

Juridification of freedom in Europe: legal history

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Introduction

In the society that is organised by the state the validity of the freedom is based on law. The law is the formal principle of the equality of the people in the society. Therefore the people are as free as they are equal and they are as equal as they are free. Formal legal equality is such a form of freedom where the freedom of the legal bodies is limited by the freedom of the counteractants. The foundation and the merit of the legal equality is the individual freedom in the society that is recognized and confirmed in the form of an *ultra vires* and a legal standing¹. The principle of the formal equality is determined by the historical development. The investigation of the stages of such development helps to understand the patterns of the legal embodiment of the freedom, i.e. juridification.

1. First stage of the juridification of the freedom

The human evolution from the hominidae to the homo sapiens was based on the improvement of the anatomical properties such as articulate speech, abstract thinking etc. The primitive societies of the savage period according to Lewis-Henry Morgan² developed into barbarity where the individual didn't separate himself from the clan or the family and from the nature itself. The freedom and bondage therefore was based upon the membership to a certain group and not personal. Only after the millenniums of the evolutionary developments of the material and the intellectual culture formed the human as such with his alienation from the nature and this was the second stage of the development. Therefore the free individual is not universal human condition but the result of the historical development and the society³. Alienation of the human from the nature implied an

active labour regulated by the more and more complex social norms and structures such as family, clan and tribe. Amid the destruction of the natural balance brought by the class division of the commodity based society the primitive norms came up short. Therefore developed the archaic law based on a custom. In the archaic law arose the possibilities for the social freedom in the form of proportionality, *lex talionis* as an example. Even vendetta as a right of the offended clan included the scope for the best possible choice as a balanced alternative to a revenge to the guilty party hence some kind of the freedom⁴. Needless to say that the vendetta had changed in time and didn't respond any longer to the principle of an equal retribution. The blood of a rich man was worth more than that of a poor. Nevertheless archaic law, despite being based on the prelogical and conservative thinking, was the first revolutionary step to the juridification of the freedom⁵.

2. *Early forms of juridification of the freedom in Ancient Greece*

The examples of the early forms of the juridification of the freedom could be found in the legislation of the Ancient Greece – statutes of Lycurgus of Sparta, Solon, Draconian constitution, the Locrian Code of Zaleukus, laws of Charondas (VIII – VI B.C.E). They were deficient and kept a lot of the archaic laws. In the Code of Zaleukus along with the fixation of the old customs also were determined the fixed penalties for the certain crimes, before such a question had been decided entirely by the judges themselves⁶. Certain syncretism of this

legislation was based on the way the ancient people thought. Their thought process was rather mythological. Law wasn't separated from the moral norms and the cosmic justice. However such legislation acknowledge not only the philosophical beliefs but also the nature of a legal freedom in the ancient city-states.

In Ancient Greece arose an idea of the "free Greeks" that was the major invention and the main *objet de vertu*. The barbarian is born to be a slave, and the Greeks are free men. Freedom was therefore understood as the independence from the external hurdles and the achievement of the inner harmony and peace. However the freedom was not solitude and isolation from the other human kind, but was defined in the frames of the city-state as an objective reality of a common good. Karl Heinrich Marx pointed that according to Aristotle the human being is not only the political animal per se, but an animal that could only be differentiated within the society⁷. From this perspective the freedom of a Greek was manifesting itself in an exercise of self-control and a pursuit of common good in the "ideal" society of a city-state.

An ancient idea of a freedom originated in the pre-class tribal period and had been manifested in the strive for equality or better to say not that very pronounced inequality in their own community and at the same time allowed the very successful exploitation of the subdued nations. That's why when the necessity of freedom for the Greeks was beyond doubts, the slavery, as an attribute of the inefficient labour, wasn't criticized even by the big thinkers of that time. When Plato described his ideal state his only wish was that the Greeks did not enslave the Greeks, while Aristotle defend-

ed the fairness of that institution based on the differences among the nations dividing human kind on free men and slaves by their nature. It turns out that in the slave category he included all the barbarians and considered their slavery permissible⁸.

The distinguished Ancient Greek lawyers such as Demosthenes, Isokrates, Lysias, Hypereides, Aeschines brought tremendous contribution in the legal recognition of an idea of the freedom. In this day and age it is difficult to determine the level of juridification of the freedom in Ancient Greece. Whole stratus of the Ancient Greek laws disappeared and only the small amount had been replicated in the speeches of the lawyers. For the Greeks the democratic rule of law was the embodiment of the free members in the city-state. A lot of ideas expressed by the ancient lawyers became deeply ingrained in the European sense of justice (rule of law, including *ius positum* and *ius naturale*, equality of free men before the law etc.)⁹.

3. Freedom in Roman Law

The ideas of the freedom that had been formulated by the thinkers from Ancient Greece went further in the Ancient Rome, particularly in the *jus civile*. Whilst the Ancient Greeks underlined the dominant importance of a justice in law (everybody receive by law what is ordained by faith), for Romans the most important thing in law was the free will, the justice was only criteria of a decision¹⁰.

The first category of the Roman law was a persona for which the freedom was the gauge of its autonomous behaviour and the

slavery the gauge of the permissible behaviour. The legal capacity of an individual was gauged by the level of his freedom or dependency. It was connected with the status such as *status libertatis*, *status civitatis* and *status familiae*. The secession of the certain status diminished the legal capacity. The lack of all three meant that the individual is a slave. The Romans regarded slaves as a property. Even the libertines after the act of manumission bore a stigma of slavery up to the third generation.

The freedom for the Roman citizens was understood as the maximum independence of an individual from the others. Such an understanding of the freedom predetermined an outermost formalism and pragmatism of *jus civile* and a corresponding approach to the individuality. Freeborn Roman citizens enjoyed the full legal capacity. «*O dulce nomen libertatis, o ius eximium nostrae civitatis* (oh, sweet the name of freedom, our right of eminent civility)» said Cicero. With Roman citizenship were connected political, private, commercial and family rights and also certain scope for the exclusive rights and the special privileges in a court of law, up to the extent of the submission to its own laws. Irrespective of the Roman territory Roman stayed Roman anywhere under power and jurisdiction of the Roman Empire. Women and children had a limited legal capacity. They belonged to the *alieni juris* and had no rights to participate in *jus commersii*. However in the classical period their limited rights were recognised.

Social and economic development resulted in the formal equality for all free men in private law. At the beginning the Roman law had stated that only Roman citizen (*civis romanus*) had a full legal capacity. A foreigner, an alien, i.e. not a member of a Ro-

man community, was an enemy and was not protected by law. In the earliest time of the Ancient Rome he could be killed without a further punishment or turned into a slave. Due to the trade growth the system of *ius gentium* was formed and as a result the formal equality of all free men¹¹. According to Friedrich Engels by Greeks and Romans inequalities played more significant role than the equalities in any of the relationships. Under the power of Roman Empire all these differences were erased, apart from the difference between a free man and a slave. In such a manner emerged the equality for the free individuals and on that bases the Roman law was developed¹².

4. Christian bases of the legal freedom

More than 450 years after the Law of Twelve Tables had been established, the Christianity formulated new "Law". In that law the freedom was an intrinsic part of the human nature that wasn't lost after the Fall. The freedom was achieved through the oration and the spiritual effort to fulfil the divine will. The canonical evangelical texts did not contain the calling to fight against the slavery or the Roman occupation. The new religion of the deprived procured the spiritual revolution by advocating the ideas of the universal equality and freedom. «There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus» (Romans 3:29; John 10:16). The real freedom was possible only in Christ as an apostle stated: «Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke

of bondage» (Galatians 5:1) The principle of the reciprocity was also embodied in the few maxima: «Judge not, that ye shall not be judged» and «the same measure that ye mete withal it shall be measured to you again» (Luke 6:37, 6:38)¹³.

Early Christians by appealing to the divine "law of freedom" adopted for its own aim the human equality idea of *jus naturale*¹⁴. Western Christianity, unlike the Eastern that became one with the state, confronted the secular authority ("*famuli vestrae pietatis*" also known as "*duo sunt*" – division of authority and power) and this contributed to the formation of the individuality that could preserve and cultivate initiative and freedom. The freedom was also addressed in the Christian preaching. Archbishop of Constantinople John Chrysostom stated that the king forces, the priest soothes and clergy must appeal to the freedom and the will of the men. Rightly so it is considered that the church in particular and not the state laid the bases of the European Law¹⁵. The division of the Roman Empire into the West and the East at the end of the fifth century, a schism of the Church into the Catholic in the West in Rome and the Orthodox in the East in Constantinople (1054) made even deeper unevenness of the juridification of the freedom in the West and the East of Europe.

At the same time there is no reason to maintain an approach that the Christendom and *leges Romanae* show the "barbarians" the way to a legal freedom. *Leges barbarorum*, i.e. Lex Salica that were compiled by the King of Franks Clovis I in the 6th Century proves the high development of the legal equality. Thus the main figure of the society was the free frank as a rightful member of the rural community, a free farmer¹⁶.

Based on the groups of texts that were included in the Lex Salica can be noticed that the Catholic Church and the Roman rule only "putteth new wine into old bottles": *leges barbarorum* and judicial system were already the functioning institutions of the formal equality.

5. Middle Ages and legal freedom

The important part of the Middle Age feudalism (circa V-XV cc.) was the legal conformation of an inequality among the different categories of the population. The birth status was immanent and the individual didn't have a chance to transfer himself to another class. This type of relationship paved the way to the special way of freedom that did not recognize the independency: the free man is not independent but he can choose the master and make with him a feudal agreement. Unlike the knight, that was a free vassal, serf and villein were not free since they were born in the status of dependency and this bond could not be broken. The individual along the "vertical" relationship with the master also was included in the "horizontal" relation with the members of his own corporation and that implied the sense of equality as a privilege of a corporation membership.

The universal, i.e. catholic, corporation was the Church. The role of the church in *res publica populi Christiani* in the Middle Ages was so important that she controlled the whole human life from the birth to the death, inter alia by the way of the Canonical Law that was an unique phenomenon among the flourished legal systems of the late Middle Ages that were confined to a

certain territories. Only in the period of the Reformation, when in 1517 Martin Luther burned among the papal bulls also the Code of the Canonical law, *epistolae decretales* and *Jus Canonicum* came for a first time under the public scrutiny and the question of the freedom of conscience arose.

For the Catholic Church the Code that had been compiled in the XII-XVI cc. was of a great importance for centuries. Some of the elements of the Canonical Law built the basis of a modern private law. Such spheres of the civil law as the equality of an exchange or the fair price were thoroughly formulated. The matrimony in *jus canonicum* was understood as an agreement among the spouses (an influence of a late Roman Law) and one of the Church's Sacraments¹⁷. The fact that the marriage was an agreement (*contractus*) determined mutual rights and obligations.

The Canonical Law was an effective regulator of the international relationships. Only after the Westphalia Peace Treaties of 1648, that came at the end the Thirty Years' War established the principle of equality among the European states irrespective of their governmental structure and religious beliefs, the bases for the resolutions of the European problems became political instead of religious¹⁸. Then again the idea of a sovereign state in the Treaties was connected with *suprema potestas* of a monarch.

Despite that the Canonical Law was based on the divine laws it included *ius naturale* according to its place and time. The Ecclesiastical law was the system parallel to the secular and wasn't simple religious behests but a balance between the royal and the papal powers. The confrontation among the clerical and the secular autocracies, that both suppressed the legal freedom, gave the

new possibilities for the development of the human individuality and dignity.

It is necessary to highlight the distinctive character of the English law in the era of feudalism. This was determined by the fact that the reception of the Roman law did not influence England as it had done in the Continental Europe. The Crown successfully opposed the Church. For example Henry II contested the involvement of the Church in the secular property issues. The Statute of Edward I in 1285 forbade the Church to interfere in the non-ecclesiastical matters.

The great document of the Middle Age's freedom was *Magna Carta Libertatum* ("The Great Charter of the Liberties") that was signed by the English King John Luckland on the June 15th 1215. The Charter established a certain set of principles such as: law controlled how the officials act, proportionality of the conduct and the punishment, right of speedy and fair trial (e.g. *habeas corpus*), inviolability of property, right of free movement etc. In the period of preparation for the English Revolution the Charter was the symbol of the political freedom and was the bases for the *Petition of Right* and others constitutional documents. The guarantees that had been declared by the Charter influenced the establishment of the human rights institution.

6. *Modern history and the sources of the legal equality*

The modern legal equality began in the mists of the feudal laws way before the end of the Middle Ages in European cities hence the name bourgeois. The Reformation fixed the ideas of the religious freedom and sup-

ported the idea of the supremacy of the people's rule. The Protestantism confirmed that the priesthood is achievable for all the believers therefore the religious equality among the men and women. The Protestantism formed the special way of thinking in the Western world¹⁹. Whereas the Catholicism considered the worldly life as a secondary and opposed to the real religious life, the Protestantism moved to put the emphasis on the human as a person, which also belong to the worldly life. The aim of the human is to strive in the worldly deeds and in that way serve the God and achieve the salvation. The people themselves are responsible for their fate. Therefore the principles of the subjectivism and individualism appeared and this defined the belief system around the individual self whereby the individuality is valued primary and inherently. That's why the Protestantism and the Western way of freedom are connected. The Renaissance developed the idea of the inherent value, dignity and autonomy of an individual. The thesis that the main part of the dignity of an individual was to serve the common good represented by the state in the form of the republic gained an importance. The republic itself was based on the principles of the legal equality.

The modern time that is usually counted from the day when the King of England Charles I decided to hold a parliament in 1640. The parliament was the symbol of the legal freedom and the process of the juridification accelerated. However the bases for this had an earlier trace, for example, in the *Petition of Right* 1628. David Hume considered that the King's agreement to the petition procured the changes equal to the revolution and the limitation of the monarchy

created the additional guarantees of rights and freedom of the subjects²⁰.

This is emblematic that the movement towards a legal freedom in England had the profound economic bases. The Grand Remonstrance of 1641 contained the long list of the abuses of power procured by the King while his rule was absolute. The bourgeoisie considered as "the abuses" anything that hindered freedom of property and business. The great success in fight against the royal despotism was passing by the Parliament the *Habeas Corpus Amendment Act* 1679. The *Bill of Rights* 1689 was the first document that legally confirmed such freedoms as the right to bear arms for self-defence (for Protestants and as permitted by law), the right to petition the monarch, fines or forfeitures only after the court conviction, freedom from the excessive fines or forfeitures, from the cruel or unusual punishment, the freedom of speech and debate, freedom of election (for the men of property) to the Parliament without the King's interference etc. The *Act of Settlement* of 1701 recognised the natural character of the English law.

The French Revolution granted the formal equality for all the citizens. On the 11th of August 1789 only few days after *Prise de la Bastille* the *Assemblée Constituante* enacted the legislation abolishing the feudal rights and privileges. Notwithstanding this the Le Chapelier Law kept the inequality for workers. The law that was passed on the 14th of June 1791 forbade guilds (an early form of trade unions) and strikes. Article XVII of that document ceremoniously declared Louis XVI "the restorer of the French freedom". On the 14 of September 1791 the King also swore an allegiance to the Constitution. However later he was found guilty of multi-

tude of crimes committed in order to establish tyranny and to destroy the liberty and executed on the 21st of January 1793. Inconsistencies on the way to freedom can be illustrated by the fate of Olympe de Gouges²¹. She was the author of the Declaration of the Rights of Woman and the Female Citizen that was declined by the National Convention.

Radical for its own time was the character of freedom in the *Déclaration des Droits de l'Homme et du Citoyen* enacted on the 26th of August 1789: Article I - Men are born and remain free and equal in rights; Article II - The goal of any political association is the conservation of the natural and imprescriptible rights of man; These rights are liberty, property, safety and resistance against oppression. Article IV - Liberty consists of doing anything, which does not harm others; Article XI - The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law etc. This Declaration had to be in view of all the members of the National Assembly as a reminder of its obligations. Therefore the concrete understanding of the unity of freedoms and obligations was formed. Henry Chantavoine formulated the Declaration of Obligations²².

It is important to stress that the freedom for the citizens of the Revolutionary France was concrete and tangible. The Article 6 Section V in the First Chapter of the 1791 Constitution stated, «the representatives shall pronounce in unison, in the name of the French people, the oath *to live free or to die*». Bearing in mind the upcoming of the terror this was quite a possibility. The Jaco-

bin Constitution of 1793 included the new Declaration of Rights as a preamble. It proclaimed the republic, the principle of a sovereignty of the people's rule and the political freedom. Additionally to the Declaration of 1789 the list of freedoms also extended to the rights of petitions, right of *la résistance à l'oppression*, i.e. the right or duty of the people of a nation to overthrow a government that acts against their common interests and the freedom of the religion. Despite the fact that the French revolution was defeated and the democratic principle of the Declaration were only partially carried out to return the European society to the pre-1789 situation was already impossible.

The process of the juridification in Europe was quite diverse: Napoleonic wars, reaction, bourgeois revolutions, feudal counterrevolutions and national liberation movements in the XIX Century. Nevertheless the progress took a form of the principle of a formal equality of citizens before the law (with exception of married women and some other persons); equality in the execution of the personal and property rights, including the matrimonial freedom (Code Pénal 1791 and 1810, Le Code civil des Français 1804 and others). The electoral system was reformed in England in 1832. In the Age of Liberty (Frihetstiden) 1718 – 1771 in Sweden the right to vote for women was introduced. It included the women that were members of the guilds and paid taxes. In Portugal, Spain and other European countries the Constitutional process was also underway even though inconsistent.

After the revolutionary uprising and social tension in Europe in 1848-1849 (so called Spring of Nations, that bore anti-feudal and national liberation character) the Prussian King was forced to abolish the

feudal courts trials of peasants and to extend the trial by jury to the political crimes. The Reforms of the Russian Tsar Alexander II in the 60-70th of XIX Century brought the abolition of the serfdom in Russian Empire. The German Civil Code (*Bürgerliches Gesetzbuch*) of 1896 recognised the equality of incorporated and private bodies etc.²³ First Russian Revolution resulted that the Tsar granted the Constitution under the name of "The Manifesto on the Improvement of the State Order" on the 17th October 1905. This Constitution proclaimed certain civil rights such as: the inviolability of person, freedom of conscience, speech, assembly and associations.

7. Evolution of the legal freedom in the XX Century

The reactionary statism (*étatisme*) in European countries started the wars of XX century²⁴. The War, except if the participants are influenced by the barbaric heroism, is an absolute unfreedom, because the individuality itself and a human being as the bearer of the freedom are denied by the war. The war eliminates the individuality; the "enemies" due to their nationality, political beliefs, religion and so forth are excluded from the most of the legal spheres. Only the international humanitarian law somehow tries to bring the armed conflicts into the certain legal frames.

After the two world wars for the prevention of the future global military catastrophe on 25th October 1945 the nations created a new subject of the international relations – United Nations. The UN Charter declares in its preamble a determination to «to save

succeeding generations from the scourge of war ... and to promote social progress and better standards of life in larger freedom». The *Universal Declaration of Human Rights* adopted by the United Nations General Assembly on the 10th of December 1948 states that the «recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world». Altogether the word "freedom" appears in the Declaration 32 times.

The Universal Declaration juridificated the new standards of freedom, whereas earlier the human being was inside the frames of freedom defined by the certain state and its laws, the Declaration recognized the legal obligations of the UN member states to guarantee the freedoms of its citizens. Every human being without any exception possesses all rights and freedoms proclaimed in the Declaration. No differentiation shall be made based on the political, legal and the international status of the country or territory, to which the person belongs without regard as to dependent such territory or not.

Different international organization (UN, European Council and other), national governments made various provisions, in which the centre place took the problem of the defence of human rights and the major freedoms in all the spheres of the society. Human rights were considered as a necessary part of the human existence and the form of the exercise of freedoms and rights²⁵.

It is worth to mention the documents that was adopted in the UN such as *Convention on the Prevention and Punishment of the Crime of Genocide* 1948, *Convention on the Non-Applicability of Statutory Limitations*

to War Crimes and Crimes Against Humanity 1968, *Convention on the Suppression and Punishment of the Crime of Apartheid* 1973, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1984, *Convention on the Rights of the Child* 1989, *Discrimination (Employment and Occupation) Convention* 1958 No.111 adopted by International Labour Association and many others.

The Helsinki Accords adopted on 1st of August 1975 in the framework of the Conference on Security and Co-operation in Europe (humanitarian cooperation among the European states in the sphere of human rights); Concluding Document of the Third Follow-up Meeting of the CSCE in Vienna in 1989 concerning the exchange of the information among the European states about the human rights conditions, Prague Document on Further Development of CSCE Institutions and Structures adopted on 30th January 1992 and many others.

The paramount importance for the juridification of the freedom carried the International Bill of Human Rights adopted by the UN General Assembly on the 16th December 1966 (the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*) and others documents of the international law. *The European Convention for the Protection of Human Rights and Fundamental Freedoms* that came into force on the 3rd September 1953 adopted the special mechanism of its protection. The European Court of Human Rights started its work in 1959 and underwent some reform on the 1st of November 1998.

8. *Socialism and legal freedom*

The modern history has shown that the freedom cannot be merely supported only by the declarations and bills. The world and Europe in the middle of the XX century were divided into two hostile social systems, where the ideas of the legal freedom were fundamentally different. For all the differences the major of them were concerned the property rights. In the bourgeois countries the right of the private property was the basis of the freedom for the civil society. In the realm of the socialism the private property was rejected, the civil freedom wasn't thought about even in the theory.

The October *coup d'état* in 1917 in Russia put the hold on the progressive development of the bourgeois social system based on the principle of the legal equality. The Soviet regime in its earlier constitutional acts, for example in the *Declaration of Rights of the Working and Exploited People* 1918, stated as its aim «to establish a socialist organisation of society and to achieve the victory of socialism in all countries» by the way of the «mercilessly crush the resistance of the exploiters». «For the purpose of abolishing the parasitic sections of society» universal labour conscription was instituted. On the practice the "Asiatic mode of production" was introduced. The characteristic of the latter is the existence of two main classes: workers and *nomenklatura* as the governmental (party's) bureaucracy. Herewith the archaic system of the consumers' privileges functioned.

In the socialist "camp" (Soviet Union and the Warsaw Pact countries) that was formed after the Second World War the liberal rights and freedoms of the people were denied. The Soviet Constitution of

1977 contained the false slogans according to which «the free development of each is the condition of the free development of all» and «the source of the growth of social wealth and of the well-being of the people, and of each individual, is the labour, free from exploitation, of Soviet people», also the «respect for the individual and protection of the rights and freedoms of citizens» by «all state bodies, public organisations, and officials» was proclaimed²⁶. In the same style were all of the Constitutions of the Soviet's satellites – countries of the "people's" socialism that was clearly profanity of the freedom. As an example the Constitution of the Polish People's Republic 1952 proclaimed the «noble tradition of the solidarity with the freedom and progress forces», that assumed the deepening of the friendship and cooperation with USSR and other Socialist Countries. Reality is that as soon as the military and economic power of the USSR diminished the European system of the socialism disintegrated by its own.

In these years the legal freedom of the Western democracies was dynamically developing. Despite the serious differences based on the historical, economical, national and geographical factors Constitutions of Italy (1948), West Germany/BRD (1949) and France (1958) and other countries confirmed the traditional European way of the constitutionalism that includes the liberal values founded on the legal equality. The law defined the universal legal capacity of the individual stating basic rights and obligations, notably the universal legal capacity was recognised as equal for all. By joining together in the European Economic Union (1957-1993) and after in the European Union in 1993 the Western

Europe secured for its citizens the area of freedom, security and justice without any inner borders.

The European freedom and relatively high standards of living gave no competitive chances to the inert socialism. At the end of the XX century most of the post-socialist countries in Eastern Europe chose the way of the legal freedom proclaimed in the Treaty of Lisbon that amended the Treaty on European Union and the Treaty and established the European Community. Therefore most of the European countries were united based on the modern principles of the respect of the human dignity, freedom, democracy, equality, rule-of-law and human rights, including the rights of the minorities.

By adopting the Constitution of 1993 the Russia also proclaimed its intention to follow the way to the legal freedom. Hence the plea of Harold Berman that the social theory of law shall improve the understanding how the western law meets the non-western law is still poignant²⁷.

9. Final notes

Every of the aforementioned stages of the juridification of the freedom are worth a monographic research. However even the reduced analysis make it clear that the source of the civilization is the development of the formal equality principle which promoted the legal character of the freedom. Due to the evolution of the volume capacity and the scope of the principle of the formal equality at the end of the XX century in Europe developed the society governed by the rule-of-law. This society offered the

maximum amount and the wide range of freedoms to the individual. However the law based society is not any longer the aim per se but the development of the common good (*bonum commune*).

Even George Wilhelm Friedrich Hegel defined that «the history of the world is none other than the progress of the consciousness of Freedom; a progress whose development according to the necessity of its nature, it is our business to investigate»²⁸. The XXI century brought out the various threats (economical, military and others) to the progress of the legal freedom. Uncontrollable migration to Europe of the people that do not recognise the legal freedom challenges the European formed social perceptions of equality among a man and a woman, races and nationalities. The bureaucracy is using the weakness of the democracy to rejuvenate the elements of the feudal privileges. The terrorism under the mask of religion spread the panic that actualizes the false dilemma of the necessity of choice between the freedom and the security²⁹. It seems that the answer to that challenge is not simple but universal. It is the uttermost defense of the immanent value that supports the European identity – the legal freedom. The denial of the legal freedom would be the real “Decline of the West”³⁰ and upcoming of a new “Dark Ages”.

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- ⁴ G.V. Mal'tsev, *Mest' i vozmezdie v drevnem prave* [Revenge and Vengeance in Ancient Law], Moscow, Norma, 2012, p. 222.
- ⁵ Erich Seligmann Fromm had a good point that legalizing of the freedom was the first step to the formation of the individuality. E. Fromm, *Marx's Concept of Man*, New York, Frederick Ungar, 1961, pp. 1-85.
- ⁶ Strabo, *Geographica*, at <http://www.e-reading.by/bookreader.php/1001698/Strabon_-_Geografiya.html>.
- ⁷ K. Marx, *Grundrisse der Kritik der politischen Ökonomie*, 2015, at <<https://www.marxists.org/archive/marx/works/download/pdf/grundrisse.pdf>>.
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- ¹⁰ Cicero, *On the Commonwealth and On the Laws*, ed. and trans. J.E.G. Zetzel, Cambridge, Cambridge University Press, 1999.
- ¹¹ I.B. Novitsky, I.S. Peretersky, *Rimskoe chastnoe pravo* [Roman private law], Moscow, Norma, 2013 p. 13.
- ¹² F. Engels, *Herrn Eugen Dührings Umwälzung der Wissenschaft (Anti-Dühring)*, at <<https://marx-wirklichstudieren.files.wordpress.com/2013/07/engels-anti-d.pdf>>.
- ¹³ *King James Bible* at <<http://www.kingjamesbibleonline.org/>>.
- ¹⁴ J. Witte Jr., J.J. Latterell, *The Christianity and Human Rights: Past Contribution and future Challenges*, in «Journal of Law and Religion», n. 30/3, 2015, pp. 353-385.
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- ¹⁶ K. Modzelewski, *Barbarian Europe*, Frankfurt am Mein, Peter Lang, 2015.
- ¹⁷ Can. 1055 – § 2. *Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum*, <<http://vilejka.by/pdf/codex-iuris-canonici-russian.pdf>>.
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