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Comment:

Two Conceptions of Human Rights

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The jurisprudence of Central and Eastern Europe, inspired by the doctrine of Marxism-Leninism, elaborated after World War II its own concept of human rights. This concept had its sources in the politics and in the social and political systems of those countries. The concept was expressed most briefly, and at the same time quite completely, by the Soviet expert in international law, Wladimir Kartashkin, in the book by several authors, *Les dimensions internationales des droits de l'homme*, edited by K. Vasak. This book has been published by UNESCO as a manual designed to teach the set of problems of human rights at universities all over the world. The concept affected substantially the interior practices of the states of that region, as well as exerted influence on their approach to the issues of human rights in international relations.

During 1989, in most countries of that region, deep political changes have been brought about. The Marxist and Leninist type political parties that used to play a dominant role lost the leadership and, in some countries, even ceased to exist. Political life has become pluralistic. Power has been taken over by coalitions of different democratic parties, often strongly opposed to the parties of the Marxist and Leninist type. The links between the countries of the region have been loosened, and this concerns especially those with the USSR. A turn towards Western Europe and the USA is being

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effected. It is commonly aimed to replace the previous blocs with a unitary European system of security and cooperation. The process of unification of Germany, based on the platform of the social and political system of the Federal Republic of Germany, has been greatly advanced.

It would be interesting to answer the question on the ways in which those changes affect the concept of human rights dominant until recently in the policies of those countries.

Earlier, the concept stressed that human rights were born in the social and economic structure of a given country, that the material conditions of the life of the community are their sources. The state may proclaim only such human rights as are practicable under given material circumstances.

Today, we witness the retreat from such a way of perceiving human rights. Their sources are to be sought first of all in the human dignity which is equal for each human being. This approach fosters universality, i.e. a unitary understanding of human rights, regardless of the country and its social and political system. Also the concept that seeks the sources of human rights in a religiously perceived law of nature wins a wider recognition.

The previous concept laid stress on the role of the state in the origins of human rights. Only the rights set up or recognised by the state can be human rights of full value. Since the state in its legislative activity, as well as in international relations, guides itself also by class, national, and other interests, human rights are of a class character.

Nowadays still it is perceived that the state played an important role in the origins of human rights, and especially in their implementation. Priority however is given to general human interests and aspirations, and not to the more limited group interests. This is in conformity with the thesis that human dignity is a universal value.

The concept that was dominant so far rests on the assumption that the rights and duties of human beings are indivisible. In practice, it regarded rights and duties equally, and often put more stress on duties than on rights. At the present time the links between the rights and duties of human beings are not being denied. However, stress is put on rights. But in the Catholic doctrine of human rights, the importance of duties is strongly emphasised.

The former concept regarded equally civil, political, economic, social and cultural rights. Economic, social and cultural rights had, however, been given more emphasis. Today, obviously, the unity and indivisibility of all kinds of human rights are recognised, and civil and political rights are given full appreciation.

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The Socialist concept of human rights stresses that the full realisation thereof is possible only in a community in which the exploitation of people by people does not exist, and the means of production are not privately owned. Today, this concept is being deviated from. It is assumed that human rights may be realised in every contemporary social and economic system. The view is becoming more and more accepted that in the system in which the means of production are private, human rights can be even more thoroughly realised than in the system in which there is no such form of ownership at all, or in which it is negligible.

The previous concept of human rights put emphasis on the fact that each human being lives in the community. In that connection, enjoying individual liberties is defined and restrained by the interests and requirements of the whole society. Hence, the liberty of an individual must be limited. This especially concerns the freedom of expression, of association, etc. The assumption was that there are only a few cases in which the interest of the individual can be opposite to that of the community. However, it was assumed that the interest of the community should have priority. Today, the autonomy and freedom of an individual is given more importance. In the case of conflict, it is not always the interest of the community that should be regarded as a superior one.

According to the previous concept, the guarantees of an individual enjoying his or her human rights consisted mainly in the competence of the state authorities called upon to guard the rule of law. The initiative and power to make decisions on claiming the individual rights rested mainly in the hands of the authorities. Today, the dominant view is that the system of protecting human rights should be devised, so that the initiative and power to take decisions should be first of all in the hands of the individuals concerned. Much importance is therefore attached to courts of law as the most appropriate independent bodies that guard such human rights.

The former concept of human rights dominant in the countries of Central and Eastern Europe assumed that the field of human rights is within the internal competence of the state. In that connection it was possible to establish only the system of collaboration of states in the field of human rights, and not the international protection of human rights. In recent years a more open version of this concept was adopted. The international protection of human rights was admitted in cases of massive and flagrant violations.

Today, a view starts asserting itself urges that human rights are a general concern of mankind, that the international community is authorised to have insight into the overall situation in the field of

human rights in each country, that both the universal and regional mechanisms of control over the observance of human rights are entitled to work.

The countries of Central and Eastern Europe took part in the setting up and functioning of the universal framework of the promotion and protection of human rights, i.e. the system of the United Nations. Yet they did not elaborate their own regional system for the promotion and protection of human rights. This was in line with the idea that human rights are an internal matter of states. Of course, there existed in individual fields bilateral cooperation, and also multilateral one, for example, in the fields of education, health protection, tourism, etc. Also efforts were made in recent years to adopt a regional declaration of human rights. However, they generally failed to produce any results. The most developed was the regional academic cooperation concerning human rights.

At present, the attitude towards regionalism in the field of human rights seems to have changed. The countries of Central and Eastern Europe — at least some of them — show their interest in participation in the Western European system of the promotion and protection of human rights and in the actions taken by the Council of Europe in that field. Moreover, all the countries of this region are avidly interested in developing cooperation concerning also human rights within the framework established by the Final Act of the Conference on Security and Cooperation in Europe signed in Helsinki, in 1975.

The changes in conceptions of human rights mentioned above find their expression in the political and social practice of the states of the region. The possibilities to exercise political freedoms were substantially extended and enriched. Free elections to the parliaments and local representations have been held or are going to be held. Numerous political parties that adopt diverse political options are being created. Freedom of association is nearly absolute. Trade union liberty is realised with no constraints. The former control over expression, media and spectacles has been abolished. Yet quite a rigorous subsequent control exercised by courts of law is maintained.

Religions and churches enjoy great freedom. Protection of individual rights of citizens has been improved, especially concerning the rights to have property, to inheritance, personal rights, i.e. the right to have one's dignity respected.

On the other hand, in the field of economic, social and cultural rights the picture is not so optimistic nor equally positive. Serious impoverishment of the population takes place, for example, in Poland during just the first quarter of 1990, by 30 per cent on average. A

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phenomenon previously unknown, namely unemployment, appears on a mass scale. In connection with the introduction of the so-called market economy, the availability of health protection, of enjoying leisure time and of cultural goods has worsened considerably. Industrial production has dropped, and the housing problem has become more acute. Also, the accessibility of secondary and higher school education has decreased.

In spite of expectations, the possibilities to travel abroad have not been improved. On the contrary, barriers are being built in this regard and, moreover, they are constructed by both the countries of the region and the Western countries.

Many people hope however that this worsening of the situation of human rights is a temporary one, connected with the transition from the planned to market economy, from the policy of confrontation, to an all-European cooperation. Time will show whether this hope is well-founded.

While signalling the changes mentioned above, either in the concept of human rights or in their realisation, it would be misleading to assume that those countries simply adopt the Western concept of human rights and that they will enforce it following the Western patterns. Except for the German Democratic Republic, which will take the system of the Federal Republic of Germany, the remaining countries of Central and Eastern Europe will probably shape their system to be more similar to those of the countries of Western Europe, but it will be a continuation of the previous system.