

Teaching Human Rights in Societies in Transition

Vojin Dimitrijević*

Katarina Tomaševski and I lived for a while in the same country, Yugoslavia. She was my junior and I met her for the first time as a diligent doctoral candidate working on her thesis on terrorism. She resided and studied in Zagreb, Croatia, and I was stationed in Belgrade, Serbia, Croatia and Serbia then being “constituent republics” of a federation, which frequently changed its constitutions and was at the time probably styled “the Socialist Federal Republic of Yugoslavia”. She struck me as a very intelligent, ambitious and good looking young woman. Our conversation was not just an encounter between a professor and a student, but a very exiting and satisfactory exchange of views, where the junior partner had so many incisive questions to ask and showed impressive erudition and command of the available literature. Although not a member of the faculty of the University of Zagreb I was eventually invited to join the commission before which Katarina defended her doctoral thesis. Needless to say, her show was impressive.

Katarina started her academic career at another university in Croatia, but soon left the country looking for a more propitious atmosphere, not to further her career, but in the desire to become a member of a wider international community, where her enormous curiosity could be satisfied and her talents recognised and rewarded. From then on I kept meeting her at international gatherings in all parts of the world. I visited her several times in her apartment in Copenhagen, where she finally settled. With the passage of time the age difference lost any meaning so that we became close friends, which enabled me to discover that she was an enormously conscientious and self-critical person, including the most unusual “non-intellectual” fields, such as culinary skills.

In a relatively short time, Katarina was recognised as a prolific writer and beloved teacher. Her interests were always directed to new and unexplored areas starting from terrorism at the time we had met, leading her to the theory of human rights and finally the position of vulnerable groups and problems of education in the fields of democracy and human rights. When I think of her today I cannot help but speculate on what she would have done had we stayed in the same country and had we been faced with the problems of transition from authoritarian to democratic rule, combined with a revival of pernicious ethno nationalism.

Transition has been accompanied with educational problems in all post-communist countries. Those who wanted to introduce better human rights standards, efficient respect and protection of human rights had also to deal with something usually called the culture of human rights. This last element has proven to be very delicate and to require a great deal of imagination and perspicacity.

* Professor of Law, Union University School of Law, Belgrade, Serbia. Director, Belgrade Centre for Human Rights.

Human rights education, to which I have been devoted for the last 15 years in the Belgrade Centre for Human Rights, has to be broken down into several sectors.

First of all, it proved to be necessary to re-educate the educators. Before 1989 there were no courses on human rights in law schools in any socialist country. Human rights did not figure as a topic when wider disciplines, such as international law, were taught. This means that the existing teachers of law (again alumni of “socialist” institutions of higher learning) had to be made aware of the importance of the subject and to be trained themselves on how to teach it. This and the conservative nature of the universities in general and the unwillingness to employ “revolutionary” methods in this field of necessary reform, resulted in improvements that were unconvincing for a long while. I for one have met many professors of criminal law who believed that human rights was not a subject they were responsible for, and that many rights guaranteed in *e.g.* criminal procedure were not inherent rights of the human person, but benevolent concessions of the state, which could always be withdrawn. The idea that human rights should not be a single course or several of lectures within the courses of international law or constitutional law, but that they should permeate the whole curriculum has to my knowledge not been accepted, save in the exceptional case of Germany, where after the German reunification the universities in the Eastern part of the country were integrated into the pre-existing “Western” educational system.

The other consequence of the absence of human rights in the legal curriculum is that all graduates of law who obtained their diplomas before 1989 have continued to live with an important handicap, a black spot regarding human rights. Even today the graduates of those days occupy the highest positions in the judiciary. As demonstrated in many cases before the European Court of Human Rights, such as the famous *Kalashnikov* case, superior judges in post-socialist countries do, to be sure, recognise the basic principles of human rights and observe their national legislation but appear to be insensitive for the niceties of human rights protection and for the social context in which human rights are implemented. Russian judges have thus not been troubled by prison conditions which tolerated that three inmates “time-share” one bed, and their Serbian counterparts have found it difficult to accept that judgements of the European Court of Human Rights or views of the Human Rights Committee have to be implemented.

The issue of the human rights culture of the judiciary has been complicated by a factor which is not of communist making, but rather attributable to a reaction to historical events. In many post-communist countries, communism is regarded as a period of repression which, in an effort to promote internationalism and secularism, was mainly directed against national and religious feelings. It has been gradually revealed that the major part of anti-communist energy was in many counties supplied by nationalism and religious feelings. Nationalism proved to be more or less harmless in ethnically homogenous countries but was devastating in the country which I shared with Katarina and a very difficult problem in other multinational states. This has been reflected in the position of national minorities: persons belonging to the latter have not been presumed to be loyal but have had to somehow prove their loyalty to the state which has often been constitutionally defined as the state of the dominant nation.¹

¹ Cf. V. Dimitrijevic, ‘Ethnonationalism and the constitutions: the apotheosis of the nation-state’, No. 3 *Journal of Area Studies* (1993) pp. 50–56.

Racism is a small step away from nationalism, and has been reflected in the worsening position of the Roma community in most post-communist states of Eastern Europe, as observed in a number of cases before the European Court of Human Rights, such as *Nachova*,² *Assenov*,³ and *D.H.*⁴

Re-educating⁵ old judges and educating new ones is a slow procedure. The first group, especially judges with long experience and high professional standing, do not listen to everyone, but only to those who for them possess a degree of authority. As a rule, the true experts in matters of human rights law come from the younger generation and have originated in the civil society. On the other hand, superior judges belong to the category of those with no training and experience in human rights matters. Very often re-training courses for judges are offered by renowned experts, including judges, who come from abroad, mostly from the West. When xenophobia has been present, advice coming from foreigners has been received with some suspicion and has largely depended on the nationality of the lecturer. On the more prosaic level, most judges in post-communist countries do not speak foreign languages (except for Russian in the former Soviet republics). Communication between the lecturers and the audience is then in the hands of interpreters, who as a rule are not jurists and do not understand the legal jargon.⁶

The experience in my country is that the efforts to train *some* superior judges have not been in vain, but that much patience was needed involving a careful selection of candidates who would be exposed to repeated training sessions and would then be able to serve as trainers themselves.

As to the preparation of new judges, this task lies primarily with the faculties of law. There again the teachers themselves need to be exposed to modern concepts and become familiar with the most important jurisprudence. What was said about the senior judges also applies to the senior university professors, with the possible exception that their command of foreign languages is better. The complicating factor, specific for transition times, is that the number of institutions of higher learning in most transition countries has exploded. In addition to the venerable state universities, many new universities and faculties, private or local, have been established, very often without serious quality control by the authorities or by independent referees. This lack of control has very often led to a confusion which is not easy to resolve. Namely, there are both excellent private institutions and state institutions enjoying a high reputation, but they tend to be outnumbered by extremely dubious universities in both categories which do not deserve such a name. It could be said that the defect of the university education can be repaired by state examinations comparable to what is usually referred to as bar examinations, but the tendency of the examiners, mostly senior judges, has been to concentrate on positive national law and neglect matters related to international law.

² *Assenov v. Bulgaria*, Application No. 24760/94, Judgement of 28 October 1998.

³ *Nachova and Others v. Bulgaria*, Applications nos. 43577/98 and 43579/98, (Grand Chamber) Judgement of 6 July 1998.

⁴ *D.H. and Others v. Czech Republic*, Application no. 57325/00, Judgement of 13 November 2007.

⁵ I wonder whether this word is appropriate in view of the poor human rights record of many “socialist countries” before the communist takeover.

⁶ Interpreting from and to a common law lecturer/audience is complicated by the fact that countries in transition belong as a rule to the tradition of civil law so that the translator should be familiar with both common and continental law systems and terminology in order to convey the meaning of an institution, which is lost if the interpretation is literal.

Returning to the culture of human rights one must underline the importance of primary and secondary education. It is meaningless to expect much from a single subject in secondary schools intended to provide some basic knowledge and orientation necessary for a good citizen. Such subjects exist in some countries and have been known under the name of “civic education”, or simply “civics”. It has not been easy to find suitable teachers for “civics” in post communist countries. There have mostly been previous professors of philosophy, sociology and even of “Marxism”. Generally, their services have not been disappointing, because they have mostly been relatively young and well educated, so that they were more ready than the others to employ unorthodox methods, which pupils have found attractive. However, the complicating issue has been that in some countries, such as Serbia, civic education is an alternative subject which parents and students can prefer or reject in favour of religious education. In spite of some efforts, religious education in post-communist countries has not been conceived in terms of an introduction into all relevant religions and information about their teachings, but has been offered under the strong influence of the revival of the dominant religion, fully entrusted to dominant churches or made dependant on the religion of the pupil. It goes without saying that religious teaching, very often provided by clerics, tends to conflict with some of the principles of modern human rights law – not to speak of difficulties created by the conflict between creationism and the theory of evolution.

The unsatisfactory solution provided by the selection of one subject, namely civic education, to carry the whole burden of human right education is more importantly visible in the fact that “civics”, even if provided in the most satisfactory way, is confined to a single course which remains peripheral in comparison to the most important subjects taught in most elementary and secondary schools. Human rights culture has to be developed in all fields, with the most conspicuous candidates being history, sociology philosophy and literature. To my knowledge, little contribution to a genuine culture of human rights has come from these sources. In some fields, newer developments after the collapse of communism have worked in the opposite direction. For instance, the upsurge of nationalism has greatly affected the teaching of national history, which has been treated not as way to acquire knowledge about the past and interpret past events, but as method to strengthen national identity and boost national pride. It is therefore not surprising that the tendency is to revive national myths, to glorify the monarchs of the past and to take pride in battles that have been won and the military leaders who were victors in the field. The inevitable consequence of such approach is that other nations, especially those with whom the present dominant nation has frequently been involved in conflicts, tend to be demonised – an effect which is pernicious when the members of the relevant ethnic groups remain in the territory as minorities. Similarly, teaching literature tends to concentrate on great patriotic writers, sometimes belonging to the distant past, whose nationalist tirades – natural and acceptable in the romantic times of nation-building – are uncritically accepted at face value. Given that the modern concept of human rights has developed only in the latest two centuries, examples from the glorious past, if not presented with critical awareness and sophistication, cannot be very inspiring for the present day generation. Given the time that was needed to produce a common textbook of history in France and Germany, a similar achievement cannot be expected soon in transition countries. A commendable effort to write a joint volume on the history

of the Balkan nations has failed because of the stubborn resistance of national historians and teachers of history.

Finally, human rights culture depends very much on the media. When the stern control of the work of the media which had existed in socialist countries disappeared and the state-owned media were generally replaced by privately owned media outlets looking for profit, many media tended to share some primitive instincts of their readers, viewers, listeners and advertisers – including nationalist prejudice, xenophobia, misogyny and homophobia. Such media tended to violate some fundamental human rights guarantees, in particular the presumption of innocence, respect for privacy and protection of juveniles. Countering and curbing these tendencies has not been an easy task. Inflexible legal provisions cannot play the role of the voluntary codes of professional ethics: systematic retraining of journalists has faced the same problems that were described in relation to the judicial profession.

These are some observations and worries that I would have shared with Katarina, were she still with us. This is another example of how the departure of a dear and wise friend leaves the survivor with a painful void.