

Pavliček, Václav – Hofmannová, Helena (eds.). Občanská a lidská práva v současné době. Praha: Auditorium, 2014, 308 s. [Contemporary Human Rights and Civil Liberties. Prague: Auditorium, 2014, 308 pp.]

A new title “Contemporary Human Rights and Civil Liberties” was published to the Czech legal publications market. Combining in 11 chapters contributions by authors mainly affiliated with the Faculty of Law, Charles University in Prague,¹ this monograph deals with the recent trends in the concept of human rights and civil liberties² stemming from the transformation of basic paradigms, the new geopolitical landscape, and empirical experience gained over the last quarter-century since the collapse of the bipolar world-order. The publication is not a self-contained piece of work, but rather follows up on the title “Human Rights and Civil Liberties” published 1991, which served primarily as a textbook for law schools students.

The team of authors under the leadership of Professor Václav Pavliček has set as one of the aims of this publication to compare and confront the actual concept of universal human rights with the contemporary state of affairs, by help of interdisciplinary and evolutionary methods. All authors agree on the proposition that “*human rights are the pivotal drivers behind humanistic principles of civilization – not mere parts of ideological political rhetoric, but genuine interests of the society as a whole*”.³ The authors point to the dynamics of human rights, which allows the rights to react to the transformations in all societies. The confrontation of the values that constitute the cornerstones of societies – or even entire civilizations – with current reality, which is subject to scrutiny by the authors in respective chapters of the book, represents an objective projection of the unipolar World with the view of close probability of emerging world that is quite multipolar. Cultural diversity is a fact that the authors have not attempted to conceal behind the idea of one higher advanced civilization overriding a less advanced one; they, on the contrary, expose the diversity in its true shape. Rich experience of the authors such as Professor Michal Tomášek and Professor Pavel Šturma with culturally diverse approaches to the rights of individuals, or rights of various groups, contributes immensely to the attractiveness of this publication.

The title opens with a chapter by Professor Václav Pavliček dealing with the evolution and state of concept of human rights in the today's world, in which the author focuses gradually on the Universal Declaration of Human Rights and its pertinence to the principle of universal observance, International Covenants on human rights as the means for internationalization of human rights, plurality of concept of human rights and regional agreements, the impacts of the collapse of bipolar world and the postmodern age, all based on the example of the right to property and (non-)alterability of fundamental human rights, and recent disputes over the value of human rights. The author is critical towards propositions of some political theorists such as F. Fukuyama⁴ on so-called “end of history” and the triumph of liberalism across the Globe. The author is not restrained from pointing out the geopolitical games in the Eurasian region in context of the fall of the Russian empire, which could have contributed to the current situation in Ukraine as a strategic place of interest not only

¹ Publication, which is one of the products of the project PRVOUK 04 “*Institutional and normative transformation of law in the European and Global context*” (“*Institucionální a normativní proměny práva v evropském a globálním kontextu*”) (coordination by prof. JUDr. Aleš Gerloch, CSc.), and PRVOUK 06 “*Public law in the context of Europeanization and Globalization*” (“*Veřejné právo v kontextu europeizace a globalizace*”) (coordination by prof. JUDr. PhDr. Michal Tomášek, DrSc.).

² For more detail see GERLOCH, A., ŠTURMA, P. (eds.). *Observance of the fundamental rights and freedoms in the course of transformation of law in the beginning of 21st century in Czech, European and international context*. Prague: Auditorium, 2011.

³ PAVLIČEK, V. Introduction. In: PAVLIČEK, V., HOFMANNOVÁ, H. (eds.). *Contemporary human rights and civil liberties*. Prague: Auditorium, 2014, 308 pp.

⁴ FUKUYAMA, F. *The End of History and the Last Man*. New York, 1993.

for Russia. In agreement with political scientist S. P. Huntington⁵, the author warns against the immigration, which is tormenting South Europe nowadays, and which brings along a potential to destabilize the quality of the system for protection of human rights. The chapter, bursting with abundance of facts and information, concludes not pessimistically, but in author's reflection on the current disputes over the value of human rights in the society and the new crossroads that the Western civilization is again standing at.

The chapter titled "Freedom and the rights of an individual as principles of the European cultural paradigm" by Professor Zuzana Lehmanová (University of Economics in Prague) and assistant Professor Šárka Zemanová (University of Economics in Prague) deals with the formation of the concept of human rights in the European culture since the Antiquity, through the Christian concept of freedom of an individual, to the ideal and realisation of the human rights in the socio-political and legal thinking of the Modern period. The authors analyse the values heritage of Europe with its historical role of a civilizational centre and world's cultural hegemon, which has laid down the basis for the evolution of global civilization, including the global concept of human rights. The impact of the "Arab spring" and the fall of secular dictatorships in the region is analysed in brief by the third chapter written by Professor Jaroslav Krejčí, thus following up on the thoughts of Professor Pavlíček about the risks of immigration from a different angle. Professor Krejčí's study deals with globalization of human rights and plurality of cultures, which centres around Confucianism in China, Hinduism in India, Buddhism in south-east Asia, and mainly Islam with its spiritual centre in the Near East, but with believers dwelling between the Atlantic ocean and China. The conflict, which emerges between the civilization based on natural rights and individual freedoms on the one hand, and civilizations that do not primarily encompass such values on the other, is from the author's perspective attenuated by intermingling of cultures, for example. For instance, the Confucian Golden Rule providing that "One should not treat others in ways that one would not like to be treated" is not strange to even Judeo-Christian ethics.

Professor Pavel Šturma in his chapter on international and European protection of human rights deals with, as is his good tradition, mechanisms for safeguarding human rights. He describes the universal mechanism for protecting human rights (the general treaty-based mechanisms – both International Covenants from 1966; non-treaty based instruments – Universal Declaration 1948; special or specific treaties on human rights concerning, for example, prohibition of discrimination), and then the regional mechanisms (especially ECHR, EU Charter of Fundamental Rights), and last but not least the mechanisms from outside Europe, which represent the inter-American and African systems for protection of human rights. His study is accompanied by abundant facts and information based on the author's deep knowledge gathered also during his active participation on the UN committees (United Nations International Law Commission). Associate Professor Helena Hofmanová, who fulfilled the role of an editor and secretary to the entire team of authors of this publication, is academically interested especially in the issues of the principle of equality, protection of minorities, etc.⁶ She devotes to her topics four chapters of the publication under review (chapters V, VIII, IX, and XI.) and deals primarily with the issue of principle of equality in the USA (affirmative action), right to life, protection of ethnic minorities in a comparative perspective (Europe and USA). The author also capitalizes on her previous career at the Constitutional Court of the Czech Republic, when analysing the concept of human rights in the case law from both decades of the functioning of that court.

The study of Dr. Miluše Kindlová is intriguing from the comparative perspective, dealing with the issue of protection of human rights in the United Kingdom, with special attention to the interaction be-

⁵ HUNTINGTON, P. S. *The Clash of Civilizations and the Remaking of World Order*. Prague: Rybka Publishers, 2001.

⁶ PETRÁŠ, R., PETRŮV, H., SCHEU, H. Ch. (eds.). *Menšiny a právo v České republice*. Praha: Auditorium, 2009. PETRŮV, H. Michiganský Proposal 2. K vývoji afirmativní a postafirmativní akce v USA. *Právní rozhledy*. 2007, No. 14.

tween the Human Rights Act 1998 and the European Convention on Human Rights, and the issues of the doctrine of sovereignty of the British Parliament.

Professor Michal Tomášek's contribution promises to expand the horizon of any Central European state citizen. His chapter titled "Concepts of rights and freedoms in the Eastern cultural systems and values of people" offers an entirely different view by the eastern civilizations on the standing of an individual in a collective society. His chapter opens with a pragmatic proposition that "*the criticism of concept of fundamental rights and freedoms of the East Asian countries by "Western" civilizations must be supported by understanding the evolution of the value of men and women in this area*"⁷, which could be, however, also a final call for assessing the impact of the so-called Eurocentric thinking. More than five thousand years of evolution of the legal culture in the Far East derived from the Chinese legal background give us all reasons to reconsider its impact on the global scale. Author's unidealistic but very enjoyable analysis describes the rules of behaviour in the eastern civilizations embedded in Confucianism (particularly the teachings about strict social hierarchy according to the system of the so-called five relationships), and the rules embodied in the so-called Legalism, which was another stream of teaching next to Confucianism. Both had a common denominator, however, in their never-ending strive against the independence and egoism of an individual, with strong support to only those qualities that had the potential to strengthen the social group as a whole. Against anarchy, they prefer order; against greed for property, they prefer the force of virtue and authority of ethics. On the other hand, practices of mutual denunciation and eavesdropping on individuals, including rewarding for such practices (offered only by the Legalists) and the resulting punishment for disobedience of the ultimate ruler have also been an integral part of those eastern teachings, and have been often transplanted in the course of history into the countries of the so-called Eastern Block. Professor Tomášek, who has command of some eastern languages and is incomparably better suited to understand the eastern teachings than mere mortals, gives us an inside view into other religious philosophical schools such as Buddhism, with which Confucianism is often confronted and the fusion of which has led to the evolution of Zen Buddhism in Japan. The influence of Islam and Christian theology on the eastern schools of thought is analysed in the following sub-chapters. The voluminous chapter of Professor Tomášek is nothing of a sort of some uncritical reverence of eastern philosophy, but a down-to-earth analysis of its internal tensions, where the conflicts between law, morals, and the relationships between the states of superiority and inferiority in the Chinese and Japanese concept of law manifests the pattern of self-sacrifice on the altar of the society. The author complements the vast collection of facts and information on the eastern teachings with excursions to their adaptations in fiction and film, which is greatly refreshing and facilitates reader's understanding of the message. Dr. Andrea Fáberová deals with the issue of refugees in the Czech Republic, especially the beginnings of that legal institution on the territory of the country, its European Union and international law framework and the system of asylum in the Czech Republic (arrival centres, housing centres and centres for integration).

This interdisciplinary and multi-thematic publication with human rights as its red line, the authors come to the conclusion that human rights are a significant driving factor behind all changes in society and are the elements of the humanistic principles of civilisations. Thus, the guarantees and enforcement of those rights are in the interest of the global society. I consider the reviewed monograph a scientific work worth respect, and it should not be missed by any readers interested in the issues of civil liberties and human rights, be it in the course of their doctrinal, historical, normative, comparative or judicial occupation. I recommend the publication under review to the general public, particularly to students of master courses in law or philosophy. In my own experience, I suggest to read in this book in the comfortable milieu of a weekend day with the confidence that you will feel inclined to revisit its pages over and over again.

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⁷ TOMÁŠEK, M. *Koncepce práv a svobod v kulturních systémech Východu a hodnoty člověka*. In: PAVLÍČEK, V., HOFMANNOVÁ, H. (eds.). *Občanská a lidská práva v současné době*. Praha: Auditorium, 2014, p. 187.

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