If the electoral competitive rules of the game are filled with inherited contents and the legacy of a previously acquired political culture, then the political life is anti-liberal and anti-democratic. Therefore, if there is no congruity between the rules of the electoral process and the dominant social

mentality, then, the best outcome can be a defective democracy. The distinction between the quantitative democracy, as the "majority rule", and the qualitative democracy, which represents the value of the content of the political will of the majority, is very important. The quantitative democracy implies a statistical sum of political minors who do not have a sufficient civic competence and responsibility and who are not familiar with the rational criteria for the promotion and the choice of the holders of public offices. In this sense, the democratic procedure supports different populist aspirations, and the unenlightened, uncritical mass society establishes a demagogic and populist style of political quasi-elites. The democracy which is electorally limited to formal elections has turned into a sterile electoral cyclicism in which the politically illiterate electoral body consolidates the authority of the irresponsible and un-functional elite. If the decision made by the majority can be wrong, which has been proven through the practice of political history, then, it is highly indicative that electoral mistakes are to be repeated from one to the next electoral cycle, which is a prevalent condition of transitional societies of the "demagogic democracy".

The parliamentary decision making and parliamentary culture show all the flaws of the parliamentarism in transition. The parliament without the "parliamentary spirit". A dominant inflow of the will of the ruling party and the executive authority distorts the doctrine of horizontal separation and the autonomy of the three branches of government. Parliamentary discussions are deprived of an argumentative and reasonable dialogue and an institutionally expressed parliamentary opposition. The parliamentary culture is normatively unfounded and un-built, the decision-making process is situationally changeable, un-functional, personalized and privatized, with distinct decisionistic feebleness and a lowered response and management capacities.

The other side of the constitutional democracy refers to the limitation of the political will of the majority in regard to the rights of individuals and minorities. The famous Tocqueville's formula of the "tyranny of the majority" over the rights of individuals and groups (political and ethnic minorities) is indicative. Namely, the boundary of the authority which is legitimized by the majority often crosses into the sphere of the rights of individuals and groups, and the interests and the needs of sub-cultural entities are often not expressed through interests and institutions. The point that the majority is always right is the result of the populist and organic basic element of the political and constitutional culture, which is a centuries-old constant rooted into the consciousness of generations.

If we can synthesize the quantitative and the majoritarian features of democracy, then we reach a conclusion that a transitionally practiced democracy is a robust mixture of number and mass, electoral mechanics and uncontrolled irrational dynamics within politics. After we consider the question of constitutional patriotism, we will add ethno-democracy onto this robust amalgamated creation.

(b) Constitutional patriotism implies a liberal-democratic way of expression and manifestation of the ethno-national identity, but also other specific identities. It emerged as the need for a constitutional limitation of extreme, chauvinistic, racial, nationalistic and other discriminatory aspirations. The "birth" place of 'constitutional

patriotism' is the intellectual Germany and Sternberger as the creator of the term. Namely, having been familiar with the negative effects of the national-socialism and the racial brutalisation of politics, he started from the three ideas: the idea of a civic friendship with the state, the idea of a rationalized emotionality towards the state and the idea of a depersonalized and vertical identification with the state as an institution. Habermas contributed to this concept by adding two main ideas of constitutional patriotism: the idea of political identification which transcends the nation and the idea of reciprocal civic solidarity in which "the other" is acknowledged as equal and free. Both ideas became fundamental for understanding politics as cooperation, compromise and consensus. Therefore, the doctrine of the constitutional patriotism assumes the un-national, i.e. de-national, social-liberal portrait of the political community, where the behaviors of subjects are legally limited and tolerance is the basic social relation.

In multinational transitional societies, especially in the Balkans, the pluralism of ethnic and national communities is evident, and the ethno-national collectivist self-identification represents predominant social and political views. It is a dogmatization of institutional, archaic and ethnic and religious specificities which create a radical distance among nations. The psychical relation of "we-they" is expressed through the perception of other ethnic groups as threatening, hostile and endangering. This pre-modern substrate of the "belated nation" and the "unfinished statehood" established a syndrome of the so-called Balkan transitional ethno-democracy.

(c) Constitutional modeling of democracy and patriotism has to include *the concept of civic identity*. The civic identity is a complex notion which incorporates different kinds of sub-identities. Citizenry is the pluralism of identity. It springs from the liberal doctrine about the man and the society, and it is expressed through the quality of rights and freedoms which are owned by people within the state community, and it is built in its entirety through the social-democratic and republican doctrine about the man as a political *sui generis* being. All people are free and equal regardless of the individual, psycho-physical, religious, national, class, professional, cultural and political sub-identities. A free and equal civic status is the main starting point, the principal normative framework and the starting position of the expression of uniqueness. Therefore, the principle of equality and universality is used for transcending partial experiences, differences, particularities and individualities. The civic identity is the basic trademark of an identity of a person and it has priority over all other types of identities. People share different identities and affiliations, but they are all equally citizens. If the civic identity is subordinated to other types of identities, then, the society is structured by inequality and discrimination.

Having in mind the experiences in multi-ethnic and multi-religious communities, there is a question of the relationship between the ethnic and the civic identity. Recent history, including today, shows that the nation, understood as an organic ethnic creation, is not a guarantee of freedoms and rights. In the societies where the ethnic affiliation represents the basic criteria of relations and behaviors, there are constant conflicts, harsh violation and suspension of fundamental rights and freedoms. Multi-ethnic and multi-religious communities nowadays

represent the key focal points of conflict and war and also the source of human suffering.

The ethnic (national) identity implies a specific type of identity embraced by the civic identity. If ethnicity covers the idea of citizenship, or, if ethnic rights as the dimension of civic identity are limited or violated, the space for the negation of the civic identity is open. Regardless of the fact that people consider their nation as the basic source and sanctuary of their collective identity, the nation, i.e. ethnicity, is a necessary but not sufficient prerequisite for the practice of the civic identity.

The form of an equal civic status enables the right and the freedom to express uniqueness, specificity and difference. The basic citizen oriented principle is the equal legal and social possibility to express differences. If the principle of difference is above the principle of equality, then, the community creates unnecessary and unnatural inequalities among, for example, the members of different ethnic groups. The fact that people are different, in one sense or another, which is natural and normal, does not mean that their rights and freedoms should be limited or taken away.

The liberal model of citizenship, that is, the individual human rights and freedoms represent an assumption and a prerequisite for the acquisition and practice of group and collective rights. Without the autonomy of an individual there are no conditions for the exercise of the rights of groups or minorities. The affirmation of the group identity at the expense of the individual identity always signifies the suspension of individuals and their rights and freedoms.

Civic Culture

The forms of the pre-modern group affiliation demand a transformation into the liberal-democratic model of civic identity. The civic culture implies balance, that is, successful merging of freedom, equality and rights. Historical and content-based evolution of the human rights is followed by the convergence, reconciliation, balance and coexistence between the principle of freedom and the principle of equality, even though, historically and content-wise, the principle of freedom comes before the principle of equality. The institutions of the social-legal and liberal state have a convergent character because they provide the balance of the opposite, but reconcilable imperatives of safety, freedom and equality. Modern practice also confirms that liberalism and social-democracy are the two dominant ideologies which are more and more in the process of convergence. As a necessary correction and building-up of the "liberal concept of freedom" the principle of (social) equality as the process of equalling the level of freedom for all people occurs. In that way, the entire principle is constituted: the freedom of equal civic status, that is, equal or nearly equal opportunities and conditions for the practice of rights and freedoms. Bringing freedom and social equality closer together enables the creation of a basic model of civic and political justice.

The public order of rights and freedoms implies a balanced relationship between freedom and equality. If equality is predominant

and stronger, especially if it is extremely favourized, then freedom is being limited and simplified, collectivist or totalitarian pretensions are encouraged, and creativity and the right to choose are restrained (Matic, 1992). However, freedom without equality creates automatization, anarchy, irresponsibility, inequality and legal insecurity. It is unproductive to proclaim or guarantee freedom in the condition of created social differences. But, even equality does not have sense if the instruments of the political power are used to restrain the freedom of choice and the autonomy of will.

Demands for equality encourage different kinds of limitations within the image of the paternalistic state; they set the limit to freedom, produce uniformity and question the very legitimacy of the community. An excessive affirmation of freedom deepens inequalities and creates the society of the privileged. The combination of the principles of liberal democracy and active participation is often an imperative for exiting this imbalance. The established rights of equal freedom have to be protected in order for the democratic process to be effective and the government to be legitimate. The affirmation of the democratic principle means freedom in moderate equality and responsibility. It was Kant who spoke about the kind of political structure which "allows the greatest possible freedom in accordance with the law, according to which the freedom of every individual can be reconciled with the freedom of all others".

Equal opportunities in the public legal order express civic freedom. Kelsen supports the standpoint of liberal democracy and considers that freedom is the assumption of equality, which does not exclude the possibility that equality is also the assumption of freedom (Kelsen, 1999). Taking into consideration the negative sides of democracy, he believes that the principle of majority should be taken out of the category of freedom. The will of the majority, which is not formed freely, is not a democratic will. That means that the principle of majority cannot be entirely taken out of the principle of equality. Norberto Bobbio believes that liberalism is not only a historical but also a legal assumption of a democratic state. There is no legitimate authority without the existence of freedom or the provision of the duration of rights and freedoms without a democratic state. It is highly unlikely – Bobbio continues – that some non-liberal state guarantees a proper functioning of democracy and, on the other hand, it is highly unlikely that a non-democratic state can guarantee basic rights and freedoms (Bobio; 1995).

Abstract equality should be distinguished from equal opportunities or legal equality. Sanctioning of equality before the law is the indicator of actual social inequalities. People are not actually equal in their biological features, abilities, and social statuses. However, the right to equal opportunities means the acknowledgment of equal significance and possibility of influence not only in the process of controlling the state, but also in the process of self-creation of one's own individuality. Considering the selective practical consequences, the idea of equality is corrected to moderate equality, and socially directed rights and the order of law prevent extreme (in)equalities.

Laws are the highest human institution – says Russo, and continues – freedom always follows the fate of the law; it rules or deteriorates with them. Where there is no law there is no freedom. The rule of law overcomes the rule of self-will and becomes the main guarantee of human dignity. The positive law is a unique system of general, universal and formal norms which are used in order to express and to protect the material substrate of freedom and equality. Laws prescribe a clear and recognizable impersonal limitation of the behavior of the authorities in relation to the separate zone of rights and freedoms of citizens, and the legal certainty of protection before an independent court of law.

Consciousness about Rights and Freedoms

(1) Human rights and freedoms have become a trademark of transition and democratization. But, there is not a democratically established society if issued human rights are not guaranteed and practiced. Taking into consideration the infamous practice, it is necessary to differentiate between two approaches to human rights and freedoms: one is legalistic and the other is cultural-social approach. When constitutional legal, i.e. legalistic, approach is talked about, then it can be said that all modern constitutions are the highest standardized norms which necessarily contain norms about human rights and freedoms in their structure. The cultural-social or real aspect of human rights means cognitive-value rootedness of human rights and freedoms in the political consciousness and legal culture of people. The culture of human rights means knowledge about human rights and freedoms, the assurance in their importance and positive experience of institutional guarantees. The culture of human rights also refers to people's expectations in relation to normative and institutional court protection and administrative treatment of citizens. Consciousness about rights and freedoms means consciousness about the possibility of acting freely without restrictions but also consciousness about rights to act in order to fulfill oneself as a citizen and not a subject.

Consciousness about human rights and freedoms in transitional countries has been disabled by anti-liberal logic of tradition and is considerably rooted in political and legal mentality, especially with the peoples of the Balkans. That mentality is, on the one hand, primarily servile by nature and it is reflected in the consciousness about the obligation to submit to the party state, and it is the consequence of an interiorised authoritarian and paternalistic state; on the other hand, that mentality is aggressively rebellious and is reflected in the populist mobilisation of sentiments and their guidance towards "a fictitiously conceived enemy", and it is the consequence of a phenomenon called "a belated nation" and an archaic-ethnic and hermetic group identity. Rights and freedoms are explained as collectivist and group in relation to other ethno-national groups because their history was also marked by the need for the outer liberation while the internal liberation of consciousness in

relation to the authoritative totalitarian state and the ethnic "collective unconscious" has been developmentally stopped. The emotional-diffuse identification in relation to prominent authorities of the national quasi-emancipation has blinded the rational cognitive development of liberal legal culture and the enlightened society.

(2) The perception of human rights and freedoms is three-layered. This is how we differentiate between general, special or partial and individual aspects. General consciousness of human rights is universal, generalized and inclusive, and it means equal treatment and acknowledgement of all kinds of human rights to all individual and group subjectivities: one type of right is as valid as any other type of right. Unequal enlightenment about human rights means selective cognitive-value perception of general common importance of some rights in relation to other rights. Certain rights should be protected unconditionally, and some depending on the situation, circumstances or interest. In this case legal consciousness is hierarchically established and it is expressed through the formation of the table of supported, i.e. denied, rights and freedoms.[2] Individual perspective is by nature possessive and selfish and is manifested in two ways: by the perception of rights and freedoms exclusively from the separate reason of interests of society's concrete individuals or by negating the idea and practice of human rights and freedoms.

In transitional societies general and universal consciousness of human rights is the slowest and the least represented. It will be built in the long run in European developmental processes and in designed and planned re-socialization of legal and political culture. The consciousness of partial sectors of human rights is the most frequent in the sphere of minority rights and socioeconomic rights. The lowest level of legal consciousness finds its real stronghold in society's corrupted institutions, in which an individual wants to circumvent legal proceedings and to achieve his/her self-interest by using different mechanism of favoritism.

(3) It is not irrelevant to explain what is attituditional and what is cognitive in human rights and freedoms. This relation has frequently been simplified and it has been unilaterally understood that behavior follows an attitude which has already been adopted. But their relation is much more complex and often ambivalent. This ambivalence has a couple of forms: the first form refers to the difference between opinion and actual behaviour, when an individual adopts human rights but in inadequate social context of anti-liberal practice he/she behaves in a conformist way towards the demands of the traditional environment. The difference between private and public attitudes stems from bad Communist practice in which private, personal and unexposed attitudes were ideologically auto-censored as undesirable and behaviorally exposed attitudes were corrected according to the demand of the mono-ideological elite. This is how people were taught to think one thing and do another. The second form of ambivalence refers to incomprehension of practical manifestations of the adopted concept of rights and freedoms. For instance, to interiorize human rights and freedoms means that such a right must be acknowledged without exception to other people. The third form of ambivalence refers to interest-based

understanding and interpretation of human rights which has been especially expressed among the "transition winners". The fourth ambivalence is expressed as a negative experience in legal proceedings of protection and realization of human rights and a low level of trust in the institutions of a legal system influenced the abstinence from legal protection and disappointment relating to originally positive expectations. Faced with "institutional injustice", people turn to extralegal ways of practicing their rights and freedoms.

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