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POJAM PRAVA NUŽDE (*Notrecht*) U HEGELOVOJ FILOZOFIJI**

SAŽETAK: Ovaj članak je posvećen istraživanju smisla prava (iz) nužde (*Notrecht*) u Hegelovoj filozofiji prava. Prvi deo rada će izložiti osnovne motive Hegelove apstraktnopravne kategorije vlasništva, te rasprave sa Savinijem, koja predstavlja dublji istorijski i filozofski osnov ovog prava. Drugi deo rada će dati pregled Kantovog i Fihteovog razumevanja i definisanja prava nužde u okvirima praktičke filozofije. Kao ključna razlika u odnosu na shvatanje prava nužde u filozofijama njegovih prethodnika, biće istaknuta socijalno-politička dimenzija kod Hegela, kao predmet analize u trećem delu rada.

Ključne reči: filozofija prava, građansko društvo, Hegel, *Notrecht*, nužda, vlasništvo

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UVOD

Raspravljajući o građanskom društvu, Hegel je problem (uklanjanja) siromaštva odredio kao pitanje koje je najpreče za moderna društva.¹ Napisano je čitavo bogatstvo literature o Hegelovoj filozofiji prava, to jest onoj filozofskoj disciplini koja se njime bavi, kao i o njegovom shvatanju građanskog društva i siromaštva. U ovom radu ćemo se poduhvatiti skromnog zadatka da istaknemo socijalno-političku dimenziju Hegelovog pojma prava (iz) nužde (*Notrecht*), odnosno, pokušati da postavimo ovaj pojam u odnos s njegovim razumevanjem problema siromaštva. Teza koju ćemo nastojati da obrazložimo ima dva dela: prvo, izuzetno je važno imati na umu da za Hegela siromaštvo nastaje i uvećava se shodno logici funkcionisanja modernog građanskog društva; a zatim, *Notrecht* predstavlja jasan primer Hegelovog uvida da materijalna oskudica vodi pravnoj, društvenoj, političkoj obespravljenosti. Na osnovu ove dve, moguće je raspraviti i dodatne tačke, poput toga da *Notrecht* ne može predstavljati problem isključivo s pravne ili moralne tačke gledišta, te da u sukobu privatnog vlasništva i *Notrecht*-a, neprikosnovenost u svakom smislu uvek ima pravo nužde.

Siromaštvo je možda najozbiljniji problem, a sasvim sigurno jedan među najvećim, s kojim je sučeljeno moderno građansko društvo. Razlog tome počiva u činjenici da ono nije slučajna pojava, već upravo suprotno, nastaje iz samih osnova građanskog društva. Neposredno gledano, siromaštvo je materijalna oskudica i to takva oskudica koja, u krajnjem slučaju, vodi u stanje ekstremne nužde. Međutim, Hegelovo shvatanje siromaštva značajno je baš zbog toga što ga ne razume isključivo kao materijalnu oskudicu. Zapravo, siromaštvo je okolnost koja – usled nedostatka resursa – onemogućava pojedince ili čitave slojeve društva da steknu obrazovanje i veštine kako bi na suštinski način učestvovali u društvenom i političkom životu svoje zajednice (para. 241). Nadalje, kada se ova dva momenta povežu, pokazuje se kako materijalna oskudica nije jedini pokazatelj siromaštva u Hegelovom smislu. Štaviše, ukoliko neko ima samo onoliko koliko mu je dovoljno da preživi, smatraće se siromašnim, pošto nije u mogućnosti da učestvuje u svim pogodnostima života u građanskom društvu, kao što su pristup veštinama i obrazovanju, pravosuđu, zdravstvenoj nezi, pa čak i utehi religije.² Ono što je neposredno vidljivo s obzirom na koncept *Notrecht*-a, odnosno situaciju ekstremne nužde, jeste činjenica da siromaštvo zapravo vodi ka nemogućnosti čoveka da u potpunosti razvije svoje potencijale i bude *osoba*. *Notrecht* ima smisao prava koje izrasta naspram pretnje potpune negacije svih prava jednog čoveka.

¹ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: „Veselin Masleša”, 363.

² *Ibid.*, 361.

NOTRECHT U KONTEKSTU APSTRAKTNOG PRAVA

Za razliku od Kanta, koji u *Metafizici morala* siromaštvo razume kao zavisnost jedne osobe o drugoj (zavisnost o dobročinstvu) koja ne može imati osnovu u pravu, Hegel nastoji da siromaštvo predstavi kao okolnost koja onemogućava čoveka da bude osoba uopšte.

Za Kanta je sloboda definisana kao nezavisnost od prisile samovolje drugoga, ukoliko ona može da opstoji sa slobodom drugoga pod univerzalnim zakonom. Ovako definisana, sloboda predstavlja jedino urođeno pravo, koje čoveku pripada na osnovu toga što je čovek.³ Međutim, Hegel vidi višestruko negativan uticaj siromaštva na ljudski život – nešto što možda nije neposredno vidljivo iz čisto pravne perspektive koju u *Metafizici morala* zauzima Kant. Budući da je moguće da čovek dospe u situaciju u kojoj mu pretila negacija njegovog postojanja kao osobe u punom smislu te reči – što za Hegela znači pravni i moralni subjekt, ali i član porodice i građanin – ova nevolja predstavlja istovremeno pravni, moralni i politički problem. Zapravo, višedimenzionalnost ovog problema u skladu je s osnovnim idejama Hegelove filozofije prava. Prema strukturi Hegelove knjige *Osnovne crte filozofije prava*, polazi se od apstraktnog prava i napreduje do kompleksne običajnosti koju taj princip, pored principa moralnosti, konstituiše. Fenomen siromaštva i njegovog značenja za individualnog člana građanskog društva mora se posmatrati najpre s obzirom na odnos između ličnosti i apstraktnog prava na imovinu. Tek iz toga je onda moguće dovoditi fenomen siromaštva u vezu sa građanskim društvom i eventualnim političkim rešenjima siromaštva u skladu sa prirodom države.

Međutim, isto je tako opravdano, s obzirom na istorijske karakteristike građanskog društva, tematizovati i same kategorije apstraktnog prava. Tako ispada da je veoma važna Hegelova rasprava sa Savinijem (Friedrich Carl von Savigny) u vezi s jurističkim pojmom poseda i njegovim odnosom s vlasništvom. Hegel kritikuje Savinija, odnosno njegovo shvatanje poseda, kako je ono izloženo u knjizi *Pravo na posed* (*Das Recht des Besitzes*, 1803). Savinji je posed eksplicitno odredio kao činjenicu (factum) koja može imati pravne posledice:

„[P]osed [je] sam po sebi, po svom izvornom pojmu, jedna puka činjenica: isto je tako sigurno da su s tim povezane pravne posledice.”⁴

³ Kant, I. (1896). *Werke*, Band 7. Leipzig: Leopold Voss, 34. Kant će kao rešenje problema siromaštva u pravnom smislu dopustiti oporezivanje bogatih i direktno finansiranje onih koji nemaju da zadovolje svoje „najnužnije prirodne potrebe”. U ovom je, u krajnjoj liniji, nastavlja Kant, razlog zbog koga je opšta volja naroda „ujedinila sebe u društvo” (*Ibid.*, 144).

⁴ Savigny, F. C. (1803). *Das Recht des Besitzes*. Giessen: G. F. Heyer, 22.

Ovaj dualitet, međutim, nije proizvod naše modernosti. Rimskom pravo, koje je bilo merodavno za Savinjija, poznaje posed (*possessio*) upravo kao faktičku vlast nad stvari, ali se i pravo korišćenja zemljišta osvojene teritorije (*ager publicus*) smatralo za *possessio* takođe.⁵ U srednjem veku je dualitet poseda u formi faktičkog zaposednja i upotrebe imovine poznat kroz institut *dominium directum et utile*. Svojom tezom o posedu kao činjenici s pravnim posledicama, iza koje – u istorijsko-političkom smislu – počiva njegovo dosledno insistiranje na shvatanju istorije kao kontinuiranog procesa bez apsolutnog početka ili kraja,⁶ Savinji se politički svrstava na stranu plemstva (koje faktički poseduje imovinu, odnosno zemlju, a koju koriste seljaci). Prema Pegeleru, u pozadini Hegelovog kritičkog stava spram Savinjija počiva, istorijski posmatrano, pobednički interes buržoazije kome, dakako, u prilog ide to da je sve što može da se zaposedne prijemljivo da bude vlasništvo.⁷ To je karakteristično za jedno doba koje je obeleženo istorijskim događajima poput političke revolucije i rađanja građanskog društva. Hegel smatra da ne može postojati vlasništvo bez poseda, pošto posed daje pravo na vlasništvo. U tom kontekstu bi trebalo čitati Hegelovo obrazloženje u para. 45. *Osnovnih crta filozofije prava*:

„Da ja imam nešto u svojoj čak spoljašnjoj vlasti, u tome se sastoji posjed... ta strana da sam ja sebi kao slobodna volja u posjedu predmetan, a time također tek zbiljska volja, sačinjava ono istinsko i pravo u tome, određenje vlasništva.”⁸

U građanskom, odnosno kapitalističkom društvu, „imati vlasništvo” direktno uslovljava čovekovo postajanje osobom. Kao princip apstraktnog prava Hegel je odredio „zapovest” – „budi osoba (Person) i poštuje druge osobe”, čime je izrazio to da je, s apstraktno-pravne tačke gledišta, čoveku u njegovoj osobi priznata pravna sposobnost. Pojam osobe se kod Hegela mora posmatrati iz celokupnosti različitih sfera modernog čovekovog života, a ne samo na temelju apstraktnog prava, stoga je ovo određenje tek „mogućnost” i jedno „ovlašćenje”.¹⁰ Već na nivou ovako apstraktnog određenja, osoba je u čvrstoj sprezi s pravom na vlasništvo. Da bi čovek uopšte ispunio zapovest „budi osoba i poštuj druge kao osobe”, zahteva se jedan minimum – čovek

⁵ Kovačević-Kuštrimović, R. (1982). Koja konstrukcija državine?. *Zbornik radova Pravnog fakulteta u Nišu*, Vol. 22, 261–274.

⁶ Prema: Losurdo, D. (2004). *Hegel and the Freedom of Moderns*. Duke University Press. 125.

⁷ Pöggeler, O. (1995). *Editorial Introduction*. Hegel, G. F. W. (1995). *Lectures on Natural Right and Political Science (Heidelberg, 1817–1818)*. University of California Press. 30.

⁸ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: „Veselin Masleša”, 95.

⁹ *Ibid.*, 84.

¹⁰ *Ibid.*, 85.

mora moći da zaposedne vlastito telo (para. 47) i stekne vlasništvo, kako bi njegova slobodna volja mogla da se realizuje u spoljašnjoj „sferi slobode” (para. 41).¹¹ Dakle, čovekovo postajanje osobom ne proizilazi nužno iz čovekove ljudskosti, prirodnosti i faktičnosti njegove egzistencije kao čoveka, ili njegovog golog života:

„Čovjek je *neposrednom* egzistencijom po samome sebi nešto prirodno, spoljašnje svom pojmu: tek *obrazovanjem* svog vlastitog tijela i duha, uglavnom time što njegova *samosvijest sebe shvaća kao slobodnu*, počinje on sebe da posjeduje i postaje vlasništvo sebe samoga i spram drugih” (para. 57).¹²

Budući da je u apstraktno-pravnom smislu polazište takvo da je čovekova slobodna volja prioritetnija od njegove gole egzistencije ili prirodne datosti, logičan je i Hegelov stav da je u pogledu bilo kog vlasništva, odnosno poseda, najvažnije to da predstavlja izraz i realizaciju slobodne volje. U tom smislu, na načelnom nivou, sve može biti predmet vlasništva i sve što se može zaposednuti, takođe, na isti način je sposobno da bude vlasništvo. Međutim, kada se sfera apstraktnog prava napusti, tačnije, kada se pređe na tlo „građanskog društva”, postaviće se iznova pitanje o čovekovoj egzistenciji i to tako da će se tema sasvim zaoštriti u socijalnom smislu. Rečeno je već da je kod Hegela apstraktnopravna osoba tek osoba u užem smislu te reči, dok pravu konkretizaciju ovaj pojam dobija kroz sve nivoe, kako on to naziva, objektivnog duha (*čije momente predstavljaju* porodica, građansko društvo i politika).

Očekivano bi bilo – pošto je *Notrecht* jedno specifično pravo, ali pravo ni manje ni više već prema samom terminu – da bi Hegel prodiskutovao njegovu prirodu i smisao upravo u kontekstu apstraktnog prava. Problem je u tome što je sa stanovišta apstraktnog prava ovaj primer naročitoj *conditio humana* nedovoljno vidljiv. Specifičnost apstraktnog prava počiva upravo u njegovoj apstraktnosti kojom je uslovljena i njegova osnovna kategorija: *osoba*. Hegel tvrdi sledeće u vezi s time:

„Personalnost počinje tek onda kad subjekt raspolaže ne samo samosviješću uopće o sebi kao konkretnom, na bilo koji način određenom ja, nego, naprotiv, samosviješću o sebi kao potpuno apstraktnom ja, u kojemu su sva konkretna ograničenost i važenje negirani i bezvrijedni” (para. 35)¹³.

Konkretizacija ovih određenja, međutim, zahteva da se filozofska diskusija pomeri, napuštanjem sfere apstraktnog prava, ka moralnosti.

¹¹ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: „Veselin Masleša”, 98, 90.

¹² *Ibid.*, 110.

¹³ *Ibid.*, 82.

NOTRECHT U KONTEKSTU MORALNOSTI

Pojam *Notrecht* ima predistoriju u tradiciji *ius necessitatis*, te u tom smislu svojevrsni *Notrecht* poznaju i Hegelovi filozofski prethodnici, odnosno Kant i Fihte. Njihova shvatanja ćemo navesti upravo s namerom da uz pomoć njih istaknemo svu specifičnost Hegelovog shvatanja.

Kod Kanta je jedino neotuđivo pravo čoveka, koje mu pripada shodno njegovoj ljudskosti naprosto, sloboda shvaćena kao nezavisnost od (prisile) izbora ili samovolje drugoga. A pravo je ona radnja koja postoji uz slobodu svih u skladu s univerzalnim zakonom.¹⁴ U specifičnom slučaju, kakav predviđa *ius necessitatis*, kada je moj život u opasnosti, ovo navodno pravo dalo bi mi ovlašćenje da oduzmem drugome život. Međutim, dalje obrazlaže Kant, tu nije reč o tome da mi taj drugi ugrožava život, već je situacija upravo takva da oduzimam život nekome ko mi ništa našao nije učinio *jer* mi je život u opasnosti. Ovako definisan *Notrecht* bi bio u koliziji s pravnom doktrinom. Na koji način? *Notrecht* je pravo, kako to Kant kaže, u subjektivnom smislu, odnosno, kako se pravo pokazuje „pred umom”. Nasuprot subjektivnog smisla stoji naravno objektivno važenje prava kao ono što je potvrđeno od strane suda kao takvo. Kant je zapravo uzeo primer davljenika koji uviđa da zarad vlastitog opstanka mora gurnuti drugog nesrećnika, čiji je život jednako u opasnosti, sa komada olupine broda na kojoj tek ima šansu da preživi brodolom. U ovom slučaju bi ubica mogao da se smatra odgovornim (*culpabile*) iako ne pod teretom krivice (*inpunibile*). Kant tvrdi: „Nužda nema zakon (*necessitas non habet legem*). Ipak, nema nužde koja bi nepravo uskladila sa zakonom.”¹⁵

Posebno je interesantno kako se *Notrecht*-om bavi Fihte. O tome raspravlja u *Osnovama prirodnog prava*, u užem kontekstu prava na odbranu (samoodbranu), a u nešto širem kontekstu prava na ličnu sigurnost i nepovredivost osobe. Fihte će zapravo formulisati *Notrecht* kao jedan naročiti slučaj samoodbrane. Fihte upotrebljava primer koji se može naći i kod Kanta, a to je primer dva davljenika koja se nalaze u situaciji u kojoj oskudna potpora (davljenička daska, čamac) nije dovoljna da oba čoveka izbavi iz opasnosti. Fihte podvlači puku prirodnu kauzalnost kao uzrok ovakve situacije, odnosno krize, isključujući bilo kakvu subjektivnu intenciju. Otuda za njega ova situacija uopšte ne potpada pod pravo. Pravo nužnosti koje bi se odnosilo na ovakvu situaciju nije pravo, jer je dotična situacija takva da u njoj pravo uopšte ne važi, što je svakako stav koji bi i Kant prihvatio. Fihte kaže: „*Za nas obojicu* priroda je opozvala pravo na život.”¹⁶

¹⁴ Kant, I. (1896). *Werke*, Band 7. Leipzig: Leopold Voss, 27.

¹⁵ Sva razmatranja o Kantovom određenju *ius necessitatis* tiče se odeljka: *Ibid.*, 32–33.

¹⁶ Sva razmatranja o Fihteovoj raspravi o *Notrecht*-u tiču se dela teksta: Fichte, J. G. (1845–1846). *Sämmtliche Werke*. Berlin: Veit und Comp, 252–254.

Pravo, tačnije sistem prava, prema Fihteu, uređuje slobodnu koegzistenciju slobodnih bića. Pošto se pitamo kako u pravnom smislu definitisati i odrediti tu slobodnu koegzistenciju, pretpostavljamo da ju je moguće urediti i da je ona kao takva moguća. U onoj ekstremnoj situaciji, ta se koegzistencija ne uzima kao moguća – to znači da nema pozitivnog prava koji uređuje ovu situaciju u kojoj se pitam da li imam ili nemam prava da žrtvujem drugoga radi svoga opstanka. Fihte smatra: „Odluka ko će preživeti zavisi od fizičke snage i samovolje.” Za njega ova situacija zapravo ne predstavlja pravni problem ili pitanje pravnog vakuuma, već je reč o problemu koji potiče iz sfere moralnosti. Slobodna volja koja nije regulisana „zakonom”, pozitivnim pravom, reguliše se prema višem poretku u odnosu na pravo, a to je moral. Shodno tome, prema Fihteu, u navednoj ekstremnoj situaciji moral nalaže: „Ne čini ništa, prepusti stvar Bogu”, a to znači da će, u krajnjoj liniji, svako delati shodno svojoj savesti koja je jedini sudija.

Ukoliko bi se dopustio misaoni eksperiment u kome se ekstremna situacija davljenika pojavljuje kao pravni problem, moralo bi se poći od toga da bi pravo nužde predstavljalo pravo da sebe posmatram kao izuzetog od svakog zakona, odnosno sistema prava. U principu, Fihte potvrđuje Kantovu tezu da nužda nema zakon. Međutim, za razliku od Kanta, on eksplicitno zaključuje da se dalje taj slučaj mora „rešavati” sa stanovišta višeg poretka, odnosno moralnosti.

SOCIJALNO-POLITIČKA DIMENZIJA *NOTRECHT*-A

Hegel je u svojim hajdelberškim predavanjima o prirodnom pravu i nauci o državi iz 1817–1818. godine ponovio isti ovaj primer dvojice davljenika (para. 63). Uz njega, Hegel dodaje i primer majke koja, okružena vukovima, odlučuje da žrtvuje jedno dete kako bi spasila ostalu decu i samu sebe. Ovde Hegel naizgled ponavlja isti onaj argument koji smo našli kod Fihtea: da nije moguće raspravljati o tome da li je ono što je učinjeno pravo ili ne. Odluka šta da se učini prepuštena je, kako Hegel ovde kaže, subjektivnom osećanju. Instanca koja odlučuje je „plemenitost duha individue” koja se definitivno ne može pravno normirati.¹⁷ U kasnije objavljenom delu *Osnovne crte filozofije prava*, Hegel ne pominje više ovaj primer i u kontekstu ekstremnih situacija govori o stradanju od gladi. Ova promena je od izuzetnog značaja, budući da se tako *Notrecht* definitivno pomera iz jednog kontekstualnog miljea vanrednih, veoma retkih situacija, u sferu svakodnevice s karakteristikom

¹⁷ Hegel, G. F. W. (1995). *Lectures on Natural Right and Political Science* (Heidelberg, 1817–1818). University of California Press, 121–122.

njenih hroničnih problema. Vredelo bi uporediti motive koje smo videli kod Fihtea sa Hegelovim, kako bismo istakli šta je slično a šta različito. I u tom zreлом tekstu o filozofiji prava, Hegelova analiza *Notrecht*-a se nalazi u poglavlju o moralnosti, tačnije u odeljku koji razmatra pojmove namere i dobrobiti (*Absicht, Wohl*). Očigledna je prva sličnost: *Notrecht* s obzirom na postojeću raspravu pripada problemskom polju moralnosti. Doduše, tu će se istovremeno pojaviti i razlika. Anticipirajući predstojeća razmatranja, moglo bi se reći da je *Notrecht* istorijski izrastao kao fenomen za moralno-problemsku svest, ali je istinsko područje njegovog konkretizovanja socijalno-politička sfera.

I kod Fihtea, kao i kod Hegela, govori se o situacijama u kojima je život u opasnosti. Hegel je u pomenutim hajdelberškim predavanjima rekao sledeće: „Ako je život u ekstremnoj/krajnjoj opasnosti ima pravo da se pozove na pravo nužde.”¹⁸ Međutim, odmah nakon jezovitog primera majke sa decom i vukovima, Hegel govori o zanatliji kome usled dugova preti gubitak ekonomske nezavisnosti i faktičke slobode kretanja. Hegel je bez previše objašnjavanja pridružio i ovaj, izuzetno važan primer *Notrecht*-a, koji sasvim izvesno svedoči o čestom scenariju s kojim se sučeljavaju brojni članovi građanskog društva. Upravo za ovaj primer i važi njegovo razmatranje da, u slučaju kada postoji apsolutna povređenost čovekove egzistencije nasuprot povredi relativne, partikularne egzistencije slobode drugog, govorimo o pravu nužde koje je čak u određenim zemljama predmet pozitivnih zakona.¹⁹ Ovde se zapravo radi o sukobu u krajnjoj nuždi života jednog i imovine drugog čoveka. Situacija krajnje nužde, gde postoji apsolutna povređenost života, predstavlja „tačku” u kojoj je opozvano pravo uopšte. Ali, za razliku od Fihtea, to nije situacija u vezi s kojom nema pravne kvalifikacije, kao da se na tu situaciju pravo ne proteže. Slučajevi poput davljenika, prema vlastitoj logici, Fihteu su služili za ilustraciju jedne izvanpravne situacije. Ona izlazi iz okvira pravnog sistema pošto predstavlja događaj koji se odvija na samom rubu ljudskog društva, odnosno socijalne sfere. Bukvalna i simbolička udaljenost takvog primera *conditio humana* pojačava taj utisak. Kod Hegela je, međutim, *Notrecht* osiromašenog zanatlije kome kreditori uzimaju sredstva za rad i reprodukciju života okolnost koja ilustruje slučaj u kome je na delu negiranje pravnog poretka kao celine i to ukidanjem faktičke osnove njegovog važenja (a to je život). Ukoliko je život čoveka ugrožen, prema Hegelu, reč je o opasnosti od potpunog nestanka odnosno gubitka prava.

U filozofskom smislu, za Hegela ljudska egzistencija uopšte u svojoj spoljašnjosti jeste stvar slučajnosti. Stoga su i mogući slučajevi u kojima apsolutno pravo svakoga na slobodnu egzistenciju, život, dolazi u sukob sa

¹⁸ Hegel, G. F. W. (1995). *Lectures on Natural Right and Political Science* (Heidelberg, 1817–1818). University of California Press, 121.

¹⁹ *Ibid.*, 122.

partikularnošću prava drugog. Kako *Notrecht* nije više vezan za sukobljenost moga života sa životom drugog, kao kod Fihtea, već moje egzistencije i imovine drugog, pažnju skreće upravo Hegelova primedba da država ima zakone koji uređuju pravo (iz) nužde. Za razliku od Fihtea, kod Hegela pravo nužde ukazuje ne samo na to da postoje, nego da su neminovne pravne uredbe shodno konkretnim političkim porecima kapitalističkih društava. U krajnjoj liniji, ova se rasprava svodi na tu jednostavnu pouku da banke odnosno kreditori ne mogu pri povraćaju duga dovesti do ekstremnog intenziviranja nužde dužnika. Ovaj primer nije karakterističan samo za hajdelberška predavanja, jer će ga Hegel ponoviti i u *Osnovnim crtama filozofije prava* (para. 127).²⁰ Prema onome što je u pročišćenom tekstu sačuvano od ove diskusije, suprotno stavu koji se relativno često može susresti u sekundarnoj literaturi o Hegelu – da su ranija predavanja u različitim varijantama politički hrabrija, radikalnija – vidimo da Hegel i u svom zreлом delu insistira na socijalnoj dimenziji ovog problema i njegovim političkim implikacijama.

Dalje se pri poređenju pokazuje i to kako Fihte posmatra *Notrecht* primarno kao posledicu prirodne katastrofe, koja je u osnovi stihijska. Situacija iz koje izrasta ekstremna nužda za Hegelovog prethodnika ne dovodi u pitanje postojeći sistem zakona. U hajdelberskim predavanjima Hegel još dozvoljava ovakvu perspektivu o slučajnosti životnih okolnosti s obzirom na individuu. Bez obzira što slučajnost ima svoje mesto u ovoj raspravi, on ipak stoji na drugačijem stanovištu. U građanskom društvu, ekstremna nužda nije nešto što slučajno i stihijski pogađa građane, već nešto što može predstavljati i sistemski proizvedenu odliku egzistencije jednog dela članova građanskog društva.

U njegovim predavanjima o filozofiji prava iz 1819/1820. godine stoji sledeće u vezi s *Notrecht*-om, i to upravo u ovom socijalnom kontekstu. Ono sa čime se suočavaju siromašni u građanskom društvu nisu puke prirodne potrebe. „Priroda, koja stoji nasuprot siromašnome, nije puki bitak već moja volja.”²¹

Dodatak para. 244. iz *Osnovnih crta filozofije prava* sadrži motiv koji proizilazi iz ovoga što su utvrdila i ranija predavanja i ukazuje upravo na tu ključnu odredbu *Notrecht*-a u građanskom društvu:

„Nasuprot prirode ni jedan čovjek ne može tvrditi neko pravo, ali u stanju društva oskudica odmah dobiva formu neprava koje je učinjeno ovoj ili onoj klasi.”²²

²⁰ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: „Veselin Masleša”, 224–225.

²¹ Hegel, G. W. F. (1983). *Philosophie des Rechts. Die Vorlesung von 1819/20 in einer Nachschrift*. Frankfurt am Mein: Suhrkamp Verlag, 195.

²² Hegel, G. W. F. (1989). *Op. cit.*, 362.

U građanskom društvu, glad nije *Naturnot* (prirodna nužda) naprosto. Ona nije jedna slučajna činjenica ljudske egzistencije u njenoj prirodnosti. Kao što je rečeno, siromaštvo se u svom *Not* ne bori sa prirodom shvaćenom kao pukim bićem, koje je neutralno u svom postojanju i u onom apstraktnopravnom smislu neutralno prema mojoj realizaciji slobode. Naprotiv, siromašan čovek stoji nasuprot volje drugoga. I u kasnijim *Osnovnim crtama filozofije prava*, Hegel će to ponoviti u jednom preciznijem obliku. U para. 195. Hegel eksplicitno tvrdi kako beskonačno uvećanje potreba, karakteristično za moderno (kapitalističko) društvo, ide paralelno sa beskonačnom nuždom i zavisnošću o materiji koja pruža beskonačan otpor prema bivanju vlasništvom – a to je slobodna volja.²³ Ova naročita „materija” nije priroda mimo društva, već nešto što bi pripadalo opštim resursima društva. Siromašan čovek oseća sebe kao zavisnog od onoga što je samovolja (*Willkür*), što znači zavisnost od ljudske slučajnosti a ne prirodnog hazarda. Za mladog Hegela je konsternirajuće upravo to što je čovek kroz samovolju postavljen u ovu dihotomiju.²⁴ Samosvest siromašnog čoveka dovedena je u tačku u kojoj on više nema prava, odnosno, u okolnost da njegova sloboda više nema realnosti.

Dualitet siromaštva i bogatstva, za Hegela, predstavlja koliziju koja iznutra korodira i izjeda moderno građansko društvo. Siromaštvo, reći će Hegel u predavanjima iz 1819/1820. godine, predstavlja potpuno nužnu karakteristiku građanskog društva. „Mehanizam” građanskog društva je takav da, s jedne strane, akumulira bogatstvo bez granice, a s druge nuždu i bedu. U ovim predavanjima Hegel je istakao da je fenomen siromaštva povezan s jednim drugim, takođe u istorijskom smislu karakterističnim za moderno građansko društvo, a to je okolnost da rad koji služi zadovoljavanju potreba postaje sve apstraktniji, a onda posledično – i sve prekastiji. Uvećanje bogatstva i siromaštva odvija se istim tempom.²⁵ Reč je o kompleksnoj socijalnoj i političkoj strukturi, s obzirom na koju ne možemo više govoriti o gladi, odnosno o krajnjoj potrebi ili nuždi siromašnih, kao o vanrednoj i pre svega singularnoj situaciji.

U para. 195. *Osnovnih crta filozofije prava* Hegel govori o ovoj dihotomiji (bogatstva i siromaštva) na sledeći način: s jedne strane imamo beskonačno multipliciranje potreba, sredstava i užitaka, ali, s druge strane, građansko društvo povećava zavisnost i nuždu – ne od prirode, pošto je potpora prirode izgubljena, nego od privatnog vlasništva (vlasništva slobodne volje).²⁶ Ovde je eksplicitno potvrđena osnova za postavljanje sukoba između apsolutnog prava

²³ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: „Veselin Masleša”, 328.

²⁴ Hegel, G. W. F. (1983). *Philosophie des Rechts. Die Vorlesung von 1819/20 in einer Nachschrift*. Frankfurt am Mein: Suhrkamp Verlag, 195.

²⁵ *Ibid.*, 193.

²⁶ Hegel, G. W. F. (1989). *Op. cit.*, 328.

jednog čoveka sa privatnom imovinom, tj. partikularnom realizacijom slobode drugog. U jednom ranijem paragrafu (para. 192), Hegel opisuje građansko društvo kao sistem potreba odnosno zavisnosti, koji dakako podseća na Adama Smita. Ovde Hegel, pomoću Smitovih političko-ekonomskih kategorija, daje opis društvenih potreba kao mehanizma kojim sam uslovljen odnosno zavisan od drugih i kojim su drugi zavisni od mog rada. Ovaj sistem je jedan celokupan odnos međusobne zavisnosti društvene proizvodnje potreba, s jedne strane, i društvene proizvodnje sredstava za zadovoljavanje tih potreba, s druge. U para. 118. hajdelberskih predavanja iz 1818/1819. godine, Hegel prepoznaje i sledeći problem: rođene u građanskom društvu, individue su zavisne o opštim resursima kako bi aktualizovale svoje pravo na život i moraju da ih priznaju „kao neorgansku prirodu i spoljašnje okolnosti koje upravljaju tim pravom.”²⁷ Pošto privatno vlasništvo čini ovaj svet opštih resursa, za Hegela ne može biti samorazumljivo i važeće ono stanovište koje je u pogledu nepovredivosti privatnog vlasništva formulisao Džon Lok. Naime, on je smatrao kako povreda privatnog vlasništva predstavlja najviše nasilje i političku tiraniju. Iz svega što smo o njegovom shvatanju *Notrecht*-a videli, za Hegela bi apsolutizacija imovine i apsolutizacija njene nepovredivosti predstavljala vrhovno nasilje i okolnost koja bi dovođila u pitanje opstanak samog pravnog poretka. Tako vidimo u para. 66. *Osnovnih crta filozofije prava* kako Hegel kaže da su neotuđiva ona dobra, kao i nezastarivo pravo na njih, što sačinjavaju moju najvlastitiju osobu i opštu bit moje samosvesti – moja ličnost, moja opšta sloboda volje, običajnost, religija.²⁸ Dakle, o imovini kao takvoj ne može biti reči u smislu neotuđivog prava, već taj status može imati samo osoba i s njom ono što bi sigurno predstavljalo život osobe kao ukupnosti prava. U krajnjoj liniji bismo mogli reći da je za Hegela nepovredivo pravo na pravo.

ZAKLJUČAK

Ruso smatra da bi svako kritičko-nepriistrasno posmatranje društva nužno vodilo do uvida u njegovu opresivnu strukturu. U skladu sa vlastitim pozitivnim predstavljanjem fikcije čovekove nevinosti i naivnosti u prirodnom stanju, on tvrdi: „Svi mislioci koji su ispitivali osnove društva osetili su potrebu da se vrate prirodnom stanju.”²⁹ Ovo isticanje činjenice opresivne strukture društva

²⁷ Hegel, G. F. W. (1995). *Lectures on Natural Right and Political Science* (Heidelberg, 1817–1818). University of California Press, 208–209.

²⁸ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: „Veselin Masleša”, 129.

²⁹ Ruso, Ž.-Ž. (1993) *O poreklu i osnovama nejednakosti: Društveni ugovor*. Beograd: „Filip Višnjić”, 138.

Hegel će prepoznati kao jednu od najvećih Rusoovih filozofskih zasluga. Prema Hegelu, čitav niz prava i političkih ovlašćenja, poput prava na vladavinu i udruživanje, prava na red, upravljanje i pokoravanje, na potčinjavanje vlasti, Ruso je shvatio u kontekstu istorijske zasnovanosti na nasilju, na prinudi i privatnoj svojini.³⁰ Na Rusoovom tragu, filozofija prava mora programski braniti pravo na pravo protiv ideološkog i političkog difamiranja, kao i socijalnog ugrožavanja, ove osnove celokupnog pravnog poretka.

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³⁰ Hegel, G. W. F. (1971–1979.) *Werke*. Band 20. Frankfurt am Main: Suhrkamp Verlag, 306.

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THE NOTION OF THE RIGHT OF NECESSITY (*Notrecht*) IN HEGEL'S PHILOSOPHY**

ABSTRACT: This article deals with researching the meaning and importance of the right of necessity (*Notrecht*) in Hegel's philosophy of right. The first part of the paper introduces the basic motifs of Hegel's abstract and legal category of possession, as well as the debate with Savigny - the fundamental historical and philosophical framework of this right. The second part of the paper provides an overview of Kant and Fichte's understanding and definitions of the right of necessity within practical philosophy. A socio-political dimension will be underlined as a topic of analysis in the third part of the paper, as a key characteristic that differentiates Hegel's notion of the right of necessity from those of his predecessors.

Keywords: Philosophy of Right, civil society, Hegel, *Notrecht*, necessity, possession

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INTRODUCTION

In his discussions on civil society, Hegel pointed out the problem of (eliminating) poverty as the key issue for modern societies¹. There is an abundance of literature on Hegel's philosophy of right, i.e. the philosophical discipline that deals with it, as well as on his understanding of civil society and poverty. In this paper, the author will undertake the modest task of pointing out the socio-political dimension of Hegel's concept of the right of necessity (*Notrecht*), that is, of trying to position this notion in relation to his understanding of the problem of poverty. The thesis which we will try to explain consists of two parts: first, it is immensely important to bear in mind that, as Hegel sees it, poverty arises and further increases in consonance with the logic according to which modern civil society functions; second, *Notrecht* is a clear example of Hegel's realization that material poverty leads to a lack of legal, social and political rights. On the basis of these two elements, it is possible to discuss some additional ones, as well. For example, it is not only from the point of view of law or morals that *Notrecht* can be seen as a problem, and where there is a conflict between private possession and *Notrecht*, the right of necessity is inviolable in every sense.

Poverty is perhaps the most serious and definitely one of the biggest problems that a modern civil society encounters. The reason for this lies in the fact that poverty is not an accidental phenomenon, but on the contrary, it arises from the very foundations of civil society. Strictly speaking, poverty is a lack of material resources, and it is such an absence that, ultimately, leads to the state of extreme necessity. However, Hegel's understanding of poverty is significant precisely because he does not understand it only as a lack of material resources. In fact, poverty is a circumstance that, due to a lack of resources, prevents individuals or entire strata of society from acquiring the education and skills necessary to participate in the social and political life of their community in a significant way (para. 241). Furthermore, when one looks at these two elements together, one can see that a lack of material resources is not the only indicator of poverty as Hegel understands it. What is more, if one has only as much as it is necessary for him to survive, he will be considered to be poor, since he cannot bpartake in all of the aspects of living in civil society, such as the access to acquire skills and education, justice, health care, and even consolation by means of religion². What is easily noticeable in terms of the concept of *Notrecht*, that is, the situation of extreme necessity, is the fact that poverty actually leads to the inability of an individual to fully develop his potential and be a *person*. *Notrecht* has the meaning of a right that develops as a response to the threat of the complete negation of all of the rights of an individual.

¹ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: "Veselin Masleša", 363.

² *Ibid.*, 361.

NOTRECHT IN THE CONTEXT OF ABSTRACT LAW

Unlike Kant, who in the *Metaphysics of Morals* understands poverty as a dependence of one person on another (dependence on charity), which cannot have a basis in law, Hegel seeks to present poverty as a circumstance that actually prevents a man from being a person.

For Kant, freedom is defined as independence from coercion by the will of another, if it can coexist alongside the freedom of another under universal law. Defined in this way, freedom is the only innate right that belongs to a person on the basis of being human.³ However, Hegel sees the manifold negative impact of poverty on human life – something that may not be directly visible from the purely legal point of view that Kant takes in the *Metaphysics of Morals*. Since it is possible for a person to find themselves in a situation where there is a threat to their existence as a person in the full sense of the word – which, for Hegel, is a legal and moral subject, but also a family member and a citizen – this problem is a legal, moral and political issue. In fact, the multidimensionality of this problem is in accordance with the basic ideas of Hegel's philosophy of right. According to the structure of Hegel's book *Elements of the Philosophy of Right*, one starts from abstract law and progresses to the complexity of ethics that this principle constitutes together with the principle of morality. The phenomenon of poverty and its significance to an individual member of a civil society has to be observed, firstly, in regard to the relationship between the individual and the abstract right to property. Only on these bases is it possible to bring the phenomenon of poverty in connection with civil society and the potential political solutions to the problem of poverty in accordance with the nature of the state.

However, given the historical characteristics of civil society, it is also justified to thematize the actual categories of abstract law. Thus, it appears that Hegel's discussion with Savigny (Friedrich Carl von Savigny) is very important in regard to the legal notion of possession and its relationship with ownership. Hegel criticizes Savigny, that is, his understanding of possession as it is explained in the book *Treatise on Possession: Or, the Jus Possessionis of the Civil Law (Das Recht des Besitzes, 1803)*. Savigny explicitly defined possession as a fact (factum) that can have legal consequences:

“[P]ossession in itself, in its original notion, is a mere fact: it is also certain that there are legal consequences associated with it”.⁴

³ Kant, I. (1896). *Werke*, Band 7. Leipzig: Leopold Voss, 34. As a solution to the problem of poverty in the legal sense, Kant will allow the taxation of the rich and the direct financing of those who do not meet their “most necessary natural needs.” This is, ultimately, Kant continues, the reason why the general will of the people “united itself into society.” (*Ibid.*, 144).

⁴ Savigny, F. C. (1803). *Das Recht des Besitzes*. Giessen: G. F. Heyer, 22.

However, this duality is not a product of our time. Roman Law, which Savigny considered to be relevant, recognizes possession (*possessio*) as factual ownership, but public land (*ager publicus*) was also considered to be *possessio*.⁵ In the Middle Ages, the duality of possession in the form of factual possession and the use of property was known as *dominium directum et utile*. With his thesis on possession as a fact that has legal consequences, behind which – in the historical and political sense – rests his consistent insistence on seeing history as a continuous process without an absolute beginning or end,⁶ Savigny is, politically, on the side of nobility (which factually owns property or land used by the peasants). According to Pöggeler, Hegel's critical attitude towards Savigny rests on, from a historical point of view, the victorious interest of the bourgeoisie, which, of course, is supported by the fact that everything that can be occupied can be possession.⁷ This is a characteristic of an era marked by historical events such as political revolutions and the birth of civil societies. Hegel believes that there is no property without possession, since possession gives the right to property. Hegel's explanation in para. 45. *Elements of the Philosophy of Right* should be read in this light:

“To have external power over something constitutes possession... the circumstance that I, as free will, am an object to myself in what I possess and only become for the first time an actual will by this means constitutes the genuine and rightful element in possession, the determination of property”.⁸

In civil, that is, in capitalist society, “having property” directly conditions one's becoming a person. As a principle of abstract law, Hegel defined the “commandment” – “be a person (Person) and respect other persons”.⁹ In this way, he expressed the fact that, from the point of view of abstract law, one in his personhood gets his legal capacity recognized. Hegel's notion of personhood must be viewed through the totality of the different areas of modern human life, and not only on the basis of abstract law. Therefore, this definition is just a “possibility” and an “authorization”.¹⁰ Even at the level of such an abstract definition, a person is tightly connected to the right to property. In order for a person to fulfil the commandment “be a person and respect others as persons”, there is a minimum required – a person must be able to possess

⁵ Kovačević-Kuštrimović, R. (1982). Kojja konstrukcija državine?. *Annals of the Faculty of Law in Niš*, Vol. 22, 261–274.

⁶ According to: Losurdo, D. (2004). *Hegel and the Freedom of Moderns*. Duke University Press. 125

⁷ Pöggeler, O. (1995). *Editorial Introduction*. Hegel, G. F. W. (1995). *Lectures on Natural Right and Political Science*. (Heidelberg, 1817–1818). University of California Press. 30.

⁸ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: “Veselin Masleša”, 95.

⁹ *Ibid.*, 84.

¹⁰ *Ibid.*, 85.

his own body (para. 47) and acquire property, so that his free will can be realized in the external “sphere of freedom” (para. 41).¹¹ Thus, a man’s becoming a person does not necessarily arise from his humanity, the naturalness and factuality of his existence as a human being, or his mere life:

“The human being, in his *immediate* existence in himself, is a natural entity, external to his concept; it is only through the *development* of his own body and spirit, *essentially* by means of his *self-consciousness comprehending itself as free*, that he takes possession of himself and becomes his own property as distinct from that of others” (para. 57).¹²

Since the starting point, in terms of abstract law, is such that a man’s free will has the priority over his bare existence or the natural givenness, Hegel’s attitude that, in terms of any property, that is, possession, the most important thing is for it to be an expression and realization of free will. In that sense, in principle, everything can be the subject of property, and everything that one can possess is in the same way capable of being property. However, if one leaves the field of abstract law, or more precisely, if he enters the field of “civil society”, a question of a man’s existence rearises in a way that aggravates the topic. It was already said that according to Hegel a person in the sense of abstract law is only a person in the narrower sense of the word, while this concept is given a real concretization through all levels, as he calls it, of an objective spirit (whose elements are represented by family, civil society and politics).

Since *Notrecht* is a specific right, but a right no less and no more according to the term itself, it would be expected that Hegel would discuss its nature and meaning precisely in the context of abstract law. The problem lies in the fact that from the point of view of abstract law, this example of a special *conditio humana* is not visible enough. Abstract law is specific precisely because of its own abstraction that conditions its basic category: *person*. In this regard, Hegel claims the following:

“Personality begins not with the subject’s mere general consciousness of himself as an ego concretely determined in some way or other, but rather with his consciousness of himself as a completely abstract ego in which every concrete restriction and value is negated and without validity” (para. 35).¹³

The concretization of these definitions, however, requires that the philosophical discussion be moved, by leaving the area of abstract law, towards morals.

¹¹ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: “Veselin Masleša”, 98, 90.

¹² *Ibid.*, 110.

¹³ *Ibid.*, 82.

NOTRECHT IN THE CONTEXT OF MORALITY

The term *Notrecht* has a prehistory in the tradition of *ius necessitatis*, and in that sense a kind of *Notrecht* was also familiar to Hegel's philosophical predecessors, Kant and Fichte. Their opinions will be presented here precisely with the intention of using them to emphasize all the specifics of Hegel's understanding of the notion.

According to Kant, the only inalienable right of man, which belongs to him because of his humanity, is simply freedom understood as independence from the (coercion of) choice or the self-will of another person. Moreover, right is that action which coexists with the freedom of all in accordance with universal law.¹⁴ In special cases, provided by *ius necessitatis*, if one's life is in danger, this alleged right would give him the authorization to take another's life. However, Kant further states, this is not about one's life being threatened by another person, but that one is taking the life of a person who has done no harm to him *because* his life is in danger. Defined in this way, *Notrecht* would be in conflict with legal doctrine. How exactly? *Notrecht* is a right, as Kant says, in the subjective sense, that is, how a right is seen "by the mind". Contrary to the subjective sense of a right, of course, is the objective validity of a right as confirmed by a court as such. Kant actually used an example of a drowning man who realizes that, in order to survive, he has to push another unfortunate man, whose life is equally in danger, from a piece of shipwreck on which he only has a chance to survive. In this case, the killer could be considered responsible (*culpabile*) although not guilty (*impunibile*). Kant claims: "There is no law to necessity (*necessitas non habet legem*). However, there is no necessity that would align the unlawful with law".¹⁵

The way in which Fichte deals with *Notrecht* is especially interesting. He discusses it in the *Foundation of Natural Right*, in a narrower context of the right to defence (self-defence), and in a somewhat broader context of the right to personal security and inviolability of a person. Fichte actually defines *Notrecht* as a specific case of self-defence. He uses the example which Kant used as well, the example of two men drowning and there being only one piece of shipwreck insufficient to allow the survival of both of them. Fichte emphasises mere natural causality being the cause of this situation, i.e. crisis, excluding any subjective intention. This is why, in his opinion, this situation does not fall under any right at all. The right of necessity that would refer to such a situation is not a right, because the situation in question is such that a right does not

¹⁴ Kant, I. (1896). *Werke*, Band 7. Leipzig: Leopold Voss, 27.

¹⁵ All the considerations of Kant's definition of *ius necessitatis* concern the section: *Ibid*, 32–33.

apply to it at all, which is certainly a position that Kant would accept as well. Fichte states: “*For both of us*, nature has revoked the right to life.”¹⁶

Law, or more precisely, the legal system, according to Fichte, regulates the free coexistence of free beings. Since there is a question on how to define and determine this free coexistence in terms of law, we assume that it is possible to regulate it and that coexistence is possible as such. In the above-mentioned extreme situation, this coexistence is not seen as possible – this means that there is no positive right that regulates this situation in which one asks himself whether he has or does not have the right to sacrifice another’s life in order to survive. Fichte believes: “The decision of who will survive depends on physical strength and self-will”.

To him, this situation is actually not a legal issue or the matter of a legal vacuum but an issue that derives from the sphere of morality. Self-will that is not regulated by “laws”, i.e. positive right, is regulated according to a higher order than law, and that is morality. Accordingly, as Fichte believes, in the stated extreme situation, morality dictates: “Do nothing, leave it to God”, which means that, in the end, everyone will act according to their conscience, which is the only judge.

If we were to allow a thought experiment in which the extreme situation of drowning appears as a legal problem, we would have to assume that the right of necessity would be the right to view one as exempt from any law or system of laws. Basically, Fichte confirms Kant’s thesis that there is no law to necessity. However, unlike Kant, he explicitly concludes that the case must be further “resolved” from the point of view of a higher order, that is, morality.

THE SOCIO-POLITICAL DIMENSION OF *NOTRECHT*

In his Heidelberg lectures on natural law and the science of the state from 1817–1818, Hegel used the same example of two drowning people (para. 63). Also, Hegel adds the example of a mother who, surrounded by wolves, decides to sacrifice one child in order to save the other children and herself. Here, Hegel seemingly repeats the same argument we encountered in Fichte: that it is not possible to discuss whether what was done is right or not. As Hegel states here, the decision of what to do is left to subjective feeling. The instance that is the determining factor is the “nobility of the spirit of an individual” which

¹⁶ All the considerations of Fichte’s discussion of *Notrecht* concern the following part of the text: Fichte, J. G. (1845–1846). *Sämmtliche Werke*. Berlin: Veit und Comp, 252–254.

definitely cannot be legally regulated.¹⁷ In his later work, *Elements of the Philosophy of Right*, Hegel does not mention this example anymore and, in the context of extreme situations, speaks of suffering from hunger. This change is very important, since *Notrecht* definitely moved from a contextual area of extraordinary, very rare situations, to the sphere of everyday life and its chronic problems. It would be worth comparing the motifs we saw in Fichte with Hegel's, in order to point out the similarities and differences. In the abovementioned text on the philosophy of right, Hegel's analysis of *Notrecht* is found in the chapter which deals with morality, more precisely in the section that considers the notions of intention and well-being (*Absicht, Wohl*). The first similarity is obvious: given the existing debate, *Notrecht* as a question belongs to the field of morality. However, at the same time a difference arises. Anticipating the forthcoming considerations, it can be said that *Notrecht* historically developed as a phenomenon for the moral-problematic consciousness, but the actual area of its concretization is the socio-political sphere.

Fichte, as well as Hegel, talks about a situation in which one's life is in danger. In the Heidelberg lectures, Hegel said the following: "If his life is in extreme danger, one has the right to invoke the right to emergency"¹⁸.

However, immediately after the terrifying example of the mother with the children and wolves, Hegel talks about a craftsman who is, due to debts, threatened with the loss of economic independence and the actual freedom of movement. Without too much explanation, Hegel added this very important example of *Notrecht*, which certainly illustrates a frequent scenario faced by many members of civil society. Precisely for this example, his consideration is valid that in the case when there is an absolute violation of human existence as opposed to a violation of the relative, particular existence of the freedom of another, we speak of the right of necessity, which is even subject to positive laws in some countries.¹⁹ This is actually a conflict of ultimate necessity between the life of one and the property of another person. The situation of extreme necessity, where there is an absolute violation of life, is the "point" at which rights are revoked in general. However, unlike in Fichte, it is not a situation in which there is no legal qualification, as if rights do not extend to that situation. According to his own logic, cases such as those of two men drowning served him as an illustration of a situation that is beyond law. A situation like this does not fit the framework of a legal system, since it is an event that takes place on the margins of human society, i.e. the social sphere. The literal

¹⁷ Hegel, G. F. W. (1995). *Lectures on Natural Right and Political Science* (Heidelberg, 1817–1818). University of California Press, 121–122.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 122.

and the symbolic distance of such an example of *conditio humana* amplifies the impression. However, for Hegel, *Notrecht* of the impoverished craftsman whose creditors take away the conditions and resources necessary for work and reproduction is a circumstance that illustrates a case of negation of the legal order as a whole by abolishing the factual basis of its validity (which is life). According to Hegel, if a person's life is endangered, we are talking about a danger of a complete disappearance or loss of rights.

In terms of philosophy, human existence in general in its *exterior* is a matter of chance, in Hegel's opinion. Accordingly, situations are possible in which the absolute right of everyone to a free existence, life, comes into conflict with the particularity of the rights of another. As *Notrecht* is no longer connected with the conflict between one's life and the life of another, as with Fichte, but of one's existence and the property of another, Hegel's remark that a state has laws governing the right of necessity draws attention. Unlike Fichte, with Hegel the right of necessity indicates not only that legal decrees exist, but that they are inevitable in accordance with specific political orders of capitalist societies. Ultimately, this discussion boils down to a simple moral that banks, that is, creditors, cannot, in the case of a debt repayment, lead to an extreme intensification of the debtor's necessity. This example is not only a characteristic of the Heidelberg lectures, since Hegel will repeat it in *Elements of the Philosophy of Right* (para. 127).²⁰ According to what is preserved in the consolidated text from this discussion, contrary to the attitude that can be found relatively often in the secondary literature on Hegel – that earlier lectures are politically bolder, more radical – we see that Hegel insists on the social dimension of these problems and its political implications in his later works.

Further comparison also shows that Fichte sees *Notrecht* primarily as a consequence of a natural disaster which is basically random. For Hegel's predecessor, the situation from which the extreme necessity arises does not question the existing system of laws. In the Heidelberg lectures, Hegel allows such a perspective on the coincidence of life circumstances with regard to the individual. Regardless of the fact that coincidence has its place in this debate, his point of view is still different. In civil society, extreme necessity is not a matter of coincidence that randomly affects citizens of a society, but something that can also be a systematically produced feature of the existence of a certain part of the members of civil society.

In his lectures on the philosophy of law from 1819/1820, we can find the following about *Notrecht* in this social context. What the poor face in civil society are not mere natural needs. "Nature, which stands opposite the poor, is

²⁰ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: "Veselin Masleša" 224–225.

not a mere being but my will.”²¹ The appendix to paragraph para. 244. of the *Elements of the Philosophy of Law* contains a motif that stems from what previous lectures have established and points precisely to this key feature of *Notrecht* in civil society:

”Against nature, no man can claim rights, but in the context of a society, scarcity immediately takes the form of injustice done to this or that class.”²²

In civil society, hunger is not just *Naturnot* (natural calamity). It is not an accidental fact of human existence in its naturalness. As previously stated, poverty in its *Not* does not battle nature understood as a mere being, which is neutral in its existence and in that abstract legal sense neutral towards one's realization of freedom. On the contrary, a poor man stands against the will of another. In his later work, the *Elements of the Philosophy of Right*, Hegel will repeat it in a more precise manner. In para. 195 Hegel explicitly claims that the infinite increase in needs, which is a characteristic of modern (capitalist) society, goes hand in hand with infinite necessity and dependence on matter which provides infinite resistance to being property – and that is free will ²³. This specific “matter” is not nature outside society, but something that would be a part of the general resources of society. A poor man feels dependent on what is self-will (*Willkür*), which means dependence on human coincidence and not a natural hazard. Young Hegel finds the exact fact that a man, by the means of self-will, is placed in this dichotomy to be concerning.²⁴ The self-consciousness of a poor man had been brought to a point where he no longer has rights, that is, to circumstances in which his freedom is no longer realistic.

For Hegel, the duality of poverty and wealth is a collision that corrodes and eats away at modern civil society. Poverty, as Hegel says in his lectures from 1819/1820, is a necessary feature of civil society. The “mechanism” of civil society is such that, on the one hand, it accumulates infinite wealth, and on the other hand, necessity and misery. In these lectures, Hegel pointed out that the phenomenon of poverty is connected with another phenomenon, which is, in the historical sense, also a characteristic of modern civil society, and that is the fact that work that serves to fulfil needs becomes increasingly abstract, and then consequently – more precarious. The increase in wealth and poverty is happening at the same pace.²⁵ It is a complex social and political structure,

²¹ Hegel, G. W. F. (1983). *Philosophie des Rechts*. Die Vorlesung von 1819/20 in einer Nachschrift. Frankfurt am Mein: Suhrkamp Verlag, 195.

²² Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: “Veselin Masleša”, 362.

²³ *Ibid.*, 328.

²⁴ Hegel, G. W. F. (1983). *Op. cit.*, 195.

²⁵ *Ibid.*, 193.

given that we can no longer talk about hunger, that is, the extreme need or necessity of the poor, as an emergency and, above all, a singular situation.

In para. 195. of the *Elements of the Philosophy of Right* Hegel discusses this dichotomy (of poverty and wealth) in the following way: on the one hand, there is an infinite multiplication of needs, means, and pleasures, but on the other hand, there is an increase in dependence and necessity of civil society – not on nature, since the support of nature is lost, but on private property (ownership of free will)²⁶. The basis for setting the conflict between the absolute right of one man against private property i.e., by the particular realization of the freedom of another person is explicitly confirmed here. In one earlier paragraph (para 192), Hegel describes civil society as a system of needs, that is, dependencies, which reminds of Adam Smith. Using Smith's political-economic categories, here Hegel gives a description of social needs as a mechanism by which one is conditioned or dependent on others and by which others are dependent on one's work. This system is one completely rounded relationship between the mutual dependence of the social production of needs, on the one hand, and the social production of means to meet those needs, on the other. In para. 118 of the Heidelberg lectures from 1818/1819, Hegel also recognizes the following problem: born in civil society, individuals are dependent on general resources to actualize their right to life and must recognize them "as the inorganic nature and external circumstances that govern the right"²⁷.

Since private property constitutes this world of general resources, the point of view formulated by John Locke regarding the inviolability of private property is not self-evident and valid for Hegel. Locke believed that violation of private property is the highest form of violence and political tyranny. According to everything we have learned about Hegel's understanding of *Notrecht*, for Hegel, the absolutization of property and the absolutization of its inviolability would constitute supreme violence and a circumstance that would endanger the survival of the legal order itself. Thus we see in para 66 of the *Elements of the Philosophy of Right* that Hegel says that inalienable goods are those which constitute one's own person and the general essence of one's self-consciousness – my personality, my general freedom of will, customs, religion, as well as the timeless right to those things²⁸. Therefore, we cannot discuss property as an inalienable right, for only a person can have that status together with those things that indubitably constitute the life of a person as a totality of rights. Ultimately, one could say that for Hegel the right to right is inviolable.

²⁶ Hegel, G. W. F. (1989). *Osnovne crte filozofije prava*. Sarajevo: "Veselin Masleša", 328.

²⁷ Hegel, G. F. W. (1995). *Lectures on Natural Right and Political Science (Heidelberg, 1817–1818)*, 208–209.

²⁸ Hegel, G. W. F. (1989). *Op. cit.*, 129.

CONCLUSION

Rousseau believes that any critical – impartial – observation of society would definitely lead to an insight into its oppressive structure. In accordance with his own positive portrayal of the fiction of human innocence and naivety in the natural state of being, he claims: “All thinkers who examined the foundations of society felt the need to return to the natural state.”²⁹ Pointing out the oppressive structure of society is what Hegel will recognize as one of Rousseau’s greatest philosophical merits. According to Hegel, Rousseau understood a whole array of rights and manifestations of political power, such as the right to rule and make alliances, the right to impose order, manage and conquer, as well as the right to subdue one to authorities, in the context of them historically being based in violence, coercion and private property³⁰. Following Rousseau’s footsteps, philosophy of law must systematically defend the right to right against ideological and political defamation, as well as against social endangerment of it, as the basis of the entire legal order.

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²⁹ Ruso, Ž.-Ž. (1993). *O poreklu i osnovama nejednakosti*. Društveni ugovor. Beograd: “Filip Višnjić”, 138.

³⁰ Hegel, G. W. F. (1971–1979). *Werke*. Band 20. Frankfurt am Main: Suhrkamp Verlag, 306.