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My best professor in Law School was Mihailo Konstantinović, a pre-war minister – which is why he was never praised or glorified enough. An excellent teacher - when he addressed us, he spoke like [famous Serbian actor] Raša Plaović, like the best actors. He, unfortunately, had many imitators, but like all imitators, they were ridiculous and much worse than the original. I am mentioning him because whenever someone would praise Mihailo (by the way, he was the father of Radomir Konstantinovic, the author of that important book on small-town philosophy), like Tea is praising me now, he would quote an anecdote about Nasradin Hoxha. Nasradin Hoxha had gone to Istanbul and when he returned to his village, they asked him whether he saw the Sultan and what the latter told him. Asked what the Sultan had said, he told one of the villagers: “Alija, he asked whether you have built your house, tiled your roof, whether your cow had calved, how your grandchildren were doing.” And Alija looks at him and says: “I know you’re lying, but I’m glad to hear it!...” This, of course, is not a story for serious people, this is a story for those who aren’t serious...

If it’s all right with you, I’ll start off, since I’ve already talked a lot on TV, in an interactive form. I will just give some broad strokes on this extensive topic you will discuss at these workshops, the freedom of expression and freedom of the media, which adjust to and change in the social context.

What I think is one thing, what is important is another. Law teaches you modesty. You may think you are the smartest person in the world, but if there is a competent court and it rendered a decision, you have to comply with it, not go on philosophising whether something else would have been better. This is why we will talk about some judgments that testify to this evolution and where we are at today.

Together with the freedom of conscience and religion, freedom of expression is one of the most important rights of the so-called freedom of the spirit, man’s freedom to think what he wants. Of course, if he is only allowed to think or dream, he will only be persecuted by an Orwellian Thought Police. But he has to be able to say what he thinks in a way. If man did that all by himself, he would be like someone who has a transistor radio in the 15th century, he can talk over it but there is no-one to convey what he is saying. So, there can be no real freedom of expression, which is an aspect of the freedom of thought, without media, without a way of multiplying that opinion and disseminating it to others.

Things have evolved in that respect in the recent past. The post-WWII breakthroughs in freedom of expression occurred in our society with a delay (do not forget, we were the Soviet Union’s most loyal allies from 1945 until 1951, if not later as well (the 1948 Information Bureau Resolution was an odd attempt to free ourselves from Moscow’s domination, proving to it that we were better communists than Moscow, but that is not the topic here). Therefore, we had major difficulties there, but it wasn’t easy anywhere at the time. If we take a look at the Diamond Jubilee of the British Queen and go back sixty years, to the time she inherited the throne, Great Britain was so poor at the time, that all the food was rationed and every citizen got half a pound of sugar (around 250 grams) and I don’t know how much butter for the coronation. Poverty reigned in Europe for a very long time after WWII, while we in Serbia, the

layabouts that we are, were not stricken so hard by it, because Serbia is agriculturally rich. That can be a good thing, but it can also be a bad thing, because a country that has never experienced real famine, like Ireland, for instance, has probably never witnessed the stupidities resulting from that “I have relatives in the country, they will dole something out to me and I’ll survive” attitude. But, that isn’t the topic either...

The fight for freedom of expression has been very difficult, of course. I won’t talk about how it was fought here, but globally. For instance, Turkey until recently had a Criminal Code, a copy of Mussolini’s, which laid down one sentence of imprisonment for the defamation of an ordinary citizen, a two times longer sentence for the defamation of a Government member and a three times longer sentence for the defamation of the President of the Republic. So it comes as no surprise that journalists sentenced to 320 years of imprisonment were languishing in Turkish jails. The breakthrough that began at that time, in the era of democratisation after WWII, is apparent in the landmark judgment of the European Court of Human Rights in the Lingens case. Lingens was a journalist of an Austrian weekly (which is still published, it is called *Profil*); he attacked the cult Austrian Chancellor Bruno Kreisky, accusing him of flirting with anti-Semites and war criminals, although he was a Jew, in order to seize power and privileges. Kreisky sued him for defamation and won in Austrian court. Lingens complained to the European Court of Human Rights, which said in that historical judgment that public figures, people aspiring to power and senior offices, enjoyed less protection than ordinary citizens. Ordinary citizens can think what they like in their “mouse holes” and nothing will happen to them, but public figures are more accountable and must tolerate criticism. That practice, which started with Lingens, so odd 40 years ago, has developed and is now commonplace, with the exception of some judges (because of whom Serbia ended up before the European Court of Human Rights), who thought that it was horrible defamation if someone wrote an article against a minor feudal party lord of a place called Babušnica.

The development of the right to freedom of expression continued. Not only with regard to the degree of protection accorded the so-called VIPs, but towards decriminalising verbal offences as well. This is something we had advocated in the pre-Milošević era, in the 1980s, regarding that infamous Article 133 of the Criminal Code of Yugoslavia, penalising the offence of “upsetting the public” by voicing untrue or harmful allegations (and the court was the one that assessed whether they were true or untrue, useful or harmful).

As you can see, as everyone knows, there are strong trends to decriminalise defamation in our region as well, to delete that offence from the penal codes, to either delete slander or libel or interpret it in a very different way than in the past; this has, fortunately, already happened in Montenegro. That is extremely important if you look at the entire development and status of the media.

Another important judgment of the European Court of Human Rights is the one that caused a real earthquake a long time ago, when a British weekly, *The Sunday Times*, was found guilty of contempt of court because it started reporting on a topic that the court had issued an injunction on. That topic, I apologise to those who already know about it, regarded the women that gave birth to children with deformities because they took Thalidomide during pregnancy. They gave birth to children without limbs and so on. The court had banned reporting on that matter while the case was still pending

before the court, but the European Court rendered a decision that if something is in public interest, the public has to be informed about it. This judgment tore down another barrier restricting the media in terms of classical restrictions.

As you know, freedom of expression may be restricted; it is not an absolute right like some other rights, for instance, the right to freedom of thought or religion. These restrictions have to be formally legal, but they also have to be legitimate, pursue a legitimate aim. Protection of morals is one such aim. A judgment rendered during the development of that more liberal interpretation is the one rendered in the famous Handyside case, when a British publisher translated a leftist publication aimed at sexually and culturally enlightening the youth; the booklet did not upset anyone in Denmark or in other European countries. But the British courts found that it had pernicious effects on morals in Great Britain, prohibited the book and ordered the seizure of the copies. That seemed possible at the time because the state was entitled to assess what was moral for its population. Subsequent attempts to do that, like the attempt to ban the showing of a film in the Austrian town of Innsbruck because it insulted Catholic morals, met with general condemnation. This margin of appreciation regarding morals, which courts in every state are entitled to, began shrinking later, but, back in 1976, the European Court of Human Rights concluded that the British court was the most competent to qualify what is moral in Britain and did not find violations of the rights to freedom of expression and to peaceful enjoyment of property. I wanted to point out that the successes, the headway in eliminating the classical restrictions of the freedom of expression and, thus, media freedoms, which had at been at risk from the state, the state authorities, was replaced by another problem. This is what I would qualify as an important topic at this moment, that the repressive state, the state that punishes, prohibits, etc, is suddenly being replaced or complemented by a repressive society. So, the state is not prohibiting, the state is sometimes even supporting human rights, but society is starting to limit and annul them.

Lawyers will best understand that on the case in which the state of India was forced to change its criminal law, abandon the sanctity of the presumption of innocence and mandate the presumption of guilt, to defend itself from the major risks that the caste system and traditions pose to India – when the state tries to be better but society is resisting it and holding on to its customs. Marriages in India are mostly arranged by the parents. The brides have to bring the dowry, but the authorities noticed that once the dowry was spent, the brides died suspicious deaths, under odd circumstances, which allowed the sons-in-law, the sons to remarry. These dowry deaths had become so widespread and suspicious, that the Indian Government and Parliament had to take measures against society's views: a law was passed under which if a daughter-in-law mysteriously disappears within a specific period of time after the wedding, the presumption is that she was killed by her in-laws. So, the presumption of guilt was introduced and the defendants have to prove that they did not kill the brides.

I turned to this topic which is characteristic of present-day evolution, as societies are becoming repressive and the Governments are not behind that. Resistance in classical thinking on human rights entailed resisting the authorities, but then the authorities have been tamed and started seeing reason, realising that it is in their interest to have human rights, because every good ruler, be he a tsar or a bishop, wants to have motivated subjects, and motivated subjects want some kind of certainty, and the law

provides such certainty, to an extent. That is its main purpose. I don't know if any of you were victims of the so-called "Marxist" definition of the law as "the will of the ruling class". This is an inanity we had to study, coined by Stalin's famous prosecutor Vishinsky.

So, why did the ruling class in Britain decide to drive on the left and the ruling class in Europe on the right side of the road? That illustration leads us to the conclusion that the function of the law is actually to reduce uncertainty, so that man knows what he may and what he may not do, and thus reduce the amount of insecurity that accompanies us through life.

Securing human rights is absolutely reasonable in that sense, regardless of the underlying philosophy. The fight against the state limiting them has been mostly successful. But we are now entering a sphere, I cited that example from India where, despite the state's best intentions, the society reproduces horrible customs, which the interpreters of religion and tradition are to be blamed for the most. I can give you an example from our part of the world: problems with homophobia. Homophobia is extremely widespread in the region for some reasons, which I amateurishly say are probably the consequence of Turkish occupation and memories of it. The latest scientific findings confirm that sexual orientation is determined in a foetus in the fourth month of pregnancy. We have had homosexuals for centuries, some tsars were homosexuals, Alexander the Great was one. Some societies tolerated homosexuality to a greater and some to a lesser extent, but, in any case, homosexuals emerged naturally, through natural development. Just like someone is born white, yellow or black, a man or a woman. The whole idea of non-discrimination is that you cannot be held responsible for something that is not your fault. I was born this way and I did not influence it in any way. This realisation is surfacing elsewhere, but, in this region, there is still a widespread view, dating to the past perfect tense, that homosexuals are evil, that they decided they would be homosexuals, that they should be arrested – or, a more recent opinion, that they are sick, that they need medical treatment. We have now heard of an "ideology of homosexuality" in this tirade against the gay parade in Serbia.

Take the example of Serbia, its new Constitution and Anti-Discrimination Act guarantee the right to freedom of sexual orientation, but when it comes to organising an event, such as the Pride Parade, the state balks; it prohibits it one year under the excuse that it cannot rein in the others, it allows it the next year but under huge security measures; sexually alternative persons would have a much clearer idea of their status vis-à-vis the authorities, but society is the one persecuting them.

To turn back to the media, and you know this better than I do, with privatisation and the penetration of capitalism, the media and what is written in them (as one cynical journalist in Serbia put it, papers aren't meant for reading, papers are meant for publishing things in them) and what they report on are a combination of the wishes of the owners, the advertisers, the indicated wishes of the readers and viewers and some general political convictions. That is what they boil down to. Unfortunately, in such situations, in which the so-called neo-liberal interests control the media, serious restrictions of the freedom of expression occur, which we have traditionally called self-censorship. Either the journalist himself thinks that it is not safe to publish something, or his editor and chief editor think that, or the owner thinks that it does not

pay. That, for instance, results in the degeneration of some media, to a regrettable state of affairs. During Milošević's reign, Radio B92 and, subsequently, TV B92 were our main bastion. Only faint traces of it still exist, something I call the B92 sports channel, because there are no news, nothing if Novak Djokovic is playing, not just Djokovic but anyone, and tennis is played all year round, because, thank God, the Sun is always shining somewhere. All we are left with is the morning news on the radio, but there is a kind of fear of the owners and editors lest they antagonise someone. One of the major reasons why [former Serbian President Boris] Tadic lost the elections was that the media were publishing those super optimistic estimates that Tadic would win by 8 or 10 percent. And these complacent citizens of ours, our "left" is still more complacent than our right, has been, ever since the real left disappeared, they simply did not go to the polls to vote. That was one of the reasons.

Resistance to that -- that is a topic we should talk about. But resistance to that cannot entail only improving the legislation; this resistance cannot be offered in the sphere in which we had earlier fought for human rights, it should involve a kind of refined campaign to oppose that. Professional press associations, of course, play a major role in that and that brings me to another matter we should focus on -- codes of conduct.

We have this communist tradition, NGOs are still 'no-nos', you see how disparagingly they are talked about. But there are some areas of life which the state cannot regulate without the members of a specific profession. For instance, after the Lewinsky scandal, Clinton was not afraid of the penalty; he was afraid that he would be disbarred. That is worse punishment for a lawyer in the United States than anything else, and it is administered by the members of the profession, not the state. The same applies to doctors and all other professions and it should apply to members of the press as well. Investigations into the guilt of journalists have been launched under pressure from independent associations in Serbia, many people have been punished for the events in the 1990s, whereas the biggest liars and inciters of the crimes have become extremely eminent journalists and rich men and no-one has dared launch such investigations. Some moves have been made in that direction but I'm afraid that nothing will come out of it. I repeat, professional associations must do this. A community, a society is not made up only of the state, but of all those structures that constitute it and that bring in that ethical component, because the law per se and the courts cannot understand this.