THE POSITION OF PEOPLE IN THE SLAVE OWNING AND FEUDAL SOCIETIES – THE FIRST HUMAN RIGHTS?

Reminding the reader that legal inequality is the main characteristic of the slave owning and feudal societies, the author draws attention to legal inequality not only between members of different classes, but also within the same social class, to difficult position of women, religious, ethnic and other minorities, foreigners, etc. The author underlines some other elements that are related to the position of man, and which are typical for the period of history in question. They involve great cruelty in punishment, torture as an integral part of the judicial system, collective punishment, extermination of opponents, and other inhuman treatment in war etc.

However, all this does not mean that these societies did not recognize any human rights. The reality in this respect was much different than in our time, but everything else at the time was different as well. When it comes to human rights, there is much evidence that in most cases at least basic protection was guaranteed not only to the ruling classes, but also, at least to some extent, to the oppressed social classes. This is confirmed by legal documents, chronicles and other historical sources that provide ample evidence of the recognition and protection of at least basic individual rights of different classes, but also the rights of minorities, foreigners, combatants and non-combatants in war and so on. Highlighting these moments, the author refers to the sources that testify both about legal regulations and the appropriate practice.

The author's conclusion is that, although in the historical period in question it certainly could not have been talked about something that would be close to the concept of human rights as we know them today, there is also no doubt that the first human rights appeared parallel with the development of law and the first states.

Key words: human rights, public international law, law, history

Most overviews of the history of human rights begin with the review of the democratic system of the ancient Athens, or more usually, the famous Great Charter of the Liberties of England (*Magna Carta libertatum*, 1215).

However, all this is actually much more complex, both in terms of accurate perception of what happened in the past, and in terms of proper valuation of social relations, events, documents and the like. And without that, the very concept of human rights, and what we have in our time, cannot be fully understood.

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1. Human rights and the division into social classes

From the modern point of view, the story of human rights is primarily the story about gender, equality, tolerance, freedom, protection from arbitrary state power. On the other hand, it is the story about the rights that the state is obliged to guarantee and secure. It is obvious that in principle there is no such a thing, and there will never be in the states whose essential feature is the division into classes.¹

In this regard, it can be noted that in the slave owning and feudal societies, the division of people into classes was legally regulated. Belonging to a particular class also determined all the essential elements of the real and social position of each individual - whether they were free or not, with certain civil, political and other rights or without them. Thus, for example, depending on the conditions in a particular society, the nature of the master, etc., a slave could enjoy a better or worse status, but has essentially always been only slave – ‘the thing that can talk’, owned by his master.

Certain social movements up or down the class were possible, but only exceptionally, and mostly related to specific individuals, their merits and transgressions. Thus, for example, under certain conditions a slave could gain freedom, in the same way in which a free citizen could become a slave². The essence here is that belonging to a class also determined general legal status.

2. Legal inequality as a characteristic of class societies

Any generalizations that would cover thousands of years, about which little is known anyway, are very debatable. This is true even if only some specifically defined geographic area were to be observed (for example, the Mediterranean), and even more so when the whole planet is taken into account. Having this constantly in mind, some principal observations can still be underlined, which reflect the reality of that time at least in its most basic terms.

1. Class division and inequality – All major religions of the world, developed in the distant past and their holy books, i.e. other ancient writings suggest that all people are brothers and sisters, having common ancestors. It should logi-

¹ Social classes can be studied in different ways. Here we are only interested in the extent to which class division influences their legal status, i.e. determines the range of human rights that are recognized to them.

² Of course, the conquerors enslaved the entire nations, turning free citizens into slaves. And vice versa - according to the Bible, Rameses gave freedom to the Jews as a people. Therefore, there is no doubt that there were sudden changes in the status of entire groups of people, as well as individuals. Nevertheless, in principle, social classes were a relatively stable category.

cally follow from this that people, if they do not always love, should at least respect each other, i.e. respect each others' fundamental rights – the right to life, freedom, honor, body integrity, property and so on.

In addition, more than 2,000 years ago, prominent philosophical schools, such as the Stoics, argued that in the eyes of the gods all men are free, that the gods do not know for the division between the rich and the poor, the Greeks and the barbarians³. Moreover, it was already in the distant past that the ideas on cosmopolitan connection of all people appeared. They can be found in the philosophy of the Ancient Jews (e.g. with the prophets Isaiah, Zechariah, and Micah), but also with the Ancient Greek philosophers from the 5th and 4th centuries B.C. (Antisthenes, Diogenes of Sinope, Socrates). Some thinkers such as Philo of Alexandria (the 1st century AD) developed a whole system of cosmopolitanism, based on the understanding that all people are equal and that they all have the common homeland - the Earth⁴. Similar, and in many ways progressive views can be found in other places, and other cultures.

Yet, there has been a legally regulated vertical division of people into classes for thousands of years. The essential characteristic of these societies involved the existence of different categories of citizens, with very different legal status, not just in terms of personal freedom and political rights (participation in administration of power), but also in all other issues such as criminal and legal protection and accountability (different sentence for the same crime)⁵, damages⁶, property relations, family relations, etc. Opposite the ruling classes, no matter what they were called in particular cases, there were the masses of unfree or semi-free, and in any case disenfranchised population. In such circumstances, there is no, and there cannot be any kind of understanding of human rights as such. On the contrary, the dominant view of the world was that the ones were expected to rule, while the others to serve and obey them.

³ Lauterpacht H.: *International Law and Human Rights*, London, 1950, 82-83.

⁴ Стояновъ А.Н.: *Очерки истории и догматики международного права*, Харьковъ 1875, 45.

⁵ Thus, for example, Dušan's Code (The Code of Serbian Tsar Dušan, adopted in 1349, amended in 1354), in Article 53 stipulates that a nobleman who rapes a noblewoman is to have their both hands and a nose cut off. The same penalty is stipulated for a commoner who rapes a common woman. However, for the commoner who would dare to rape the noblewoman a more severe punishment was stipulated: hanging. In addition, there were no provisions for penalties for a nobleman who would rape a common woman.

⁶ Thus, for example, the Code of Hammurabi in Article 209 provides that if someone hits a daughter of a free man, and she aborts a child as a consequence, they are to pay 10 silver shekels (shekels) for the miscarriage. For the same offense with the same consequences, which is committed against a daughter of a freed man, twice as lower compensation was stipulated - 5 silver shekels (Art. 211), and if the woman is a slave of a free man - the compensation is only 2 shekels (Art. 213). The Code of Hammurabi, and later the above mentioned The Law of the Twelve Tables, the Russian Law, Law Codex of Vinodol and Dušan's Code were used in the translation, that is the text published in: Jasić S. *Zakoni starog i srednjeg veka*, Belgrade, 1968.

This is particularly typical of the slave owning states. Slavery by itself is one of the severest forms of the denial of any human rights. Can we talk about any human rights in a situation when a slave is not treated as a person, when their owner can buy, use, sell, corporally punish, and even kill them at their own will?⁷

A little better, but still very bad was the position of serfs and similar categories of population groups in various feudal societies. In some cases, the status of a serf differed only slightly from that of a slave, and somewhere the life of a farmer was in reality even more difficult than that of slaves who got lucky to serve humane masters.

2. Inequality within the same class. - It should be added to all the above said that in these societies, even the privileged, higher layers were typically in mutually unequal position, and that even when the rights in question were principally recognized, they were all too often violated.

First of all, even in those societies of the past that are often cited as examples of humanity and tolerance, not everything was so perfect. In the enthusiasm about the Athenian democracy it is sometimes forgotten that the assembly (*ecclesia*) did make decisions on all most important issues, but that the right to vote did not belong to everyone! The slaves and foreigners did not have that right. Neither did women! The right to vote and be elected was reserved for adult free men, that is for just one particular part of the free citizens of Athens⁸.

Generally speaking, although sometimes women are equal to men⁹, or at least enjoy certain special legal protection¹⁰, so that here and there even women rulers appear¹¹, in most societies of this period women were disenfranchised –

⁷ The truth is that in some societies there were certain rules that restricted excessive self-will and, in particular, the cruelty of a master to a slave.

⁸ It is believed that out of 100.000-250.000 citizens, only 20.000 to 30.000 had the right to vote.

⁹ Thus, for example, at first glance it is quite surprising that the Vikings, the cutthroats and thieves before whose names the whole of Europe used to shake, gave equality to their women; they had a very good position in general. A similar situation is found in some other communities.

¹⁰ Thus, although there is no mention of full equality, the Code of Hammurabi in many places specifies the legal status of married and unmarried women, and even of concubines (Articles 127-157). Among other things, it contains provisions by which a married woman is allowed not to be considered married under certain circumstances (Art. 128), or to go back home (Articles 131, 134, 136, 142, 149), provides for compensation to a wife driven away by her husband (Articles 138-140), specifies that even if the husband brings home a concubine (because his wife could not have any children), he cannot equate a concubine with his wife (Art. 145), that if a woman fell ill after her marriage, and the husband took a second wife, he cannot drive away his sick wife - she will stay in the house, while the husband will support her until her death (Art. 148), and so on.

¹¹ For example, famous Egyptian women pharaoh Hatshepsut (reigned for about two decades in the 15th century BC) and Cleopatra (reigned from 51 to 30 BC), the Queen of Sheba (10th century BC), the Illyrian queen Teuta (3rd century BC), the queen of the British Iceni

they are not entitled to vote, have no right of inheritance, are married against their will and so on. Even within the same social class (either ruling or subordinate), women generally have a worse position than men.

Also, there was also a difference in legal status between free men, depending on very different aspects - the position in the state hierarchy, property (eg, property census as a condition of the right of vote)¹². The tribal or ethnic origin often determined the place on the ladder within the same class, and thus the corresponding scope of rights¹³.

3. The position of religious, ethnic and similar minorities. - The relationship to those local citizens (subjects) that differ from the rest of the population by ethnic origin, language, religion, etc.. has always represented a particular problem.

Generally speaking, although in the ancient societies there was considerable religious tolerance, there are numerous examples that prove the opposite - scorn, contempt and even open hostility toward others, just because they are of a different ethnic origin, religious beliefs, language, color of skin and the like.

In this sense, it is enough to recall that even the Old Testament testifies in many places that during the time of Moses, but also later, thousands of people were killed because of idolatry (i.e. different religious affiliation)¹⁴.

tribe Boudica (1st century), the Chinese Empress Wu Zetian (reigned from 691 to 706), the Georgian queen Tamara (12th-13th centuries) and others.

¹² Thus, for example, Dušan's Code (Article 50) provides that 'A lord who insults and disgraces a lesser lord shall pay 100 perpers'. In the opposite case, for the member of a lower gentry who curses the nobleman, the corporal punishment - 'and be beaten with sticks' with identical financial penalty is provided. In medieval Serbia there was a difference between higher gentry and lower gentry. (the text in English taken from www.dusanov-zakonik.com)

¹³ For example, in Francia (the Kingdom of the Franks) which was composed of a number of Germanic tribes, the Frankish tribes aspired to a higher rank, and thus to more rights in relation to other Germanic tribes. Vajs A., Kandić Lj.: *Opšta istorija države i prava*, Belgrade 1974, 74.

¹⁴ After the Exodus, Moses, coming down from the Mount Sinai after 40 days, burned and turned to dust the golden calf that the Israelites made in the meantime (because they thought that Moses had died, since he was not coming back), and then: 'Moses stood at the gate of the camp and shouted, "If any man be on the Lord's side, let him join with me. And all the sons of Levi gathered themselves together unto him: And he said to them: Thus saith the Lord God of Israel: Put every man his sword upon his thigh: go, and return from gate to gate through the midst of the camp, and let every man kill his brother, and friend, and neighbor. And the sons of Levi did according to the words of Moses, and there were slain that day about three thousand men.' *Biblija, Stari zavet*, translated by Daničić Đura, Karadžić Vuk, Belgrade 2007, 'Izlazak', chapter 32/1-29, 76-77. (the text in English taken from <http://www.tldm.org/bible/Old%20Testament/exodus.htm>)

The fight against the idolaters was ruthless later as well. Among other things, upon the order of the prophet Elijah 450 priests of God of Baal were slaughtered (*Biblija, op. cit.* 'Prva knjiga o carevima', 'V. Ilijino doba', 1/20-40, 327).

Also with regard to the Jews, but this time as victims, the Old Testament elsewhere shows that only a combination of circumstances prevented the command of Haman, the right-hand man of the Persian King Xerxes (Ahasuerus), to annihilate all the Jews, their women and children 'in a single day'¹⁵.

There have always been attempts to make a forced assimilation of various ethnic and similar minorities. That is strongly evidenced by the fact that the Syrian King Antiochus IV Epiphanes, who thought that only what was Greek was good, issued a decree that all his subjects had to dress like the Greeks, speak the Greek, pray to the Greek gods, and that the one who disobeyed this commandment was to be put to death¹⁶.

It is interesting to note that the Arabs, who conquered Egypt in the 7th century, banned the Coptic language in 997, which led to the disappearance of the ethnic characteristics of that community and its conversion to a religious minority¹⁷.

The above cases are given only for illustrative purposes. Numerous similar examples could be found at various places, related to various nations and their destinies¹⁸.

However, although in slave owning societies there were occasionally incidents of religious intolerance, it is not typical of these societies. Despite the fact that at the time wars were frequent, they were fought for robberies, conquest of territories, acquisition of slaves, revenge, personal animosity between the rulers,

¹⁵ 'And Haman said unto king Ahasuerus (i.e. Xerex, note by B.K.): There is a certain people scattered abroad and dispersed among the people in all the provinces of thy kingdom; and their laws are diverse from all people; neither keep they the king's laws: therefore it is not for the king's profit to suffer them. If it please the king, let it be written that they may be destroyed....': *Biblija, op. cit.*, 'Knjiga o Jestiri', ch. 3/8-9, 451. Also: Sokolov D.: *Biblijska istorija*, Belgrade 1981, 54, 61, 65, 121.

(the text in English taken from <https://www.jewishvirtuallibrary.org/jsource/Bible/Esther.html>)

¹⁶ 'Moreover king Antiochus wrote to his whole kingdom, that all should be one people, and every one should leave his laws: so all the heathen agreed according to the commandment of the king....For the king had sent letters by messengers unto Jerusalem and the cities of Juda that they should follow the strange laws of the land,...And whosoever would not do according to the commandment of the king, he said, he should die.... *Knjige Makavejske*, translated by bishop ZHP Atanasije, Nikšić 2002, *Prva Makavejska*, ch. 1, 41-50, 101-102. Also see in: *Druga Makavejska*, ch. 5, 25. ch. 6, 1-19, 171-173. (the text in English taken from <http://www.earlyjewishwritings.com/text/1maccabees.html>).

¹⁷ Today, the Coptic language (the Copts claim to be the natives and the descendants of the ancient Egyptians from the time of the Pharaohs) is practically completely forgotten and only appears in shorter parts of the church liturgy, which is mostly in the Arabic (Coptic Church belongs to the Christian churches of the Eastern ritual).

¹⁸ Dušan's Code too (14th century) speaks of the Latin heresy, heretics, priests, monks and others in several places. Among other things, Article 10 specifies: 'And if any heretic be found to live among the Christians, let him be branded on the face and driven forth, and whoever shall harbour him, let him too be branded'. (the text in English taken from www.dusanov-zakonik.com)

and so on. Generally speaking, there were no wars inspired only or primarily by religious reasons.

All this significantly changed in feudalism. In addition to armed conflicts within one society (civil wars) that are fought for the freedom of religion, against the 'heretics' and the like, there was a large number of wars between two or more countries in which religious reasons were put at the forefront - various 'holy wars' and wars for the protection or expansion of certain religion, wars initiated as a sort of help to members of a religious minority in another country, etc. The best known religious wars were The Crusades¹⁹ (11th-13th centuries), The Albigenian crusade (1209-1229), Huguenot (as many as eight wars in France between the Catholics and the Huguenots, 1562-1598)²⁰, the Thirty Years' War (1618-1648)²¹ and others.

It is particularly interesting that the Christians, cruelly persecuted by Rome for a long time (not for the religious, but primarily for political reasons) later, when Christianity became the state religion of Rome, began persecuting members of other religions equally severely²².

¹⁹ In a wider sense, that is the name for all conflicts of Christian states motivated by religion, fought against those of a different religion, and particularly various wars of conquest justified by religious reasons – for example, the wars of Byzantium with its pagan neighbors, German Crusades against the East Slavs, three crusader war with the Swedes winning Finland (1155, 1249, and 1293), the campaigns of Catholics against heretics, etc. In the narrow sense, this is a common name for a series of military campaigns initiated by the Popes and various European monarchs from 1095 until 1229, with the aim of recapturing the Holy Land from the Muslims. See more in: Krivokapić Boris: *Enciklopedijski rečnik međunarodnog prava i međunarodnih odnosa*, Belgrade 2010, entry 'Krstaški ratovi', 474-475.

²⁰ One of the most terrifying events of that time is the so-called St. Bartholomew night that took place on August 23, 1572, when Catholics massacred the Huguenots (French Calvinist Protestants) in France. On that night and in the following days between 1,000 and 2,000 Huguenots were killed in Paris only, and it is estimated that in the country up to 20,000 (some sources say up to 70,000!) people were killed.

²¹ The deadliest war until then time - believed to have taken about 10 million victims. Fought because of religious intolerance between the Catholics and the Protestants, namely the attempt of Ferdinand II, the ruler of the Roman-Germanic Holy Roman alliance to impose the authority of the Catholic Church on Europe - the idea of a united European Christian empire in which the Pope would rule at the spiritual, and the Emperor of the Holy Empire at the secular level.

²² As long as they recognized its power, Rome was quite tolerant towards various religions within its territory. Thus, for example, when it resorted to repression against the Jews (killing of Jewish population, major deportation of Jews from Judea, the introduction of a special tax for the Jews etc.) it was not because of their different religion, but as a sanction, the response to the rebellions, especially the First (66-73) and Second Jewish rebellion (132-135). The Christians were first persecuted in 64, when Nero blamed them for the Great Fire of Rome. Although they were not guilty of anything, the Christians were captured, burned alive in the streets, or thrown to the lions in the arena. Although later there was no organized persecution of the Christians, they occasionally faced with repression, mainly because the state authorities saw them as insufficiently loyal residents. This was because the

Religious bigotry and exclusion became drivers of many international and civil wars, while hatred developed on that basis makes these conflicts particularly merciless, with countless examples of unnecessary cruelty and turning into massacres²³. Although they sometimes break out uncontrollably, in many cases these conflicts are a part of state policy, whether the war operations are prepared and maintained by state authorities, or those authorities refuse to step in and protect the victims.

The Jews in particular suffered and were killed a lot in various regions. Scattered around the world, they differed from the local population in origin, religion, customs, and even appearance²⁴. Their situation was particularly exacerbated when in the 4th century the Christians began blaming them for the murder of Jesus Christ. After that they were blamed for many other evils of this world, among other things, for the spread of the 'black death' (the plague). That fed hostility towards them in the coming centuries and in different countries.

Some of the first large-scale massacres of the Jews were carried out by the Muslims in 1033 in Fez (Morocco), when the mob killed about 6,000 Jews, and in 1066 in Granada (Spain), where about 4,000 Jews were massacred. However, massive violence against the Jews was recorded especially in the Christian world - in France and Germany (1096), London and York (1189-1190), France, Savoy, Dresden, Mainz, etc. (1348), Basel, Freiburg, Strasbourg (1349) and so on. Blaming them for bad crops, among other things, the crowd in Lisbon tortured, killed and burned about 2,000 Jews in only two days in 1506.

In fact, in practice the reasons were most often found in the field of politics and economy, and often consisted of the sheer envy and desire to steal property from the Jews (the houses and other property). History testifies that the outbursts of hostility toward the Jews in Europe were the most common and most savage during the time of great economic crisis and wars.

Christians refused to accept the official cult of cherishing Roman emperors as gods, and that the empire embodied the divine authority of the Roman state. That cult was one of the most important links that tied the inhabitants of the Roman Empire. Therefore it was no wonder that disrespect for it was treated as an attack on the state itself, and a high treason. When in 380 Theodosius declared Christianity the state religion of the Empire, a complete turnaround followed. Persecuted in the past, the Christians suddenly transformed into a ruthless persecutors who fiercely fought against the pagans and members of other religions, and spread their religion as missionaries, but also with fire and a sword.

²³ It is considered that, for example, about 60% of the population was lost in religious clashes in the Czech Republic only in the 17th century.

²⁴ In the countries where they settled, the Jews always represented ethnic and religious minority, which caused fear by the majority of the population. That was reinforced by the fact that the Jews, as a rule, lived isolated. In major cities they used to have their closed quarters - ghettos (the first one was built in Venice in 1516) where they engaged in trade and lived apart from the people of other religions and backgrounds.

4. The position of foreigners. – No matter how difficult the position of certain categories of the local population was, for most of the history the position of foreigners was even worse.

The great ancient people (Egyptians, Persians, Hindus, Jews, Greeks and others) generally considered themselves as 'chosen' - believed that their ruler was the heir or at least favorite with the gods, and that they were called upon to rule over other peoples.

It is therefore not surprising that in many ancient countries foreigners were looked down on with contempt, mistrust, and even hatred for a long time. In some cases the position of foreigners was similar to the position of slaves, or even worse.²⁵

A good illustration of this is the old Hindu law, recorded in the famous Laws of Manu.²⁶ It recognized the division of people into particular social classes - the castes. At the top, there were the *Brahmins* (priests) who were, as God's people, predestined to be the masters of everything that exists by birth, including other beings. In contrast, slaves were deprived of all rights, even the remnants of the Brahmins food. In even worse (worse than slaves) position were the members of the defeated tribes (*Pariahs*). Since it was believed that they were not worthy of being even slaves of Hindu castes, they had to live out of a civil society, without the right to any protection. As a result, they could have been the subject of any form of violence and attacks without any penalty. At the very bottom of this unusual ladder there were *foreigners* who were below pariahs (the latter, unlike foreigners, had at least a moral right to the pity of the Brahmins)²⁷.

Basically the situation was similar in Egypt too. With the idea that they were called upon to rule the world, the Egyptians had patronizing attitude toward foreigners for a long time, despising even the Greeks, according to the testimony of Herodotus.

Hostility towards foreigners was typical of ancient Greece as well. It is known that in it (especially in Sparta) there was an institute named *Xenelasia*,²⁸

²⁵ More in: Krivokapić Boris: *Zaštita manjina: istorijski razvoj, osnovna pitanja i zaštita u okviru UN*, Belgrade 2004, 49-63; Krivokapić Boris: *Međunarodno pravo – koreni, razvoj, perspektive*, Belgrade 2006, 31-35.

²⁶ Indian Code, named after its purported creator and forefather of the Aryans, the legendary Manu. It is believed to have originated in the 4th century BC, although according to some opinions, that was much earlier - around 1500 BC. The original text is not preserved, but only its version in verse from the first century BC, as it is believed. It contains a number of provisions and data of religious and philosophical nature, related to penal, civil, military law, diplomacy, military affairs, etc.. For the text see: Buhler G. (transl.): *Indian History Sourcebook: The Laws of Manu, c., 1500 BC*, Fordham University, <http://www.fordham.edu/halsall/india/manu-full.asp>. This and all later mentioned sources from the Internet were last consulted on March 4th, 2014.

²⁷ More on this: Bartoš M., Nikolajević B.D.: *Pravni položaj stranaca*, Belgrade 1951, 19-21; Стоянов А.Н.: *op. cit.*, 41.

²⁸ Greek: *xenos* – foreigner, stranger, and *elases* – forcing out, expulsion.

which is thought to have been established by the legendary lawmaker Lycurgus of Sparta (about 820-730 BC). It consisted of the right to non-acceptance, i.e. persecution of foreigners who were much hated at that time²⁹.

Even in Athens, where the position of foreigners was more favorable than in other Greek city-states, foreigners generally had a bad position. There were four categories of foreigners. The first two comprised *isotelia* and *metics*, which, so to say, belonged to the 'local foreigners' and as such enjoyed certain rights³⁰. The other two consisted of foreigners without permanent domicile in Attica and the barbarians. *The foreigners who did not reside in Attica* were in a worse position than the *metics*, and they were supervised and protected by the citizens of Attica (Proxeni). The *barbarians* enjoyed a particularly bad position; that name was used for those who were born outside of Hellenic civilization, and who differed from the Greeks with their origin, appearance, language, customs, religion and so on. They were generally without any rights and protection, exposed to contempt. The Greeks often compared them with animals (Isocrates), and in any case considered them their natural enemies, i.e. people who are by nature destined to be slaves (Aristotle).³¹ However, over time, their situation started improving, influenced mainly by the demands of trade development.³²

Roman law was initially very strict to foreigners too, leaving them at the mercy of violence of all kinds. However, later with the expansion of international contacts, particularly the development of foreign economic relations, the situation considerably improved.

²⁹ Foreigners could reside in Sparta only on the basis of special permit. The reasons for this decision were of a practical nature - on the one hand, efforts to protect one's own culture and blood from 'harmful' influence from the outside, but on the other, it was a purely military reason that foreigners should not be given the opportunity to learn about the exact number of Spartan citizens (and with that of warriors). However, in the case of proven friends of Sparta, the rigid implementation of this rule would be abandoned and they would be shown hospitality.

³⁰ *Isoteleia* were the foreigners who had certain, narrow or broader rights recognized by special international agreements or domestic laws. *Metics* were foreigners from other Greek states, who were authorized to reside in Athens. They represented a kind of second-class citizens and enjoyed a number of rights, although in this respect they were not equal with the citizens-though personally free, they had no political rights, they were limited in the acquisition of real property, they paid a special tax (*metoikion*), they were supervised by a particular citizen (*prostate*), the penalties for them were harder than those for the citizens, they were obliged to do military service, in a war they fought in the forefront, that is at the most dangerous places, etc. See more in: Стоянов А.Н.: *op. cit.*, 52-54; Vajs A., Kandić Lj.: *op. cit.*, 49; Bartoš M., Nikolajević B.D.: *op. cit.*, 21-23.

³¹ Стоянов А.Н.: *op. cit.*, 57.

³² Another brutal institute at that time was androlepsy that represented an aspect of private reprisals against foreigners. This institution existed in ancient Athens. According to it, when an Athenian citizen was killed in a foreign country, and that country refused to extradite or punish the murderer, the family of the murdered could capture and bring before the Athens Court any three citizens of the country in question.

Generally speaking, the position of foreigners was poor in most feudal states, too. After all, the rule *jure herede legitimo* was widely spread in the Middle Ages (Latin: upon the legal right of heritage) according to which the legacy of the foreigner could not be inherited either by a will or by law, but the feudatory contained all property of the deceased foreigner which was on his territory.³³ When it is known that, in this way, foreigners were denied the right to dispose of their property in case of death (by a will) or, seen from another angle, the right of inheritance, which is one of the most natural human rights, it is clear that the foreigners were disadvantaged anyway. They (foreign merchants, pilgrims, etc.) usually did not have any rights. Among other things, in the case of criminal offense, they were often more severely punished than domestic subjects.

5. Collective sentence. – To everything mentioned we may add that in this historical epoch collective punishment was often stipulated and imposed. They are particularly resorted to as a measure of revenge after some form of rebellion, or other form of expression of disobedience. Completely innocent people used to be punished then along with the culprits, their relatives, neighbors, or simply fellow citizens.

After all, the law of the period, including the written codes, provides for certain situations in which due to a sin of an individual or a group (even ordinary crime, such as robbery or theft) other persons were punished, including the entire cities and villages.³⁴

6. Extreme cruelty. Torture as a part of the legal (judicial) system. – Generally speaking, this period and the first centuries that followed were characterized by great brutality. This is best seen with death sentences that were executed

³³ Later, this custom gradually became diluted, so that already in the 13th century the inheritance rights of a foreigner's own children were recognized, as well as the right of a foreigner to bequest in their will a property of certain value.

³⁴ Thus, for example, the Code of Hammurabi (Art. 23) says: 'If the robber has not been caught, the robbed shall seek in front of God what has been taken from them, and the city and the sheik within whose boundaries the robbery has been committed, shall reimburse him for everything that he has lost'.

Similarly Dušan's Code (Article 99) provides that 'If anyone be found who hath set fire to a house, or to a threshing floor, or straw, or hay belonging to another man, out of malice, that incendiary shall be burnt in the fire. If he be not found, let that village hand over the incendiary. And if it hand him not, let that village pay what the incendiary would have paid'. While Art. 145, among other things, specifies: 'Imperial order: In all lands, and in the towns, and in districts, and in the marches, there shall be no brigands or thieves in anybody's region. And in this manner shall thieving and brigandage be stopped: In whatsoever village a thief or brigand be found, that village shall be scattered, and the brigand shall be hanged by his feet, and the thief shall be blinded, and the master of the village shall be brought bound to the Tsar and pay for shall be punished as a thief and a brigand'. The next article (146) provides the same penalty for the other persons: 'And also prefects, and lieutenants, and bailiffs, and reeves, and headmen who are found to administer villages and summer pasture huts, all these shall be punished in the manner written above if any thief or brigand be found in them.' (the English text taken from www.dusanov-zakonik.com)

by burning, stoning, throwing the convict to the lions, crucifixion, decapitation, impalement, skinning, and the like.

One of the characteristics of this period is very widespread corporal punishment - mutilation (severing arms, legs, tongue, nose, ears, blindness, stamping), hard beating (whipping, flogging) and the like. These penalties imply extreme current (physical) and subsequent (mental) pain. Despite the fact that they were sometimes only an expression of a whim of the person who was in a position to decide on the fate of the other, in many cases, these sentences were stipulated in advance for particular criminal acts by the appropriate legal documents. Although they were finally abolished only at the end of the 19th and early 20th century, according to the standards of today, quite inappropriate punishment was especially typical of the ancient world and the age of early feudalism.

However, torture was not only a form of a sanction or a part of it. In this period it was also resorted to during investigation in order to find out the truth, and especially in order to obtain a confession - it has long been considered the greatest ('ultimate', or 'key') evidence. In this sense, torture has for centuries been an integral part of the judicial process both before the state (secular) and certain ecclesiastical courts.³⁵

3. The war and the position of the people

Although in some cultures there were surprisingly humane rules of war, including the examples of extraordinary humanity of some generals³⁶, generally speaking wars were often cruel beyond measure. There are two important elements related to the war in this era that have a direct impact on the position of people, even regardless of the causalities in the battles themselves.

First of all, those were the wars of conquest, fought in order to enslave the inhabitants of conquered territories - converting free people into slaves who

³⁵ This refers to the practice of the Inquisition - the investigative and judicial authorities of the Catholic Church, designed to fight heresy. These authorities were active in the 12th and 13th century and remembered for their evil. They usually showed the defendant torturing devices and invited them to plead guilty. If they refused to acknowledge, or would not reveal accomplices, etc., they were put to torture. When tortured, the vast majority of people, even quite innocent ones, would admit all that was asked of them.

³⁶ There is a well-known example of the Persian King Cyrus I (7th century BC) who ordered that the wounded Chaldeans be treated in the same way as his own wounded soldiers. One should be reminded that the ancient Greek ruler of Gela and Syracuse, Gelon (or Gelo), when in 480 BC at the Battle of Chimera he totally defeated the army of Carthage which attacked the Greek colonies in Sicily, did not seek any other requirements for the conclusion of peace but the obligation of Carthage to stop offering its own children as the sacrifice to God Baal. It is believed that this was the most noble peace treaty in history.

would be forced to work for their masters.³⁷ In addition to looting, which at that time was considered to be completely legal, even honorable, it was exactly the hunt for new slaves that made the ancient states spread far beyond the area inhabited by the ruling ethnic group. Therefore, many states of that time covered vast areas inhabited by different peoples.

On the other hand, a lot of data has been preserved confirming that the winners, especially if they met with tough opposition, treated the vanquished with no mercy. The whole cities and nations were destroyed.³⁸

The Bible itself testifies to the brutality of the Ancient Jews who, in some cases, killed the entire population of the conquered cities.

The most famous is the example of the conquest of Jericho, when the Jews killed all the inhabitants,³⁹ as well as their cattle, and burned the city.⁴⁰ However, they also mercilessly killed all the inhabitants of Gai, of the southern towns of Canaan and other towns that were on their way.⁴¹ After all, it was in accordance with what they were told to do in an order from the Old Testament.⁴²

³⁷ Although there were other sources of slavery (debt bondage), the most important among them for a long time was capturing at war, and with it, as a result of it, the birth by enslaved parents.

³⁸ In ancient times there were many cases of massacres of entire peoples, but also those situations in which only men were killed, and the women and children sold into slavery. Even if we put aside personal drama, that also meant, more broadly speaking, the sentence of the social community in question to disappearance.

³⁹ The only one spared was the prostitute Rahab with her family, because she previously saved Jewish spies.

⁴⁰ They then slew by a sharp sword everything that was in the city, women and men, children and the elderly, oxen and sheep, and donkeys'. *Biblija*, 'Knjiga Isusa Navina', *op. cit.*, 196. (the text in English taken from www.biblegateway.com/passage/?search=Joshua%203&version=NIV)

⁴¹ Here is how the Bible describes the conquest of the north Palestine city of Hazor: 'And they killed every living thing that was in it, the sword cutting through, and there remained nothing alive, and burned Hazor with'. *Ibid.*, 203. (the text in English taken from www.biblegateway.com/passage/?search=Joshua%203&version=NIV)

⁴² 'When thou comest nye unto a city to fight against it, offer them peace. And if they answer thee again peaceably, and open unto thee, then let all the people that is found therein be tributaries unto thee and serve thee. But and if they will make no peace with thee, then make war against the city and besiege it. And when the LORD thy God hath delivered it into thine hands, smite all the males thereof with the edge of the sword, save the women and the children and the cattle and all that is in the city and all the spoil thereof take unto thyself and eat the spoil of thine enemies which the LORD thy God giveth thee. Thus thou shalt do unto all the cities which are a great way off from thee and not of the cities of these nations. But in the cities of these nations which the LORD thy God giveth thee to inherit, thou shalt save alive nothing that breatheth. But shalt destroy them without redemption, both the Hethites, the Amorites, the Cananites, the Pherezites, the Hevites and the Jebusites, as the LORD thy God hath commanded thee, that they teach you not to do after all their abominations which they do unto their gods, and so should sin against

The Old Testament elsewhere testifies about the cruelty of war, among other things, the ruthless attitude towards prisoners of war.⁴³

The Bible is given here only as the most famous example. History offers much tangible evidence that similar procedures were practiced by other peoples, in other areas and other times.⁴⁴ We shall mention only several most famous cases of this kind.

The first refers to the destruction of Milos by Athens in 416 BC, during the Peloponnesian War. When, after a long siege, with the help of treason in the city itself, they managed to conquer Milos, the Athenians killed all the men, and sold women and children into slavery.

When in 332 BC, after seven months of siege Alexander of Macedon conquered Tyre, he destroyed the town, killed 2,000 men of military age, while he sold the rest of the population, about 30,000 of them, into slavery.

A similar event took place in 146 BC, when the Romans in the Third Punic War conquered Carthage. Then upon the decision of the Roman Senate, all the survived inhabitants of Carthage (about 50,000 of them) were sold into slavery, and the city was razed to the ground.

Therefore, it can be seen that this was well-established practice, followed by various countries and their militaries. That also means that if the winners were by any chance of bad luck, then they would be those to taste the bitterness of defeat, and most likely suffer the same fate (i.e. everything would be the same with the reverse roles).

In many cases, the winners were not content to kill or sell the defeated into slavery, but would kill them in a cruel manner. Thus, for example, in 701 BC, when the Assyrians occupied the Judah city of Lachish, they brutally killed prominent residents - some were slaughtered, others impaled, the third ones skinned alive. It was a revenge for disobedience (refusal to pay the toll).

When Crassus' troops finally defeated Spartacus' rebellious army of slaves, in 71 AD, some 6,000 survived slaves were crucified along Via Appia, from Capua to Rome.

Similar examples can be found at the age of feudalism.

the LORD your God.' *Biblija, op. cit.*, 'Peta knjiga Mojsijeva', *Chapter 20:10*. (the text in English taken from <http://faithofgod.net/tanak/de.htm>)

⁴³ 'Amaziah took courage, and led forth his people, and went to the Valley of Salt, and struck ten thousand of the children of Seir. The children of Judah carry away ten thousand alive, and brought them to the top of the rock, and threw them down from the top of the rock, so that they all were broken in pieces'. *Biblija, op. cit.*, 'Druga knjiga dnevnika' IV.6.25.11-12, 413. (the text in English taken from <http://ebible.org/web/2Chron.htm>)

⁴⁴ One of the best-known wars, the Trojan war, ostensibly fought in the 13th-12th centuries BC, ended in a complete destruction of Troy. Those of its residents who were not killed, were turned into slaves. Although it has never been reliably confirmed whether what was described in Homer's *Iliad* corresponds to historical truth, there is no doubt that similar events marked the ancient world.

Thus, for example, on beating the Slavic ruler Samuel in the battle of Belasica in 1014, the Byzantine Emperor Basil ordered that around 15,000 prisoners be blinded, and each hundredth left with one eye, to guide them back to Samuel. Having seen the sad scene, Samuel died of pain (he got weak and died two days later).

In the Middle Ages, among numerous massacres carried out in different places, the one from the Third Crusade became remembered, when the Crusaders, under the command of the English King Richard I the Lionheart conquered Acre in 1191, and then killed about 2,700 of its citizens – the Muslims, despite the fact that the Sultan Saladin offered to buy them out and save them in this way.

The notorious Wallachian Duke from the 15th century, Vlad III Zmajevic (Drakul) remained remembered. He slaughtered tens of thousands of people in cruel ways, mostly the captured Turkish soldiers - some were skinned alive, others were buried alive, boiled etc. He particularly loved to impale people, and therefore got the nickname of 'Cepesh' (which in Romanian means 'the Impaler').

Asian invaders, especially Genghis Khan (Temujin) and Tamerlan (Timur Lenk) carried out dreadful massacres in the cities and countries which dared to oppose them. It is believed that Genghis Khan only is responsible for the deaths of about 40 million people.⁴⁵

Mass murders, robberies and other abominations were also committed by the Europeans on conquering other parts of the world and turning them into their colonies.

Unfortunately, not only are the wars the reality of the modern world, but terrible war crimes and crimes against humanity are carried out even today, and some of the most heinous genocide cases are related to contemporary history. Why then cite the examples from the past, when similar phenomena occur in our time as well?

There is one big difference. Today, unfortunately, many perpetrators of atrocities remain unpunished. But the ideas of war crimes, crimes against humanity, of genocide are very well known... of the fact that such activities are not only forbidden, but also punishable, and that these are international crimes for which one is held accountable.... In the distant past, it was not the case.... The one who had the power, could basically do whatever they wanted, without feeling the need to justify their deeds to anyone. The only thing they had to take care of was not to become the victim of a more powerful ruler themselves.

⁴⁵ The cities that surrendered without a fight were spared, but those who resisted, were destroyed without mercy, usually with all their residents (only those who could be of use were spared – the scientists, artists, and artisans). Among other things, in only half a year (Autumn 1213 - Spring 1214) about 90 Chinese cities were looted and burned to the ground.

4. The first human rights

Everything said above does not mean that a class society did not recognize any human rights. They certainly did. In most cases, at least basic protection was recognized to the oppressed social classes.

Even in the most primitively organized human communities there are some forms of such rights as the right to life, bodily integrity, family, property and so on. However, generally speaking, that did not include any special kind of humanity or a dedication of those in power, not to mention any more or less defined concept of human rights and the like. It was an objective need, so that the whole society could function in general. The state protected the individual and their assets - life, family, property, etc. by identifying the appropriate offenses, prescribing severe punishment for them, and prosecuting and punishing the offenders. But all that in order to ensure peace, order and proper functioning of the society, and not because the state felt obliged to guarantee these rights to its subjects.

In this light it is clear that those in power generally did not feel compelled to protect the people under their jurisdiction from themselves - from various forms of violence, torture, plunder, discrimination ... and that exactly is the essence of the modern concept of human rights. However, certain human rights have existed since the appearance of law and the first states.

If we are interested in the highest standards of human rights in a class society, they should definitely be looked for in what the members of the highest classes enjoyed. These rights can be found in the domain which we call civil and political, even economic and cultural rights today, while certain so-called group rights can also be identified. Of course, all these rights are very far from what we have in mind today regarding the same rights, but they undoubtedly exist.

1. Individual rights. – We can talk about human rights at least conditionally in all those cases in which there was a rule that no one can be punished without a reason and, especially without a trial, the defendant had certain rights in court proceedings, etc. Such solutions can be traced throughout history.

After all, even the notorious Inquisition in determining the 'guilt' of the person in question recognized their right to a defense. Certain forms of the rights of defense, no matter how caricature they may seem, can be found in such institutes from the past such as Judgment of God. That refers to the right of the defendant to prove their innocence by submitting to certain activities dangerous to human life and body, all with the belief that if they are innocent, God will help them to remain unharmed, and make justice triumph. One on the ways, especially when the higher strata of the society were concerned, was the right of the accused to prove innocence in a duel with those who accused them.⁴⁶

⁴⁶ There were also other ways, appropriate for common people. Depending on a local custom, the accused was required to stand barefoot on red-hot metal, or to carry such an

The first political rights can be traced even in the ancient times in those communities (for example in the ancient Athens) where the citizens directly and on the basis of equal suffrage decided on the selection of the most important officials and other important issues.⁴⁷

Historical documents prove that in ancient societies there was an institution of the right to asylum. At first various fugitives enjoyed sanctuary in certain places in the country, mainly in the temples. Later the asylum was also given in the international context (to foreigners) and even international treaties used to be signed on that.⁴⁸

The right to private property was recognized and protected even in ancient times, of course, but only with free citizens. The right of ownership or disposal of one's property or that of inheritance and so on was recognized to particular social classes in the epoch of feudalism, too.

2. Minority rights. - Although the relationship to the members of different ethnic and religious minorities in some places was very unfavorable, history records many positive examples where these communities and their members were guaranteed, and in practice recognized some special rights, above all the right to survival, protection of specialty, and non-discrimination.

Such a practice was fostered, for example, by one of the greatest conquerors in history, Alexander the Macedonian. Striving to reconcile and harmonize different peoples and their cultures in his vast empire, he showed considerable

object with their bare hands, all without burnings; to take a metal object or a stone out of boiling water without burnings; to come to the surface after being tied and thrown into the water (in some societies, on the contrary, especially in the accusations of witchcraft, if the defendant began to sink, they would be pulled out of the water, because it was considered a proof of their innocence, that is that they were not a witch) and the like. Sometimes even if the defendant had injuries, they were considered not guilty, i.e. they were under the protection of God, if their wounds healed in due time (for example, if the burns healed within 3 days).

These methods were typical for the old and middle ages, and can be found in many nations – the Assyrians, Babylonians, Jews, Hindus, Slavs, Germans, Arabs, etc. That was the age of religious bigotry and at the same time underdevelopment of the legal system. Although the mentioned and similar examples are very far from the real right of defense against charges in court proceedings, they still testify that there was a feeling that the one who was charged with the most serious charges still had the right to try to justify their deed, even with the help of a miracle. Hammurabi's Code (Article 2), the Russian Pravda (Articles 22-23) and Dušan's Code (Art. 150), among others, provide for certain types of God's judgment.

⁴⁷ In ancient city-states the main square was the center of all social activities - religious, commercial, cultural, and even political. Among other things, that is where the citizens gathered to discuss important issues, argue and make decisions. This unique kind of a national assembly under the open sky, as well as the very place where it met, were called 'agora' with the Greeks, and 'forum' with the Romans.

⁴⁸ See more in: Krivokapić Boris: *Međunarodno pravo – koreni, razvoj, perspektive, op. cit.*, 24-25.

amount of tolerance, and, among other things, allowed the Jews to live according to their laws.

One example of respecting the fundamental rights of people of different origin can be found in the solution represented by Art. 153 of Dušan's Code, according to which when 'people of different religions' and merchants were judged (members of other religions or foreign traders) half of the members of the jury were to consist of the members of 'their group'.

3. The relationship to foreigners. - Although foreigners have been quite disenfranchised and despised many times, there are many instances in which they have been guaranteed not only a kind of protection, but also certain special rights.

Among other things, it is known that Amasis II, the last great pharaoh of Egypt, married to a foreigner himself, allowed the Greeks to freely open shops and recognized their freedom of cult (what is more, he supported the construction of the temple at Delphi by a rich gift) and established special courts for foreigners. Later, during the Ptolemaic dynasty, foreigners were even given the opportunity to enter the public service⁴⁹.

After all, even the ancient Greeks, who had an extremely negative attitude towards foreigners, modified it later by among other things, developing the institution of *proxenia*, consisting in the provision of some kind of state hospitality to foreigners, on condition of reciprocity⁵⁰.

Foreigners were deprived of many rights for a long time with the ancient Jews too, but they were not completely disenfranchised. In addition, by converting to Judaism, a foreigner could become a citizen of the Jewish state, gaining full citizenship rights, except that he and his immediate descendants could become neither military officers nor judges. In addition to these naturalized foreigners (the so-called proselytes of justice), there were other privileged, but unnaturalized foreigners (the proselytes of residence). They were given the right to settle in Judea, as well as the right to trade freely there, under condition to respect the seven basic commandments of God. However, they were under jurisdiction of special courts⁵¹.

⁴⁹ Bartoš M., Nikolajević B.D.: *op. cit.*, 20.

⁵⁰ At first, this hospitality was shown from time to time, mostly to foreign statesmen and other prominent figures, but later, through special agreements on this, *proxeny* obtained a permanent character. It was achieved through the *proxeni*, chosen from among the citizens of the host city with the aim of representing the interests of another city. The *proxeni* received foreigners, took care of the protection of their rights, mediating between them and the local authorities. They represented foreigners in front of local assemblies, testified during the composition of wills, regulated the legacy of deceased persons without heirs, provided assistance to foreign representatives and represented them in the local assembly, and sometimes performed other functions too. The Institute of *proxenia* is believed to have been acknowledged by at least 78 ancient Greek city-states, or alliances.

⁵¹ Bartoš M., Nikolajević B.D.: *op. cit.*, 21.

Although in the beginning and Roman law was very strict towards foreigners, leaving them at the mercy of the violence of all kinds, the situation considerably improved with the expansion of international contacts, and particularly the development of foreign economic relations. In this regard, progress was achieved by the introduction of institutions such as *hospitium*, patronage, and also by signing numerous agreements with other nations.

Hospitium (Latin *hospitium* - hospitality, banqueting) was a standard contract, concluded between a foreigner and a Roman citizen, by which a Roman citizen would take on the obligation to accommodate the foreigner, protect and nurture them in case of illness, and especially to defend their interests before the Roman court. If the parties would not terminate it by mutual agreement, the contract would automatically pass to their heirs, and remained in force even in the event of war between Rome and the foreigner's state. Later, the Roman state itself received foreigners to *hospitium* who became distinguished by their merit to Rome, and even guaranteed *hospitium publicum* to all citizens of a foreign country by means of an international treaty.

Patronage was also a kind of contractual relationship between a foreigner (client) and a local citizen (patron). The client was obliged to obey the patron and do him certain favours (for example, give a dowry to his daughters), while the patron would take it upon himself to help the client in a variety of ways – teach him about the Roman law, represent him in court, etc. The client would lose their previous citizenship and become a kind of Roman resident, which became even more pronounced when, a little later, public patronage appeared. Some noble families took the whole cities and provinces under their patronage, by which the heads of these families became patrons of these areas before the Roman Senate, while the customers received a special type of Roman citizenship.

Rome concluded a number of agreements on friendship, alliance or trade with the neighbouring, but also with distant peoples. Most of these agreements contained provisions that guaranteed the subjects of foreign states, i.e. the contracting parties the respect of a person, property and free trade during their stay on the Roman territory. A foreigner had the right to conclude marriage in Rome, the right to be a subject of property relations and the right to self-appear before the Roman court.

Significant expansion of the borders of Rome, its entry into the market, and allied and other relationships with a growing number of countries made the above mentioned institutions become insufficient, so that the need for the new regulation of the position of foreigners appeared. The special Praetor (*praetor peregrinus*)⁵² started taking care of them, who eventually created a special law, the Praetorian law, known as *jus gentium* (the law of the people). Unlike the *jus civile*, the scope of which was limited insofar as it could only serve the citizens of

⁵² A high state official (magistrate).

Rome (*cives*), *jus gentium* was the common private law of all free people - both the people of Rome and foreigners (Peregrine).⁵³

In fact, Roma classified all foreigners into two main groups: the peregrines and the barbarians.

All foreigners residing in the territories under the rule of Rome were referred to as the Peregrines. This includes both those who were called *ex jure Latini* (foreigners with certain civil rights) and the people living in remote provinces, who had much fewer rights than the population of Italy, the defeated former enemies and former Roman citizens who were deprived of their civil rights⁵⁴. Although they did not enjoy the position of Roman citizens, according to the Praetorian law, the Peregrines got certain legal protection, and in case of insufficiency of its regulations (legal gaps), they could rely on the law of their community. The conclusion can be drawn that the position of the Peregrines was relatively high around the first century AD. However, it should be noted that, on the one hand, *jus gentium* did not give any political rights, and, on the other hand, the legal status of certain categories the Peregrines differed significantly.⁵⁵

In contrast to this, the barbarians were foreigners who lived outside of Rome and its laws. For a long time they had no rights, including the right to use the regulations of *jus gentium*. They could be killed and enslaved by anyone, and their assets were legally considered to be a no man's thing (*res nullius*), meaning that anyone could obtain them by occupation. Nevertheless, their position also improved over time.

And otherwise, more broadly speaking, as time passed, the status of foreigners gradually improved in principle. There is no doubt that the main reason for that was an objective need to develop trade and industry in general.

Thus, for instance, in the Middle Ages the associations of traders from developed Mediterranean cities succeeded in obtaining from territorial authorities a kind of self-government for their colonies in Constantinople, North Africa and some countries of the East. Moreover, by means of special agreements, called *capitulations*, the rulers of the given area renounced a series of competencies to foreigners residing in their territory. Among other things, the capitulation regime implied the exemption of the Christian states' subjects from the power and the laws of the territorial state, and instead establishing jurisdiction of electoral officers (magistrates, consuls) of Christian countries, the exemption of the Christian subjects from taxation, their right to live in a specific city district (which territorial authorities were not allowed to enter), the right to move freely, engage in trade, crafts and the like.

It is believed that the first agreements on capitulation were those that were concluded with Turkey by Genoa (1453), Venice (1454), France (1535), followed

⁵³ See more on this in: Stojčević D.: *Rimsko privatno pravo*, Belgrade, 1975, 28-31.

⁵⁴ Stojčević D.: *op. cit.*, 25.

⁵⁵ Stojčević D.: *op. cit.*, 26-27, 29.

by England (1583), The Netherlands (1612), Austria (1615) and a number of other countries. By means of these contracts the mentioned states provided to their consuls civil and criminal jurisdiction over their compatriots in Turkey⁵⁶. Later, the regime was imposed on a number of countries (Egypt, Morocco, Tunisia, Persia, China, Japan, etc.). On the other hand, the circle of privileged countries expanded with the time, to encompass an increasing circle of European countries, but also the United States. Once imposed, the regime was renewed with new contracts, whereby the rights of foreigners, i.e. . Western states were reaffirmed and even expanded.

After all, foreigners have acquired special rights in other ways, too. Suffice it to recall that in Serbia is during Uros I Nemanjić (1243-1276) the Saxons⁵⁷ received a number of benefits, including their courts, notaries and accountants. In addition, they had full freedom of their (Catholic) religion.⁵⁸

4. The rules of humanitarian law. - Throughout history there have been certain, more or less developed rules of what we call the war and humanitarian law today. This refers to particular human rights in the war.

Such rules can be found in all eras and cultures. Thus, for example, the Indian Code of Manu stipulates that the use of dishonest means of warfare must be avoided, that tipped arrowheads or poisoned arrows, firing missiles, etc... must not be used; that farmers must be spared, as well as those who beg for mercy, the weary opponents, those who are asleep or surrender must not be killed, that a man whose body is naked (not covered by armor) must not be injured, that the wounded must not be killed, as well as that the enemy on the run must not be chased. After all, the ancient Greeks testified that the wars in India concerned only the warrior castes, that the farmers in the vicinity of the battle cultivated the land peacefully, and that the Hindus, when fighting in wars, spared residents, did not destroy the cities, and did not use dishonest weapons, etc...⁵⁹

In the Middle Ages, when the wars, especially in Europe and a large part of Asia, were a daily occurrence, there were certain rules of conduct in war, certain knights' code (sometimes known as *the knights' rules*). While valid only between knights, but not in conflicts with the 'infidels' or serfs, these rules, among other

⁵⁶ Thus in 1535 France obtained the right for Christians who were not Turkish citizens to attend the holy places and trade freely in the empire. More in: Moa M.: Basic concepts of public international law, Belgrade, 1925, 159

⁵⁷ Medieval German miners in Serbia and Bosnia who, having fled before the Tatar invasion (1241), came there from Erdelj, where there had already been Saxony mining colonies.

⁵⁸ Stanojević St.: *Narodna enciklopedija srpsko-hrvatsko-slovenačka*, book IV, Zagreb 1929, 49-50.

⁵⁹ Стоянов А.Н.: *op. cit.*, 41-43. See more on humanitarian aspects of warfare with the ancient Hindus in: Manoj Kumar Sinha: 'Hinduism and international humanitarian law', *International Review of the Red Cross*, vol. 87, 858/2005, 291-293, http://www.icrc.org/eng/assets/files/other/irrc_858_sinha.pdf.

things, limited the arbitrariness in relation to the defeated, or the opponents not able to fight.

Similar, and one can say, knights' rules of war were built in ancient China. Thus in the 6th century BC, in his book 'The Art of War', the famous Chinese strategist Sun Tzu states that: 'The captured soldiers should be treated humanely and taken care of'.⁶⁰ In China, in the so-called Period of the States at War, (from the 5th century BC to the unification of China in 221 AD) there were rules of war that were respected by all seven feudal states at war ('the seven powers') which, among other things, implied a favorable treatment of the prisoners of war, protection of old people and the like.⁶¹

Another form of restrictions on freedom of warfare was brought about by the Catholic Church. Since numerous private wars inflicted damage to many, including the Catholic Church, it began resorting to the institution of God's peace starting from the 11th century (*Latin: Pax Dei*) which meant the protection and inviolability of certain categories of people at war - priests, pilgrims, travelers, traders, women, farmers and their property. God's peace prevailed throughout Western Europe (France, Germany, Italy, Spain etc.). Starting from 1123, excommunication was used as a sanction for non-compliance with these rules.⁶²

According to the above said, although history has recorded too many examples of fighting wars without any consideration, there is evidence that there have been certain rules of what is referred to as humanitarian law today. It is true that the rules have sometimes been broken, sometimes drastically, but there is also no doubt that in most cases they have actually been respected.⁶³ Therefore, since ancient times there has been an awareness of the necessity, but also duty to protect certain persons not taking part in hostilities - children, women, elderly, monks, hermits, blind people, the sick, wounded, and even, in a sense, fighters. In other words, the awareness of some rights of these persons.

After all, although a huge number of culprits have escaped punishment, history has recorded cases where national courts of states put on trial individuals accused of what is referred to as war crimes today, i.e. crimes against humanity. Among other things, William Wallace, i.e. Wallace⁶⁴ who led a war of extermi-

⁶⁰ Sun Cu: *Umeće ratovanja*, Belgrade 2009, Chapter II 'Pokretanje rata', item 17, 27.

⁶¹ However, the examples of serious violation of these rules have been recorded. Thus, after the Battle of Camping (250 BC), in which the king China defeated the state of Jao, he ordered all 400,000 enemy prisoners of war be buried live, although he had previously promised to spare their lives. See more on all this in: Sheng Hongsheng: 'The Evolution of Law of War', *Chinese Journal of International Politics*, Vol. 1, 2006, 271-272, <http://cjip.oxfordjournals.org/content/1/2/267.full.pdf+html>.

⁶² The institution of God's peace disappeared already in the 13th century along with the strengthening of centralized states, which stopped private wars

⁶³ Otherwise, they would completely disappear. Every law (rule) is sometimes violated, but only the one which is generally respected, survives.

⁶⁴ English: *William Wallace*, Scottish: *Uilleam Uallas*.

nation and had no regard 'either for age, gender, monks, or nuns', was put on trial in England in 1305.⁶⁵ Such examples could be seen everywhere, in other epochs as well.⁶⁶

It should be noted that even in 1474 international *ad hoc* crime tribunal, composed of 28 judges from various city-states of Alsace, Germany and Switzerland, sentenced to death a nobleman (the governor of the occupied city of Brajzah, on the Upper Rhine) for murder, rape, abuse, perjury, illegal confiscation of private property and other crimes that were committed upon his orders by persons under his command at a time when there were no hostilities⁶⁷. Therefore, that was an example of the exercise of international justice for serious violation of human rights.

5. The main characteristics of this period

According to the above said, in the age of slavery and feudalism, there wasn't any, and cannot be talked about any concept of human rights, in any case not the one that we know today.

However, this does not mean that there weren't any human rights. The reality in this respect was much different than in our time, but - everything else was different as well: the means of production, transport, health, education, medicine, etc...

In this regard, although any generalizations are hard to make, it is worth trying to underline some common features of the condition of human rights in these epochs.

1. Inequality as a fundamental principle. - Even if we take into account only positive examples, it must be concluded that, in general, during slavery and feudalism there was actually no developed idea of human rights in the world, especially of such rights that would belong to everyone. On the contrary. These societies were based on the open and even validated inequality of social classes and strata.

At one end of the social ladder there were free citizens i.e. nobility, and at the other - slaves, serfs and foreigners. Thereby the status, and with this the circle

⁶⁵ To tell the truth, since it was a famous Scottish freedom fighter, the question is whether he was actually prosecuted and punished (and before the execution publicly subjected to horrific torture) because of real or alleged crimes, or because he was the nemesis of England and a possible example for other similar leaders.

⁶⁶ For the examples of the medieval and renaissance war regulations which in the language of today could be called a part of the humanitarian law, see inter alia in: Meron Teodor: *Međunarodno pravo čovečnosti potiče iz davnina*, Belgrade 2004, 11-19, and further in the text.

⁶⁷ See more on this case in: Schwarzenberger G.: *International Law as Applied by Courts and Tribunals*, London 1968, 462-466.

and the scope of what is referred to as human rights in the terminology of today, directly depends on the position of a particular person or group on the vertical. The higher the position, the greater the rights. And vice versa. Although, of course, the most complete rights were recognized to the ruling class, in most cases some sort of, even minimal protection was also enjoyed by the lower social categories, and even, in some cases, slaves.

2. The rights to ensure peace and order in the society. - Another feature of the rights understood in this way was that they were primarily a function of protection from arbitrariness, excessive cruelty, lawlessness and etc. coming from individuals - both those in power, and from common criminals. They did not, or at least not primarily, serve the preservation of the integrity and personality development of an individual, and certainly were not turned to the state as such (in terms of its precisely defined obligations) as is the case today.

In other words, we shall not be mistaken if we notice that the recognition of these rights was not basically aimed at ensuring freedom and the overall integrity of an individual from unjustified intervention of the state power. No. It primarily served ensuring the normal life of the entire society, public order and peace. Therefore, the prevention of complete chaos. Without it there would be no organized society, the community would not be different from a common herd. When the first legislators prescribed harsh punishment for murder, beating, rape, theft, robbery and the like, with this they primarily created conditions for normal life in a given society, and only indirectly acknowledged and protected the respective rights of the individual.⁶⁸

After all, the political rights represent a good example. In particular, despite the fact that the Athenian democracy is even today, and with many reasons, praised as a positive example, decision making of the citizens in the national assembly was not at the time seen so much as a manifestation of human rights, but rather as a form of protection against possible dictatorship and tyranny.⁶⁹

On the other hand, certain rights were given to certain groups and with that the individuals who made them. But again, this was not because it was believed that there was some sort of natural right of that kind, but for very practical reasons.

Free men, and later nobility and other privileged classes were given certain rights in order to strengthen their position, so that they would support the central authorities, and help them in managing the society. When certain rights were given to the disenfranchised and oppressed classes, it was almost always to appe-

⁶⁸ Although sanctioning of the respective offenses in our time also has the function of protecting social order, public order, peace and so on, the concept of human rights is primarily seen as the protection of an individual or a group from unlawful (unjustified) interventions of state government

⁶⁹ Paunović Milan, Krivokapić Boris, Krstić Ivana: *Međunarodna ljudska prava*, Belgrade, 2013, 23.

ase them, so that they would not rebel etc.⁷⁰ When privileges were given to foreigners, that was with the aim of attracting foreign traders to come and develop trade, which, of course, was in the interest of the local rulers. Over time, the awareness of these elements disappeared and was turned into a kind of customary legal rules. That is visible clearly enough in the example of nobility who truly believed that they were entitled to special rights by birth (originating from God).

In this way, even when we take into account those rights that were acknowledged and enjoyed, the fact is that they were not the result of the awareness of human rights, as something that is supposed to be one of the cornerstones of every advanced society. They almost spontaneously appeared in dealing with everyday problems. After all, the first step towards the adoption of any developed concept of human rights is the rule of the equality of all people and the prohibition of discrimination. However, slave owning and feudal societies are an example of the exact opposite.

Therefore, though we might be tempted to find the first civil, political, or economic rights in various positive examples, we must constantly keep in mind that that was a special reality, based on the legal inequality of people.

3. Lack of legal guarantees. - One must keep in mind the following: even when some categories of people were guaranteed certain rights, most often it was the question of goodwill of the respective ruler, susceptible to change. In other words, although they were generously recognized, such rights could have been easily abolished, without an explanation. The danger of that happening was even more pronounced when the new ruler would take the reins, with his own views of the relationships in the society.

Thus, for example, Antiochus III the Great (about 200 BC) gave 'to the people of Judah' the charter of freedom of living by the laws and customs of our fathers,⁷¹ but already his son (Antiochus IV Epiphanes) had a completely different approach, trying to impose ethnic and religious assimilation of his subjects under the threat of the death penalty.

⁷⁰ After all, the famous Law of the Twelve Tables (451-449 BC) is the result of the struggle of the plebeians to be equated with the privileged patricians in terms of rights. Namely, after the overthrow of the last Roman king Tarquin the Arrogant in 509 BC, the patricians seized power and obtained for themselves many privileges, including the fact that only they could be elected to the highest state positions and the Senate. When the patricians abused this power in many ways, the plebeians founded the National Tribunes, plebeian assemblies, and used the so-called secession as one of the most powerful weapons, i.e. mass abandonment of the city (by which it remained not only without numerous service providers, but also without proper defense). As a result of the agreement to codify customary legal rules, and thus regulate basic relationships in the society, the Law of the Twelve Tables emerged, as well as some other laws later on. Yet, full equality between the patricians and the plebeians was finally achieved only in 287 BC.

⁷¹ 'Knjige Makavejske', *cit.*, 269-270.

However, already at this time the first codification appears - Sumerian Code of Ur Nammu (about 2100 BC),⁷² the Code of Lipit – Ishtar (around the 1930. BC), the Laws of Eshnunna (about the 1720 BC), The Code of Hammurabi (about in 1770 BC)⁷³, Assyrian Code (around 1075 BC), The Laws of Manu (the 4th century BC, and according to some even the 17th century BC), The Law of the Twelve Tables (451-449 BC)⁷⁴, and later many others such as The Theodosian Code (438), Justinian Code (529-534)⁷⁵, the Russian Justice (XI c)⁷⁶, The Vinodol Code (1288)⁷⁷, Dušan's Code (1349-1354)⁷⁸ and others. Moreover, some of these codes insist on the principle of legality and judicial independence, for which

⁷² Already in the introduction of the Code the commitment of the legislator is emphasized (Ur Nammu) to cleanse the land from the kidnappers, fraud and bribery, to ensure fairness and prevent the poor from becoming the victim of the rich. Among other things, the Code provides for appropriate property sanctions provided that God's judgment finds the lack of grounds for charges of witchcraft (magic) and adultery (Article 1, 14).

⁷³ One of the oldest codes of ancient Mesopotamia, passed around 1750 BC, was written on both sides of the diorite stone (magmatic rock), 2.62 m high and 75 cm wide, which is kept in the Louvre in Paris today. At the top of the stone there is a relief showing Hammurabi (the famous Babylonian ruler, 1795-1750 BC) praying in front of Shamash, the Sun God. Below that, in 3,600 horizontal lines, the Code is written in three parts: the introduction (it says that the gods sent Hammurabi to earth to establish law and order), the normative part (282 articles) and the final part (in which Hammurabi gives his merits, calls for respect of the Code and threatens severe punishment to those who should break it). Unlike other similar codes of that time which were of local significance, this one was applied throughout Mesopotamia and was in effect even after the disintegration of Hammurabi's empire.

⁷⁴ See the text in: Jasić Stojan: *op. cit.*, 'Zakon XII tablica', 67-85, as well as in: *Zakon XII tablica*, http://www.harmonius.org/sr/pravni-izvori/pravo-eu/privatno-pravo/Zakon_12_tablica%20.pdf.

⁷⁵ Although it is basically concerned with private law, the Code insists on justice, law, equality ... Among other things, it contains the following ideas and rules of law: 'According to natural law, all people are born free' (*Institucije, Knjiga 1/2*) ; 'The ruler is worthy if he behaves as a subject of law: our power to obey the law' (*Kodeks, knjiga 1/14/4*); 'The house of every individual is for him a safe sanctuary and shelter' (*Digesta, 2/4/18*), etc.

⁷⁶ The oldest known collection of laws of the Russian law, created between 1019 and 1054 on the basis of customary legal norms of the old Russian law, the legislation passed by the Princes and jurisprudence. It contains primarily the norms referring to the inheritance, criminal, commercial and procedural law. It is preserved only in manuscripts from the 13th and later centuries.

⁷⁷ One of the oldest monuments of Slavic customary law. It is named after Vinodol in Croatia where it was created (the document does not have a title). In the written form it determined the rights and obligations of the serfs and feudal masters, but also of women who are in principle equal with men before the law. The largest number of provisions refers to criminal law, with the death penalty provided for in only two cases - for witchcraft and for the one caught in arson.

⁷⁸ Jasić Stojan: *op. cit.*, 159-204; *Законик благовернога цара Стефана, у години 6857, индикта 2, на празник вазнесења Господња, месеца маја, 21 дан*, <http://www.dusanov-zakonik.com/>

we are often too easily inclined to believe that they are the achievements of the modern society⁷⁹.

Although they indirectly guarantee certain human rights in terms of protection against unlawful deprivation of life, property etc, these documents still primarily serve to provide law and order in the society. It is to some extent expected and understandable when it comes to the codes that primarily contained criminal and legal provisions. However, the codes that are mainly known as the sources of civil law contain provisions that refer to certain human rights. A good example is the Law of the Twelve Tables, known mostly as a source of Roman private law⁸⁰. What is particularly important is that these are the written codes of which there is generally no deviation. Whoever is in power is in principle bound by the solutions from these documents.

This basically applies to the most famous document of this epoch, which is often regarded as the first legal act that guaranteed the first most important human rights. It is The Great Charter of the Liberties (Magna Carta Libertatum, 1215).⁸¹ It was signed and certified by the English King John, known as John Lackland, the brother of Richard the Lionheart, after he had been pointed a gun at and forced to that by the barons. Basically, it is a kind of constitutional pact between the English king and the aristocracy, which limited the powers of the king and introduced the rules that were to guarantee the rule of law. Although it is considered the first written constitutional instrument in the world, and at

⁷⁹ An interesting provision from Article 171 of Dušan's Code, which insists on the principles, even when the ruler is inclined to punish or reward someone beyond the law: 'Imperial order: If the Tsar write a writ either from anger or from love, or by grace for someone, and that writ transgress the Code, and be not according to justice and the law, as written in the Law, the judges shall not believe that writ, but shall only judge and act according to justice'. Article 172 is even clearer: 'All judges shall judge according to the law, rightly, as is written in the Code, and shall not judge out of fear of the Tsar'. Is there a clearer definition of the rule of law? And more than six and a half centuries ago! (the text in English taken from www.dusanov-zakonik.com)

⁸⁰ Among other things, it says that, if someone is summoned to court, and because the disease or old age is impotent, they are to be given livestock for transport (Table I / 1); that for the servants and slaves, the reputable and protégés the same law is to be applied (I / 5); that if the plaintiff and the defendant are present, the case should be resolved (the judgment passed) until the sunset (I / 9); that the trial shall not take place on the day when the judge (arbitrator) or the defendant (II / 2) is seriously ill; that the one who holds the debtor in shackles, and the borrower that if a father sells his son three times, the son is free from his father (IV/2b); that the right of bequest through will is recognized (V / 3); that when there is a dispute about someone's freedom, temporary freedom is to be determined by law (VII / 7); that it can be decided about the head of the citizen only at the highest (centurian) Assembly (IX / 2); that no one can be killed without judgment (IX / 6); that the bones of the dead are not to be removed after the funeral (X/5A); that everything voted by the people later (after The Law of the Twelve Tables) is to be right and proper (XII / 5).

⁸¹ The Charter was subsequently amended and supplemented several times, so that today, what is meant by the document is the version from 1297.

the same time the first human rights document, realistically speaking, it only represented the restriction of the arbitrariness of rulers, i.e. dealt with the rights that were actually limited only to the aristocratic class.

When the contribution of the English legal tradition to the development of the concept of human rights is concerned, actually much more important is the principle of *habeas corpus* (Latin: you may have the body). It is the name of the legal requirement that the detained person be immediately brought to court so that the court would decide whether the detention is lawful. The purpose of this institute is that the closure of the defendant must be justified by valid evidence i.e. that the one that is unlawfully deprived of his freedom be set free. The term comes from the famous document *Habeas Corpus Act* (1679) of the English King Charles II⁸². This institute has been and remained an obstacle to arbitrary arrest and detention.

4. Lack of awareness of human rights. - Although there have always been philosophical and literary works on equality of people, their brotherhood and the like, realistically speaking, such awareness was absent in the wider social strata in the past. On the contrary, people were born and died with a particular ideology that their place in the society is more or less precisely defined, and on the other hand, the place of their community in the whole world. In class societies, based on legally based class division and exploitation of subordinate classes (slaves, serfs, etc.), the idea of equal human rights and freedoms belonging to everybody simply could not come to life.

In this regard, it is sufficient to note that the one who would try to persuade a Spartan that all the rights that they enjoyed should also be recognized to a helot (a kind of state slave) would certainly not have had a grateful interlocutor. On the contrary, it is most likely that they would have paid their attempt to advocate human rights by their life - because the Spartan would have understood that as a revolt, an attack on the very foundations of the social machinery of his country, and a kind of blasphemy. The situation would not have been better in most other slave owning societies of the ancient world, or the feudal states either.

And yet, one cannot deny that certain, various human rights have been known since the dawn of civilization.

⁸² There are claims that this institute first appeared in 1305 at the time of Edvard I, and according to some sources, that happened even before, in the 12th century.

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POLOŽAJ LJUDI U ROBOVLASNIČKOM I FEUDALNOM DRUŠTVU – PRVA LJUDSKA PRAVA?

S a ž e t a k

Rad se bavi položajem ljudi u robovlasničkom i feudalnom društvu, sa ciljem da se da objektivna ocena tog položaja. Podsećajući da je pravna nejednakost glavna karakteristika ovih društava, autor skreće pažnju na pravnu nejednakost ne samo između pripadnika različitih klasa, već i u okviru istih društvenih staleža, na težak položaj žena, verskih, etničkih i drugih manjina, stranaca itd. Pisac izdvaja još neke momente koji su vezani za položaj čoveka a koji su karakteristični za period istorije kojem je reč. Tu spadaju velika surovost kod kažnjavanja, mučenje kao sastavni deo sudskog sistema, kolektivne kazne, istrebljenje protivnika i drugi nečovečni postupci u ratu itd.

Međutim, sve to ne znači da u ovim društvima nisu priznavana nikakva ljudska prava. Stvarnost je u tom pogledu bila mnogo drugačija nego u naše vreme, ali – i sve drugo je tada bilo drugačije. Kada je reč o ljudskim pravima, mnogo je dokaza da je u najvećem broju slučajeva makar elementarna zaštita bila zajemčena ne samo vladajućim, već, makar u određenoj meri, i potlačenim društvenim slojevima. O tome svedoče pravni dokumenti, hronike i drugi istorijski izvori koji pružaju obilje dokaza o priznavanju i zaštiti makar elementarnih individualnih prava raznih staleža, ali i prava pripadnika manjina, stranaca, boraca i neboraca u ratu itd. Osvetljavajući ove momente, pisac se poziva na izvore koji govore i o pravnoj regulative i o odgovarajućoj praksi.

Zaključak autora je da, premda u istorijskom periodu o kojem je reč, sasvim sigurno nije moglo biti reči o nečemu što bi bilo blisko konceptu ljudskih prava koji danas poznajemo, isto tako nema sumnje da su prva ljudska prava nastala uporedo sa nastankom prava i prvih država.

Ključne reči: ljudska prava, međunarodno pravo, pravo, istorija