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HUMAN RIGHTS IN YUGOSLAVIA 2002

LEGAL PROVISIONS, PRACTICE AND LEGAL CONSCIOUSNESS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA COMPARED TO INTERNATIONAL HUMAN RIGHTS STANDARDS

Belgrade Centre for Human Rights

Belgrade, 2003

Series

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HUMAN RIGHTS IN YUGOSLAVIA 2002
LEGAL PROVISIONS, PRACTICE AND LEGAL CONSCIOUSNESS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA COMPARED TO INTERNATIONAL HUMAN RIGHTS STANDARDS

Editors

Vojin Dimitrijević
Tatjana Papić

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For the publisher

Vojin Dimitrijević

Proof-reading

Jasna Alibegović

Cover photograph

Milan Aleksić

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Mirko Milićević

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Contents

Abbreviations

AEPS – Act of Enforcement of Penal Sanctions

AI – Amnesty International

ANEM – Association of the Independent Electronic Media

BCHR – Belgrade Centre for Human Rights

B&H – Bosnia and Hercegovina

CAA – Center for Antiwar Action

CAT – Committee against Torture

CESCR – International Covenant on Economic, Social and Cultural Rights of 16 December 1966

CeSID – Center for Free Elections and Democracy

CC – Criminal Code

CoE – Council of Europe

CPC – Criminal Procedure Code

CRC – Child Rights Centre

CSCE – Conference for Securuty and Cooperation in Europe

CUPS – Centre for Advanced Legal Studies

DOS – Democratic Oposition of Serbia

DPS – Democratic Party of Socialists

DS – Democratic Party

DSS – Democratic Party of Serbia

EU – European Union

FPRY – Federal People's Republic of Yugoslavia

FRY – Federal Republic of Yugoslavia

Federal Constitution – Constitution of the Federal Republic of Yugoslavia of 27 April 1992

GSS – Civic Alliance of Serbia

GŠ VJ – Yugoslav Army's General Staff

HC – Helsinki Committee for Human Rights in Serbia

HLC – Humanitarian Law Center

Human Rights in Yugoslavia 1998 – Human Rights in Yugoslavia 1998, Belgrade Centre for Human Rights, Belgrade 1999

Human Rights in Yugoslavia 1999 – Human Rights in Yugoslavia 1999, Belgrade Centre for Human Rights, Belgrade 2000

Human Rights in Yugoslavia 2000 – Human Rights in Yugoslavia 2000, Belgrade Centre for Human Rights, Belgrade 2001

Human Rights in Yugoslavia 2001 – Human Rights in Yugoslavia 2001, Belgrade Centre for Human Rights, Belgrade 2002

HRW – Human Rights Watch

ICCPR – International Covenant on Civil and Political Rights of 16 December 1966

ICESCR – International Covenant on Economic, Social and Cultural Rights of 16 December 1966

ICG – International Crisis Group

ICRC – International Committee of Red Cross

ICTY – International Criminal Tribunal for the Former Yugoslavia

ILO – International Labour Organisation

IWPR – Institute for War and Peace Reporting

JUL – Yugoslav United Left

"KLA" – "Kosovo Liberation Army"

KFOR – Kosovo Forces

LCEMP – Elections of Members of Parliament Act

LMFR – Marriage and Family Relations Act

LGAP – General Administrative Procedure Act

Montenegrin Constitution – Constitution of the Republic of Montenegro of 13 October 1992

Montenegro – Republic of Montenegro

MOC – Montenegro Ortodox Church

MUP – Ministry of Interior

NATO – North Atlantic Treaty Organisation

ODIHR – Office for Democratic Institutions and Human Rights

OSCE – Organisation for Security and Co-operation in Europe

PSEA – Penal Sanctions Enforcement Act

REC – Republic Electoral Commission

RTS – Radio Television of Serbia

SDB – State Security Service

SDP – Social Democratic Party

SDU – Social Democratic Union

Serbia – Republic of Serbia

Serbian Constitution – Constitution of the Republic of Serbia of 28 September 1990

SFRY – Socialist Federal Republic of Yugoslavia

Sl. glasnik RS – Službeni glasnik Republike Srbije (Official Gazette of the Republic of Serbia)

Sl. list RCG – Službeni list Republike Crne Gore (Official Gazette of the Republic of Montenegro)

Sl. list SRJ – Službeni list Savezne Republike Jugoslavije (Official Gazette of the Federal Republic of Yugoslavia)

Sl. glasnik SRS – Službeni glasnik Socijalističke Republike Srbije (Official Gazette of the Socialist Republic of Serbia)

SNP – Socialist People's Party

SPC – Serbian Orthodox Church

SPS – Socialist Party of Serbia

SRCG – Socialist Republic of Montenegro

SRS – Serbian Radical Party

UN – United Nations

UN doc. – United Nations document

UNESCO – United Nations Educational, Scientific and Cultural Organisation

UNHCHR – United Nations High Commissioner for Human Rights

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations Children's Fund

Universal Declaration – Universal Declaration of Human Rights, UN General Assembly resolution 217 A (III) of 10 December 1948

UNMIK – United Nations Interim Administration Mission in Kosovo

VJ – Army of Yugoslavia

YUCOM – Lawyers Committee for Human Rights

Preface

The Report on the Human Rights Situation in the Federal Republic of Yugoslavia in 2002 is published by the Belgrade Centre for Human Rights in an attempt to offer to the Yugoslav and foreign public a survey of the actual exercise and enjoyment of internationally guaranteed human rights in the FRY. The Centre's aim has been to examine as thoroughly as possible the legal regulation, exercise, enjoyment, limitations and violations of human rights and the most important factors influencing the human rights situation in the country.

This is the fifth in a series of reports on human rights published by the Centre since 1998. It can be perused with reference to the other four, especially if the reader wishes to investigate the origins of the latest events and compare the present situation with that before the changes in 2000.

The report is divided into four sections.

The first section describes and analyses constitutional provisions, laws and regulations dealing with human rights, and compares them with international standards and the obligations of the FRY under international treaties. This section is based on comprehensive data collected by the Centre.

Section two deals with the practical enjoyment of human rights in the FRY. The need to provide a full picture made it necessary not to rely only on the Centre's own research, but also to systematically survey the Yugoslav media and collect all available reports produced by relevant human rights organisations. The sheer mass of data, often conflicting, did not always allow the authors to reach final conclusions, but all sources have been conveyed in full, giving to the reader material to arrive at his/her own conclusions.

As in its reports for 1998, 2000 and 2001, the Centre conducted in late 2002 its survey of legal consciousness in the FRY on a large sample of respondents; the findings are given in section three.

A comprehensive annual report on the human rights situation in a country and society cannot be produced without covering the broader issues affecting the enjoyment of human rights. Section four therefore includes concise presentations of the topics deemed to be most important: the situation in Kosovo, the International Criminal Tribunal for the Former Yugoslavia, the reform of security and armed forces and efforts to promote truth and reconciliation in the FRY and the entire region of the former Yugoslavia.

Work on the report began on 1 January 2002 and ended on 10 January 2003. As a rule, factual research covers the period until 20 December 2002.

The Centre expresses its gratitude to all those who collaborated in the production of this report for their hard work and devotion, especially to contributors outside its staff. They include master photographer Milan Aleksić, who has for the fifth time graciously permitted the Centre to use his work.

Introduction

The Federal Republic of Yugoslavia (FRY) was officially created by the Constitution of 27 April 1992, which will stay in force until the new union of Serbia and Montenegro will be established by the Charter which has been negotiated throughout 2002.[1] The situation reflected in this Report is that governed by the 1992 Constitution.

For the causes of human rights and democracy the most important event in Serbia and Yugoslavia since the Second World War occurred in September and October 2000, after the federal presidential and parliamentary elections.[2] The main electoral adversary to the then president Slobodan Milošević and the parties which he controlled was a coalition of 18 Serbian political parties calling itself the Democratic Opposition of Serbia (DOS). The presidential candidate of the latter was Vojislav Koštunica, head of the Democratic Party of Serbia (DSS). He beat Milošević in the presidential vote. The attempt by the regime not to recognise the results of the vote only poured fuel on the fires of dissatisfaction in Serbia, which turned into a general strike and mass protests, peaking on 5 October 2000 so that the old regime was convinced to yield power.

Real changes could only be expected after elections for the National Assembly of Serbia, which were held on 23 December 2000 and resulted in a large majority for the DOS (176 of the total of 250 seats). In January 2001 a new government headed by Prime Minister Zoran Đinđić was elected and it was still in power at the end of 2002.

The pace of reforms in Serbia was slowed down by the growing differences within the DOS itself, where two loosely defined factions appeared in 2001, one around Koštunica and his DSS and the other headed by Đinđić and his Democratic Party (DS), which enjoys the support of most of the smaller DOS members. The split is not completely clear-cut or permanent, but the overall impression is that the former group is more conservative and reluctant to make changes, and the latter more inclined towards radical reforms and a quicker return into the fold of the world economy. The rivalry between the groups, neither of which can count on a parliamentary majority without (often unprincipled) concessions to smaller parties, provoked some serious, though not fatal, political crises. The newest row came after the failed elections for president of Serbia on 29 September (with the second round on 13 October), and 8 December 2002. One of the candidates at both elections was Vojislav Koštunica, the actual President of the FRY. In the September-October elections one of his opponents was Miroljub Labus, the actual federal Vic-Prime Minister, who enter the second round with Koštunica but a sufficient number of voters failed to turn out. Labus did not present his candidacy for the October elections so that Koštunica faced two opponents from the extreme right, Vojislav Šešelj, the president of the Serb Radical Party, and Borislav Pelević, leader of the Party of Serbian Unity, which had been founded by Željko Ražnatović – Arkan, the murdered chief of the paramilitary organisation "the Serb Volunteer Guard" and had been indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY). Commentators have explained to failure of the second round of the September – October elections by abstention of the voters of the far right and of the December elections by the absence of the civic option of the centre and centre-left, previously represented by Labus.

The uncertain constitutional order of the FRY and doubts in the continued existence of the Yugoslav state continued to burden the foreign policy of the federal government; one of the reasons for a slowdown in the FRY's admission to the Council of Europe lay in these factors. Not only have no preparatory activities for drafting a new federal constitution begun, but neither has there been any work on a badly needed constitutional reform in Serbia, where several unofficial proposals have been made public, including one drafted by an independent group of experts under the auspices of the Belgrade Centre for

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[1] On the Draft Constitution Charter see I.1.4.

[2] Earlier periods are covered by introductory sections of the *Human Rights in Yugoslavia 1998*, *1999, 2000* and *2001*. Belgrade, Belgrade Centre for Human Rights, 1999, 2000, 2001, 2002.

Human Rights.[3] It was simply not known whether it was to be a constitution for a federal entity or an independent state.

In 2000 the FRY had abandoned its unproductive insistence on international continuity with the former SFRY, and had been admitted into the UN and some of its specialised agencies. It also returned to the Organisation for Security and Cooperation in Europe (OSCE). The country's application for admission to the Council of Europe was under serious consideration both in 2001 and 2002, and Yugoslav parliamentarians regained permanent guest status in the OSCE Parliamentary Assembly. Two major obstacles to the admission of Yugoslavia to the Council of Europe have been the uncertain status of the federation and the difficulties on the cooperation of Yugoslavia with ICTY.

Non-governmental organisations, which played a prominent role in the democratisation of the country and replacement of the former regime in Serbia, operated in a far more favourable environment than that before the October 2000 events, but this did not encompass legislative changes. A law on NGOs was prepared all through 2001 and 2002 (in cooperation with representatives of relevant associations), but had not been adopted by the end of the year.

Under UN Security Council Resolution 1244, which ended NATO intervention against the FRY in 1999, Kosovo remains a part of Serbia and the FRY, although it is internationally administered – the Yugoslav authorities' actual control in the region does not exist.[4]

[3] *Constitutional Reform in Serbia and Yugoslavia*, Belgrade, Belgrade Centre for Human Rights, 2001.

[4] See IV.1 below.

I

LEGAL PROVISIONS RELATED TO HUMAN RIGHTS

Summary

1. Although it may be considered that Yugoslav law meets international standards in many areas, the overall structural defects of the legal system and its non-compliance with important international instruments bring forth the inadequacy of the envisaged human rights guarantees. Rule of law has not been established in Yugoslavia as yet, primarily due to the existence of numerous contradictory provisions, the fact that many laws are still on the books which impose restrictions on guaranteed human rights not allowed by the Federal Constitution, and due to the absence of independent judiciary.

2. The guarantees laid down by the Federal Constitution and the fact that international treaties take precedence over national law, at least formally, are a solid basis for the development of effective human rights protection mechanisms and the establishment of the rule of law. However, a great number of federal and republican laws have not been brought into line with the Federal Constitution. The result is the continued application of unconstitutional and restrictive norms instead of the constitutional provisions guaranteeing human rights and freedoms. There is an urgent need to harmonise the Serbian with the Federal Constitutions since the discrepancies here are especially wide.

3. In March 2002 the new Code of Criminal Procedure entered into force. The Code offers more comprehensive guarantees in criminal proceedings to the suspect, the accused and the defendant. The institution of police detention has definitely been removed from the Yugoslav legal system. Defence is provided with means necessary to acquire a relatively equal position in the proceedings. The defendant must have defence counsel at the very first interrogation. The Code explicitly prohibits every use of force, extortion, exhaustion and similar methods and punishments for the purpose of forcibly obtaining statements. Two important guarantees for the position of the defendant, such as public trial and equality of arms are also covered in more detail than in the previous Code.

4. Organised crime has hit hard the Yugoslav society in 2002. In the area of legislation certain steps were taken aimed at fighting organised crime. The Serbian Parliament has adopted the Act on the Organisation and Jurisdiction of State Bodies in Combating Organised Crime, and the Federal Parliament has innovated the Criminal Proceedings Code. Although there is a legitimate public interest to regulate in detail the jurisdiction and procedure in respect of offences containing elements of organised crime, some provisions in the new legislation remain controversial from the aspect of human rights protection. This particularly relates to parts of the Code on undercover investigators and temporary confiscation of objects and material gain.

5. So far the legal system has not secured effective legal remedies for human rights abuses, mainly because of the lack of a comprehensive system of a fully independent judiciary. In January 2002, legislation enacted in 2001 entered into force, covering the work, organisational structure and position of judges and courts. The principle of judicial independence was thus secured in a more adequate manner. However, in mid-July 2002, new changes were made to the adopted legislation, violating the principle of separation of powers as well the independence and impartiality of the judiciary (Act on Changes and Amendments to the Act on Judges, *Sl. glasnik RS,* No. 42/02). A large number of positive changes made in 2001 were abolished by these amendments. The procedure for the election of judges has been changed, as well as the composition of the High Judicial Council and the principle of immovability of judges violated while presidents of courts were barred from the performance of their judicial function during their presidential mandate. The Serbian Constitutional Court, by its decision of 19 September 2002 suspended the execution of individual acts and actions performed on the basis of these amendments to the Act (*Sl. glasnik RS,* No. 60/02). This affected in particular the application of Article 14 of the International

Covenant on Civil and Political Rights (ICCPR) which provides that „everyone is entitled to a fair and public hearing by an independent and impartial tribunal."

6. Although the Federal and Montenegrin Constitutions prescribe for the victims of human rights violations a specific remedy - constitutional complaint with the Federal and Montenegrin Constitutional Courts, respectively - in practice, this entitlement has been interpreted in such a way as to render it only a theoretical remedy. However, it is important to note that the Federal Constitutional Court abolished, specially in 2001 many legal provisions that were violating human rights.

7. The principle of proportionality with respect to restrictions on human rights has neither been recognised by Yugoslav legislation nor by the courts; there is still the potential to impose restrictions not in accordance with the legitimate interests. As far as derogations from the exercise of human rights in times of public emergency are concerned, Yugoslav law does not secure that such measures must be limited to „the extent strictly required by the exigencies of the situation." The Serbian Constitution fails to enumerate the rights which cannot be derogated from, even during the state of war, while the Federal Constitution does not cite the right to life as one from which no derogation is permitted.

8. Yugoslav legislation does not specifically guarantee the right of parents to organise the religious and moral education of their children in conformity with their own beliefs. Enjoyment of this right is very limited in practice since the establishment of private elementary schools has not been allowed in Yugoslavia.

9. Conscientious objection is provided for by the Federal Constitution but is very restrictively regulated in laws and has been in practice made meaningless. The period allowed to plead this status is extremely short and the state has no obligation to inform recruits of the possibility of civilian service. After performing military service under arms, young men may not invoke the conscientious objector status when later called up for military duty, even if they performed their military service at a time when this right was not recognised in Yugoslavia.

10. Legal provisions governing the freedom of association allow for an organisation to be banned on grounds that are not mentioned in international instruments. Also, individuals who have been convicted of criminal offences cannot be founders of political or trade union organisations, and employees of state agencies, professional soldiers and police are not allowed to go on strike.

11. The Serbian Constitution provides for a lower level of minority rights than the Federal Constitution. In 2002, the Act on the Protection of the Rights and Freedoms of National Minorities was passed at the federal level, establishing a good foundation for the enjoyment of minority rights in FRY. The Act guarantees participation of minorities in public life, public and private use of language and script, preservation and development of cultural and national values and ethnic characteristics. Since the provisions of the Serbian Constitution are those applied in practice, ethnic minorities in the Republic enjoy less protection than offered by the Federal Constitution. No special legal remedies exist for the protection of the minority rights guaranteed by the Yugoslav constitutions, thus making them only verbal declarations.

1. Human Rights in the Legal System of the FRY

1.1. Introduction

The present report discusses Yugoslav legislation in relation to the civil and political rights guaranteed by international treaties to which the FRY is a party, in particular (ICCPR) as the main instrument in this field. The standards established by other international treaties that deal in more detail with specific human rights, such as the UN Convention against Torture and the Convention on the Rights of the Child, are also considered. A comparative analysis is also made of Yugoslav law and the European Convention on Human Rights and Fundamental Freedoms (ECHR) since it is the hope of the Belgrade

Centre for Human Rights that the FRY will in the near future became a member of the Council of Europe (CoE) and ratify this Convention.[5]

The Report deals with all the Yugoslav legislation, both federal and republican, relevant to each of the rights reviewed, going beyond the actual text of the law to include judicial interpretation where it exists. The following elements are used to evaluate the conformity of Yugoslav legislation with international standards:

– whether a particular right is guaranteed;

– if so, how it is formulated in national legislation and to what extent the formulation differs with respect to that contained in the ICCPR (ECHR);

– whether the guarantees of a certain right in national legislation and their interpretation by the state authorities ensure the same meaning and scope as the ICCPR (ECHR);

– whether the restrictions on rights envisaged by Yugoslav law are in accordance with the restrictions the ICCPR (ECHR) allows;

– whether effective legal remedies exist for the protection of rights.

Since this report was prepared in 2002, it considers only legislation that was in effect up to 20 December 2002.

1.2. Constitutional Provisions on Human Rights

The Federal Constitution of 27 April 1992 defines the Federal Republic of Yugoslavia as a federal state founded on the equality of citizens and the equality of its constituent republics – Serbia and Montenegro (Art. 1, Federal Constitution). Both the Federal Constitution and the constitutions of the republics devote separate chapters to human rights and fundamental freedoms (Chapter II, Federal Constitution; Chapter II, Serbian Constitution; Section II, Montenegrin Constitution). In addition to civil and political rights, they also guarantee economic, social and cultural rights, including the right to work, social security, health care, and education. The Federal Constitution furthermore states that Yugoslavia "shall recognise and guarantee the rights and freedoms of man and the citizen recognised under international law." This is an ambiguous provision since it fails to designate clearly the source of the rights and freedoms thus guaranteed, although it may be assumed that international customary law is meant.

Human rights and freedoms are exercised directly on the basis of the Federal Constitution. They are, however, restricted by the "equal rights and freedoms of others and in instances provided for in the present Constitution" (Art. 9 (3)), and the manner of their exercise may be prescribed by law (Art. 67 (2)).

Pursuant to the Constitutional Act for the Implementation of the FRY Constitution (*Sl. list SRJ*, No. 1/92), the Federal Constitution took effect on the date of its promulgation, unless otherwise provided for by the Act in specific cases (Art. 1). The Constitutional Act envisaged the continuing application of all federal statutes that were not specifically repealed "until they are brought into conformity with the Constitution within the time periods set by the present Act..." (Art. 12). A decade later and in spite of several extensions of the deadlines, a large number of statutes that clash with the Constitution are still on the books. Where human rights are concerned, this could have grave consequences since the laws of the former Yugoslavia indirectly place restrictions on the rights guaranteed by the Constitution.

1.3. International Human Rights and FRY

International human rights treaties ratified by the former Yugoslavia are binding on the FRY. In its Preamble, the Federal Constitution speaks of the "unbroken continuity of Yugoslavia," and the federal authorities undertook to abide by all the international commitments of the former Yugoslavia.[6] On 8 March

[5] In early November 2000, the Yugoslav government expressed the wish for the FRY to accede to the CoE <http://press.coe.int/press2>. At the beginning of the 2001, the Yugoslav Parliament was granted special guest status in the CoE Parliamentary Assembly <http://press.coe.int/cp/2001/41a(2001)htm>

[6] Yugoslav Mission to the United Nations note to the UN Secretary-General, UN doc. A/46/915 (1992).

2001, the FRY made a declaration that it considered itself a successor to certain treaties to which the former Yugoslavia was a party, including human rights treaties, and acceded to the Genocide Convention.[7] According to the interpretation of the Human Rights Committee, all the states that emerged from the former Yugoslavia would in any case be bound by the ICCPR since, once the Covenant is ratified, the rights enshrined in it belong to people living in the territory of the state party irrespective of whether it broke up into more than one state.[8]

Under the Federal Constitution, ratified international treaties are an integral part of the national legal system and, as such, a part of federal law. International treaties are in the legislative hierarchy higher than both federal and republican statutes. The Federal Constitution designates the Federal Constitutional Court as the court which rules on the conformity of *laws*, other regulations and general enactments *with the Constitution... and with ratified and promulgated international treaties* (italics added; Art. 124 (1.4)). It follows that all laws, including federal, must conform with international treaties.[9] Hence only the provisions of the Federal Constitution have greater legal force than ratified international treaties. In addition to such treaties, international customary law is also a constituent part of national law (Art. 16). In practice, however, government agencies and the courts paid scant attention to internationally guaranteed human rights.

The former Yugoslavia ratified all the major international human rights treaties, including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Elimination of Discrimination against Women, Convention on the Rights of the Child, Convention on the Prevention and Punishment of the Crime of Genocide, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Appendix I).

It also made a declaration recognizing the competence of the Committee against Torture to receive and consider individual communications and communications by states parties under Articles 22 and 21, respectively, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. And, on 22 June 2001, the FRY ratified both the Optional Protocol to the International Covenant on Civil and Political Rights – thereby making it possible for its citizens to seek redress from the UN Human Rights Committee – and the Second Optional Protocol to the Convention, the goal of which is the abolition of the death penalty.[10]

On the basis of Art. 14 (1), the Federal Government on 7 June 2001 made a declaration whereby it recognised the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual and collective complaints against violation of the rights guaranteed by the Convention on the Elimination of All Forms of Racial Discrimination.[11] Pursuant to Art. 14 (2), the Federal Government designated the Federal Constitutional Court as the court competent to receive and consider submissions by individuals or groups in the jurisdiction of the FRY who allege to be victims of violation of the rights guaranteed by this Convention, after all other legal remedies provided by national law have been exhausted.

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[7] Multilateral Treaties Deposited with the Secretary-General of the United Nations <http://www.untreaty.un.org/ENGLISH/bible/englishinternetbiblr//historicalinfo.asp>

[8] "The rights enshrined in the Covenant belong to the people living in the territory of the State Party. Once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State Party, *including dismemberment into more than one State...* (italics added). See para. 4, General Comment No. 26(61) on issues relating to the continuity of obligations under the ICCPR, *Committee on Human Rights*, UN doc. CCPR/C/21/Rev.1/Add.8, 8 December 1997.

[9] The Federal Constitution also prescribes that Yugoslavia "shall fulfill in good faith the obligations contained in international treaties to which it is a contracting party" (Art. 16 (1)).

[10] *Sl. list SRJ* (*Međunarodni ugovori*), No. 4/01.

[11] Multilateral Treaties Deposited with the Secretary-General of the United Nations <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/part1/chapter IV/treaty2.asp>

1.4. Constitutional Charter and Human Rights

The Constitutional Charter of the new state community of Serbia and Montenegro was adopted on 7 December 2002. By end of 2002 it has not been ratified by the parliaments of member states.

The Constitutional Charter envisages that the attained level of human and minority rights cannot be reduced. It is also provides that international agreements on human and minority rights in force in Serbia and Montenegro shall be directly applicable. Furthermore, it envisages adoption of the Charter on Human and Minority Rights, whereas member states have the responsibility to regulate, ensure and safeguard human and minority rights on their territory (Art. 9).

Ratified international agreements and general principles of international law have supremacy over the legislation of Serbia and Montenegro. Otherwise, the Constitutional Charter of Serbia and Montenegro envisages that the Serbian and Montenegrin Parliaments have the jurisdiction to apply international law, co-operate with international organisations and courts and ratify international agreement of Serbia and Montenegro (Art. 10). Besides, the state community of Serbia and Montenegro shall supervise the respect of human and minority rights and provide the protection of these rights, in cases protection has not been provided in the member states (Art. 9). The Constitutional Charter of Serbia and Montenegro provides the Court of Serbia and Montenegro will be competent to review appeals of citizens if an institutions of Serbia and Montenegro violates their rights and freedoms guaranteed by the Constitutional Charter and where there is no other legal remedies available (Art. 19). However, the question is how the system for the protection human and minority rights would function in practice.

1.5. Amnesty and Pardon for Criminal Offences in Connection with the armed conflicts in Former Yugoslavia

The federal Amnesty Act applies to persons who up to 7 December 2000 avoided participating in the wars in the territory of former Yugoslavia (*Sl. list SRJ*, No. 9/01), or, more precisely, men who committed the criminal offences of refusing to bear and use arms (Art. 202, Federal Criminal Code),[12] failed to respond to call up, avoided military service (Art. 214), avoided military service through self-infliction of injury or deceit (Art. 215), went absent without official leave or deserted from the armed forces (Art. 217), avoided recruitment registration and medical examinations (Art. 218), and failed to fulfil material obligations (Art. 219). The Act also grants amnesty to persons who in the period from 27 April 1992 to 7 October 2000 committed or were suspected of having committed criminal offences such as hindering the struggle against the enemy (Art. 118), armed rebellion (Art. 124), calling for a forcible overthrow of the constitutional order (Art. 133), seditious conspiracy (Art. 136) and defaming the reputation of FRY (Art. 157). Criminal proceedings against these persons were dropped, or they were released if already serving sentence and their convictions were deleted from the records. The Act does not apply to persons accused or convicted of the criminal offence of terrorism (Art. 125).

In July 2002 the Amnesty Act (*Sl. list SRJ*, No. 37/02) was adopted, granting amnesty for Yugoslav citizens who in the period from 1 January 1999 to 31 May 2001 on the territory of Preševo, Bujanovac and Medveđa municipalities have committed, or were suspected of having committed criminal offences of terrorism (Art. 125, Federal CC) and seditious conspiracy (Art. 136). Amnesty extends also to those persons who have committed these offences in conjunction with Article 139 (1) and (3) (which incriminate attack against constitutional order, endangering territorial integrity, aiding the enemy, undermining military and defence power (Art. 139 (1)), as well as the attack against constitutional order, accepting capitulation and occupation, endangering territorial integrity, endangering the independence, exerting violence against the highest state bodies, armed rebellion, diversion, sabotage and espionage, endangering and transferring armed groups, weapons and ammunition to the FRY territory during the state of was or immediate threat of war (Art. 139 (3)).

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[12] *Sl. list SFRJ*, Nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 54/90, and *Sl. list SRJ*, Nos 35/92, 16/93, 37/93 and 24/94.

Serbia adopted its own Amnesty Act (*Sl. glasnik RS*, No. 10/01) commuting the sentences of those convicted under the Serbian Criminal Code (Serbian CC). The Act does not apply to those found guilty of rape or unnatural sexual intercourse with a mentally or physically disabled person (Art. 105, Serbian CC)[13] or a person under the age of 14 (Art. 106), or to persons who already have three criminal convictions.

2. Right to Effective Remedy for Human Rights Violations

Article 2 (3), ICCPR:

Each State Party to the present Covenant undertakes:

a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b) To ensure that any persons claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

c) To ensure that the competent authorities shall enforce such remedies when granted.

2.1. Ordinary Legal Remedies

The Federal Constitution prescribes that "the rights and freedoms recognised by the present Constitution shall enjoy the protection of the courts" (Art. 67 (4)). The relevant provisions of the Serbian Constitution are similar (Art. 12 (4)). In its Art. 17, the Montenegrin Constitution guarantees protection of these rights in a "procedure established by law," indicating that judicial protection is not necessarily ensured in all circumstances. However, provided that some other requirements are met, judicial protection is ultimately obtained in this republic through the possibility of constitutional appeal.

In cases of human rights violations, protection can be sought in both civil and criminal proceedings. The choice between these two possibilities depends on the particular right and the manner in which it was violated, as well as the compensation sought. Specific remedies are discussed in the sections dealing with the different rights.

Though criminal proceedings may in some cases be initiated by private citizens, most require action by the public prosecutor. Only if the prosecutor finds no grounds for prosecution and dismisses the case can the injured party assume the capacity of private prosecutor and proceed with his case (Art. 61, Criminal Procedure Code – CPC). In order to preclude action by the victims, public prosecutors in the past frequently failed to institute criminal proceedings for human rights violations committed by government agencies and persons acting in an official capacity. This was particularly evident during the regime of Slobodan Milošević when prosecutors did not take action on such serious abuses as, for instance, torture or degrading treatment by police. Public prosecutors also often failed to notify victims of the dismissal of their complaints within the legally required time-period of eight days (Art. 61 (1), CPC). The victims thereby lost any possibility of pursuing their cases since, under the law, they must act within three months of the day the prosecutor dismisses their complaint or decides to discontinue prosecution (Art. 61 (4), CPC).

2.2. Constitutional Appeal

The Constitutional appeal is a specific legal remedy introduced by the 1992 Federal Constitution and also provided for by the Montenegrin Constitution. These appeals are lodged with the Federal and Montenegrin Constitutional Courts respectively, when "a ruling or action violates the rights and freedoms of man and the citizen enshrined in the present Constitution" (Art. 124 (1.6)), Federal Constitution; Art.

[13] *Sl. glasnik SRS*, Nos. 26/77, 28/77, 43/87, 6/89, 42/89, *Sl. glasnik RS*, Nos. 16/90, 21/90, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98.

113, (1.4)), Montenegrin Constitution). Constitutional appeals cannot be filed when human rights are violated by laws, ordinances and the like, even if the existence of these constitutes a violation of the constitutionally guaranteed rights. The only possibility available in this case is to lodge a motion with the Constitutional Court challenging the constitutionality of such acts, which the Court is not obliged to consider (Art. 127, Federal Constitution).[14]

The human rights "enshrined" in the Federal Constitution for which constitutional appeal is allowed are enumerated in Articles 19–66. They include the human rights guaranteed by international treaties ratified by the FRY or which, under Art. 10, it "recognises and guarantees" under international law. Article 16 states that the generally accepted rules of international law are a constituent part of the internal legal order. Constitutional appeals are accepted by the Montenegrin Constitutional Court only when the matter is not in the jurisdiction of the Federal Constitutional Court (Art. 113 (1.4)), Montenegrin Constitution). The Court has not clarified this provision, and it has not proven thus far to be a barrier to lodging constitutional appeals in Montenegro.

Constitutional appeals may be lodged with the Federal Constitutional Court only by an individual whose rights have been violated, the Federal Government agency charged with human and minority rights (at its own initiative or acting on behalf of the injured party), and by human rights non-governmental organisations on behalf of an injured party (Art. 37, Federal Constitutional Court Act, *Sl. list SRJ*, No. 36/92). The competent government agency has not up to now lodged any appeals and, where those by non-governmental organisations are concerned, the Federal Constitutional Court has interpreted the provision restrictively, ruling that non-governmental organisations may file an appeal only if specifically requested to do so by injured party (Decisions Už. No. 1/95 of 22 February 1995 and 2/95 of 11 October 1995, *Decisions of the Federal Constitutional Court*, pp. 245–246 and 261–262). The ruling in effect cancels out the authority of non-governmental organisations to file such appeals since they (or more precisely, their staff attorneys) could in any case lodge one if duly authorised by the injured party (Art. 20 (1)), Federal Constitutional Court Act). It is also noteworthy that no possibility is provided for the person lodging the appeal to remain anonymous to the public.

The most controversial is the provision under which a constitutional appeal is possible only when no other legal remedy is available (Art. 128, Federal Constitution). Although some legal experts interpret this as meaning that all ordinary remedies (judicial and others) must be exhausted before a constitutional appeal can be filed, the Federal Constitutional Court has taken the position that an appeal is possible only when no other protection exists in law in a given case, not even in theory:

... if dissatisfied with the final decision of the Republican Labour Office, the party is entitled to institute administrative litigation before the Serbian Supreme Court ... The Court has established that the person who filed [this] constitutional appeal had recourse to other means of legal protection, of which he availed himself ... For this reason ... the Court has decided to dismiss the constitutional appeal (italics added; Decision Už. No. 10/95 of 10 May 1995; *Decisions of the Serbian Supreme Court*, p. 256. See also Decisions Už. Nos. 19/95 and 21/95, *id*.).

With this decision, the Court to a major extent made constitutional appeal a purely theoretical remedy since the Yugoslav legal system nominally provides protection in almost all cases of human rights violations.

Nonetheless, considering constitutional appeal No. 35/2000 on 13 June 2001, the Federal Constitutional Court (*Sl. glasnik RS*, No. 39/01) ordered the competent bodies to conduct the procedure for the dismissal of judges prescribed by law and the Constitution. The Court established that the Serbian Supreme Court was bound by the Constitution and statute to determine in general session the reasons for terminating judicial office, that is, the reasons for dismissing certain judges, and found that the prescribed procedure had not been adhered to in the case of Judge Radovan Čogurić. This case was one of the exceptions in which the Constitutional Court ensured legal protection for an individual whose human rights had been violated.

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[14] The Federal Constitutional Court became more active in 2001 in examining the constitutionality of laws, as did also its Serbian counterpart which started function on 20 June 2002 when its members were electred.

Under the Montenegrin Constitution, a constitutional appeal may be lodged only "when no other judicial protection is available" (Art. 113 (1)). The Court's interpretation of the provision has been the same as the Federal Constitutional Court's – that constitutional appeal is possible only when no judicial protection exists, not when all other legal remedies have been exhausted (see, e.g., Montenegrin Constitutional Court Decision U. No. 62/94 of 15 September 1994).

Neither the Federal nor the Montenegrin Constitutional Court has ever considered whether a form of legal protection is effective or not. All they held to be necessary was the existence of some kind statutory protection, if only on paper. Thus, in one case relating to approval of a real estate contract, the Federal Constitutional Court dismissed a constitutional appeal against the inaction of state agencies in the first instance and upon the subsequent complaint. The Court found that legal remedy was available and that an appeal had in fact been filed with a higher body. What it disregarded was that the appeal was actuated precisely by the inaction of that higher body (see Decision Už. No. 21/95, *Decisions of the Federal Constitutional Court*, 1995, p. 265).

2.3. Ombudsman

During 2002, the Serbian Ministry of Justice has forwarded to the Serbian Parliament the Draft act on Ombudsman (Act on People's Attorney).[15] By adopting this Draft act the institution of Ombudsman would be introduced into Serbian legal system for the first time.

Draft act defines the ombudsman institution as an independent and autonomous body that promotes and safeguards human rights and freedoms guaranteed by the constitution and law in cases when they have been violated by a state administration, public services established by Republic of Serbia or other organisations exercising public authorities (Art. 1). Anyone who claims to be a victim of human rights violation file a complaint to the Ombudsman (Art. 2).

Article 11 of the Draft act envisages that the Ombudsman institutes a proceeding on his own initiative or on the basis of complaint filed to him. The procedure is instituted once all available legal remedies have been exhausted (Art. 13 (1)). The said article does not specify the legal remedies.[16] With regard to this, it is unclear whether this provision would include, for instance, the constitutional appeal that has proven to be ineffective mechanism for the protection of human rights. The Ombudsman can initiate a procedure even before all other legal remedies have been exhausted, if he deems that the applicant might suffer significant and irreparable damage (Art. 13 (2)). The said solution is in accordance with international standards in human rights protection, since *post festum* reaction of the Ombudsman could make his role futile.

One of the better solutions adopted by the Draft act is that the Ombudsman is authorised to initiate proceedings before the Constitutional Court and initiate procedure for law adoption in the Parliament. It can deliver opinions on human rights provision in legislation, and can attend sessions of the Serbian Parliament with an authority to propose amendments to draft acts (Art. 7).

The Ombudsman has access to all data kept by administrative bodies, including state, official and professional secret, as well as free access to premises where administrative bodies' affairs are conducted (Art. 8 (1 and 2)). He can without a prior notice inspect the penitentiary facilities for execution of legal sanctions and to interview detained persons in private (Art. 9). Solution contained in the said article does not include police premises, psychiatric and correction facilities. Therefore, there is a need for a more

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[15] One of the remarks made by the experts regarding the Draft act is related to the adopted terminology for this institution. The term "people's attorney" obscures the essence of the ombudsman function and links it to the function of attorney or defence counsel, although these two institutions have nothing in common. Hereinafter the term Ombudsman will be used.

[16] According to the jurisprudence of the European Court for Human Rights, in order to establish the competence of this court all "available and effective" domestic legal remedies need to be exhausted beforehand. Legal remedies, which can in advance said to be neither available nor effective, do not have to be exhausted. This is particularly relevant for the long procedures in legal remedies or for legal remedies which have proven to be without real success before domestic courts (see: *Papamichalopulos v. Greece*, A–260, 1993).

appropriate solution to be adopted in order to provide general control function in all institutions where freedom of movement and other human rights are restricted. It is also unclear why provisions in Art. 12 (3), which envisages that persons deprived of liberty have the right to file a complaint to the Ombudsman in a sealed envelope, deny this right to persons held in custody.

The Ombudsman is elected by the Parliament by two-thirds majority, upon nomination by the Judiciary and Administration Committee of the Parliament (Art. 23 (1)). It shall have a maximum of five deputies; however, their area of responsibility is not specified (e.g. prison issues, police, etc.) (Art. 25 (1)).

According to the Draft act, the Ombudsman has an obligation to submit annual reports to the Parliament on the human rights situation and legal security of citizens in Serbia (Art. 22 (1)).

3. Restrictions and Derogation

Article 4, ICCPR:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A future communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

3.1. General and Optional Restrictions

3.1.1. General Restrictions

Under the Yugoslav constitutions, the general grounds for imposing restrictions on human rights are to ensure the human rights of others (Art. 9 (4)), Federal Constitution; Art. 11, Serbian Constitution; Art. 16 (2)), Montenegrin Constitution) and the prohibition of the abuse of these rights (Art. 67 (3)), Federal Constitution; Art. 13 (3)), Serbian Constitution; Art. 16 (3)), Montenegrin Constitution. None of the constitutions elaborate these two bases.

A similar provision regulating the "exercise" of human rights is to be found in all three constitutions (Art. 67 (2)), Federal Constitution; Art. 12 (1 and 2)), Serbian Constitution; Art. 12 (1.2)), Montenegrin Constitution). Pursuant to Art. 67 (2) of the Federal Constitution, the manner in which certain rights and freedoms are exercised may be prescribed by statute in two cases: 1) when so envisaged by the Constitution and, 2) when necessary to ensure the exercise of those rights. In the first case, the Constitution itself states that the manner in which some rights are exercised is to be prescribed by law. This does not necessarily imply restrictions, although the fact that the Constitution leaves it to statute to elaborate how a specific right is exercised makes it possible to limit the scope to which that right may be exercised (see, e.g. conscientious objection – I.4.8.).

In the second case, the manner in which human rights are exercised may be prescribed by law *when necessary to ensure the exercise of those rights*. This provision refers to human rights that cannot be exercised directly, and makes it possible for the legislature to prescribe by law how they will be realised. This creates a potential for abuse and for imposition of legal restrictions on these rights. There has to date been no closer interpretation by either the legislature or the courts as to which rights can be directly exercised and which cannot. It should also be noted that this provision may be in conflict with Art. 67 (1), which lays down that rights and freedoms are exercised "in conformity with the Constitution."

3.1.2. Optional Restrictions

Optional restrictions also are provided for and defined in the constitutions. The Serbian Constitution states explicitly that human rights may be restricted "when so determined by the Constitution" (Art. 11, Serbian Constitution). Though the Federal and Montenegrin Constitutions are not so explicit in envisaging the possibility of restrictions, they do prescribe them in provisions treating particular rights. The Federal Constitution, for instance, contains a provision under which restrictions may be imposed by the competent authorities on the freedom of peaceful assembly "in order to obviate a threat to public health or morals or for the protection of the safety of human life and property" (Art. 40 (2)). Freedom of movement may be restricted by federal statute "if so required by criminal proceedings, to prevent the spread of contagious diseases, or for the defence of the Federal Republic of Yugoslavia" (Art. 30 (2)).

The Yugoslav legal system does not envisage the principle of proportionality where restrictions on human rights are concerned, nor has this principle been applied by the courts. Yugoslav lawyers are not accustomed to seeking a balance between the public interest that justifies a restriction and the interest underlying the right in question.

3.2. Derogation in a "Time of Public Emergency"

3.2.1. General

The Federal and Serbian Constitutions envisage derogation from certain guaranteed human rights during a state of war. Instead of derogation, both somewhat awkwardly use the term "restriction," which could result in confusion. For its part, the Montenegrin Constitution does not provide for any derogation from the human rights its guarantees even in emergencies.

There is an evident discrepancy between the Federal and the Serbian Constitutions with regard to derogation since the Federal Constitution states that only the Federal Parliament or government may declare a state of emergency (Art. 77 (1.7)), Art. 78, and Art. 99 (1.10)). In addition, since the Federal Constitution enumerates all the human rights, derogation from them pursuant to the Serbian Constitution would be meaningless as they would in any case be guaranteed by the Federal Constitution. It should be borne in mind, however, that the Serbian Constitution was written as the organic act of an independent state and, as a result, major problems are encountered in applying the Federal Constitution. The possibility therefore exists of the Serbian Constitution being used as grounds for derogation from human rights during a state of war.

3.2.2. Derogation During a State of War[17]

Under the Federal Constitution, a state of war, a state of imminent threat of war, and a state of emergency is proclaimed by the Federal Parliament (Art. 78 (3)). If the Parliament is unable to convene, this is done by the Federal Government, upon seeking the opinion of the President of the Republic and the Speakers of the Parliament's Chambers (Art. 99 (1.11)). The government is also empowered to adopt measures regulating matters in the jurisdiction of the Federal Parliament in the event of the legislature not being able to meet, and in accordance with the procedure laid down in Art. 99. However, only during a state of war – not of an imminent threat of war or a state of emergency – may the government adopt acts imposing restrictions on certain human rights:

Enactments adopted during a state of war may throughout the duration of the state of war restrict various rights and freedoms of man and the citizen, except those listed in Articles 20, 22, 25, 26, 27, 28, 29, 35 and 43 of the present Constitution. The Federal Government is obliged to seek the approval of the Federal Parliament for those measures as soon as it is able to convene (Art. 99 (11)), Federal Constitution).

It ensues from this provision that the Federal Parliament, if able to convene, may instead of the government adopt acts derogating certain human rights in a state of war.

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[17] For more details on decrees that placed restrictions on certain rights and freedoms during the sate of war in Yugoslavia in 1999, see *Human Rights in Yugoslavia 1999*, I.3.2.4.

The Serbian Constitution contains similar provisions but also empowers the President of Serbia to declare a state of war if the republic's Parliament is unable to convene and after seeking the opinion of the Premier (Art. 83 (1.6), Serbian Constitution). During a state of war, the President of Serbia, at his own initiative or at the proposal of the government, may issue acts placing restrictions on certain human rights, and submit them to Parliament for approval as soon as it is able to convene (*id*. para. 7).

These provisions in the two constitutions requiring parliamentary approval for derogation are in accordance with the OSCE standards in this field (*Document of the Moscow Meeting of CSCE on the Human Dimension*, 1991, para. 28.2).[18]

Derogation from certain human rights during a state of war as envisaged by the Federal and Serbian Constitutions is in accordance with Art. 4 of the ICCPR, which allows such measures "[in] time of public emergency which threatens the life of the nation...". The provisions of the two constitutions are in fact more restrictive as they confine the possibility only to a state of war, whereas the ICCPR allows derogation in other public emergencies too. In common with the ICCPR, the constitutions lay down that the state of war must be officially proclaimed.

Neither the Federal nor Serbian Constitution envisage, however, that the measures taken in a state of war must be in proportion to the threat to the state, namely that they be "to the extent strictly required by the exigencies of the situation" (Art. 4, ICCPR; *Document of the Moscow Meeting of CSCE on the Human Dimension*, 1991, para. 28.7). Since the Yugoslav legal system does not recognise the principle of proportionality, the possibility exists of the federal or republican authorities taking advantage of a state of war to suspend certain human rights whether or not this is justified by the threat to the state.

The Serbian Constitution does not stipulate the rights from which there can be no derogation during a state of war and gives the President of the Republic discretionary powers in this regard (Art. 83 (7)), which could result in violation of Art. 4 (1 and 2) of the ICCPR. Hence, under this Constitution, all rights may be derogated from during a state of war.

The Federal Constitution enumerates the rights that cannot be derogated in a state of war (Art. 99), but the list does not correspond fully to the rights cited in the ICCPR. Like the ICCPR, it envisages no derogation from the prohibition of discrimination on the grounds of race, sex, language, religion or social origin and, in addition, cites political or other beliefs, education, property, or other personal status (Art. 20), the prohibition of torture (Art. 22 (1) and Art. 25), the principle of legality in criminal law (Art. 27), and freedom of conscience (Art. 35 and 43).

Where it falls short, however, is its failure to mention the right to life (Art. 6, ICCPR; Art. 21, Federal Constitution), which does not figure among the rights from which there can be no derogation. This is the case also with some rights not explicitly guaranteed by the Constitution: the prohibition of slavery and servitude (Art. 8, ICCPR) imprisonment on the ground of inability to fulfill a contractual obligation (Art. 11, ICCPR), and the right to be recognised as a person before the law (Art. 16, ICCPR). In contrast to the ICCPR, the Federal Constitution stipulates no derogation from rights such as the inviolability of the physical and psychological integrity of the individual, his privacy and personal rights (Art. 22), to equal protection of the law, including to appeal (Art. 26), to protection against double jeopardy (Art. 28), to a fair trial (Art. 29), and to freedom of expression and thought (Art. 35).

3.2.3. State of Emergency

Neither the Federal nor the Serbian Constitution provides for any derogation of rights during a state of emergency or of imminent threat of war. Under the Serbian State of Emergency Act (*Sl. glasnik RS*, No. 19/91), however, the President of the Republic, who may declare a state of emergency at the proposal of the government, is empowered to issue orders and other acts to deal with the situation. These include compulsory work orders, and restrictions on freedom of movement and residence, on the right to strike, and on the freedom of assembly, political, trade union and other activities (Art. 6 (1)), State of Emergency Act).

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[18] See also: *The Paris Minimum Standards of Human Rights Norms in a State of Emergency*, Section A, para. 2, 1984; ILA, Report of the First Conference Held at Paris, London, 1985; 79 *AJIL*, 1072 (1991).

As noted above, the Constitution authorises the President of Serbia during a state of war to issue acts placing restrictions on rights and freedoms (Art. 83 (1.7)). On the other hand, during a state of emergency the President may "take the measures required by the circumstances ... in accordance with the Constitution and law." There is no mention of restrictions on human rights. If derogation at a time of the gravest threat to the country – a state of war – explicitly requires constitutional authority, the lack of such a requirement at a time of lesser danger – a state of emergency – cannot be interpreted as approval to impose restrictions on human rights. In that sense, Art. 6 (1) of the State of Emergency Act is unconstitutional. The Act is also inconsistent with the Serbian Constitution, which in its turn is inconsistent with the Federal Constitution since this organic act stipulates that a state of emergency may be proclaimed only by the federal authorities.

Under the Serbian State of Emergency Act, derogation of rights is not subject to ratification by the Parliament, and this constitutes a departure from the OSCE standards (*Document of the Moscow Meeting of CSCE on the Human Dimension*, 1991, para. 28.2).

In contrast to the restrictions that may be imposed on human rights during a state of war, the Serbian Constitution envisages in a state of emergency only "measures such as are required by the circumstances" (Art. 83 (8)), Serbian Constitution). Furthermore, the State of Emergency Act introduces some proportionality by stating that the objective of these measures is "to ensure the elimination of the state of emergency as soon as possible and *with the least detrimental consequences"* (italics added; Art. 5 (2) of the Act). The list of rights on which restrictions may be placed in a state of emergency is in accordance with Art. 4 (2) of the ICCPR.

4. Individual Rights

4.1. Prohibition of Discrimination

Article 2 (1), ICCPR:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26, ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4.1.1. General

Where the prohibition of discrimination is concerned, the FRY is bound, besides the ICCPR, by the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, ILO Convention No. 11 on Employment and Choice of Occupation, and the UNESCO Convention Against Discrimination in Education.

The Federal (Art. 20), Serbian (Art. 13) and Montenegrin (Art. 15) Constitutions all prohibit discrimination. The subject matter is most closely regulated by the three paragraphs of Art. 20 of the Federal Constitution:

Citizens shall be equal irrespective of their nationality, race, sex, language, faith, political or other beliefs, education, social origin, property or other personal characteristics.

Everyone shall be equal before the law.

Each person shall be duty bound to respect the rights and freedoms of others and shall be held responsible for it.

The scope of this article falls considerably short of Yugoslavia's obligation under Art. 26 of the ICCPR. The Federal Constitution, like the first part of Art. 26, guarantees equality before law, i.e. that law is applied equally to all. Both the Federal and the two republican constitutions guarantee "equal protection of the law" only to citizens, which is also in line with Art. 26 of the ICCPR. This includes two kinds of obligations: prohibition of discrimination by laws and other regulations, and the obligation to guarantee by law equal and effective protection against any discrimination. A literal interpretation of paragraph 1, Art. 20 of the Federal Constitution, however, leads to the conclusion that aliens, refugees and stateless persons can be discriminated against. Note should be made here of Art. 66 (1) of the Federal Constitution, which states that "Aliens in the Federal Republic of Yugoslavia shall enjoy the freedoms and the rights and duties laid down in the Constitution, federal laws and international treaties." This means that aliens seeking protection from discrimination may invoke only the ICCPR and other international treaties to which Yugoslavia is a party.

Although Art. 16 of the Federal Constitution states that international human rights treaties have the greater legal force, Yugoslav courts as a rule do not take them into consideration, in particular those dealing with human rights; hence the need to regulate constitutional protection against discrimination in more detail than is the case at present.

The definition of discrimination in Art. 20 of the Federal Constitution is similar to the definitions in international instruments. Amongst the grounds on which discrimination is prohibited, the Constitution cites "other personal characteristics" – a synonym for the word "status" used in the ICCPR and the ECHR – and like these two international acts, makes it possible to prohibit discrimination on grounds that are not specifically listed.

The Montenegrin Constitution features an original solution (Art. 15) with regard to the prohibition of discrimination as, in contrast to other national and international acts, it does not enumerate different kinds of discrimination:

Citizens shall be free and equal, irrespective of any distinctions or personal characteristics.

All shall be equal before the law.

The fact that the Montenegrin Constitution prohibits discrimination based on "any distinctions or personal characteristics" rather than citing the usual grounds, creates the possibility of a broader interpretation which, along with the traditional forms, could include new forms of discrimination. The Montenegrin Constitutional Court has not thus far had an opportunity to interpret this provision. But it should be borne in mind that, like the Federal Constitution, the Montenegrin guarantees protection against discrimination only to citizens.

Article 13 of the Serbian Constitution states:

Citizens shall have equal rights and responsibilities and shall enjoy equal protection before state and other bodies, irrespective of race, sex, birth, language, nationality, religion, political or other beliefs, education, social origin, property or other personal characteristics.

A major defect of this Constitution is that it fails to guarantee equality before the law to all. It also speaks only of "citizens" and, finally, prohibits only discrimination by government and other bodies. This may be taken as meaning that Serbia has no constitutional obligation to prevent discrimination by other actors, which could be of major significance with respect to discrimination in the field of employment (see ILO Convention No. 11).

Nonetheless, Yugoslav legislation defines all forms of discrimination as punishable criminal offences, including discrimination in the use of language and script (Art. 60 and 61, Serbian CC; Art. 43, Montenegrin CC; Art. 154, Federal CC. Thus, under Art. 60 of the Serbian CC:

Whoever denies or restricts on the grounds of nationality, race, religion, political or other belief, ethnicity, sex, language, education or social status, the rights of citizens under the Constitution, law, other regulations or ordinances or ratified international treaties, or extends favours or privileges to citizens on these grounds, shall be punished with a term of imprisonment of three months to five years.

This definition of discrimination as a criminal offence fulfills the obligation undertaken by all states parties under Art. 2 (1.b.) of the Convention on the Elimination of All Forms of Racial Discrimination to prohibit racial discrimination practised by persons or organisations. Furthermore, and in accordance with

Art. 4 of the Convention, the Federal Criminal Code prohibits incitement to racial hatred and intolerance (Art. 24, Federal CC; see I.4.9.6).

On the basis of Art. 14 (1), in 2001 the Federal Government made a declaration whereby it recognised the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual and collective communications relating to violations of the rights guaranteed by the Convention on the Elimination of All Forms of Racial Discrimination.[19] Furthermore, the Federal Government designated the Federal Constitutional Court as the court competent to receive and consider submissions by individuals or groups in the jurisdiction of Yugoslavia who allege to be victims of violation of the rights guaranteed by this Convention, after all other legal remedies provided by national law have been exhausted (Art. 14 (2)).

4.1.2. Examples of Discrimination in Yugoslav Legislation

4.1.2.1. Some criminal offences against dignity and morals. – The Act on Amendments to the Criminal Code of the Republic of Serbia of 26 February 2002 and the Act on Amendments to the Criminal Code of the Republic of Montenegro of 19 June 2002, rape of women in marriage is incriminated for the first time (Article 103 of CC of Serbia; Article 86 of CC of Montenegro). Thus the discriminatory provision according to which the crime of rape exists only when the passive subject is a woman who is not married to the perpetrator, was deleted. The same amendment also applies to the crimes of forced sexual intercourse and intercourse with an infirm person (Art. 104 (1), Art. 105 (1) Serbian CC; Art. 87 (1), Art. 88 (1) Montenegrin CC). The discriminatory provisions based on the marital status of women are thereby deleted.

A male can be a victim of these crimes (with the exception of rape as noted above) only if compelled to engage in an act of unnatural sexual intercourse, which implies homosexual intercourse. Provisions treating unnatural sexual intercourse do in fact incriminate homosexual rape (Art. 110 (1)), Serbian CC; Art. 91, Montenegrin CC). The law, if a victim is male however, does not incriminate the rape of a male by a female, compelling a person to engage in sexual intercourse by threats or in other prohibitive conditions, rape of an infirm person and unnatural sexual intercouse with an infirm person (only Montenegrin CC – Art 87 (2) and 88 (2)). Only Art. 107 of the Serbian CC incriminates rape through abuse of official position. In addition, only a female can be a victim of solicitation for prostitution (Art. 251, Federal CC). This definition of criminal offences constitutes discrimination and unjustifiably places men in a more unfavourable position than women. It also reflects the prevailing social stereotype of women as mere sexual objects.

A discriminatory provision of the kind was deleted by the Act on Amendments to the Serbian CC of March 2002; the earlier provision envisaged that the victim of sexual intercourse and unnatural sexual intercourse through abuse of official position can only be a female (Art. 107). Now the victim of this crime can also be a male.

Yugoslav legislation does not incriminate consensual intercourse between persons of age and of the same sex. The Serbian and Montenegrin Criminal Codes define as a crime sexual intercourse with a person under the age of 14 even with the consent of the minor (Art. 106, Serbian CC; Art. 89, Montenegrin CC). The lawmakers have thus set 14 as the age of consent. But sexual intercourse between consenting males, one of whom is a minor over the age of 14, is defined as a crime (Art. 110 (4), Serbian CC; Art. 91 (4), Montenegrin CC). These provisions are discriminatory as they envisage different ages of consent to homosexual intercourse (18) and heterosexual and lesbian intercourse (14).

4.1.2.2. Refugees and citizenship – The status and rights of refugees in Yugoslavia are regulated by the relevant international instruments, primarily the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on the Status of Refugees. Both Serbia and Montenegro have passed their own legislation in this field: the Serbian Refugee Act (*Sl. glasnik RS*, No. 18/92), and the Montenegrin

[19] Multilateral Treaties Deposited with the Secretary-General of the United Nations <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/part1/chapter IV/treaty2.asp>

Displaced Persons Relief Act. Both have been severely criticised for unjustifiably narrowing the definition of a refugee and the rights of refugees.

Under Art. 1 of the Serbian Refugee Act, refugees are:

Serbs and citizens of other nationality forced by pressure exerted by the Croatian authorities or the authorities of other republics, threat of genocide, persecution or discrimination on the grounds of their religion and nationality or political beliefs, to leave their homes in those republics and flee to the territory of the Republic of Serbia.

That this law is discriminatory in nature is confirmed by the opening "Serbs and citizens of other nationality." Although all refugees must have the same legal and social status, the provision makes a distinction between Serb and other refugees. Moreover, it applies only to refugees from the territory of former Yugoslavia persecuted by the authorities of the ex-republics, and it remains unclear how it could be applicable also to refugees from countries outside the former Yugoslavia.

The problems that arose when the Yugoslav Citizenship Act (*Sl. list SRJ*, No. 33/96; see I.4.16) was passed were not removed by its subsequent amendment (*Sl. list SRJ*, No. 9/01). Under this law, all citizens of the former SFRY who were domiciled in the territory of the FRY on 27 April 1992 – including many refugees who formally registered as residents up to that date – may acquire citizenship automatically on the basis of Art. 45. However, those who arrived after that date can be granted Yugoslav citizenship only by the federal or republican ministries of internal affairs, which have discretionary powers in determining whether or not the requirements are met, and are bound to "take into account the interests of security and defence and the international position of Yugoslavia" (Art. 48). Where acquiring citizenship is concerned, the provision places at a disadvantage those who sought refuge in Yugoslavia after 27 April 1992 as compared to those who arrived before that date.

4.1.3. Draft Act against Discrimination

The Institute for Comparative Law drew up a Draft act against discrimination. Experts of the Council of Europe positively assessed the Draft and made their remarks. It is expected that the final text of the Draft will be submitted to the Federal Government by the end of 2002.

The Draft act regulates the prohibition of and protection against discrimination in all spheres of social life and establishes frameworks of special protection against discrimination of particularly handicapped categories of people (Art. 1).

The notion of discrimination is defined so as to mean making any unjustifiable and prohibited distinction between and unequally treating persons or groups based on personal characteristics (Art. 2).

The Draft act prohibits all kinds of discrimination – by discrimination particularly meaning direct and indirect discrimination, calling for and inducing discrimination, assisting in discriminatory actions and violating the principle of equal rights and obligations (Art. 5). Severe forms of discrimination are particularly pointed out, such as any instigation of, incitement to and fanning of national, racial, religious and other kinds of inequality, hate or intolerance; any propagation or deliberate implementation of discrimination by state authorities, as well as any kind of slavery, human trafficking, apartheid and ethnic cleansing (Art. 8).

Furthermore, the Draft act lays down the prohibition of writing and displaying discriminatory messages and symbols, calling for discriminatory actions against other persons, the violation of which entails civil and legal and minor offence sanctions (Art. 10). The Draft especially envisages the obligation of the state and state authorities to ensure equal rights and freedoms for all its citizens regardless of their personal characteristics. It also prescribes special forms of the prohibition of discrimination: in proceedings before state authorities (Art. 12); in the sphere of employment (Art. 13); in public services (Art. 14); in religious rights (Art. 15); discrimination based on sex (Art. 16); discrimination based on sexual affiliation (Art. 17); discrimination against children (Art. 18); discrimination in the sphere of education and professional training (Art. 19); prohibition of discrimination against minorities (Art. 20); prohibition of discrimination based on political beliefs (Art. 21); as well as discrimination against persons with special needs (Art. 22).

The Draft act also lays down procedures which, although in contradiction to the principle of equality, do not constitute discrimination. Thus, regulations, decisions and special measures, i.e. measures of the so-called affirmative action, adopted with a view to promoting the position of ethnic, religious, linguistic and other groups in order to extend special protection to them to support their survival and development, are not considered discrimination (Art. 6 (2)).

For the purpose of this Draft act, mechanisms of protection envisage protection before the Federal Constitutional Court (lodging a constitutional appeal), in administrative procedure and administrative dispute (Art. 23 and 24).

The Draft act also regulates civil and legal protection against the court (proceedings and appropriate appeals) and temporary measures through which protection is implemented; the right to this protection applies to every person injured by discriminatory actions, but, in certain cases and under certain conditions, also to organisations for the protection of discriminatory groups (Art. 26 – 30). Furthermore, the Draft lays down irrefutable assumption of guilt if it is indisputable between the parties or the court established that there was an act of direct discrimination (Art. 29). He who was subjected to discriminatory treatment does not have to prove either the offence or the act of discrimination itself. Instead it is sufficient to show that there is reason to believe that he was subjected to discriminatory treatment. It is the responsibility of the offender to prove that there was no act of discrimination.

Finally, the Draft act prescribes disciplinary and criminal responsibility, including appropriate sanctions (Art. 31–33).

4.2. Right to Life

Article 6, ICCPR:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorise any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

4.2.1. General

The Yugoslav constitutions guarantee the inviolability of human life (Art. 21 (1), Federal Constitution; Art. 14 (1), Serbian Constitution; Art. 21 (1), Montenegrin Constitution), underscoring that this is a right that belongs inherently to every individual.

While the Federal Constitution lays down that criminal offences prescribed by federal statute may not carry the death penalty (Art. 21 (22), the Serbian and Montenegrin allow capital punishment: “Sentence of death may be imposed exceptionally for the most serious criminal offences” (Art. 14 (2), Serbian Constitution; Art. 21 (2), Montenegrin Constitution).

This meant that, paradoxically, capital punishment may not be imposed for some very grave crimes in federal jurisdiction such as war crimes, genocide or international terrorism, but may be handed down for murder, which is in the jurisdiction of the republics.

However, capital punishment was completely abolished in the Federal Republic of Yugoslavia in 2002. Amendments to the criminal codes of Serbia and Montenegro brought to an end the process which started in 2001. In June 2001 the Federal Republic of Yugoslavia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights abolishing capital punishment (*Sl. list SRJ (Međunarodni ugovori)*, No. 4/01). The Act on Amendments to the Federal CC (*Sl. list SRJ*, No. 61/01) was adopted in November 2002, abolishing paragraph 1 of Article 34 of the Federal CC laying down capital punishment as a sanction which can be pronounced when prescribed by republican law. As the prescription of criminal sanctions is in the purview of the federation, the possibility of prescribing capital punishment for offences which are in the purview of the republic as well was abolished. In Article 95, paragraph 1, item 1, words "death sentence or a term of imprisonment of 20 years" were changed to read "a term of imprisonment of 40 years". In accordance with those changes other articles of the law pertaining to capital punishment were also amended (Art. 35 (1), Art. 48 (2.1) and Art. 97, item 1). The republican criminal codes are in accordance with the Federal CC. In the course of 2002 the criminal codes of both republics were amended. Upon the adoption of the Act on Amendments to the Serbian CC (*Sl. glasnik RS*, No. 10/02), adopted by the National Parliament on 26 February 2002, republican criminal legislation was harmonized with amendments to the Federal CC. By deleting Article 7 and amending Article 47 (2) capital punishment was replaced with a term of imprisonment of 40 years.

The Montenegrin Parliament adopted the Act on Amendments to the Monetnegrin CC (*Sl. list RCG*, No. 30/02) on 19 September 2002, replacing capital punishment with a term of imprisonment of 40 years in Article 30 (2), in accordance with amendments to the Criminal Code.

Capital punishment sentences should therefore be replaced with a term of imprisonment of up to 40 years, and in order to observe the principle of certainty, a legal act should be adopted to regulate this matter. So far no court decision has been brought concerning this issue and the Serbian Supreme Court has not received any request of a competent public prosecutor or a convicted person to commute capital punishment to a term of imprisonment. Abolition of the death sentence has a bearing on whether or not Yugoslavia will become a member of the Council of Europe.[20]

The Yugoslav constitutions also contain guarantees of fair trial for criminal offences, amongst which the principle of *nulla poena sine lege* (Art. 27, Federal Constitution; Art. 23, Serbian Constitution; Art. 25, 26, Montenegrin Constitution, see: I.4.6).

The state has special responsibilities with regard to persons who have been detained or whose freedom is otherwise restricted. Failure to provide medical aid or food, to prevent acts of torture or attempts at suicide by these persons could be in violation of Art 6 (1) of the ICCPR. In this sense, the Yugoslav constitutions proclaim the inviolability of the physical and psychological integrity of the individual, respect for human dignity, and prohibit any form of violence against detained persons (Art. 25 (1)), Federal Constitution; Art. 28, Serbian Constitution; Art. 24, Montenegrin Constitution, see I.4.3).

With respect to the right to life, states also have an obligation to take active measures to prevent malnutrition, promote medical care and other social welfare activities aimed at reducing the mortality rate and extending life expectancy (see General Comment No. 6/19, Human Rights Committee, 27 July 1982).

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[20] Among the obligations to be fulfilled by Yugoslavia to become a member of the Council of Europe is signing all the Protocols to the Convention at the time of admission. That includes Protocol No. 6 obliging member states to abolish capital punishment except for "offences committed at a time of war or an imminent threat of war", as well as Protocol 13 adopted by the Parliamentary Assembly in February 2002, prescribing the abolition of capital punishment without exception. Included in the list of obligations are the ratification of the European Convention and all the Protocols thereto within one year from Yugoslavia's admission to the Council of Europe, the abolishment of capital punishment in Montenegro within six months from admission and the imposition of moratorium on execution pending abolishment. 2 More information regarding the listed obligations submitted to FRY authorities by the President of the Parliamentary Assembly Mr. Peter Shieder during his visit to Belgrade in August 2002 can be found on <http://assembly.coe.int/communication>

Thus the Yugoslav constitutions state that everyone is entitled to health care, adding that children, expectant mothers and the elderly have the right to publicly financed health care if they are not covered by another insurance program, while other persons receive such care in accordance with law (Art. 60, Federal Constitution; Art. 30, Serbian Constitution; Art. 57, Montenegrin Constitution).

Where hazardous activities that could have an adverse effect on the health of those involved are concerned, the state is bound to issue health risk warnings and establish simple and effective mechanisms to enable the persons concerned to obtain all the necessary information (see *McGinley and Egan v. United Kingdom*, ECHR, App. No. 21825/ 93/94 (1998)).

Under Article 13 of the Yugoslav Environment Protection Act (*Sl. list SRJ*, No. 24/98), the competent government agencies must provide the public with accurate and timely information on the state of the environment and any pollution that represents a threat to human life and health or to the environment. The corresponding articles in the republican statutes are very similar (Art. 8, Serbian Environment Protection Act, *Sl. glasnik RS*, Nos. 66/91, 83/92, 53/93, 67/93, 48/94, 44/95 and 53/95; Art. 7 (12), Montenegrin Environment Act, *Sl. list RCG*, Nos. 12/96, 55/00).

In contravention of the ICCPR, the Federal Constitution does not prohibit derogation from the right to life when an imminent threat of war is declared. The Serbian Constitution also allows derogation from guaranteed human rights during a state of war and does not even specify rights on which no restrictions may be imposed (see I.1.3.2.).

4.2.2. Criminal Law

Offences against the right to life are defined in both the criminal legislations of the constituent republics and of the federal state, and are prosecuted by the state, that is, the competent public prosecutor. The difference between the republican and federal statutes lies in the subject matter they regulate. Thus the federal statute deals with crimes against humanity and international law such as genocide (Art. 141), war crimes (Art. 142–144), extrajudicial killing or wounding of an enemy (Art. 146), and incitement to a war of aggression (Art. 152). This is in keeping with Yugoslavia's obligations under international treaties, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Convention on the Protection of Victims of War, and the 1977 Additional Protocols on international and non-international armed conflicts.

Republican statutes also define offences against life (Art. 47, Serbian CC; Art. 30, Montenegrin CC). Homicide carries a minimum penalty of five years in prison while aggravated forms of the crime are punishable with at least 10 years in prison and 40 years as a maximum sentense.

The Serbian CC (Art. 51 (1)), and its Montenegrin counterpart (Art. 34 (1)) define as punishable incitement to suicide and assisting a person to commit suicide. This means that Yugoslav law does not allow euthanasia and does not recognise it as a mitigating circumstance in cases of assisted suicide.[21]

4.2.3. Abortion

Neither the ICCPR nor the ECHR define the beginning of life, but interpretation has brought out that the provisions treating the right to life do not pertain to the foetus.

Abortion is regulated by republican statutes: the Serbian Act on Abortion in Medical Facilities (*Sl. glasnik RS*, No. 16/95), and the Montenegrin Act on Abortion Procedure (*Sl. list SRCG*, Nos. 29/79, 31/79, 29/89, *Sl. list RCG*, Nos. 28/91, 17/92 and 27/94). Under both laws, abortion may be performed only at the request of the woman, with the Serbian law also requiring written consent of the woman. A request by a pregnant woman for an abortion is sufficient up to the tenth week (Art. 6, Serbian Act; Art. 2, Montenegrin Act) and, in exceptional cases only, after the twentieth week of pregnancy.

Every abortion after the tenth week is considered exceptional and may be performed only in the following circumstances:

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[21] It is interesting to note that the legislation of the Kingdom of Yugoslavia (before World War II), recognised mercy killing as a mitigating circumstance.

1. to save the life of the woman or eliminate a serious risk to her health (health reasons);

2. if there is a risk of the child being born with a severe physical or mental disability (eugenic reasons);

3. if conception was the result of a criminal offence such as rape (social reasons).

Decisions on abortions up to the tenth week of pregnancy are by the attending physician; up to the twentieth week by a panel of medical doctors, and after the twentieth week by the medical ethics board of the hospital.

4.2.4. Use of Force by Government Agencies

Both the Serbian and Montenegrin Acts on the Enforcement of Criminal Sanctions (*Sl. glasnik RS*, No. 16/97; *Sl. list RCG*, No. 25/94) prescribe when force may be used against convicts. The Serbian Act states that force may be used only to prevent escape, a physical attack on another person, self-inflicted injury, material damage, and in cases of active or passive resistance to a legitimate order by an on-duty officer (Art. 136). The corresponding provision in the Montenegrin Act is virtually identical (Art. 61).

The Serbian Act prescribes in detail the use of firearms (Art. 138). Though these provisions are based mainly on the Serbian Interior Affairs Act, other ancillary legislation regulating the use of force must be taken into account, including the Regulations on the Use of Force in Detention Facilities (*Sl. glasnik SRS*, No. 30/78). The Regulations allow the use of firearms, with possible lethal consequences, to prevent the escape of a convict from a high security prison, regardless of the length of the sentence the prisoner is serving (Art. 4 (1.1)). This in effect means that a prison guard may shoot, possibly fatally, a prisoner attempting to escape, irrespective of whether his crime was multiple murder or petty larceny. There is, however, a certain measure of control over the use of force under the Regulations, which envisage that the force used in a given situation should result in the least harmful consequences, that before using a firearm, the prison guard must warn the escaping prisoner that he will shoot, first orally and then with a shot fired into the air, and that use of firearms is ruled out when the escaping prisoner conceals himself in a group of civilians whose lives might be endangered.

The Serbian Interior Affairs Act (*Sl. glasnik RS*, Nos. 44/91, 79/91, 54/96, 30/00 and 8/01) and its Montenegrin counterpart (*Sl. list RCG*, No. 24/94) regulate the use of force by law enforcement officers, and the matter is elaborated in detail in ancillary legislation. Under the Serbian Act, police may use firearms only when other means do not suffice to protect assets and property (Art. 23 (1.1–6.)) and to "repel an attack on a facility (line 6). Deprivation of life in this case does not come under any of the three exceptions provided for by the ECHR (Art. 2 (2)), nor does it meet the test of "strict proportionality" (see *Stewart v. United Kingdom*, ECHR, App. No. 1004/82 (1982); *McCann and Others v. UK*, ECHR, App. No. 18984/91 (1995), Publications of the ECHR, Series A, Vol. 324; *Kelly and Others v. UK*, ECHR, App. No. 30054/ 96 (2001); *Gul v. Turkey*, ECHR, App. No. 22676/93 (2001)). The provisions of the Montenegrin Interior Affairs Act are similar (Art. 17 and 18), and oblige a law enforcement officer to give warning before using a firearm (Art. 19 (2)).

The cited statutes and ancillary legislation in general provide far broader grounds for the use of force than envisaged by Art. 2 of the ECHR, especially where protection of assets and property is concerned. Another problem is that the law does not insist on "absolute necessity," that is, proportionality, and usually uses the term "if other means do not suffice."

4.3. Prohibition of Torture, Inhuman or Degrading Treatment or Punishment

Article 7, ICCPR:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

4.3.1. General

Besides Article 7 of the ICCPR on the prohibition of torture, the FRY is bound also by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention"). When it ratified this Convention, the FRY also recognised the competence of the Committee against Torture to receive and consider communications by state parties and by or on behalf of individuals (Art. 21 (1)) and 22 (1)) of the Convention).[22]

The Yugoslav constitutions also prohibit torture. An analysis of the provisions of the Federal Constitution (Art. 22 and 25) is fully applicable to those contained in the Serbian (Art. 26) and Montenegrin (Art. 24) Constitutions. The Federal Constitution lays down that:

The inviolability of the physical and psychological integrity of the individual, his privacy and personal rights shall be guaranteed.

The personal dignity and security of man shall be guaranteed (Art. 22).

Respect for the human personality and dignity in criminal and all other proceedings, in the event of detention or other restriction of freedom, as well as during the serving of a prison sentence, shall be guaranteed.

The use of force against a suspect who has been detained or whose freedom has been restricted, as well as any forcible extraction of confessions or statements, shall be prohibited and punishable.

No one may be subjected to torture, or to degrading treatment or punishment.

Medical and other scientific experimentation may not be carried out on an individual without his consent (Art. 25).

The need for two separate provisions to enforce respect for the human personality may be questioned. One possible answer is that Article 22 is a general prohibition of torture and similar treatment, i.e. lays down an obligation to ensure the inviolability of an individual's physical and psychological integrity, and hence covers both government agencies and private citizens. Consequently, Article 25 should only further elaborate the general obligation under Article 22 with respect to the state and its officials, who are prohibited from subjecting an individual to torture or similar treatment "in criminal and all other proceedings..." This emphasises the responsibility of state agencies, in particular the police who figure prominently in criminal proceedings.

The wording of paragraphs 3 and 4 of Article 25 is borrowed from Article 7 of the ICCPR, though not in entirety as they omit to prohibit cruel or inhuman treatment and punishment. A similar omission is to be found also in the last paragraph of Article 25, which prohibits medical and scientific experimentation on an individual without his consent. It is not stipulated, however, that this consent must be "free." Many legal writers consider the word to be crucial in the ICCPR's Article 7.

The Federal Constitution also guarantees compensation for damages sustained as a result of the "unlawful or improper conduct" of a government official or agency, which should be constructed as including compensation in cases of torture or similar treatment (Art. 123). Compensation is sought by filing a civil action, as well as in the course of criminal proceedings against persons indicted for torture or similar treatment (Art. 103, CPC).

The Federal Constitution allows no derogation from the prohibition of torture even during a state of war. The Serbian, however, makes possible derogation without any restrictions during a state of war (see I.3.2.2). The Montenegrin Constitution is silent on this point.

4.3.2. Criminal Law

Under the Torture Convention, states must ensure that all acts of torture are offences under their criminal law and take into account their grave nature when prescribing penalties (Art. 4). Several

[22] In May 2001, the Committee against Torture handed down its first decision on a communication submitted by an individual against Yugoslavia (*Ristić v. Yugoslavia*, Com. No. 113/1998) in which it found Yugoslavia in violation of its obligations under the Torture Convention. For more details see II.2.3.

provisions of national law treating abuse of official position prohibit torture, with federal officials being liable under federal statute (Chapter XIX, Federal CC). The most important criminal offence treated therein is civil injury (Art. 191):

A person acting in an official capacity who abuses another by inflicting severe physical or psychological suffering, or coerces or insults him, or otherwise treats him in a manner violating his human dignity, shall be punished with a term of imprisonment of three months to three years.

Though the term "torture" is not explicitly used, the offence encompasses the infliction of severe physical or psychological suffering, as well as the enforcement of criminal sanctions, and thus corresponds to the definition used in the Torture Convention.[23] An important point is that, in contrast to the Convention (Art. 1), *intent* is not required. Use of force, even when severe physical or psychological injury is not a consequence, as well as ill-treatment and violation of human dignity, i.e. actions that come under inhuman or degrading treatment, are also prohibited.

The Federal CC incriminates the extraction of statements (Art. 190). A statement extracted by force is defined as a confession or any statement obtained from an accused, witness, expert witness or other person by an on-duty law enforcement agent through the use of force, threats, or any other proscribed means. The law envisages two degrees for this criminal offence: simple and aggravated. Aggravated extraction of a statement requires extreme force to have been used or consequences of a serious nature for the victim in subsequent legal proceedings against him, and carries a minimum penalty of one year in prison.

In 1998, the Committee against Torture criticised the FRY for the failure of its criminal law to prohibit torture in itself, in accordance with Art. 1 of the Torture Convention, and recommended introduction of the criminal offence in national legislation as it is defined in the Convention.[24] This, however, has not been done to this day.[25]

Though the Federal Criminal Code does not explicitly prohibit the extraction of statements through the use for that purpose of medical or scientific experimentation, Art. 190 bans the obtaining of statements by "other proscribed means," which may be constructed as meaning such experiments.

The Torture Convention also prohibits incitement or acquiescence to infliction of severe pain or suffering by a person acting in an official capacity. The Federal CC prohibits incitement to civil injury, extraction of statements or violation of the equality of citizens, but it is debatable whether an official who incites others to torture or acquiesces to it could be prosecuted on the basis of this provision. Depending on the circumstances, other articles of the CC could be applied: Article 174 (abuse of official position), Article 182 (dereliction of duty), Article 199 (failure to report a criminal offence carrying a prison term of five years or more).

In view of the gravity of torture, it would seem that the punishment envisaged for civil injury (Art. 191, Federal CC) – three months to three years imprisonment – is too lenient, and, furthermore, an attempt to commit the act is not punishable.

The Serbian and Montenegrin Criminal Codes regulate the prohibition of torture much alike the Federal Code. They prescribe as criminal offences the extraction of statements (Art. 65, Serbian CC; Art. 47, Montenegrin CC), and civil injury (Art. 66, Serbian CC; Art. 48, Montenegrin CC). There are, however, some differences:

An official, who in the performance of duty abuses another, insults him or generally treats him in a manner that violates his human dignity, shall be punished with a term of imprisonment of three months to three years (Art. 66, Serbian CC, wording of Art. 48, Montenegrin CC, is similar).

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[23] The ECHR has in several judgments drawn a distinction between torture and inhuman and degrading treatment; see: *Ireland v. UK*, ECHR, App. No. 5310/71 (1978) and *Tyrer v. UK*, ECHR, App. No. 5856/72 (1978).

[24] See remarks and comments on FRY Report, UN doc. Committee against Torture, UN CAT/C/YUGO of 16 November 1998, pp. 10, 17.

[25] The only amendments made by the new Yugoslav authorities so far were to the penalties envisaged, not the prohibition of torture.

As defined by the two republican codes, the offence does not encompass infliction of "severe physical or psychological pain" and "coercion," as envisaged by the Federal CC (Art. 191), and the Torture Convention (Art. 1). Though the Serbian CC incriminates the use of force (Art. 62 (1)), this is not sufficient to compensate for the failure to prohibit the infliction of pain: first, use of force does not necessarily include infliction of pain and, second, prosecution is by civil action except when accompanied by threats of death or serious bodily injury.

Apart from these criminal offences containing elements of torture in their subject matter, federal penal legislation deals with torture in a number of other provisions. Namely, in the part of Federal CC regulating crimes against international law, there are offences that include torture in their modus of perpetration. These are: war crimes against the civilian population (Art. 142), war crime against the wounded and sick (Art. 143) and war crimes against the prisoners of war (Art. 144).

4.3.3. Criminal Proceedings and Execution of Criminal Sanctions

Under the federal CPC, detention could up to the end of 2000 be ordered by both the investigating judge and the police (Art. 196, see I.4.5.1.1.). A person could be held in police custody for up to 72 hours, and it was in this period that the most serious violations of the prohibition of torture and similar treatment occurred. The Federal Constitutional Court ruled Art. 196 unconstitutional and did away with the possibility of police custody (*Sl. list SRJ*, No. 71/00). This paragraph of Yugoslav legislation was criticised also by the Committee against Torture, which recommended that the period of police custody be limited to 48 hours at the most, and that the detained person be allowed access to legal counsel immediately upon being taken into custody.[26] New CPC lays down as a rule that only the competent court may order a person to be taken into custody.[27] A person arrested without a court order will be brought promptly before an investigating judge (Art. 5).[28] If, for unavoidable reasons, the apprehension of a person deprived of liberty has taken longer than eight hours, the police shall inform the investigating judge accordingly (Art. 227 (3)).

The new CPC encompasses special provisions with regard to the requirements of respect for the person of the suspect and/or the accused in the course of the proceedings. Therefore "it is not allowed to use force, threat, deceit, promise, extortion, exhaustion or other similar measures against the accused to obtain his statement or confession or anything that could be used as evidence against him" (Art. 89, para. 8). Court decision cannot be based on evidence obtained in such a way. Any violence against a person deprived of liberty and person whose liberty has been restricted, as well as any extortion of confession or other statement from the accused or other person involved in criminal proceedings is also forbidden (Art. 12). Besides this prohibition, the legislators have also prescribed that court decisions cannot be based on evidence that is by nature or by the method of obtaining in contradiction with the provisions of this Code, other statute, constitution or *international law* (Art. 18 (2); italics added).

The CPC prohibits injury to the personality and dignity of detained persons (Art. 148), and extraction of confessions or other statements from a detained person or another party to the proceedings. A detained person may request to be seen by a medical doctor, under the supervision of the investigating judge (Art. 150). Where interrogation is concerned, the law states that it must be conducted in a way that "fully respects the personality of the accused" (Art. 89 (8)).

The status of convicts is defined and more closely regulated by the Serbian Act on the Enforcement of Criminal Sanctions (*Sl. glasnik RS*, No. 16/97), which emphasises their right to humane treatment. Article 56 of the Act stipulates respect for the dignity of a person serving a prison sentence and prohibits any threats to his physical or psychological well-being. Articles 57 through 103 lay down the treatment of convicts. The Act contains a provision on the status of persons against whom sanctions are being enforced

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[26] See *supra* note 23, pp. 12, 17.

[27] Custody can be ordered only in the cases it specifies, and only "if the same purpose cannot be achieved through other measures" (Art. 141 and 142). The duration of detention remains the same as in the previous CPC (see I.4.5.1.3.).

[28] If for unavoidable reasons, the taking in of a person lasted more than eight hours, the police are bound to inform the investigating judge (Art. 227 (3)).

(Art. 5) and, though it does not explicitly prohibit torture, it envisages that the rights of convicts may be restricted only to the extent necessary to enforce the sanctions, and in accordance with the law.

4.3.4. Use of Force by Police

Under the Serbian Interior Affairs Act (*Sl. glasnik RS*, No. 44/91), law enforcement officers are obligated to use force in a manner that will "produce the least harmful consequences" (Art. 3). The subject matter is more closely regulated by the Regulations on the Use of Force (*Sl. glasnik RS*, Nos. 40/95, 48/95 and 1/97), Art. 2 of which states that a law enforcement agent:

shall use force in the performance of his duty in such a manner as to produce the least harmful consequences for the person against whom the force is being used, and only for as long as the reasons... for the use of force exist.

When using force, a law enforcement agent is bound to safeguard human life and dignity (Art. 3). The types of force that may be used are listed: a police officer's physical strength, nightstick, handcuffs, special vehicles, specially trained dogs, mounted police, chemical agents, and firearms. The police officer's immediate superior examines how the use of force was applied within 24 hours of its use (Art. 31 (1)). Whether the use of force was justified or not and the manner of its application is evaluated by a senior officer designated by the Ministry of Interior. In the event that the use of force was unjustified or incorrectly applied, this officer recommends to the Minister of Interior the taking of appropriate measures (Art. 31 (4)).

4.4. Prohibition of Slavery and Forced Labour

Article 8, ICCPR:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well being of the community;

(iv) Any work or service which forms part of normal civil obligations.

4.4.1. General

With regard to the prohibition of slavery and forced labour, the FRY is bound, besides provisions of the ICCPR and the Slavery Convention (*Sl. novine Kraljevine Jugoslavije*, No. 234/29), by the Convention No. 29 Concerning Forced Labour (*Sl. novine Kraljevine Jugoslavije*, No. 297/32), Convention on the Suppression of Trade in Adult Women (*Sl. list FNRJ*, No. 41/50), Convention for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others (*Sl. list FNRJ*, No. 2/51), Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (*Sl. list FNRJ*, (*Dodatak*), No. 7/58), International Covenant on Economic, Social and Cultural Rights (*Sl. list SFRJ*, No. 7/71), Convention on the Elimination of All Forms of Discrimination against Women (*Sl. list SFRJ* (*Međunarodni ugovori*), No. 11/81), Convention on the High Seas (*Sl. list SFRJ* (*Dodatak*), No. 1/86), Convention against Transnational Organized Crime and additional protocols

(*Sl. list SRJ* (*Međunarodni ugovori*), No. 6/01), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (*Sl. list SRJ* (*Međunarodni ugovori*), No. 7/02) as well as by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (*Sl. list SRJ* (*Međunarodni ugovori*), No. 7/02). By ratifying these conventions, the FRY has undertaken the responsibility to protect certain rights, together with the obligation to suppress and punish all forms of slavery, practices similar to slavery, transport of persons in the position of slavery, trafficking in human beings and forced labour.

4.4.2. Trafficking in Human Beings and Smuggling of People

Prohibition of slavery belongs to the category of absolute rights. Article 4 (2) of the ICCPR prohibits the derogation of rights listed in Article 8 (1 and 2), because they pertain to the overall situation of the human being, whereas the other rights listed in this article pertain to labour that is not voluntary, but is neither permanent nor constant. Keeping someone in the position of slavery was for long considered a part of the distant past. However, today this has become an issue of interest since it occurs massively in the form of trafficking in human beings.

In Article 3 (1) of the First Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime (*Sl. list SRJ* (*Međunarodni ugovori*), No. 6/01) (hereinafter: the First Protocol), trafficking in human beings is defined as:

... recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3 (1) of the Second Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime *(Sl. list SRJ (Međunarodni ugovori*), No. 6/01) (hereinafter: the Second Protocol), defines the smuggling of people as:

... procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

It is important to make a distinction between these two notions, with the view of a more precise definition of the problem from the aspect of the prohibition of slavery. Both terms can imply the smuggling of people, but in the trafficking in human beings there is no willingness of the emigrating person.[29] Exploitation is not a decisive factor in the case of smuggling of people, but is elementary in the case of trafficking in human beings. Moreover, in the smuggling of people the accent is on the violation of regulations regarding the passage of state border, whereas in the case of trafficking in human beings the accent is on the violation of human rights.[30] Although the said distinctions place the trafficking in human beings among the more serious and different forms of criminal offences, in both cases the issue of appropriate treatment of victims may be raised. In the FRY legal practice, these offences are mechanically regarded as cases of illegal migration, engaging in prostitution, pimping for prostitution, while the human dimension of the problem does not receive enough attention.[31] The fact of the matter is that these cases are

[29] Article 3 (2) of the First Protocol has adopted a viewpoint that the criminal offence exists even if the victim of trafficking in human beings consents to the intended exploitation, if any of the measures listed in Article 3 (1) had been used.

[30] The condition for existence of the criminal offence of smuggling of people is that the crossing of an international border had been effected, whereas the trafficking in human beings can be done across borders or internally within the boundaries of one state.

[31] The expert public as well as NGO activists point out that this is indeed the obstacle for a successful fight against trafficking in human beings. Namely, when the accused is tried for "incitement to prostitution", this not only places the victim in a deprived position, but the victim is usually already

actually about violation of the prohibition of slavery and forced labour, prohibition of discrimination, prohibition of torture, inhuman and degrading treatment, as well as the right to freedom, dignity and security of persons, which are serious violations of the basic guaranteed human rights requiring an adequate legal remedy.

4.4.3. Deficiencies in the Domestic Legislature

With regard to the smuggling of people, Article 249 (2) of the Federal CC recognises the offences of illegal transfer of other persons across the FRY border and of aiding another person to illegally cross the border with the view of obtaining personal gain, prescribing the punishment of 6 months to 5 years in prison. However, in the prescribed offence the obligation to protect the rights of the smuggled persons is ommited. Endangering the life or security of migrants, inhuman and degrading treatment, including the exploitation of migrants, have not been envisaged as qualified forms of this offence, which represents a deviation from standards set forth in the Second Protocol (Art. 6 (3)).

Moreover, slavery, as well as its modern forms, is not explicitly prohibited in the highest federal and republican constitutions. The constitutions of the FRY and Montenegro protect the right to freedom by prescribing that "everyone shall have the right to personal freedom" (Art. 23 (1), Federal Constitution; Art. 22 (1) Montenegrin Constitution). The constitutions of the FRY and Serbia prescribe that "nobody shall be deprived of freedom except in cases and by procedure determined by federal law" (Art. 23 (2), Federal Constitution; Art. 15 (2), Serbian Constitution). The provision that "illegal deprivation of freedom is punishable" is contained in the Federal Constitution (Art. 23 (6)) and in the Montenegrin Constitution (Art. 22 (6)). The explicit provision on establishing a condition of slavery and transport of persons in the condition of slavery is contained only in the Federal CC (Art. 155 (1)) under the heading on criminal offences against humanity and international law:

A person who, in violation of the provisions of international law, places another person in the condition of slavery or a similar condition or keeps him in such condition, buys, sells, gives to another person or brokers in the sale, purchase or transfer of such person or incites another to sell his freedom or the freedom of persons sustained or taken care of by him, shall be punished by imprisonment from 1 to 10 years.

Paragraph 2 of Article 155, prescribes the criminal offence of transport of people in slavery or similar condition from one country to another, which carries a punishment of 6 months to 5 years in prison, while paragraph 3 of the same article prescribes the punishment of at least 5 years imprisonment for a qualified form of the criminal offence when it involves minors.[32] This provision is neutral with regard to sex, which means that victims can be both women and men. However, in the paragraph 1 of Article 155 there is no mention of exploitation as the purpose for placing people in the condition of slavery. Also, it ensues from the paragraph 2 that transport of persons in the condition of slavery within the state borders is not punishable. Besides, punishment has not been prescribed for the organiser of the offence, but for the transporters, that is the immediate perpetrator.[33] In principle, the essence of this provision is in keeping

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deported to the country of origin, and therefore due to the absence of her testimony many of those suspected for trafficking in people are released due to the lack of evidence.

[32] The European Union Commission in the Draft Framework Decision on firghting the trafficking in human beings (2001) suggests that the punishment of deprivation of freedom for the perpetrators should not be less than 6 or 10 years in prison if the criminal offence had been committed under aggravating circumstances.
See also <http://europa.eu.int/eur-lex/en/com/pdf/2000/en_500PC0854_01.pdf>

[33] In Recommendation on activities against the trafficking in human beings with the view of sexual exploitation (2000), the Committee of Ministers of the CoE suggested to all member states to provide for civic and criminal responsibility and establish appropriate sanctions for those legal persons that have been proven to serve as a front for trafficking in human beings. The essence of this recommendation is to determine the responsilibity of the actual organiser of the criminal offence, i.e. the person who collects the profit from such activities.
See also <http://cm.coe.int/ta/rec/2000/2000r11.htm>

with the request presented in paragraph 1, Article 8 of the ICCPR, but it is evidently incomplete and obsolete in relation to the standard set in the First Protocol (Art. 5 (1)).[34]

The Federal CC also prescribes other criminal offences on the basis of which perpetrators of trafficking in human beings can be prosecuted, such as the criminal responsibility of organisers of criminal associations (Art. 26), illegal deprivation of freedom (Art. 189) and brokering in the exercise of prostitution (Art. 251). The prescribed punishment by imprisonment for the one "who solicits, incites or lures ... to prostitution or who in any form participates in the transfer of a female person to another with the view of prostitution" is set from 3 months to 5 years, whereas the punishment from 1 to 10 years in prison is envisaged for a qualified form of this offence, perpetrated against a minor female person. The criminal offence has to be perpetrated with the intent to exercise prostitution and against a female person, which excludes all other forms of exploitation to which a victim of trafficking in human beings can become may be subjected. It is not envisaged that male persons could become objects of this offence. In the absence of comprehensive provisions, the cases in the FRY against those trafficking in human beings have hereunto been initiated by filing criminal charges on the basis of Article 251 of the Federal CC. However, this and other two cited provisions of the FRY CC do not satisfy the criteria set forth in the First Protocol and are not sufficient whith regard to a criminal offence of such scope. A similar situation can be found in the criminal legislation of federal units, which prescribe the offence of abduction (Art. 64 of the Serbian CC; Art. 46 of the Montenegrin CC), coercion (Art. 62 of the Serbian CC; Art. 44 of the Montenegrin CC), pimping or enabling fornication (Art. 111 of the Serbian CC; Art. 93 of the Montenegrin CC), abduction of a minor (Art. 116 of the Serbian CC; Art. 98 of the Montenegrin CC) and criminal association (Art. 227 of the Serbian CC, Art. 202 of the Montenegrin CC). Although the prescribed punishments have been increased during the year, these provisions still cannot be more than subsidiary means in criminal prosecution and punishment of perpetrators of trafficking in human beings. Though it was passed this year, the Act on Changes and Amendments to the Serbian CC (*Sl. glasnik RS*, No. 10/02) has not envisaged trafficking in human beings as a separate criminal offence.

The Federal Act on Movement and Residence of Foreigners (Art. 34 (4)) prescribes that temporary residence in the FRY shall not be issued to a foreigner who has entered the FRY illegally and has not been granted refugee status, i.e. has not been granted the right to asylum. The protective measure envisaged in this case is the removal of foreigner from the FRY territory (Art. 35). With regard to these provisions, the FRY has the obligation, in accordance with Article 7, para. 1 of the First Protocol, to consider the adoption of legal and other appropriate measures that permit the victims of illegal trafficking in human beings to remain on its territory temporarily or, in certain cases, permanently and thereby exclude them from the category of illegal migrants.

The European Court of Human Rights has taken the position that all persons must be given normal access to existing domestic legal remedies, the scope of which must be adequate to provide restitution for the alleged violations.[35] During this year, main reason for the lack of appropriate legal remedies, as well as for the difficulties in prosecuting perpetrators and the insufficient security for victims of these criminal offences, was the slowness in adoption of laws harmonised with international standards.[36]

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[34] "Each State party shall adopt such legal and other measures necessary to establish as a criminal offence the action prescribed in Article 3 of this Protocol, when it has been committed with intent." (*Sl. list SRJ* (*Međunarodni ugovori*), No. 6/01, p. 31)

[35] See judgment in the case of *Aksoy v. Turkey*, 18 December 1996. Reports of Judgements and Decisions 1996 – VI, str. 2275–76, st. 51 i 52.

[36] Although Article 10 of the Federal Constitution "recognises and guarantees human rights and freedoms... acknowledged by international law" with the Article 16 prescribing that "International agreements that have been ratified and publicised in accordinace with the Constitution ... are an integral part of the interior legal system", domestic courts do not in practice base their judgments directly on provisions of international agreements.

4.4.4. Changes in Domestic Legislation

First important steps have been taken to change the penal policy with regard to the most serious criminal offences on federal and republican levels.

Working group for legislative changes of the national team against trafficking in human beings[37] has suggested to incriminate the trafficking in human beings, and the Federal Government has included this in the Draft act on changes and amendments to the Federal CC, which had been sent into the parliamentary procedure in April, but has not been passed until the end of the year. Also, measures have been taken to harmonise domestic legislation with the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Convention on Transnational Organised Crime. On federal level, the Act on Amendments to the Criminal Proceedings Code was adopted, regulating special rules for criminal prosecution of perpetrators of organised crime offences, as well as for the procedure of confiscation of objects and benefits from property and the procedure for international cooperation in identifying and prosecuting perpetrators of organised criminal offences in crime offences. These changes introduce a variety of new criminal law institutions. Particularly important is the authority given to the state public prosecutor, who can order that a particular witness, witness-collaborator and members of his immediate family be provided with special protection. With regard to trafficking in human beings as one of the forms of organised crime, this provision is very important since it guarantees special protection to witnesses should they decide to testify, which makes more likely that the number of proceedings against perpetrators of this offence that used to be discontinued due to lack of evidence would decrease. In July, Serbia passed the Act on Organisation and Jurisdiction of State Bodies in Suppressing Organised Crime (*Sl. glasnik RS*, No. 42/02), which provides for the establishing of special institutions (special prosecution office headed by a special prosecutor, service for suppressing organised crime, special departments of competent courts, special detention unit). It is prescribed that the jurisdiction of the Serbian state bodies shall, among other things, encompass the criminal offence of trafficking in human beings when this offence contains elements of organised crime.

While proposing changes and amendments to the Act on Movements and Residence of Aliens, the Serbian Victimology Society suggested introducing a measure on temporary residence, not less than 45 days, for victims of trafficking in human beings.

In June, by the amendments to the Montenegrin CC (*Sl. list RCG*, No. 30/02), trafficking in human beings was introduced as a separate criminal offence in the Montenegrin CC.[38] This provision makes sense, since cases of internal trafficking in human beings are frequent in practice (trafficking in human beings within the FRY borders). Punishment by imprisonment for the basic form of this offence is from 1 to 8 years, and 1 to 10 if the offence is perpetrated against a person under 14 years of age or against a minor (Art. 201 of Montenegrin CC (1 and 3)). The organiser of the offence shall receive punishment of at least 5 years in prison.

Since January 2001, the Regulation has been in force in Kosovo that incriminates the trafficking in persons and prescribes exceptionally high punishments for perpetrators. The prescribed punishment for people trafficking in human beings is from 2 to 12 years in prison, whereas under aggravating circumstances, for example when the victim is a minor, the punishment is from 2 to 15 years, or from 5 to 20 years in the case of organised criminal association with intent to engage in trafficking in human beings.[39]

In February, changes to the Serbian CC (*Sl. glasnik RS,* No. 10/02) have set harsher punishments for the criminal offence of kidnapping (Art. 64, Serbian CC), introduced the criminal offence of corruption (Art. 255a-z, Serbian CC) and defined as an aggravating circumstance the taking of a minor abroad in

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[37] More on National Team against Trafficking in Human Beings in *Human Rights in Yugoslavia 2001*, part I.4.4.3.

[38] As reported by the media, police has continued to define cases of trafficking in human beings as "incitement to prostitution" (*Monitor*, 3 May and 12 June, pp. 17 and 25).

[39] Regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo (UNMIK/REG/2001/4) <http://www.unicri.it/TraCCC%20docs/UNMIK_Reg.2001 -04.doc>

relation to the criminal offence of abduction of a minor (Art. 116, Serbian CC). The Montenegrin CC contains similar changes. It added qualified forms to the criminal offence of kidnapping carrying a prison sentence from at least 5 years if the kidnapped person has been held beyond 10 days or is a minor or is under 14 years of age, as well as a punishment of at least 10 years if the kidnapping has resulted in the death of the kidnapped person. (Art. 46, Montenegrin CC). Besides, adequate provisions have been included about punishing corruption (Art. 229b-j, Montenegrin CC).

In its General Comment No. 28, paras. 12 and 30, Human Rights Committee suggested to the States parties to undertake measures on national and international level to protect women and children, including women and children who are foreign citizens, from infringement of their rights, including cross-border trafficking in such persons, their forced prostitution as well as forms of forced labour under the guise of various personal services. By ratifying the Convention Against Transantional Organised Crime and additional protocols and the Convention on Confiscation of the Proceeds from Organised Crime, the FRY has taken the obligation to guarantee full protection of their rights to the victims of trafficking in human beings – asylum,[40] issuing permit for temporary / permanent residence, access to shelter, physical protection, legal, social assistance and health care – regardless of origin, religion or occupation of the victim – as well as adequate protection should the victim consent to testify against the perpetrator of the crime. In relation to the special protection of minors, the Optional Protocol to the Convention on the Right of the Child, mandates that the FRY not only ensure sustainability of the existing efforts, but should undertake more action in suppressing the trafficking in children, child prostitution, child pornography, and in the improvement of victim protection. Although on the good track, we can conclude that more action needs to be taken by the FRY to harmonise its legislation with international standards, with the view of guaranteeing protection of human rights from modern forms of slavery.

4.4.5. Forced Labour

Slavery in all its forms should be distinguished from forced or compulsory labour. The former primarily refer to the position and living conditions of a human being, whereas the latter is a much larger concept that encompasses every work done under threat or punishment.[41] Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Sl. list SFRJ, No. 7/71) prescribes that:

The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

In this sense, persons who do not work may be deprived of material compensation for work, but they must not be forced to work, meaning that there is the right, but not the obligation to work.

4.4.6. Domestic Legislation

The Federal Constitution (Art. 54 (3)), as well as the Montenegrin Constitution (Art. 52 (2)) and the Serbian Constitution (Art. 35 (4)) expressly prohibit forced labour. However, none of these acts clarify what kind of labour shall not be considered forced labour. One can assume that in this sense it is possible to interpret this prohibition as absolute.[42] In some situations, nevertheless, domestic legislation envisages the performance of compulsory service or labour. These situations are identical to the ones prescribed in Article 8 (3), item (c) of the ICCPR.

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[40] In this case the competent government bodies should regard the victim of trafficking in human beings as a "member of a specific social group", in keeping with the Geneva Refugee Convention (See A. Kartusch, *Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe*, Warsaw, 2001, p. 68.)

[41] Article 2 (2) of the Convention No. 29 of the ILO, has defined forced labour as "any labour or service required from a person under threat of punishment and for which this person did not volunteer".

[42] See *Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR,* CoE, October 2002, p.70.

Article 8 (1) of the Serbian Labour Act (ZOR, *Sl. glasnik RS,* No. 70/01), prescribes that provisions of an employment contract shall be regarded as null and void if they determine more unfavourable conditions for work than those prescribed by law and general act, or if they were based on inaccurate information provided by employer about rights, responsibilities and obligations of the employee. The employee has the right to cancel his contract of employment with the employer (Art. 63, Federal Act on Bases of Labour Relations (*Sl. list SRJ*, No. 29/96, 51/99), Art. 100 Act on Associated Labour). Since the dissolution of the employment contract in the mentioned case is permitted to the employee, i.e. there is no sanction for such action, this provision is in accordance with the standard contained in Article 8 (3), item (a) ICCPR.

Article 8 (3), item (b) of the ICCPR prescribes that the prohibition of forced or compulsory labour cannot be interpreted as prohibition of execution of a sentence of forced labour rendered by a competent court. Accordingly, domestic legislation regulates the working obligation of detained and convicted persons. Article 149 (5) of the Act on Criminal Proceedings (*Sl. list SRJ*, No. 70/01) prescribes that a detainee can work in the prison compound on specific tasks, but only at his own request, and for this work he shall receive compensation set by the prison chief warden. With regard to labour of convicted persons, the European Court of Human Rights, in the case of *De Wilde, Ooms, Versyp v. Belgium* (App. No. 2832/66 (1971)) ruled that convict labour that did not contain elements of rehabilitation was not in accordance with Article 4 (2) of the ECHR. In the provisions on work obligation of convicts, the Montenegrin Act on Execution of Criminal Sanctions (*Sl. list RCG*, Nos. 25/94, 29/94, Art. 37–41) and Serbian Act on Execution of Criminal Sanctions (*Sl. glasnik RS*, Nos. 16/97, 34/01, Art. 76–89) emphasise the rehabilitation element of work performed by convicted persons. Relevant provisions of domestic legislation have in that respect been harmonised with international standards.

The Federal Constitution prescribes general compulsory military service (Art. 137 (1)) with the possibility of invoking conscientious objection i.e. providing the possibility to perform military service in Yugoslav Army without bearing arms or in civilian service (Art. 137 (2)).[43] Obligations prescribed in Article 137 of the Federal Constitution cannot be considered forced labour, provided they are of "purely military nature" (Art. 2 (2), item (a) of the ILO Convention No. 29 on forced labour).

The Federal Defence Act (*Sl. list SRJ*, Nos. 44/99, 3/02) prescribes work obligation of citizens during the state of war, immediate threat of war or state of emergency[44] (Art. 24 (1)). It is envisaged that work obligation cannot be imposed without prior consent to persons who have been listed in law as particularly vulnerable, such as parent of a child under 15 years of age whose spouse is performing military service, woman during pregnancy, childbirth and maternity, person unfit for work (Art. 24 (3)). However, the FRY Defence Act does not prescribe the duration of work obligation of individuals. Besides, in accordance with Article 99 (11) of the Federal Constitution, during the state of war, the Article 54 of the Federal Constitution, explicitly prohibiting forced labour, is subject to derogation.[45] Article 4 (2) of the ICCPR prescribes absolute prohibition to derogate Articles 1, 2 and 8 of the ICCPR, but not the provisions from paragraph 3, Article 8 ICCPR, taking into consideration that these are situations of temporary nature. It seems, however, that by omitting to determine the length of compulsory forced labour, domestic legislation has created space for potential abuse of the derogation of forced labour.[46] This law also prescribes work obligation for all able-bodied citizens over the age of 15. This provision is not in

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[43] On conscientious objection see more in I.4.8.

[44] See I.3.

[45] The Federal Constitution does not mention any form of prohibition of derogation of prohibition of slavery and forced labour, since this prohibition is not envisaged in the highest legal act. See *Human Rights in Yugoslavia 2001*, part I.3.2.2.

[46] ILO Convention No. 29 on forced labour in Article 12 (2) prescribes a maximum period of 60 days in the period of 12 months during which a person can be compelled to forced or compulsory labour. Paragraph 2 of the same Article indirectly points that labour from paragraph 1 belongs to foreseen exceptions from the prohibition of forced labour, since in prescribes that each such worker should get a certificate in which the period of his forced labour is registered.

accordance with what is prescribed in Article 11 (2) of the ILO Convention No. 29 on forced labour, where it is envisaged that only persons over 18 and under 45 years of age can be subject to compulsory labour.[47]

With regard to usual civic obligations, domestic legislation prescribes the provision of legal assistance (Art. 17 (2) of the Federal Act on Advocate, Art. 71 of the Law on Criminal Proceedings), which is in accordance with standards set forth in Article 8 (3), item (c) iv.[48]

4.5. Right to Liberty and Security of Person; Treatment of Persons in Deprived of Their Liberty

The right to the liberty and security of the person was among those whose protection by law and the prevailing practice was the most controversial in the Yugoslav legal system until 2001. Almost the entire body of legislation governing this field, in particular the federal CPC and the Serbian and Montenegrin internal affairs acts, required extensive revision or even adoption of new laws. Though the Federal Constitutional Court in late 2000 and in 2001 did away with a number of unconstitutional provisions, this was not sufficient to establish a legal system that could effectively combat crime and, at the same time, provide strong procedural guarantees of human rights. The new CPC was enacted on 26 December 2001 (*Sl. list SRJ*, No. 70/01) and, being a systemic law, entered into effect after a *vacatio legis* of three months, that is, in March 2002.

4.5.1. Right to Liberty and Security of Person

Article 9, ICCPR:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been a victim of unlawful arrest or detention shall have an enforceable right to compensation.

4.5.1.1. Prohibition of arbitrary arrest and detention – The intent of the ICCPR's Article 9 is to provide procedural guarantees against arbitrary arrest and detention. State parties have an obligation to define precisely when arrest is lawful, and to provide for judicial review to determine whether or not this is the case. The Human Rights Committee has interpreted the article as also guaranteeing the right to personal

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[47] CoE Committee of Ministers recommended to member states, with regard to protection of children from sexual exploitation, to ratify and apply all international instruments relevant for this field, stressing the ILO Convention No. 182 on prohibitions and emergency action to suppress the most serious forms of child labour (Recommendation (2001) 16 of the CoE Committee of Ministers to Member States on the Protection of Children against Sexual Exploitation <http://www.cm. coe.int/>). By the end of this year, the FRY has not undertaken steps with regard to accession to this Convention.

[48] See judgment in the case of *Van der Mussele v. Belgium*, ECHR, App. No. 8919/80 (1983).

safety, under which states are obliged to take "reasonable and appropriate" measures to protect every individual from injury by others (see *Delgado Paéz v. Columbia*, No. 195/1985, para. 5.5).

The Yugoslav constitutions guarantee the right of personal freedom (Art. 23, Federal Constitution; Art. 22, Montenegrin Constitution; Art. 15, Serbian Constitution). Thus the Federal Constitution lays down that "Every individual shall have the right of personal freedom" (Art. 23). Besides, the Federal Constitution (Art. 22 (1)) and Montenegrin Constitution (Art. 20 (2)) guarantee the right of "security of person". The Serbian Constitution does not contain such a provision.

The ICCPR's requirement that arrest and detention be lawful and its prohibition of arbitrariness does not only relate to criminal proceedings; it includes all cases in which a person's freedom is restricted, e.g. due to mental illness, vagrancy, alcohol or drug addiction, and the like. The Yugoslav constitutions use two terms: "detention" and "custody," with the latter always relating to criminal cases[49] and the former to all other forms of detention. There is, however, no clear distinction between the two and Article 23 of the Federal Constitution prescribes the right of a "detained person to choose his own defence counsel" (para. 5), and that he must "be informed of his right to remain silent" (para. 4). This indicates that the term "detention" may also relate to criminal cases. A similar defect is found in Article 22 of the Montenegrin Constitution, while the Serbian does not envisage these guarantees.

The Federal Constitution prescribes that a person may be deprived of his liberty only according to the procedure laid down by federal law (Art. 23 (2)). This means that the republican laws envisaging deprivation of liberty (e.g. misdemeanour acts) should only reiterate the provisions of the relevant federal statutes, without providing for other grounds or procedures for depriving individuals of their liberty.

There is a discrepancy between the Serbian and Federal Constitutions where grounds for custody are concerned. The Federal Constitution states in its Article 24 that only a "person suspected of having committed a criminal offence may be taken into custody" if this "is necessary for the conduct of criminal proceedings." On the other hand, the Serbian Constitution envisages in Article 16 the possibility of an individual being taken into custody if "necessary to ensure public safety." Similar provision is contained in the former CPC (Art. 191), but even before the enactment of the new Code this rule has been put out of force by a Federal Constitutional Court decision (*Sl. list SRJ,* No. 71/00). The CPC in Article 142 states reasons for assigning detention:

(1) Detention shall be ordered:

1) against persons suspected of having committed a criminal offence for which the prescribed penalty is at least twenty years imprisonment. If circumstances should indicate that this is the case for which the law envisages that a more lenient sentence could be passed, it is not necessary to order detention.

2) Against a defendant who has been sentenced to a five-year in prison or more by a first-instance court, if the defendant is already in custody, which is justified by the manner in which the crime was perpetrated or by other particularly serious circumstances regarding the offence.

(2) If there is reasonable doubt that a person has committed a criminal offence and if there are no conditions for detention as in paragraph 1 of this Article, with the view of unobstructed criminal procedure, detention can be ordered for to such person:

1) if he is in hiding or if his identity cannot be established, or if there are other circumstances warranting risk of flight;

2) if there are circumstances indicating that he might destroy, conceal, alter or forge evidence or traces of the criminal offence or if special circumstances indicate that he might interfere the procedure by influencing witnesses, accomplices or those who have harboured him;

3) if specific circumstances indicate that he might repeat the offence or complete the attempted offence, or that he shall perpetrate the offence he is threatening with;

4) if duly informed defendant obviously refuses to attend the main hearing at the trial.

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[49] Thus Article 24, Federal Constitution; Article 16 of the Serbian Constitution, and Article 23 of the Montenegrin Constitution states that "A person suspected of having committed a criminal offence may be taken into custody and detained...".

The Federal Constitution envisages that detention can be ordered only by decision of the competent court (Art. 24 (1)), and not by "decision of another competent body", as was permitted by the previous 1974 Constitution. The law that has been in force until 2002 allowed the possibility of detention being assigned by the police (Art. 196). However, by the end of 2002, this CPC provision has been declared unconstitutional by the Federal Constitutional Court (*Sl. list SRJ*, No. 71/00).

Up to the beginning of 2001, detention was in part regulated by Article 11 of the Serbian Interior Affairs Act under which police could detain persons if necessary to ensure public order, prevent a threat to public safety, or to the security and defence of the republic (para. 1), or to establish the identity of a person if this could not be achieved by his identity card or by other means (para. 2). On 17 January 2001, the Federal Constitutional Court found these provisions of the Serbian Act in contravention of the Federal Constitution, which states that the subject matter may be regulated only by federal statute (*Sl. list SRJ*, No. 5/01). The CPC definitely sets the rule that only a competent court can decide on detention and only in cases prescribed by the Code and under reservation envisaged by the general provision that this could be done: only if the same purpose cannot be achieved by other means" (Art. 141 and 142). The decision on detention is served to the person concerned at the time of deprivation of liberty or at the latest 24 hours from the moment of deprivation of liberty or appearance before the investigating judge. The detained person can appeal against this decision. Appeal does not delay execution (Art. 143 (3 and 4)). Appeal must be dealt with within 48 hours. The duration of detention must be restricted to the shortest possible time (Art. 16 (3)). The problem in this regard arises in relation to the right of the person deprived of liberty to be promptly informed about the reasons for detention and grounds for charges against him (Art. 5 (2), ECHR). Namely, Article 143 (3) of the CPC says that "decision on detention is served to the person concerned at the time of deprivation of liberty, or at the latest 24 hours after the moment of deprivation of liberty or appearance before the investigating judge." Whether the 24-hour deadline is in keeping with the requirement of "promptness" depends primarily on whether information given to the person deprived of liberty at the time of detention suffices for him to understand the reasons for which he has been deprived of liberty.[50]

The CPC introduces the possibility of a suspect being detained by the internal affairs bodies. The CPC itself states that this is an extraordinary measure to be applied exceptionally (Art. 229). The suspect against whom this measure is applied enjoys the full scope of rights belonging to defendants, especially the right to legal counsel. Duration of detention is limited to 48 hours *maximum*. The investigating judge must be informed about this immediately, with the possibility to request that the detained person be brought to him promptly (Art. 229 (4)). The detained person can lodge a complaint against the decision on detention. The investigating judge must decide on this appeal within 6 hours. Nevertheless, the most important guarantee for the suspect's position in this situation is the impossibility of being interrogated without the presence of counsel. Namely, the questioning of suspect shall be postponed until the arrival of counsel, up to eight hours maximum. If the presence of counsel has not been ensured until then, police shall either release the detainee immediately or bring him/her before the competent investigating judge (Art. 229 (6)).

4.5.1.2. Right to be informed of reasons for arrest and charges – Paragraph 2 of the ICCPR's Article 9 states that a person who is arrested shall be informed, at "the time of his arrest," of the reasons for his arrest and "promptly" informed of the charges against him. The Federal and Montenegrin Constitutions lay down that a person taken into custody "must be informed immediately and in his mother tongue or in a language he understands of the reasons for his arrest..." (Art. 23 (3)), Federal Constitution; Art. 22 (2)), Montenegrin Constitution). These provisions are in line with the somewhat more precise guarantee contained in the ECHR (Art. 5 (2)), which also states that an arrested person shall be informed of the reasons for his arrest and the charges against him "in a language he understands." The Serbian Constitution, however, does not offer this guarantee. The Federal and Montenegrin Constitutions provide that a detained person "must be given an explanation for his arrest in writing at the moment of arrest or no later than 24 hours from the time of arrest" (Art. 24 (2), Federal Constitution; Art. 23 (2), Montenegrin Constitution).

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[50] See *Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR,* CoE, October 2002, p. 107.

The internal affairs acts of both republics prescribe that, in the cases of arrest they envisage,[51] the police "must immediately inform the arrested person of the reason for his arrest (Art. 15 (4), Montenegrin Act; Art. 11 (4), Serbian Act). This article of the Serbian Act was, however, set aside by the Federal Constitutional Court since the matter may be regulated only by federal statute (*Sl. list SRJ*, No. 5/01).

With regard to the right of an arrested person to be informed promptly of the charges against him, the provisions of the CPC are in accordance with international standards as they prescribe that the investigating judge must inform the arrested person of the charges and evidence against him before proceeding to question him for the first time (Art. 4 (1)), which means that the investigating judge is obliged to inform the defendant before the questioning "what he has been charged with, grounds for suspicion against him, as well as that he is not obliged to state his own defence nor respond to questions, after which he shall be asked to state his own defence if he so wishes" (Art. 89 (2)). If the defendant should request, he shall be allowed to read the criminal charges filed against him, as well as the petition for inquiry, before the first questioning (Art. 89 (3)).

4.5.1.3. Right to be brought promptly before a judge and to trial within a reasonable time – This right applies only in criminal cases and guarantees that an arrested person will be brought promptly before "a judge or other officer authorised by law to exercise judicial power" and that he will be tried within a reasonable time or be released. Though it is hard to determine what "promptly" means, it would seem that this period should not exceed four days even in exceptional circumstances, and should be much shorter in normal circumstances (see the European Court of Human Rights in *Brogan v. United Kingdom*, A 145, 1978, p. 33). "Other officer authorised by law to exercise judicial power" means an impartial organ which is also independent, primarily with respect to executive bodies and the prosecutor, and which is empowered to either release the arrested person or order him remanded to custody (see the European Court of Human Rights in *Schiesser v. Switzerland*, A 34, 1991, p. 31).

Under Yugoslav law, custody may be ordered by an investigating judge or a judicial panel, acting either *ex officio* or at the request of the prosecutor. An investigating judge may be taken to mean "a judge or other officer authorised by law to exercise judicial power" (see *mutatis mutandis* the European Court of Human Rights in *Bezicheri v. Italy*, A 164, 1989, p. 20).

The new CPC has a very clear systematisation: the person whose generally guaranteed rights and freedoms are restricted is provided with an overall guarantee that this restriction shall occur only in justified cases; these guarantees are then further elaborated in relevant places. In cases of appearance before the court in the shortest possible time and duration of the proceedings, Article 16 first states that the defendant has the right to be brought before the court and be tried promptly. The court is *obliged* to proceed without undue delay and prevent all possible abuse of law.

Authorised persons of internal affairs bodies can deprive a person of liberty if there are grounds stated in Article 142, but nevertheless have the obligation to promptly bring this person beforean investigating judge. If the bringing of person before the investigating judge has taken longer than eight hours, this delay must be explained to the judge. The investigating judge shall make official record of this. The record shall contain the statement of the person deprived of liberty about the time and venue of arrest (Art. 227 (1 to 3)).

In accordance with international standards and pursuant to the constitutional provisions requiring that "the length of detention must be of the shortest possible duration" (Art. 24 (3), Federal Constitution; Art. 23 (3), Montenegrin Constitution; and "shortest period necessary" in Art. 16 (2), Serbian Constitution), the CPC introduced the deadlines described above.

All three constitutions prescribe that the period of custody ordered by a first-instance court may not exceed three months, and that it may be extended by further three months by a higher court. The period starts running on the day of arrest and, "if by the end of this period [three plus three months] charges have

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[51] Article 11 of the Serbian Interior Affairs Act lays down that a person may "be detained" if restoring public order and peace and preventing a threat to the security or defense of the country cannot be achieved by other means" (para. 1), or "if the identity of the person cannot be established on the basis of his identity card or by other means" (para. 2). The corresponding Montenegrin Act uses the term "arrest" and adds to the above reasons for arrest the "safety of public traffic" (Art. 15 (1)).

not been brought, the suspect shall be released (Art. 24 (4), Federal Constitution; Art. 16 (3), Serbian Constitution; Art. 23 (4), Montenegrin Constitution). The length of custody in regular proceedings is regulated in much the same way, only in more detail, by the CPC (Art. 197), while the period of custody pending indictment in summary proceedings is limited to eight days without the possibility of extension (Art. 436 (2)) and after the indictment has been filed general rules apply (see above, Art. 146). In proceedings against minors, detention is an exceptional measure and is limited to three months during pre-trial procedure, and after that to a maximum of one year (Art. 486 (2 and 3)).

A person taken into custody has the right to stand trial within reasonable period of time or otherwise be released. In Yugoslav law the duration of detention is limited in the following way: on the bases of a decision of investigating judge detention may last for a maximum of one month, and on the basis of a decision by judicial council it can be extended for another two month maximum. The Supreme Court's judicial council (in cases of criminal offences carrying a penalty over 5 years in prison or longer) can extend this period for another three months maximum. If by end of these deadlines no indictment has been made, the detained person shall be released (Art. 144). The improvement of the position of the defendant is contained in the CPC provisions that detention can last for a maximum of two years after the indictment. If this deadline should expire without a sentence by first-instance court, the defendant shall be released (Art. 146 (3)). After the sentencing , the detention may last up to one additional year maximum. If within this period a court should abolish the decision in the first instance, detention can be continued for another year (Art. 146 (4)).

4.5.1.4. Right to appeal to court against deprivation of liberty – This right is envisaged in cases when a person has been ordered taken into custody by a non-judicial body (see the European Court of Human Rights in *De Wilde, Ooms and Versyp v. Belgium*, A 12, 1971, p. 76). Under the Federal Constitution, only a court may order a criminal suspect to be held in custody (Art. 24). In other cases of detention, however, it fails to provide for the possibility of a person petitioning the court to examine whether he is being lawfully held. Though the Constitution guarantees to everyone "the right of appeal or resort to other legal remedies against a decision which infringes a right or legally founded interest" (Art. 26 (2)), this cannot be equated with the ICCPR's Article 9 (4), which entitles individuals deprived of their liberty by arrest or detention to take proceedings before a court. The situation is the same where the Serbian and Montenegrin Constitutions are concerned (Art. 15, 12 (2), and 22 (2), Serbian Constitution; Art. 22 and 17 (2), Montenegrin Constitution). The Interior Affairs Acts of both republics make it possible for a person deprived of liberty to complain to the Minister of Interior (Art. 16, Montenegrin Act; Art. 12, Serbian Act), but no mention is made of an appeal to the court, which is in contravention of international acts.

The Serbian and Montenegrin Civil Procedure Code (*Sl. glasnik RS*, Nos. 25/82, 48/88; *Sl. list SRCG*, Nos. 34/86, 5/87), prescribe that a person may be confined in a psychiatric institution if the nature of his illness requires that his movement and contacts with others be restricted (Art. 45 (1), Serbian Code; Art. 48 (1), Montenegrin Code). These provisions, however, are unconstitutional as the Federal Constitution states that no one may be deprived of his liberty except in cases and according to the procedure laid down by federal law (Art. 23 (2)), Federal Constitution). The very procedure envisaged by these laws, as well as the procedural guarantees for the person concerned, are generally harmonised with international standards.[52]

4.5.1.5. Right to compensation for unlawful deprivation of liberty – The Federal Constitution prescribes that "a wrongfully convicted or wrongfully detained person shall be entitled to rehabilitation and to compensation for damages from the state, and to other rights as envisaged by federal law" (Art. 27 (4)). Identical provisions are to be found in the Montenegrin (Art. 25 (4)) and Serbian (Art. 23 (4)) Constitutions. The Federal and Serbian Constitutions furthermore state that "Everyone shall be entitled to compensation for damages sustained as a result of unlawful or improper actions of an official or state agency or organisation..." (Art. 123 (1), Federal Constitution; Art. 25 (1), Serbian Constitution). The Montenegrin Constitution does not contain a similar provision.

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[52] See *Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR,* CoE, October 2002, p. 95.

A person unlawfully deprived of liberty has the right to rehabilitation, compensation of damages from the state, as well as other rights prescribed by law (Art. 14 CPC). Right to compensation of damages belongs to persons unlawfully convicted under conditions stated in Article 556 of the CPC, as well as to a person who has been detained without criminal proceedings being instituted or if the latter has been discontinued by final decision, or if the person has been released by a final judgement or the charges have been rejected, if such person has spent longer time in custody than the duration of penalty for the offence he has been convicted for.

The compensation procedure consists of two stages: administrative and judicial (civil law). A person who has been deprived of his liberty first submits a request to the administrative body concerned seeking "an agreement on the existence of damages and the kind and level of compensation" (Art. 557 (2)). If the request is dismissed or the administrative body fails to decide on it within three months of the date of its submission, the injured party may sue for compensation. If only a part of the request is settled, the injured party may sue for the remainder of the damages he considers he is entitled to (Art. 558 (1)).

4.5.2. Treatment of Persons Deprived of Their Liberty

Article 10, ICCPR:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

4.5.2.1. Humane treatment and respect for dignity – All restrictions that are not inherent in the very nature of the deprivation of liberty and of life in a restricted environment are prohibited. Article 10 of the ICCPR complements Article 7, which prohibits torture, cruel or inhuman or degrading treatment or punishment (see I.4.3.).

In a similar manner, all three Yugoslav constitutions guarantee "Respect for the human personality and dignity in criminal and all other proceedings in the event of detention or restriction of freedom, as well as during the serving of a prison sentence" (Art. 25 (1), Federal Constitution; Art. 24 (1), Montenegrin Constitution; Art. 26 (1), Serbian Constitution).

The Federal Criminal Code prescribes that a person convicted of a criminal offence may be deprived of some rights or have those rights restricted while serving the sentence, but only to the extent required by the nature of the sentence and in a manner that ensures respect for his personality and his human dignity (Art. 6, Federal CC; see *mutatis mutandis* Art. 6 (2)), Serbian CC). It is prohibited to "use violence against a person deprived of liberty and person whose liberty has been restricted, as well as to extort a confession or other statement from the defendant or other person taking part in the proceedings" (Art. 16 of the CPC). Further, the defendant must be questioned in a civil manner and with full respect of his personality (Art. 89 (7))[53] and it is forbidden to apply force, threat, deceit, extortion, exhaustion or other similar measures against him (Art. 89 (8)). During detention it is prohibited to offend the personality and dignity of the defendant. Among guarantees for respect of dignity is also the provision contained in Article 79 that only a female person can search another female person and that witnesses to this can only be female.

[53] It is interesting to note that a similar provision was incorporated in the Criminal and Judicial Procedure Code of the Kingdom of Yugoslavia in 1929, which says that the questioning shall be conducted "with civility and kindness".

The Montenegrin Act on Enforcement of Penal Sanctions (AEPS, *Sl. list RCG*, No. 25/94) prescribes that convicted persons must be "treated humanely and in a manner that ensures respect for their personality and dignity and protects their physical and psychological health" (Art. 15 (1)). A similar provision exists with respect to juvenile offenders, with the added provision that they must be treated "in a manner appropriate to their physical and psychological development" (Art. 107 (2)).

The Serbian AEPS (*Sl. glasnik RS*, No. 16/97) states that "everyone shall respect the dignity of a convicted person" and that his physical or mental health may not be jeopardised (Art. 56). A juvenile sentenced to a reform institution or a juvenile prison has the same rights as an adult convict, and these may be augmented (Art. 218 (1)). Unfortunately and unlike the Montenegrin AEPS (Art. 107 (2)), the Serbian Act fails to afford special protection to juveniles subjected to disciplinary measures or stricter supervision. Finally, under the Serbian AEPS, a person committed to a psychiatric institution has the same rights as those serving prison sentences, unless his treatment requires otherwise (Art. 191).

The Serbian AEPS requires prison authorities to inform convicts of their rights and obligations and that "the text ... of the law and prison rules shall be accessible to the convict for the duration of his imprisonment" (Art. 51 (2.3)). The rule is applied also to persons in custody, convicted juveniles, and persons committed to psychiatric institutions (Art. 191, 218 (1) and 314). The Montenegrin AEPS does not prescribe that convicts must have access to information on their guaranteed rights. There are no rules requiring courses on the rights of convicted persons in the training of prison service personnel.

Pursuant to the Serbian AEPS, supervision of inmates of penal institutions is performed by the Office of Penal Sanctions (Art. 9 (1) and 346 (1)). The Ministry of Public Health monitors the standards of care provided in hospitals, psychiatric institutions and other medical services in penal institutions (Art. 353). The court that has committed a defendant to a psychiatric institution supervises the legality of the pronounced measure of compulsory psychiatric treatment and confinement (Art. 195 (1)). The implementation of the detention measure is supervised "by the president of the competent court". The competent judge visits the inmates at least once a week, with the possibility to discuss with them the living conditions and behaviour of penitentiary staff, without presence of guards. (Art. 152 (2) CPC). Pursuant to the Serbian AEPS, convicts have the right to "complain to the person supervising the work of the penitentiary facility, without the presence of prison staff and appointed persons" (Art. 103 (4)). In Montenegro, penal institutions, juvenile institutions and confinement in psychiatric institutions are supervised by the Ministry of Justice (Art. 21, 69 and 82, Montenegrin AEPS). Supervision of correctional measures is by the social welfare agency, while the court that pronounced the measure supervises the legality of its execution (Art. 113).

The right of convicted persons to complain about the conditions in which they serve their sentences is very restricted and imprecisely defined. Under the Serbian AEPS, they may complain to the prison warden against "violation of their rights or other irregularities" (Art. 103 (1)) and, if there is no response or they are not satisfied with the response, they may submit a written complaint to the Director of the Office of Penal Sanctions" (para. 3). The Serbian AEPS, however, does not prescribe the time period within which Director must examine the complaint. Even more unfavourable is the Montenegrin AEPS, which states that a convict may complain only to the head of the institution in which he is serving (Art. 34 (2)), again with no time period being set for examination of the complaint, and with no further right of appeal. Under the Serbian AEPS, all of the above is applicable also to detainees (Art. 314), juveniles in reform institutions and juvenile prisons (Art. 218 (1)), and persons committed to psychiatric institutions (Art. 191). The Montenegrin AEPS is silent about the rights of these persons to lodge complaints.

4.5.2.2. Segregation of accused and convicted persons, juveniles and adults – In its Article 10 (2), the ICCPR prescribes that accused persons must be segregated from convicted persons "save in exceptional circumstances," while juveniles must always be separated from adults "and brought as speedily as possible for adjudication." The CPC lays down that convicted and accused persons must "as a rule" be segregated, while the Montenegrin (Art. 16 (4)) and Serbian AEPS (Art. 312 (1)) allow no exceptions, which is in accordance with international standards. The Serbian AEPS, however, contains the general rule that accused and convicted persons are held "in the same conditions" unless otherwise prescribed by the CPC (Art. 314), which is not in line with Article 10 (2.a.) of the ICCPR, which states that accused persons "shall be subject to separate treatment appropriate to their status as unconvicted persons."

As to detention, the CPC allows exceptions from the unconditional rule that juveniles must be segregated from adults, but only when a judge of the juvenile court assesses that the "isolation of a juvenile would be of longer duration and the possibility exists of placing him in the same room as an adult who would not have a harmful influence on him" (Art. 475). It would seem, however, that this constitutes an impermissible departure from the standard set by Article 10 (2.b.) of the ICCPR. The Montenegrin AEPS prescribes that adult and juvenile persons serving sentences of imprisonment are, as a rule, segregated (Art. 16 (3)) but fails to specify in which cases exceptions are allowed. Only the Serbian AEPS allows no exceptions in this regard and even prescribes that adults sentenced to juvenile prisons and juveniles who attain their majority while serving are to be held in separate sections of the institution (Art. 282).

4.5.2.3. Correctional/penitentiary system – The basic aim of the treatment of prisoners is, under the ICCPR, their reformation and social rehabilitation. The Federal Criminal Code states that the purpose of penal sanctions is to preclude an offender from committing new crimes, his re-socialisation, deterring others from crime, strengthening morals and developing social responsibility and civic discipline. The Montenegrin AEPS states that the purpose of a prison sentence is the "re-socialisation" of the convicted person, while the Serbian AEPS does not specify the aim of penal sanctions.

4.6. Right to a Fair Trial

Article 14, ICCPR:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

4.6.1 Independence and Impartiality of Courts

The Serbian and Montenegrin Constitutions in their respective Articles 96 (1) and 100 lay down that courts of law are independent and bound only by the Constitution, law and other general enactments. The Federal Constitution is silent on this point. The principle of the separation of legislative, executive and judicial powers is embodied in all three (Art. 12, Federal Constitution; Art. 9, Serbian Constitution; Art. 5, Montenegrin Constitution). The independence of courts, however, depends not so much on constitutional provisions. It is exactly in the field of practice that one can judge whether the judiciary is independent and impartial, what type and amount of influence is exerted by the executive powers, as well as to what extent the right of citizens to fair trial has been ensured.

Laws regulating the work, organisational structure of courts and the status of judges were extensively amended in the course of 2001. The Serbian Parliament passed five laws in this area: the Act on the Organisational Structure of Courts, Act on Judges, High Judicial Council Act; the Public Prosecutor's Office Act, and Act on the Seats and Districts of Courts and Public Prosecutor's Offices (*Sl. glasnik RS*, No. 63/01). With the exception of the High Judicial Council Act, all these laws entered into effect on 1 March 2002.

However, in mid July 2002 amendments to this laws were made, which abolished some of the earlier provisions (*Sl. glasnik RS,* No. 42/02). These amendments have in fact fundamentally violated the principle of separation of powers and independence and impartiality of the judiciary. Of a greater concern are the procedure and the atmosphere in which these changes were made. They were adopted despite the disagreement of the Legislative Committee of the Serbian Parlament. Almost all impovments that had been achieved through the changes in 2001 were devaluated. The the procedure for election of judges was changed, as well as the composition of the High Judicial Council and the principle of immovability of judges; presidents of courts have been deprived of the right to adjudicate during their presidency, etc. The Constitutional Court of Serbia has by its decision of 19 September 2002 barred the application of these amendments (*Sl. glasnik RS,* No. 60/02),[54] The Court has ruled that the "application of challenged articles of the Act would prevent presidents of courts from adjudicating, which is their primary choice; would prevent the courts, especially those with a smaller number of judges, to establish councils outside the hearing procedure to decide on cases in emergency procedure; this would also result in denying the performance of judicial function in the field of realisation of civil rights and freedoms as defined in the Constitution".

Judges have tenure of office (Art. 101 (1) and 126 (2), Serbian Constitution; Art. 2 (1), Serbian Act on Judges; Art. 103 (1), Montenegrin Constitution), and only justices of the Federal Court and Federal Constitutional Court (Art. 109 (2) and 125 (2), Federal Constitution) and of the Montenegrin Constitutional Court (Art. 111 (2), Montenegrin Constitution) are appointed for nine-year terms. Except in the case of military courts, judges may not be transferred without their consent (Art. 101 (5), Serbian Constitution; Art. 2 (2) and 16, Serbian Act on Judges); (Art. 103 (4), Montenegrin Constitution; Art. 27, Montenegrin

[54] Procedure for judging the constitutionality was initiated by Serbian Supreme Court and the initiative to review the constitutionality of the mentioned provisions was initiated by several district and commercial corts (Valjevo, Užice, Šabac, Novi Sad...). Several NGOs (Belgrade Centre for Human Rights, Fund for an Open Society, Humanitarian Law Centre, Lawyers Committee for Human Rights and League of Experts – LEX) has forwarded a joint petition to the Srbian Constitutional Court requesting, among other things, "immediate repeal of these laws and urgent fundamental reform of the judiciary, with the view of realising core values of democratic society".

Act on Courts). The new Serbian Act on Judges retains the possibility of transferring or reassigning judges to another court but improves their position in these situations. Decisions on reassignment are taken by the Supreme Court President, and those on transfer by the High Judicial Council (Art. 18 and 17 (3), Serbian Act on Judges). The improvement is in that a decision to this effect may be taken only when the judge concerned has consented in writing (Art. 16 (1, 3)). Judges may not hold other public office or engage in other professional activity, and their right to political organising is restricted (Art. 42 (4), 109 (6), 125 (4), Federal Constitution; Art. 100 and 126 (4), Serbian Constitution; Art. 5 (2), Serbian Act on Courts; Art. 106 and 111 (5), Montenegrin Constitution; Art. 28 (1.d), Montenegrin Act on Courts).

The most significant innovation with respect to mechanisms for the protection of judges is the establishment of the Grand Chamber (Art. 36, Serbian Act on Judges), which is made up of nine justices of the Serbian Supreme Court excluding the Court President (Art. 39 (1)). However, the value of this institute is greatly reduced by changes and amendments to the Act. Namely, the Grand Chamber now consists of nine judges of the Supreme Court appointed by the Parliament at the nomination by the High Judicial Council. This practically transforms the Grand Chamber into a Parliament body, thus violating the principle of separation of powers.[55] Under the new law, judges may also lodge complaints when they consider that their rights have been infringed and when no other remedy is available. These complaints are considered by the Grand Chamber, which must decide on them within eight days and notify the president of the respective court, the president of the court immediately superior, and the President of the Serbian Supreme Court of its decisions (Art. 26, Serbian Act on Judges).

These provisions were amended altering the procedure for appointment of judges in 2002. Presently, in the stage of nominations it is the High Judicial Council that nominates candidates for judges, prosecutors and deputies of public prosecutors and proposes to the Parliament for election, whereas the presidents of courts are nominated by the competent Parliament committee (Art. 66 (2)). Prior to this, the Minister of Justice collects information and opinions on all proposed candidates for presidents of courts and submits them to the committee together with his opinion (Art. 65a).

The High Judicial Council now has five permanent members and ten non-permanent members by invitation who are judges and public prosecutors. Among non-permanent members six are judges and four are public prosecutors. Three of the permanent members – President of the Supreme Court of Serbia, Republican Public Prosecutor and the Minister of Justice – are members *ex officio*. Other two are elected, one by the Serbian Bar Association and another by the Serbian Parliament (Art. 3). Non-permanent members are six judges, elected by the Supreme Court of Serbia and two public prosecutors, elected by Republican Public Prosecutor (Art. 4). Hence, the only representative of the executive branch is the Minister of Justice.

The Council conducts the whole procedure – from inviting applications for vacant positions to considering them and nominating the candidates – and Parliament may elect only the candidates nominated by the Council (Art. 46 (1)), Serbian Act on Judges).

This guarantee of independence of the judiciary is seriously compromised by a new provision according to which the competent committee of the Serbian Parliament proposes another candidate if the nominated candidate has not been elected. If neither the second candidate is elected, High Judicial Council shall again announce the election procedure (Art. 46 of the Act on Judges).

The independence of courts is far better regulated and protected by this new legislation. For example, the Serbian Ministry of Justice and the Serbian Supreme Court share responsibility for overseeing the administrative divisions of courts. The rules of procedure, the basic legal act of the judiciary, is now adopted by the Minister but *in agreement with the President of the Supreme Court* (italics added). Any act passed by a court administration that infringes the independence of courts or judges is automatically deemed null and void, and declared as such by the Grand Chamber[56] at the proposal of the president of the competent court (Art. 67, Act on Organisational Structure of Courts, *Sl. glasnik RS*, No. 63/01).

In 2002 the debate on the justification for existence and the present organisation of the military courts. These debates have been prompted in the process of adopting the Constitutional Charter, as well as

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[55] See Decision by the Serbian Constitutional Court*, Sl. glasnik RS,* No. 60/02.

[56] For the Grand Chamber see below.

by some concrete actions that have given rise to doubts with regard to fair procedure before these bodies in practice.[57] The provisions regulating the independence of military courts remain, however, questionable in many respects (Art. 138 (2), Federal Constitution; Art. 2, Act on Military Courts, *Sl. list SRJ*, No. 11/95). In contrast to civil courts, judges and lay judges of military courts are appointed, not elected (Art. 26 (1), Act on Military Courts) and their presidents and judges are subject to the same regulations "governing relations in the service and the rights, duties and responsibilities of military personnel" (Art. 41 and 42). Furthermore, judges of military courts may be dismissed if the competent authority decides to downsize a particular tribunal (Art. 37 (1)), which jeopardises the principle of tenure that is embodied also in the Act on Military Courts (Art. 28 (1–3)). Also, the competent body of the Ministry of Defence decides on the personnel structure in military courts, which in effect means that it prescribes how many officers of a certain rank are assigned to a particular court. And this, in turn, means that if a judge wishes to be promoted in rank and there is no position of appropriate seniority under the prescribed structure, his only option is to resign and seek some other position in the military. Furthermore and in contrast to judges of civil courts, the consent of a military judge is not required for his temporary reassignment to another court (Art. 40).[58]

4.6.2. Fair and Public Trial

4.6.2.1. Fairness – The requirement that a trial be fair is of particular importance where criminal proceedings are concerned since it enhances protection of the defendant beyond the cited minimum of rights he is entitled to. It is a general clause that provides overall protection of defendants. In assessing whether or not a trial is fair, it must be considered in its entirety since the accumulation of defects, which individually are not in violation of Article 14 of the ICCPR, could in fact constitute denial of this right. In order to be fair, a trial must be oral and adversary in nature, unlawfully obtained evidence must be inadmissible, and the prosecutor must disclose to the defence all the evidence he has, including evidence that could exculpate the defendant.

Under the CPC, the proceedings are ordinarily oral and, in keeping with this, the written documents (indictment, expert findings and the like) are read out. When a court of second instance rules in chambers without conducting hearings, its decision must, as a rule, rest on the records of the case. The principle of directness requires judicial decisions to be based on the facts determined by the court itself (e.g. by examining witnesses) and not on reading of the record. The obligation of the court to base its judgement only on evidence presented at the trial derives from this principle (Art. 352 (1), CPC).

One of the most important requirements for a fair trial is that the court must hear both opposing parties. This ensures their equality of arms and contributes to establishing the facts of a case. Under the CPC, the defendant has the right "to respond to all the facts and evidence against him, and to present evidence and facts in his favour" (Art. 4 (2)). The principle is further elaborated in a series of provisions – the defendant is entitled to examine the records and evidence (Art. 74 (1)), they must receive the decision by the investigating judge on opening the judicial inquiry (Art. 243 (1)). Before the decision on opening the judicial inquiry, the investigating judge shall hear the defendant, except if delay would pose a danger (Art. 243 (1)). Likewise, before rendering a decision, the judge can summon the public prosecutor and the defendant to court so that they could respond to circumstances important for the decision with regard to opening the inquiry. At that time opposing parties can give oral proposals (Art. 243 (3)). An important guarantee for the *audiatur et altera pars* principle is given through the provision pursuant to which the investigating judge can accept the proposal by public prosecutor not to conduct the inquiry since the collected evidence provides enough grounds for indictment, *only* if he had heard the defendant beforehand (Art. 244 (1 and 2)). This rule, however, has not been fully implemented. Direct indictment is possible outside provisions from Art. 244 (2) only if it concerns a criminal offence carrying a penalty of up to five years imprisonment (Art. 244 (6)).

The indictment must be served promptly to the defendant, or within 24 hours if he is in custody (Art. 270 (1)). The intent of Article 373 of the CPC prescribing that copies of interlocutory appeals must be

[57] According to the Draft Constitutional Charter military courts are abolished.

[58] See IV.3.

delivered to the opposing party is the same. Failure to comply with any of these provisions is a serious violation of due process.

The adversary system is most easily and fully secured at the trial itself. The opposing sides' equality of arms in criminal trials is, however, put into question by Article 370 (3) of the CPC under which the public prosecutor is always notified about sessions in chambers of second-instance courts, and the defendant and his counsel only if they make a request to this effect (Art. 374), or if the court considers that this would be "beneficial for the clarification of issues" (Art. 375 (1)). A failure to notify a defence counsel of such sessions when he has made the request is also a grave violation of due process.

4.6.2.2. Public trial and public sentencing – Besides the general provision prescribing the transparency of the work of all government agencies (Art. 10), the Serbian Constitution contains a separate article stating that trials are open to the public (Art. 97 (1)). For its part, the Federal Constitution lays down only that the work of federal agencies is open to the public (Art. 122 (1)), while the Montenegrin speaks of the openness of judicial hearings (Art. 102). The Federal Constitutional Court Act (*Sl. list SRJ*, No. 27/92) states that the work of this Court is open to the public and cites the ways whereby this is secured, e.g. public hearings (Art. 6 (1 and 2)). The republican statutes on courts say nothing about the openness of their work but provisions to this effect are contained in the relevant procedural laws.

The general rule with respect to both criminal and civil proceedings is that trials and hearings are held in open court and may be attended by adult members of the public (Art. 291 of the CPC; Art. 306 of the Civil Procedure Act, *Sl. list SFRJ*, No. 4/77).

Under the CPC, the public is always excluded from proceedings involving juveniles (Art. 494). The law also envisages the possibility of excluding the public "*ex officio* or at the request of the parties but only after their being heard" when necessary to protect classified information, public order, public morals, the interests of a minor, or protection of individual or family life of the defendant or the injured party (Art. 292). Generally, these bases are in keeping with the ICCPR standards, especially because in the new Act the previously contested reason of "protection of other special interests of society" has been omitted – since it seemed to broadly worded. There are opinions that in a certain sense guarantees for public in the Yugoslav CPC have been more comprehensively regulated because it does not contain the grounds from the ICCPR pursuant to which the court can exclude public "in the interest of justice". Only, although not a minor problem is the silence of law with regard to protection of the witness and his "personal and family life". Barring the public from a trial or hearing in circumstances not envisaged by law is in contravention of criminal and civil procedure and constitutes grounds for appealing the judgement (Art. 368, (1.4) CPC; Art. 354 (2.12), Civil Procedure Act).

Similar provisions are contained in the Civil Procedure Act, which envisages that public can be excluded from civil proceedings "during the entire main hearing or a part of it if required by interests of preserving official, business or personal secret, or by interest of public order or morality" (Art. 307 (1)). Public can also be excluded in cases when usual security measures are insufficient to ensure undisturbed conduct of the hearing (Art. 307 (2)).

Sentencing must be public in both criminal and civil cases, irrespective of whether the public was excluded from the particular proceedings or not (Art. 357 (4), CPC; Art. 336 (3), CPA). However, making public the reasons why a particular sentence was pronounced depends on whether the public was excluded and, if so, "the panel shall decide if the public shall be excluded when it sets out the reasons why it imposed the sentence" (Art. 357 (4), CPC; similar in Art. 336 (3) CPA). In line with the provision under which the public is barred from proceedings involving juveniles, the CPC prescribes also that the trial record and the sentence may be made public only with the permission of the court (Art. 473 (1)). However, naming of the juvenile or release of any information that could help to identify him is strictly prohibited (Art. 473 (2)).

The new CPC recognises another exception from the rule that the accused shall have the right to a public trial. Namely, in certain offences carrying a monetary fine as primary penalty the judge can render a decision without holding a hearing, upon request of the public prosecutor (Art. 449–454). The defendant can contest this decision and if his appeal is resolved positively, public hearing shall be scheduled. This

norm is in keeping with the CoE Recommendation on Concerning the Simplification of Criminal Justice from 1983.[59]

4.6.3. Guarantees to Defendants in Criminal Cases

4.6.3.1. Presumption of innocence – Under Yugoslav law, everyone charged with a criminal offence has the right to be presumed innocent until proved guilty under a final decision of the court (Art. 27 (3), Federal Constitution; Art. 23 (3), Serbian Constitution; Art. 25 (3), Montenegrin Constitution). Though the wording differs slightly from that of the ICCPR, which states that "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty by law," the intent and legal consequences are the same: the burden of proof is on the prosecution and not on the defence, and the court must give the defendant the benefit of the doubt if his guilt has not been proved conclusively (*in dubio pro reo*).

Like the constitutions, the CPC also guarantees the presumption of innocence (Art. 3), and further develops the principle by prescribing the obligation of the court to acquit a defendant when his guilt has not been proved beyond a reasonable doubt, e.g. because of lack of evidence (Art. 355 (1.3)). That the burden of proof is exclusively on the prosecutor is evident from the fact he must always cite in the indictment the evidence on which he bases the charges (Art. 266 (1.5), CPC).

4.6.3.2. Prompt notification of charges, in language understood by the defendant – A defendant must be informed of the criminal offence he is charged with and of the evidence substantiating the charge. This is a basic principle of the CPC (Art. 4 (1)), and is reiterated in its provisions regulating the interrogation of defendants, who must be informed prior to their first questioning of the charges against them and the grounds for those charges (Art. 89 (2)). The provision is applied also to criminal suspects (Art. 226 (8), CPC). A defendant at liberty is served with the indictment immediately or, if he is in custody, within 24 hours (Art. 270 (1)). During the first hearing the defendant must be informed about the offence he has been charged with and about the evidence of the prosecutor. More importantly, person deprived of liberty must be promptly informed, in his own language or language he understands, about the reasons for being taken into custody and immediately warned that he has the right to remain silent, that he has the right to legal counsel of his own choice and to request that his immediate family be informed about him being deprived of freedom (Art. 5).

4.6.3.3. Sufficient time and facilities for preparation of defence and right to communicate with legal counsel – Furthermore, in the event of the prosecution orally amending the indictment during the trial itself, the CPC provides only for the possibility of adjournment to enable the defence to prepare and does not lay this down as an obligation. It should also be noted that the adequate-time provision is not applied to a defendant when he is questioned during the pre-trial proceedings, where no interval is envisaged between the time he is informed of the charges and evidence against him and his interrogation. Namely, at his first questioning, the defendant is given 24 hours to retain counsel but is not informed of the charges or evidence against him prior to that.

Affording a defendant sufficient time to prepare his defence is among the basic principles of the CPC (Art. 13 (5)). However, the minimum time periods it envisages are too short – eight days in regular (Art. 285 (3)) and "enough time, at least eight days" in summary proceedings (Art. 442 (3)). If the prosecutor filed another indictment at the very hearing, the judicial council is obliged to leave sufficient time for the defendant and his counsel enough time to prepare appropriate defence (Art. 341(2)). Furthermore, in the event of the prosecution orally amending the indictment during the trial itself, the CPC provides only for the possibility of adjournment to enable the defence to prepare and does not lay this down as an obligation. Upon request by the defendant and his counsel adjournment can be granted. It should also be noted that the adequate-time provision is not applied to a defendant when he is questioned during the pre-trial proceedings, where no interval is envisaged between the time he is informed of the charges and evidence against him and his interrogation. Namely, at the first interrogation the defendant is

[59] See *Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR*, CoE, October 2002, p. 140.

allowed 24 hours to secure legal counsel. The new provision in the CPC is nevertheless better because it now envisages the obligation to inform the defendant about his rights in the procedure, including the right to legal counsel, at the very first questioning. Additional guarantees have been established by offering the defendant a possibility to read the criminal report and criminal findings. However, it seems that this is more linked with the right to be informed about charges and evidences than with the right to have sufficient time to prepare the defence. This is because pursuant to the letter of CPC the defendant has the right to read the criminal charges *immediately* prior to first questioning (Art. 74 (1)).

In second-instance proceedings and though there is no specific CPC provision regulating the matter, the practice of appeal courts is that "when giving notice of a session of the chamber... account must be taken to afford the parties sufficient time to prepare for the session" (see Federal Court opinion in Decision SS Kzs. 24/76). This defect is in part alleviated by Article 369 of the CPC, which requires delivering a copy of the appeal to the opposing party and giving it eight days to respond.

The right of an accused to respond to the facts and evidence against him and to present facts and evidence in his favour (Art. 4 (2), CPC) is a prerequisite without which the defendant would not be able to prepare his defence, and is a principle of the CPC.

4.6.3.4. Right to trial without undue delay – Pursuant to the CPC (Art. 16), the court is obliged "to ensure that the procedure is conducted without delay and to prevent all abuse of rights belonging to persons involved in the trial". This principle is developed elaborated in a series of CPC provisions (e.g. Art. 218, 258, 283, 393...). In the proceedings involving juveniles, CPC requires particular emergency (Art. 474, 491, 496). The Serbian Act on Judges prescribes that trial judges must inform the president of their court of the progress of their cases with regard to time. Judges must also report to their court presidents why a first-instance proceeding has not been concluded within six months of receipt of the case and continue to do so thereafter at regular monthly intervals. (Art. 25, Serbian Act on Judges).

4.6.3.5. Prohibition of trials in absentia *and the right to defence* – The Federal and Serbian Constitutions prohibit trying a person in his absence "if he is accessible to the court or other body authorised to conduct proceedings," while the Montenegrin does not contain a provision to this effect (Art. 29 (2), Federal Constitution; Art. 24 (2), Serbian Constitution). Trial *in absentia* is allowed only exceptionally, in cases when the defendant is absent through his own fault e.g. is a fugitive or otherwise inaccessible to government agencies, and there are compelling reasons for trying him in his absence (Art. 304 (2), CPC; for the shortened procedure see Art. 433). Furthermore, a defendant being tried *in absentia* must have defence counsel from the moment the decision is taken to try him (Art. 70 (3)). The law absolutely prohibits *in absentia* trials of juveniles (Art. 454 (1), and a person who has been convicted *in absentia* or his counsel may seek a new trial (Art. 410). These provisions of Yugoslav law conform with international standards.

The Federal Constitution guarantees the right to defence and the matter is more closely regulated by the CPC. Article 29 of the Constitution lays down:

Every person shall be guaranteed the right to defend himself and the right to engage a defence counsel before the court or other body authorised to conduct proceedings.

No one being tried before a court or other body authorised to conduct proceedings may be punished without being granted a hearing and allowed to defend himself, in accordance with federal law.

Every person shall be entitled to have a defence counsel of his choice present at his hearing.

The cases when a suspect must be given legal assistance shall be specified by federal law.

A defendant may undertake his own defence only in cases when the law does not make defence counsel mandatory (Art. 5, Art. 226 (8 and 9), Art. 229 (5 and 6), Art. 243 (4)). Counsel is appointed by the court in two cases: when having counsel is mandatory and the defendant has not retained his own attorney, and when the defendant pleads indigence. The law stipulates cases in which defence counsel is mandatory: when the defendant is deaf, mute or both, incapable of defending himself, or is being tried for a criminal offence carrying the death penalty or a prison term exceeding 10 years, the defendant must have a counsel at the first questioning; this also applies if the defendant is tried *in absentia*, as soon as the decision is taken to conduct trial *in absentia*; if the defendant is taken into custody he must have a defence counsel appointed by court at the time of rendering the decision on detention (Art. 71 (1 to 3)). Instead of a court-appointed defence counsel, the defendant can at any time take another counsel (Art. 73 (1)). Besides,

president of the court can dismiss the appointed counsel who is remiss in his duties. The information on the dismissal of a defence counsel is sent to the Bar Association (Art. 73 (5)). The essence of the right to defence guaranteed by the constitution is to provide the defendant with the possibility to get appropriate legal assistance throughout the trial. The intent of the constitutionally guaranteed right to defence is to provide defendants with appropriate legal assistance during the entire trial. In this context, the Federal Constitutional Court on 14 March 2001 ruled unconstitutional Article 123 (4) of the former CPC stating that the time period for entering a petition for remedy starts from the day the defendant, not his counsel, is served with the judgement (*Sl. list SRJ*, No. 13/01). Where indigent defendants are concerned, the CPC states that the defendant who is unable to bear the costs of defence himself can have a court appointed counsel when on trial for offence carrying a prison sentence exceeding 3 years or if this is required by interests of fairness (Art. 72).

The CPC extends to the defendant the right to engage defence counsel. Thus the defendant who has been called by the police for questioning or has been summoned by the investigating judge (Art. 226 (8 and 9), Art. 243 (4)) has the right to be informed about his rights, which includes the right to legal council. Maybe the most important novelty is that a suspect can be interrogated by the police only with his consent and in presence of an attorney. The very statement that he agrees to the interrogation must be given in the presence of the defence counsel (Art. 226). If the defendant cannot provide himself a defence counsel, one shall be appointed *ex officio* from the list of attorneys submitted by the Bar Association.

Fundamental changes in the criminal procedure law in the FRY have been made, however, in the part regulating the contact of suspect/defendant with his defence counsel and the right of counsel to review cases and records used in the proceedings. The defendant in custody must have an attorney as soon as the court renders the decision on detention (Art. 171 (2)). After passing the decision to initiate the investigation or after the immediate filing of the indictment, as well as beforehand, if the suspect has been questioned pursuant to regulations on questioning of defendants, defence counsel has the right to review records and collected items submitted as evidence (Art. 74 (1)).

The Criminal Procedure Code allows the defence counsel to read the criminal charges filed and the request to open an inquiry immediately prior to first interrogation (Art. 74 (2)). As concerns the contact with the defence counsel, regulations are more detailed than the ones in the old law. Supervision on discussions conducted between the suspect/defendant with his defence counsel is especially regulated. Defence counsel has the right to a confidential discussion with the suspect deprived of freedom even before he has been interrogated, as well as with the defendant held in custody. Control over this discussion before the first interrogation and during the investigation is *allowed only by observation, but not by listening* (Art. 75 (1) italics added). When the investigation is completed or when the indictment is issued without prior investigation, the defendant cannot be denied free and unsupervised correspondence and discussion with his defence counsel (Art. 75 (5)). As regards the defendant himself, he shall be allowed, if he so requests, to read the criminal charges filed and the petition for investigation immediately prior to the first hearing (Art. 89 (3)).

Text pertaining to confession given during the proceedings has also been reviewed. When the defendant confesses to having committed a criminal offence, the body in charge of conducting the procedure is obliged to continue gathering evidence about the offence *only* if the confession is obviously false, incomplete, contradictory or unclear and if it is not corroborated by evidence (Art. 94; italics added).

Since they quite well regulate the right of defence counsel to access all material evidence and unconditional obligation of the prosecutor to disclose all evidence to the defence, these provisions are in keeping with the ECHR standards (see *Edwards v. United Kingdom*, ECHR, A 247 B, 1992, para. 36).

4.6.3.6. Right to call and examine witnesses – A defendant may during the entire proceeding make motions to call new witnesses and expert witness, and to present new evidence (Art. 326 (4), Art. 339, Art. 340 (1)). The consequences of the failure of a witness or expert witness to appear when summoned by the court or of refusing to testify are the same, regardless of whether they are witnesses for the prosecution or the defence. Persons involved in the investigation can, upon approval of the investigating judge, directly question witnesses and experts (Art. 251 (7)). Testimonies given outside the trial itself are admissible only if persons involved in the proceedings have been informed about the time and venue of these testimonies (Art. 288 (3) and Art. 334 (3)).

4.6.3.7. Right to an interpreter – Article 49 of the Federal Constitution guarantees the right of everyone to use his own language in proceedings before a court or other body authorised to conduct proceedings, and to be informed of the facts in his own language. An identical provision is contained in the Serbian Constitution (Art. 123 (2)), while the Montenegrin (Art. 72) envisages this right only for members of national and ethnic groups, not for all.

Pursuant to CPC, parties, witnesses and others taking part in the proceedings have the right to use their own language and for that purpose simultaneous interpretation is provided (Art. 9). If the proceedings are held in the language of these persons, the court is obliged to inform them about the right to an interpreter (Art. 9 (3)). When "the defendant, his counsel... contrary to their request have been denied the right to use their own language during trial and to follow the course of trial in their language" this constitutes a serious violation of criminal proceedings (Art. 367, item 1, Art. 368, (1. 3)). Problem also exists regarding the issue of payment for interpreter fees. The CPC (Art. 193 (5)) only envisages that the cost of interpretation for national minority languages shall not be charged to persons who are generally not requested to pay for the cost of a trail. This further means that persons who do not speak minority languages in the FRY shall not enjoy such benefit. This solution is not in accordance with Article 6 (3) (e) of the ECHR.[60]

4.6.3.8. Prohibition of self-incrimination – Defendants have the right to remain silent, and shall be informed during the first interrogation that "he is not obliged to defend himself personally or respond to any questions" (Art. 89 (2)). Defendents also have the right not to enter a plea in response to the indictment and not to state his defence (Art. 320 (3)). If the defendant has not been duly informed about his rights, court judgment cannot be based on his statement (Art. 89 (10)).

The CPC also prohibits the use of force, threat, deceit, promise, extortion, exhaustion and similar means (Art. 89 (8)). Also, the judgment cannot be based on the statement of the accused that has been obtained contrary to this prohibition (Art. 368 (1.10)).

4.6.3.9. Special treatment of juveniles in criminal proceedings – Article 14 of the ICCPR prescribes that the procedure in the case of juveniles must take into account their age and the desirability of promoting their rehabilitation. There are no criminal statutes in Yugoslavia specifically treating juveniles; this is done instead in separate chapters of laws applicable to adult offenders. Thus the CPC regulates in a separate chapter (XXIX) procedure with regard to juveniles. Its provisions are applied when persons who committed criminal offences when they were minors have not attained the age of 21 at the time proceedings against them are instituted, and some provisions are applied also to youthful offenders (Art. 464).

Pre-trial proceedings are conducted by a juvenile court judge and the trial itself is held before a bench of the juvenile court. Lay judges on these benches are required to have special qualifications. Though the public is as a rule excluded, this need not always be the case since the law allows the presence in the courtroom of a limited number of professionals (Art. 494). A juvenile may never be tried *in absentia* (Art. 454) and, finally, the juvenile court plays an important role in the supervision of the measures it has pronounced and further decisions in that regard (Art. 491 and 492).

4.6.3.10. Right to appeal – The Federal Constitution lays down that "Everyone shall be guaranteed the right of appeal or resort to other legal remedies against a decision which infringes a right or legally founded interest" (Art. 26 (2)). Identical provisions are contained in the Montenegrin (Art. 17 (2)) and Serbian (Art. 22 (2)) Constitutions.

The two-instance principle is an absolute rule. An appeal against a decision of a lower court is always allowed, and in some cases may be pursued to the third instance (Art. 391 (1.3), CPC). Problem with the third-instance court as a "higher court" arises in the case of military courts, where in second and third instance it is always the Supreme Military Court that decides, but in different panels (Art. 20, Act on Military Courts).

In addition to appeal as a regular remedy, a convicted person also has recourse to several extraordinary remedies and may lodge a motion for a new trial, for extraordinary mitigation of sentence, and for extraordinary review of the sentence (chapters XXIV and XXV of the CPC).

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[60] *Id,* p. 165.

4.6.3.11. Right to compensation – The Federal Constitution prescribes that "a wrongfully convicted or wrongfully detained person shall be entitled to rehabilitation and to compensation for damages from the state, and to other rights as envisaged by federal law" (Art. 27 (4)). The relevant provision of the Serbian Constitution (Art. 23 (4)) is virtually identical, while the Montenegrin Constitution envisages only the right to compensation (Art. 25 (4)).

4.6.3.12. Ne bis in idem – International standards (Art. 14 (7) ICCPR and Protocol 7 Art. 4 (1) ECHR) envisage that "nobody... can be tried again nor can he be punished again... for an offence for which he had already been legally acquitted or convicted". ECHR, unlike the ICCPR, allows departure from this rule – procedure can be re-opened if "there is evidence about new or newly discovered facts or if in earlier procedure there has been a serious violation that could affect its outcome" (Art. 4 (2) Protocol No. 7, ECHR).

The provision of Article 28 of Federal Constitution has not appropriately formulated the principle *ne bis in idem*, since the Constitution prohibits conviction and/or punishment for the same offence again, and not – which is the essence of this principle – the re-institution of proceedings for the same offence against a person against who such procedure has already been conducted and terminated by final judgment. Much better solution is the one in Montenegrin Constitution, according to which "nobody can be tried twice for the same punishable offence" (Art. 27). Serbian Constitution does not contain any provisions whatsoever about this principle of procedure.

The new CPC recognised the norm according to which "nobody shall be prosecuted and punished for a criminal offence for which he had already been acquitted or convicted by final judgement, or when criminal proceedings have been terminated by final decision or the charges have been dropped by final judgment" (Art. 6 (1)). Besides, it is prohibited to render decisions that are less favourable for the defendant in the proceedings upon filing the relevant legal remedy (Art. 6 (2)).

4.6.4. Special Provisions Regarding Criminal Proceedings in Organised Crime Cases

In the field of legislation certain steps were made in regard to organised crime. In this respect, amendments to the CPC entered into force on 27 December 2002 (*Sl. list SRJ,* No. 68/02). These amendments provided a new chapter of the CPC (XXIXa) that regulates special rules of procedure for criminal offences of organised crime. In cases not explicitly regulated by this chapter, other provisions of CPC shall be applied (Art. 504a (2)).

Article 504v specifically prescribes that information about pre-trial and investigating procedures for offences of organised crime represent official secret. The information about pre-trial can be obtained only with a written authorisation of the public prosecutor, and the information about the investigation with an approval of the investigating judge, with prior consent of the public prosecutor (Art. 504v (2 and 3)).

Also, for the first time the notion of the witness collaborator is introduced into the Yugoslav legislation. The CPC defines the witness collaborator as "a member of a criminal organisation against who criminal charges have been filed or proceedings are being conducted for the criminal offence of organised crime, provided there are extenuating circumstances on the basis of which according to the Criminal Code he could be exculpated or his sentence reduced and if the significance of his statement for uncovering, proving or preventing other offences by the criminal organisation is more important than the damaging consequences of criminal offences he had committed" (Art. 504d (1)). Witness collaborator who has participated in the trail shall not be prosecuted for the offence he testified about.

The witness collaborator is not bound by the CPC provisions related to relieving from duty to bear witness and responsibility to respond to certain questions (exculpation for the spouse, relatives to a certain degree of kinship, possibility to deny response to questions that would mean exposure for himself or other persons to severe shame, significant material loss or criminal prosecution) (Art. 504đ).

The Council that decides on the proposal of the prosecutor to hear such witness during the trail shall hold a session in camera (Art. 504e (2)). The CPC in Article 292 provides possibilities in which it is allowed to exclude public from the main hearing. Since there is no provision of this kind on pre-trail proceedings, this is significant for the principle of public presence from the aspect of the defendant's

position. Article 504j envisaging that “statements and information obtained by the public prosecutor during pre-trial proceedings can be used as evidence in the trail proceedings but the decision cannot be based entirely on them”. *Ratio legis* of this provision is a protection of the witnesses and their personal and family circumstances as well as their safety. In the part related to the analysis of Article 292 of the CPC, the absence of specific ground for excluding the public in relation to the protection of the interest of witnesses was stressed. The Council can open the trial for public upon proposal by the public prosecutor and with consent of witnesses (Art. 504ž).

Provisions of the new CPC also prescribe that the Ministry of Interior that in the pre-trial proceedings has undertaken some of the actions against organised crime offences, have the obligation to immediately inform the public prosecutor (Art. 504l).

For the protection from the aspect of the protection of interantional standards of human rights, especially important are the provisions in the Articles from 504lj to 504o. the CPC provides new measure – under-cover investigator (Art. 504lj (2)). On the basis of the written order of an investigating judge, the Ministry of Interior executes this measure. They have the obligation to submit daily and final reports to the investigating judge and public prosecutor on measures they have undertaken (Art. 504m (1 and 2)). The CPC further prescribes that “bodies of the Ministry of Interior shall submit complete documentation consisting of photographs, video, audio or electronic records and all other evidence collected using under-cover investigator to the public prosecutor (Art. 504m (3)). This means that possibilities are expanded for application of measures that restrict the right to privacy. However, such an important limitation is more closely regulated by the CPC only through general provision that the under-cover investigator can use technical means to record conversations and enter peoples' home and other premises if this has been provided by the investigating judge order (Art. 504nj (5)). It is prescribed that all information gathered by these means shall be destroyed if the prosecutor does not initiate proceedings within six months from the day of expiration of measure, and that persons to whom this information relates should be informed about this measure if their identity can be determined (Art. 504n (2)). It is impossible not to know identity of a person since the order of the investigating judge must contain information about the person against the measure is being conducted (Art. 504lj (2)).

The under-cover investigator can be brought as a witness during a trial. Hearing shall be conducted in such manner not to reveal the identity of the witness. This provision is rather vague. It can be concluded that this does not mean the usual exclusion of public (in the sense of Art. 292 CPC) but the complete protection of identity, which means that neither the defence nor the defendant can find out this identity (Art. 504nj (4)).

When there is reasonable doubt that an organised crime offence has been committed, the court can, regardless of the provisions in Article 82 to 88 and 513 to 520, authorise a measure of temporary confiscation of items and property benefits.

4.7. Protection of Privacy, Family, Home and Correspondence

Article 17, ICCPR:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

4.7.1. Privacy

It is customary in law to interpret the privacy of individual in two different ways. According to the usual understanding, the right to privacy serves to ensure protection from undesired publicity, such as unauthorised intrusion of the press into private life, publishing of secretly taken photographs, tapping telephone conversations, apartment search, opening letters, etc. Contrary to this, according to the wider concept, right to privacy is identified with personal autonomy of individual, or his general freedom to determine his own lifestyle without interference by state or other persons. In this respect, the right to privacy is discussed in case of free determination of personal preferences of an individual, such as

appearance, sexual orientation, founding and maintaining marital and family relations, upbringing of children, refusal of medical treatment, setting funeral arrangements and the like.

In keeping with the generally recognised interpretation of international human rights instruments, an individual's right to privacy includes his identity, integrity, personal feelings, autonomy and sexual preference, and his communication with others. The Federal Constitution guarantees "the inviolability of the physical and psychological integrity of the individual, his privacy and personal rights" (Art. 22 (1)). The wording in the Montenegrin Constitution is identical (Art. 20 (1)), while the Serbian Constitution states that "human dignity and the right to privacy are inviolable" (Art. 18).

Further in the text privacy shall be considered in the sense of: access to personal data, sexual autonomy, criminal law protection of private life, home, correspondence, honour and reputation, family life and family, name and change of sex by trans-sexuals.

4.7.1.1. Access to personal data – In its Article 33, the Federal Constitution stipulates the protection of personal data:

Protection of the secrecy of personal data shall be guaranteed.

The use of personal data for purposes other than those for which they were compiled shall be prohibited.

Everyone shall have the right of access to personal data concerning himself as well as the right of court protection in the event of their abuse.

The collection, processing, utilisation and protection of personal data shall be regulated by federal statute.

The Montenegrin Constitution contains a very similar provision (Art. 31), while the Serbian also guarantees the protection of personal data but does not envisage court protection in the case of abuse, or the right of individuals to be informed about data concerning them (Art. 20).

The Personal Data Protection Act (*Sl. list SRJ*, Nos. 24/98, 26/98) states that personal data may be collected, processed and used only for the purposes specified by the Act, and for other purposes only with the consent in writing of the individual concerned (Art. 13). The grounds on which access to personal data can be denied are broadly defined, and consequently give authorities broad powers to withhold it.[61]

It also prescribes that individuals may request data about themselves, or may request to see such data, the deletion from records of data that is not in accordance with the law, and prohibition of the use of erroneous data (Art. 12). These rights, however, do not apply to data collected in accordance with the regulations on criminal and national security records (Art. 13). The grounds upon which access to personal data may be denied are very broadly defined and, consequently, give government agencies too much latitude to withhold information it. In early May 2002, Federal Constitutional Court initiated the procedure to harmonise the Article 13 with the Federal Constitution and the ICCPR, on the initiative by the Humanitarian Law Center (HLC) submitted in October 2001.[62] Another initiative to review the constitutionality of provisions related to personal data protection was submitted in April 2002. This time the possibility of application of unconstitutional regulations arose in April 2002, with the beginning of the population census in the FRY. The Lawyers Committee for Human Rights and Forum for Ethnic Relations have submitted to the Federal Constitutional Court a proposal to review the constitutionality of the Act on Census of Population, Households and Apartments in 2002 (*Sl. list SRJ*, Nos. 74/99, 21/01). The problematic provision of the Act expressly states which persons are obliged to keep as official secret all personal, property and ownership data they have obtained during the census procedure (Art. 11). This obligation, however, does not apply to other persons (such as members of the Ministry of Interior, employees of the Urban Development Institutes) who would accidentally or deliberately obtain these data

[61] See *Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR*, CoE, October 2002, p. 190.

[62] HLC, *Press Release*, 6 May; *see Human Rights in Yugoslavia 2001*, I.4.7.1.

and thereby violate the constitutional provision which guarantee the protection of personal data (Art. 33, Federal Constitution).[63]

With regard to records in the field of security, the Serbian Government had passed two decrees in May 2002 – Decree on Opening State Security Service Secret Files which declassified files kept on Serbian citizens (*Sl. glasnik RS*, No. 30/01), and a week later the Decree Amending the previous one (*Sl. glasnik RS*, No. 31/01). On the basis of the first regulation, the above-mentioned files had ceased to be secret, and citizens who these files had been kept had the right to see their contents, as well as to impart to others what they had learned. The second Decree, however, altered the title and Article 1 of the previous Decree, which meant that the text related to removal of the status of secret had been changed, so that the new changes allowed only "the inspection" of files by the persons concerned. This regulation entered into force only after the files had already ceased to be confidential on the basis of the first Decree, so that for renewal of the state secret status it was not sufficient to alter the text of the regulation, but it was necessary to enact another decision on restoring the status of confidentiality.[64]

The opening of secret files is regulated with only one decree in Montenegro, whose Government in September 2001 enacted the Decree on Opening State Security Service Secret Files (*Sl. list RCG*, No. 45/01) kept on Montenegrin citizens. Although Article 1 of the Decree has declassified these filed, citizens, or immediate family of deceased citizen, are only allowed to see files (Art. 2).[65]

Although the attempts to deal with this issue certainly represent a step towards democratisation of the society, it should be borne in mind that these files are still kept under the control of state security services[66]. Moreover, opening of secret files for public encroaches on the very essence of the right to privacy, and therefore it needs to be regulated by law and not by a decree. In the year 2002 two model laws have been presented on the opening of secret police files, each of them drafted by one of the two Belgrade-based NGOs, Centre for Advanced Legal Studies (CUPS) and Centre for Antiwar Action (CAA). CUPS has prepared a model law related to the opening of secret files kept with the Serbian State Security Service, whereas the CAA, together with this model, prepared also a text of the law on opening secret files of all security services at to the federal level. Authors of both models have envisaged that all citizens, including foreigners under specific circumstances, have the right to be informed whether a file has been kept on them, to have an insight into this file, as well as request corrections of data contained in their files. Both models allow the use of files for scientific and other purposes regulated by law, and after the expiry of the period for such use (set to five year in the CAA proposal and ten years in the proposal by the CUPS), these files are handed over to the archives.

In respect to the handling of files, both models state that it is necessary to remove the files from the services in which they had been kept and transfer them to an independent public service for saving. However, the CUPS model law provides an alternative solution according to which the secret files are not

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[63] YUCOM, Press Release, 9 April; organisations have also suggested that the court should order discontinuation of the census, given the danger posed by unavoidable damaging consequences that could arise due to its continuation.

[64] Therefore the Ministry of the Interior acts inappropriately when they remind citizens, before they read their files, that they are not allowed to disclose to others the contents of the file, because these files are no longer confidential and there are no grounds for restricting circulation of information contained in them. Another problem arose with the opening secret files. Namely, among the people who went to see the contents of their files it was noted that many of them contain only the material until early nineties. Doubts were raised whether the following of these people by the State Security indeed ceased at that time. It is highly possible that the later documents have only been classified in a different manner and that access to them is still not possible. Ivan Jaković, *Danas, "*Tajna večera kod *Dva ribara*", 2 August 2001.

[65] It is unclear why the text of Decree stresses that the citizen on whom the file had been kept, is only allowed to review it in the premises of the State Security, without the right to take it out and copy the file (Art. 2 (1.1)), whereas no such restriction is mentioned for relatives of the deceased citizen (Art. 2 (1.2)).

[66] The mentioned decrees only allow the opening of the files related to "internal enemies, i.e. internal extremists and terrorists", whereas all others remain confidential.

to be opened nor an independent agency is established to take them over and protect their use. Pursuant to this solution, significantly different from the basic text, the files are taken over directly by the Serbian Archives, where they are subject to regulations on archive materials.

Under certain provisions of the Act on Security Services of the FRY (*Sl. list SRJ*, No. 37/02), give authority to have insight into personal data of individuals, contained in documentation of various institutions. Namely, within their jurisdiction, security services may gather information they need through access to registers and other databases (Art. 24). State administration bodies, courts and legal entities which keep such registers and data bases, are obliged to allow access to the security services on the basis of written requests by Service officials (Art. 26 (1)).

From the viewpoint of personal data protection, another objection can be raised in relation to this Act. Access, controlling and protection of records and data in the registers and databases kept in the services themselves has not been regulated by this law, but these matters are to be regulated by decrees (Art. 35).

Nevertheless, the law prescribes that security services are bound by the Constitution and laws in performing their duties, that they are obliged to respect human rights and freedoms, professionalism and proportionality in exercising their authority (Art. 4). Furthermore, citizens are allowed to be informed about measures of data gathering undertaken by the services with regard to them, and in cases when the services are authorised by law to refuse such request, citizens have the right to lodge an appeal against a *reasoned* decision of the Service chief (Art. 34, italics added). This law also contains an entire chapter on *Democratic Civilian Control* (chapter VII), that regulates the supervision over security services by the Federal Parliament through a standing Committee for Control of the FRY State Services, established by the Parliament (Art. 47).

One of the model federal Criminal Codes provides another criminal offence in regard to privacy of the individual. This offence encompasses illegal gathering, imparting to other person or use for unintended purposes the data about an individual that had been obtained, processed and used under the law. A specific form of this offence is the illegal gathering and use of these data contrary to the law. Illegal work of secret services and abuse of personal data obtained in the course of their work is prohibited by this rule.

4.7.1.2. Sexual preference – Yugoslav legislation allows sex between two consenting males over the age of 18, but intercourse with a youth below that age, even with his consent, is a crime and carries a sentence of up to one year in prison (Art. 110 (4), Serbian CC; Art. 91 (4), Montenegrin CC).

Right to express sexual orientation is not explicitly granted in the Yugoslav legal system. The Serbian Constitution Proposal created by the independent group of experts of the Belgrade Centre for Human Rights,[67] as well as the draft Act against Discrimination, composed by the Institute for Comparative Law in Belgrade, propose that no discrimination is allowed with regard to sexual orientation of an individual.

Reliable records on discrimination based on homosexual orientation are not available either in Serbia or in Montenegro. Public opinion is generally not in favour of public display of homosexual orientation.[68]

4.7.1.3. Protection of privacy by criminal law – The federal and republican criminal codes envisage punishment for the invasion of privacy. Thus unauthorised photographing (Art. 195 (a), Federal CC; Art. 71, Serbian CC; Art. 55, Montenegrin CC), publication of another's personal papers, as well as of portraits, photographs, film or audio recordings of a personal nature (Art. 71 (a), Serbian CC; Art. 56, Montenegrin CC), unauthorised wiretapping and audio recording (Art. 195 and 195 (a), Federal CC; Art. 70, Serbian CC; Art. 54, Montenegrin CC), violation of the privacy of correspondence (Art. 72, Serbian CC; Art. 54, Montenegrin CC), and disclosure of privileged information (Art. 73, Serbian CC; Art. 53, Montenegrin CC), are criminal offences.

Electronic surveillance and recording of another's conversations or statements without the consent of the individual involved is also punishable (Art. 195 and 195 (a)), Federal CC; Art. 70, Serbian CC; Art.

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[67] See <http://www.bgcentar.org.yu>

[68] See more in *Human Rights in Yugoslavia 2001,* part II.2.10.

54, Montenegrin CC), and aggravated forms of the offences are when they are committed by a person acting in an official capacity.

Protection from infringing the privacy of an individual is also provided by the definition of the offence "illegal photograph taking" in Article 71 of the Serbian CC. Pursuant to this, anyone produces an unauthorised photographic, film or other image of an individual without his consent, and thereby seriously infringes his/her private life, or anyone hands or shows such image to a third party or in some other way enables the third party to have access into such material, shall be fined or sentenced to up to one year in prison. This offence also provides more serious forms if such act is committed by an official person on duty.

Pursuant to the provision of criminal offence "unauthorised publishing of another person's manuscript, portrait, photograph, film or phonogram" stated in Article 71a of the Serbian CC, anyone publishes or displays without authorisation a manuscript, portrait, photograph, film or phonogram of a personal nature without consent of the individual shown in the portrait, photograph or film or whose voice has been recorded on a phonogram or without consent of another person whose consent is required by law, and thereby seriously infringes the private life of this individual, shall be fined or sentenced to up to one year in prison.

Domestic legislation does not provide special protection of public figures privacy. However, decisions of international bodies monitoring the respect of human rights have already made a distinction between the level of protection of pubic figures and other citizens. Hence the right to respect of private life can be restricted to the extent to which the individual himself links his private life to the public life. The limits of acceptable critisism are wider in regard to public figures (*Lingens v. Austria*, ECHR, App. No. 9815/82 (1986) and *Van Oosterwijck v. Belgium*, ECHR, App. No. 7654/76 (1980)).

The constitutional guarantee of the inviolability of the mail and other correspondence is more closely regulated by criminal legislation, which prohibits opening another's letter, telegram, package or other matter, delaying delivery or concealing such matter without authorisation, its destruction or delivery to a third person (Art. 72, Serbian CC; Art. 52, Montenegrin CC).

Unauthorised disclosure of privileged communications (Art. 73, Federal CC; Art. 53, Montenegrin CC), that is, statements made within a protected relationship such as attorney-client, physician-patient and the like, is also punishable under the law, except when such a disclosure is in the public interest or when the interests of a third person take precedence. The offence is actionable under civil procedure.

4.7.2. The Home

The Federal Constitution lays down the inviolability of the home. Law enforcement officers may enter and search a home only with a court warrant (Art. 31 (1 and 2)), and the search must be conducted in the presence of two witnesses (Art. 31 (3)).

In a manner laid down by federal statute, a law enforcement officer may enter a home or other enclosed space without a warrant and search them without the presence of witnesses if this is necessary to arrest a perpetrator of a criminal offence or to protect human life and property (Art. 31 (44)).

Similar guarantees of the inviolability of the home are to be found in the constitutions of the republics (Art. 21, Serbian Constitution; Art. 29, Montenegrin Constitution).

On the other hand, provisions on search are also provided in the new Criminal Procedure Code. By this Code provision on search have been improved.[69] Hence the search of an apartment can be in order to apprehend the perpetrator of a criminal offence or to find evidence of an offence or objects important for a criminal proceeding. Better guarantees are set on searching attorney's offices. These premises may be searched only in relation to a specific proceeding, act or document (Art. 77 (2)). Search is ordered by the court, through a written reasoned warrant. If the person to whom the search warrant is related requests the presence of a legal counsel or defence counsel, the search shall be postponed until arrival of such person, up to a maximum of three hours. A person subject to search must be specifically informed about the right

[69] Provisions of the old CPC that were declared unconstitutional by the Federal Constitutional Court. See *Human Rights in Yugoslavia 2001,* I.4.7.2.

to have an attorney present during the search (Art. 78). Search can be conducted without prior serving of the warrant, as well as without prior notice to hand over persons or objects, or the information about the right to defence counsel or attorney, if there is possibility of armed resistance or other form of violence, or if there is obvious preparation or action to destroy evidence of a criminal offence or object of importance for criminal proceedings.

In strictly defined cases the CPC permits entry into the home and search without presence of witnesses under explicitly stated circumstances (Art. 81). According to the text, controversial is basis for search allowing entry and search without a warrant or witnesses if "someone is calling for help" (Art. 81 (2)). The existence this is difficult to prove, and the burden of proof is transferred to the complainant, i.e. the owner of the apartment. Owner of the apartment who is present has the right to lodge a complaint against the action by the internal affairs bodies (Art. 85 (2)). Internal affairs bodies are obliged to submit a report to the investigating judge about a search undertaken without appropriate court order (Art. 81 (6)).

The Montenegrin Interior Affairs Act (*Sl. list RCG*, Nos. 24/94 and 29/94) prescribes, in Article 3, that "authorised officials" may enter and search a home without a warrant and without the presence of witnesses if "necessary to take into custody the perpetrator of a criminal offence or to save human life and property." Though this is in keeping with the exceptions provided for by Article 31 (4) of the Federal Constitution, the entire provision is unconstitutional as the subject matter may be regulated only by federal statute. Furthermore, there is a major potential for abuse since no oversight mechanisms are envisaged.

Violation of the home is punishable under all the criminal codes. The Federal CC deals with violations by officers of federal agencies. The criminal offences defined are violation of the inviolability of the home (Art. 192, Federal CC; Art. 68, Serbian CC; Art. 50, Montenegrin CC) and illegal search (Art. 193, Federal CC; Art. 69, Serbian CC; Art. 51, Montenegrin CC).

The term "home" is broadly constructed in Yugoslav jurisprudence as any enclosed space which serves as a dwelling either permanently or occasionally. Any premises legally owned by an individual, regardless of where he actually resides, are also considered a home.

4.7.3. Correspondence

Besides letters, the term correspondence includes telephone, telegraph, telex, facsimile, and all other mechanical and electronic means of communication. The Federal Constitution guarantees the privacy of correspondence (Art. 32 (1)). This right may be restricted by federal statute but only with a court order and if required for the conduct of criminal proceedings or national defence (Art. 32 (2)). The corresponding provisions of the republican constitutions are similar (Art. 30, Montenegrin Constitution; Art. 19, Serbian Constitution).

The Criminal Procedure Code goes into more detail with regard to restrictions on the privacy of correspondence.

Unlike the former CPC, the new CPC introduces a restriction with regard to the possibility that an investigating judge can have insight into letters, telegrams or other means of communication addressed to the defendant or sent by him; this restriction is allowed this only if there are circumstances on the bases of which it can be expected that these would serve as evidence in the proceedings (Art. 85 (1)). If the interests of the proceedings allow, the contents of the consignment can be communicated in its entirety or partly to the defendant or to person it had been addressed to, or can be delivered to him. If the defendant is absent, the consignment shall be returned to the sender if this is not contrary to the interests of the proceedings (Art. 85 (3)).

The status of convicts is regulated by the Act on Execution of Criminal Sanctions (*Sl. glasnik RS*, No. 16/97), which allows no restrictions on the right of correspondence of persons serving prison sentences (Art. 65 and 66).

The Serbian Interior Affairs Act (*Sl. glasnik RS*, No. 44/91) envisages a procedure whereby the police may inspect letters and other correspondence (Art. 13). At the request of the republican Public Prosecutor or Minister of Interior, the Serbian Supreme Court may authorise opening of correspondence and electronic surveillance if required for the conduct of criminal proceedings or for the security and defence of Serbia. The request is decided upon by the President of the Supreme Court or a justice

designated by him, after which the Minister may order the taking of "measures departing from the principle of the privacy of correspondence with respect to certain individuals or organisations ..." (Art. 13 (3)). The statute clearly is not in line with the Serbian or the Federal Constitutions, neither of which envisages the interests of "security" as grounds for opening and reading another's correspondence. Moreover, as this is a republican law, it violates the provision of the Federal Constitution which provides that such restrictions can only be prescribed by a federal law; therefore in January 2001, by decision of the Federal Constitutional Court (*Sl. list SRJ*, No. 5/01) established that this provision was not constitutional.

Pursuant to the above mentioned Act on Security Services of the FRY, these services are also authorised to secretly collect necessary information. In case this cannot be done in the usual way (Art. 28) or in a way that would not require a disproportionate risk or endangering lives of others, the Military Security Service can use special means and methods that temporarily restrict human rights and freedoms generally guaranteed by the Constitution and law (Art. 30 (1)). Special means and measures, including supervision, following and surveillance of persons, as well as surveillance of mail packages and other means of communication (Art. 30 (2.1 and 2.2)), can be used only upon approval of the competent military court (Art. 31 (1)). The motion for their enforcement must contain basic suspicions, grounds and need for such implementation, as well as the duration of this measure (Art. 31 (3)). Although this procedure is entirely under the jurisdiction of military bodies, such way to regulate secret data collection offers a some guarantee that security services cannot use their authority that can infringe human rights and freedoms arbitrarily.

Pursuant to the Act on Security and Information Agency (*Sl. glasnik RS*, No. 42/02), Director of the newly established Agency can, if this is required by the security interests of Serbia, issue an order based on a prior court decision, requesting that against certain natural or legal persons measures be undertaken that depart from the principle of inviolability of the privacy of correspondence and other means of communication (Art. 13).

This Act once again ignores constitutional provisions in the field of privacy of the individual, both those prescribing the exclusive jurisdiction of the federal legislator in regulating these issues, and those on permitted restrictions of this right. In this process the said decision by the Constitutional Court has seen neglected, and the protection of the interest of "Republic of Serbia security" is stated as a reason for infringing privacy. Consequently, the legislator did not find it legally relevant that the Serbian and the Federal Constitution, state only two reasons as grounds for permitted restriction of the principle of inviolability regarding the privacy of correspondence and other means of communication, and only in cases when such limitation of privacy is necessary for the conducting the criminal proceedings or for the defence of the FRY or Serbia. Neither did they consider the decision of the Federal Constitutional Court pursuant to which it was not permitted to expand the list of grounds by citing "reasons of security of Serbia". This Act, which ignores constitutional provisions and the jurisprudence is contrary to the rule of law.

The procedure for taking measures to restrict one's privacy pursuant to this Act is as follows: it is necessary that the proposal by the director of the Agency to undertake measures be approved by the President of the Supreme Court of Serbia, or another authorised judge, within 72 hours from the submission of the proposal. The approved measures can be enforced for up to six months maximum, and can be extended for another six months maximum on the basis of a new proposal (Art. 14).

Particular concern is raised by the provision in Article 15, pursuant to which when required by reasons of urgency, and a typical example of this is said to be internal and external acts of terrorism, the director of the Agency may decide to order application of privacy restriction measures, even without a decision by the Supreme Court of Serbia. In this case it is required only to have a "prior written consent to initiate adequate measures by the president of the Supreme Court or an authorised judge". The director of the Agency must then initiate the usual proceedings before the Supreme Court only 24 hours after the moment he received the written consent, by submitting a written proposal, on which the Court must decide within 72 hours. The Court decision would then either approve the extension of already undertaken measures, or suspend them. Therefore, in this particular "case of emergency" it is imaginable that the Director of the Agency would by himself restrict the privacy of an individual for the duration of 96 hours, without an appropriate decision by the Supreme Court.

The HLC submitted in December 2002 an initiative to the Constitutional Court of Serbia to review the constitutionality of the mentioned articles of this Act. According to the HLC opinion, the contested

provisions are imprecise, incomplete and unclear, and therefore open the way to arbitrary interpretation and other forms of misuse.[70]

The three criminal codes define as punishable the violation of the privacy of correspondence, with the Federal CC treating breaches by officials of federal agencies. The criminal offences prescribed are violation of the privacy of correspondence (Art. 194, Federal CC; Art. 72, Serbian CC; Art. 52, Montenegrin CC) and unauthorised wiretapping and recording (Art. 195, Federal CC; Art. 70, Serbian CC; Art. 54, Montenegrin CC).

4.7.4. Honour and Reputation

In accordance with Article 17 of the ICCPR, Code of Obligations envisages a provision of compensation for damages in case of insult against honour and spreading false information. The court can also rule that the judgment be publicly announced, or correction made at the expense of the injuring party, or order the injuring party to withdraw the statement by which the damage had been caused or something else whereby the purpose of compensation can be achieved (Art. 198–200). Criminal codes of the republics still envisage criminal offences against honour and reputation, such as slander, defamation and exposing personal and family circumstances (Chapter XI of the Serbian CC; Chapter IX of the Montenegrin CC).

Pursuant to the modern human rights protection standards, it is recommended that states abandon criminal responsibility for violations of honour and reputation and instead use measures of civic law that accomplish the same purpose. These criminal offences may have justification only when the injured parties are private citizens and not public figures, holders of public functions, especially politicians, insulted and slandered by the media in the process of reporting or commenting issues of public interest.[71]

Outside criminal regulations, no other form of protection have been prescribed for safeguarding the reputation. According to the draft Information Act the legal position of politicians is more strictly defined in relation to the position of other persons, in terms that the sphere of privacy of the politicians is narrowed and that politicians in performing their duties must accept stronger attacks to their person than is the case with other people.

4.7.5. Family and Domestic Relations

Yugoslav legislation is on the whole in accordance with the requirements to protect the family and domestic relations. Thus, Article 61 (2) of the Federal Constitution lays down the equality of legitimate, illegitimate and adopted children, as do also the constitutions of the republics; though the husband of a woman is considered to be the father of their child, the law does provide for the possibility of civil action to determine a child's paternity; common law marriages produce certain consequences under family law, and the like.

However, the concept of protection of the family as a component of an individual's privacy is not to be found in the law. While the Federal Constitution guarantees the inviolability of the home (Art. 31), of the mail and other correspondence (Art. 32), and protection of personal data (Art. 33), and the Serbian adds the right to a private life, none of the constitutions treat the family as part of the private sphere.

The three constitutions mainly regulate the family from the aspect of the society as a whole. Under Article 6 (1) of the Federal Constitution, “the family, mothers and children enjoy special protection,” and the provisions of the republican constitutions are very similar.[72]

Nor is the regulation of family life by the Marriage and Family Relations Act any better. Indeed, the Act does not even contain a definition of the terms family and family life and speaks only of relations

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[70] HLC, Press Release, 2 December.

[71] See I.4.9.5. It is interesting that the ECHR, unlike the ICCPR, does not protect the right to honour and reputation as a separate right, but mentions reputation and rights of others as a legitimate restriction of the freedom of expression, which should be interpreted very narrowly, like any other form of restriction of human rights (see Art. 10 (2), ECHR).

[72] See more I.4.15.

"between parents and children," implying that the quality of family life has to do merely with relations between parents and children, or adopted children and their adoptive parents (Art. 151, Marriage and Family Relations Act). Only the interests of the child and the society are protected. Thus Article 7 (1) of the law prescribes that "parents exercise their rights and duties in the upbringing of their children in accordance with the needs and interests of the child and the interests of the society," and makes no mention of the interests of the parents. The inadequate regulation of family relations is evident also where the role of the child welfare agency is concerned. In proceedings involving parent-child relations, the agency represents the child on behalf of the state (Art. 11, Marriage and Family Relations Act) and no special procedural protection of the interest of parents to be with their children is envisaged. The interests of parents are not a factor the court is bound to consider in deciding to whom custody of a child will be awarded (Art. 125 (2) of the Act).

The failure of the law to view the family through the interests of each of its members has a detrimental effect. Perhaps the most glaring example of this is the lack of any regulation of a child's relations with relatives other than his parents, e.g. grandfather or grandmother. Since the law does even not mention this relationship, it may be concluded that it enjoys no legal protection.

4.7.6. Change of Sex of Transsexuals

In the FRY there is no legal provisions that regulate the conditions under which data referring to sex of the person could be changes after the operation. However, municipal administrations in charge of registers have in practice been responsive to requests for the alteration of data on sex. Contrary to experiences of foreign legal systems in which as a rule there was an initial reluctance of registrars and courts to legally recognise change of sex, absence of legal regulations in the FRY has incited municipal administrative bodies to act as if this was a correction of an erroneous entry of sex at birth, although in cases of trans-sexualism there had not been any mistake either at the initial entering of sex in the registry, or until the person in question has not undertaken the surgical operation of sex change. The only condition for the correction is to submit appropriate medical documentation.

However, it seems that leaving to personal preferences and expertise of competent persons in our municipalities to decide on such important issue as the sex change, gives rise to legal insecurity, which may sooner or later imperil the position of trans-sexuals. Sex change is a fact that can be determined only in a special administrative or court procedure on the basis of professional opinion of competent experts and with respect of the elementary right to human dignity.

4.8. Freedom of Thought, Conscience and Religion

Article 18, ICCPR:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such restrictions as are prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

The Federal Constitution and both republican constitutions guarantee freedom of thought and conscience (Art. 35; Serbian Constitution, *Sl. glasnik RS*, No. 1/90, Art. 45; Montenegrin Constitution, *Sl. list RCG*, No. 48/92, Art. 34 (1 and 2)). Furthermore, freedom of belief is explicitly guaranteed by the

Federal and Montenegrin Constitutions. Along with freedom of religion, these are absolute freedoms and may not be derogated from even during a state of war. Among the grounds on which discrimination is prohibited, the Federal Constitution cites religion, political or other beliefs (Art. 20).

Freedom of religion is also guaranteed by the three constitutions (Art. 43, Federal Constitution; Art. 41, Serbian Constitution; Art. 11 and 34, Montenegrin Constitution). It should be noted, however, that these constitutional provisions are rather exiguous and do not embody some important principles contained in international standards. Article 43 of the Federal Constitution states:

Freedom of religion, public or private profession of religion and performance of religious rites shall be guaranteed.

No one shall be obliged to reveal his religious beliefs.

These rights are regulated almost identically by the Serbian and Montenegrin Constitutions (Art. 41; Art. 11 and 34, respectively), which in addition proclaim the separation of church and state, the freedom of religious communities to perform their rites and administer their affairs, found religious schools and charitable organisations, and provide also for the possibility of state assistance for these purposes.

The widest difference between the Yugoslav constitutional provisions and the international standards of religious freedom is with regard to the freedom of adopting a new religion or belief. General Comment 22 (48) of the Human Rights Committee (1993) is explicit that an individual's freedom "to have or adopt a religion or belief of his choice" (Art. 18 (1), ICCPR) is to be interpreted as the right to change one's religion. This right is also protected by Article 18 of the Universal Declaration of Human Rights. None of the three Yugoslav constitutions, however, mention the right to change one's religion or beliefs.

Under the ICCPR freedom of religion includes the right to manifest religion or belief in worship, observance, practice and teaching. The Serbian Constitution guarantees these rights, with the exception of teaching. It does make it possible for religious communities to establish their schools but, rather than defining religious instruction as a component of the right of every individual to freedom of religion, the Constitution characterises it as an activity of religious communities.

Under Article 18 (4) of the ICCPR, the states parties undertake "to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions." None of the Yugoslav constitutions guarantees this right. Interpreted in conjunction with Article 13 (3 and 4) of the ICESCR,[73] the provision means that parents have the right to establish private schools for the education of their children in conformity with their convictions. In Yugoslavia, however, elementary schools may be founded only by the state and not by private citizens (Art. 9, Serbian Act on Elementary Schools, *Sl. glasnik RS*, Nos. 50/92, 53/93, 67/93, 48/94 and 66/94; Art. 17, Montenegrin Elementary School Act, *Sl. list RCG*, Nos. 34/91, 48/91, 17/92, 56/92, 30/93, 32/93, 27/94, 2/95 and 20/95), although this right is explicitly prescribed by the ICESCR. Consequently, the FRY is in noncompliance with its obligations under both Article 18 (4) of the ICCPR and Article 13 (3 and 4) of the ICESCR.

The Act on Amendments and Changes to the Act on Elementary Schools (*Sl. glasnik RS*, No. 22/02) and the Act on Amendments and Changes to the Act on Secondary Schools (*Sl. glasnik RS,* No. 23/02) regulate religious education and teaching of an alternative subject in Serbian schools.[74]

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[73] Art. 13 (3 and 4), ICESCR:
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents ... to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and authorities to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

[74] In July 2001 the Serbian Government adopted the Decree on Organisation and Conduct of Religious Education and Alternative Subject Education in Primary and Secondary Schools (*Sl. glasnik* RS, No. 46/01). It introduced cources in religious and civic education in schools.

Both subjects are optional. The decision on attendance of religious or alternative subject classes in elementary schools is taken by parents or, if applicable, legal guardians. In the secondary schools students decide about the subject themselves, with the obligation to inform their parents or legal guardians about their decision. Classes on this subject are held in all eight grades of elementary school and all four grades of secondary school, with students having to decide each year. Parents or legal guardians (in primary schools) and students (in secondary schools) have to decide on attending one of the proposed subjects. According to the previously adopted decree classes on these subjectswere fully optional, meaning that attending them was notcompulsory. Pursuant to currentlaw, religious education is obligatory for the pupil or student who decides to take it up, and the same rule applies to classes in the alternative subject with ethical-humanist content, for the running school year. The Decree allowed for the attendance of both subjects, whereas the current legal provision does notallow that. This fact further instills in the public the impression of conflict and opposition between religion and human rights.

Despite the fact that less than half of the pupils and students applied for classes for one of the optional subjects, the Serbian Government decided to institutionalise to a greater extent religious education in primary and secondary schools.

Amendments to the Act on Elementary and Secondary School contain the provision stating that the religious education in schools is organised for the traditional churches and religious communities: the Serb Orthodox Church, the Islamic Community, the Roman Catholic Church, the Slovak Evangelical Church, the Jewish Community, the Reformed Christian Church, and the Evangelical Christian Church.

Neither federal nor republican legislation has determined which churches and religious communities are traditional. It was only in these changes (and previously in the Decree) that they were explicitly cited (Art. 20 (3), Act on Elementary School and Art. 24 (2) of the Act on Secondary School). It remains unclear why some of those cited are defined as traditional and what criteria were applied.

The very term “traditional church” is controversial. It is awkward and inaccurate and probably aimed at excluding certain denominations, frequently and erroneously called sects, from the program of religious instruction in schools.

Conscientious objection is not explicitly mentioned in the international instruments, but it originates from the freedom of thought, conscience and religion. The right to conscientious objection is contained in and recognised by the recommendations and resolutions of the Parliamentary Assembly and the CoE Committee of Ministers[75].

The Federal Constitution, in the part on the Yugoslav Army (not in the part on human rights), lays down the right of conscientious objection (Art. 137 (2)).[76]

An individual who for religious or other reasons refuses to bear arms may perform military service in Yugoslav armed forces without bearing arms or in civilian service, in conformity with law.

At the beginning of 2002, the Federal Assembly adopted the Act on Changes and Ammendments of the Yugoslav Army Act (*Sl. list SRJ*, No. 3/02) which reduces military service from 12 to 9 months, whereas the civilian service takes 13 months. This is certainly a better solution than the previous one contained in the Yugoslav Army Act (*Sl. list SRJ*, Nos. 43/94, 28/96, 44/99, 74/99), according to which the recruits who invoke the conscientious objection have to perform military service twice as long – 24 months.

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[75] Instruments of the CoE relating to the right to conscientious objection are the following: Resolution 337 (1967); Recommendation No. 478 (1967) on the Right to Conscientious Objection; Recommendation No. 816 (1977) and the Recommendation No. 1518 (2001) on the Right to Conscientious Objection in the Military Service of Member States, Recommendation No. R (87) 8, of the CoE Committee of Ministers to Member States on the Right to Conscientious Objection to Mandatory military service of 9 April 1987.

[76] See views of UN Human Rights Committee 1989/59, and Recommendation of the CoE Committee of Ministers, No. R (87) 8; see also: Human Rights Committee *obiter dictum* in *J. P. v. Canada* (No. 446/1991, para. 4.2) which states for the first time that “conscientious objection... is in any case” protected by Art. 18 of ICCPR.

The Yugoslav Army Act regulates the conditions under which the right to conscientious objection can be enjoyed (Art. 296 – 300). Recruits can invoke this right only at the time of drafting. Article 9, paragraph 1 of the European Convention reads: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief". Likewise, Article 18 of the Universal Declaration on Human Rights guarantees the freedom to change religion or beliefs, as well as the General Comment 22 (48) of the Human Rights Committee (1993). The conscript should be given the possibility to invoke conscientious objection during the drafting period, during military service and as a member of the army reserve. This would be in accordance with the right to change religion and beliefs.

The draft board decides on the possibility of performing military service without bearing arms. If the board renders a negative decision, the recruit can lodge an appeal within 15 days to the respective military-territorial body of the second instance (Art. 300 (2), Yugoslav Army Act). The decision of the second instance commission is final and there is no administrative procedure against it. The possibility of judicial protection has not been envisaged.

Pursuant to the Article 297 (1), of the Yugoslav Army Act, civilian service is performed in the units and institutions of the Army and the Federal Ministry of Defense. Civilian service means the possibility of serving in civilian institutions (humanitarian organisations, old people's homes...) and not in the institutions of the army. Legislators has failed to establish the difference between performing military service without arms (which can be done in the institutions of the army) and civilian service. This is a very unusual omission, given that the previous legal provision had correctly interpreted the issue of the civilian service. The Act on Changes and Amendments of the Yugoslav Army Act (*Sl. list SRJ,* No. 44/99), has changed the Article 297 which until then had read:

Military service in the civilian service is performed in military economic, health care institutions, general rescue organisations, organisations for rehabilitation of the disabled and other organisations and institutions performing services of public interest.

It can be concluded that in Yugoslav legislation there are two important principles formulated as constitutional principles. One is the principle of separation of church and state and the other is the guarantee of the right to freedom of thought, conscience and religion (the latter has not been stated precisely enough in terms of the possibility of changing religion and belief). At the same time, there is no legislative framework to fully regulate the subject matter of freedom of religion, leaving this to be done partially through individual provisions of other laws (Yugoslav Army Act, Acts on Elementary and Secondary Schools). New legislative initiatives in this direction have been announced by the Federal Government that is preparing a draft act on religious communities and on religious freedom .[77]

4.9. Freedom of Expression

Article 19, ICCPR:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

a) For respect of the rights or reputations of others;

b) For the protection of national security or of public order (*ordre public*), or of public health and morals.

[77] See *Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR*, CoE, October 2002, p. 206.

4.9.1. General

The Yugoslav constitutions guarantee the right to freedom of thought, expression and information. The manner in which they do so, however, differs from international treaties since freedom of expression and public expression of opinion, and freedom of the press and other media are treated separately in a series of provisions.

All the constitutions guarantee freedom of public expression of opinion (Art. 35, Federal Constitution; Art. 34 (2), Montenegrin Constitution; Art. 45, Serbian Constitution). The Federal and Montenegrin Constitutions contain an additional provision: "Freedom of speech and public appearance shall be guaranteed" (Art. 39, Federal Constitution; Art. 38, Montenegrin Constitution), and the Montenegrin further lays down that "No one shall be obliged to declare his opinion" (Art. 34 (2)).

Freedom of the press and other mass media is regulated by separate provisions in all three constitutions. Thus the Federal Constitution, which devotes three articles to the press (Art. 36, 37 and 38), besides freedom of the press ("Freedom of the press and other forms of public information shall be guaranteed" – Art. 36 (1)), also recognizes the right of citizens to participate in the work of media in order to express their opinions, and their right freely to establish printed and other public media, with the exception of broadcasting media, the founding of which is regulated by statute. The right of reply, publication of corrections and to damages for false information is also envisaged (Art. 37, Federal Constitution). Although it prohibits censorship, the Federal Constitution stipulates when restrictions may be imposed on the distribution of the press or dissemination of other information (Art. 38):

Censorship of the press and of other forms of public information shall be prohibited.

No one may prevent the distribution of the press or dissemination of other publications, unless it has been determined by a court decision that they call for the violent overthrow of the constitutional order or violation of the territorial integrity of the Federal Republic of Yugoslavia, violate the guaranteed rights and liberties of man and the citizen, or foment national, racial or religious intolerance and hatred.

Apart from a few minor differences in wording, the provisions on freedom of the press of the Montenegrin Constitution (Art. 35–37) are the same.

The Serbian Constitution, which devotes only one article (Art. 46) to the press, regulates the subject matter in a similar way, but with one major difference: it does not guarantee the right of reply but only to correction and damages. In enumerating the grounds for restrictions, it adds: "No one may prevent distribution of the press or dissemination of other information... unless they *foment or encourage* national, racial or religious intolerance and hatred" (italics added, Art. 46 (6)). It also contains a provision binding publicly funded media to provide the public with "timely and impartial information" (Art. 46 (7)).

Hence restrictions are possible not only in the case of incitement, as provided for by the Federal and Montenegrin Constitutions, but also when the press "encourages" intolerance and hatred. Since the latter term is broader, it ensues that the Serbian Constitution provides more leeway for imposing restrictions.

The Yugoslav constitutional provisions dealing with freedom of expression are generally in line with international standards. However, they fail to adhere to those standards with regard to the freedom to "seek" and "receive" information regardless of frontiers and the kind of media.[78] Even granting that "receiving" of information is more or less well regulated through the guarantee of media freedom, the freedom to seek information from government agencies is not envisaged either by the constitutions or by any statute.

4.9.2. Restriction of the 1998 Serbian Public Information Act and Enactment of New Law

The Public Information Act, which was rushed through the Serbian Parliament and adopted on 20 October 1998 (*Sl. glasnik RS*, No. 36/98), contained a number of provisions that constituted drastic violation of freedom of the press. Though it remained on the books after the change of government in 2000, it was not applied.

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[78] General Comment No. 10 (19), Committee on Human Rights, 27 July 1983, p. 2.

The constitutionality of the Act was challenged soon after its adoption, but it was only in early 2001 that the Federal Constitutional Court ruled many of its provisions in contravention of both the Federal Constitution and statute, and international law: Articles 17, 26 (1), 27, 38 (3), 41 (3), 44 (1), 47 (2), 48, 42 (2 and 3), 43, 44 (2), 45, 46, 52, 54, 61–64, 67, 68, 69, 72, 70 (1.3), 71 (1.1), 73, 74 and 76 (*Sl. list SRJ*, No. 1/01). Finally, on 14 February 2001, the Serbian Parliament abrogated virtually the entire Act, leaving standing only the provisions dealing with the registration of media, and the right of reply and correction (*Sl. glasnik RS*, No. 11/01). Hence only Articles 12 through 23 (excepting Art. 17 which was declared unconstitutional), and Articles 37 through 41 (excepting Art. 38 (3 and 4 (3), also declared unconstitutional) remain in force.

In Serbia, two years after the democratic changes, expert and public debate still continues about the kind of law on public information and media that should be adopted. As yet, two versions of the bill were made known to the public: Public Information Bill, drafted by experts from the Media Centre (hereinafter: the Bill) and the Model Public Information Act, proposed by the Belgrade Centre for Human Rights working group (hereinafter: the Model).

Provisions of both drafts are similar to a great extent, defining basic notions related to public information and regulating key institutions necessary for undisturbed work of the media (concept of information media, information in the public interest, rights of foreign citizens, position of state and public officials, establishment of public media, prohibition of discrimination, impressum, accessibility of public information, position and rights of journalists, editors and professional associations, right to correction and response, penal provisions). Moreover, some of these institutions were defined differently or to a different degree of detail (i.e. the possibility of restrictions, provisions of a procedural nature, etc.).

The CoE commented on several occasions the draft bills and suggested that certain changes be made with the view of harmonising the bill with the CoE standards.[79] Without intention to go deeper into the detailed analysis of each article of both bills it may be observed that the Bill has a more liberal approach to restrictions of freedom of expression, whereas the Model is more detailed and examines greater number of situations under which this freedom may be restricted. The first general principle is more in accordance with the spirit of the European Convention on Human Rights, where the courts are left to deliberate whether in each individual case there were grounds for restriction of this freedom. There are also provisions that are not contained in either of the bills, but according to the CoE opinion should be an integral part of this law (classification and regime of various types of press publications, representation of public opinion in media companies, digital radio and TV, internet).

Generally, both bills will certainly represent an improvement for the media regulations in Serbia, still in desperate need for a quality statutory framework. Political will and expert consensus are necessary to adopt a new public information act in Serbia during next year.

4.9.3. Establishment and Operation of Electronic Media

During 2002 laws were passed in Serbia and Montenegro that regulate the establishing and operation of electronic media.

On 19 July 2002 Serbia enacted the Broadcasting Act (*Sl. glasnik RS*, No. 42/02), which regulates the conditions and ways of performing broadcasting activities, establishes the Republic Agency for Broadcasting, as well as institutions of public broadcasting service, stipulates the conditions and procedure for issuing permits for broadcasting radio and television programmes and regulates other important issues regarding the sector of broadcasting (Art. 1). This Act applies neither to the conditions and procedure for issuing permits for broadcasting stations, nor to the conditions and procedure through which the broadcasters obtain the right to install, use and maintain stationary or mobile broadcasting equipment. The enactment of a law regulating the area of telecommunications is also expected in the near future.

4.9.3.1. *Serbian Broadcasting Act* – Basic achievement of the new laws on broadcasting in Serbia and Montenegro (*Sl. list RCG*, No. 51/02) is the establishing of independent and self-governed regulatory bodies in this field, which has represented a grey area in the freedom of information during the previous

[79] Latest comparative analysis done by Dr Jorge Pegado Liz, Attorney, CoE expert and member of the High Media Council of Portugal, 30 September 2002, Strassbourg, ATCM(2002)24.

period, due to the dominant role of the state in issuing permits for programme broadcasting, as well as to numerous legislative regulations and gaps in law. In drafting new regulations the legislators were guided by international standards, especially the Recommendation of the Council of Europe Committee of Ministers on Independence and Operation of the Regulatory Authorities in the Broadcasting Sector.[80]

In Serbia, the Republic Agency for Broadcasting (Agency) is founded on the basis of the Act as an independent and self-governed organisation performing public authorities and having the status of a legal person. The decision-making body is the Council and the Agency is represented by the Council Chairperson. The Agency has a multi-sided jurisdiction, from determining the broadcasting development strategy to issuing permits for programme broadcasting, monitoring the application of the Act and deciding on submissions and requests of broadcasters and other persons. The Agency is also responsible for adopting measures in the field of broadcasting aimed at protection of minors, application of copyright regulations and prevention of broadcasting of programmes that incite to discrimination, hatred or violence against individuals or groups of people on the basis of sex, religion, race, nationality or ethnicity (Art. 8 (2)).

Members of the Council are elected by the Republic of Serbia National Parliament, upon the proposal of eight authorised nomination bodies (National Parliament, Assembly of the AP of Vojvodina, Republic of Serbia Government, Executive Council of the AP of Vojvodina, deans of the Republic of Serbia Universities, professional associations, local non governmental organisations involved in protection of human rights, churches and religious communities, Art. 23) who each propose two candidates for the election of each individual member of the Council, baring in mind that these candidates should be prominent experts in fields relevant for Agency operation. The ninth member, who must be from Kosovo and Metohija, is subsequently elected by the eight elected members.

The role of state bodies in the election procedure for Agency bodies is much higher than in Montenegro (see below I.4.9.3.2). A special regulation prescribes who shall not be eligible for Council membership in keeping with the principles of conflict of interest and preserving the independence of Agency operation (Art. 25). There is a detailed regulation of the reasons and in particular the procedure of dismissal of Council members, about which the decision is taken based on a justified proposal and following the implemented procedure to allow the possibility of the Council member concerned to state his/her case. The final condition for dismissal is that it should receive the majority of votes of the National Parliament members (Art. 29). The income of the Agency consists of the compensation fees for programme broadcasting, whereas the shortfall in funds is covered from the budget. There is a special provision stating that this circumstance should not influence the independence of the Agency (Art. 35).

Permit and the procedure for issuing permits for programme broadcasting – the condition is the prior obtaining of the permit for radio stations issued on the request of the Agency by the regulatory body responsible for the field of telecommunications, in accordance with the specific act regulating the sector of telecommunication and based on the Plan of radio frequency allocation, adopted by the respective telecommunications ministry. This body is obliged to issue a permit if it is in keeping with the Act and the Plan (Art. 39).

Only a domestic natural or legal person, registered or residing in Serbia can become a permit holder. If the founders of a local legal person are foreigners whose capital originates from the country where it is not permitted or it is not possible to determine the origin of the founding capital, such legal person does not have the right to participate in public tenders for the issuing of permits (Art. 41). The presence of foreign capital in the founding assets of the permit holder cannot exceed 49%, unless otherwise specified by an international agreement. Moreover, foreign capital cannot be a part of the founding investment of public broadcasting services (Art. 41).

Political parties, as well as organisations and legal persons established by them cannot become permit holders; the same applies to companies, institutions and other legal persons established by the Republic of Serbia, with exception of the institutions of public broadcasting service (Art. 42).

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[80] Recommendation of the Committee of Ministers on the Independence and Operation of the Regulatory Authorities in the Broadcasting Sector, Rec. No. 23/2000.

The permits are issued by way of a public tender. The Act stipulates the reasons on the grounds of which a permit can be withdrawn even before it has expired.[81] In such case the Agency conducts a procedure in which the broadcaster concerned must be given an opportunity to state his case and be present at the session debating the withdrawal of his permit, after which a reasoned decision is made. There is the right to appeal against this decision, as well as the right to initiate a judicial review and administrative proceeding against the decision of the Agency with regard to this appeal (Art. 62).

The broadcasters have the right to fully, timely and freely inform and to protect children and youth against pornography, violence, drug abuse propaganda etc. (Art. 68). The bearers of the public broadcasting service in the Republic are the Broadcasting Institution of Serbia (former Serbian Radio and Television) and provincial broadcasting institutions. Public broadcasting service produces and broadcasts programmes of general interest. These programmes have various contents, and the bearers of the public broadcasting service are obliged to provide balance and equality of such contents "that support the democratic values of modern society, in particular the respect of human rights, cultural, national, ethnic and political pluralism of ideas and thought" (Art. 77). The Act particularly stresses the obligation of broadcasting institutions to ensure the respect of the impartiality and objectivity principles with regard to the informative programme (Art. 79).

The Management Board of the Broadcasting Institution of Serbia, which together with the General Manager represents the management structure, is nominated by the Agency from the ranks of recognised experts in the fields of journalism, media, management, law and other prominent individuals (Art. 87). Among other duties, the Management Board passes the Statute of the Broadcasting Institution of Serbia, adopts activity plans, nominates and dismisses the General Manager, as well as the managers and editors-in-chief of radio and television programmes, and passes financial plans. The Programmes Committee is an advisory body representing the interests of viewers and listeners, which reviews the programmes' concept. Members of this Committee are elected by the National Assembly, 6 among the delegates in the Assembly and 12 from professional associations, scientific institutions, citizens' associations, religious communities, NGOs, etc. (Art. 91).

The Act also contains provisions on preventing the prohibited media concentration,[82] provisions on advertising and sponsorship, adapted to the intention to preserve independence, impartiality and variety of the media scene. It is prohibited to advertise political parties outside pre-election campaigns and it is also prohibited to receive sponsorship from state bodies and political organisations, as well as from those dealing in production or sale of goods and services whose advertising is not permitted (tobacco, alcoholic beverages, etc.).

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[81] The permit shall be withdrawn from the broadcaster if it informs the Agency in writing that he has no intention of broadcasting the programme, if he has stated false information in the application for the public tender, if he has not commenced the broadcasting of programme within given deadline, if he has not performed a technical inspection of the broadcasting station within given deadline, if he has ceased programme broadcasting without justified reason (for a period longer that 30 consecutive days or 60 days within one calendar year), if he violates the regulations on the prohibited media concentration and if despite the expressed warning does not meet the obligation of paying the fee for the permit. Also, if the relevant body in charge of telecommunications should annul the permit, if the Agency withdraws the permit from the broadcatesr on the grounds of violation of obligations or disregard of conditions stipulated by the permit or if one of the founders should after the issuing of permit become a foreign legal person registered in a country where it is not possible or not permitted to determine the origin of the founding capital, the programme broadcasting permit shall cease to be valid before the end of the period for which it had been issued (Art. 61)

[82] Media concentration, in other words the prevailing influence on public opinion, can arise when the broadcaster violates the principle of pluralism of thought by way of participating in the founding capital of another broadcaster, press and publishing company or a news agency. Prohibited media concentration exists also when the broadcaster is the only one broadcasting both radio and television programmes in a certain area, as well as in the case when the founder of a press and publishing company or news agency participates in the founding capital of the broadcaster thus leading to the violation of the principle of pluralism of thought in the public information media (Art. 98).

4.9.3.2. The new media laws in Montenegro – On 23 September 2002, Montenegro has enacted the new Act on Media, Act on Broadcasting and Act on Public Broadcasting Services, Radio Montenegro and Television Montenegro (*Sl. list RCG*, No. 51/02).

In comparison with the Public Information Act from 1998, the Act on Media regulates this field more fully and more liberally. For the first time there is a prohibition on state establishing individual media (Art. 7), whereas it is allowed to establish the media without permission, on the basis of simple application, with exception of electronic media regulated by another law (Art. 8). Particularly important are the provisions that guarantee the right of journalists to protect their sources of information and the freedom to publicise information regarded as state, military or other secret if there is a justified interest of the public (Art. 21). The right to response and correction is also guaranteed (Arts. 26–35). The Act obliges the media to protect the integrity of minors (Art. 22). A particular novelty is the obligation to publish information on effective dismissal of criminal proceedings, disallowance of indictment or acquittal from charges of a person about whom the media had published information on criminal proceedings being initiated against him/her (Art. 25). The operation of foreign media in Montenegro is also regulated on the basis of simple application and can be banned only by a court decision (Arts. 36–41).

The Act on Broadcasting established for the first time an independent regulatory body – the Agency for Broadcasting, governed by a Council whose members are nominated among prominent experts by the Government, University, associations of broadcasters, NGOs working on protection of human rights, NGOs working with media, whereas the Montenegro Assembly only ratifies these nominations (Art. 12). Agency for Broadcasting is financially independent. Its jurisdiction encompasses, among other things, adoption of the strategy and plan for issuing broadcasting frequencies, issuing permits for frequency use, passing sentences on fines and enacting specific regulations. The procedure for issuing permits for frequency use envisages organising a public tender that must contain non-discriminatory, objective and measurable decision-making criteria (Art. 37). Any participant at the public tender, dissatisfied with the Agency's decision, has the right to file a complaint to the Agency Council, and subsequently, if need be, institute a judicial review of the Council decision (Art. 40). The Act also regulates the operation of public broadcasting services, established by the Republic or local administrations, which broadcast programmes of general interest intended for all layers of the society, especially bearing in mind children, youth, minority ethnic groups, disabled, socially and medically deprived, as well as broadcasting programmes in languages of national and ethnic minorities (Art. 95). The Act prevents the prohibited media concentration, as well as regulates the subject matter of advertising and sponsorship (Art. 105–114). The holder of permit for broadcasting and transmitting broadcasting signals can be a domestic or foreign natural or legal person with residence, domicile, or seat in Montenegro. Foreigners cannot participate in the core capital of public broadcasting services (Art. 32). Religious community or other religious organisation or legal person founded by it, can obtain a permit for programme broadcasting only on local level, whereas political parties, organisations or coalitions and legal persons founded by them are not eligible for obtaining a permit for broadcasting (Art. 33).

The Act on Public Broadcasting Services Radio Montenegro and Television Montenegro defines the Radio and Television of Montenegro as public services governed by a Council representing the interests of citizens and independent from state bodies and all persons involved in the production or broadcasting of radio and television programmes (Art. 14). Members of the Council – who cannot be assembly delegates, state officials and members of political party bodies, or persons previously convicted of particular felonies or those who can be assumed to have a conflict of interest – are nominated by the civil society institutions: NGOs, professional associations, artistic and sports organisations, University, etc., and are ratified by the Montenegro Assembly without the right to decline (Art. 16). The Act guarantees and ensures the independence of the Council work – its members cannot be dismissed during their mandate, except in strictly defined cases (Art. 22). Special guarantees are given for editorial independence with regard to contents, time and way of broadcasting programmes, given that these programmes should meet the interests of the public on national and local levels and contain equal proportions of informative, cultural, educational, sports and entertainment programme (Art. 7). The means of funding further ensure the independence of the public broadcasting services – besides subscription and taxes on vehicle radios and numerous other forms of income from the Republic Budget, the right to produce and broadcast commercials is also envisaged (Art. 9–12). This solution could lead to unfair competition with commercial media that have no other guaranteed sources of income.

When passing these acts an amendment was also adopted that postpones their application until 1 May 2003. In the meantime the Public Information Act from 1998 shall remain in force, changed and amended in August 2002 (*Sl. list RCG*, Nos. 4/98, 41/02). These changes and amendments have been adopted by the united opposition prior to the scheduled parliamentary elections. The essence of these changes was to reduce the necessary majority in the programme committees of public media for dismissal of editors-in-chief who have been accused by the opposition of favouring the ruling parties.

On the same occasion, in August 2002, the Act on presentation of those submitting election lists in the electronic and printed, state and private public media from the day of scheduling the elections until pre-election silence (*Sl. list RCG*, No. 41/02) was enacted that regulates in detail the behaviour of all media during the election campaign, with the aim to ensure equal presentation of all candidates in both public and private media. However, this legislation also contained provisions that domestic public, as well as the representatives of the OSCE and CoE have found to be restrictive with regard to freedom of expression. The disputed provisions related to the restriction of editorial freedom in informative broadcasts during the election campaign,[83] prohibition of commercial political marketing (Art. 12) and the high fines for violation of this Act, in the amount from fifty to thirty minimal salaries in the Republic for both the media and political parties (Arts. 16 and 17), etc. This Act has never been applied and was abolished after one month, on 23 September 2002.

4.9.4. Other Draft Legislation in Relation to Freedom of Expression

Besides the drafts cited above, work on another two of significance for freedom of expression has been supported by the Serbian government. The first is aimed at regulating and promoting freedom of commercial speech within the standards laid down by the European Court of Human Rights. The goal of the Draft act on access to public information is to compensate for the lack of constitutional guarantees of freedom of speech, that is, the absence of guaranteed rights to seek information in the framework of the freedom of speech and expression guarantee.

In 2002, the working group close to the Media Centre has drafted an Act on Advertising. This Draft act regulates the conditions for advertising, rights and obligations of the advertiser, agencies for market communication, other agencies and other products of advertising messages, founders of public media and others transmitting advertising messages, consumers and other recipients of advertising messages. Advertising as defined by this Draft act is information that in any way or by any means endorses the advertiser, his activities, goods, services or other. The Draft act defines advertising as free and representing an integral part of the freedom of expression.

Advertising is done in accordance with good business practices and cannot be contrary to law and public morality. Discrimination and position of monopoly are prohibited, as well as advertising that shows the use of force, dominant position by persons of one sex over a person of the other sex, sexual harassment and abuse of environmental protection.

The Draft prescribes in detail the amount of commercials broadcast within one hour via electronic media, depending on whether they are private or public service, as well as other ways of advertising.

Advertising specific goods and services was placed under a specific regime (pornography, weapons, medications, mind altering substances, tobacco, alcohol, medical and legal services). The Draft act also contains provisions related to political advertising.

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[83] For instance, reporting on political activities of the President of the Republic, Assembly and the Government was restricted to only one minute, whereas the usual activities of other state and government officials were not to be reported at all during the campaign (Art. 2). It was also prohibited to report on activities of state and party leaders with regard to "touring and opening various facilities, roads, tunnels, bridges, laying foundation stones, delivering guest speaches at the University of Montenegro, visitng hospitals, opening and visiting various festivals, exhibitions, receiving sports, scientific, culture and other public figures, as well as opening and attending sports events, competitions and the like (Art. 3 (3)). Public media shall not inform about expressions of gratitude given in any sense to a state body, state or party high official or party itself" (Art. 3 (2)).

During 2002, two models of the Act on Free Access to Public Information were drafted. Independent legal experts within the Centre for Advanced Legal Studies (CUPS) proposed a Draft act on Free Access to Public Information. A more concise draft was proposed by the Committee of Lawyers for Human Rights, the Centre for Alternative Studies, the Forum for Ethnic Relations and the European Movement in Serbia (Draft of the group of NGOs). Both drafts were submitted to the Serbian Government for deliberation.

The Draft proposed by the CUPS defines the term "information of public interest" as information on any matter that everyone has the right to know, notwithstanding any property issues regarding such information (source, carrier, place of storage, date of origin, means of obtaining information or other property). Hence, public information is defined as an information about the threat to and protection of life and health of the population and environment, information generated in the work or in relation to the work of public authorities, information stored with the public authorities on behalf of citizens, for their purposes and by their request.

The Draft submitted by the group of NGOs uses the term "information", encompassing the contents of documents controlled or kept by authorities in the Republic of Serbia, which the person requesting the information wishes to obtain from them (Art. 2 (2)).

The Draft by CUPS relies on the principles of equality and prohibition of discrimination (Art. 7 and 8), regulating the right of access to information, meaning the right of individual to know whether any public authority possesses the requested information, right to have an insight into the document containing the requested information and the right to have a copy of that document. This Draft also envisages the right of journalists to be present at the sessions and meetings of public bodies, right to compensation for damages produced by discriminatory action, as well as the right to a free copy of the document containing the requested information. The Draft proposed by the group of NGOs does not contain provisions that explicitly regulate principles of equality and prohibition of discrimination.

Both drafts envisage that rights contained in the Act could exceptionally be subject to exclusion or restriction, providing a similar list of exceptions to the right of free access to information.

The possibility of instituting proceedings with the aim of obtaining insight into documents before the public authority without the obligation of the plaintiff to elaborate on reasons for filing the request is present in both drafts. Similar provisions exist with regard to the protection of interest, or not requesting the responsibility of the officials who outside their authority disclose particular information contained in a document (so-called "whistle blowers").

The draft proposed by the CUPS envisages the establishment of the institution of special ombudsperson for access to information, which would have authority to act in appellate and other remedy proceedings (Art. 33–40). The draft proposed by the group of NGOs envisages a somewhat different solution regarding legal remedies. With regard to regular legal remedies, a person requesting the information can file an appeal to the second instance body against a decision denying his/her request, pursuant to the General Administrative Procedure Act (Art. 10 (1)). Against the decision on appeal, or the final decision in the first instance denying the request, the plaintiff can institute an action before a competent court pursuant to the Act on Judicial Review of Administrative Decisions. Such an action has the status of priority in the court's caseload (Art. 10 (3)). In the proceedings upon specific legal remedies, the plaintiff requesting information can file a request for specific judicial protection (Art. 11, 12 and 13), constitutional appeal, or commence other actions for protection of the constitutionality and legality before the competent constitutional court (Art. 14). Finally, the plaintiff requesting the information can appeal to the general ombudsperson if he/she deems that his/her right of access to information was violated by an act or action of the responsible party, or if the plaintiff was prevented from accessing the information or the information contained in the requested documents was withheld without justification (Art. 15 (1 and 2)).

4.9.5. Criminal Law

During 2002, the criminal law in Serbia and Montenegro has undergone positive changes.[84] For freedom of expression in Serbia it is particularly important that the offence of spreading false rumours (Art. 218, Serbian CC) was reformulated so that instead of criminal responsibility for "spreading false rumours with intent to incite discontent or disturbance of citizens" it now lays down the punishable act of "stating and spreading rumours that are known to be false, with intent to provoke serious disturbance of public order and peace, upon which such disturbance indeed occurs". Such formulation is in accordance with international standards and practice of the European Court of Human Rights that justify criminal prosecution as a form of restricting the freedom of expression only in exceptional cases. Therefore, freedom of expression can be restricted only when justified by reasons of "absolute social necessity", such as preventing violence and crime and in the interest of public security, when such expression, given the circumstances, can lead or has lead to violence, as currently prescribed in the Serbian CC (compare *Sürek v. Turkey*, ECHR, App. No. 24122/ 94, (1999)).

Moreover, in Serbia criminal responsibility no longer exists for the unauthorised possession and use of a radio station, once a criminal offence pursuant to Article 219 of the Serbian CC, which was used over the past years for criminal prosecution of the independent media,[85] especially the provision in the third paragraph that had prescribed a punishment of one to eight years of imprisonment for "spreading false rumours or disturbing citizens by way of unauthorised possession and use of a radio station". Today, broadcasting of programme without permission of the Republican Agency for Broadcasting is a misdemeanour that is prosecuted through administrative procedure and does not carry a prison punishment (Art. 113 (1), Broadcasting Act). The Montenegrin CC still prescribes the offence of unauthorised possession or use of a radio station, punishable by fine or imprisonment up to one year, whereas spreading false rumours through such means carries a punishment of up to three years in prison (Art. 194 of Montenegrin CC). There are no special provisions with regard to spreading false rumours and information.

However, criminal codes in Serbia and Montenegro still contain several criminal offences from the group of acts against honour and reputation (slander – Art. 92, Serbian CC, Art. 76, Montenegrin CC; insult – Art. 93, Serbian CC, Art. 77, Montenegrin CC exposing personal and family situation – Art. 94, Serbian CC, Art. 78, Montenegrin CC), which are not in conformity with modern human rights standards. The key problem is that these are imprisonable offences, which is today considered an inadequate way to protect the honour and reputation, as well as a disproportionate restriction of the freedom of expression, especially considering the media an their role in the democratic society. In criminal codes of Serbia and Montenegro imprisonment is prescribed as the only sanction when these offences are committed through the media.[86] The position of the Human Rights Committee and the European Court of Human Rights is that the permitted restriction of any human right is to be construed as undertaking only those measures that are absolutely necessary to achieve the legitimate aim – in such a way that the same aim is not achievable in a less restrictive way. It is deemed that a prison sentence or criminal liability in general are not necessary for the protection of honour and reputation, and that apart from the right to correction and other extra-judicial procedures it is enough to ensure civil liability in the form of indemnity in a corresponding amount.[87]

Criminal Codes of Serbia and Montenegro do not discriminate between the injured parties, whereas according to the European Court practice it cannot be same whether it is a private citizen, public servant or a politician. The politicians have to withstand a lot more criticism, even insults. More serious forms of slander, punishable by a longer prison sentence, are defined in our legislation as acts committed by way of

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[84] See the Act Amending the Serbian Criminal Code, *Sl. list RS*, Nos. 10/02 and 11/02 as well as the Act Amending the Montenegrin Criminal Code, *Sl. list RCG*, No. 30/02.

[85] See *Human Rights in Yugoslavia 2001*, I.4.9.5.

[86] See Chapter 11 (Art. 92–102) Serbian CC, Chapter 9 (Art. 76–85) Montenegrin CC.

[87] See Conclusion of the Report by Special Rapporteur of the UN Committee for Human Rights on the Freedom of Expression, E/CN.4/2000/63, para. 205; for the view that criminal responsibility for slander does not represent a proportionate measure to protect reputation, see judgment of the European Court in *Dalban v. Romania*, 1999; for the amount of reparation see *Tolstoy Miloslavsky v. United Kingdom*, 1995.

using the media and where "the false statement stated or spread is of such importance that it could have lead to more serious consequences for the injured party" (Art. 92 (3), Serbian CC and Art. 76 (3), Montenegrin CC). The courts interpreted this provision in the favour of injured parties – civil servants, with the arguments that the consequences for their reputation are more serious precisely because they are known by a large number of people. In sharp contrast to this, the European Court holds firmly that politicians and other people in public office need to withstand much more criticism than the others (see *Lingens v. Austria*, ECHR, App. No. 9815/82 (1986)).

The same offences prescribed in Article 98 Serbian CC and Article 82 Montenegrin CC were used to protect the reputation of the FRY member republics and their flags, coats of arms, anthems, presidents, assemblies, governments, speakers of the assemblies and prime ministers in relation to the performance of their functions, with a prison punishment of up to three years. This protection is still in force in Serbia, whereas after the change in Article 82 of the Montenegrin CC, *only* the reputation of the FRY member republics and their flags, coats of arms and anthems is now protected.[88] Both republican codes also still prescribe the criminal offences of contempt of the people or members of national or ethnic groups in the FRY.[89] In Serbia, the aforementioned offences carry a prison punishment of up to three years, whereas in Montenegro this punishment is from three months to three years.

The Human Rights Commission has particularly appealed to the states to abolish the offences of contempt for the State and its bodies, frequently used by non-democratic regimes for persecution of individuals who oppose them.[90] The state, especially its symbols, cannot have the right to protection of honour and reputation, because these are rights belonging only to people as individuals.

The exclusion of responsibility for the acts against honour and reputation is also provided for in Serbian and Montenegrin laws, *inter alia*, in the case of serious criticism, scientific or literary work and works of art, in journalism, etc., *if from the manner of expression it could be determined that it had not been done with the intent of contempt*. Contrary to this, the European Court of Human Rights has articulated a clear attitude that freedom of expression also includes the right to disclose information and opinions that are *insulting* and *shocking*, if it is the matter of public interest, as well that freedom of the press includes the right to exaggerate and be provocative to a certain extent (see *Prager and Oberschlick v. Austria,* ECHR, App. No. 15974/90 (1995)).

Our laws also exclude responsibility if the accused *proved the authenticity of his claims* or if there had been sufficient grounds for him to believe in their authenticity.[91] However, such placing of the burden of proof, deviating from the guaranteed assumption of innocence, is not in accordance with international standards (see *Lingens v. Austria*).

Finally, in Serbian and Montenegrin criminal codes, besides "stating false rumours" their "spreading" is also punishable. In the case of *Thoma v. Luxemburg*, (App. No. 38432/97(2001)), the ECHR found that a journalist must not be held responsible for quoting or conveying the text of a colleague journalist since the obligation of the journalist is to constantly and formally distance himself from the contents of the quotations that could offend or injure someone's reputation cannot be reconciled with the role of the press in reporting on current events and ideas.

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[88] It is interesting that Montenegro never adopted the National Anthem Act, meaning that it does not have an anthem that could be protected by this provision.

[89] Art. 83 Montenegrion CC, Art. 100 Serbian CC.

[90] See Conclusions of the Special Rapporteur of the UN Commission for Human Rights on Freedom of Expression, E/CN.4/2000/63, para. 50.

[91] Applicable only to slander, however, but one can always be punished for the offence of insult and reproach by contempt (see Art. 92 (4), Serbian CC and Art. 76 (4), Montenegrin CC).

4.9.6. Prohibition of Propaganda for War and Advocacy of National, Racial or Religious Hatred

Article 20, ICCPR:

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Though Yugoslav law contains provisions meeting the requirements of this ICCPR article, prosecution for incitement of national, racial or religious hatred was seldom seen in practice in spite of the frequency of hate speech and war propaganda immediately before and, in particular, after the breakout of armed conflicts in the former Yugoslavia in 1991.

The Yugoslav constitutions do not explicitly prohibit propaganda for war, but it is defined as a criminal offence by the Federal CC, Article 152, which states that a person who advocates or incites to a war of aggression will be punished with one to 10 years in prison. The difference between this wording and that of the ICCPR, which prohibits "*any* propaganda for war," is immediately obvious (italics added).

In view of the interpretation given by the Human Rights Committee, however, the provisions of Yugoslav criminal law may be deemed satisfactory. The Committee, namely, constructed the term as meaning propaganda aimed at an act of aggression or a breach of the peace in contravention of the UN Charter, and not the sovereign right to self-defence or the right of peoples to self-determination (General Comment No. 11 (19) of 29 July 1983). Where application of Article 152 of the Federal CC is concerned, the major problem is in determining whether the war advocated is a war of aggression, of self-defence or a war for the self-determination of peoples.

The problem does not arise, however, with regard to the prohibition of incitement or encouragement of national, racial, or religious hate, which Article 50 of the Federal Constitution declares unconstitutional and punishable:

Any incitement or encouragement of national, racial, religious or other inequality, as well as the incitement and fomenting of national, religious or other hatred and intolerance shall be unconstitutional and punishable.

The corresponding Article 43 of the Montenegrin Constitution is identical, whereas the Serbian Constitution contains no explicit prohibition of hate speech and only two indirect references to "incitement and encouragement of national, racial or religious intolerance and hate:" first, as a permissible ground to ban political, union or other organizations and their activities (Art. 44) and, second, as a ground to prevent the distribution of the press and dissemination of other information (Art. 46). Articles 37 and 42 of the Montenegrin Constitution are also along these lines. The provisions of the Federal Constitution are in accordance with the obligations under Article 20 of the ICCPR, which is not the case with the Serbian since it prohibits incitement of hate only in connection with the rights to freedom of association and information and fails to mention any other forms it may take.

The Federal and Montenegrin Constitutions go further than required by Article 20 of the ICCPR, and their relevant provisions may be interpreted as including incitement of hate against other minority groups, homosexuals for example. On the other hand, while international instruments speak of "advocacy of hatred," the Federal Constitution also proclaims as punishable the "incitement of inequality" and "fomenting of intolerance." The first term is in all probability encompassed by the general prohibition of discrimination, whereas the second is rather imprecise. The greater precision of the ICCPR's Article 20 is evident also in that it establishes a causal relation between "advocacy" and incitement. Not every advocacy of hate is punishable, but only those forms that constitute "incitement to discrimination, hostility and violence." The Federal Constitution does not contain this useful adjunct and consequently appears to be a political declaration rather than a binding legal norm.

Article 134 of the Federal CC, which expressly prohibits incitement of national, racial or religious hate, discord or intolerance may also be subjected to criticism:

Whoever incites or encourages national, racial or religious hatred, discord or intolerance among the nations and national minorities living in the Federal Republic of Yugoslavia shall be punished with a term of imprisonment of one to five years.

If the offence referred to in paragraph 1 of this Article is committed under coercion or ill-treatment, or endangering of safety, by defamation of national, ethnic or religious symbols, damage to the property of others, desecration of monuments, memorials or graves, the perpetrator shall be punished with a term of imprisonment of one to eight years.

Whoever commits the offence referred to in paragraphs 1 and 2 of this Article through abuse of official position or authority, or if the act results in disorder, violence or other serious consequences on the life together of the nations and national minorities living in the Federal Republic of Yugoslavia shall be punished for an act referred to in paragraph 1 of this Article with a term of imprisonment of one to eight years, and for an act referred to in paragraph 2 of this Article with a term of imprisonment of one to ten years.

Paragraph 1 falls considerably short of the standards called for by the ICCPR since it prohibits incitement of national hate only with regard to the "nations and national minorities living" in Yugoslavia, while the ICCPR forbids "any" incitement of national hatred, i.e. against any national group irrespective of where that group lives.

Another two provisions of the Federal CC deal with incitement to national, racial or religious hate. Article 100 defines as a criminal offence the defamation of nations, national minorities and ethnic groups but, again, only those living in Yugoslavia, while Article 145 criminalises incitement of genocide and other war crimes, more or less as they are defined by Article 20 of the ICCPR.

The new Serbian Broadcasting Act provides for the jurisdiction of the Agency for Broadcasting to prevent broadcasting of programmes that incite to discrimination, hatred or violence against certain individuals or groups of individuals on the grounds of their sex, religion, race, nationality or ethnicity (Art. 8 (2)), and only the public broadcasting services have the obligation "to prevent any form of racial, religious, national, ethnic or other intolerance or hatred, or hatred with regard to sexual orientation" in the production and broadcasting of their programmes (Art. 79).

While the Montenegrin Public Information Act of 1998 (that will remain in force until 1 May 2003) prescribes that "the programme orientation of a public broadcaster must not be directed towards violent overthrow of the constitutional order, violation of the territorial integrity of the Republic and the Federal Republic of Yugoslavia, infringement of guaranteed freedoms and rights of individuals and citizens or incitement of national, racial or religious intolerance or hatred" (Art. 24 (2)), the new Montenegrin Media Act, regulates the hate speech in much more detail. It is prohibited to "publish information and opinions that incite to discrimination, hatred or violence against individuals or groups of individuals on the grounds of their race, religion, nationality, ethnicity, sex or sexual orientation" (Art. 23 (1)). The responsibility is excluded if such information is "published as a part of scientific or author's work dealing with public matters, and have been published as a part of an objective journalistic report (1) without intent to incite to discrimination, hatred or violence and, (2) with intent to critically point out these occurrences" (Art. 23 (2)).

4.10. Freedom of Peaceful Assembly

Article 21, ICCPR:

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

4.10.1. General

All three Yugoslav constitutions guarantee the freedom of peaceful assembly while republican statutes regulate the subject matter more closely (Serbian Act on Assembly of Citizens, *Sl. glasnik RS*, No.

51/92; Montenegrin Act on Public Assembly, *Sl. list RCG*, Nos. 57/92 and 27/94). The Federal Constitution (Art. 40) lays down that:

Citizens shall be guaranteed the freedom of assembly and other peaceful gatherings, without the requirement of a permit, subject to prior notification of the authorities.

Freedom of assembly and other peaceful gatherings of citizens may be provisionally restricted by a decision of the competent authorities, in order to obviate a threat to public health or morals or for the protection of the safety of human life and property.

Similar provisions are contained also in the Serbian Constitution (Art. 43) and Montenegrin Constitution (Art. 38), except that they use the term "public" instead of "peaceful" assembly. The relevant provisions of the Federal Constitution are in line with international treaties dealing with the right to peaceful assembly.

The Federal Constitution (Art. 40 (2)), and Montenegrin Constitution (Art. 39 (2)) similarly regulate the possibility of restrictions on the freedom of assembly, envisaging that it may be "provisionally restricted by a decision of the competent authorities in order to obviate a threat to public health or morals or to protect the safety of human life and property." These grounds are in conformity with international standards. None of the constitutions prescribes restrictions that are "necessary in a democratic society", which reflects the failure of the Yugoslav legal system generally to recognise the principle of proportionality with respect to restrictions on human rights.

To the grounds provided for in the Federal and Montenegrin Constitutions, the Serbian (Art. 43) adds "preventing a disruption of public traffic." Every disruption of public traffic does not necessarily represent a threat to public law and order or some other interest on the basis of which international instruments allow restrictions to be imposed on the freedom of peaceful assembly. If, on the other hand, it did constitute such a threat, it would be covered by the grounds already envisaged, and setting it out as a separate ground is unnecessary.

"Disruption of public traffic" figures also in the Serbian Act on Assembly of Citizens, though it is here moderated by a provision stating that a public gathering may be held in a space reserved for traffic on condition that it is possible to temporarily alter the traffic regimen (Art. 2 (3)).

Considering a petition to examine the constitutionality of the Act, the Federal Constitutional Court found it in conformity with the Constitution. The Court was of the opinion that a public assembly in a location where the traffic regimen cannot be changed would in fact constitute a threat to life and property and, hence, is among the grounds for restrictions envisaged by the Constitution (Decision on the constitutionality of Article 2 (2) in the part reading "disruption of public traffic," and Articles 8, 13, 15 (1.3 and 2), Act on Assembly of Citizens, *Sl. glasnik RS*, Nos. 51/91, 53/93, 67/93, 48/94 and 29/01). The Court proceeded from a correct restrictive interpretation according to which disruption of public traffic may be a ground for restricting the freedom of assembly *only* if it is not possible to alter temporarily the traffic regimen.

Contrary to international standards, all three constitutions guarantee the freedom of peaceful assembly only to "citizens" and not to everyone. Under Article 16 of the ECHR, Article 10 (freedom of expression), Article 11 (freedom of assembly and association), and Article 14 (prohibition of discrimination) do not prevent states from imposing restrictions on the political activity of aliens, whereas the ICCPR does not contain a similar provision. The restrictions allowed by Article 16 pertain only to "political activity" and therefore do not justify restrictions on the right of aliens to peaceful assembly if their goals are not of a political nature. Furthermore, in keeping with the accepted construction that "restrictions" do not imply exemption, i.e. denial of a right, it is not permissible completely to deny aliens the right to freedom of assembly.

As it originally stood, the Serbian Act on Assembly of Citizens envisaged that an alien could convene a gathering subject to a prior permit from the police; such a permit was necessary also for an alien to address the gathering (Art. 7). The Federal Constitutional Court, however, found these provisions unconstitutional since regulation of the rights of aliens is in the purview of the federal, not the republican

authorities.[92] The ruling left a legal void in the Serbian Act, which could in practice result in denying aliens the right to peaceful assembly simply because the manner of exercising the right is not regulated. Such viewpoint would of course be erroneous, since the ICCPR, which became a part of Yugoslav law through ratification, recognises the rights to assembly to everyone, including aliens. The fact that the exercise of the right is not regulated by law does not mean that it does not exist. Analogously, it may be inferred that aliens must comply with the same obligations foreseen by the Serbian Act for citizens when organising public gatherings.

The Serbian Act states that public gatherings may be at a fixed location or along a specified route (Art. 3 (1)), a provision that makes sense in a country without a tradition in demonstrations by private citizens. It defines a public gathering as "convening and holding a meeting or other gathering in an *appropriate space* (Art. 2 (1), italics added) and goes on to define such a space:

A space is considered appropriate for a public meeting if it is accessible and suitable for a gathering of persons whose identity and number is not known beforehand, and in which a gathering of citizens would not disrupt public traffic or constitute a threat to public health or morals or to the safety of human life and property (Art. 2 (2)).

The statute envisages prior designation by municipal or city authorities of "appropriate" locations for public assembly. The Belgrade City Assembly thus made a list of such locations, a number of which are situated outside the city centre (Decision on Designation of Locations in Belgrade for Public Gatherings, *Sl. glasnik grada Beograda*, No. 13/97). As one of the main purposes of most public gatherings is to draw attention, holding them in out of the way locations would hardly achieve the desired effect.

This provision on prior designation of suitable locations is too restrictive and creates a potential for abuse as it makes it possible to ban gatherings at any location not listed, even when they would not constitute a threat to any of the interests cited in the Constitution.

The Serbian Act on Assembly of Citizens provides that a public gathering cannot be held in the vicinity of the Federal or Republican Parliament buildings, immediately prior to or during sessions (Art. 2 (4)). The question is under what grounds for limitation set forth by the Constitution could this prohibition be placed. It probably deals with the security of people or property, but such a general restriction cannot be set. It is necessary to determine that it exists in each individual case. Bearing in mind that the Act leaves to the competent bodies to which the gathering is reported (police) to determine what is considered a venue "in the vicinity" of the Parliament and what is considered the "immediately prior to the session" and in respect of the Federal Constitution and the Constitution of the Republic of Serbia definitions that the session of the parliament is the period in which the sessions are being held (two regular sessions lasting several months each with the possibility of emergency sessions), one could reach the legitimate conclusion that the freedom of public assembly can be completely denied in particular cases.

The same objection is valid with regard to the possibility of denying the freedom of assembly pursuant to the federal Act on Strikes (*Sl. list SRJ*, No. 29/96). This Act allows strikers to assemble only on their company's premises or grounds (Art. 4 and 5 (3)) and, consequently, prevents them from staging public demonstrations. The Federal Constitutional Court dismissed a petition to examine the constitutionality of this provision, considering that it did not pertain to the manner of exercising the human rights guaranteed by the Federal Constitution. According to the Court:

Legally confining the assembly of strikers to their [company] premises does not constitute a restriction on the personal and political freedoms of citizens, which are manifested in the freedom of all

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[92] In this Decision, the Federal Constitutional Court ruled unconstitutional Art. 8 (right of aliens to convene, hold and address a public gathering with a prior permit from the police), Art. 13 (organizer of a public gathering is bound to compensate any damage resulting from the public gathering), Art. 15 (1.3) (an alien who convenes, holds, or addresses a public gathering without a permit may be fined up to 1,000 new dinars or sentenced to a jail term of up to 60 days), and para. 2 of this Article. An alien who commits the offences referred to in Art. 15 (1.3) may be deported from Yugoslavia. The Decision was based on Art. 77 of the Federal Constitution under which only the federal authorities formulate policy, enact and enforce federal legislation in the spheres of contractual relations and the status of aliens.

citizens to movement, thought, speech and assembly (Decision IU No. 132/96 of 9 October 1996, Decisions of the Federal Constitutional Court, pp. 33–34).

In handing down this decision, the Court apparently proceeded from the opinion that workers were not included in the term "all" citizens and, hence, restriction of their freedom of assembly did not constitute a restriction of their human rights and liberties. This reasoning is unacceptable. Freedom of assembly is guaranteed to all citizens and they may exercise it as individuals, as employees, or as members of any other grouping. Furthermore, imposing restrictions on the rights of one group, in this case employees, solely on the basis of their status and without determining the interests necessary in a democratic society that would justify such a distinction is in contravention of the international instruments prohibiting discrimination.

Under the republican statutes, organisers of public meetings are bound to notify the police, at least 48 hours in advance in Serbia and 72 hours in Montenegro, of the gathering (Art. 6 (11), Serbian Act; Art. 3 (1), Montenegrin Act). If the gathering is to be held in a space reserved for public traffic and the traffic regimen has to be changed, the Serbian Act requires notification five days in advance (Art. 6 (2)). The Serbian Act also states that police will disperse a gathering that is being held without prior notification to the authorities and "take measures to restore public order and peace" (Art. 14).

4.10.2. Prohibition of Public Assembly

The Serbian Act makes it possible for the police to ban a public assembly on the constitutionally determined grounds (threat to public health, morals or to the safety of human life and property) as well as disruption of public traffic (Art. 11 (1)). The organisers must be informed of the ban at least 12 hours before the gathering is scheduled to start. An appeal against the decision is possible but does not stay its execution, and the final decision may be challenged by instituting administrative proceedings.

The police authorities may provisionally prohibit a public assembly if it is aimed at a forcible overthrow of the constitutional order, violation of the territorial integrity of Serbia, violation of human rights, or incitement of racial, religious or ethnic intolerance and hate (Art. 9 (1)). These grounds of limiting the freedom of assembly are not prescribed by either the federal or Serbian constitution, but it is possible to legitimately implement this limitation in light of the permitted limitations of the freedom of expression. The organisers must be notified of the ban at least 12 hours before the gathering is due to start. The difference between such a provisional ban and the permanent ban envisaged by Article 11 is that the former can be pronounced permanent only by a court decision. If the police authorities seek to impose a permanent ban, they must file a request to that effect with the competent district court within 12 hours, and the court has 24 hours from the receipt of the request to hand down its decision. The organiser may appeal to the Serbian Supreme Court within 24 hours of receiving the court's decision, and the Supreme Court must rule within 24 hours of receiving the appeal (Art. 10).

It is unclear why the law provides better legal protection by prescribing time periods and the involvement of courts in the case of the provisional ban envisaged by Article 9, while in the case of a permanent ban under Article 11 the organiser is directed to institute administrative proceedings. The preferable solution would be to apply the better legal protection under Art. 9 in both these cases, especially since the law does not oblige the police authorities to take into account proportionality when imposing permanent bans, which gives them broad discretionary powers.

The police may disperse a gathering Article 12 (1) in the event of any of the circumstances envisaged by Article 9 (1) and Article 11 (1).

In Montenegro, a public assembly may be banned or dispersed on grounds similar to those envisaged by the Serbian Act for imposing a provisional ban (e.g. forcible overthrow of the constitutional order; Art. 7 of the Montenegrin Act on Public Assembly), if disorder breaks out, or if it represents a threat to public order and peace, safety of traffic and the like (Art. 6 (1) in conjunction with Art. 5 (3)). The police authorities may provisionally ban a gathering if necessary to protect the safety of persons and property, public health or morals (Art. 8).

Where remedy is concerned, the Montenegrin statute envisages the possibility of appeal to a higher administrative agency, and institution of administrative proceedings to appeal the final decision of the agency. It also prescribes that a public gathering may be held if the competent agency fails to decide on the appeal within 24 hours of receiving it (Art. 10 (4)).

4.11. Freedom of Association

Article 22, ICCPR:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protections of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this Article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

4.11.1. General

All three Yugoslav constitutions guarantee the freedom of association. The language of the Federal and Montenegrin Constitutions is the same: "The freedom of political, trade union and other association and activities shall be guaranteed, without the requirement of a permit, subject to registration with the competent authorities" (Art. 41 (1), Federal Constitution; Art. 40 (1), Montenegrin Constitution). The wording of the corresponding article of the Serbian Constitution is similar (Art. 44 (1)).

The Serbian and Montenegrin Constitutions also guarantee the freedom to organize in trade unions which, the Federal Constitution states, are established "to protect the rights and promote the professional and economic interests of their members" (Art. 41 (3)). This definition of union activities is in line with Article 8 (1) of the ICESCR, but is narrower than the corresponding provision of the ICCPR (Art. 8 (1a)) and the ECHR (Art. 11). Under the latter two instruments, the freedom of trade union organising includes the right of every individual to found and to join trade unions for the protection "of his interests," a clause that is contained in the ICCPR's Article 22 to underscore that unions work also for the civil rights of their members.

Neither the Yugoslav constitutions nor the statutes of the two republics mention the right of individuals not to associate with others. The European Court of Human Rights has in its jurisprudence ruled that the state must guarantee this right also (*Sigurour A. Sigujonsson v. Iceland*, ECHR, A–264, 1993).

Political and trade union organisations whose activities cover the entire territory of Yugoslavia are established pursuant to the Federal Act on Association of Citizens in Societies, Social Organisations and Political Organisations (further on "Federal Act on Association", *Sl. list SFRJ*, No. 42/90, *Sl. list SRJ*, Nos. 24/94, 28/96, and 73/00), while the status of organisations whose activities are limited to the territory of a republic are regulated by the relevant republican statutes. Montenegro has one law in this field: the Act on Non-governmental Organisations (*Sl. list RCG*, Nos. 27/99, 9/02, 30/02), entry into force of which repealed some provisions of the Act on Citizens' Association (*Sl. list SRCG*, Nos. 23/90 and 13/91; *Sl. list RCG*, No. 30/92) and the Act on Endowments, Foundations and Funds (*Sl. list SRCG*, No. 24/85). Serbia has two laws: the Act on Social Organisations and Citizens' Associations (*Sl. glasnik* SRS, Nos. 24/82, 39/83, 17/84, 50/84, 45/85 and 12/89, *Sl. glasnik RS*, Nos. 53/93, 67/93 and 48/94) regulating the establishment and activities of social organisations and citizens' associations, and the Act on Political Organisations (*Sl. glasnik RS*, Nos. 37/90, 30/92, 53/93, 67/93 and 48/94). There are two laws in Serbia because the Act on Social Organisations and Citizens' Associations was adopted back in 1982 during the one-party system.

All these statutes were enacted before the present constitutions and therefore do not conform fully with them. Trade union organisations and citizens' associations are in Serbia still established pursuant to the 1982 Act, which is burdened by socialist rhetoric and archaic restrictions.

4.11.2. Registration and Termination of Associations

The Federal and Serbian Constitutions guarantee the freedom of association without the requirement of a permit and subject to registration with the competent authorities (Art. 41, Federal Constitution; Art. 44, Serbian Constitution). Registration is a formal requirement for an association to commence its activities but the constitutions do not lay down the need for any prior approval. An association may be banned only as an exception and as prescribed by the constitutions (Art. 42, Federal Constitution; Art. 44, Serbian Constitution). Political organisations are registered with the competent Ministry of Justice (Art. 11, Federal Act on Association; Art. 7, Serbian Act on Political Organisations), and trade unions with the competent Ministry of Labour (Article 130 of the Labour Act, *Sl. glasnik RS*, Nos. 70/01, 73/01 and Art. 4, Rules on Entry of Trade Union Organisations in Register, *Sl. glasnik RS*, Nos. 6/97, 33/97, 49/00 and 18/01), and on the day of registration acquire the status of a legal person. The procedure starts with an application to the competent authority, which is bound to enter the organisation in the register within 15 days (30 days in the case of political organisations in Serbia) of receiving the application if it has been established under the law (Art. 13, Federal Act on Association; Art. 10, Serbian Act on Political Organisations).

Citizens' organisations in Serbia are registered with the republican Ministry of Interior pursuant to the procedure prescribed by the Act on Social Organisations and Citizens' Associations. The Ministry must decide on entry into the register within 30 days of receiving the application, whereupon the organisation acquires the status of a legal person and may commence its activities (Art. 34 and 35).

The socialist-era Act, however, lays down the purposes for which an association may be founded: "developing personal affinities and creativity in social, humanitarian, economic, technical, scientific, cultural, sports, educational and other activities." This clearly does not conform with the Federal and Serbian Constitutions, neither of which envisages any restrictions as to the purposes of an organisation. The two constitutions only prohibit organisations whose activities are aimed at a forcible overthrow of the constitutional order, violation of the human rights and freedoms of others, or incitement of hate and intolerance.[93] In practice, this unconstitutional provision gives the Ministry of Interior broad discretionary powers and is frequently abused to deny registration. A typical example was the Ministry's refusal to register the Serbian Association of Judges and, regrettably, its decision was, at one point under the former regime, upheld by the Serbian Supreme Court when it considered the Association's appeal in 1999.[94] The Court reasoned, unconvincingly, that the Serbian Act on Social Organisations and Citizens' Associations was a regulation of substantive law on the basis of which applications for entry into the register were decided upon and, although it was not in conformity with the Constitution, there was no need to apply the Constitution in this case. The Court did not find it necessary to explain why, in a case of a statute conflicting with the Constitution, it considered that the statute should take precedence.

In view of the fact that the manner of exercising the constitutional freedom of organisation and operation is regulated by the Act on Social Organisations and Citizens' Associations, which was adopted back in 1982 in line with the constitutional arrangement of the then Socialist Republic of Serbia and whose latest amendments were brought in 1989 (after which only fees in penal provisions were altered), the Ministry of Justice and Local Self-government of the Republic of Serbia presented several draft acts on non-governmental organisations. The last draft, elaborated with participation of non-governmental organisations themselves, became the official one – Draft act on Associations. The objective of the draft is to bring into conformity the manner of exercising the constitutional freedom of organisation and activities of citizens in order to achieve common goals guaranteed by the constitution, and the constitutional order and, at the same time, the standards stipulated in the ICCPR and the ECHR.

Article 2 of the draft defines association as a "voluntary and statute-based non-governmental non-profit association of a number of natural or legal persons". Under the same article associations are established for the purpose of "realising and promoting certain common or public cultural, humanitarian,

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[93] See I.4.11.4.1.

[94] The Serbian Association of Judges applied for entry into the Register of Citizens' Associations on 29 May 1998 and was turned down by the Ministry of Interior on 7 September. When its appeal against this decision was dismissed, it filed an administrative action with the competent court. The Serbian Supreme Court finally disposed of the case by dismissing it on 17 February 1999.

informational, ecological, professional, social, scientific or other goals and interests." Like the similar provision of the Act on Social Organisations and Citizens' Associations, this one too is contrary to the Federal and Serbian Constitutions, which envisage no restrictions as to an organisation's objectives.

The Draft act provides the possibility for an association to gain the status of an association of public interest and prescribes conditions and manners of gaining such a status (Art. 6 and 19–21), in accordance with the division of associations, generally accepted in comparative legislation, into those whose activities are only aimed at the interests of their members and those whose activities are of general interest.

This distinction could only reflect on the financing of associations of public interest by granting subsidies from the budget, since in other countries too these organisations enjoy larger financial benefits than others. In elaborating such a conception the working group of the Ministry of Justice and Local Self-government took into account above all the experience of the Federal Republic of Germany, but also appropriate legislative arrangements of Hungary and Slovenia. However, it seems that the implementation of such a division of associations in our society, which does not have a democratic tradition, could lead to numerous problems and abuses, since, under the draft, the change of status depends on the assessment of the competent republican administrative authority as to whether the goals and activities of an association are of public interest or not. In order to oppose the "nationalization" of non-governmental organisations, representatives of some non-governmental organisations in the working group of the Ministry proposed that an independent commission (council) should be established to grant the status of an association of public interest, whose members would be, among others, representatives of an association of public interest. The proposal was not accepted, but a "concession" was made – it was envisaged that an expert council should be established, members of which would be outstanding experts and representatives of an association of public interest in a particular sphere. However, this provision of the draft will not solve the problem given the fact that members of the expert council should be appointed by the competent minister and that this council only offers a non-binding opinion in the procedure of establishing the status of an association of public interest.

The Act on Non-governmental Organisations passed in Montenegro in 1999 deals with non-governmental associations, foundations and foreign non-governmental organisation (*Sl. list RCG*, Nos. 27/99, 9/02 and 30/02), and repealed the 1990 Act on Citizens' Associations (*Sl. list SRCG*, Nos. 23/90 and 13/91; *Sl. list RCG, No*. 30/92) provisions on association of citizens in social organisations and associations and the Act on Endowments, Foundations and Funds (*Sl. list SRCG*, No. 24/85). This is a concise (35 articles) and liberal piece of legislation but for this very reason does not regulate all matters of importance for the activities of NGOs and creates room for widely differing interpretations.

In February 2002 the Constitutional Court of Montenegro adopted a decision according to which the provisions of Article 26 (2) and Article 29 (2) of this Act were declared unconstitutional. Those provisions related to the powers of the Government to prescribe the criteria, manner and procedure of granting material assistance to non-governmental organisations and its powers to decide on the division of property of a non-governmental organisation which is deleted from the register. Furthermore, in June 2002 an act on amendments to this act was adopted, regulating in detail the criteria, manner and procedure of granting material assistance to non-governmental organisations, putting it in the competence of the Commission for the Distribution of Resources to Non-governmental Organisations appointed by the Assembly of the Republic of Montenegro.

For the purpose of harmonization with the law, Article 33 prescribes that organisations and associations of citizens entered in the register of social organisations and in the register of citizens' associations, and foundations, funds and endowments entered in appropriate registers, are obliged under this act to reregister as non-governmental associations or non-governmental foundations within 6 months from its entry into force. Otherwise, their activities will terminate by operation of law.

In order to bring the activities of NGOs into conformity with the Act, its Article 22 prescribes that registered social organisations and citizens' associations must within six months of entry into effect of the Act re-register as NGOs. Owing to the short period allowed for re-registration, the number of NGOs in Montenegro marked a sharp decline (only 200 NGOs, or 15 percent of the previous number, were able to re-register within the time-period set). The Serbian Draft Act On Associations contains a similar provision (Art. 66), envisaging a period of one year from the day of entry into force of this act to bring the statute

and other general acts of social organisations, citizens' associations and their unions into conformity with the provisions of the law.

How termination of the activities of a political or trade union organisation is regulated, i.e. the grounds for its deletion from the register, has a major impact on the exercise of the right to freedom of association. Article 18 of the Federal Act on Association and Article 65 of the Serbian Act on Social Organisations and Citizens' Associations prescribe that an organisation ceases to exist: a) by a decision of the body designated by its statute; b) when its membership falls below the number required for its establishment; c) if an organisation has been banned; and d) if it is established that an organisation terminated its work (except for political organisations in Serbia).

The Serbian Draft act in Article 46 envisages seven reasons for the termination of an association, i.e. for its deletion from the register. In addition to the decrease of the number of members, a decision of an association on the termination of its work and a ban on its work, the draft also states: a) expiry of the time-period for which an association was formed; b) merging of an association with another association or its splitting; failure to carry out activities aimed at achieving statutory objectives for two years in succession or failure to implement organisation in accordance with the statute, and d) in case of bankruptcy. The draft prescribes liquidation of an association except in cases of its merging with another, splitting or bankruptcy. The wording of several provisions is virtually identical with those of the Act on Enterprises, which shows that NGOs are viewed as business companies and yet again indicates the misconception of the nature of their activities.

Under Article 3 of the Draft, the activities of associations may not be directed at a violent overthrow of the constitutional order, violation of the territorial integrity of Serbia or Yugoslavia, violation of the constitutionally guaranteed human and civil rights, incitement of national, racial, religious or other intolerance or hate. If an association's activities are in contravention of Article 3, the Serbian Minister of Justice and Local Self-government may ban it, at the proposal of the public prosecutor or the registration authority (Article 47), and his decision may be challenged on judicial review. There is no doubt whatsoever that an organisation whose activities are aimed at, for instance, violation of the constitutionally guaranteed human and civil rights, should be banned but, since such acts constitute serious criminal offences, they should be dealt with by the courts rather than administrative bodies.

The Montenegrin Act on Non-governmental Organisations also envisages the possibility of banning an organisation but fails to say by whom or on what grounds.

Article 4 of ILO Convention No. 87 on trade union freedoms and rights stipulates that administrative agencies may not disband or suspend trade union organisations. In Serbia, however, a union may be banned by the competent municipal police department, and, in the case of those registered at federal level, by the Federal Minister of Justice (Art. 20, Federal Act on Association; Art. 67, Serbian Act on Social Organisations and Citizens' Associations). Furthermore, the Serbian Act, in contrast to the Federal Act on Association, does not even require any explanation to be given for the decision. Both laws contain, in addition, a provision under which a banned organisation must cease its activities on the day of receipt of the decision, not the day when it become final. Under the FRY Act on Citizens' Associations a decision banning the work of an organisation is final (no appeal against it is allowed), but there is a possibility to start an administrative litigation before the Federal Court. However, the Act on Social Organisations and Citizens' Associations of Serbia lays down the possibility of an appeal to a decision banning the work of an organisation, expressly stating that an appeal postpones the execution of a decision and does not envisage court protection.

Decisions on banning political organisations are in Serbia taken by the Supreme Court, at the proposal of the Public Prosecutor (Art. 12 (5), Serbian Act on Political Organisations). An appeal may be lodged against a decision of the Supreme Court; an appeal will be decided on by the chamber of the same court (Art. 13 (4)). In Montenegro, political organisations and citizens' organisations may be banned by the Constitutional Court, at the proposal of the Public Prosecutor or the administrative agency that keeps the relevant register (Act on the Constitutional Court of Montenegro, *Sl. list RCG*, No. 21/93).

4.11.3. Association of Aliens

Whereas the ICCPR and ECHR guarantee the right of association to "everyone," only "citizens" enjoy this right under the Federal and Montenegrin Constitutions. The Serbian one conforms with international instruments as it makes no distinction between citizens and aliens.

The right of aliens to association is not, however, completely denied by statute. The Montenegrin Act on Association of Citizens and the Serbian Act on Social Organisations and Citizens' Associations allow such associations on condition that their aims are not political, trade union or similar. Aliens' associations are subject to a regimen laid down by the Federal Act on Movement and Residence of Aliens (*Sl. list SFRJ*, Nos. 56/80, 53/85, 30/89, 26/90 and 53/91, *Sl. list SRJ*, Nos. 24/94 and 28/96), which in Article 68 (1) states that "associations of aliens are established on the basis of permits issued by the competent authorities." In the case of associations covering all of Yugoslavia, this is the Federal Ministry of Interior, and for those active only in one of the republics, the republican ministries, that is, the police. The same provision is laid down in the Act on Social Organisations and Citizens' Association of Serbia. Furthermore, both acts define precisely that this right is enjoyed only by aliens residing in the FRY or the Republic of Serbia, taking into account the special conditions required for that by the Act on Movement and Residence of Aliens (Art. 31–60).

Under the Montenegrin Act on Non-governmental Organisations, the only requirement for a foreign NGO to commence its activities is its entry into the register at the Ministry of Justice, with the obligation of a non-governmental organisation to be registered as such in the country of domicile (Art. 19; *Sl. list RCG*, Nos. 27/99, 9/02, 30/02).

Besides being subject to a very restrictive permit system, no court protection is envisaged in exercising the freedom of association of aliens. Under the Serbian and Montenegrin laws, an appeal may be lodged with the Government against a decision on rejecting a request for approval required for establishing an association of aliens, or a decision on banning the work of an association of aliens. No administrative litigation is envisaged in case the government brings a decision on the rejection of an appeal (Art. 32, Act on Association of Montenegro: Art. 70, Act on Social Organisations and Citizens' Associations of Serbia). In the same case the Montenegrin Act on Non-governmental Organisations does not allow an appeal against a decision of the competent authority but envisages the possibility of an administrative litigation (Art. 18).

Until recently neither the federal state nor Serbia had any legislation specifically treating foreign NGOs. In October 2001, the Federal Ministry of Justice came out with a draft law on foreign NGOs in order to establish a legal basis for their activities in Yugoslavia. The draft defines these NGOs as non-profit organisations based in another country, established and registered pursuant to the regulations of that country for the purpose of realising a common or general interest or goal, and with representative offices in Yugoslavia or Serbia. As legal persons, the organisations would have to be entered in the Register of Representative Offices of Foreign NGOs, the terms for which would be in accordance with the standards embodied in the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations of 24 April 1986.

However, there is still no special regulation to govern the work of foreign associations, which, in principle, is in the federal competence. As in the territory of the Republic of Serbia there is a significant number of these associations, whose work is of major importance for our citizens and which could withdraw from the Republic due to the failure to regulate their legal status, there is a need to regulate at least temporarily the legal status of representative offices and other organisational parts of foreign associations with the seat in the territory of the Republic of Serbia. For those reasons the Draft act on associations envisages, under the same conditions applicable to domestic associations, the possibility for a "representative office, office and some other organisational form of a foreign or international non-governmental non-profit association with the seat in the territory of the Republic of Serbia, unless it is otherwise stipulated by law or an international contract" to be entered in the register and to work. The Draft act does not envisage a system of approval. The only condition for the implementation of activities of a representative office, office and other organisational form of a foreign or international association is entering in the register for associations of aliens, which is the responsibility of the ministry competent for administrative affairs. In order to be entered in the register, an association has to be registered in the

country of domicile, i.e. it has to have the status of a legal person under the law of the country of domicile, and has to be in possession of a decision on the opening of a representative office, office or other organisational form in the Republic of Serbia.

4.11.4. Restrictions

4.11.4.1. Banning of organisations – All the Yugoslav constitutions prohibit political, trade union and other forms of organisation and activities aimed at a forcible overthrow of the constitutional order, violation of the territorial integrity and independence of the country, violation of the constitutionally guaranteed human and civil rights, or incitement of national, racial or religious intolerance or hate (Art. 42 (1), Federal Constitution; Art. 44 (2), Serbian Constitution; Art. 42, Montenegrin Constitution). Such activities are also defined by law as criminal offences. The requirements of the ICCPR and ECHR are the basis for determining legal grounds for imposing restrictions on political and union activity, to which the Federal and Montenegrin Constitutions add the prohibition of incitement to "other intolerance or hate" but without characterising it. This wording is so loose as to allow, for instance, accusing the opposition of "intolerance of the government."

The Yugoslav legal system does not recognise the principle of proportionality with respect to restrictions on human rights and fails to take into account that they must "be necessary in a democratic society," as laid down by the ICCPR and ECHR in connection with the freedom of association.

The present legislation impermissibly expands the possibility of banning organisations and associations. Thus the Federal Act on Association envisages that political organisations or trade unions may be banned not only if their activities are against the law but also if they are not in line "with the goals for which they were established, or their declared political orientation, or their programs" (Art. 20). Hence it is possible to ban, for example, a political organisation that has declared itself to be royalist and is not, in the opinion of the competent authority, acting in accordance with its monarchist orientation. The fact that it is left to state agencies to evaluate the programs of political organisations and decide whether or not their activities are in accordance with these programs creates a major potential for abuse.

The Serbian Act on Political Organisations states in Article 12 (2) that a political organisation may be banned if it admits minors to membership "and/or abuses them for political purposes." Though the aim obviously is to protect minors, the wording of the provision should be far more specific.

4.11.4.2. Financing of political parties – The Federal Constitution states in Article 41 (2) that "the sources of revenue of political parties shall be open to public scrutiny". The financing of political parties is regulated by federal and republican statutes (Federal Act on Financing of Political Parties, *Sl. list SRJ*, No. 73/00; Montenegrin Act on Financing of Political Parties, *Sl. list RCG*, No. 44/97; Serbian Act on Financing of Political Parties, *Sl. glasnik RS*, No. 32/97). All three envisage annual allocation of a proportion of the respective budgets to parties (Art. 4 and 5 (1), Federal Act; Art. 2, 3 and 4, Montenegrin Act; Art. 2, 3 and 4, Serbian Act).

The statutes furthermore allow political parties to receive funding from other sources (Art. 2 and 8, Federal Act; Art. 2 and 8, Montenegrin Act; Art. 2, Serbian Act; Serbian Act on Political Organisations (Art. 12 (3)). Only the federal and Serbian laws expressly prohibit financing by foreign states and nationals, publicly financed government agencies and institutions, public companies, and anonymous donations exceeding five percent of the amount of the federal budget directed at financing political parties, and in Serbia over 3% of the annual net income of a political organisation in the previous year (Art. 3, Federal Act; Art. 2 and 5, Serbian Act).

These provisions aim to prevent foreign states from exerting an influence on domestic politics but are not proportional with the interest that is being protected. They are too vague and it is not clear who is actually included in the term "other foreign nationals." For example, can a Yugoslav emigrant who becomes a citizen of another country and has double citizenship make financial contributions to political parties in Yugoslavia? It should also be borne in mind that, in view of the situation in this country, membership dues alone are insufficient for a political party to finance its activities and election campaigns. These broadly worded and unspecific provisions cannot be deemed necessary in a democratic society.

Opinion on these restrictions, which aim to preclude undue foreign influence on parties and political life in this country, is divided. Since it is a question whether a foreign donation always entails undue

influence, the purpose would probably be better served by introducing stringent controls of spending of these funds, or prohibiting parties from taking funds from foreign governments and their agencies.[95]

4.11.4.3. Other restrictions – Under the Montenegrin Act on Association of Citizens and the Serbian Act on Political Organisations, persons who have been convicted of certain criminal offences may not establish political and trade union organisations (in Serbia only political organisations) for a period of five years after the judgement by which the person was convicted of some of the mentioned offences becomes legally valid (Art. 5, Montenegrin Act; Art. 5 (2), Serbian Act). The criminal offences cited are in the category of "criminal offences against the constitutional order and security of the FRY." To this the Montenegrin Act adds offences against the Yugoslav armed forces, against humanity and international law, against human and civil rights, and incitement of national, racial or religious hate or intolerance.

Associations are banned if their activity is directed at a violent overthrow of the constitutional order, incitement of racial or national hate, and the like. In this case, the punishment is for the consequence – banning an organisation is the extreme penalty for its unlawful activity. But founding of organisations by persons who have been convicted of the cited crimes and have served their time does not necessarily mean that their organisations will engage in unlawful activity. The law thus completely does away with the right of such persons to freedom of association, which includes the right to found political parties or trade unions. There are other ways to monitor the work of parties and unions and preclude their illegal activities or the possible illegal activities of convicted persons. Denying them freedom of association is the severest possible measure and certainly is not necessary in a democratic society.

4.11.5. Restrictions on Association of Members of the Armed Forces and Police

The ICCPR and ECHR allow states to impose restrictions on the right to association of members of the armed forces and police and, in the case of the Convention, on the administration of the state too (Art. 22 (2), ICCPR; Art. 11 (2)), ECHR). Under the Federal Constitution, professional members of the armed forces and of the police force may not organise in trade unions and may not belong to political parties (Art. 42 (3 and 4)). The Act on the Yugoslav Army (*Sl. list SRJ*, No. 43/94) contains an identical provision, laying down in its Art. 36 that "professional soldiers and cadets of armed forces academies and military schools may not be members of political parties, do not have the right to organise in trade unions, and do not have the right to strike." In contrast to this general prohibition, paragraph 2 of the Article states that "soldiers performing their military service and members of the armed forces reserves on duty in the Army may not take part in the activities of political parties."

The Montenegrin Constitution does not prohibit members of the police force from organising in trade unions but in Article 41 (2) prescribes that "professional members of the police force may not belong to political parties." The Serbian Constitution has no provisions regulating the freedom of association of police force members.

Because it excludes a significant proportion of the population from political affairs, the prohibition of belonging to political parties to police officers is debatable and constitutes a serious restriction on the freedoms of association and expression. In its report on human rights in Yugoslavia in 1998, the Belgrade Centre for Human Rights was of the opinion that the broad general prohibition was not in accordance with the ICCPR and the ECHR.[96] In *Rekvény v. Hungary* (ECHR, App. No. 25390/94 (1999)), however, the European Court of Human Rights ruled in 1999 that prohibiting police officers from belonging to political parties and taking part in political activities was not in contravention of Art. 10 (freedom of expression) and Article 11 (freedom of association) of the ECHR. In view of this judgement, it may be said that the relevant Yugoslav constitutional provisions in principle impose permissible restrictions.

In its 2000 Report, the Belgrade Centre took the position that a complete prohibition of trade union activity by members of the armed forces and police constituted an impermissible restriction on the freedoms of association and expression since it prevents them from protecting their professional interests

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[95] See more I.4.14.2.

[96] See *Human Rights in Yugoslavia 1998*, I.4.10.5.

and can hardly be considered necessary in a democratic society. For its part, the European Commission of Human Rights has found that prohibiting members of the armed forces, police and state administration from organising in trade unions is in accordance with the EComHR (*Council of Civil Service Unions v. UK*, EComHR, App. No. 1160/85 (1987)). The Commission considered that states should have a large measure of freedom in judging what measures are required to defend their national security (see *Leander v. Sweden*, A–116, 1985).

The Yugoslav constitutions envisage some personal restrictions on freedom of association that are not provided for by international instruments and should therefore be considered from the aspect of the generally allowed restrictions. Under Article 42 (3) of the Federal Constitution "Justices of the Federal Constitutional Court and the Federal Court, the Federal Public Prosecutor... may not belong to political parties,[97] while the Constitution of Montenegro prescribes that "judges, the judges of the Constitutional court and the state prosecutor cannot be members of *organs* of political parties" (italics added). The Serbian Constitution does not contain a similar prohibition but Article 47 of the Serbian Act on the Public Prosecutor's Office (*Sl. glasnik RS*, Nos. 63/01, 42/02) and Article 27 of the Act on Judges (*Sl. glasnik RS*, Nos. 63/01, 42/02) envisage that a judge, the public prosecutor and his deputy cannot be members of a political party. However, it was for the first time that judges, public prosecutors and deputies were expressly recognised the right to associate in that capacity in order to protect their interests and in order to take measures to protect and maintain their independence (public prosecutors and deputies) or their independence and autonomy (judges).

The aim of these restrictions of the right of judges, prosecutors and deputies to belong to political organisations is legitimate – to ensure an impartial and independent judiciary and, furthermore, to protect the public order. Hence, and like the prohibition of political organising of members of the armed forces and police, it may be considered necessary in a democratic society.

The Serbian Act on Labour Relations in Government Agencies (*Sl. glasnik RS*, Nos. 48/91, 66/91, 44/98, 49/99 and 34/01) extends the restriction on freedom of political organising to those employed in the government administration and appointed officials. Article 4 (3) of the Act states that these persons "may not be members of organs of political parties" which is in keeping with the ECHR. Unlike the Convention, the ICCPR envisages such a restriction only with respect to members of the armed forces and police and does not include the state administration. In this case, the restriction should be evaluated in accordance with the general conditions for restricting freedom of association. Since the state administration includes translators, typists, librarians and the like, the prohibition is too broad.

The Montenegrin Constitution prohibits "political organising in state agencies" (Art. 41 (1)). In its Art. 6, the Act on the State Administration (*Sl. glasnik RCG*, No. 20/92) furthermore prohibits the founding of political parties and other political organisations or any forms of these in state administration agencies. This prohibition is in accordance with international standards for its purpose is to prevent state agencies from identifying with political parties or organisations.

4.11.6. The Right to Strike

The right to strike is guaranteed by Article 8 (1.d) of the ICESCR, Article 6 (4) of the European Social Charter, but not explicitly by the ICCPR or the ECHR.[98]

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[97] Judges of the highest courts in the FRY were loyal to the former regime until the very end. Some who served on election commissions have been accused of falsifying the results of the 24 September 2000 presidential election.

[98] Unlike the Human Rights Committee which decided, in a controversial opinion, that the right to strike was not included in the right to freedom of association guaranteed by the ICCPR (*Alberta Union v. Canada*, Com. No. 18/1982*),* the European Court of Human Rights recognised the importance of the right to strike for the promotion of the freedom of trade union association, but its scope and importance remain to be elaborated in the jurisprudence of the Court (*Schmidt and Dahlstrom v. Sweden*, A 21, 1976). The ILO Committee on Freedom of Association also took the view that the right to strike, which is not explicitly mentioned in ILO Convention No. 87, constituted a legitimate and indispensable means for unions to protect the interests of employees. (Com. No. 118/1982, para. 2.3).

The Yugoslav constitutions also guarantee the right to strike. Under the Federal Constitution "Employed persons shall have the right to strike in order to protect their professional and economic interests, in conformity with federal law" (Art. 57 (1)); identical wording in Montenegrin Constitution, Art. 54 (1)). The Serbian Constitution states only that "employed person have the right to strike, in conformity with the law" (Art. 37).

The ICESCR prescribes that the right to strike is to be exercised in conformity with the laws of the particular country (Art. (8.1.d)), which permits the imposition of certain restrictions in order to mitigate the effects and consequences of strikes on public order; however, the right to strike itself cannot be denied. The Federal Constitution also places restrictions on the right to strike by stipulating its lawful objectives, that is, protection of professional and economic interests, which is allowed by international instruments.

Under Article 57 (2) of the Federal Constitution, "the right of industrial action may be restricted by federal statute if so required by the nature of the activities concerned or the public interest." Under the Strike Act (*Sl. list SRJ*, No. 29/96) the right to strike is limited by the obligation of strikers' committee and workers participating in a strike to organize and conduct a strike in a manner which does not jeopardize the safety of people and property and people's health, which prevents causing direct material damage and enables the continuation of work upon the termination of strike. Besides that general restriction, a special strike regime is also established: "in public services or other services where work stoppages could, due to the nature of the service, endanger public health or life, or cause major damage" (Art. 9 (1)). Activities of public interest are those implemented by an employer in the following spheres: power generation industry, water supply industry, transport, information, PTT services, public utilities, staple foods production, health and veterinary protection, education, social care for children and social welfare, as well as activities of general interest for the defence and security of the FRY and affairs necessary for the implementation of the FRY's international obligations. Fields in which work stoppage could jeopardise people's life and health or cause major damage are: chemical industry, ferrous and non-ferrous metallurgy (Art. 9 (2–4)). In that case the right to strike can be exercised if special conditions are met, which means to "ensure the minimum process of work which secures the safety of people and property or is an irreplaceable condition for life and work of citizens or life of another enterprise or a legal or natural person performing an economic or other activity or service" (Art. 10, para. 1). The minimum process of work is established by the director, and for public services and public enterprises by the founder, in the manner established by the general employment act, under the collective contract; the director and the founder have the obligation to take into account opinions, remarks and proposals of trade unions (Art. 10 (3 and 4)).

Though there is no doubt as to the need for a special regime for strikes in services that are indispensable for the normal functioning of the country, it should be ensured through other means. The necessity of a minimum of the work process in vital installations is acceptable only in some services. The rules setting the minimum work process should be very restrictive but with regard to the employer, not the work force. The Strike Act's definition of the minimum is so broad as to put into question the possibility of a strike or its effectiveness. Moreover, vague formulations such as "compliance with international obligations" make it possible completely to ban industrial action in some cases, for example in companies that are exclusively export-oriented. Thus the established regimen of strikes to an extent denies the very right to strike.

The Federal Constitution lays down that "civil servants and professional members of the armed forces and the police force shall not have the right to strike" (Art. 57 (3)). An identical provision is to be found also in the Montenegrin Constitution (Art. 54 (2)). Since the Serbian Constitution does not contain a provision of this kind, the only correct interpretation is that government employees and members of the republican police force have the right to strike. Article 8 (2) of the ICESCR allows countries to restrict by law the right to strike of members of the armed forces, the police or of the state administration. But, as in the case of the right to political and union organising, the Federal Constitution prohibits rather than restricts the right of these categories of employees where industrial action is concerned. The consequence of this repressive solution is evident in the Strike Act under which an government employee, member of the armed forces or the police may be dismissed if it is established that he organised or took part in a strike (Art. 18).

4.12. Peaceful Enjoyment of Property

Article 1, Protocol No. 1, ECHR:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.

According to the jurisprudence of the European Court of Human Rights, Article 1 of the First Protocol to the ECHR in principle guarantees the right to property, namely the right to own and use the property and freely dispose with it (*Hentrich v. France*, ECHR, A–296, 1994).

Right to property is comprised of three different rules. The first rule, expressed in the first sentence of Article 1(1), general in nature, outlines the principle of peaceful enjoyment of property. The second rule, formulated in the second sentence of the same paragraph, regulates the deprivation of property and subjects it to certain conditions. The third one, in paragraph 2, recognises the right of state parties to control the use of property based on public interest. According to the European Court's jurisprudence, second and third rule should be interpreted in light of the general principle expressed in the first rule (*Holy Monasteries v. Greece*, ECHR, A–301, 1994).

In its jurisprudence, the European Court of Human Rights has held that a balance between the public interest and the rights of individuals must be found in every case of interference in the right to peaceful enjoyment of property. The need to balance these interests, stated in Article 1 of the First Protocol, is characteristic of the Convention as a whole. The extent of state interference (expropriation or restrictions on the use of property) must be justified by the circumstances of the particular case and conditional on fair compensation. The question of monetary compensation does not arise only with respect to expropriation and may be sought also in the case of restrictions on the use of property (*Sporrong and Lonnroth v. Sweden*, ECHR, A–52, 1982).

4.12.1. General

The right to own property “in conformity with the Constitution and law” is guaranteed by Art. 51 of the Federal Constitution. Article 69(3) lays down that:

No one may be deprived of his property, nor may it be restricted, except when required by the public interest, as determined by law, and subject to fair compensation, which may not be below its market value.

The Montenegrin (Art. 45) and Serbian (Art. 34 and 63) Constitutions contain very similar guarantees; hence the three constitutions are in accordance with international standards. The guarantee that a person may be deprived of his property only when required by the public interest, in accordance with law, and subject to compensation at market value is of particular importance.

Competence with regard to property relations is divided in FRY. The federal state, through its agencies, regulates the principles and system of property relations while other issues are in the purview of the constituent republics (Art. 77 (5), Federal Constitution). The most important law regulating this area at federal level is the Act on the Principles of Property Relations (*Sl. list SFRJ*, Nos. 6/80, 36/90 and *Sl. list SRJ*, No. 29/96). Only those provisions of national law that do not conform to international standards will be discussed here.

4.12.2. Expropriation

An action for the review of constitutionality of the provisions of Article 3 and Article 58 (1), (2) of the Expropriation Act (*Sl. list RCG*, No. 55/00) was commenced before the Montenegrin Constitutional Court. The contested provisions prescribe that, with the date of the effective expropriation order, the title to the property shall be transferred, as well as the type of ownership shall be changed. Besides, the property

right and other rights on the expropriated real property shall be entered into registry on the basis of effective expropriation order and the request for registration may be submitted by any of the parties concerned. The court ruled that the disputed provisions are not in accordance with Article 45 of the Montenegrin Constitution, which prescribes that minimum compensation for the expropriated property has to be set. The upper limit for compensation is not set by the Constitution. The court has held that, since deprivation or restriction of the right to property is indivisibly linked to fixing and payment the compensation for expropriated real property that could not be lower than the market value, fixing and payment of compensation must be done prior to the transfer of right to property or must be effected simultaneously with the transfer of property at the latest. Contrary to this, contested provisions had prescribed that with the date of effective expropriation order the beneficiary of the expropriated real property shall register his/her right and thereby deprive the previous owner of the right to property prior to the payment of compensation for this property. Moreover, it may happen even before fixing this compensation if parties have not reached an agreement on forms and amount of compensation and transfer of property prior to the effective expropriation order (*Decision of Montenegrin Constitutional Court*, U-No. 14/2001, 12 February 2002, *Sl. list RCG*, No. 12/02).

When and how an individual in Serbia may be deprived of real property or his rights in respect of such property may be restricted, both of which constitute serious interference with the right to peaceful enjoyment of property, is regulated by the Republic's Expropriation Act (*Sl. glasnik SRS*, Nos. 40/84, 53/87 and 22/89; *Sl. glasnik RS*, Nos. 6/90, 15/90, 53/95, 23/01).

The administration of the municipality where the real property in question is located conducts the proceedings pursuant to the expropriation proposal and renders the appropriate order (Art. 29 (1)). Appeal against this order is heard by the Serbian Ministry of Finance (Art. 29 (5)).

Under the Act, the beneficiary of an expropriation may take possession before a decision on compensation for the property becomes final, i.e. before a contract on compensation is concluded, if the Ministry of Finance considers this necessary because of the urgency of the matter or construction work (Art. 35 (1)). The language of this provision is too broad and imprecise to meet European standards. Under the ECHR, the law must, *inter alia*, provide protection from arbitrary decision-making by state bodies (*Kokkiniakis v. Greece*, ECHR, A–260, 1993 and *Tolstoy Miloslavsky v. United Kingdom,* A–316, 1995).

Article 20 of the Serbian Act, however, does not oblige the government to consider the interests of the owner of a property when determining the existence of a public interest for expropriation, or to examine whether the owner's interest in continuing to own the property and running his business prevails over the public interest. The manner in which the government has hitherto established the existence of a public interest amply demonstrates that the interests of individuals were not taken into consideration.

Individual interests are threatened also in the procedure before municipal bodies that decide on expropriations. In the majority of cases at this stage, an owner is not allowed to build on his land, and his right to dispose with his property is impaired by the entry of expropriation notices into land and other real property registers. The Act fails to fix a time limit within which this stage of the procedure must be concluded, and does not envisage the possibility of compensation in the event of it being unduly prolonged, sometimes, as practice has shown, for more than 10 years.

Similar problems arise when a decision on expropriation has been taken but the amount of compensation remains to be fixed. Since the law allows the beneficiary of the expropriation to take possession of the property immediately upon the decision to expropriate, the owner is now in fact the owner only on paper. Furthermore, if Article 35 (1) of the Act is applied, the owner loses even this safeguard, without compensation having been paid. This stage of the procedure also occasionally lasted for over 10 years. How the amount of compensation is determined and the long delays in its payment often resulted in owners receiving far below the market price of their property as prescribed by Article 44 of the Act. This article was set aside by the Federal Constitutional Court in 2001 (*Sl. list SRJ*, No. 16/01).

Article 36 of the Expropriation Act does not provide for any time limit within which the previous owner of the expropriated real property can file a request for annulment of the effective expropriation order, but only a time limit within which, if the beneficiary of the expropriated real property has not put the facilities into proper use, the effective expropriation order can be annulled. Under the previous Expropriation Act (*Sl. glasnik RS*, No. 6/90), Article 39 (4 and 6), a request for annulment of an effective expropriation order could not be filed upon expiration of five-year period from the date of the effective

expropriation order, or six years if it concerned a complex. Provisions from the Article 39 were deleted due to changes to this Act.

Provisions of Article 44 of the Expropriation Act, prescribing the manner and criteria for fixing the compensation for expropriated real property, ceased to be in force, pursuant to the decision by Federal Constitutional Court. According to the ruling, just compensation should be fixed pursuant to this provisions of the Expropriation Act on the basis of three elements. First element is the construction price for residential real estate, determined as the market value. Second is the 1–2% of the average market price of residential real estate, determined depending on the conditions that give specific characteristics to the real property. Third element is the need to establish the lower and upper limit of these percentages and require of competent bodies to render just decision within this scope, without questioning the market price of such property (*Sl. list SRJ*, No. 16/01).

The Expropriation Act calls for the procedure following the proposal for expropriation, which has not been concluded before the day of its entry into force, to be completed based on regulations effective prior to the entry into force of this Act, "except in cases where the expropriation proceedings have not been effectively finalised, *and involve business and housing facilities*" (italics added) (Art. 71 (1)). With regard to this formulation it is unclear whether this concerns the expropriation of business and housing facilities or the expropriation of the property where business and housing facilities are to be constructed. Pursuant to the ruling of the Supreme Court of Serbia on the cited provision, the relevant criterion is the type of real property that is expropriated (U. 3294/98, 12 July 2000).

4.12.3. Inheritance

The Yugoslav constitutions explicitly guarantee the right to inheritance (Art. 51, Federal Constitution; Art. 34 (2), Serbian Constitution, Art. 46, Montenegrin Constitution). The Inheritance Act of Serbia (*Sl. glasnik RS*, No. 46/95) prescribes that a man of military age who leaves the country to avoid taking part in its defence and does not return until the death of the testator, is considered unfit to inherit the assets willed to him (Art. 4 (5)). Since FRY insisted from the time the conflicts in former Yugoslavia first broke out that it was not a belligerent, it remains unclear if this provision is envisaged for the future or if it applies only to those who refused to take part in the ex-Yugoslavia wars. It is quite clear, however, that the article constitutes a drastic violation of both the right of a testator to dispose of his property as he sees fit, and an unlawful restriction on the right of inheritance guaranteed by the constitution, which can in no way represent a threat to the "defence of the country".[99]

The Montenegrin Inheritance Act contains a similar provision, under which a person who has committed an act against the constitutional order, the security and independence of the country or its defence capability may be excluded from inheriting (Art. 42 (3)).

4.12.4. Transformation of Forms of Ownership in Favour of State Ownership

Immediately after the victory of democratic parties in the 1996 local elections, the Serbian government, which was in power until 2000, rushed through Parliament a law enabling it to nationalize socially owned and municipal property in a centralised manner. The aim was to prevent the newly elected local authorities from managing and disposing with such property.

The Act on Assets Owned by the Republic of Serbia (*Sl. glasnik RS*, No. 54/96) defined these assets as all those acquired by government agencies, organs and organisations of units of territorial autonomy and local governments, public services and other organisations founded by the republic or the territorial units, and all other assets and revenues realised on the basis of the investment of government funds. In addition, the Act restricted management and disposition of property by local governments by requiring the Serbian government's approval for the sale of real property used by public-service organisations (Art. 8).

The former authorities also changed the form of ownership by decree. A glaring example was that of the *Borba* media company, a socially owned enterprise which by a Federal Government decree became a

[99] There were no petitions challenging the constitutionality of the provision in 2001.

state-owned company – thereby the government took *de facto* control over it (Federal Government Decree on the *Borba* Federal Public Company, *Sl. list SRJ*, Nos. 15/97, 56/98, 10/00, 17/00, 34/00, 7/01 and 12/01).

After the 1997 Ownership Transformation Act (*Sl. glasnik RS*, No. 32/97), replete with inadequate provisions, a new Privatisation Act was passed in 2001 (*Sl. glasnik RS*, No. 38/01). The new statute sets forth the grounds and procedure regarding the change of ownership for socially owned and state capital. With the date of its enactment, the Ownership Transformation Act[100] had ceased to be in force.

4.12.5. Restitution of Unlawfully Taken Property and Indemnification of Former Owners

Although denationalisation and indemnification of former owners is an important component of transition, the issue has not yet been dealt with comprehensively in the FRY. Absence of appropriate legal framework in this field has a negative impact primarily on the privatisation process, since foreign investors are reluctant to place significant investments into the local economy due to the lack of legal certainty and safeguards with regard to intangibility of property. In 2002 the Foreign Investments Act was passed (*Sl. list SRJ,* No. 3/02), providing additional safeguards for the foreign investors' rights by way of simplifying the procedure for approval of investment contracts and expanding the list of economic activities where foreign citizens may be majority shareholders.

During 2002, at the Serbian Government initiative, a special committee was formed to draft an Act on Restitution of Property and Indemnification. However, several draft acts on denationalisation have hitherto been drafted in Serbia. The Centre for the Advancement of Legal Studies, together with the Serbian Ministry of Finance and Economy, organised an international conference on denationalisation in October 2002. It was decided, inter alia*,* to establish a working group within the Ministry of Finance and Economy to draft a new Act on Denationalisation, as well as to form a special section for denationalisation matters.[101]

This Report contains only the analysis of the Act that was available to public before the Report was complited. This Draft act has not yet been discussed in the republican Government.[102]

This Draft act regulates conditions, manner and procedure for restitution of property on the territory of Serbia that was nationalised through confiscation from former owners, natural and legal persons, following the decrees and statutes on dispossession without market compensation, passed and applied in the period from 1945 onwards (Art. 1 (1)). The property subject to restitution or indemnification is: farming and forest land, forests, building land, residential and business premises, companies, funds and associations, intellectual property, movable property, securities and financial assets (Art. 12). In Chapter II of the Draft act, dealing with market compensation, it is provided that the value of nationalised property shall be fixed according to its condition at the time of nationalisation and taking into account its value at the time of rendering the decision on restitution or indemnification (Art. 32, (1)). If the current value of property cannot be determined, the value shall be fixed pursuant to Article 52 (1) of the Draft, within two months from the date of entry into force of the Act, a directive shall be passed on standards and methodology for determination of the nationalised property's value (Art. 32 (6)).

The Draft act calls for the restitution of property, in the form of same or other property, and in case when this is not possible (for instance, when the property no longer exists in its physical form), a market based indemnification shall be paid in the form of securities or cash, the priority being given to the restitution of property (Art. 1 (2 and 3)). If the property cannot be fully restituted, the possibility of partial restitution is given, and market based indemnification is paid for the remaining difference in value (Art.13 (2)). Article 16, however, introduces many exceptions to this rule. For example, real property is not restored if: it is used for performing medical, cultural, formational and educational activities and if restitution would significantly reduce the possibility to perform these activities, since it cannot be replaced

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[100] See more in *Human Rights in Yugoslavia 2001*, I.4.12.5.

[101] See more at <http://www.cups.org.yu/projekti/html/denacionalizacija.html>

[102] See <http://www.srbija.sr.gov.yu>

with another real property; if the real property is an indivisible part of a network, facilities, equipment and other resources of public companies in the fields of energy, utilities, traffic and communication that are excluded from the privatisation process; if the real property is excluded from the market, that is if the right to property cannot be acquired over it. In such cases, the owner is entitled to fair market value compensation (Art. 16 (2)). If the value of real property increased significantly due to new investments, the former owner has the right to request either its full restitution with the obligation to pay fair compensation for the difference in value, or market value based indemnification for the said real property (Art. 20 (2)). If, on the other hand, the value of confiscated property was significantly reduced due to nationalisation, it shall be returned to the right holder with indemnification compensating for the full value at the time of nationalisation (Art. 20 (4)).

Former owners of the confiscated property or their heirs are beneficiaries of the right to restitution or indemnification (Art. 6 (1)). The condition for exercising this right is the possession of Yugoslav citizenship at the time of the Act is passed, whereas for foreign citizens it is provided that the restitution of property shall be made according to international agreements (Art. 6 (2)). If the former owner of property has deceased or has been declared as deceased, the right to restitution of property is passed to his heirs, and the right to inheritance is determined pursuant to provisions of the republican Act on Inheritance (Art. 9 (1 and 2)). The right to restitution of property was established also in favour of legal persons, such as churches and other religious organisations, endowments and other not-for-profit legal persons (Art. 8).

According to this Draft act, the responsibility for restitution lies with the state or other legal persons that were, at the time of entry into force of the Act, holders of the social ownership right to this property; companies and other commercial entities whose property encompasses assets or property of nationalised companies, as well as the Shares Fund, which is obligated to provide restitution in shares held by Republic of Serbia (Art. 10). Individuals can only exceptionally be responsible for restitution of property, only in cases when they have acquired it without basis in law or hold it on the grounds of rent, lease or other similar relationship (Art. 11 (2)).

Procedure for the restitution of property is a summary one. A former owner initiates it by filing a claim to the municipal administrative body responsible for property and legal matters, depending on the location of real property (Art. 37). The General Administrative Procedure Act is applied in these proceedings (Art. 4 (2)). During the proceedings before the competent body, the option of composition is envisaged (Art. 38 (1)). The claim for restitution of property can be filed by the former owner or his successors within two years from the date of entry into force of this Act (Art. 39). The procedure has two instances, with the decision being taken in the first instance by the municipal body responsible for property and legal matters. Appeal against the decision of this body is heard by the Ministry of Finance and Economy. (Art. 43). However, it is unclear why the Draft act has not provided for the possibility of judicial review of the decision rendered by the Ministry of Finance and Economy.

The Draft act prohibits any transaction with the property that is subject to the obligation of restitution, from the date of entry into force of the Act, as well as the use of such property for mortgage, lease or collateral security (Art. 53 (1)).

In 2002, the Montenegrin Assembly adopted the Act on Just Restitution that prescribes conditions, manner, procedure and deadlines for restitution of ownership rights to former holders of these rights on real and movable property that had been unlawfully confiscated from them pursuant to regulations from 1945 onwards (Art. 1 (1)). Beneficiaries of the right to restitution are natural and legal persons, former holders of ownership and other rights on real and movable property and assets, at the time of the confiscation, as well as their heirs, regardless of whether probate proceedings have been conducted after their death (Art. 10 (1) and (2)). The holder of the right to restitution can also be a religious organisation or community (Art. 10 (7)).

The Act exempts acquisition of real property, other property or property rights, or financial indemnification pursuant to this Act from taxation within one year from the day of acquisition, that is of entry into possession by holder of the right to restitution (Art. 9). Serbian Draft Act on Denationalisation does not mention a similar provision.

The Montenegrin Government shall establish the Restitution Fund within 60 days from entry into force of this Act, which should provide means for restitution and payments of compensation in the course of the denationalisation process (Art. 33). The novelty are provisions enumerating the sources for the Fund:

revenue from sale of state property (in the amount of 10%), revenue from sale of government bonds (10%), revenue from privatisation of companies or their parts (10%), revenue from concession compensations (15%), revenue from tax, loans from international organisations for the purpose of compensation and other sources (Art. 33 (2)). The same article introduces the obligation of the Government to submit annual report to the Parliament, together with the proposed budget, on the implementation of restitution process.

Deadline for filing claims for restitution pursuant to the Montenegrin Restitution Act is shorter than the one in the Serbian Draft act and it is set at 14 months after entry into force of the Act (Art. 35). In contrast to the Serbian Draft act envisaging that parties in the restitution procedure shall not pay fees (Art. 49 (1)), the Montenegrin Act prescribes that the beneficiary of restitution shall pay the costs in the amount of 50 euros (Art. 35 (4)). Like the Serbian Draft act, the Montenegrin Restitution Act also calls for the Administrative Procedure Act to be applied in the restitution proceedings, with two-instance procedure guaranteed. The Commission for Restitution decides in the first instance, and the Republican Commission for Restitution in the second (Art. 36). An important novelty in comparison with Serbian Draft act is the possibility that the court can decide in the matter, if the Commission or one of the interested parties should request so (Art. 37). In respect of the composition of the commissions for restitution, at least half of the members must be representatives of former owners nominated by their associations, whereas the directors of these commissions and the other half of members are nominated by Montenegrin Government at the proposal of associations of former owners (Art. 40).

With regard to the privatisation of previously nationalised property, Article 61 (2) of the Privatisation Act does not envisage making this property a separate estate in the privatisation process but does prescribe that five percent of revenue from its sale plus other budget funds will go to recompense the former owners. The efficacy of this provision is not clear since a law that will more closely regulate the restitution of nationalised property and compensation of its former owners still remains to be adopted.

The Federal Parliament revoked a decree by which the Karađorđević royal family were stripped of their Yugoslav citizenship and their property confiscated (*Sl. list SRJ*, No. 9/01), thereby invalidating the legal basis on which this property was confiscated. Under Article 2 of the new law, the terms for the restitution of the property will be prescribed in a separate act.

Acquisition of property under Yugoslav law requires both a legal basis and a *modus.* The new law has in principle created the legal basis (by revoking the decree under which the property was confiscated) but did not establish the *modus,* leaving this to be done by a future law. However, on 12 July 2001 (E. P. No. 132), the Federal Government placed the property at the disposal of Prince Alexander Karađorđević and other members of the royal family, but without giving them outright ownership. This created a legally ambiguous situation: it is not known who has title to the property as there is no longer any legal basis for it to be state property, nor is there a *modus* for it to belong to the Karađorđevićs.

In addition to being an untoward legal solution whose lack of clarity constitutes a threat to property rights in general, the government's decision also raises the issue of discrimination against other owners of nationalised property. The reason why it should be in the public interest to afford special treatment to the Karađorđević family is not clear. It would appear that the decision was prompted by the needs of day-to-day policy. It sets a bad precedent in that it makes it possible for the authorities to use their discretion when deciding on the restitution of confiscated property, in violation of the equality of citizens and the prohibition of discrimination, and to avoid passing a law that would deal comprehensively with this serious and complex problem.

4.12.6. Tax on Extra Profit and Extra Property Act

In 2001 the Serbian Parliament passed the Act on Tax on Extra Profit and Extra Property acquired by way of using special privileges (hereinafter: Act on Extra Profit, *Sl. glasnik RS*, No. 36/01). According to this Act, the subject of taxation is profit and property acquired by a natural or legal person through taking advantage of special privileges not accessible to all individuals, in the period from 1 January 1989 until the entry into force of this Act (Art. 2 (1)). The tax return was due to be submitted to the competent revenue service within 30 days from the entry into force of this Act (Art. 11 (1)). In case the taxpayer should consider that there are circumstances justifying exemption from this tax, he/she shall submit

evidence on such circumstances together with the tax return (Art. 11 (4)). The Act also provides for the possibility of *ex officio* commencement of the proceedings by the revenue service to determine and enforce the payment of this tax, by filing a report of the Serbian Government's Commission for Investigation of Abuses in the Economy or a report of the police, customs or other state bodies should they learn of facts indicating the existence of the subject of taxation (Art. 12).

The Federal Constitutional Court reviewed the constitutionality of this Act (*Sl. glasnik RS*, No.18/02). Parties submitting this motion contested its grounds for enactment, claiming that the contested Act covers the matters that according to the Federal Constitution fall under the exclusive federal jurisdiction. The question of retroactive application of the Act was also raised, stating that the entire Act is of retroactive nature and not only several of its provisions, as allowed by the Constitution in certain cases. According to the opinion of the moving parties, retroactive introduction of a new form of taxation changes the conditions for economic activity, the relationship that had already been regulated from the aspect of corporate or income tax, and thereby compromises the equality of arms in the market economy. It was also asserted that the contested act is in violation of the federal Obligations Code with regard to the statute of limitation for claims. The moving parties further stated that the contested Act compromises the principle of equality of citizens before law, since pursuant to this Act property and profit acquired in a certain period of time is taxed, and not on a continual basis. The same principle was breached due to taxation of acquired residential space of certain individuals, if their size is over 90 m^2 (Art. 3 (12)), as well as due to the amount of tax rate for the space above this limit (Art. 10). The motion asserted that the appeal against the revenue service's decision on one time tax does not delay the enforcement, hence directly contravening the principle that the determination of whether someone is a taxpayer may only be made by the court. Another objection was that the tax return is not to be filed *ex officio*, as laid down by Article 12 of the Act.

The Federal Constitutional Court found that the Serbian Parliament had not violated federal rules on jurisdiction to prescribe of the FRY, because the contested Act of the Republic of Serbia has, in accordance with the Federal Constitution and the federal Act on the Bases of Taxation System, introduced a form of taxation already envisaged in the federal legislation.[103] With regard to the objection to retroactive effect, the Federal Constitutional Court held that the Federal Constitution, Article 117 (2), enables a deviation from the general rule of prohibition of retroactivity, having in mind that certain provisions of certain statutes must have a retroactive effect to legal relationships from the past. The Federal Constitutional Court indicated that the Serbian Parliament, when passing the contested Act, had in mind the general interest for which it was necessary that contested provisions in Articles 2, 3 and 8 of the Act on Extra Profit should have a retroactive effect, and that is "the necessity that by means of a one-time tax appease, or to the greatest possible extent remove, great injustices that occurred in the distribution of profits, made by abuse of special privileges, which were accessible only to certain natural and legal persons". According to the opinion of the Federal Constitutional Court, the issue of retroactivity of this Act cannot be brought into question, since this kind of tax always relates to property that exists at the time of taxation, and was, by definition, acquired beforehand. The Court therefore concluded that the contested Act on Extra Profit on the whole does not violate the provisions in Article 117 of Federal Constitution.

The contested provision in Article 3 (1.18) of the Act on Extra Profit, which sets forth that the abuse of special privileges also includes the privileged payments of old foreign currency savings, was found to be unconstitutional, since the beneficiaries of privileged payments of old foreign currency savings cannot be subject to special tax, because they have not gained any extra profit.[104]

The Federal Constitutional Court also determined that the provision of Article 11 of the Act on Extra Profit, which regulates the submission of a tax return, is not in accordance with the Federal

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[103] Provision in Article 2 of the Federal Act on the Bases of Taxation System, prescribes types of taxes that can be introduced inthe FRY, among them the tax on financial transactions and extraordinary taxes (items 6 and 9). In Article 142e of the Act on the Bases of Taxation System it is provided that a statute, republican or federal, can introduce new taxes. In the contested act Serbia introduced a tax that has the characteristics of an extraordinary tax.

[104] The court took the position that the transaction employed by the owner of a savings account in order to receive the payment of his foreign currency savings, can give rise to moral contempt, but cannot constitute any grounds for a special tax obligation.

Constitution, as it is usual practice that citizens submit their tax returns personally. The contested provision permits the tax return submitted by the citizen be delivered, without delay, to the Republic's Prosecutor Office. Hence, the Court held that it represents not only a tax return, but also a criminal complaint, i.e. the act of self-incrimination, which is prohibited pursuant to provisions of domestic statutes and international agreements.

The contested provision of Article 19 (4), excluding the appeal against the decision on enforcement of the tax on extra profit payment, was held contrary to Article 26 (2) of the Federal Constitution, guaranteeing to everyone the right to appeal against decision about his right or lawful interest.

According to the ruling of the Court, provision in Article 31 of the contested Act, which prescribes that in the course of the proceeding related to determination and payment of one time tax, provisions of the Obligations Code covering the statute of limitations of claims shall be derogated from, does not belong in this statute. The Court ruled that the Obligations Code regulates matters of private law, which is not the case with the contested Act, regulating public law (fiscal) matters.

While reviewing the constitutionality of the Act on Extra Profit, the FCC had not entered into deliberation on many other issues related to the implementation of the act, reasons for its enactment and consequences of its enforcement, concluding that "these are matters of the legislators' tax policy and their responsibility for this policy".

4.13. Minority Rights

Article 27, ICCPR:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The Yugoslav constitutions guarantee certain minority rights. A comparison of the three constitutions, however, brings out essential differences and diverse approaches, in consequence of which these rights and the degree to which they are protected are differently regulated. In contrast to the Federal Constitution, the Serbian Constitution contains no separate provision that in general guarantees minority rights and their protection. The Montenegrin Constitution is far more precise and comprehensive in this regard.

There is also a major difference between the Yugoslav constitutions and the internationally recognised standards in the area of minority rights. Thus Article 10 of the Federal Constitution states that the FRY recognises and guarantees the human rights and freedoms recognised under international law. This may be interpreted as equating of the legal force of minority rights guaranteed by international instruments and those proclaimed by the Federal Constitution. The FRY acceded to the CoE Framework Convention for the Protection of National Minorities,[105] and is now in the process of acceding to the European Charter for Regional or Minority Languages. On 1 September 2002, a year after coming into force of the Convention, the FRY submitted to the Secretary General of the Council of Europe, on the basis of Article 25 (1) of the Framework Convention, a report on legal and other measures taken to implement the principles stipulated in the Convention. Besides the thoroughly elaborated new minority policy, there are some basic problems stated in the report: the constitutional rearrangement of the country, a number of disparities between the federal and the republican legislations, the country's poor economic capacity, the effect of the tragic events in the former Yugoslavia in the last ten years on the inter-ethnic relations in the FRY. During the year 2002 the Humanitarian Law Center was preparing the Alternative Report on the Application of the Framework Convention in the FRY. This report will be submitted to the Council of Europe at the beginning of 2003. According to this report, although the federal authorities have undertaken

[105] On 3 December 1998, the Federal Parliament confirmed by law the Framework Convention for the Protection of National Minorities, and it was duly published in the *Sl. list SRJ (Međunarodni ugovori)*, No. 6/98. The instruments of ratification, however, were not deposited with the CoE, on the grounds that thethe FRY was not a member of the CoE nor had been invited by the CoE to accede to the Framework Convention. Hence, the FRY had no international obligations under the Framework Convention. Following the democratic changes, the FRY was invited to accede and the instruments of ratification were deposited.

measures for the improvement of the status of minorities (adoption of the federal law, establishment of national councils), these measures have a limited reach. Namely, most of the spheres of social life that are important for minorities (education, use of language, culture) are within republican jurisdiction. Also, many legal acts contain provisions that are indirectly discriminatory with regard to education, official use of language, media, social welfare, personal status and relation to religious communities, which affects the application of the Convention.

Disparity in the protection of minority rights at federal level and in Serbia may ensue also from the different legal regulation of the subject matter. Both constitutions contain provisions under which ways of exercising rights and freedoms, including the minority rights they guarantee, may be more closely prescribed by law. The Federal Constitution without doubt has greater legal force than the constitutions of the republics, just as federal laws have greater legal force than the laws of the republics. However, when it comes to minority rights, many arrangements envisaged by republican laws are not in accordance with the federal Act on Protection of Rights and Freedoms of National minorities (hereinafter: Act on Protection of National Minorities, *Sl. list SRJ*, No. 11/02). This disparity is unequivocally the result of the recent adoption of the federal law regulating the manner of exercising minority rights envisaged by the Federal Constitution. Nevertheless, if the disparity between republican regulations and the federal Act on Protection of Rights and Freedoms of National Minorities is not eliminated, i.e. if republican laws continue to prescribe different manners of exercising minority rights, the true enjoyment of minority rights will not be possible. Also, there will be essential inequality of minority members in the two Yugoslav federal units, since the Montenegrin Constitution, as well as Montenegrin laws regulate minority rights in a more precise manner.

Article 11 of the Federal Constitution guarantees the right of minorities to preserve their identity:

The Federal Republic of Yugoslavia shall recognise and guarantee the rights of national minorities to preserve, foster and express their ethnic, cultural, linguistic and other peculiarities, as well as to use their national symbols, in accordance with international law.

A similar provision is found in the Montenegrin Constitution, which, in Article 67 (1), guarantees the protection of national, ethnic, cultural, linguistic and religious identity. Though the Serbian Constitution does not explicitly cite preservation of minority identity, the obligation may be indirectly inferred from its Art. 3 (2), which guarantees "personal, political, *national*, economic, social, cultural and other rights of the man and citizen" (italics added). There can be no doubt that this provision is too terse and incomplete to adequately regulate minority rights in a multiethnic state such as the Republic of Serbia. A comparison of the provisions of the federal and the republican constitutions also points to a difference regarding the definition of the holder of minority rights. The Constitution of the Federal Republic of Yugoslavia in its Article 11 departs to an extent from the stylization of relevant international documents and comparative legal arrangements, establishing that the Federal Republic of Yugoslavia recognises and guarantees the rights of *national minorities (minorities as a collective)*, unlike the Constitution of the Republic of Serbia and the Constitution of the Republic of Montenegro laying down provisions on the rights of *members* of other nations, national and ethnic groups, i.e. national minorities. Preservation of national identity is elaborated further in Article 46 of the Federal Constitution, which guarantees the freedom to express national sentiments and states that no one is obliged to disclose his/her nationality. To this the federal Act on the Protection of National Minorities adds that no one may be subject to harm because of his affiliation, or because they disclosed or did not disclose their nationality.

In addition to the general provisions on minority rights, the Yugoslav constitutions also contain articles treating specific rights. In many cases, however, the elaboration of these rights by statute is uneven.

The Federal Constitution guarantees the free use of minority languages. The federal Act on the Protection of National Minorities goes further by defining this as the right of minorities to freely use their languages and scripts in public and personal communication, and reflects the intention to comply with Article 7 of the European Charter for Regional or Minority Languages to which the FRY is to accede shortly.

All three Yugoslav constitutions guarantee the right to the official use of minority languages and scripts. Thus, under Art. 15 (2) of the Federal Constitution:

In regions of the Federal Republic of Yugoslavia *inhabited by national minorities*, the languages and scripts of these minorities shall also be in official use in the manner prescribed by *law* (italics added).

The Serbian Constitution contains an identical provision (Art. 8 (2)), whereas the Montenegrin Constitution is more restrictive, envisaging the official use of minority languages only in municipalities in which the *majority or a significant proportion of inhabitants* are members of national or ethnic groups (italics added). In Serbia, the official use of languages and scripts is regulated by the Act on Official Use of Languages and Scripts (*Sl. glasnik RS*, Nos. 45/91, 53/93, 67/93 and 48/94). Under the Act, whether or not a minority language will be in official use is decided upon by the municipality in which a particular minority lives. Since the statute fails to enumerate the criteria upon which such a decision is to be made, different municipalities have adopted different solutions.[106] In order to correct this, the federal Law on protection of national minorities envisages in Article 11 the official use of minority languages and scripts in units of local self-government in which, according to census figures, members of minority groups account for over 15 percent of the population. However, these provisions are not respected in practice.[107]

In addition, there is an obligation to maintain the existing official use of language and script in units of local self-government in which the language of a national minority was officially used at the time of the adoption of the Law on protection of rights and freedoms of national minorities. This law provides for a possibility for the official use of minority languages in units of local self-government in which members of national minorities account for less than 15% of the total population, if so decided by units of local self-government. The Serbian Act on Official Use of Languages and Scripts states in its Article 19:

In areas in which minority languages are in official use, place names and other geographic names, the names of streets and squares, the names of organs and organisations, traffic signs, public information and warnings and other public signs shall be inscribed in the languages of the minorities.

Article 7 of the statute does not allow the geographic and personal names on public signs to be replaced by others, stating only that they are inscribed in the languages of minorities in accordance with the standard usage of the particular language. A closer look at this provision brings out that official geographic and personal names inscribed on public signs in the Serbian language may not be replaced with the names traditionally used by minorities, and that only their transliteration is allowed. Hence the traditional minority names cannot be in public use even when they are in fact translations of the Serbian geographic and personal names, which is not in conformity neither with the federal Law nor with the Framework Convention. That this is the correct interpretation has been confirmed by the Serbian Constitutional Court. In three decisions rendered on 25 January 2001, the Court ruled that

[T]he cited provision of the Act does not permit the replacement of geographic names with minority language names," and that the legal formulation that such names are "inscribed in the minority language in accordance with the standard usage of the language excludes the possibility of the translation of geographic names. (*Sl. glasnik RS*, No. 10/01).

The Courts' decision makes the use of minority languages where geographic names are concerned inconsequential, reducing it merely to the use of minority-language spelling. There is no doubt that this interpretation not only deepens the discrepancy between Articles 7 and 19 of the statute, but also creates a legal basis for finding any use of place names in minority languages an impermissible replacement or change (for instance, Szenta is allowed for Senta but Zenta is not). Minority communities are irked by the decision, in particular because traditional names were freely used earlier. The federal Act on Protection of National Minorities envisages in its Article 11 (5) that in the regions where languages and scripts of national minorities are officially used, names of organs with public authorities, names of units of local self-government, names of settlements, squares and streets and other toponyms will also be written in the languages of national minorities which are in official use, according to their tradition and orthography. The mentioned arrangement from the federal law is aimed at more clearly regulating the official use of languages and scripts of national minorities related to geographic names. The provisions of the federal Act on Protection of National Minorities regulating the official use of languages and scripts of national minorities undoubtedly enjoy supremacy over the provisions of the Act on the Official Use of Language

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[106] Miroslav Samardžić, *Položaj manjina u Vojvodini*, Belgrade, 1998.

[107] See more II.2.13.

and Script of the Republic of Serbia. What remains to be done is not only to correct the disparity between the republican and the federal regulation, but also to translate into practice the provisions of the federal Act, which is more liberal when it comes to national minorities.

Article 9 of the federal Act on Protection of National Minorities envisages the right of members of national minorities to "the free choice and use of personal name and the name of their children, as well as the right to have these names registered in all public documents, archives and personal data records *according to its language and orthography"* (italics added). However, there were cases when the registration of the names of the newborn children according to the tradition of minorities was not approved.[108]

All three Yugoslav constitutions guarantee the right to education in minority languages (Art. 46 (1), Federal Constitution; Art. 32 (4), Serbian Constitution; Art. 68, Montenegrin Constitution). There are, however, differences in how republican statutes regulate the exercise of this right.

Under the Montenegrin Elementary School Act (*Sl. list RCG*, No. 34/91), classroom instruction in the Albanian language is provided in schools located "in areas in which *larger numbers of members of the Albanian nationality* live" (italics added).

The corresponding Serbian law is more precise: instruction in minority languages is provided if more than 15 pupils enrol in the class (Act on Elementary Schools, *Sl. glasnik RS*, No. 50/92). The possibility is also envisaged of minority-language instruction for classes with less than 15 pupils, subject to the approval of the Minister of Education. Instruction may be in only a minority language or in two languages. In the former case, Serbian language classes are compulsory.

The federal Act on Protection of National Minorities envisages the right of children to receive an education in their own language at pre-school, elementary and secondary public schools. A novelty in the Yugoslav legal system is the provision of Article 13 (6) of the federal Act on Protection of National Minorities, under which members of national minorities participate, through their national councils, in the elaboration of curricula for the subjects which reflect peculiarities of national minorities in the language of national minorities, for bilingual instruction and for learning the language of national minorities with elements of national culture. Until the end of 2002 only Hungarians, Romanians, Ruthenians and Croatia.[109]

Article 46 (2) of the Federal Constitution and Art. 68 of the Montenegrin Constitution guarantee to national minorities the right to public information in their languages. The Serbian Constitution does not guarantee this right.

Under the Article 17 of the federal Act on Protection of National Minorities, the state would ensure news and current affairs, cultural and educational programs in minority languages on public service broadcasting systems. It also provides for the possibility of establishing radio and television stations whose entire programs would be in minority languages. The participation of minority representatives in the management of such media would be regulated by separate republican legislation as, under the Federal Constitution, the matter falls within the competence of the republics.

The Federal Constitution guarantees to national minorities the right to establish, in conformity with the law, educational and cultural organisations or associations financed on the principle of voluntary contributions, *and may also receive assistance from the state* (italics added; Art. 47, Federal Constitution). The corresponding provision in the Montenegrin Constitution is somewhat different since it guarantees to minorities the right to establish education, cultural and religious associations *with the material assistance of the state* (Art. 70, Montenegrin Constitution; emphasised clause indicates the obligation of Montenegro to assist minority associations financially). The Serbian Constitution contains only a generalised guarantee of the freedom to express national cultural identity.

Under the Artticle 12 of the Act on Protection of National Minorities, state-founded museums, archives and institutions charged with the preservation of national monuments would have an obligation to

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[108] HLC, Alternative Report on the Application of the Framework Convention for the Protection of National Minorities, 2002.

[109] See more II.2.13.

preserve and promote the cultural and historical legacy of national minorities within their territory. Minority representatives would participate in decision-making on the ways of promoting their cultural and historical legacy.

The Federal Constitution guarantees to national minorities the right to use their national symbols *in accordance with international law* (italics added, Art. 11, Federal Constitution). The Montenegrin Constitution sets no conditions for using and displaying national symbols and makes no reference to international law (Art. 69, Montenegrin Constitution). The Serbian Constitution is silent on this point.

The federal Act on Protection of National Minorities envisages that members of national minorities have the right to use national symbols and insignia which may not be identical with symbols and insignia of another state. Under Article 16 of the Law on protection of rights and freedoms of national minorities, national symbols, insignia and holidays of national minorities are proposed by national councils of national minorities and confirmed by the Federal Council on National Minorities. The law also envisages the right to officially use national symbols on buildings and on the premises of organs and organisations with public authorities in the areas in which the language of a national minority is in official use, with the obligation to put out the symbols and insignia of the FRY or the member republics.

In August 2002 the Human Rights Committee in Bujanovac submitted to the Federal Constitutional Court an initiative for review of Article 16 of the Act, as the Yugoslav Constitution prescribes the use of national symbols in accordance with international law, as no international instrument under which the FRY is bound contains restrictions in regard to the choice of symbols (HLC Report, *Albanci u Srbiji – Preševo, Bujanovac i Medveđa*, 2002). On 25 September 2002, the court rejected the initiative, ruling that "the provision does not ban the use of national symbols of national minorities which they themselves choose; it prohibits the use of symbols a foreign state has already selected as its own symbols" (*Sl. list SRJ*, No. 57/02).

Under both the Federal and Montenegrin Constitutions, national minorities have the right to establish and foster unhindered relations with their co-nationals in other countries. This is more than provided for by Article 27 of the ICCPR, and in accordance with Article 17 of the Framework Convention for the Protection of National Minorities. The Federal Constitution also lays down the right of minorities to take part in international non-governmental organisations. Both constitutions contain the provision that such relations may not be detrimental to the federal state or its constituent republics. There is no similar provision in the Serbian Constitution.

In contrast to the Federal and Serbian Constitutions, the Montenegrin explicitly guarantees to minorities and ethnic groups the right to proportional representation in public services, government agencies and bodies, and in local self-government. The lack of such constitutional provisions in Serbia resulted in the adoption of the Election Act under which the whole of Serbia become a single electoral district. The Act also prescribes a minimum of 5 percent of the vote to secure a seat in the Serbian Parliament (*Sl. glasnik RS*, No. 35/00). Consequently, unless they form coalitions, the political parties of smaller minorities are for all practical purposes excluded from parliamentary life. An entire chapter of the federal Act on Protection of National Minorities treats the effective participation of minorities in decision-making on matters of particular interest to a minority, and in government and administration. It envisages that public services in their employment policy must take into account the ethnic composition of the population and knowledge of the language used in the territory they cover.

Effective participation in certain spheres of social life of significance for national minorities will be enabled with the assistance of national councils of national minorities designed as bodies with certain public and legal authorities which may be entrusted to them in the field of education, information and culture. Under the express provision of Article 19 of the Act on Protection of National Minorities, national councils *represent* national minorities in the sphere of the official use of language and script, education, information and culture. National councils will be elected by assemblies of electors of national minorities pending the adoption of a special law. Under Article 24 of the Act on Protection of National Minorities, electors of national minorities may be federal and republican deputies and deputies in the assemblies of autonomous provinces elected to office as members of a national minority or as persons declaring themselves as members of a minority and speaking the language of a minority. Electors for the election of national councils may also be deputies in assemblies of units of local self-government who belong to a national minority and were elected in units of local self-government in which a minority language is in

official use. Electors for the election of national councils may also be citizens who declare themselves as members of a national minority and enjoy support of at least one hundred members of a minority with the voting right, or are nominated by a national organisation or an association of a national minority. Under Article 14 of the Rules on the Manner of Operation of Assemblies of Electors for the Election of National Councils of National Minorities (*Sl. list SRJ*, No. 41/02), national councils will be elected on the assembly of electors in accordance with D'Hondt's electoral system.

A set of measures contained in the Act on Protection of National Minorities is also designed to promote the participation of national minorities in societal affairs. Article 4 of the Act prescribes that under the Constitution and the law, the FRY authorities will adopt regulations, individual legal acts and will undertake measures to ensure full and effective equality between members of national minorities and members of the majority nation. A special provision lays down the obligation to undertake such measures in order to improve the position of persons belonging to the Roma national minority. Thus the Yugoslav legal system is harmonized with Article 4 (2) of the Framework Convention for the Protection of National Minorities.

General provisions on the protection of minorities from persecution and hate are to be found in the Federal and Montenegrin Constitutions. Both stipulate that any incitement or encouragement of national, racial, religious or other inequality, hatred and intolerance are unconstitutional and punishable (Art. 50, Federal Constitution; Art. 43, Montenegrin Constitution). The Serbian Constitution, regrettably, has no general provision under which ethnically-motivated persecution, hatred or intolerance is unconstitutional and punishable.

All three constitutions envisage the possibility of restrictions on freedom of the press and of association if they are directed "to incitement of national, racial or religious hatred or intolerance.[110]

The Constitution of the Republic of Montenegro and the federal Act on Protection of National Minorities envisage a political mechanism for the protection of minority rights. The Constitution of the Republic of Montenegro establishes a special institution – the Council for the Protection of Rights of Members of National and Ethnic Groups, tasked with preserving and protecting minority identities and rights, the Council is chaired by the Montenegrin President, and its composition and powers are determined by the republic's Parliament (Art. 76). However, this body did not have a single meeting until today. The federal Act also envisages a political mechanism for the protection of minority rights – the Federal Council on National Minorities. The composition and competences of the Federal Council on National Minorities are to be established by the Federal Government, but it is obligatory that the Federal Council be composed of representatives of national councils.

There are no legal means in the Yugoslav or republican legal systems specifically designed to protect the minority rights guaranteed by the three constitutions. However, since the majority of these rights are embodied in the Federal Constitution, redress can be sought by lodging a constitutional appeal. Under the Article 37 (3) of the Federal Constitutional Court Act, the federal body charged with human and minority rights *may* file such a complaint on behalf of an individual who alleges violation of his/her constitutional rights (italics added; Art. 37 (3), *Sl. list SRJ*, No. 36/92). The wording suggests that lodging of a complaint by this body is of a discretional nature, and there have thus far been no such cases. To rectify this, the federal Law on protection of national minorities envisages that the body would file a constitutional appeal whenever addressed by a person belonging to a minority who alleges that his/her constitutional rights have been violated.

The Constitutional Charter envisages that international agreements on human and minority rights currently valid on the territory of Serbia and Montenegro shall be directly applicable, and that the attained level of human and minority rights cannot be reduced. However, the question is how the system for the protection of human and minority rights would function in practice. Namely, the Constitutional Charter of Serbia and Montenegro abolishes the Federal Constitutional Court, envisaging the establishment of the Court of Serbia and Montenegro. According to the text of the Constitutional Charter, this Court will be competent to hear constitutional complaints of individuals who claim that an institution of Serbia or Montenegro violated their rights or freedoms guaranteed by the Constitutional Charter, and if no other legal remedies are available. It is unclear what would be the situation with the right of persons belonging to

[110] See I.4.9.6.

national minorities, who consider that their constitutional rights and freedoms were violated, as well as with a similar competence of the Federal Ministry for National and Ethnic Communities, to lodge a complaint with the Federal Constitutional Court as provided by Article 23 (2) of the Act on Protection of National Minorities.

In fact, the process of drafting the Constitutional Charter was highlighted in the FRY Government Report under the Framework Convention on National Minorities as one of the main problems in the implementation of the Convention. Under the Constitutional Charter, application of international law, cooperation with international organisations and courts, as well as ratification of international agreements of Serbia and Montenegro, shall be within the jurisdiciton of the Parliament of Serbia and Montenegro. In addition, it follows from the Constitutional Charter that the union of Serbia and Montenegro shall be competent to monitor implementation of human rights and minority rights, as well as to protect them in case when the protection has not been ensured in member states.

The implementation of the Framework Convention provisions shall continue to be under the jurisdiction of the common state, which does not have effective mechanisms for the exercise of this competence, given the fact that the majority of areas in public life that are of importance for minorities (education, use of language, culture) remain under the jurisdiction of the republics. Since it remains unclear whether and how federal regulations will be applied in the new situation, it is very difficult to give a realistic assessment of the degree of protection that national minorities will enjoy after the adoption of the Constitutional Charter.

4.14. Political Rights

Article 25, ICCPR:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

c) To have access, on general terms of equality, to public service in his country.

4.14.1. General

The Federal Constitution lays down that power is vested in the citizens, who exercise it directly and through their freely elected representatives (Art. 8). A Yugoslav citizen who has attained the age of 18 has the right to vote and to be elected to public office (Art. 34). The constitutions of the two republics also proclaim the sovereignty of the people, and that suffrage is universal and equal (Art. 2 and 42, Serbian Constitution; Art. 2, 3 and 32, Montenegrin Constitution).

4.14.2. Participation in the Conduct of Public Affairs

All Yugoslav constitutions in their provisions give concrete principal guarantees of direct democracy. All constitutions prescribe the people's initiative for adoption of legislation and for change of constitutions. The right to propose a federal law, other regulation or general act belongs to 30.000 voters (Art. 95, Federal Constitution). In Serbia, the right to propose a law, other regulation or general act belongs to 15.000 voters (Art. 80, Serbian Constitution), whereas in Montenegro that right belongs to 6.000 voters (Art. 85, Montenegrin Constitution). The proposal to change the Federal Constitution can be submitted by at least 100.000 voters (Art. 139 and 140, Federal Constitution). The proposal to change the Serbian Constitution can be submitted by at least 100.000 voters (Art. 132 of the Serbian Constitution), whereas the proposal for changing the Constitution of Montenegro can be submitted by at least 10.000 voters (Art. 117, Montenegrin Constitution). Referendum, as an institution of direct democracy, is mentioned neither in the federal Constitution, nor in other relevant legal acts of the Federal state. The absence of legal regulation of referendum on federal level is undoubtedly a consequence of the political sensitivity of the issue whether the electoral bodies of the republics shall be joined in one electoral body or whether the electoral body

shall be divided into two units, corresponding to member republics. A federal law could have resolved the present dilemma, but no federal law on referendum has been passed since the establishment of the FRY. The constitutions of the member republics prescribe referendum as a form of direct democracy. The Constitution of the Republic of Serbia prescribes two cases of obligatory referendum - when the decision is being made on changing the republic's borders (Art. 4) and in the final adoption process of the Act on Amendments to the Constitution, which requires consent of more than one half of all voters (Art. 133 (2)). The Serbian Constitution also recognises the institution of facultative referendum, which is possible in two cases - when the National Assembly decides that the citizens should give an opinion about certain matters from the jurisdiction of the Assembly and if the calling for a referendum requires at least 100.000 voters. Article 116 of the Serbian Constitution also provides for referenda in local self-government units. Constitutional provisions on referendum and people's initiative are more closely regulated in the Republic of Serbia through the Referendum and People's Initiative Act (*Sl. glasnik RS* Nos. 48/94 and 11/98). The Republic of Montenegro has enacted the new Referendum Act (*Sl. list RCG*, No. 9/01), in 2001, during the period of growing political crisis between the two federal units of the FRY regarding the future of the joint state. According to the Montenegrin Constitution referendum must be called on decisions on changing the status of the state, changing the form of government and changing of borders. The Constitution also recognises the category of facultative referendum, as well as the referendum on local self-government level. Pursuant to Article 8 of the Referendum Act, all persons registered in the voters' roll used for the elections have the right to participate in the referendum in Montenegro. This has given rise to many polemics, since it deprives Montenegrin citizens who are not domiciled in Montenegro of the right to participate in a potential referendum on the future status of Montenegro. In its report[111] on the Act, however, the ODIHR[112] deemed the provision acceptable since persons who are not domiciled in Montenegro do not have the right to vote in elections for the republic's parliament either; allowing them to vote in a referendum could result in the republican parliament, in which they do not have representatives, confirming a referendum decision. Furthermore, Montenegrin citizens domiciled in Serbia have the right to vote in Serbian elections and referendums. If they had the same right in Montenegro, the effect would be one man - two votes.[113] Noting in its report that some of its earlier recommendations and comments had been incorporated in the Act, the ODIHR nonetheless pointed up several major defects (e.g. the failure to envisage a qualified majority for referendum decisions, lack of transparency with regard to vote-counting and publication of the results, the vaguely defined authority of observers).

The Speaker of the Montenegrin Parliament requested the ODIHR's comments on the draft act on the referendum on Montenegro's status, which has only 17 articles and is in effect a *lex specialis* with respect to the Referendum Act passed in February 2001. The ODIHR responded with a report[114] in which it expressed concern over the failure of the draft to reflect the recommendations it made in a previous report.[115] An act on the referendum on Montenegro's status has never been passed as a separate law, and the process of resolving the issue of Montenegro's status began with concluding the Belgrade Agreement on redefining relations within the Yugoslav federation.

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[111] OSCE/ODIHR *Assessment of the Referendum Law on the Republic of Montenegro, FRY*, Warsaw, 6 July 2001.

[112] Institution operating within the Organisation for Security and Cooperation in Europe; it was established in 1990, with the siege in Warsaw.

[113] The Montenegrin Party of Hard Currency Savings Depositors challenged the constitutionality of Art. 8. The Federal Constitutional Court ruled the part of the provision reading “in accordance with election regulations“ unconstitutional as “citizens may directly express their will in various ways: in plebiscites, referendums, civil initiatives, civil veto and similar ... Each of the cited ways of direct expression of the will of citizens implies different manners of their exercise ... Equating the right to decided by referendum with the right to vote for representatives in state and local bodies may constitute unfounded expansion and unfounded restriction of this right, in dependence on the referendum question.“ (*Sl. list SRJ*, No. 17/01).

[114] See *supra* note 70.

[115] OSCE/ODIHR *Comments on the Draft Referendum Law on the Status of the Republic of Montenegro, FRY*, Warsaw, 5 November 2001.

4.14.3. Political Parties

Establishment of political parties and their activities are free (see I.4.10.). Up until 1997, coalitions dominated by parties that emerged from the former Communist Party were in power in both Serbia and Montenegro. The reform-oriented wing of the Democratic Party of Socialists was voted into office in Montenegro in 1998 in an election that was positively assessed by domestic and foreign observers. The Serbian parliamentary election in December 2000 was the first fair and free election to be held in Serbia since World War II. Indeed, until the introduction of parliamentary democracy in 1990, genuine elections were not possible owing to the constitutionally declared one-party system and, after that, because of a series of legal and *de facto* obstacles set up by the regime.[116] Thus the Serbian parties then in opposition held that none of the elections held after 1990, including the presidential, parliamentary and local elections in September 2000, in which they were voted into power, were truly free and fair.[117]

The financing of political parties is regulated by federal and republican statutes (Federal Act on Financing of Political Parties, *Sl. list SRJ*, No. 73/00; Montenegrin Act on Financing of Political Parties, *Sl. list RCG*, No. 44/97; Serbian Act on Financing of Political Parties, *Sl. glasnik RS*, No. 32/97). All three envisage annual allocation of a proportion of the respective budgets to parties, and additional financing of their campaigns in years when election years (Art. 4 and 5, Federal Act; Art. 3, 4 and 6, Montenegrin Act; Art. 2, 3 and 4, Serbian Act). More on prohibition of financing of political parties by foreign states and nationals see in the part on freedom of association I.4.11.4.2. All the statutes set certain restrictions on campaign spending in order to prevent disadvantage to parties with smaller funds at their disposal. Under the federal statute, for instance, the total amount a party secures for campaign spending may not be in excess of double the highest sum received by a political party from the federal budget (Art. 8). The Montenegrin law regulates this point by stating that campaign spending may not exceed the sum of 250 average monthly wages in the republic (Art. 9). Under Article 10 of the Montenegrin Act, parties are obliged to conclude compacts to limit campaign spending when elections are called. The presented solution in the Montenegrin Act does not seem feasible.

The Federal Act also regulates the use of the assets of the former League of Communists of Yugoslavia, Socialist Alliance of Working People, and Alliance of Socialist Youth of Yugoslavia. These assets passed to the federal state but the law envisages that political parties represented in parliaments must be allowed use of at least half of the real property of the three former organisations (Art. 13, Federal Act).

4.14.4. The Right to Vote and to Stand for Elections

The right to vote in parliamentary and local elections in the two republics belongs to: 1) Yugoslav citizens residing in the republic in which the election is being held; 2) persons who have attained the age of 18 and have business competence (Art. 10, Act on Election of Parliamentary Deputies, *Sl. glasnik RS*, No. 35/00; Art. 122, Act on Local Self-Government, *Sl. glasnik* RS, No. 48/99;[118] Art. 11, Act on Election of Deputies and Councillors, *Sl. list RCG*, Nos. 4/98, 17/98 and 14/00[119]). The right to be elected to public office is treated differently in Yugoslav legislation, depending on the office involved. Thus a candidate for

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[116] See *Human Rights in Yugoslavia 1998*, *1999* and *2000*.

[117] Strong criticism of the organization of elections and procedure may be found in the reports of the OSCE observers. See: *Parliamentary Elections September 21, 1997 and Presidential Elections September 21 and October 5, 1997*, and *Assessment of Election Legislation in the Federal Republic of Yugoslavia, 2000*, OSCE Office for Democratic Institutions and Human Rights ("OSCE Report 1997").

[118] Article 128 of the new Local Self-government Act of the Republic of Serbia (*Sl. glasnik RS,* No. 9/02) provides that upon entry into force of this Act the previous Local Self-government Act of Serbia (*Sl. glasnik RS*, No. 48/99) shall cease to be in force, with the exeption of the provisions in articles 120-162.

[119] During the time of the writing this report, the new Act on Election of Deputies and Councilors in the Republic of Montenegro was passed, to which the President of the Republic, pursuant to his constitutional powers, had lodged a veto with the justification that election laws cannot be changed during the election process, which had begun by calling for extraordinary parliamentary elections in this republic. OSCE had the same objections to the above Act.

federal president must be a citizen with at least ten years' residence in Yugoslavia prior to the date of his nomination (Art. 3 (1), Act on Election and Term of Office of President of the Republic, *Sl. list SRJ*, No. 32/00). Candidates for Serbian president must be citizens of Serbia with at least one year's residence in the republic prior to the date of the election, while the Montenegrin law does not require candidates to be citizens of the republic. All the relevant acts lay down that the candidates for these offices must posses the right to vote.

Besides provisions regulating active and passive right to vote, Yugoslav election laws also prescribe the *electoral right* of citizens. According to the provisions of the election laws, the electoral right is wider than the active and passive right to vote and encompasses also the right of citizens to run and be nominated for public office, to decide about proposed candidates and election lists, to pose questions to the candidates in public, to be timely, truthfully and objectively informed about programmes and activities of the sponsors of election lists and about the candidates on these lists, as well as to exercise other rights laid down by election laws (Art. 9 of the Act on Election of Federal Deputies into the Council of Republics of the Federal Assembly; Art. 9 of the Act on Election of Federal Deputies into the Council of Citizens of the Federal Assembly; Art. 9 of the Serbian Act on Election of Parliamentary Deputies).

Whether or not a person may vote and be elected to public office depends on whether he or she is entered in the electoral rolls. Regular updating of the rolls is a basic prerequisite for individuals to exercise their right to vote and for the regularity of elections in general. Previous elections brought out numerous irregularities and the rolls proved to have been improperly kept. Election laws do not define electoral rolls as public documents kept by duty. Voters are enlisted in the election rolls by their place of residence. The Serbian Act on Election of Parliamentary Deputies provides that persons who have “temporarily moved from their domiciles ('refugees')“ are entered in the electoral roll in the municipality in which they are registered as refugees (Art. 13). Why the lawmakers used the world “refugees“ instead of “displaced persons“ whom they obviously had in mind is unclear. Refugees do not have the right to vote while displaced persons, who are Yugoslav citizens displaced from Kosovo and Metohija, do.

Neither the federal nor the Serbian statute envisages sanctions for improperly kept electoral rolls.[120] In contrast to the Montenegrin Act, they do not make it possible for sponsors of election lists to obtain copies of the entire electoral roll and check its accuracy. Access to this roll is of exceptional importance for monitoring the regularity of elections since rolls are kept by municipal authorities and it is possible for an individual to be entered in more than one municipal roll. The provision in Serbian law according to which citizens can have insight into the electoral roll and request changes is not sufficient to prevent potential abuse. It is unrealistic to expect that citizens will tour all municipalities and check every municipality roll. The solution that can at least partly prevent one person from voting at several polling stations has been set forth in the Serbian Act on Election of Parliamentary Deputies, providing for the first time in Serbia measures to control the voting procedure by means of a special spray and signing the electoral roll (Art. 68 (3 and 4)).

The Montenegrin Act on Electoral Rolls (*Sl. list RCG*, Nos. 14/00 and 30/01) envisages a set of measures to keep the rolls updated, specifies the authority charged with doing so, and prescribes sanctions for infringements (Art. 16). Transparency is ensured, with political parties fielding candidates for election having the right to receive a copy of the entire roll on computer diskettes within 48 hours of requesting it. Parties may lodge complaints and observations, and are also allowed to examine documents relating to individual voters and even act on their behalf without informing the individual concerned, which constitutes a grave breach of privacy rights.

4.14.5. Electoral Procedure

4.14.5.1. Bodies administering the election process – In addition to the electoral statutes, rules governing the election procedure are to be found also in the decisions of the federal and republican electoral commissions. These commissions supervise the legality of the election process and the uniform

[120] The Serbian statute prescribes criminal responsibility for a person who, with the *intent* of preventing another from exercising his right to vote, fails to enter him in the electoral roll or deletes his name from the roll (Art. 105, Serbian Act on Election of Deputies).

application of the electoral statutes, appointment of the permanent members of the electoral commissions in the election districts (in Montenegro: municipal electoral commissions), and hand down instructions for the work of other permanent electoral commissions (if any) and polling committees, which are also bodies administering elections.[121] The federal and republican commissions are empowered to consider complaints in the second instance (under Art. 96 (2)) of the Serbian Act on Election of Parliamentary Deputies, the republican Electoral Commission considers complaints in the first instance). Pursuant to the provisions of the election laws, bodies administering elections are independent. However, the legal provisions under which the bodies charged with conduct of elections are answerable to the body that appointed them (Art. 24 (2), Act on Election of Federal Deputies; Art. 28 (2), Serbian Act on Election of Parliamentary Deputies; Art. 17 (2), Montenegrin Act on Election of Parliamentary Deputies) are disputable. Since municipal election commission members are appointed by the municipal assemblies, the inclusion of representatives of political parties in some municipal commissions was seen as membership on the basis of the political balance in the respective municipality, and resulted in those commissions taking decisions along political lines.[122]

The federal and republican commissions are appointed by the respective parliaments (Art. 33 (1), Act on Election of Federal Deputies; Art. 38 (1), Serbian Act on Election of Parliamentary Deputies; Art. 29, Montenegrin Act on Election of Parliamentary Deputies). Members of the polling committee charged with the immediate conduct of elections at the polling stations are nominated by the respective electoral commissions. Members of the electoral commissions are nominated for the period of four years, whereas the members of polling committees are nominated for every election. Besides the nominated members (the so-called permanent members) the electoral commissions and polling committees also include representatives of sponsors of election lists (political parties, coalitions or groups of citizens). The permanent members of the commission, who as a rule are drawn from the judiciary, are expected to be politically neutral. However, in view of the dependence of the judiciary on the executive branch, they may in practice advocate the interests of the parties in power, which was the case up to the 2000 Serbian parliamentary election. The non-permanent members who, besides representatives of the parliamentary majority, include representatives of other political parties, become involved in the work of the commissions only after the election lists have been made public in the electoral districts.

4.14.5.2. Control of ballot printing and safekeeping of electoral documentation – Pursuant to the federal and republican statutes, the central electoral commissions decide on the manner, place and control of ballot printing. However, they have failed to regulate the process in detail or to envisage appropriate control mechanisms (OSCE Report 1997, p. 11) since they do not stipulate the obligation to safeguard election materials before they are delivered to the local commissions, or the procedure whereby this is done (e.g. sealing the premises and the like). In order to preclude counterfeiting of ballots for the federal election in 2000, the ballots were printed in one designated facility and on watermarked paper (Art. 63 (4) Act on Election of Deputies to the Chamber of Citizens of the Federal Assembly, *Sl. list SRJ*, No. 32/00).

In its report on the early election in Montenegro, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) noted the absence of provisions regulating mutilation of ballots by voters.

4.14.5.3. Determination of the election results – The competent electoral commission determines the election results. The electoral commission determines the overall number of votes received by each election list (elections on all levels in FR Yugoslavia are conducted according to the proportional representation system) and in proportion with the number of votes received establishes the number of mandates belonging to each elections list, on the basis of D'Hondt system. The distribution of mandates is shared only by the election lists that have received at least 5% of votes from the overall number of voters who have voted in the electoral district (Art. 87 of the Act on Election of Federal Deputies in the Council of Citizens of the Federal Assembly; Art. 92 of the Act on Election of Deputies in the House of Republics of the Federal Assembly; Art. 81 of the Serbian Act on Election of Parliamentary Deputies), or 3% of the

[121] Just prior to the 24 September 2000 elections, the Federal Electoral Commission handed down an instruction requiring voters in the presidential election to show their ballots to a member of the polling committee. The rule constituted a violation of the secrecy of balloting and was aimed at intimidating voters.

[122] See *supra* note 63.

overall number of voters who have voted in the electoral district (Art. 94 of the Montenegrin Act on Election of Deputies and Councillors).

Election laws contain various solutions with regard to the distribution of seats that have been won by individual election lists in the parliamentary elections. Different solutions with regard to the distribution of seats result in the different ways of exercising the passive right to vote on various election levels. Federal election laws prescribe that the sponsor of the election list shall distribute one third of the seats received to the candidates from the list by order in which they appear on the list, and one third of the seats according to the sponsor's own choice (Art. 90, Act on Election of Federal Deputies in the House of Citizens of the Federal Assembly; Art. 93, Act on Election of Deputies in the House of Republics of the Federal Assembly). In Serbia, the sponsors of the election lists can distribute the seats won to the candidates of their own choosing (Art. 84 (1), of the Serbian Act on Election of Parliamentary Deputies). Pursuant to the Montenegrin Act, one half of the seats won by the list shall be distributed to the first candidates from the list, whereas the rest of the seats shall be distributed according to the decision of the election list sponsors (Art. 96 (1), Montenegrin Act on Election of Deputies and Councillors). In its report on the parliamentary election in Montenegro,[123] the OSCE expressed concern with regard to the distribution of seats. Under the law, one half of the seats won by a party are distributed to the first candidates on the list and the remainder are assigned by the sponsor of the list. This clashes with the recognised standards of transparency and may confuse voters.

All election laws in the FRY that regulate the election of deputies on various levels prescribe that the term of office of a deputy shall cease before due time if, among other things, his/her membership in the party on whose list he/she had been elected should terminate (Serbian Act also says in the coalition - Art. 88 (1.1)). The consequence of this is that the deputies are primarily accountable to their parties, whereas the freedom of mandate and political accountability of the deputies to the voters is reduced. Moreover, in case the party or coalition should split, the proposed solution can lead to fierce political and constitutional disputes, which are not rare in the constitutional practice of FRY. Regarding the dispute that arose due to the complaint lodged by 45 deputies of the Democratic Party of Serbia in the Serbian National Assembly against the decision of the National Assembly Administrative Committee that had temporarily suspended their mandates following the exclusion of their party from the ruling coalition "DOS - Dr. Vojislav Kostunica", the Constitutional Court ruled:

[That] the execution of the contested actions and acts could result in irreparable harmful consequences as follows: by incapacitating the legally elected deputies to perform their duties by way of changing the composition of the Serbian National Assembly in relation to the one established in the elections held on 23 December 2000, leading to the infringement of the freely expressed will of the citizens. The change in the composition of the National Assembly that would arise as a consequence of the implementation of the contested actions and acts could impact on the constitutionality and legality of the acts passed by the Serbian National Assembly in keeping with its constitutional authority.

(*Sl. list SRJ*, No. 57/02)

4.14.5.4. Grounds for annulment – Republican election laws prescribe various grounds for annulment of elections at particular polling stations. If there is reason to conclude that the elections at a particular polling station were null and void, the polling committee must be dissolved, a new one appointed and the balloting repeated. The Serbian Act prescribes that the polling committee must be dissolved and balloting repeated at a polling station where the breach has occurred of the secrecy of voting, of the legal provision of voting in person, or if there has been a violation of the prohibition to display political party symbols or other promotion material, etc. (Art. 55, Serbian Act on Election of Parliamentary Deputies). On the other hand, when the irregularities are less serious, in considering complaints the electoral commission may decide whether or not the voting will be cancelled (see Art. 72, Montenegrin Act on Election of Parliamentary Deputies). Federal statutes specifically and in great detail set out the grounds for finding voting null and void. As a result, voting is on occasion cancelled on mere technicalities that could not have affected the results, e.g. if a member of the polling committee failed to explain the manner of voting to a

[123] OSCE/ODIHR, *Report on Parliamentary Election in the Republic of Montenegro, FRY*, Warsaw, 22 April 2001; <http:// www.osce.org/odihr/documents/reports/election_reports/yu/fry_mont_fin2001pe.pdf>.

voter upon request (Art. 71), or if symbols of political parties were posted within a diameter of 50 meters around the polling station (Art. 58, Act on Election of Federal Deputies to the Chamber of Citizens). Elections can be annulled as a whole in the procedure by various legal means. For instance, Article 50 of the Act on Federal Constitutional Court prescribe that the Court can annul the entire election process if it adopts complaint lodged against the decision of the Federal Election Commission (*Sl. list SRJ* No. 36/92).

4.14.5.5. Legal protection – Election laws provide for a basic legal remedy that ensures legal protection in the electoral process is the complaint that each voter or participant in the election can lodge with the competent election commission. Election laws have different ways of regulating the grounds for complaints, which can lead to various interpretations with regard to the character and purpose of this legal remedy, or the subject matter of legal protection. The Montenegrin Act on Election of Deputies and Councillors prescribes that the complaint shall be lodged "*on the grounds of violation of the right to vote during the elections*" (Art. 107 (1)). Federal election laws prescribe that the complaint shall be lodged "*on the grounds of irregularities in the procedure of nomination of candidates and implementing the election process*" (Art. 101 (1), Act on Election of Federal Deputies to the Chamber of Citizens). Comparison of the proposed legislative solutions could give rise to the doubt whether the purpose of the complaint is to ensure protection of individual rights or to prevent irregularities, that is to protect the objective right? It seems that the only correct answer, which cannot be reached on the basis of given legislative provisions, is that by means of a complaint not only individual rights could be protected, but also the rules of electoral procedure. The clearest provision is contained in Article 95 of the Serbian Act on Election of Parliamentary Deputies, which provides for the complaint to be lodged to the Republican Electoral Commission "*on the ground of violation of the electoral right during the elections or on the grounds of irregularities in the procedure of nomination or election*". All proposed solutions link the legal protection to the period in which the elections are being held. In this manner the temporary cessation of mandate of the National Assembly deputies has not been explicitly included in the legal protection procedures, which means that the complaints prescribed by the election laws do not provide full protection for the passive right to vote.

None, however, lay down the rules according to which electoral commissions are to deal with complaints. This results in a lack of uniformity with regard to establishing the facts, use of evidence and, in particular, observance of the adversarial principle. Only the new Montenegrin law (Art. 111) envisages the subsidiary application of the Administrative Procedure Act. This Act itself prescribes that its provisions are applicable in all administrative matters while specific procedures requiring departures are conducted pursuant to the general principles of the Act (Art. 1 and 3).

Under the Montenegrin law, decisions on complaints are delivered in keeping with the Administrative Procedure Act (*Sl. list SRJ*, No. 55/99), meaning that all interested parties are notified of them. The federal and Serbian electoral statutes contain no similar provision, owing to which interested parties were not notified of decisions and were not able to participate in the complaints procedure.

The absence of any legal obligation to apply the Administrative Procedure Act results in arbitrary decisions in both the electoral procedure and in evidence evaluation. Namely, the Act prescribes that all the relevant facts must be established correctly and in full, and be supported by the evidence (Art. 8 and 149). In practice, however, decisions were taken on the basis of unsubstantiated allegations by interested parties.[124]

The electoral statutes provide also for the possibility of appeal against the decisions of the competent electoral commissions by which a complaint has been rejected or disallowed: to municipal courts in the case of local elections (Art. 156, Act on Local Self-government), to the Serbian Supreme Court in the case of republican parliamentary and presidential elections (Art. 97, Serbian Act on Election of Parliamentary Deputies), to the Montenegrin Constitutional Court with respect to elections at all levels (Art. 110, Montenegrin Act on Election of Deputies and Councillors), and to the Federal Constitutional Court with respect to federal elections (Art. 47, Act on the Federal Constitutional Court; Art. 105, Act on the Election of Deputies to the Chamber of Citizens of the Federal Assembly; Art. 110 Act on Election of Federal Deputies to the Chamber of Republics). Appeals to the highest court instances of the regular

[124] See Report of the Committee of Experts, Serbian Association of Jurists, for an analysis of judicial proceedings regarding the November 1996 local elections in Serbia.

judicial system and to the constitutional courts are lodged through competent electoral commissions. Procedures before the courts are conducted as urgent - decisions are taken within 48 hours (Art. 97 (5), Serbian Act on Election of Parliamentary Deputies and Art. 52 (2), Act on Federal Constitutional Court). Serbian Act on Election of Parliamentary Deputies prescribes that the Supreme Court of Serbia shall decide on the appeal by way of applying provisions of the law regulating administrative proceedings (Art. 9 (4)).

4.15. Special Protection of the Family and the Child

Article 23, ICCPR:

1. The family is the natural and fundamental grouping of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognised.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24, ICCPR:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

4.15.1. Protection of the Family

Under the Federal Constitution, the family, mothers and children enjoy special protection (Art. 61 (1)). Very similar provisions are to be found also in the Serbian (Art. 28 (1)) and Montenegrin (Art. 59 (1) and 60 (1)) Constitutions. The protection provided for by the constitutions is more closely regulated by the statutes of the two republics – the Serbian Marriage and Family Relations Act (*Sl. glasnik SRS*, Nos. 22/80, 24/84 and 11/88, *Sl. glasnik RS,* Nos. 22/93, 25/93, 35/94, 46/95 and 29/01) and the Montenegrin Family Act (*Sl. list RCG*, No. 7/89).

Under the Serbian Marriage and Family Relations Act, the society through its developmental policies and special measures in the fields of education, culture, social welfare and medical care ensures conditions for the founding of families and for harmony in matrimonial and family life (Art. 19). These principles are further elaborated in a series of provisions. Legal procedures relating to marriage and family relations, common law marriages, and property relations in a family are also regulated.

The relevant national legislation contains no legal definition of the term family. Most family law provisions, however, treat the nuclear family (parents and children), while a smaller number dealing with matters such as alimony, child support, and kinship as an obstacle to marriage, regulate relations among a somewhat wide circle of relatives.

Provisions pertinent to penal protection of the family have been the subject-matter of changes and amendments to republican Criminal Codes during this year. Thus, the Criminal Codes of Serbia and Montenegro now lay down an offence of family violence (Art. 118a of the Serbian CC, *Sl. glasnik RS,* No. 10/02, Art. 100 a of the Montenegrin CC, *Sl. list RCG*, Art. 30/02) defined in the following way:

A person who, by use of force or by serious threat of assault at life or body, violates or endangers the physical or mental integrity of a family member, shall be penalised by fine or sentenced to up to three years of imprisonment.

Aggravated forms of this offence exist if weapons or dangerous tools have been used or if grave bodily harm or serious health damage has occurred, as well as if the act was committed against a minor, or if it has resulted in death of a family member (para 2, 3 and 4). Penalties for aggravated forms of this offence span from six months to ten years of imprisonment, except in case of death of a family member, when the minimum penalty is ten years.[125]

Pursuant to the amended Serbian Criminal Code, mental cruelty, threat of violence, light bodily harm, grave bodily harm and similar acts committed against a family member are treated as a criminal offence of violence in the family, which is prosecuted *ex officio*. Thereby, violence in the family is regarded as a crime like any other and the prosecutors have a duty to prosecute the perpetrator of violence in each case where the police file an application.

Under Yugoslav law, family members have an obligation to support each other. This is both a right and a duty of family members and other relatives, and an expression of their family solidarity (Art. 10, Serbian Act; Art. 9, Montenegrin Act). Withholding of child support, maintenance or alimony is sanctioned by the Criminal Codes of the republics, which also envisage penalties for failure to fulfil family obligations, e.g. abandonment and neglect of family members unable to care for themselves (Art. 120, Serbian CC; Art. 101, Montenegrin CC).

4.15.2. Marriage

The Federal Constitution speaks of marriage only in the context of the equality of legitimate and illegitimate children (Art. 62 (1)). Under the Serbian Constitution, marriage and family relations are regulated by statute (Art. 29 (2)), while the Montenegrin Constitution states that marriage may be entered into only with the free consent of the man and woman (Art. 59). The republican laws mentioned above go into more detail.

In the eyes of Yugoslav law, spouses are equal. The obstacles to marriage are listed in the relevant laws, some of which ensure that marriage is entered into with the free consent of the intending spouses (a marriage is considered null in the case of coercion, deceit, or incompetence), and others prohibit marriage between persons connected by ties of consanguinity (to the fourth degree) or affinity (to the second degree). Finally, only men and women of marriageable age may marry, which is in accordance with the ICCPR (Art. 23 (2)). As a rule, persons over the age of 18 may enter into marriage though persons over the age of 16 may be permitted to do so with a court dispensation. When a person over the age of 16 marries, he or she attains full business competence and does not loose it if even if the marriage is divorced before majority is attained.

Divorce is allowed and may be by mutual consent of the spouses or by one party suing on the grounds of irretrievable breakdown of the marriage, irreconcilable differences or other grounds such as desertion, mental illness and the like (Art. 83, Serbian Act; Art. 55, Montenegrin Act). However, the law allows only divorce by consent during the pregnancy of the woman and until the child becomes a year old (Art. 84 (2), Serbian Act; Art. 57, Montenegrin Act). The court may deny a divorce petition if it finds this in the interests of the well being of the couple's minor children (Art. 84, Serbian Act; Art. 56, Montenegrin Act).

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[125] Criminal offence of domestic violence was proposed by the Serbian Victimology Society as a legislative solution that would, together with incriminating violence in the family, envisage another form of protection of preventive nature, through restraining orders. The provision was not adopted. This measure would consist of ordering the perpetrator to stop the violence and to restrain from approaching the victim. Petition to the court would consist of ordering the perpetrator not to approach the victim within a set period of time and not to reside in the same apartment as the victim, regardless of the ownership of real property. This would be important for the protection of victims, especially women (most vulnerable when seeking protection from the law). Besides this one, experts from the Victimology Society have proposed a new safety measure the perpetrator could be subjected to jointly with the sentence of incarceration or probation, such as mandatory counselling and treatment of the perpetrator in order to help him resolve his problems in a constructive way rather than by violence.

Assets acquired during a marriage are communal property and are managed and administered jointly by the spouses (Art. 324, Serbian Act; Art. 284, Montenegrin Act). Property owned by the spouses before they married remains their personal property (Art. 70, Serbian Act; Art. 279 Montenegrin Act).

Changes and amendments to the republican Criminal Codes introduced certain novelties related to the protection of women in marriage. Changes refer to the expansion of the concept of rape as a criminal offence, encompassing and sanctioning rape in marriage (Art. 103 (1), Serbian CC; Art. 86, Montenegrin CC). For aggravated forms of this crime (grave bodily harm of the victim, act committed by a group of persons, or in a particularly cruel or degrading manner, or if the offence was committed against a minor, or if offence resulted in death of the victim) harsher punishments are prescribed. Harsher punishments are also envisaged for other offences from the group of crimes against the dignity of person and morality, which protect women in matrimony (Art. 104, 105, 106, 107, Serbian CC and Art. 87, 89, Montenegrin CC). However, in the Montenegrin Criminal Code, for crimes of rape, unnatural debauchery and forced intercourse, committed against a spouse, criminal prosecution is done on the basis of private action (Art. 88a, Montenegrin CC), whereby judicial bodies have distanced themselves from punishing rape in marriage. The Office of the UN High Commissioner for Human Rights in Podgorica had a series of objections to the quality of amendments and changes to the Criminal Code. The Office believes that protection from sexual harassment is unjustifiably missing and that it is necessary to separate violence in the family directed against women from other forms of domestic violence, particular objection being that these offences have not been included among crimes against life and body, which would stress them as peril to society.[126]

4.15.3. Special Protection of the Child

4.15.3.1. General – Yugoslavia has ratified the Convention on the Rights of the Child from 1990 (Act on Ratification of the UN Convention on the Rights of the Child, *Sl. list SFRJ* (International agreements), No. 15/90 and No. 4/96 (withdrawing reservations given at the signing); *Sl. list* SRJ, No. 2/97).[127] The FRY adopted, in July 2002, two optional protocols to the Convention on the Rights of the Child. These are: the Optional Protocol on the Sale of Children, the Child Prostitution and Child Pornography and the Protocol on Participation of Children in Armed Conflicts (*Sl. list SRJ, (Međunarodni ugovori),* No. 7/02).

There is no definition of the child as such in Yugoslav law. The Federal Constitution and the constitutions of the two republics link the attainment of majority with attainment of the right to vote. Article 15 (1) of the Serbian Act states that majority is attained at the age of 18, while the Montenegrin Act says nothing on the subject. Under Article 82 of the Federal CC, the statutory age of responsibility for the purposes of criminal law is 14. These few examples show that the minimum age for attaining certain rights and obligations is dealt with differently.

Ratification of two optional protocols to the Convention on the Rights of the Child is an important step towards the improvement of the legal position of children, especially bearing in mind the disturbing rise in violation of children's rights in Yugoslavia during the course of last year[128] Violence in the Family and Child Abuse and the practice of violating children's rights in the wars on the territory of former SFRY.

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[126] Commentary on the Draft Amendments to the Criminal Code of the Republic of Montenegro, Office of the UN High Commissioner for Human Rights in Podgorica, 10 May 2002.

[127] Implementing the obligation undertaken by the ratification of the Convention, the FRY authorities have in 1994 submitted to the Committee for the Rights of the Child a *Report on the Implementation of the Convention on the Rights of the Child in FRY for the Period 1990–1993*. Committee on the Rights of the Child has posed additional 32 questions to the FRY Government, to which the Government has responded in writing, refusing to address them orally according to the usual procedure. The following the Federal report was due in 1998, but at the time of writing of the present Report it has not yet been submitted.

[128] See *Human Rights in Yugoslavia 2001*, II.2.15.1.

Protocol on the Sale of Children, Child Prostitution and Child Pornography requires the state parties to undertake measures for the protection of children, given the increasing international trafficking of children, sex tourism and the ever-greater availability of child pornography on the Internet.

Obligations of states laid down by the Protocol include, *inter alia*, the need to encompass the offences of prohibited sale of children, child prostitution and child pornography in their respective criminal and penal codes (Art. 3 (1), Art. 4 (1, 2, 3)). Article 2 contains the definitions of these crimes, and the article 3, para. 1a explains the actions of perpetration of these offences. Attempt to perpetrate these offences is also punishable, and the state parties should apply adequate sanctions for these offences taking into account their serious nature (Art. 3 (3)). In accordance with the special protection of children guaranteed by the Convention on the Rights of the Child, the Protocol also prescribes special measures for protection of children victims of these offences in all stages of criminal proceedings, security and discretion for children victims and ensuring the best interest of the child (Art. 8).

Yugoslav legislation still has to harmonise its penal laws with the Protocol. For example, child prostitution does not constitute a separate criminal offence in the Federal CC, but is regarded as an aggravated form of the criminal offence of aiding the prostitution (Art. 251 (1). Under the item of showing pornographic material, Article 252 of the Federal CC incriminates sale, showing or public display of pornographic material to persons under 14 years of age, but does not define the case when the subject of the offence is child pornography, nor does it particularly incriminate such an act. As regards the sale of children, domestic legislation is still inconsistent with the Protocol. Article 155 of the Federal CC prohibits placing people into slavery or servitude (see chapter on Prohibition of Slavery and Forced Labour) but does not mention children as subject of special protection when they are victims of this offence.

The Optional Protocol on Participation of Children in Armed Conflicts guarantees the protection of children in international and non-international armed conflicts, prohibits compulsory recruitment of persons with child status and binds states parties to raise the minimal age limit for voluntary recruitment of persons into their armed forces (Art. 1, 2, 3).[129]

While the state parties are expected to undertake all necessary measures to prevent such practice of compulsory recruitment of children and direct use of children in armed conflicts (Art. 1 and 2), in respect of the voluntary recruitment of persons under 18 years of age, the difference is made whether these are armed forces of the country or armed groups that are not an integral part of the country's armed forces. In the first case, each state party should deposit a binding statement after the ratification of the Protocol in which it should set the minimal age limit for voluntary recruitment as well as give guarantees[130] that such recruitment shall not be compulsory (Art. 3 (2)). In the second case, concerning non-state armed groups, states are requested to undertake all measures to prevent recruitment or use of children in hostilities, under any circumstances.

The Yugoslav Army Act is in accordance with the Protocol in the part that relates to compulsory recruitment, prescribing that the person, recruit, shall be sent to his military service after 21 years of age (Art. 301), or at the explicit request of the recruit himself once he is 18 years old (Art. 302).

4.15.3.2. "Measures of protection ... required by the status of minors" – Under Article 24 (1) of the ICCPR, "every child shall have without any discrimination ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." Though the ICCPR contains a general prohibition of discrimination (Art. 2 and 26; see I.4.1), this provision reinforces the obligation of the state to ensure no inadmissible discrimination where protection of the child is concerned.

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[129] Since Article 38 of the Convention on the Rights of the Child sets the minimal age limit for participation in the armed conflicts at 15 years of age, the Protocol demands that states parties should raise the age limit given in this article of the Convention related to voluntary recruitment, leaving to the states to set this limit themselves.

[130] In Article 3 (3) of the Protocol minimal guarantees are given regarding voluntary recruitment that the states should fulfil: that such recruitment shall indeed be voluntary, that such recruitment shall be conducted with explicit consent of parents or legal guardians of the recruited person, that these persons have been fully informed about obligations arising from such military service, that these persons have provided reliable proof of their age before they are accepted into state military service.

Accordingly, the Federal Constitution (Art. 20), besides prohibiting discrimination in general, stipulates that illegitimate children have the same rights and duties as legitimate children (Art. 61 (22)). Very similar provisions are to be found also in the republican constitutions (Art. 13 and 29 (4), Serbian Constitution; Art. 15, 17 (1) and 60 (2), Montenegrin Constitution), and are further elaborated in the family law of the republics (Art. 5, Montenegrin Act; Art. 7, Serbian Act).

Parents have the right and duty to take care of their children, support them in keeping with their financial and material ability, and provide guidance in the adoption of family and other values (Art. 113–117, Serbian Act; Art. 58–61, Montenegrin Act).

As a general rule, parents exercise their parental rights jointly and in agreement. This does not imply, however, that all the rights and duties must be exercised jointly, and parents are allowed to decide which will be exercised by one or the other spouse. In the event of their disagreement, the final decision rests with the child welfare agency. Where issues of major importance for the development of the child are concerned, decisions are made by both parents, even when they are separated or divorced (Art. 123 and 124, Serbian Act; Art. 66–74, Montenegrin Act).

In matrimonial disputes, the court *ex officio* decides on the custody and upbringing of minors, and need not take into consideration agreements reached by the parents. Personal contacts between children and parents may be limited or temporarily suspended only if necessary to ensure the best interests of minors (Art. 125–131, Serbian Act; Art. 66–74, Montenegrin Act).

The basic forms of protection of children without parental care are adoption and placement with a foster family (Art. 148 and 149, Serbian Act). Adoption is allowed when required for the well being of the child (Art. 152, Serbian Act), and children are placed only with foster families with a proven ability to provide proper parental care (Art. 202, Serbian Act; Art. 217, Montenegrin Act).

A child may own assets acquired through inheritance, gifts, or similar. Under Yugoslav law, a child acquires civil capacity at the age of 15.

4.15.3.3. Protection of minors in criminal law and procedure – The Federal CC contains a separate chapter prescribing special rules that are applied to juvenile delinquents in conjunction with the relevant republican Criminal Codes. Other provisions of the criminal codes are applicable only if they are not in conflict with the special rules (Art. 71, Federal CC).

Criminal penalties may not be pronounced against a child who was under the age of 14 at the time the criminal offence was committed. Children older than 14 but younger than 16 (younger juveniles) are subject only to correctional measures, as is the case also with offenders between the ages of 16 and 18 (older juveniles) who, however, may as an exception be sentenced to terms of imprisonment in the case of extremely serious crimes. The purpose of these measures is to protect and aid juvenile delinquents and ensure their development and upbringing (Art. 72–75, Federal CC).

Correctional measures envisaged by the republican criminal codes are: reinforced supervision by parents or guardians, placement of minor in a disciplinary institution, reinforced supervision by the custodial council, reinforced supervision in another family or placement in the correctional facility or young offenders' institution.

In the first four cases the child remains under the control of parents or third persons. Namely, placement in a disciplinary institution envisages that the minor would spend a certain number of hours in the institution. Placement in a correctional facility or a reformatory entails putting the child under public supervision. This can last from at least 6 months to maximum five years. The institution is required to provide education, contact with parents, occasional leaves, and it is subject to special judicial control. See Articles 17–27 of the Serbian CC and Articles 11–26 of the Montenegrin CC. In May 2002, the FRY has adopted the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (*Sl. list SRJ (Međunarodni ugovori)*, No.1/02). This CoE Convention binds the states to provide central custodial bodies with the view of facilitating the applications of individual citizens of CoE member states to the competent bodies in each state party to this Convention, enables easier execution of decisions on custody in other state parties if the decision should be implemented on their territory, as well as enables the enforcement of decisions on custody of a child (Art. 4).

Criminal procedure in the case of juveniles is covered by a separate chapter of the CPC (Art. 452–492), and other provisions of the CPC are applicable only if they are not in conflict with those set out in this chapter. Assigning detention to minors is an exceptional measure (Art. 486–487). Juvenile magistrate can decide that a minor shall be placed in detention to prevent the escape, committing a criminal offence, destruction of evidence or danger of influencing witnesses or accomplices. Detention can be set by the juvenile magistrate or juvenile court panels. In the preparatory procedure detention can last up to one month. However, juvenile court panel can extend the detention for a maximum of another two months for justified reasons. After the preparatory procedure, detention can last for one year maximum. Each month the juvenile court panel is obliged to review the grounds for detention. As regards the conditions in detention, the minor is separated from the adult prisoners on remand, but the juvenile magistrate can rule that the minor could be held in custody with adult prisoners on remand in the case of prolonged isolation and if there is a possibility to place the minor with an adult that would not have a harmful influence on the minor (Art. 487 (2)). However, this provision is not in keeping with the ICCPR, which does not allow exceptions with regard to isolation of detained minors from adults in detention facilities (Art. 10, ICCPR).

Since Yugoslav law does not allow imposition of criminal penalties against a child below the age of 14, the CPC envisages termination of criminal proceedings against a child who was not 14 at the time the crime was committed, of which the child welfare agency must be notified (Art. 435, CPC). The CPC stipulates that a child may not be tried *in absentia*. Agencies that are parties to proceedings have an obligation to consider the mental development, sensitivity and personal characteristics of the child in the event of his presence at hearings and, in particular, during his questioning, so as to avert possible ill effects on his well being (Art. 454, CPC). If the proceedings are for a crime carrying a prison sentence of over five years, the child must have a defence attorney from the very beginning and, in other cases, if the judge deems it necessary (Art. 456, CPC).

The public prosecutor is duty bound to notify the child welfare agency whenever proceedings are instituted against a child (Art. 459, CPC). Information on such proceedings may not be disclosed to the public without the permission of the judge and, when permission is granted, the name of the child and other information that could be used to identify him may not be disclosed (Art. 461, CPC). Proceedings against a child are always conducted *in camera* (Art. 482, CPC).

Proceedings against children are conducted by judges or panels of juvenile courts. The law makes it possible for one court to be designated to hear in the first instance criminal cases involving children from several judicial districts. The lay judges on panels hearing juvenile cases are selected from among educators, teachers and others who have experience in work with children (Art. 482, CPC).

4.15.3.4. Birth and name of the child – To ensure that every child is registered immediately after birth, the law prescribes oral or written notification of the Registry Office in the place of the child's birth. The birth of a child must be reported within 15 days. If the parents are unknown, the birth is recorded by the Registry Office of the district in which the child was found and on the basis of a decision of the competent child welfare agency (Art. 17 and 25, Serbian Public Registries Act; Art. 5, 7 and 9, Montenegrin Public Registries Act).

Having a name (first and last names) is the right of every individual. The name of a child is chosen by both parents and is entered into the Register of Births within two months of birth. In the event that the parents do not agree on a name within the set time period, the child is named by the child welfare agency. A child receives the last name of one or both parents. In Serbia, children of the same parents may not bear different last names. If one of the parents is deceased, unknown or unable to exercise his or her parental rights, the child is named by the other parent. If both parents are deceased, unknown or unable to exercise their parental rights, the child is named by the child welfare agency. Article 389 of the Serbian Marriage and Family Relations Act[131] and 7 of the Montenegrin Act on Personal Names (*Sl. list RCG*, Nos. 20/93, 27/94), respectively, prohibit giving a child a name that is disparaging, morally offensive or against the customs and beliefs of the community. Under Article 2 of the Montenegrin Act on Personal Names, members of national and ethnic groups may have their names entered in their own languages.

[131] There is no special law covering personal name in Serbia, but the provisions on personal names are contained in the Part IX of the Serbian Act on Marriage and Family Relations.

4.16. Right to Citizenship

Article 15 of the Universal Declaration of Human Rights:

Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nor denied the right to change his nationality.

Article 24 (3), ICCPR:

Every child has the right to acquire a nationality.

4.16.1. General

The Universal Declaration of Human Rights states the right of every individual to have a nationality and prohibits arbitrarily depriving a person of nationality or of the right to change it (Art. 15). Though the ICCPR does not refer specifically to this right, its Article 24, which treats the status of children, guarantees in paragraph 3 the right of every child to acquire a nationality.[132] The goal is clearly to keep down the number of stateless persons. The provision only obliges states to enable newborn children to acquire a nationality, not necessarily to grant their citizenship to every child. How and what conditions must be met to acquire nationality is regulated by national legislation, which, however, must not discriminate against newborn children on whatever grounds.

Under the Federal Constitution, acquisition and termination of Yugoslav citizenship is regulated by federal statute. Yugoslav nationals in fact have dual citizenship, that of the federal state and of one of its constituent republics. Yugoslav citizens may not be deprived of citizenship, expelled from the country, or extradited to another country (Art. 17, Federal Constitution). The constitutions of Serbia (Art. 47) and Montenegro (Art. 10) contain basically the same solutions as the Federal Constitution, and are in accordance with Article 15 of the Universal Declaration.

Unlike its Federal and Montenegrin counterparts, the Serbian Constitution states that citizens of Serbia who also have the citizenship of another state may be deprived of their Serbian citizenship “only if they refuse to fulfil the constitutional duties of citizens” (Art. 47 (4)). On the other hand, the Federal Constitution states that every Yugoslav citizen is at the same time a citizen of a constituent republic, and gives the federal authorities the competence to regulate issues relating to Yugoslav citizenship (Art. 17 (1 and 2)). The application of the Serbian Constitution's provision whereby a person may be deprived of Serbian citizenship could result in that person being a citizen of Yugoslavia but not of Serbia, which would be in contravention to the Federal Constitution.

The Socialist Federal Republic of Yugoslavia (SFRY), the break-up of which caused citizenship problems for great numbers of its citizens, had during its existence four federal statutes regulating citizenship: the Citizenship Act of the Democratic Federal Yugoslavia (1945), the Citizenship Act of the Federal People's Republic of Yugoslavia (1946), the Yugoslav Citizenship Act (1964) and the SFRY Citizenship Act of 1976 (*Sl. list SFRJ*, No. 58/76). The 1976 law was in effect when the country broke up. All the states that subsequently emerged in the territory of the former Yugoslavia have adopted their own citizenship legislation.

Less than five years after its enactment, the Yugoslav Citizenship Act (*Sl. list SRJ*, No. 33/96) was amended in March 2001 (*Sl. list SRJ*, No. 9/01). Also in March, another piece of legislation with a bearing on citizenship, but possibly even more significant for the development of a system based on legal security and human rights, came into effect. This was a law (*Sl. list SRJ*, No. 9/01) repealing a decree passed almost five decades earlier by the Presidium of the FPRY National Assembly under which the Karađorđević royal family were stripped of their citizenship and all their assets confiscated (*Sl. list FNRJ*, No. 64/47). The new law restores Yugoslav citizenship to persons divested of it by a political rather than a legal act, while the restitution of their assets will be the subject matter of a separate statute (Art. 2).

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[132] See I.4.15

4.16.2. Acquisition of Yugoslav Citizenship

Yugoslav citizenship is acquired by origin, birth, naturalisation (acceptance) and international treaty (Art. 2).

Children of Yugoslav citizens irrespective of where they are born, and children with one Yugoslav parent who are born in Yugoslav territory acquire citizenship by origin, i.e. *ex lege,* as do also children born abroad, one of whose parents is Yugoslav and the other unknown or a stateless person (Art. 7).

A child born abroad, one of whose parents is Yugoslav and the other a foreign national, acquires Yugoslav citizenship if one of the following requirements is met (Art. 8):

1) if, before the child attains the age of 18, the Yugoslav parent registers it as a Yugoslav citizen with a Yugoslav diplomatic mission (the child's consent is required if it is over 14; a child between the ages of 18 and 23 may apply itself);

2) if the child would be stateless unless granted Yugoslav citizenship.

Besides this basic criterion of origin, citizenship can also be acquired by birth. Thus children born or found in the territory of Yugoslavia acquire citizenship if their parents are either unknown or stateless persons.

The amendments adopted in 2001 also changed one of the conditions for naturalisation (Art. 12). The earlier provision – that "it may be concluded from his behaviour that he will be a loyal citizen of Yugoslavia" – has been rephrased and now reads: "that it may be concluded from his behaviour that he will respect the legal order of Yugoslavia" (Art. 12 (1.5)). Although the competent body still has discretionary rights with regard to naturalisation, they have been narrowed down by this more specific instruction. This removes the possibility of politically motivated decisions through arbitrary interpretation of the term "loyal citizen of Yugoslavia."

Yugoslav citizenship can be terminated by way of loss or renunciation of nationality or by international agreement (Art. 19–25).

4.16.3. Dealing With Citizenship Problems Following the Break-up of Former Yugoslavia

The position of refugees, already hard hit by the wars and the economic crisis in the FRY, was further aggravated by the discriminatory provisions of the 1996 Yugoslav Citizenship Act (*Sl. list SRJ*, No. 33/96, 9/01). Articles 47 and 48 of the Act enumerate different grounds upon which people from the former Yugoslav republics (except Serbia and Montenegro) could acquire Yugoslav citizenship, depending on whether they took up residence in the FRY before or after the promulgation of the new Constitution on 27 April 1992. Besides, these provisions gave wide discretionary powers to the decision-making bodies with regard to citizenship of refugees who have taken up residence in the FRY after 27 April 1992.[133]

Subsequent amendment of this law made it easier for refugees to resolve various problems in which citizenship played a part.[134]

Under the 1996 law, citizens of the former Yugoslavia who also had the citizenship of Serbia or Montenegro on 27 April 1992 were considered citizens of FR Yugoslavia, as were also their children born after this date (Art. 46).

Acquiring citizenship was made easier for two more categories (Art. 47 (1)):

1. Citizens of the former Yugoslavia who were citizens of a former republic other than Serbia and Montenegro, and *citizens of other states that emerged in the territory of the Socialist Federal Republic of Yugoslavia* (italics added), on condition that they were domiciled in the territory of FR Yugoslavia on 27 April 1992. The provision also covers children born to these persons after the promulgation of the Federal Constitution;

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[133] See *Human Rights in Yugoslavia 2000,* I.4.1.2.3.

[134] See *Human Rights in Yugoslavia 2001*, I.4.9.3.

2. Citizens of the former Yugoslavia who were citizens of a former republic other than Serbia and Montenegro and who accepted transfer to the Yugoslav armed forces as professional officers and non-commissioned officers or as civilians in the employ of the Yugoslav Army, and their spouses and descendants.

The first category has been expanded by the new legislation and now includes, besides citizens of the former Yugoslav republics, citizens of the states subsequently created in the territory of former Yugoslavia. These persons may have dual citizenship and the law no longer makes Yugoslav citizenship conditional on either declaring that they have no other citizenship or, if they have, on renouncing it (Art. 47 (4)).

Amendment to the Act also abolished the time-limit within which Yugoslav citizenship could be applied for. This was usually one year from the date of entry into force of the 1996 Act, but could be extended to three years for justifiable reasons. Upon becoming Yugoslav citizens, refugees lost their refugee status and many rights essential for their survival. Now, however, they can put off seeking citizenship until such a time as they are better off financially.[135]

A provision of the Act on "acceptance into Yugoslav citizenship" was also amended. This form of naturalisation was envisaged for citizens of the former Yugoslavia who, because of their ethnicity, religious or political affiliation, or advocacy of human rights and liberties, were forced to flee to the territory of FR Yugoslavia (Art. 48 (1)).

This category is differently defined in the amended Act. It now includes (Art. 48 (1 and 2)):

1. SFRY citizens who had the citizenship of another former Yugoslav republic, or *are citizens of another state that emerged in the territory of the former Yugoslavia* (italics added) and are in this country as refugees or displaced persons or have fled to foreign countries;

2. SFRY citizens residing in Yugoslavia or abroad who do not have the citizenship of another state that emerged in the territory of former Yugoslavia, which in effect means stateless persons or persons who have in the meantime acquired the citizenship of a foreign country. The option of dual citizenship is also open to individuals who meet the cited requirements, and they are no longer required to declare that they have no foreign citizenship or to renounce it.

Previous law required the person who would acquire or be accepted into Yugoslav citizenship (Art. 47 and. 48) to provide proof that they have no other citizenship, thus creating additional insecurity for these persons. Namely, if they wanted their application approved, they would have to renounce the citizenship of the other state, without any assurances in the outcome of the Yugoslav government bodies' decision. On the other hand, the intent of lawmakers was to permit the acquiring of dual citizenship without depriving the citizens of their link with the republic of origin, as well as to contribute to the resolution of problems regarding migration, settlement, family and property rights of these persons.[136]

In keeping with the new definition of the category referred to in Art. 48 (1)), individuals applying for Yugoslav citizenship are now released from the obligation of providing proof that they were forced to flee their homes because of persecution. Such substantiation is objectively no longer necessary as the status of refugee, expellee or displaced person may be acquired under the Serbian Refugee Act (*Sl. glasnik RS*, Nos. 18/92, 45/02) and the Expelled Persons Relief Decree (*Sl. glasnik RS*, No. 47/95), and the Montenegrin Displaced Persons Decree (*Sl. list RCG*, No. 37/92).[137]

Whether or not the requirements for acquiring Yugoslav citizenship are met is by law determined by the federal and republican[138] Ministries of Interior. Though the amendments have done away with their

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[135] See *Pravi odgovor*, No. 2, March 2001, p. 5.

[136] See *Danas*, "*Izbeglica ima pravo na državljanstvo",* Interview with Brankica Grupković, Federal Assistant Minister of Interior, 30 August 2002.

[137] Montenegrin law designates refugees and expelled persons as "displaced persons." The term was borrowed in the amendments to the Yugoslav Citizenship Act, and therefore does not include internally displaced persons from Kosovo, the majority of whom are in any case Yugoslav citizens.

[138] Opinion of the relevant republican ministries is obtained because the FRY citizenship is acquired simultaneously with one of the republican citizenship. (Art. 5).

right to evaluate the reasons set out in the application, they retain their discretionary powers in making the decision, "taking in account the interests of the security, defence and international position of Yugoslavia" (Art. 48 (3)).

The watershed date remains unchanged. Citizens of the former Yugoslav republics, excluding Serbia and Montenegro, and now citizens of other states created in the territory of the former Yugoslavia, will acquire citizenship or be naturalised depending on whether their residence in FR Yugoslavia was registered before or after 27 April 1992. Those who arrived after this date are still in a somewhat less favourable position as their applications go to a body that retains discretionary powers, albeit reduced. While persons who were residents in Yugoslavia before 27 April 1992 acquire citizenship almost automatically, pursuant to the law prescribing the required conditions, the second category is accepted into Yugoslav citizenship on the basis of a decision of an administrative agency (Art. 48 (7)).

The possibility of dual citizenship was provided for as far back as 1996. Namely, Article 18 (2) of the Citizenship Act permits the granting of dual citizenship on the basis of international agreements and on the basis of reciprocity. Moreover, some provisions of the statute make it possible directly: for instance, where foreign citizens are accepted into Yugoslav citizenship for services rendered to this country and despite not having been released from their first citizenship (Art. 14).[139]

As the number of persons holding dual citizenship increases, the issue will inevitably arise of their legal status in the other countries of which they are citizens. Since it may be safely assumed that the majority will be from Croatia and Bosnia-Herzegovina, it should be noted that the Bosnian Citizenship Act makes dual citizenship conditional on the prior conclusion of bilateral agreements. Agreement on dual citizenship between the FRY and B&H was signed and should be ratified in the parliaments of state parties. The text of the agreement prescribes the conditions for acquisition of the other state party's citizenship of the other state, the person is above 18 years of age, that he/she has at least three years of registered domicile in the territory of a state whose citizenship he/she shall be acquiring, or one year in case of marriage, that he/she has the means to support himself/herself, that he/she has not been convicted of criminal offences carrying a sentence of more than three years imprisonment, as well as that it can be inferred from his/her demeanour that he/she will respect the legal system of the country whose citizenship he/she is acquiring. The most problematic provision in the agreement seems to be the one leaving to national legislations to regulate the issue of active and passive right to vote for dual citizenship holders. Namely, many persons among the potential dual citizens have registered their domicile both in B&H and the FRY.

Law on Croatian citizenship allows Croatian citizens to hold or acquire citizenship of another country (Art. 2), and the draft of a similar agreement between Croatia and the FRY is under way.[140]

4.17. Freedom of Movement

Article 12, ICCPR:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

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[139] See Vida Čok, *Pravo na državljanstvo*, Beogradski centar za ljudska prava, Belgrade, 1999, p. 102.

[140] See *Danas*, *"Izbeglica ima pravo na državljanstvo",* Interview with Brankica Grupković, Assistant Federal Ministra of Interior Affairs, 30 August 2002.

4.17.1. General

All three Yugoslav constitutions guarantee freedom of movement and are in line with the approach taken in international human rights instruments. Article 30 of the Federal Constitution lays down:

Citizens shall be guaranteed freedom of movement and residence and the right to leave and return to the Federal Republic of Yugoslavia.

The freedom of movement and residence and the right to leave the Federal Republic of Yugoslavia may be restricted by federal statute, if so required for criminal proceedings, to prevent the spread of contagious diseases, or for the defence of the Federal Republic of Yugoslavia.

Freedom of movement is treated in a similar manner in Article 17 of the Serbian Constitution, while the Montenegrin Constitution is less precise: though its Article 28 (1) guarantees freedom of movement and of residence, it fails to mention the freedom freely to leave or return to Montenegro.

Although the ICCPR guarantees the freedom of movement, settlement and leaving a country to every person lawfully within its territory (Art. 12 (1 and 2)), the Federal Constitution guarantees this right only to citizens (Art. 30 (1)). Foreign citizens in our country enjoy these rights pursuant to the Act on Movement and Residence of Aliens (*Sl. list SFRJ,* Nos. 56/80, 53/85, 30/89, 26/90, 53/91; *Sl. list SRJ*, Nos. 16/93, 31/93, 41/93, 53/93, 24/94, 28/96). Hereby freedom of movement of aliens lawfully within the territory of the FRY has not been given the highest possible legal protection; these people move and reside in the FRY pursuant to provisions of the above-mentioned Act. The Act is rather restrictive in some of its parts, and all affairs related to movement and residence of aliens are in some cases left to the Ministry of Interior with broad guidelines for decision making.

4.17.2. Restrictions

The way possible restrictions on freedom of movement are formulated by the three constitutions is in accordance with international standards. They prescribe that restrictions may be imposed only by law and if necessary to attain a legitimate goal. The constitutions list few reasons for derogation from this right, and use more narrow formulations than is the case with the ICCPR.

The Act on Travel Documents of Yugoslav Citizens (*Sl. list SRJ,* Nos. 33/96, 49/96, 12/98, 44/99, 15/00, 7/01, 71/01, 23/02) envisages the basis on which the Ministry of Interior, as competent authority for issuing travel documents or visas (Art. 15) shall deny the request for issuing such documents (Art. 46).[141]

In April 2002, this Act was amended (*Sl. list SRJ*, No. 23/02), and the reasons for denial of request for issuing document have been redefined. Namely, the competent body shall deny the request for the duration of criminal proceedings against the person in question, at the request of the competent court; then the request of a person sentenced to an unconditional prison sentence longer than three months, until sentence has been served; then persons whose movement has been denied pursuant to existing regulations for the purpose of prevention of spreading contagious diseases or epidemics, as well as in case of a state of war, a state of imminent threat of war of a the state of emergency (Art. 46 (1)). These reasons are in accordance with the constitutionally permitted basis for restrictions of the freedom of movement (Art. 30 (2) Federal Constitution).

The said legislative amendments have also removed the provision under which it was envisaged that the Ministry of Interior, at the request of the competent military authority, shall deny the request for issuing a travel document or visa if it has established that the person filing the request has the intention to travel abroad in order to avoid the obligation of military or civilian service in the Yugoslav Army (Art. 46 (1.5)). This provision used to give the authority to an administrative body to assess whether the person requesting a travel document or a visa is indeed trying to avoid military service by travelling abroad or he wishes to

[141] See *Human Rights in Yugoslavia 2001*, I.4.17.2. For a long time these reasons for refusal of request have also included those that are not in accordance with freedom of movement restrictions allowed by the Constitution (Art. 30 (2)). They were declared unconstitutional by relevant decisions of the Federal Constitutional Court in 2000 and 2001.

leave the country for other, "permitted" reasons.[142] Still in force is the provision of the Act that envisaged the duty of the conscript for the duration of recruitment obligation to attach the permission to travel abroad together with his request for issuing a travel document and visa (Art. 43 (1)). Nevertheless, the amendments have revoked the broad authority of the Ministry of Interior to arbitrarily decide on freedom of movement of these persons in with regard to leaving one's own country.

4.18. Economic, Social and Cultural Rights

The constitutions of the federal state and its two constituent republics lay down the principles of the social rights of citizens and of a special position of specific groups (children, women, mothers, the elderly), and these are more closely regulated by the statutes and ancillary legislation of the republics, and are exercised through public services.

The 1991 Public Services Act (*Sl. glasnik RS,* No. 42/91, 71/94) paved the way for private initiative in the spheres of social and cultural rights but did not make it possible for the private sector to apply for financing from public funds and the state budgets (Art. 10), reserving this exclusively for state public-service institutions. Hence, even though it has been almost 10 years since the law was passed, private institutions are not integrated in the sub-systems of medical care, social welfare, child care, education and others, either in terms of organisation or of financing.

4.18.1. Right to Work

The right to work is explicitly guaranteed by the constitutions of Serbia (Art. 35) and Montenegro (Art. 52) but not by the Federal Constitution. All three constitutions guarantee the free choice of occupation and employment, and prohibit forced labour (Art. 54, Federal Constitution). Only the Serbian Constitution prescribes that employment and public office are equally accessible to all (Art. 54 (1)).

The Federal and Serbian Constitutions guarantee to an extent the safety of jobs by laying down that an employee's contract may be terminated against his will only under the conditions and in the manner stipulated by law and collective contracts (Art. 54 (2), Federal Constitution; Art. 2, Serbian Constitution). Procedure and grounds for such termination of employment are prescribed by the Act on Basis of Labour Relations (*Sl. list SRJ*, Nos. 29/96, 51/99) as well as by the new Labour Act (*Sl. glasnik RS*, Nos. 70/01, 74/01), although these two laws have not been harmonised on many issues including the one mentioned here.

The new Labour Act, passed in the late 2001, by broad and vague formulation of grounds for dismissal in the Article 101, gives the employer a larger possibility to terminate the labour contract, stating that "the employer is allowed to cancel the employee's contract if there are justified reasons for this, related to the capacities of the employee, his behaviour and the needs of the employer" (for instance, due to failure to achieve results in work, disregard of work discipline, etc.). On the other hand, this Act envisages that the procedure in the case of dismissal is urgent, and that prior to dismissal the employer is obliged to request the opinion about the employee from the trade union of which the employee is a member, as well as that legal protection in case of illegal dismissal can be requested both by the employee in question and the trade union that he has authorised to act on his behalf.

The rights of employees made redundant by technological, economic or organisational innovations are also regulated by law. Under the Serbian Labour Act, the contracts of these employees may be terminated only if the employer is able to provide them with other work or retraining for other jobs (Art. 101 (3)). When an employee has been made redundant, the employer may not hire another person for the same job for a period of three months and, should the need arise for such an employee within that period, the employee who was dismissed takes precedence (Art. 101 (5 and 6)). The employer who has more that 50 permanent employees working full-time and is planning to cancel their contracts on these grounds for more than 10% of the overall number of employees within one calendar year, is obliged to adopt a programme on how to resolve the issues of redundant workers (Art. 114 (1)). Employees made redundant are entitled to severance pay based on the length of time they were employed (Art. 117).

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[142] See *Human Rights in Yugoslavia 2001*, I.4.17.2.

Rights and obligations stemming from the employment of persons working in state bodies are regulated by specific acts; therefore provisions generally regulating labour relations apply to them only in cases that are not explicitly regulated by these laws.[143]

Right to work includes also the right to information about possibilities and conditions of employment, professional orientation, preparation for employment and financial compensation during expert training and in case of termination of employment. The above-mentioned rights are exercised through the labour market and without fee.

4.18.2. Right to Fair and Favourable Conditions of Work

The Yugoslav constitutions guarantee remuneration in accordance to work performed (Art. 55, Federal Constitution; Art. 36, Serbian Constitution; Art. 53 (1), Montenegrin Constitution).

The Federal Act on Bases of Labour Relations lays down the right of employees to be paid for their work in accordance with the law and collective contracts, whereas the Serbian Labour Act prescribes that appropriate compensation shall be determined in keeping with the law, general acts or labour contract, as well as that the employee shall be guaranteed equal pay for equal work or for work of same value.

To ensure the material and social security of the employed, the Serbian law envisages a minimum wage (until passing of the Labour Act this was the right to guaranteed wage), which is fixed jointly by the government and unions and employer's representatives and in accordance with statute (Art. 84 (2), Serbian Labour Act). If the three parties fail to reach an agreement on the minimum wage within 10 days from the day of starting the agreement, it is fixed by the government (Art. 84 (3)).

The right of employees to limited work hours, paid annual vacations and other leave is guaranteed by the constitutions. The constitutions also prescribe the right to daily and weekly rest periods (Art. 56 (1), Federal Constitution; Art. 38 (1), Serbian Constitution; Art. 53 (2), Montenegrin Constitution).

Under the law, employers are obliged to introduce shorter hours for persons working at particularly hard or hazardous jobs, in proportion to the potential ill effects on the employees' health or capacity. An employee may work longer hours but for the employee this can be an obligation only in cases of force majeur, sudden increase of workload and need to finish unplanned work within a given deadline. By law, the employee has the right to rest during daily work, as well as to daily, weekly and annual leave and paid or unpaid leave in keeping with the law. These rights cannot be denied to the employee. Also, within the protection of motherhood, maternity leave is envisaged for employed women, as well as leave for the purposes of child care in the duration of 365 days, with the possibility that the father of the child can exercise the same rights, if the mother abandons the child, dies or is for other justified reasons prevented from exercising these rights, i.e. for prison sentence, severe illness, etc. (Art. 69 (5 and 6), Serbian Labour Act).

The constitutions guarantee safety at work and prescribe special protection for women, young people and disabled persons (Art. 56 (2 and 3), Federal Constitution; Art. 38 (2 and 3), Serbian Constitution; Art. 53 (3 and 4), Montenegrin Constitution).

To be assigned to a job that carries an increased risk of injury or occupational or other diseases, an employee must fulfil certain required standards with regard to physical and mental health and age. A potential employee must undergo a medical examination before assignment to a high-risk job, and after that at prescribed periods (Art. 30–35, Safety at Work Act, *Sl. glasnik RS*, Nos. 42/91, 53/93, 67/93, 48/94, 42/98). To safeguard the health of the work force, the law also establishes shorter hours for persons working at hazardous jobs.

Failure to observe security measures during work can result in the closing down of a company (Art. 100 (1.1) of the Act on Enterprises) and, in some cases, in criminal prosecution (Art. 90, Serbian CC; Art. 74, Montenegrin CC).

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[143] In Sebia, to persons employed in state bodies provisions of the Act on Labour Relations in State Bodeis apply (*Sl. glasnik RS,* No. 48/91, 66/91, 44/98, 49/99, 34/01, 39/02). In early July 2002, during the strike of the employees in judiciary, the urgent procedure was taken to adopt the Act on Changes and Amendments of the Act on Labour Relations in State Bodies (*Sl. glasnik RS,* No. 39/02).

4.18.3. Right to Social Security

Social security is comprised of the rights to social insurance and to social welfare. Under the Yugoslav constitutions, social insurance is realised through compulsory insurance schemes for all employed and self-employed persons and farmers (Art. 58, Federal Constitution; Art. 55, Montenegrin Constitution; Art. 40, Serbian Constitution) and includes pension, disability and medical insurance. The Serbian Constitution states that, through compulsory insurance and according to law, employed persons ensure for themselves medical care and other rights in the event of illness, pregnancy, birth, reduction or loss of ability to work, unemployment, old age, and for their family members the right to medical care, family pensions and other rights deriving from social security (Art. 40). All these rights are more closely regulated by a number of statutes.

In 2001 the Pension Insurance Act was amended both on federal level (Act on Bases of Pension and Disability Insurance, *Sl. list SRJ*, Nos. 30/96, 58/98, 70/01, 3/02) in Serbia (Act on Pension and Disability Insurance, *Sl. glasnik RS*, Nos. 52/96, 48/98, 29/01). The Act on Social Protection and Provision of Social Welfare was amended as well (*Sl. glasnik RS*, No. 29/01).

Compulsory insurance includes all those employed, persons performing individual services and farmers. Moreover, pursuant to the Act on Basis of Pension and Disability Insurance (*Sl. list SRJ*, No. 30/96, 58/98, 70/01, 3/02), right from the pension and disability insurance are explicitly guaranteed also to employees who are declared as redundant, while they are exercising financial compensation pursuant to regulations on labour relations (Art. 12).

The possibility exists under the law of voluntary insurance for persons who are not covered by the compulsory insurance schemes (Art. 16, Act on Bases of Pension and Disability Insurance, *Sl. list SRJ*, No. 70/01). At the same time, by voluntary insurance, the ensured persons can secure a wider scope or other form of rights for them and their families, outside those prescribed by this Act.

An insured person is eligible for an old age pension if he meets two requirements prescribed by the Act: a certain age and length of employment (Art. 22). These are 63 years of age for men (58 for women) and at least 20 years of employment, or 65 years of age for men (60 for women) and at least 15 years of employment, or 40 years of employment for men (35 for women) and at least 53 years of age (Art. 22).

A disabled person has the right to a disability pension and other rights on the basis of his remaining ability to work, the right to retraining or acquiring additional qualifications, the right to be assigned to an appropriate full-time job, and the right to monetary benefits. The cause of the disability has no significance in the determination of the disability itself but does have an effect on eligibility for certain rights and their scope.

An employed person whose health has deteriorated to an extent that prevents him from working (ensured who has suffered from loss or deterioration of working ability) is eligible for a disability pension on condition that his age (53 for men and 48 for women) precludes him from retraining or acquiring additional qualifications (Art. 45 (1), Act on Pension and Disability Insurance). If the disability was caused by a work-related accident or occupational disease, the person has the right to a pension regardless of the length of his employment and to the amount of 85 percent of the pension base.

In order to provide at least minimum means of living for those who have only a few years of employment and/or received very low wages when they worked, the law prescribes the lowest old age and disability pensions. The base for this pension is the average net monthly wage in Serbia in the preceding year.

When a person covered by the compulsory insurance scheme or recipient of an old age or disability pension dies, his family acquires the right to a family pension (Art. 64–73, Act on Pension and Disability Insurance).

Unemployment insurance is regulated by republican statutes: the Serbian Act on Employment and Rights of Unemployed Persons and the Montenegrin Employment Act. The three Yugoslav constitutions guarantee the right of temporarily unemployed persons to receive unemployment benefits (Art. 55 (2), Federal Constitution; Art. 36 (2), Serbian Constitution; Art. 55 (2), Montenegrin Constitution).

When a person loses his job, he becomes eligible for a monetary benefit on condition that he was insured for at least nine consecutive months or 12 non-consecutive months over the 18 months preceding the loss of his job (Art. 13, Serbian Act on Employment and Rights of Unemployed Persons, *Sl. glasnik RS*, Nos. 22/92, 73/92, 82/92, 56/93, 67/93, 34/94, 52/96, 46/98, 29/01; Art. 28, Montenegrin Employment Act, *Sl. list SRCG*, Nos. 29/90, 27/91, 28/91, *Sl. list SRCG*, Nos. 29/90, 27/91, 28/91, *Sl. list RCG* Nos. 48/91, 8/92, 17/92, 3/94, 27/94, 16/95, 22/95). However, not every loss of job means that a person is entitled to an unemployment benefit, and the matter is differently regulated by the republican Acts, with the Serbian (Art. 12) prescribing when a person is eligible and the Montenegrin (Art. 31) when he is not. Generally speaking, a person who loses his job through his own fault or resigns, is not entitled to an unemployment benefit. Unemployed persons receiving benefits also have medical, pension and disability coverage (Art. 27, Montenegrin Employment Act; Art. 8 (6), Serbian Medical Insurance Act).

In contrast to social insurance, funds that come from the contributions employed persons pay from their incomes, social benefits mean the expenditure from public funds established from public income of the state.

The Federal and Montenegrin Constitutions lay down that the state provides social welfare for people unable to work and/or without means of living, while the Serbian guarantees social welfare only those who are unable to work and have no means of living (Art. 55, Montenegrin Constitution; Art. 58, Federal Constitution; Art. 39 (2), Serbian Constitution). The area of social welfare is regulated in Serbia by the Act on Social Security and Provision of Social Welfare and in Montenegro by the Act of Social and Child Protection. In 2001 Serbian Act on Social Security and Provision of Social Welfare was amended (*Sl. glasnik RS*, No. 29/01).

The basic right in this area is to welfare benefits, which in Serbia belongs to individuals or families whose income is below the subsistence minimum. The amount paid is determined in a percentage depending on the size of the family, and the base, which for social welfare is the average net wage in the municipalities or towns in the preceding quarter where the base cannot be higher than the average wage per employee in the Republic during the same period (Art. 11, Serbian Act on Social Security and Provision of Social Welfare, *Sl. glasnik RS*, Nos. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01). The amount of welfare benefits is harmonised with the flow of average monthly salaries per employee in the municipality or town, in the same quarter in relation to the preceding one. The subject matter is similarly regulated by the corresponding Montenegrin Act on Social and Child Protection (*Sl. list RCG*, Nos. 45/93, 27/94, 16/95, 44/01).

Other rights in the system of social security and welfare envisaged by the statutes of both republics include the rights to the care and nursing of a third person, assistance in job-training, and placement in a social welfare institution or foster family (Art. 22–38, Montenegrin Act; Art. 23–47, Serbian Act). The decisions on all these rights are made by the competent social welfare agencies.

4.18.4. Protection of the Family

Under the Federal Constitution, the family, mothers and children enjoy special protection of the state, and illegitimate children have the same rights and duties as legitimate children. The republican constitutions also guarantee protection of the family, mothers and children, and comprehensively regulate this area (Art. 28 Serbian Constitution and Art. 60 Montenegrin Constitution). Both prescribe that parents have an obligation to care for their children, ensure their upbringing and education, and the obligation of children to care for parents who are in need and require assistance (Art. 61, Federal Constitution; Art. 27 and 29, Serbian Constitution; Art. 58 and 59, Montenegrin Constitution).

Employed women enjoy special protection under the labour relations statutes, on the grounds of their physical and psychological characteristics as well as pregnancy and motherhood. All the Yugoslav constitutions guarantee special protection of working women, young people and disabled persons (Art. 56 (3), Federal Constitution; Art. 27 and 29, Serbian Constitution; Art. 58 and 59, Montenegrin Constitution). The majority of these rights are regulated by the Federal Act on Bases of Labour Relations. Identical provisions are contained in the corresponding Serbian Act, which adds some further regulations, while the Montenegrin Act has very little to say with respect to the special protection of women and young people.

Under the Act on the Bases of Labour Relations, women cannot hold jobs involving extremely hard physical labour, or work underground or underwater, or jobs that could have a harmful effect on their health or constitute a risk to their life (Art. 35 (1)). The same restriction is contained in the Serbian Labour Act, but it nevertheless envisages the possibility that a working woman gives a written consent to exclude the implementation of the mentioned provision (Art. 67 (2)). Furthermore, a pregnant woman cannot work at a job that could threaten her pregnancy or the development of her unborn child (Art. 35 (2)), and there are restrictions on her working overtime or at night. Pregnant women and women with children below the age of three may not work overtime or at night. Exceptionally, a woman with a child over the age of two may work at night but only if she specifically requests this in writing. Single parents with a child up to the age of seven or a severely handicapped child may work overtime or at night only if they make a written request to this effect (Art. 36, Act on the Bases of Labour Relations, Art. 68 (3), Serbian Labour Act), and women holding jobs in industrial or construction enterprises provided they do not hold executive positions or deal with health, social and other protection, may work at night only as an exception (Art. 40, Act on Bases of Labour Relations).

Maternity leave is a basic right of working women. A pregnant woman may start her leave 45 days before her due date or at the latest 28 days before the due date (Art. 37 (3), Act on Bases of Labour Relations). The duration of maternity leave is until the child's first birthday (Art. 37). In its Article 69, the Serbian Labour Act stipulates that maternity leave for a third child lasts until 365 days from the due day. If the child is stillborn or dies before the mother's maternity leave expires, she has the right to extend the leave until she recovers from childbirth and the loss of the child. The minimum period stipulated by law is 45 days, during which time the woman enjoys all the rights accorded to women on maternity leave (Art. 30, Act on Bases of Labour Relations).

During maternity leave, leave for the purposes of child care and leave for the purposes of special child care, employed woman has the right to compensation for her salary in the amount of salary she would have earned in her workplace, up to a maximum of five average wages in the republic, provided she had been permanently employed for at least 6 consecutive months and immediately prior to exercising this right. In the contrary, she shall have the right to compensation of wages in a certain percentage from this base, depending on the duration of employment immediately prior to exercising this right (Art. 10–12, Act on Financial Support for Families with Children, *Sl. glasnik RS*, No. 16/02, Art. 73, Montenegrin Act on Social and Child Protection).[144] Besides the maternity benefit, the Montenegrin statute also envisages a benefit of 50 percent of the lowest wage in the republic for unemployed new mothers who are registered as job seekers with the Labour Office or are full-time university students. This benefit is paid for a period of 12 months following the birth of the child (Art. 81 and 82).

If the condition of a child requires special care or if it suffers from a severe disability, the mother has the right to additional leave (Art. 37 (4), Act on the Bases of Labour Relations). In Serbia, one of the parents can choose between leave and working only half-time, for 5 years maximum, in which case she/he is paid for the time she works and receives compensation for the rest in accordance with social insurance regulations. The Montenegrin Labour Relations Act envisages that a working woman with a physically or mentally disabled child may work half-time up to the child's third year (Art. 40). Under republican statutes, one parent (only the mother in the case of Montenegro) may take leave from work until the child's third birthday, with their labour rights and duties remaining dormant during this period. Only Montenegrin law envisages continuing medical and pension insurance for mothers who take this kind of leave (Art. 75, Serbian Labour Act; Art. 42, Montenegrin Labour Relations Act).

The law guarantees to an extent a woman's job during pregnancy, maternity leave and additional leave, during which periods she may not be made redundant but may be dismissed on other grounds (Art. 38 (3), Act on Bases of Labour Relations). Serbian Labour Act introduces wider protection of employees

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[144] In April 2002, the Act on Financial Support for Families with Children was adopted (*Sl. glasnik RS,* No. 16/02) and by enetering into force it has replaced some obsolete provisions of the Act on Social Child Care (*Sl. glasnik RS*, Nos. 49/92, 29/93, 53/93, 67/93, 28/94, 47/94, 48/94, 25/96, 29/01). This has introduced some changes in this field, relevant for the type, scope, sharacter and conditions of exercising the stated rights.

on the basis of exercising the above-mentioned rights, by obliging the employer not to terminate the employment contract unless explicitly stated conditions have been met (Art. 76).

The above rights are guaranteed primarily to women but, in the event of a woman's death, if she is otherwise prevented from exercising them, or if she abandons the child, they devolve to the father if he is employed (Art. 38 (1), Act on the Bases of Labour Relations).

Other rights, most importantly child benefits, are provided for by the statutes of the republics. In Serbia, the child benefit is ensured for the first four children, and the exercising of this right depends on the aggregate monthly income per family member. These benefits are paid until the child attains the age of 19, on condition that it is acquiring an education (Art. 21–29, Child Welfare Act). The legal provisions in Montenegro are very similar except that child benefits do not depend on the family's financial circumstances. The amount of the benefit depends on the child's age, what school it is attending and psychological and physical condition (Art. 42–50, Montenegrin Act on Social and Child Protection).

All the Yugoslav constitutions guarantee special protection for children, including at work. The Montenegrin in addition prohibits abuse of children, and their working at jobs that could impair their health and development (Art. 61). Labour legislation sets the lowest age for admission to employment at 15 (Art. 7, Act on Bases of Labour Relations), and employees under the age of 18 enjoy special protection. Like women, minors may not hold jobs involving hard physical labour, work underground and underwater, and other jobs that could imperil or adversely affect their health, nor may they work at night. Shorter hours may be envisaged for minors by either collective contracts or company rules. Minors employed by construction, industrial and transport companies may not work at night (Art. 41). The same provisions are contained in the Serbian Labour Act, which additionally envisages that it is prohibited to reassign working hours for persons under 18 years of age (Art. 45).

4.18.5. Right to Health Care

The Yugoslav constitutions guarantee to everyone the right to health care and stipulate that children, pregnant women and the elderly who are not covered by insurance schemes are entitled to free medical care (Art. 60, Federal Constitution; Art. 30, Serbian Constitution; Art. 57, Montenegrin Constitution). Besides these constitutional rights to health care, employed persons and their families are also entitled to health care under the compulsory insurance scheme.

Health care is in the purview of the republics, whose relevant statutes are very much alike. In Serbia, the area is regulated by the Medical Insurance and Health Protection Acts, and in Montenegro by the Act on Health Protection and Medical Insurance.

Insurance is compulsory under republican laws, which also envisage the possibility of voluntary insurance for those who want broader medical coverage or those not covered by the compulsory scheme. The law designates which categories are to be covered by the compulsory insurance scheme and whose contributions for this purpose are deducted from their wages. The scheme also covers their family members.

Health care for uninsured persons without means of living is paid for from the republican budgets. The matter is somewhat differently regulated by the statutes of the two republics. In Serbia, these are children up to 15, or up to the end of their regular education, which may be up to the age of 26 at the most, pregnant women and mothers, persons over the age of 65, handicapped and disabled persons, persons on social welfare, and persons suffering from specified serious illnesses (Art. 7 and 8, Serbian Health Protection Act, *Sl. glasnik RS*, No. 17/92, 26/92, 50/92, 52/93, 53/93, 67/93, 48/94, 25/96, 18/02). Funds for the prevention and combating of epidemics, and preventing and eliminating the consequences to public health of natural disasters and similar also come from the Serbian state budget.

The Montenegrin Act on Health Care and Health Insurance envisages as a minimum compulsory forms of health care provided for all citizens, especially for certain categories of individuals. Persons unable to work or earn a living who do not have means of support, when their health care is not ensured on some other grounds enjoy the same rights. These compulsory forms of health care include prevention, diagnostics, and treatment of specified serious illnesses, medical care for women who are pregnant and during childbirth, and persons over the age of 65 (Art. 32 and 22, Montenegrin Act on Health Protection

and Medical Insurance, *Sl. list SRCG*, Nos. 39/90, 21/91, *Sl. list RCG* Nos. 48/91, 17/92, 30/92, 58/92, 6/94, 27/94, 30/94, 16/95, 20/95, 22/95, 23/96).

The basic rights under the compulsory insurance scheme are to medical care, compensation of earnings while a person is unable to work, travel expenses related to medical care, and reimbursement of funeral costs.

Health care includes preventive and control measures, treatment, medicines, rehabilitation and the like, and is more closely regulated by the regulations of the Medical Insurance Office, which covers the costs specified in its regulations while other costs are borne by the insured. The law also provides for the possibility of insured persons participating in the costs, which means that they in fact pay extra. Participation in the costs of obligatory forms of health care is ruled out in Montenegro (Art. 1, Montenegrin Act on Health Protection and Medical Insurance) and is restricted in Serbia by the law stating that it may not be as high as to deter persons from seeking medical care (Art. 29, Serbian Act on Medical Insurance, *Sl. glasnik RS*, Nos. 18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 46/98, 54/99, 29/01, 18/02).

The right to medical treatment abroad is very limited. In Serbia it is guaranteed only to children below the age of 15 who suffer from an illness or condition that cannot be treated in Yugoslavia. Montenegrin law sets no age limit for treatment abroad (Art. 31, Montenegrin Act on Health Protection and Medical Insurance; Art. 27, Medical Insurance Act).

The right to compensation for earnings belongs only to insured persons and does not extend to their family members. Compensation is paid if a person is temporarily unable to work because of an illness or injury, if they are nursing a sick family member, or are accompanying a family member who has been referred to a medical institution in another place, if they are unable to work due to necessity to maintain pregnancy, or in other similar cases. Compensation for wages is only paid for days for which wages or compensation of wages would be due pursuant to labour regulations.

Compulsory health insurance covers cost of transport for the purposes of treatment or medical examination in another town or place, as well as funeral costs.

As a rule, the rights ensuing from insurance are decided upon by the Medical Insurance Office and its local offices. Decisions may be appealed, with the second-instance decision being final. Administrative litigation against a final decision is not allowed but remedy may be sought before the competent court within 30 days from the day of serving the decision (Art. 68, Serbian Medical Insurance Act).

Article 3 of the Act states that the republican Medical Insurance Offices may introduce voluntary insurance schemes for persons not covered by the compulsory scheme or those who want broader coverage. Private insurance companies have appeared over the past few years (e.g. Belgrade's Anlave Clinic) but it is not known how many people are insured through them, who in fact owns these companies, or what guarantees they provide for the functioning and reliability their systems.

A voucher system for payment of medical services in the private sector by persons covered by the compulsory scheme has not yet been introduced. These persons can realise their rights only in the public sector and pay the full costs of treatment in private hospitals and clinics.

The Serbian government's Planned Network of Medical Institutions Decree (*Sl. glasnik RS*, Nos. 13/97, 58/97, 31/98, 1/99, 37/99) determines the type, number, structure and location of state medical institutions and the number of hospital beds. The basic criterion for establishing medical centres, clinics, pharmacies, medical stations and similar is the size of the population of a district. The law does not envisage mobile medical teams to make care more accessible to people in distant villages and sparsely populated areas. To the contrary, the whole concept is centred on cities and tailored to the needs of densely populated areas.

In 2001, a group of experts of the Centre for Policy Studies came out with a study entitled “Guidelines for Reform of the Health Care System in the Republic of Serbia.” The study identifies the key areas of reform, suggests possible solutions and defines the process of the implementation and evaluation of reform decisions. The main goals of reform would be to ensure fairness in the use and financing of the health care system, its overall effectiveness and financial and institutional sustainability, and continual upgrading of its work and the services it provides. Some of the principles on which the reform would be based are:

– Privatisation based on an evaluation of the state's and society's interests and which areas of the system could be given over to the private sector;

– An active approach to private medical practice and its inclusion in the health care system and its financing;

– Continued development of the compulsory medical insurance scheme; decentralisation of the existing Medical Insurance Fund and more autonomy for its regional offices; introduction of other forms of insurance, including voluntary and private;

– Increasing the participation costs of insured persons to between 10 and 15 percent of the total cost of medical care;

– Increasing the number of hospital beds to five per 1,000 inhabitants;

– Organising primary health care in medical centres (municipal level), with people having the right to choose their doctors; integration of private medical practice in the system of primary health care and contracting of medical care for individuals/families on the same terms as in the public sector; allowing private practices to rent space in municipal medical centres and to use their laboratories, X-ray facilities, administrative and clerical personnel, etc.;

– That the Medical Insurance Fund continue financing only primary dental care and emergencies, while other dental services would be given over to the private sector.

4.18.6. Housing

There is no mention of the right to housing in either the Federal Constitution or the constitutions of the republics.

The housing situation in Montenegro and Serbia is specific and requires explanation. Namely, in the 1991–1993 period, occupants of socially owned housing were able to purchase their apartments at very low prices, with the average price per square meter being less than 50 euros. Due to the hyperinflation in 1992 and 1993, the price fell dramatically so that whole apartments were bought for under 50 euros. Before that, socially and state-owned apartments made up 24 percent of all housing in Serbia and Montenegro, and were located mainly in major cities (over half of Belgrade's housing, for example, was socially or state-owned), whereas close to 99 percent of all housing is at present privately owned.

A distinction should be made between socially owned apartments in the former Yugoslavia and the subsidised public housing provided in west European countries for needy members of society. In Yugoslavia, socially or state-owned apartments were allocated to people from all social groups though state and party officials, business executives, ranking military officers, and experts had better chances of being allocated an apartment and more say with regard to its quality, location and size. As inflation eroded the value of the national currency, they purchased their apartments at giveaway prices. This policy eliminated the most important source of financing for public housing and incentives for construction (subsidised loans, mortgages and the like) even though these possibilities are envisaged by the 1992 Housing Act.

The Housing Act (*Sl. glasnik RS*, Nos. 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98, 26/01) regulates: 1) purchase of the remaining socially-owned apartments; 2) renting of socially-owned apartments; 3) the status of legal occupants of housing which is the private property of others. In all other areas, the market has taken over and housing is merely a commodity. Only in Article 2 of the Act does it say that the "state takes measures to create favourable conditions for housing construction and ensures conditions for meeting the housing needs of underprivileged persons, in accordance with law." All the other elements designed to protect and assist vulnerable social groups and which exist in different forms in all European countries, are no longer a matter of interest or concern for state agencies in Serbia and Montenegro. The problem is further exacerbated by the fact that "underprivileged persons" in fact means people on welfare, that is, those below the line of absolute poverty. Hence the number of people who can hope for state assistance with respect to their housing needs is indeed negligible.

The state did, however, retain some of its rights under the previous Housing Act and certain elements of the housing policy of former Yugoslavia: allocation of new occupancy rights over apartments

which were shortly afterwards purchased at low prices, and selective granting of easy-terms bank loans to high officials, which confirms the extent to which the *nomenklatura* was privileged and the law violated.[145]

The maintenance of the existing and construction of new housing is an acute problem. These matters are regulated by the Housing Act. The Housing Maintenance Act (*Sl. glasnik RS*, Nos. 44/95, 46/98, 1/01) specifies in detail which work must be undertaken to maintain apartments and buildings, and obliges apartment owners to participate in the costs of capital repairs and maintenance in proportion to the size of their apartments. Non-compliance with the law and the absence of legal provisions making it obligatory for those whose neglect of their own apartments causes damage to other apartments in the building to pay compensation to their neighbours have contributed to the poorer quality of housing and to the reduction in the value of real property.

Minimum housing standards are not fixed in either Serbia or Montenegro. Thus housing can be anything from shacks without running water, toilets and sometimes not even electricity, to luxuriously appointed mansions with swimming pools and tennis courts. This creates insurmountable problems in statistically determining the number of substandard dwellings.[146]

Retired persons are the only vulnerable category of the population for which Special Regulations on Housing Requirements have been adopted (*Sl. glasnik RS*, Nos. 38/97, 46/97). These matters are administered by the Serbian Pension and Disability Insurance Fund.

Municipal funds for building housing for indigent families are scant. No systematic record exists of the number of such apartments or their quality, nor are there fixed criteria for their allocation and use. In a recent ruling, the Constitutional Court designated the City Assembly as the body empowered to lay down uniform criteria for the allocation of these "solidarity" apartments, and companies, through their by-laws, to set the criteria under which the apartments are rented (*Sl. glasnik RS*, No. 1/01).

4.18.7. Physically and Mentally Disabled Persons

The Serbian Constitution guarantees to disabled persons training for jobs they are capable of performing and ensures conditions for their employment. Persons who are unable to work and have no means of living receive social welfare (Art. 40). For more details on social welfare for disabled persons, see I.4.18.3.

4.18.8. Nutrition

No constitutions or laws in Yugoslavia treat the right to proper nutrition. As a result, there are no food subsidies designed to improve the diets of the poorest and most vulnerable groups. The prices of some basic foods are "protected" to keep them at a relatively low level. Relief aid in food from foreign and domestic humanitarian organisations was distributed to refuges, the poor, the unemployed and other vulnerable groups through the Red Cross, and by churches and other humanitarian organisations.

4.18.9. Poverty

In June 2002, the Serbian Government adopted the Interim Poverty Reduction Strategy defining forms of poverty, stating information on the number of poor citizens and families as well as the particularly vulnerable categories of population. At the same time, this document determines the threshold of poverty in

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[145] Documents that came to light after the political changes in October 2000 brought out the extent to which the Housing Act had been violated by government agencies and the parties making up the then-ruling coalition. Although the 1992 Act did away with the system of allocation of housing (except in the case of persons on welfare), senior government, party and other officials were allocated large and luxurious apartment, which they then purchases at prices far below the market rate.

[146] The Housing Act defines a dwelling as "A dwelling within the meaning of the present Act is one or more rooms *intended and suitable for habitation* which, as a rule, makes up a single unit with a separate entrance" (Art. 3). The definition in official statistics is: "a built unit consisting of one or more rooms with ancillary rooms (kitchen, pantry, entranceway, bathroom and similar, or *without ancillary rooms* and with one or more entrances" (italics added).

a more narrow sense, which is the inadequacy of income for meeting basic living needs. According to the data published in the *Interim*, almost one third of Serbian citizens live in the conditions of poverty with average income below USD 30 per person per month, whereas 18% live below the absolute poverty line with income lower than USD 20.[147] Baring in mind the multidimensional character of the poverty phenomenon, during the process of drafting and implementing the Poverty Reduction Strategy its wider definition shall be used, besides the definition in the strict sense, which also includes the possibility to meet other existential needs (accessibility of public and utilities services).[148]

4.18.10. Education

The Federal and Montenegrin Constitution stipulate that primary education is free of charge and compulsory (Art. 62, Federal Constitution; Art. 62, Montenegrin Constitution). The Article 32 of the Serbian Constitution states that "tuition is not paid for regular education financed from public funds". From this provision it ensues that primary, secondary and high regular education are free, which means that this provision of the Serbian Constitution comes very close to the requirement in Article 13 (2) of the ICESCR, which prescribes that states have the obligation to gradually provide higher levels of education than the primary that would be free of charge. Compulsory education lasts eight years and is organised in the primary school.

Right to education, defined in the current constitutional provisions as the right to schooling, is guaranteed to all under equal conditions.

In the FRY the parents have no possibility to choose another educational institution for their children's schooling apart from the one founded by the public authority, although this right is explicitly prescribed by the ICESCR (Art. 13 (3 and 4)). Namely, natural persons are not allowed to establish primary schools, they can only be established by the state (Art. 9, Serbian Act on Elementary Schools, *Sl. glasnik RS*, Nos. 50/92, 53/93, 67/93, 48/94, 66/94, 22/2002; Art. 17, Montenegrin Act on Elementary Schools, *Sl. list RCG*, Nos. 34/91, 48/91, 17/92, 56/92, 30/93, 32/93, 27/94, 2/95, 20/95).

In April 2002 the Act on Changes and Amendments to the Act on Elementary Schools was passed *(Sl. glasnik RS*, No. 22/02*)* and in May 2002 the Act on Changes and Amendments to the Act on Secondary Schools was adopted *(Sl. glasnik RS,* No. 23/02*).*

The legislator has opted for conducting gradual reforms in education and these two acts are only the first step in this process. They do not change the concept of education and adopted changes are only a step towards decentralising the educational system, depoliticising the school and democratisation of teaching.

Changes and amendments mainly refer to the status, organisation, plan and programme of religious education and education in the other optional subject designated by the Minister of Education, determining the professional, administrative and inspection supervision, as well as the area of responsibility of school boards and parents' councils.

One of the important novelties relates to the decentralisation of school management, by transferring these authorities from republican level to the levels of local self-administration. School boards, we the school management bodies, have a tripartite composition according to these changes, being composed of school representatives, parents and local self-administration (Art. 118 (2), Act on Elementary Schools and Art. 89 (2), Act on Secondary Schools, *Sl. glasnik* Nos. 50/92, 53/93, 67/93, 48/94, 24/96, 23/02). The intention of the legislator was to create a partnership and harmonised opinions of those groups that naturally have an interest in participating in education. However, the question remains to what extent are the local authorities free from political reasoning while deciding on persons they nominate for membership in school boards, as well as to what extent are those representatives prepared to sincerely use the given authority (and the responsibility that accompanies it) in the best interest of the school as an educational institution. One of the authorities of the school board is to nominate school principals based on prior opinion of the teachers' council. Current practice in nomination of school principals (after the changes to

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[147] *Initial Framework of the Poverty Reduction Strategy*, Serbian Government, June 2002, p. 2.

[148] *Id*, p. 1.

the act have come into force) shows that in a significant number of cases the opinion of the teachers' council has been disregarded.[149]

Another important novelty is related to introducing the provision that ensures protection of groups and individuals from discrimination and protection from physical punishment and verbal abuse of students. Article 7 of the Act on Elementary Schools and Article 8 of the Act on Secondary Schools envisage the following:

All activities threatening or degrading groups and individuals on the grounds of race, national, language, religious affiliation, sex or political conviction, as well as instigating such activities is strictly prohibited in the school.

Physical punishment and verbal abuse of students' personalities is prohibited in the school.

In this way the republican laws underline the provisions of the Convention on the Rights of the Child related to non-discrimination, protection from abuse and school discipline in terms of the way it can be exercised (Art. 2, Art. 19 (1) and Art. 28 (2), of the Convention on the Rights of the Child; for prohibition of physical punishment see *Campbell and Cosans v. United Kingdom* (ECHR, App. No. 7511/76, 7743/76 (1982))[150]). These prohibitions are supported by appropriate protection mechanisms and their breach constitutes the grounds for dismissal of teachers or associates from the teaching process (Art. 73 (1), Act on Elementary Schools and Article 80 (1), Act on Secondary Schools). This is also the grounds for dismissal of school principals who do not take appropriate action in cases of improper conduct of teachers (Art. 88 (3), Act on Secondary Schools), and sanctions have also been prescribed for the school, which is obliged to pay a fine for the offence if it fails to take action against such conduct (Art. 109 (11 and 12), Act on Elementary Schools and Act. 140 (1 and 2) Act on Secondary Schools).

Serbian Government determines the number and location of schools in the republic and the Ministry of Education, at the proposal of municipalities, determines the area from which children are enrolled in a particular school. The novelty in these laws relates to the separation of the management from professional and pedagogical supervision in schools. By introducing the institution of education advisor a step further can be made in improving the overall education and upbringing process, thus influencing the quality of education. Financing salaries, compensations and other income of educational staff, as well as the funds for joint consumption, are centralised and done through the Ministry of Education. Also, by changes and amendments to the act it has been explicitly stated that the school can generate its own income from donations, sponsorships, contracts and other legal affairs. Municipality or the town provide resources for further professional development of teachers and associates, investment and regular maintenance, equipment, material costs and depreciation in keeping with the law, transport of students living farther than 4 km from the location of the school, if there is no alternative school at their location. For students with developmental disabilities transport is provided regardless of the distance between their house and school. Changes and amendments to the Act on Elementary Schools have introduced a provision pursuant to which "the municipality or town on whose territory the parent of the student has residence keeps records of children categorised and enrolled in an appropriate school, covers the cost of transport, food and accommodation of students if on the territory of that particular municipality there are no appropriate schools" (Art. 85 (9)). The problem, however, remains how this obligation would be fulfilled by poorer municipalities, which cannot allocate the necessary funds from their budgets. Current obligation of

[149] When there is a reference the right to education we usually think about children as beneficiaries of education or about parents who have the right to bring up their children in accordance with their religious and philosophical beliefs (Protocol 1, Art 2. of the European Convention for Protection of Human Rights and Freedoms). Teachers are most often and easily forgotten in the process. Although they are not the only ones concerned by the life and organisation of the school, the issue of electing school principals is primarily of their concern and interest. This is particularly important since the Act on Changes and Amendments to the Act on Secondary Schools envisages that Parents' Council would be dealing with issues related to the school life (Art. 90a). Election of the school principal is of more relevant to the life of school as a collective; therefore this authority should be fully given to the Teachers' Council. Such solution the school would become truly democratised and depoliticised institution.

[150] About the case of physical punishment of minors see also the case *Tyrer v. United Kingdom* (ECHR, App. No. 5856/72 (1978)).

municipalities, although regulated by law, has remained unfulfilled in poor municipalities (usually rural communities), where the problem of long distances from home to school is the most acute. The Act does not envisage organising specialised school buses, not even in municipalities with low population density and dispersed settlements. For these settlements, as well as for settlements with very small number of children in primary school age, the legislator envisages establishing the so-called branch schools, with combined classes. The Act contains the category "combined class" for lower elementary school grades (grades 1–4), in which two grades have been put together (in this case the class has 20 pupils) or three and four classes (of 15 pupils each). The quality of work in combined classes, located in old and poorly equipped buildings (frequently without toilet facilities and running water, library, kitchen, proper classrooms and similar rooms), is rather low and has a demotivating effect on pupils.

Professional advancement, obtaining certificates and development of teachers, associates and child minders are more closely regulated than in the previous acts and represent another step in the reform of educational system towards modernisation and increased quality of education.

The Act does not envisage penal provisions for municipal authorities, nor for the Ministry of Education, should they fail to ensure that students are able to attend school under conditions stipulated by this Act, but it does envisage sanctions for parents. A parent who deliberately fails to enrol his or her child into elementary school or the child is absent from school without justification, shall be fined with an amount from 1.000 to 10.000 dinars or 30 days in prison (Art. 141, Act on Elementary Schools).

Towards end of July 2001, Serbian Government has enacted a Decree Introducing Religious Instruction and an Alternative Subject in Elementary and Secondary Schools (*Sl. glasnik RS*, No. 46/01). Since new subjects in schools can only be introduced by acts and not decrees, the adopted changes to these acts regulate the introducing of these subjects into schools (See more I.4.8.).

4.18.10.1. The University Act – The Federal and Serbian constitutions do not mention explicitly the autonomy of the university, but they proclaim the freedom of scientific and artistic creation (Art. 53, Federal Constitution and Art. 33 (1), Serbian Constitution). Guaranteed freedom of science can mean the freedom of university as the institutional bearer of the scientific thought. In the Montenegrin Constitution, with similar provisions, the autonomy of the university is explicitly guaranteed (Art. 50, Montenegrin Constitution).

The New University Act was passed in April 2002 (University Act, *Sl. glasnik* No. 21/02). According to the words of the Minister of Education, Gašo Knežević, "this act is of transitional and temporary nature" (Beta, 18 April). The Act defines the teaching curricula, length of studies and redefines management bodies in the university and mandate of students' parliament, and also contains provisions on reviewing the election of teachers and associates done pursuant to the former University Act.[151] Compared to the previous law this Act represents a significant step towards genuine autonomy of the university.

Pursuant to Article 2 of this Act, the university is an autonomous scientific or artistic educational institution, which is very important given the absence of such norm in the Serbian Constitution.

The Act guarantees the freedom of scientific and artistic educational work and creation (Art. 4 (2)), whereas political, religious and party organisation is prohibited at the university.

A university can be funded by the Republic, legal and natural persons (Art. 10).

Article 16 encourages international educational cooperation, since the faculty or university can organise studies from their respective fields in cooperation with foreign university, faculty or international organisation.

An important part of the university autonomy principle is exercised through the provision pursuant to which a faculty enacts its own teaching plans and curricula and programmes for innovation of knowledge with consent of the university.

The new University Act regulates in detail the existence of the students' parliament – an organisation in charge of rights and interests of students at the university and faculty (Art. 64). Elections for this parliament are held once a year, by direct and secret ballot. This body elects ant dismisses its representatives in management bodies of the university and faculty. The importance of the students'

[151] More about the former law, see *Human Rights in Yugoslavia 1998*, IV. 4.

parliament is also reflected through the possibility of submitting proposals related to the improvement of the education process as well as in the possibility of filing complaints against the way in which teaching is organised and conducted. These complaints are deliberated by the faculty or university council.

Student representatives have the right to be attend sessions of the faculty or university council.

Pursuant to the new Act, a large portion of management in faculties and university has been left to the academic community.[152]

One of the new bodies is the Republic Council for the Development of University Education, consisting of deans and provosts of universities in the republic and ten members nominated by the Government; this body renders strategic decisions. The area of responsibility of this Council includes development and capacities of university education, material situation of universities, proposals of necessary preconditions for the opening of university and faculties (Art. 115, 116, 117, 118).

The University Act is also the first act containing elements of lustration (Art. 141).

It has been judged as a necessary and temporary solution in the public. The University Act from 1998 (*Sl. glasnik RS,* No. 20/98) has placed the academic community entirely under the control of the state. The implementation of this act has resulted in the dismissal of over 200 teachers and associates, leading to inefficiency of the teaching process, automatic promotions for which only the dean's signature was required, as well as the international exclusion of Serbian universities. The role of university was reduced to mere production of human resources intended to serve the state.[153]

In the discussions regarding the new Act that would regulate academic life, the issues of moral responsibility for the acts committed was raised. This should be seen as the source of Article 141 of the University Act. The question still remains to what extent could this provision be considered as lustration, because it has been softened, mitigated and given a time limit. The proposal to review the procedures of election of teachers during the previous law can be submitted by the dean of a faculty and the respective department, but only within two months of the date of coming into force of the present Act. Therefore, this review is not conducted automatically, but only at request, while the decision on review is taken by majority of votes of the overall number of council members. Given that during the time of the 1998 Act majority of teachers and associates have silently watched their colleagues being expelled, it is questionable whether they would now have the initiative and strength to accept the possibility of reviewing decisions taken in that period.

The Article 141 contains the provision allowing teachers and associates whose contracts had been terminated against their will during the period of the 1998 Act, to re-establish their employment at the faculty, upon personal request. Although this provision could be interpreted as a form of positive discrimination, in its essence it is only partial, but not sufficient attempt to rectify the injustice done to one part of the academic community.

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[152] For example, faculty deans are elected among permanent professors, by the faculty Council composed an elected mainly from the ranks of faculty teaching staff, whereas a small number of members are representatives of the students' parliament and the founder.

[153] See more *Human Rights in Yugoslavia 1998*, IV.4.

II

HUMAN RIGHTS IN PRACTICE

Summary

In 2002 the Yugoslav authorities expressed on a number of occasions a desire to secure the full observance of human rights, in keeping with relevant international standards, and the country's legal reform proceeded in a similar direction. Although some improvements are visible, the situation in practice is burdened with numerous difficulties.

The outstanding problems in 2002 included an apparent lack of desire to prosecute cases of discrimination, torture and trafficking in human beings, as well as human rights violations perpetrated in the past. Little was done in reforming and consolidating institutions which should play a key role in the protection of the rights of individuals.

There was an obvious lack of political will in the Federal Republic of Yugoslavia to look into serious violations of human rights and humanitarian law which took place in the 1990s. Just three convictions took place and one trial begun in 2002, leading to a conclusion that there was no determination to come to terms with the crimes and punish those responsible.

Although the state did not pratice or promote any discrimination in 2002, it effectively tolerated it by inefficient prosecution of offenders. Very few suspected cases of discrimination were investigated. The majority of the victims of ethnically motivated discrimination were Roma.

Some cases of brutal police torture were reported in 2002. In spite of the ongoing reform in the police, physical and mental abuse are still being used as a coercive tool in investigations. Although somewhat more frequent than in the past, there were still far too few inquiries into and prosecutions of cases of suspected police brutality, except when there was major public pressure. Even when policemen were convicted (as was the case only in Serbia), penalties were disproportionately lenient, leading to the conclusion that police brutality continues unobstructed in Serbia, and particularly in Montenegro.

Although more light was shed in 2002 on trafficking in human beings, it continued to be one of the biggest and most serious problems. What provokes particular concern are indications that a number of senior government officials, particularly in Montenegro, were implicated in cases of trafficking in human beings.

1. Introduction

1.1. Sources of research – Three sets of sources were used in the research conducted for this report. The first are the Yugoslav media, the second reports of Yugoslav non-governmental organisations (NGOs) and the third reports by international governmental and non-governmental organisations. Materials used are attributed to the medium or organisation that published them with the date of release or publication.

1.2. Domestic press – There are 14 daily newspapers in Yugoslavia – nine in Serbia and five in its partner republic Montenegro. Five Serbian dailies and four weeklies, and two Montenegrin dailies and one weekly, are considered politically relevant and are sold throughout the federation.

During the past year, the Belgrade Centre for Human Rights (BCHR) monitored five Belgrade dailies: *Politika*, *Danas*, *Večernje novosti, Glas javnosti* and *Blic*, and the Podgorica-based *Vijesti* and *Dan,* as well as three Belgrade weeklies: *Vreme, NIN* and *Reporter,* and the Podgorica weekly *Monitor*.

The state news agency Tanjug and the biggest independent agency Beta are also quoted, as are some foreign agencies.

Media reports indicate that there were fewer human rights violations in Yugoslavia in 2002 than in the preceding year. But this view is not supported by the sheer number of relevant media texts: some 11,215 were recorded in 2001, and 11,285 in 2002. One reason lies in the three rounds of presidential elections held in Serbia in 2002, local elections in three municipalities along the Kosovo administrative boundary, and parliamentary, presidential and local elections in Montenegro – this led to a virtual doubling of the share of articles on political rights, in fact up to 23.4% of the total.

In 2002, the number of texts on activities of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the Hague grew by about 50% over 2001, reaching almost 30% of the total of items devoted to human rights. This increase was expected, as the trial of the former Yugoslav President Slobodan Milošević opened in 2002.

The share of texts devoted to the plight of the non-Albanian population of Kosovo and Metohija continued its decline (from 19% to 8%). The reason apparently lies in a shift of media attention to the ongoing changes in the Federal Republic of Yugoslavia (FRY) and the attendant problems, as well as a certain reader fatigue with Kosovo events.

The remaining groups of human rights violations can be divided into two categories. The first encompasses social and economic rights (5.63%), minority rights (4.78%), the right to life (4.62%) and the right to a fair trial (3.76%)The share of texts on social and economic rights rose slightly over that recorded in 2001. This is seen as a result of the start of economic privatisation and the inevitable and growing number of workers' strikes.

The percentage of texts on minority rights fell by more than two thirds – from 17.5% to 4.78%. This happened partly because of the overall improvement in the enjoyment of those rights, but certainly more because violations of minority rights are increasingly being treated as violations of concrete rights of individuals. Many violations of minority rights therefore ended up in other sections of this report: discrimination, freedom of information and others.

The number of texts on violations of the right to freedom of expression (5.18%), the right to life (4.62%) and the right to a fair trial (3.76%) dropped slightly in 2002 compared to 2001.

The second group encompasses the freedom of thought, conscience and religion (2.29%) and prohibition of discrimination (1%), (their share remaining at the same general level as in 2001), and the prohibition of torture (1.92%), inhuman treatment (1.52%) and slavery.

The number of texts devoted to the prohibition of torture and inhuman treatment has been rising constantly since 2000, when human rights violations of that type began to grow in number and when the BCHR began covering the issue in its reports. The rise is a consequence of frequent instances of white slavery in the FRY, especially in Kosovo, but also of an increased public interest in that modern form of slavery.

There were also more texts on violations of the prohibition of torture; the reason does not lie in any actual increase in police brutality in 2002, but in growing general awareness that torture is illegal and the public becoming sensitive to every such case.

Table 1: Number of texts on human rights in the Yugoslav press in 2002

ŽZ_TBL_BEG = COLUMNS(14), DIMENSION(IN), COLWIDTHS(E6,E4,E4,E4,E4,E4,E4,E4,E4,E4,E4,E4,E4,E5), ABOVE(.0788), BELOW(.1181), HGUTTER(.0197), VGUTTER(.0197), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF)

ŽZ_TBL_BODY = TABLE 8C, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D, TABLE 8D

PAPER, I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, Svega

Politika, 119, 224, 234, 216, 147, 118, 110, 95 , 54, 125, 108, 77, 1.627

Blic, 137, 206, 208, 194, 115, 104, 87, 72, 69, 126, 85, 85, 1.485

Danas, 166, 233, 258, 264, 202, 162, 180, 119, 109, 177, 119, 115, 2.104

V. novosti, 157, 186, 222, 210, 146, 105, 126, 74, 66, 130 , 82, 95, 1.599

Glas javnosti, 129, 159, 184, 196, 140, 117, 118, 70, 82, 117, 102, 84, 1.498

Vijesti, 114, 145, 155, 114, 89, 76, 59, 63, 60, 74, 56, 90, 1.095

Dan, 119, 155, 144, 150, 110, 80, 85, 60, 68, 104, 76, 88, 1.239

Vreme, 11, 10, 14, 15, 11, 10, 11, 16, 7, 12, 10, 14, 141

NIN, 25, 20, 11, 20, 23, 14, 11, 14, 10, 17, 5, 7, 177

Reporter, 18, 17, 24, 21, 15, 7, 11, 5, 5, 11, 9, 6, 149

Monitor, 12, 18, 21, 18, 20, 11, 12, 8, 7, 14, 15, 12, 168

TOTAL, 1.007, 1.373, 1.475, 1.418, 1.018, 804, 810, 596, 537, 907, 667, 673, 11.285

ŽZ_TBL_END =

1.3. Reports by domestic non-governmental organisations – The following major reports and press releases were used in this report:

A) Albanci u Srbiji (Albanians in Serbia) – Preševo, Bujanovac and Medveđa, Humanitarian Law Center (HLC), 2002;

B) Alternativni izveštaj o primeni Okvirne konvencije za zaštitu nacionalnih manjina (Alternative Report on the Application of the Framework Convention for the Protection of National Minorities), HLC, 2002;

C) Izveštaj o monitoringu zatvora (Report on Monitoring Prisons), Helsinki Committee for Human Rights in Serbia (HC), November 2002;

D) HLC press releases, 2002;

E) Lawyers Committee for Human Rights (YUKOM) press releases, 2002;

F) Child Rights Centre (CRC) reports and press releases, 2002;

G) HC press releases, 2001;

H) Centre for Free Elections and Democracy (CeSID) reports and press releases, 2002;

I) Sandžak's Council for the Defense of Human Rights and Freedoms, press releases, 2002;

1.4. Reports of international organisations – Materials used in this report include those produced by the United Nations and its agencies (UNOHCHR, UNICEF), the joint UNICEF, UNOHCHR and OSCE/ODIHR report on trafficking in human beings in South-East Europe. BCHR also referred to reports and press releases of international non-governmental organisations such as the Human Rights Watch (HRW), European Roma Rights Center and Amnesty International (AI).

2. Individual Rights

2.1. Prohibition of Discrimination

2.1.1. Discrimination on Ethnic Grounds – Judging by media and NGO reports, in 2002 the state neither practiced nor encouraged discrimination, but effectively tolerated it by dilatory prosecution of offenders. The majority of victims of ethnically-motivated discrimination were again the Roma.

In a survey of ethnic intolerance commissioned by the Federal Ministry for National and Ethnic Communities, some 3% of those polled voiced extreme ethnic bias, 58% were moderate, and just 10% of the persons polled fully tolerated other religious and ethnic communities. Tolerance was highest in the ethnically diverse province of Vojvodina. Of particular concern is the fact that the highest level of intolerance was recorded in the 25–35 age group (*Glas javnosti*, 23 July, p. 6).

In July 2002, a national court ruled for the first time ever that racial discrimination was a violation of human rights. The District Court in Šabac, western Serbia, ordered local "Krsmanovača" Sports and Recreational Centre to publicly apologise to Merihana Rustenov, Jordan Vasić and Zoran Vasić, after pool

attendants had on 8 July 2000 turned them away because they were the Roma.[154] Ruling positively on all aspects of the action brought by the HLC, judge Ljiljana Mijailović – Vuković also ordered the institution to suspend all discrimination of patrons (HLC, Press Release, 10 July; *Blic*, 11 July, p. 8). In connection with the same incident, the HLC lodged on 21 July 2000 a report against persons unknown with the District Prosecutor in Šabac for the criminal offence of violation of equality of citizens. After the prosecutor declined to initiate proceedings before the court the HLC filed with the District Court in Šabac a request for an investigation, which is pending (HLC, Press Release, 10 July). Čedomir Vasiljević Centre owner, the owner of the Centre and a former Serbian government minister and official of the Serbian Radical Party (SRS), has denied all accusations, blaming the HLC for "using the Roma as guinea pigs" in its quest to prove the existence of discrimination (*Večernje novosti*, 23 July, p, 13).

2.1.1.1. Violence against the Roma – Although the media and NGOs reported fewer attacks directed at the Roma than in 2001, there were still many in 2002.[155] In spite of a significant drop in the incidence of police brutality against the Roma, such cases were still recorded in 2002.

Numerous criminal complaints alleging violence, torture and discrimination against the Roma were dropped by the prosecutorial authorities, who in 2002 ordered investigations in just a few more such cases than in the preceding year. No criminal actions against suspected perpetrators were brought.

The HLC filed on 30 January 2002 a complaint with the Federal Constitutional Court in connection with a prohibition of the access of the Roma to the a Belgrade disco.[156] The Third Municipal Prosecutor in Belgrade, the recipient of a complaint against disco employees filed in July 2000, had not begun an investigation, although the offence is liable to *ex officio* prosecution. Numerous complaints motivated the HLC to organise on 18 February 2000 a test which showed that the Roma were not admitted to the "Trezor" discotheque: two young Roma were turned away with the explanation that they did not have invitations – other patrons without invitations were let in.

Submitting that the lack of action by the prosecution was a serious breach of the UN Convention on the Elimination of All Forms of Racial Discrimination, the HLC asked the Federal Constitutional Court to find a violation of the Convention, whose Article 2 requires all signatories to use all appropriate means to put a stop to and ban racial discrimination practiced by any individual, group of organisation (HLC, Press Release, 30 January).

Four unidentified policemen from the police station in Petrovaradin (a suburb of Novi Sad), allegedly beat Jovan Nikolić, a Romany from the village of Dobrinci, on 11 November in their station and on 14 November in the police station in Ruma. Their alleged aim was to force Nikolić to confess to a theft. During the second beating Nikolić threatened to file a complaint against the policemen and undergo a medical examination at once, whereupon the inspector in charge decided to hold him in custody for 48 hours. The investigating judge questioned Nikolić on 16 November and then released him. Nikolić then went to the local ambulance in Ruma, were light injuries were recorded. The HLC filed a criminal complaint against the policemen with the District Prosecutor in Novi Sad (HLC, Press Release, 12 December).

Late in June, two Belgrade policemen physically abused two young Romanies washing car windshields; one of them slapped and insulted the children (HLC, Press Release, 2 July). Denying the charge, police said a "traffic policeman had without any physical or verbal abuse cautioned the young the Roma that they were unsafe and were obstructing traffic" (HLC, Press Release, 5 July; *Dan* and *Večernje novosti*, 4 July, pp. 8 and 11).

The HLC pointed out that prosecutors were quick to file charges against the Roma, even in cases where evidence of a criminal offence was very questionable (HLC press release, 23 September). The prosecutor in Bajina Bašta dropped criminal charges against a the Romany, a displaced person from

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[154] See Human Rights in Yugoslavia 2000, IV.4.3.3.

[155] For position of the Roma, see II.2.13.2.

[156] In July 2001, the FRY accepted the jurisdiction of the Committee for the Elimination of Racial Discrimination to receive and review individual and collective complaints by victims of discrimination, the Federal Constitutional Court was designated as the national legal institution of the highest instance before such applications are filed with the Committee.

Kosovo, who was on trial for inflicting light injuries. The injuries were inflicted by Staniša Simić on local Serbs who had been physically and verbally racially abusing him. Simić was legally represented by the HLC (HLC, Press Release, 23 September).

The Roma continued to be the principal targets of attacks of skinhead gangs in 2002. A group calling itself the Patriotic Segment of the Serb Skinhead Youth said in a proclamation which appeared on walls in March that its task was "the rejuvenation of the Serb family, the survival of the white race and the restoration of racial pride, and opposition to the new world order, drug addicts, homosexuals, racial intermixing and the deluge of coloured people" (*Glas javnosti*, 26 March, p. 4).

The media have estimated that there are some 500 organised skinheads in Belgrade and about 2,000 in Serbia, but representatives of the Roma community claim there are ten times as many. Slavko Jovanović president of the Roma Association Otvoreno srce ("Open Heart"), demanded that the state protect his people from the "skinhead terror" and warned that the Roma would "reply in kind if the state fails to help them" (*Glas javnosti*, 26 March, p. 4).

On 12 June 2002, a Belgrade skinhead abused and beat trolleybus conductress Radmila Marinković, a Romany (*Glas javnosti*, 14 June, p. 15). Three days later, police said it had established his identity and were looking for him (Beta, 15 June), but by the end of the year nothing further was reported in connection with this incident.

The Roma community also came in for abuse from others. In March, Pančevo resident Zlatko Đukanović brutally beat S. Ž. (16), after the lad had refused to answer "whether his father was a Gypsy". An inquiry was opened (*Glas javnosti*, 7 March, p. 12), but there was no report by the end of the year whether Đukanović had been charged.

In February, the Fourth Municipal Prosecutor in Belgrade filed charges against Vladan Stefanović (19), a resident of the borough of Zemun, for inflicting injuries on there Roma. In November 2001, Stefanović had brutally beaten the three, whom he had found sleeping in cars near the Belgrade Flea Market (*Blic*, 28 February, p. 12).

Abusive graffiti directed at the Roma and other ethnicities were often seen in some towns in Serbia and Montenegro.[157]

Cases of discrimination against the Roma were also reported in Montenegro. The municipal authorities in Nikšić refused for several days to grant to a group of 53 Romanies citizenship certificates required for personal identity cards. They were given the certificates only after the Ministry of Justice intervened. "Officials treated the Roma discourteously and threw them out from their offices. This is clearly a case of discrimination, as the local authorities are legally obliged to issue certificates within two hours after application," Aleksandar Zeković, head of the HLC office in Podgorica, was quoted as saying. An NGO called *Margo* claims that one-half of the roughly 20,000 Roma living in Montenegro do not have the identity documents necessary for the exercise of their rights (HLC, Press Release, 26 September; *Vijesti*, 25 and 26 September, p. 11; *Dan*, 27 September, p. 11).

2.1.1.2. Discrimination against other ethnic groups – A number of attacks directed at national minorities were reported in 2002; Chinese citizens in Yugoslavia also came in for discrimination, and there were several cases of open anti – Semitism.[158]

The HLC's Belgrade branch filed in April a criminal complaint against Momir Vujić, a resident of Petrovaradin, who, the HLC said, "motivated by ethnic hatred, has for three years been verbally and physically assaulting his neighbours, the Gojak family". Vujić threatened to set their house ablaze, insulted them and on 15 March physically assaulted Aziz Gojak. The Gojak family had sought protection from the police, who had not reacted (*Danas*, 18 April, p. 5; HLC, Press Release, 17 April).

In July 1999, an unrelated family forcibly moved into the flat in Belgrade of Vesel Sadiku, a retired ethnic Albanian policeman. Since a court ruled in his favour in 2000, Sadiku has made six unsuccessful

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[157] For more on hate speech, see II.2.8.9.5.

[158] For more on anti-Semitism see on hate speech II.2.9.5. More on earlier anti-Semitic incidents in the *Human rights in Yugoslavia 2001*, II.2.1.1.2.

attempts to re-enter his home (Beta, 19 February). There are indications that the enforcement of the judgment is not taking place because of Sadiku's ethnic origin.

Media reported growing discrimination against Chinese citizens who began settling in Yugoslavia in the late 1990s. In mid-November, residents of Novi Beograd found leaflets in their mailboxes demanding the expulsion of the Chinese from Serbia (*Radio B 92*, 17 November).

An association representing about 3,000 Chinese legally residing in the FRY has asked Yugoslav President Vojislav Koštunica and Serbian Prime Minister Zoran Đinđić to secure better treatment of its members. The president of the Association protested over frequent attacks on Chinese, who are concentrated in the Block No. 70 in Novi Beograd. Milan Knežević, owner of the textile firm *Modus,* located in the shopping centre popularly called the Chinese Market, said the incidents were the result of unfair competition by the Chinese, most of their goods he says have been imported without tax (*Politika*, 26 April, p. 9).

Local traders staged a protest in Novi Pazar in February, demanding the expulsion of the Chinese from that south-western Serbian town. "The Chinese are like a plague and should be driven out of Novi Pazar as soon as possible, because they will destroy our commerce", protesters were quoted as saying. The Novi Pazar-based Chinese businessman Guao Nek Sin said that he and his countrymen had all requisite permits and "wanted to work legally" (*Glas javnosti*, 7 February, p. 17).

There was no official reaction to these events, and the authorities did not investigate charges that most imports from China were illicit, which is in fact the main argument of those who attack and intimidate the Chinese (*Politika*, 26 April, p. 9).

2.1.1.3. Discrimination on other grounds – Other types of discrimination were also reported in the FRY in 2002. Most political discrimination took place in Montenegro. Displaced persons and sexual minorities were also victims of discrimination. The status of women in the FRY shows that gender-motivated discrimination was quite widespread. Of the total unemployment number of around one million, between 700,000 and 800,000 were women. Just five percent of all private property in Serbia belongs to women; in Montenegro, women's monthly wages are about 30 Euros, lower than comparative wages for men. Just 5.62% of all deputies in the Yugoslav Parliament are women; the figure in Serbia's parliament is 10.8%, and in Montenegro's 8.23%. Just four of Serbia's 24 government ministers are women (*Politika*, 21 March, p. 10; *Blic*, 30 September, p. 8; *Glas javnosti*, 3 November, p. 5; *Vijesti*, 10 November, p. 6).

Early in July, a group of eight Yugoslav NGOs[159] asked the Yugoslav Foreign Minister Goran Svilanović to take steps to abolish discrimination practiced against the citizens of the Moslem-Croat Federation in Bosnia and Herzegovina. "Citizens of the Republika Srpska (RS) can enter Serbia with a personal ID, while those from the Federation need a passport ... in hotels in Serbia, citizens of the Federation are charged rates applicable to foreigners, while those from the RS are treated as nationals ... postal and telephone services to the RS are subject to domestic rates, and those to the Federation to international rates", the letter said (Tanjug, 12 July; letter by eight NGOs to Minister Svilanović, 12 July).

Dušan Božović, director of the media centre in Budva, Montenegro, was sacked, apparently on political grounds. Minutes of the meeting of the board said one of the reasons for Božović's replacement was "that he is a member of the executive board of the DPS[160]" (*Vijesti*, 23 August, p. 8). Six police candidates who had completed special police training in 1998 were not employed in spite of passing all requisite checks and tests. "We were told off the record that we could not get jobs because we were not members of the DPS", Dušan Đokić, one of the group, was quoted as saying. In August, the group sent appeals to the OSCE, the Council of Europe and the HLC (*Dan*, 23 August, p. 8).

Late in April, the HLC issued public warnings about intolerance inhabitants of Kraljevo, central Serbia, were showing towards displaced persons from Kosovo. The HLC was reacting to a statement by Mayor of Kraljevo, who had come out against employing displaced persons in the customs service, the PTT and power company, "as long as 13,500 Kraljevo residents are on the unemployment list". There are

[159] The Humanitarian Law Center, the Helsinki Committee for Human Rights in Serbia, the Centre for Regionalism, the Women in Black, the Multi-National Association of Bosnians, the Belgrade Circle, the Lawyers Committee for Human Rights and the Belgrade Centre for Human Rights.

[160] Montenegro's ruling Democratic Party of Socialists

currently around 40,000 refugees and displaced persons in the Kraljevo municipality (HLC release, 19 April; *Glas javnosti*, 20 April, p. 6). A representative of the local authorities was also heard speaking out against the displaced persons.

Intolerance against people with different sexual orientations continued in 2002, even within the state offices. Speaking about the work of internal affairs, Miroslav Milošević, the head of the Belgrade local police department in charge of legality told the bi-weekly Nedeljni Telegraf in February that police personnel included drug addicts, homosexuals and people with criminal records, and that he would purge the police of such people. Gay and lesbian rights organisations reacted and sent a letter on 12 February to the Serbian Interior Ministry demanding that it distance itself publicly from such statements, that the police refrain from carrying out such "purges", and that Lt.-Col. Milošević be punished for his statement (Press releases by Labris, Gayten – GLTB, the Anti-Homophobic Campaign, the Same Sex Study Programme and Queeria, 12 February).

The latest UNAIDS report covering south-eastern Europe notes growing discrimination against HIV-positives in Yugoslavia. Viktorija Cucić, member of the Serbian government commission in charge of fighting AIDS, said that "HIV-infected persons lose their jobs, children are prevented from attending school, and their medical records are specially marked" (*Blic*, 26 November, p. 8). Official sources say there are now 1,314 HIV-positive persons in Serbia; the real figure is estimated to be at around 15,000 (*Blic*, 12 August, p. 2).

2.2. The Right to Life

The number of reports about threats to the right to life has been falling since 2000, and especially since May 2001, after the crisis in three municipalities in southern Serbia along the Kosovo administrative boundary was peacefully. resolved.

Fifteen murders believed to be either politically-motivated or linked with organised crime were recorded in 2002. They include the assassination of General Boško Buha of the Serbian Police.

There was an evident lack of political will to investigate serious violations of human rights and humanitarian law that took place under the previous regime and to punish those responsible. This is evidenced by just three convictions and a single fresh trial begun in 2002.[161]

Neither did the authorities complete investigations into of mass graves found in the preceding years. The prosecutorial authorities and the police traded accusations, blaming each other for this failure.[162]

Over 80 complaints were recorded in connection with medical malpractice, often with fatal outcomes. Several cases of sanitary and ecological negligence threatened the lives of thousands of people.

Capital punishment was abolished in Serbia and Montenegro in 2002; this was done at federal level in November 2001.[163] Abolition of the death penalty was one of the main preconditions for Yugoslavia's admission to the Council of Europe.[164]

2.2.1. Unsolved murders. – As long ago as October 2001, Serbian police offered a DEM 300,000 reward to "anyone who can provide evidence about the perpetrators or originators of 22 unsolved murders which took place in the past few years" (*Danas*, 19 February, p. 5). Dušan Mihajlović, Minister of the Interior, withdrew the offer in October, after no one had come forward with any such information (*Večernje novosti,* 4 October, p. 11).

Fifteen murders committed in 2002 are believed to have political or organised crime backgrounds (*Blic*, 23 October, p. 11).[165]

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[161] More II.2.2.3.

[162] More II.2.2.4.

[163] See *Human Rights in Yugoslavia 2001*, I.4.2.1., pp. 56, 244.

[164] See more <http://assembly.coe.int/communication/Temporar.../Liste%20d'engragments%20RFY_e.htm>

One of them was that of police general Boško Buha early in June (*Danas*, 10 June, p. 4). Five months later, police said it suspected a group headed by Željko "Maka" Maksimović, for whom an arrest warrant was issued. Nikola Maljković, Dragan Ilić and three others have been arrested as Murder suspects in this case.[166] Unofficial sources said that some 30 or more persons were also arrested (*Večernje novosti*, 30 October, p. 11; *Danas*, 31 October, p. 3; HRW press release, 1 November). The Belgrade District prosecutor initiated on 8 November investigations against Maksimović, Maljković, Ilić, Vladimir "Karlos" Jakšić, Bojan Miletić and Slobodan Kostovski on suspicion of murder, terrorism and conspiracy to commit crimes (*Glas javnosti*, 9 November, p. 9). The authorities said the suspects were part of a major criminal organisation formed to create chaos in the country by carrying out a number of political assassinations[167] (*Večernje novosti*, 30 October, p. 11; *Danas*, 31 October, p. 3; HRW Press Release, 1 November). The authorities did not specify further on the terrorism or organised crime aspect. Police announced that Dragan "Tapi" Malešević, a known painter, had died of a heart attack while being questioned in a police station in connection with this case (*Reporter*, 5 November, p. 3). The preliminary results of the official autopsy indicate that Malešević died of a sudden deterioration of a longstanding heart condition (HRW, Press Release, 1 November).

Police continue their fruitless hunt for the April 1999 assassins of Slavko Ćuruvija,[168] owner and editor of the daily *Dnevni Telegraf.* There are no visible results in the inquiry in connection with the disappearance in 2000 of the former Serbian President Ivan Stambolić.[169] The only information available in 2002 was a statement by one Zoran Topenčarević, who claims to have been a reporter for *Dnevni Telegraf*. Topenčarević applied for political asylum in Finland in January, claiming his life was in danger. He said that he had received reliable information from high-ranking sources in the SDB (State Security Service) that Ćuruvija had been slain by a group "headed by the SDB agent Mileta Pantelić" and that "it was most probably Mirjana Marković (wife of former Yugoslav President Slobodan Milošević) who had issued the order for Ćuruvija's assassination". Topenčarević also accused the SDB of murdering Stambolić and claimed that his remains had been built into a bridge in Novi Sad (*Blic*, 17 January, p. 9). Topenčarević's statements have generally been rated as unreliable.

Stambolić's wife Katarina believed that all hope of her husband still being alive had vanished. She also suspects that her husband had been abducted by the SDB but that the Yugoslav Army's security service was also involved. "The main responsibility certainly rests with Mirjana Marković", she said, adding that the Serbian and Yugoslav authorities knew what had happened to Ivan Stambolić but that "they don't want to say so" (*Glas javnosti*, 7 May, p. 11).

The Belgrade District Prosecutor said early in June that the investigation in the Stambolić case had yielded no results and that apart from the accounts of eyewitnesses to the kidnapping "we have not been able to obtain a single other item of information or evidence which could help us to solve the crime" (*Večernje novosti*, 4 June, p. 11).

The trial of persons accused of being responsible for the deaths of four senior officials of the then oppositional Serbian Renewal Movement (SPO) in a car crash on 3 October 1999 near Lazarevac has still not been concluded. SPO accusations that the police had staged a political assassination thus remain unconfirmed (*Politika*, 29 January, p. 11).[170]

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[165] Police say one of the reasons for this and other murders lies in the large quantity of unregistered firearms, of which they say there are about 70,000 in Serbia, including 2,327 seized in the January 2001 – February 2002 period. (*Večernje novosti*, 10 April, p. 11). There are about 500,000 registered guns (*Blic*, 6 August, p. 10).

[166] For more on circumstances of the arrest of the suspects in the Buha murder case, see II.2.3.1.

[167] Serbian police have said Maksimović's group planned to assassinate Serbian Prime Minister Zoran Đinđić and several other high-ranking political, business and police figures.

[168] More on this in *Human Rights in Yugoslavia 1999, 2000, 2001*, II.2.2, II.2.2.3, II.2.2.4.

[169] More in *Human Rights in Yugoslavia 2000, 2001*, II.2.2.3, II.2.2.2.

[170] More on this case in *Human Rights in Yugoslavia 1999*, II.2.2.2.

The identity of the assassins of Pavle Bulatović, the FRY Minister of Defence, gunned down of 7 February 2000, also remains unknown. A committee formed by the Yugoslav Assembly in December 2001 to look into the case was dissolved late in February 2002 after the parliament voted that it had exceeded its powers. The committee was made up largely of Radical and Socialist party deputies (*Danas*, 28 February, p. 4).

Also unsolved is the June 2001 murder of Jagodina journalist Milan Pantić.[171] *Glas javnosti* reported in July that the police were closing in on the assassins. The report was denied by the local police chiefwho said that the investigation was still a priority but that in spite of the fact that over a thousand people had been questioned no results had been achieved (*Danas*, 22 July, p. 5).

2.2.2. Trials of army and police personnel for breaches of humanitarian law – A Yugoslav military court delivered in 2002 for the first time ever judgment convicting army personnel for war crimes during the conflict in Kosovo. On 11 October, the military court in Niš sent Lt. Col. Zlatan Mančić to prison for seven years, Captain Rade Radojević to five years, private Danilo Tešić to five and private Mišel Seregi to four years. In July 2002, they were indicted for the murders of two Albanians in the village of Kušin near Prizren in April 1999, during NATO intervention (*Glas javnosti*, 29 July, p. 8). Tešić, Seregi and Radojević admitted that the first two had killed two unidentified Kosovo Albanian civilians and then burnt their bodies, acting on the orders of Mančić, an officer of the VJ security branch. Captain Radojević had not prevented the crime, although it was his duty to do so (HLC, Press Release, 12 October; *Danas*, 12–13 October, p. 1).

The court accepted a change in the indictment: the prosecution dropped charges in connection with Article 3 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. This provision is common to all Geneva Conventions and is applicable to conflicts which are not of an international nature. It prohibits "at any time and in any place infliction of injuries to life and corporal integrity, in particular all types of murder, mutilation, cruelty and torture". By accepting this approach, the court sided with the view of most military, political and legal circles in Serbia that Kosovo was the scene of a conflict between the Serbian security forces on the one side and terrorists and NATO on the other. The ICTY has defined the conflict in Kosovo between Serbian armed forces and the ethnic Albanians' Kosovo Liberation Army (KLA) as a conflict which was not international in nature (HLC, Press Release, 12 October).

According to the altered charges, the court found Mančić guilty of breaches of Article 33 (3) in conjunction with Article 5 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Article 33 (3) prohibits reprisals against protected persons, while Article 5 regulates the protection of those civilians whom a party to a conflict, in this side the Serb side, strongly suspects of working against it or being involved in espionage: "spies, saboteurs and persons giving rise to suspicion that they are involved in activities detrimental to the security of the state", whom the said article strips of some of the rights to which they are otherwise entitled under the Convention (HLC, Press Release, 12 October). Some sources, including the HLC, say this raises doubts about the genuine intention of military prosecutors and courts to put on trial people suspected of having committed war crimes during the conflict in Kosovo (HLC, Press Release, 12 October).

Although the two private soldiers' defence attorneys claimed that they had not completed their military training and were not aware of rules concerning civilians prescribed by the Geneva Conventions, the court held that they had known that their actions were prohibited. The presiding judge, Col. Radenko Miladinović, said the court had passed sentences below the minimum prescribed by law[172] because the defendants had been afraid that "they would be executed if they disobeyed their orders" (*Danas*, 12–13 October, p. 1).

The court rejected HLC's criticism, stressing that it had applied Article 142 (1) of the Federal Criminal Code in force at the time of the crime, which prescribed 15 years' imprisonment as the penalty for this type of criminal offence (*Glas javnosti*, 22 October, p. 5).

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[171] More on this in *Human Rights in Yugoslavia 2001*, II.2.9.1.

[172] The legally-prescribed minimum penalty for war crimes against civilians is five years' imprisonment.

On 8 July 2002, the District Court in Prokuplje sentenced Ivan Nikolić, a member of the VJ reserve, to eight years' imprisonment for a war crime against the civilian population (*Danas*, 9 and 26 July, p. 1 and III). In November 2001, Nikolić was indicted for the murders of two Kosovo Albanian civilians in the village of Penduh on 24 May 1999. In April 2002, the Serbian Public Prosecutor altered the charges to war crimes against the civilian population (*Danas*, 3 and 22 April, p. 22 and 1; HLC, Press Release, 11 July). The investigating judge requested the international administration in Kosovo to provide evidence in the case (*Danas*, 25 April, p. 3 and 18 May, p. 3). The Arguing that the judgment had been passed without any material evidence and "under pressure from the international community," Nikolić's defence attorney announced an appeal with the Supreme Court of Serbia (*Danas*, 9 and 26 July, p. 1 and III). It is not known whether the appeal judgment was lodged..

The HLC said the court had passed a fair verdict, in line with the facts the accused had provided to the military after his arrest and during the investigation, but the organisation believes the sentence is not appropriate given the gravity of the crime. Even the prosecutor, whose role is to be the guardian of the victims, made a serious mistake when he cited as a mitigating circumstance the defendant's youth and the courage he had shown during the war in Kosovo (HLC, Press Release, 11 July).

Late in April 2002, the Prokuplje District Prosecutor Višeslav Bukumirović, and the *Danas'*s correspondent began to receive anonymous telephone threats, believed to be coming from Nikolić's co-belligerents. Describing the trial as political, president of the Association of Veterans of the 1999 War Zoran Ristić said "the Serbian Ministry of Justice is kowtowing to the Hague Tribunal" (*Večernje novosti*, 27 April, p. 11; *Danas*, 11 May, p. 3).

Also in April, the trial resumed of Saša Cvijetan, a member of a special police unit charged in connection with war crimes against civilians.[173] Cvijetan allegedly took part in the killings of 19 ethnic Albanians in Podujevo in 1999. Co-defendant Dejan Demirović is at large (*Danas*, 9 and 10 April, p. 3). At the request of the Serbian Public Prosecutor, the Supreme Court of Serbia late in November transferred the trial to the District Court in Belgrade (*Danas*, 28 November, p. 1). There were no reports on any progress in the case.

2.2.3. Trials for abductions of Bosniaks in Sandžak in 1992 and 1993 – Little was done in 2002 to prosecute those responsible for grave violations of the human rights of Bosniaks in the Sandžak region in 1992 and 1993.

On 9 September, the Higher Court in Bijelo Polje sentenced Nebojša Ranisavljević to 15 years' imprisonment for taking part in the kidnapping of 19 passengers, mainly Bosniaks, from a train at the tiny station in Štrpci on 27 February 1993.[174] Ranisavljević has been in detention since October 1996. Proceedings began in May 1998; the trial was resumed on several occasions, as the law requires evidence to be presented anew every time proceedings are adjourned for more than a month.[175] The court held that Ranisavljević was guilty of a war crime against civilians. Together with a group of 26 other uniformed men, led by Milan Lukić,[176] he had forcibly taken away 20 passengers of Moslem nationality to the territory of the Republika Srpska, where they were beaten, stripped of valuables and then murdered. The presiding judge said that Ranisavljević had received the maximum penalty, but that the court had taken into consideration that "it has been established without doubt that the accused was a member of the armed group which had committed the crime, but not its organiser" (*Vijesti*, 10 September, p. 7; *Danas*, 4 October, p. III). A report of the Railway Enterprise, read out during the trial, showed that senior state officials had been informed about the planned abduction but had done nothing.[177] Although it is clear that

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[173] More on this and the Ivan Nikolić case in *Human Rights in Yugoslavia 2001*, II.2.2.1.2.

[174] For a chronology, see *Human Rights in Yugoslavia 2001*, II 2.6.3.

[175] See *Human Rights in Yugoslavia 2001*, II.2.6.3.

[176] The ICTY condemned Lukić in August 1998 for crimes against humanity and violations of the customs of war.

[177] Confidential information was disclosed that the director of the Sector for Defensive Preparations and Protection Mitar Mandić had informed the then General Director, Milomir Minić, that members of the Bosnian Serb Army of the Municipality of Rudo would stop a train and abduct passengers on the short section of the line passing through Bosnia and Herzegovina. After the kidnapping a report describing the

at least 30 others are implicated in the case, including very high-ranking figures in the state administration at the time of the kidnapping, there are no indications that anyone else is to be put on trial in connection with the crime (HLC, Press Release, 17 September).

The counsel of the families of the victims, filed early in September criminal complaints against fifteen persons who, he said, "did nothing and did not prevent the planned kidnapping, which they knew for a fact would take place". They include the then Yugoslav President Dobrica Ćosić, the then Serbian President Slobodan Milošević, the then VJ Chief of Staff Gen. Života Panić, and Jovica Stanišić, head of the Serbian SDB at the time (*Večernje novosti*, 11 September, p. 4).

The Belgrade District Public Prosecutor indicted on 23 October ten persons suspected of taking part in the abduction of 17 Bosniaks from a bus on the Sjeverin – Priboj line on 22 October 1992. Milan Lukić,[178] Oliver Krsmanović, Dragutin Dragićević, Đorđe Šević and six others face charges of war crimes. Dragićević and Šević are in custody, and arrest warrants have been issued for Lukić and Krsmanović (Beta, 24 October; *Danas*, 8 October, p. III). The trial had not begun by the end of the 2002.

2.2.4. Mass graves – Investigations into the discovery in 2001 of several graves in Serbia containing a total of 716 bodies, believed to be those of Kosovo Albanians killed during NATO intervention in 1999, were not completed in 2002.

Since June 2001, the investigating authorities have found two graves at a training range used by a special anti-terrorist unit of the Serbian police in Petrovo Selo near Kladovo with a total of 74 bodies, and another 48 bodies near Lake Perućac. Seven mass graves were found at the same unit's range near Belgrade, with 584 bodies counted so far, with possibly 50 more. The figure of 716 does not appear to be final; another grave which has not yet been opened is known to exist near Vranje (*Vreme*, 7 November, p. 24). Eleven bodies of Kosovo Albanians from the Petrovo Selo graves have been identified and handed over to relatives in Kosovo (*Politika*, 29 November, p. 8).

The Serbian Minister of Interior said in May that all available documents concerning the graves had been handed over to the prosecuting authorities and that identification of the bodies was under way, and was in no way connected with the police. A Deputy Public Prosecutor in Belgrade reacted, saying that "in order to initiate criminal proceedings, we need a criminal complaint and evidence". None of that, he added, had been submitted by the police (*NIN*, 28 February, p. 23; *Večernje novosti*, 16 May p. 11).

It is obvious that the police and prosecutors are either not cooperating or shifting responsibility back and forth, and that there is no political will to shed light on the crimes and to punish those responsible.

2.2.5. The situation in Preševo, Bujanovac and Medveđa – Attacks were reported against candidates for or members of the local multi-ethnic police force, as well as buildings used by the police. Prominent members of the ethnic Albanian ethnicity were attacked, as were some Serbs. Two murders committed in 2002 remain unsolved (HLC Report, *Albanci u Srbiji – Preševo, Bujanovac i Medveđa*, 2002).

2.2.6. Legal epilogue of the forcible mobilisation of refugees in 1995 – Serbian courts continued in 2002 to process actions against the state of Serbia brought in connection with the forcible mass mobilisation in 1995 of refugees from Croatia and Bosnia and Herzegovina; most of them were sent that year to the fronts in Bosnia and Croatia, where some were killed and others taken prisoner and maltreated. The HLC filed in 1996 and 1997 claims for damages for violations of honour, freedom and personal rights on behalf of 644 such persons, and its lawyers also represented the families of the 64 who were killed (HLC, Press Release, 20 November).

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events in Štrpci was signed by Minić. It was then forwarded to the Serbian ministries of defence, internal affairs and transport and communications. The evidence further shows that after the announcement of the planned kidnapping, meetings were held in Užice with the SDB and representatives of the VJ's Užice Corps. An eyewitness confirmed in court the accuracy of the information and also spoke about meetings he had held with representatives of the relevant ministries, army and the police.

[178] See the Štrpci case above.

Court continued their practice begun in 2001 – they awarded damages for illegal arrests, but the sums were far too low to make up for the refugees' suffering. Pecuniary damages paid for loss of life were equivalent to 7.500 euros, and in other cases were just over 800 euros.[179]

The First Belgrade Municipal Court awarded Nada Pupovac and Radoslav Babić, a refugee couple from Croatia, 70,000 dinars each (just over 1,166 euros) as damages for their suffering after they were illegally arrested and taken to the Republika Srpska in August 1995. The same court awarded Marta Budišić and her son and daughter 150,000 dinars each (2,500 euros) in damages for hardship suffered as a result of the death of their husband and father, respectively. The court awarded the same sum to the wife children of Dragomir Mandić, who was killed near Knin on 24 June 1995. In all three cases, HLC lawyers appealed against the amount of damages awarded (HLC, Press Release, 18 March, 13 May and 18 October).

The HLC also lodged appeals against the failure of courts to take into consideration the losses suffered by the refugees after being taken to the war zones. The courts did not take into account Article 33 on *non-refoulment* of the Convention on the Status of Refugees, prohibiting the FRY to return refugees to territories where they might be persecuted because of their racial, religious or ethnic affiliation, political orientation or membership in any social group.

Courts of lower-instance have only implemented the opinion of the Supreme Court of Serbia, to the effect that Serbian authorities are accountable only for damage suffered while on the territory of Serbia, and that there was no causal link between the illegal actions by Serbian policemen and the damage suffered by the refugees in the war-affected areas. Although the Supreme Court has not changed its opinion formally Tit was altered to a certain degree in 2001; on 24 October 2001, in a ruling on an appeal lodged against a decision of the Belgrade District Court, one of it's the Supreme Court of Serbia chambers found the state of Serbia responsible for the entire damage suffered by the said appellants. The court set aside the second-instance decision, raising damages awarded from 10,000 dinars (slightly over 166 euros) to 20,000 dinars (slightly over 333 euros) for each of the eight refugees. Although the ruling meant moral satisfaction for the forcibly mobilised refugees, the damages awarded are still humiliatingly meagre (HLC, Press Release, 7 March).

Acting in an appeal, late in July the District Court in Belgrade awarded 800,000 dinars (just over 13,333 euros) in damages to the family of Dušan Grbić, a forcibly mobilised refugee killed in Bosnia and Herzegovina in 1995. Grbić's wife and three children received 200,000 dinars each (just over 3,333 euros each) (HLC, Press Release, 26 July; *Blic*, 27 July, p. 10). A court of first instance had ordered the Republic of Serbia to pay 50,000 dinars in damages (just over 830 euros). The appeal was lodged by the HLC claiming that the court had failed to find Serbia also responsible for the damages Grbić had suffered after his handover to the authorities of the then Republika Srpska Krajina.[180]

Although it did not increase the damages (50,000 dinars, or just over 833 euros) which the First Municipal Court had awarded late in October 2001 to Ljuban Mrđenović, a refugee from Croatia, for his illegal arrest and handover to RSK in August 1995,[181] the District Court in Belgrade ruled early in March 2002 that the unlawful conduct of the Serbian police was to blame for the entire damage suffered by the refugee from his arrest until his return from the front (HLC, Press Release, 7 March).

2.2.7. Endangerment of general security – Dragoljub Milanović, former director of the Serbian state radio and TV enterprise (RTS), was on 21 June sentenced to nine-and-a-half years' imprisonment for endangering general security, in a case involving the deaths of 16 RTS employees from NATO bombs in 1999.[182] Milanović was found guilty of not implementing an order to relocate staff during a state of war

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[179] See *Human Rights in Yugoslavia 2001,* IV.3.2.2.1.

[180] See more in *Human Rights in Yugoslavia 2001,* IV.3.2.2.1.

[181] *Id.*

[182] Milanović was further sentenced to eight months' imprisonment for abuse of official position, and therefore received a single 10-year term.

(*Blic*, 22 June, p. 11).[183] On 1 October, the Belgrade prosecutor appealed against the length of the sentence to the Supreme Court of Serbia, which had not ruled on it by the end of 2002.

NATO intervention is also connected to criminal charges brought against the commanding officer of the VJ's Guards Brigade in February 2002 by the parents of soldiers killed in an air raid in Belgrade. The parents say Maj.-Gen. Milivoje Bojović is responsible for positioning the soldiers in an unprotected location, in an area known to be targeted, rather than in a nearby shelter (*Glas javnosti*, 22 and 25 February pp. 10, 23). In mid-October, the military prosecutor in Belgrade initiated investigation (*Glas javnosti*, 15 October, p. 9).

The Non-Governmental Organisation of Parents of Victims (NOPNU), claimed that seven VJ soldiers had been killed in NATO intervention due to the negligence of their commanding officers and announced that it had filed criminal complaints against several officers (*Politika*, 12 September, p. 8).

No new information came to light in 2002 in connection with the explosion which took place in 1995 in the Belgrade factory *Grmeč*, killing 11 and seriously wounding nine persons (*Vreme*, 21 November, p. 14). In March 2001, the Supreme Court of Serbia quashed a ruling of the Belgrade District Court that there was no reasonable basis for a criminal investigation against the then Grmeč director Rajko Unčanin and four other managers.[184] The Supreme Court ordered a fresh investigation, ruling that the District Court had not established the true cause of the explosion and had therefore not had any basis for assuming that the management was not responsible. The case is now with the investigating judge. The media reported in 1995 that the blast was the result of an ill-advised attempt to make rocket fuel in a factory not equipped for such production.

Following the accident, the District Prosecutor first filed a request for an investigation, and then dropped it. The victims' relatives then filed their own request for an investigation against those suspected of being connected with a serious criminal offence against general security of citizens with fatal consequences (Art. 194, Serbian Criminal Code). They also filed a criminal complaint against Radoslav "Lule" Lukić, then an assistant head of the SDB (*Vreme*, 21 November, p. 13). The investigating judge, however, declared them not responsible following an order of the then Serbian President, Slobodan Milošević, and the SDB head, Jovica Stanišić, that the production of rocket fuel be undertaken (*Vreme*, 21 November, p. 15).[185] An appeal by the families then went to the District Court, which upheld the investigating judge's decision. The families appealed to the Supreme Court of Serbia, which in 2001 quashed the District Court's decision. Since the case was returned to the District Court, no new investigation has taken place.

2.2.8. Endangerment of the right to life on other grounds – Several dozen complaints were recorded in 2002 in connection with medical malpractice. The Serbian Physicians' Society and the Private Physicians' Association received 80 such complaints (Beta, 5 March). Instances of alleged malpractice with fatal consequences and other similar investigations and trials took place in Bor (*Glas javnosti*, 25 April, p. 11 and Beta*,* 17 June), Podgorica (*Vijesti*, 17 June, p. 5), Belgrade (*Glas javnosti*, 20 May, p. 19; *Večernje novosti,* 12 February, p. 10), Šabac (*Blic*, 27 April, p. 8), Valjevo (*Danas*, 15 April, p. 20), Užice (*Večernje novosti*, 21 March, p. 11) and Niš (*Politika*, 16 September, p. 9; *Glas javnosti*, 4 October, p. 8).

Early in September 2002, a total of 420 people were affected by a water supply – related epidemic in the central Serbian town of Topola. The head of the local water utility was arrested on r suspicion of being responsible. After spending seven days in detention, he was released on bail (*Danas*, 31 August, p. 4; *Danas*, 7 September, p. 4*)*.

Negligence caused a major outbreak of trichinosis in Serbia in late 2001 and early 2002, affecting 404 people. Butchers in Zrenjanin, Novi Bečej, Žitište, Loznica, Batajnica, Kragujevac, Novi Sad and some other towns used bacteria – infected pork to make smoked meat products, which they then sold without veterinary certificates. A Zrenjanin butcher and a sanitary inspector were detained during the

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[183] More on the case in *Human Rights in Yugoslavia 2001,* II.2.2.3.

[184] There is speculation that the group of people involved in illegal trade in arms with Iraq uncovered in November 2002 was also involved in the explosion in the Belgrade firm *Grmeč* (*Vreme*, 21 November, p. 13).

[185] See *Human Rights in Yugoslavia 2000,* II.2.2.4.

epidemic (*Večernje novosti* 12, 23 and 29 January, pp. 11, 2, 11), but there were subsequently no reports that they had been prosecuted.

Endangerment of life and health was also reported in Montenegro, particularly in connection with inappropriate locations of rubbish dumps. Protests were reported in Petrovac, Nikšić, Grbalj and Budva. "No dump in Montenegro has all the necessary technical documentation or meets the requisite sanitary location, construction and utilisation criteria", an ecological consultant was quoted as saying and adding that Montenegro's only waste water purification system was located in Podgorica (*Monitor*, 26 April, p. 30–31).

2.2.9. Abolition of the death penalty – The Serbian parliament adopted on 26 February amendments to the Criminal Code abolishing the death penalty and replacing it with a 40-year term of imprisonment.[186] The Montenegrin parliament abolished capital punishment on 20 June (*Vijesti*, 20 June, p. 4).[187]

At the time of the parliamentary vote, there were 25 death row inmates in Serbian prisons (*Blic*, 27 February, p. 10 and *Danas*, 1 March, p. 5), including Vučko Manojlović, who had been awaiting execution for 17 years (*Politika*, 10 March, p. 9). On 6 November, the District Court in Niš set aside the death sentence for Manojlović, and replaced it with 40 years' imprisonment (*Blic*, 7 November, p. 10). Most legal professionals believe that all death sentences ruled effective before the adoption of the changes in the law should automatically be commuted to a 40-year prison term. But no court ruling to that effect had been rendered by the end of 2002 – the Supreme Court of Serbia had received no commutation request from a prosecutor or a condemned person.[188]

2.3. Prohibition of Torture, Inhuman or Degrading Treatment or Punishment

The number of Yugoslav media reports of police brutality grew somewhat in 2002, most probably not because of an actual increase in the number, but because of better coverage. The HLC reported over 200 cases of police brutality had been reported in Serbia and Montenegro (*Vreme*, 19 December, p. 29). The real figure is most probably far higher, as the majority of cases, except for the most drastic ones, go unreported.

Regardless of reforms initiated in the police, duress is still employed as a means of obtaining information in investigations.[189] Although somewhat more than in the preceding years, still too few policemen suspected of brutality were taken to task, except where there was public pressure. The police habitually deny all responsibility and provide inane explanations; have never addressed the issue seriously, let alone taken disciplinary or preventive (educational) action to halt and punish such abuse. In a very small number of cases, policemen suspected of exceeding authority were suspended from duty.

Only in Serbia did courts in some cases award damages to persons brutalised by police and punish those responsible, but the penalties were usually comparatively lenient.[190] Police brutality clearly remains generally immune in Serbia, and especially in Montenegro.

Failure to conduct efficient and timely investigations represents a violation of the prohibition of torture, inhumane and degrading treatment (*Assenov et al. v. Bulgaria*, ECHR, App. No. 24760/94 (1998)). In the case of *Ristić v. Yugoslavia* (Comm. No. 113/1998), the UN Committee against Torture (CAT) had found the FRY in breach of the right of Milan Ristić, who died on 13 February 1995, to a prompt and impartial investigation and the right to an efficient legal remedy (Art. 12 and 13 of the Convention against

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[186] See more I.4.2.1.

[187] Id.

[188] Interview with Vida Petrović-Škero justice of the Supreme Court of Serbia, BCHR archives, September 2002.

[189] More on police brutality toward on the Roma II.2.1.1.1.

[190] More *Human Rights in Yugoslavia 1998,* II.3.2.2.

Torture).[191] Police claimed that he had committed suicide, but reasonable suspicion exists that he was killed by three policemen. In its decision, dated 11 May 2001, the CAT ordered the FRY to provide the parties who had suffered damage the right to an efficient legal remedy, to conduct an investigation and to provide it with information thereon, but the Serbian judiciary appears to has done nothing to comply.

The non-compliance with the views of a body whose jurisdiction has been accepted by the FRY led Ristić's parents and the HLC, who brought the action before the CAT, to file a claim for damages in April (HLC, Press Release, 9 April; *Blic*, 10 April, p. 8).

Richard Towle, Head of the Office of the UN High Commissioner for Human Rights in Belgrade, said that in spite of considerable progress have been observable in the reforms in the police, prisons and the judiciary since October 2000 "torture reportedly still takes place, and prosecutions are slow in those cases. There is still concern that some of the torturers remain outside the grasp of the law" (Beta, 25 June).

In mid-January the Yugoslav Parliament set up a commission to examine the conditions under which ethnic Albanians and the Serbs in Kosovo and Metohija served their prison terms in Serbia, and in Kosovo, respectively (Beta, 16 January).

2.3.1. Torture in Serbia – Police torture was reported in the media in 2002 in Trgovište (*Politika*, 9 March, p. 11), Belgrade (HLC, Press Release, 11 March; *Blic*, 12 March, p. 10; HLC, Press Release, 31 March), Prokuplje (*Glas javnosti*, 5 February, p. 5; *Blic*, 19 and 26 February, p. 11), Pančevo (*Glas javnosti*, 8 March, p. 10), Šabac (*Glas javnosti*, 14 June, p. 14), Leskovac (*Blic*, 29 June, p. 11), Mladenovac (HLC, Press Release, 16 July; *Dan*, 17 July, p. 9 and *Danas*, 24 July, p. 5), Vranje (HLC, Press Release, 22 November) and the Belgrade suburb of Zemun (HLC, Press Release, 5 December).

Police brutality was concentrated in southern Serbia – in Leskovac, Surdulica, Vladičin Han and Vranje (*Blic*, 6 June, p. 9; *Blic*, 12 September, p. 10). Dobrosav Nešić, president of the Human Rights Committee in Leskovac, said that since (the political shift in) October 2000, 120 cases of police torture had been recorded in the Jablanica and Pčinja districts (*Blic*, 6 June, p. 9). The Serbian Minister of Interior said that the accusation was unfounded. "Torture as a method of work does not exist and it is only history", he said, but he did not rule out the possibility of sporadic cases of abuse of office and exceeding authority (*Blic*, 6 June, p. 9).

The Sandžak's Council for Defence of Human Rights and Fredoms had by late 2002 filed about 30 criminal complaints in connection with brutal actions by police in Novi Pazar, the regional centre, (Beta, 14 December). Tutin (HLC, Press Release, 10 and 25 January; Beta, 6, 8, 10 and 11 January and *Danas*, 12 January, p. 11) and Sjenica (Beta, 1 February). Semiha Kačar, charwoman of the Committee, said that the police in Sandžak consisted of the same people who had in the previous ten years maltreated about 15,000 persons (*Glas javnosti*, 25 May, p. 5).[192]

The Serbian police admitted that in the first half of 2002 its personnel had used coercive methods in 408 cases, including six cases where such use was unjustified. A total of 392 complaints were lodged in connection with work and conduct; police said that in its view 43 of them were justified, and that disciplinary action had been taken against 35 policemen (*Glas javnosti*, 12 July, p. 11).

This Report deals here only with cases of police brutality which provoked some public interest.

Milan Jezdović, 24, died on 4 December while being questioned by Belgrade police. The Serbian Ministry of Interior claimed that Jezdović had resisted arrest and had died of a heart attack. The Police maintained that a considerable quantity of narcotics had been found in his flat. Jezdović's family have doubted the veracity of the police statement, stressing that photographs of his body clearly showed bruises and injuries on his face. The investigating judge announced an inquiry after the results of the autopsy are received. Aleksandar Drašković, who was arrested together with Jezdović, claimed that policemen had submitted both to electric shocks, beating by batons and asphyxiation with plastic bags (*Politika*, 10 December, p. 15; *Danas*, 12 December, p. 17). Reacting to the accusations, the police claimed that

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[191] See *Human Rights in Yugoslavia 2001,* II.2.3.

[192] The HLC estimates that about 17 percent of police staff in the Sandžak region are Bosniaks, which is considerably lower than their share in the local population (HLC, report by Dragan Lalošević at a round-table held on 14 December: *Minority Rights – Bosniaks in Serbia*).

Jezdović had been known for a number of years as a narcotics dealer, clearly showing no awareness that the prohibition of torture, inhuman and degrading treatment was absolute.

Late in February 2002, three unidentified Smederevo policemen brutally beat and used electric shocks on Vladimir Radojčić, 28, a resident of Belgrade. On the way to Smederevo and in their police station, the three kicked Radojčić, hit him on the head with pistol butts and inflicted electric shocks to his legs and genitals. Back in Belgrade, he reported to the Emergency Centre, where doctors found a broken ankle joint and numerous contusions and burns. Radojčić was given no document by the police about his arrest and detention (HLC, Press Release, 5 March).

The Belgrade Centre for Human Rights highlighted the obligation of the authorities to investigate this and every other case where there are reasonable grounds to believe that an act of torture or inhuman and degrading treatment occurred, and to prosecute those responsible (BCHR, Press Release, 11 March). An Interior Ministry working group established to look into the case reported that "Radojčić, who is well known to the police and who has a long criminal record, sustained the wounds while trying to fly from the police". It maintained that the medical certificate issued to Radojčić at the Emergency Centre in Belgrade was "a fake, obtained from a doctor friend". The report notes among other things the presence of "bruises at the back and the neck, a swelling and contusion on the elbow, and burns accompanied by swellings on both sides of the ankle joints" (*Večernje novosti*, 6 and 8 March, p. 15; *Glas javnosti*, 7 March, p. 3; *Blic*, 8 March, p. 9; Beta, 11 March; *Politika*, 27 March, p. 10).

The Serbian Interior Ministry announced that Belgrade police and SDB agents had on 27 October 2002 arrested Nikola Maljković, 30, suspected of the murder of police general Boško Buha.[193] Maljković's lawyer said on 30 October that his client was in the prison hospital with fractured arm and several ribs, and bruises all over his body. Police have not disclosed anything about the injuries (HRW, Press Release, 1 November; *Politika*, 1 November, p. 11). The Human Rights Watch has voiced concern about possible police involvement in an incident in which Dragan Ilić, 46, one of the suspects, was brutally beaten after his release from detention on 29 October, whereupon he was re-arrested in a Belgrade hospital. Sources in Belgrade suggested that the police were enraged after the investigating judge released Ilić (HRW, Press Release, 1 November). In a statement published in connection with the cases, the Belgrade Centre for Human Rights reminded the authorities of their obligation to promptly and efficiently investigate all cases where arrests of persons suspected of criminal offences were conducted under suspicious circumstances, and where there were obvious traces of maltreatment (BCHR, Press Release, 6 November).

There are serious indications that the Belgrade police tortured Alija Delimustafić, the former Minister of the Interior of Bosnia and Herzegovina. A spokesman for the First Municipal Court said that during the first two questioning sessions the investigating judge had noticed "minor contusions under both of Delimustafić's eyes". Delimustafić's lawyer said that there was reliable information that his client had been brutally beaten (Beta, 25 January). Delimustafić was arrested in Belgrade on 17 January and late in March sentenced to three months in prison for possession of forged documents. In May, he was handed over to the authorities of Bosnia and Herzegovina, where he is to stand trial for abuse of official position and forgery (*Danas*, 27 March, p. 5; *Glas javnosti*, 28 May, p. 17; *Reporter*, 4 June, p. 17).

2.3.1.1. Prosecution for police brutality – Courts have passed light sentences in all eight police torture and maltreatment cases tried since October 2000. Even where serious injuries had been inflicted, the offending policemen were sent to prison for less than eight months. The only exception was an 18-month jail for a policeman, condemned in August 2002[194] (HRW, Press Release, 1 November).

The Municipal Court in Vršac sentenced on 13 June 2002 policemen Igor Janjić and Nenad Atanacković to two months' imprisonment each, with a year's probation, for the beating of Georg Tani in the police station in Plandište on 23 December 2000 in an effort to obtain his confession (HLC, Press Release, 14 June; *Danas*, 15. June, p. 22).

In a trial held on the basis of criminal complaint charges filed by the HLC as early as in April 1994, three policemen were sent to prison in 2002 for abusing citizens of Bosniak nationality. On 1 July 2002,

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[193] More on Gen. Buha's murder II.2.2.1.

[194] See below Surdulica police inspector Dragoslav Jovanović, sentenced by the Supreme Court of Serbia to 18 months in prison for obtaining confessions under duress.

the District Court in Užice sentenced Prijepolje policemen Momir Laković, Nenad Puzović and Ratomir Dučić to five months' imprisonment each for the criminal offence of forcing a confession (Article 65 (2) of the Serbian Criminal Code), committed on 17 February 1994 in the police station in Prijepolje (HLC, Press Release, 4 July; *Glas javnosti*, 5 July, p. 11).[195]

The Fifth Municipal Court in Belgrade sentenced on 8 July 2002 Dragan Ninković and Goran Krstić, policemen in the Belgrade borough of Voždovac, to three months' imprisonment each, for the criminal offence of maltreatment in official capacity (Art. 66, Serbian Criminal Code).[196] It was established that on 7 May 1998, Ninković and Krstić had brutally beaten Krsta Kalinović, a the Romany born in 1976, inflicting numerous injuries. The two were trying to force Kalinović to provide information on offences which had allegedly taken place in the vicinity of his home (HLC, Press Release, 9 July; *Danas*, 10 July, p. 5). It was not known whether the judgment had become effective by the end of 2002.

Early in October 2002, the Municipal Court in Vrbas sentenced Saša Mladenović and Željko Bukinac, policemen in Srbobran, to suspended sentences of eight months' imprisonment each, after they had on 14 July 2000 brutally beaten and seriously injured Dragan Šijački, an artist from Novi Sad. The court acquitted Danijel Galić, the third member of the police patrol (HLC, Press Release, 9 October; Beta, 14 October).[197] It is not known whether the sentences have been appealed.

Early in August, the Supreme Court of Serbia sentenced police inspector Dragoslav Jovanović, from the southern Serbian town of Surdulica, to 18 months' imprisonment for using force to obtain evidence. The original sentence passed by the District Court in Vranje had been ten months, which the Supreme Court said it had increased because Jovanović had "enjoyed and shown persistence in ... humiliating (the victim) during five hours of interrogation" (Beta, 9 August).

Early in June, also in Belgrade, three policemen went on trial on charges of using duress to force a confession from Dušan Lukić in March 1995; Lukić died two weeks after he was released (*Blic*, 4 June, and 24 September, pp. 9 and 11).

Several policemen were suspended from duty in 2002 on suspicion of exceeding powers and using unauthorised force: in Sjenica (*Glas javnosti*, 4 February, p. 11), Leskovac (*Danas*, 2 and 4 July, pp. 13 and 5) and Belgrade (*Danas*, 27 September, p. 16).

In March the police in Novi Sad filed criminal charges against two of its officers, suspected of inflicting serious injuries on Marko Brkić (HLC, Press Release, 25 February; *Blic*, 12 March, p. 10). Spasoje Dinić, chief of the Vranje police department, and another policeman were relieved of duty in early May for maltreating detainees (*Večernje novosti*, 9 May, p. 11). On 14 December, the District Prosecutor in Novi Pazar opened an investigation against Milić Karloičić, a former inspector of the local police, on suspicion of maltreating a number of persons in order to force confessions. A YUKOM lawyer said that this was the first ever investigation in Sandžak based on a criminal complaint for such an offence (Beta, 14 December). At the end of 2002, it was not known if criminal proceedings had been initiated against any of these policemen.

2.3.1.2. Awards of damages in connection with police brutality – In August 2001, the Municipal Court in Vršac awarded 15.000 dinars (250 euros) in damages to Georg Tani (HLC, Press Release, 14 June; *Danas*, 15 June, p. 22).[198]

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[195] Kasim Hajdarević and Imzo Kamberović were arrested during a weapons collection drive in Prijepolje on suspicion of illegally possessing firearms. After nothing was found in their homes, for 24 hours the two were exposed to police brutality, particularly by Laković, Puzović and Dučić, in an effort to force them to confess where they had hidden their guns. Hajdarević sustained serious injuries, and Kamberović has suffered serious health problems ever since.

[196] The HLC lawyers who filed a criminal complaint in June 1998 represented the victim of the torture.

[197] See *Human Rights in Yugoslavia 2001,* II.2.3.1.

[198] More on the Tani case in the section on prosecution in connection with police brutality in Serbia II.2.3.1.1.

The First Municipal Court in Belgrade ordered the Republic of Serbia to pay Danica Drašković, the wife of the Serbian Renewal Movement leader Vuk Drašković, damages of 330,000 dinars (5,500 euros) for serious injuries inflicted by the police in arrest in June 1993, (*Danas*, 3 September, p. 5).

The Municipal Court in Novi Sad ordered Serbia to pay Stevan Dimić, a Roma man, damages of 240,000 dinars (4,000 euros) for beatings he had suffered at the hands of the police. Dimić was arrested on suspicion of having raped a 15 year-old girl; police then tried to force a confession from him. In April 2000, Dimić was cleared of the charges (*Reporter*, 5 November, p. 14).

The First Municipal Court in Belgrade awarded late in November damages of 210,000 dinars (3,500 euros) to Đorđe Lazarević for serious injuries inflicted on him by the police on 29 September 1999 during a public protest against the regime of Slobodan Milošević (Beta, 27 November).

2.3.1.3. Prisons in Serbia – Serbia's Ministry of Justice announced late in September that there were a total of 6,000 inmates in 28 prisons in Serbia, including 5,000 prisoners and 1,000 detainees (*Blic*, 28 September, p. 10).

Between April and August 2002, a team of the Helsinki Human Rights Committee in Serbia visited the prison for juvenile offenders in Valjevo, the prison in Niš and the minimal security prison in Padinska Skela, near Belgrade (Report on Monitoring Prisons, Helsinki Committee for Human Rights in Serbia, November 2002). Although there was some evidence of neglect and of the consequences of the 2000 prison riots and of 2001 floods, living conditions were generally considered satisfactory and in line with European standards. There was a shortage of funding for prisoners' personal hygiene and proper heating in the winter (Report on Monitoring Prisons, Helsinki Committee for Human Rights in Serbia, August 2002).

Over 700 inmates of the Zabela prison near Požarevac went on a hunger strike in March 2002, demanding better living conditions. The strike ended after the Serbian Minister of Justice promised four outdoor activity hours a day instead of two, TV privileges, pay phones in the prison and the necessary medicines (*Blic*, 26 and 27 March, pp. 10 and 9).

2.3.2. Torture in Montenegro – Reports came in 2002 from the Montenegrin towns of Bijelo Polje, Podgorica, Berane, Danilovgrad, Pljevlja, Cetinje, Bar and Nikšić of police brutality aimed at forcing confessions or other reasons (*Dan*, 29 March, 7 April, 7, 8 and 9 May, 14 August, 3, 15, 22 and 24 October, 9 and 20 November, pp. 8 and 9; *Vijesti*, 30 March, 12 April, 24 July, 22 August, 13 and 15 November, p. 5; HLC, Press Release, 23 July). There had been no reports by the end of 2002 of any investigations or criminal proceedings in any of these cases.

The Montenegrin police harassed refugees from Kosovo in July 2002 in a refugee camp in Kamenovo; policemen allegedly beat up the owner of the land. Montenegrin media reporters at the scene of the incident protested after police threatened them and seized their gear (*Danas*, 12 July, p. 2; *Dan*, 13 July, p. 8).

2.3.2.1. Prosecutions in connection with police brutality in Montenegro – Several Montenegrin policemen suspected of unlawful use of force were prosecuted in 2002.

On 4 March, the Higher Court in Bijelo Polje set aside a judgment acquitting police inspector Željko Golubović of the charges against him and returned the case to the investigating authorities. Golubović, accused of using beatings in an effort to force a confession from Bojan Tošić on 10 November 1999, had been acquitted by the court in Pljevlja in October 2001. The Higher Court said it had reversed the judgment because of "the infringements of the criminal procedure and the law" in the first-instance proceedings, and because "the facts of the case were not established correctly" (*Dan*, 5 March, p. 8; HLC, Press Release, 4 March).

Late in July, an investigating judge in Podgorica remanded in custody a policeman suspected of the criminal offence of inflicting serious injuries with fatal consequences. In a quarrel which took place on 28 July, the policeman allegedly hit a civilian, who fell on the pavement, sustaining fatal injuries (*Dan*, 31 July, p. 9).

Velibor Rahović, Srđan Šćekić, Miljan Đerković, Zoran Tajić and Radoman Tijanić, members of a special police unit in Berane, were suspended from duty and are under investigation on suspicion of exceeding authority (*Dan*, 8 August, p. 8).

Two policemen, Vladimir Šiljak and Mevludin Hasanović, were suspended from duty for repeatedly maltreating Darko Knežević, 20, on 1 January (HLC, Press Release, 28 January; *Dan*, 3, 9 and 11 January, pp. 4, 9 and 9; *Vijesti*, 5 January, p. 6). Nothing further was heard about the case in 2002.

2.3.2.2. Prisons in Montenegro – No comprehensive prison monitoring scheme was effected in Montenegro in 2002, hence the absence of general data.

Late in September, 200 inmates of the prison in Spuž went on hunger strike, demanding better living conditions. The strike ended after the director of the Criminal Sanctions Bureau gave a promise to that effect (*Vijesti*, 27 September, p. 9).

2.3.3. Corporal punishment in schools – The Primary Education Act and Secondary Education Act prohibit corporal punishment of schoolchildren, as required by international standards (*Campbell and Cosans v. United Kingdom*, ECHR, App. No. 7511/76, 7743/76 (1982)). However, some incidents were reported in 2002. In March, Rade Đurđević, teacher in a primary school near Niš, slapped the seventh grader N. S, who sustained a brain contusion. Đurđević did not deny that he had hit N. S., saying that "the smack was not a hard one" and that the pupil had provoked him repeatedly. Đurđević was moved to a different class and subjected to disciplinary procedure (*Glas javnosti*, 14 March, p. 3). A primary school history teacher in Belgrade physically assaulted two eighth graders. The teacher, who has a history of such behaviour, said she had been unable to restrain herself (*Blic*, 14 June, p. 8). Veselin Mićović, a primary school teacher in Petrovac, was suspended after physically abusing three pupils in September (*Vijesti*, 20 September, p. 7).

2.4. Prohibition of Slavery and Forced Labour

A joint OSCE/ODIHR, UNICEF and UNOHCHR report issued in June 2002 notes an increase in trafficking in human beings in Yugoslavia. "Yugoslavia is mainly a country of transit, but also of origin, in the trafficking in human beings, and some of the main routes of trafficking in women and children pass through Belgrade and Sandžak", said Mary Black, UNICEF programme co-ordinator in Yugoslavia. UNICEF holds that human beings are sold in the FRY at prices below 5,000 euros (Beta, 28 June; *Večernje novosti*, 28 June, p. 11).

The U.S. State Department said in a report published in 2002 that Yugoslavia was making important steps to prevent and halt trafficking in human beings.[199] The report says that the FRY was above all a country of transit, and to a smaller extent also a country of origin and a destination for women intended for white slavery.[200] The authorities stepped up the drive to root out the phenomenon in 2002. In Yugoslav law, only in Montenegrois trafficking in human beings treated as a specific crime.[201] A growing flow of white slaves from Serbia proper to Montenegro and Kosovo has also been reported.[202]

Serbian and Montenegrin police mounted several major actions in 2002 to locate and neutralise organised trafficking in human beings and forcible prostitution. The most important was certainly the arrest of Zoran Piperović, the Deputy State Prosecutor of Montenegro. He is suspected of involvement in trafficking in human beings. Policemen were also reported to be implicated in some such cases in Montenegro.[203]

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[199] See U.S. Department of State, *Victims of Trafficking and Violence Protection Act 2000: Trafficking in Persons Report*, 2002, p. 12. <http://www.state.gov/g/tip/rls/ tiprpt/2002>. The *Report* contains data collected in the April 2001 – March 2002 period.

[200] *Id*, p. 109.

[201] See more I.4.4.4.

[202] See UNICEF, UNOHCHR, OSCE/ODIHR, *Trafficking in Human Beings in South Eastern Europe – Current Situation and Responses*, 2002, pp. 88 and 97. <http:// www.unicef.org/sexual-exploitation/trafficking-see.pdf>

[203] See more II.4.2.2.

In 2002, a major media campaign against trafficking in human beings was conducted in the FRY: which local and international governmental and non-governmental organisations took part.[204]. The first regional centre for collecting data on the victims of trafficking in human beings was opened in Belgrade early in April. "Collecting information in this area is very important in order to increase the efficiency of the fight against this evil, because we believe that complete information exists in only 30 percent of all cases," said Helga Konrad, the Stability Pact coordinator. Safe houses for the victims of trafficking in human beings exist in Belgrade and Podgorica (*Blic*, 6 April, p. 12).

2.4.1. Trafficking in human beings in Serbia – The OEBS/ODIHR, UNICEF and UNOHCHR report describes Serbia as the "central transit point in the trafficking in human beings to Bosnia and Herzegovina, Macedonia, western Europe and Kosovo" (Beta, 28 June; *Večernje novosti*, 28 June, p. 11).[205]

A report on the work of the Serbian police Public Security Department in the January-May 2002 period notes that 92 criminal complaints were filed against the owners of various catering establishments and other persons who had taken part in trafficking in human beings.[206]

The Serbian police announced in September 2002 that they had apprehended a total of 397 nationals of the Romania, Moldova, the Ukraine, Bulgaria and Belarus involved in prostitution. Of that total, 48 women were victims of trafficking in human beings (*Politika*, 26 September, p. 11; *Blic*, 7 December, p. 11).

In January, Serbian police raided in a single night a total of 441 premises suspected of being connected with trafficking in human beings and prostitution. Some 150 persons were arrested and 13 criminal charges and 100 misdemeanour charges filed (Beta, 24 January). Actions were conducted in Leskovac (*Danas*, 20–21 July, p. 15), Belgrade (*Politika*, 2 August, p. 1; *Glas javnosti*, 17 October, p. 9), Vitoševac near Aleksinac (*Glas javnosti*, 9 October, p. 9), Smederevo (*Politika*, 26 November, p. 9) and the village of Starčevo near Pančevo (Beta, 24 January). Police arrested a number of owners of cafes, night clubs and motels where women from Moldova, the Ukraine and Romania were held in white slavery, on suspicion of having committed the criminal offence of holding people in slavery and organising prostitution. There were no reports criminal prosecutions before the end of 2002.

2.4.2. Trafficking in human beings in Montenegro – The Montenegrin police arrested early in December Zoran Piperović, Deputy State Prosecutor, on suspicion of involvement in trafficking in human beings; the investigating judge remanded him in custody for 30 days (*Vijesti*, 2 December, p. 9). Piperović joined Ekrem Jašarević and Irfan Kurpejović, suspected of the same offence. The investigation is founded on the testimony of S. Č, a Moldovan victims of white slavery, who was under special police protection in the Women's Safe House in Podgorica (*Vijesti*, 29 November and 2 December, p. 9). Safe House spokeswoman Ljiljana Raičević said the woman was the 48 case of trafficking in human beings, reported in Montenegro (*Danas*, 7 December, p. 2).

Dragan Prelević, the attorney of Moldavian woman S. Č., said that at least 50 persons would be arrested, each allegedly committed many criminal offences. "These criminal offences are trafficking in human beings, rape, holing in servitude, pimping, trafficking of narcotics, severely endangering physical integrity, corruption, non-reporting criminal offences by officials and abuse of office", said Prelević. Moreover, people who worked on this case were thretened; not just the legal council but investigating judge as well.

In 2002, Montenegrin police filed in 13 cases criminal charges against 29 persons suspected of involvement in trafficking in human beings and prostitution. In the past two years, the Montenegrin police repatriated 46 women believed to be actual or potential victims of trafficking in human beings (*Vijesti*, 2 December, p. 9). Between October 2001 and April 2002, the Women's Safe House protected a total of 31 women from several European countries. "All the girls were frightened and had in many cases been so

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[204] See U.S. Department of State, *Victims of Trafficking and Violence Protection Act 2000: Trafficking in Persons Report*, 2002, p. 109. <http://www.state.gov/g/tip/ rls/tiprpt/2002>

[205] UNICEF, UNOHCHR, OSCE/ODIHR, *Trafficking in Human Beings in South Eastern Europe – Current Situation and Responses*, 2002, p. 80.

[206] See <http://www.mup.sr.gov.yu/domino/mup.nsf/index.html>

badly beaten they had to undergo medical treatment for days", a Safe House representative said (*Blic*, 20 April, p. 10).

There are indications that some members of the Montenegrin police are implicated in trafficking in human beings, notably in the case of a Podgorica teenager found by the police on 10 April. She and four other teenage girls from the Montenegrin capital had been sold several times and taken to Albania, most probably for prostitution (*Vijesti*, 18; 27 April, pp. 7 and 14 May, p. 5; *Monitor*, 12 July, p. 24). There have been no reports on prosecutions in connection with this case. A similar event took place in Kolašin, where police arrested Vladan Bakić and Milivoje Rakočević a policeman, on suspicion of involvement in trafficking in human beings and extortion. The criminal complaint was, however, rejected by the prosecuting authorities (*Vijesti*, 15 August, p. 5).

In April 2002, criminal charges were filed in Bijelo Polje against two persons suspected of involvement in slavery and organising prostitution (*Vijesti*, 18 April, p. 7). In August, Miodrag Šaković was arrested on suspicion of involvement in the criminal offence of trafficking in human beings. Damir Ramadanovski from Bečej, and Ranko Šćekić from Podgorica were reported to be his accomplices (Montenegrin Police Press Release, 14 August; *Vijesti*, 12 November, p. 7). In November, the prosecutor in Podgorica indicted the three (*Dan*, 14 November, p. 9).

The Government of Montenegro and the OSCE/ODIHR office in Podgorica established in a 2001 a Project Committee for the Protection of Victims; in April 2002, the Montenegrin police appointed a national coordinator for the fight against trafficking in people who demanded in May that Serbia also form a team to solve the problem.[207] Describing Montenegro as a positive example, Helga Konrad, the Stability Pact Coordinator, said that it was "good that the Montenegrin police do not repatriate the victims of trafficking in people promptly, because available data indicate that after their return half of them again become victims " (*Vijesti*, 18 June, p. 5).

2.4.3. Cross-border trafficking in human beings – In the absence of appropriate legal protection, revocation of residence is applied to all foreign nationals who do not cross the Yugoslav border legally, irrespective of whether they have crossed the border illegally or were part of a case of trafficking in human beings.

In July, customs officers in Kladovo severed an channel of organised smuggling of Kurds from refugee camps in Bulgaria through FRY to European Union countries. Eight Iraqi citizens, including four children, were handed over to border police after being briefly questioned.[208]

The Serbian police reported that measures had been stepped up to block illegal border crossings by foreign citizens and that 156 Romanians and Moldovans, 71 citizens of Afghanistan and 47 Turkish nationals had been apprehended.[209]

2.5. Right to the Liberty and Security of Person and Treatment of Persons Deprived of Their Liberty

A number of instances were recorded in 2002 of illegal detention and unlawful treatment of detained persons. Some of the illegally detained persons were maltreated,[210] and courts awarded damages in several cases.

In July 2002, the Yugoslav Parliament adopted the Amnesty Act (*Sl. list SRJ*, No. 37/02) pardoning Yugoslav citizens involved or suspected of involvement in terrorism (Art. 125, Federal Criminal Code) and conspiring to carry out hostile activities (Art. 136) in the area of the municipalities of Preševo, Bujanovac and Medveđa in the 1 January 1999 – 31 May 2001 period. There was no information by the end of 2002 how many persons the amnesty covered.

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[207] Press release by the OSCE Mission in Yugoslavia, 26 August.

[208] Statement by the FRY President Vojislav Koštunica, Federal Secretariat for Information, 18 July.

[209] See <http://www.mup.sr.gov.yu/domino/mup.nsf/index.html>

[210] More II.2.3.

The security situation in the said municipalities has improved considerably, and no serious violations of the right to personal freedom and security were reported in 2002; neither did the police interrogate persons, except in the cases of some journalists.[211]

Illegal arrests were reported in Montenegro. Early in March, the Ecological Society in Pljevlja accused local police of harassing and arresting its members. One activist was arrested on the evening of 10 March while attempting to put up a poster warning about environmental pollution. "Given that the said activist was spotted late at night, it is normal for police to intervene", Pljevlja police chief explained (*Vijesti,* 12 March, p. 10).

In mid-March, it came to light that on 18 September 2001 a group of about a dozen policemen had illegally arrested Bogdan Vasović from Podgorica on suspicion of involvement in illegal cross-border smuggling of people. After spending a month in detention, Vasović was released without any explanation (*Dan*, 16 March, p. 8).

2.5.1. New Criminal Procedure Code – The new Federal Criminal Procedure Code, which became effective on 28 March, has provoked some controversy. Under the law, post-indictment detention can last a maximum of two years; if a judgment in the first instance is not delivered within that period, the accused must be released (Art. 146 (3)). After judgment in the first-instance is passed, detention cannot exceed one year (Art. 146 (3)).[212]

Early in April, the Belgrade District Court ordered the release of all indicted persons in detention for more than two years without a judgment being issued. The decision was made based on an opinion of the Supreme Court of Serbia. The District Prosecutor in Belgrade appealed against these decisions, arguing that "the new Code does not prescribe an obligation to release persons remanded in custody under old law" and that those released had been accused of serious crimes punishable by death, "where investigations and detention were mandatory" (*Glas javnosti*, 17 April, p. 11). Although the Supreme Court ruled in favour of the appeals, police have so far re-arrested only one of the eight men released (*Glas javnosti*, 5 and 17 April, p. 11; *Blic*, 9 and 24 April, pp. 5 and 8).

In spite of the Montenegrin authorities' official non-acceptance of the federal state and its decisions, courts in that republic have been applying provisions of the new Code, noting that "the new Code contains no provisions which could harm the citizens, rights and interests of Montenegro" (*Vijesti*, 27 January, p. 7). Montenegrin media reported that at the moment the Code was adopted there were in the prison in Spuž over 30 persons in detention for over four years without binding judgments. They have not been released (*Dan*, 18 April, p. 5).

*2.5.2. Awards of damages for illegal arrest*s – Between 1 January and 24 September 2000, Serbian police had arrested a total of 2,360 members of *Otpor* and other opposition and non-governmental movements and organisations.[213] HLC lawyers filed on behalf of 88 persons a total of 62 claims for damages in connection with illegal police actions by in those cases. Courts in Serbia gave positive rulings in a number of such actions in 2002, some of which were implemented. Human rights organisations have maintained, however, that damages awarded do not represent adequate moral and material compensation for the victims.

One example is that of Branislav Omorac, an activist of *Otpor*. The Municipal Court in Pančevo initially ordered the state of Serbia to pay him damages of 25,000 dinars (416 Euros) as compensation for his illegal arrest on 1 September 2000 (HLC, Press Release, 31 January; *Glas javnosti*, 11 February, p. 11).The District Court in Novi Sad reduced the award of the Municipal Court in Bečej ordering Serbia to pay another *Otpor* activist, Boris Negeli, the sum of 300,000 dinars (5,000 euros).[214] Partly accepting an appeal by the republican Advocate General, the Novi Sad court decided that the compensation was too high and reduced it to 100,000 dinars (1,667 euros). Between January and August 2000, Negeli was arrested about 15 times in connection with his activities in *Otpor* (HLC, Press Release, 31 January).

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[211] More II.2.9.2.

[212] See I.4.5 and I.4.6.

[213] Arrests and damages awarded *Human Rights in Yugoslavia 2000, 2001,* II.2.4, II.2.5.5.

[214] See *Human Rights in Yugoslavia, 2001,* II.2.5.5.

Early in June 2002, the District Court in Pančevo halved the damages awarded by the first-instance court to *Otpor* activists Ivan Malek and Mak Kabadaja for illegal police treatment on 14 July 2000.[215] Malek and Kabadaja will now receive 50,000 dinars (833 euros) each. Although it found that the facts had been duly established in the first-instance, the District Court found that 50,000 dinars was fair compensation, adding that Malek and Kabadaja had received other satisfaction "through the legalisation of the Popular Movement "Otpor", public apology given by the Minister of the Interior... and by the fact that they had been given their police dossiers." (HLC, Press Release, 5 June).

The Serbian Justice Ministry early in October offered Momčilo Veljković an *Otpor* activist from Požarevac, 65,000 dinars (1,083 euros) in compensation for his illegal arrest in May 2000. Veljković refused, announcing that he was demanding 15,000,000 dinars in damages (250,000 euros) becauseof the "serious physical and mental consequences" of his arrest (*Blic*, 4 October, p. 10).[216] Nothing more had been heard about the case by the end of 2002.

In November, the District Court in Požarevac set aside the decision of lower court to award 30,000 dinars (500 euros) as damages of to Veljković's brother Mile, twice arrested illegally in 2000 (*Danas*, 6 November, p. 4).

One claim for damages was rejected. Milan Čolić, an activist of the Centre for Free Elections and Democracy (CeSID), sought damages of 80,000 dinars (1.333 euros) as compensation for his illegal arrest on 4 September 2000. Noting that "police had not exceeded authority," the Municipal Court in Babušnica said Čolić had provoked a policeman by crumpling a Socialist Party (SPS) poster and throwing it on the ground. The court decided that by his conduct Čolić could have provoked a disturbance, as an political gathering of the Socialist Party of Serbia of Slobodan Milosević) and of his wife's JUL (Yugoslav Left) had just ended and its participants were leaving the venue. Čolić was awarded 15,000 dinars (250 euros), but the District Court in Pirot has sent the case back to the court of first instance (HLC, Press Release, 31 January).

2.6. Right to a Fair Trial

There were no reports in the media of any significant violations of the right to a fair trial in 2002.

In contrast to the last decade of the 20th century, not a single political trial was reported. It is important to note that no ethnic Albanians were prosecuted in rigged trials; this had been quite frequent until the quito democratic change in 2000. However, in a number of re-trials of ethnic Albanians, courts gave guilty judgments, and pronounced sentences equalling the time spent in prison,[217] in what was an appearent attempt to avoid claims for compensation for wrongful detention.

There was a noticeable increase in 2002 in the pressure exerted by the executive branch on the judiciary. Some Serbian government ministers voiced their legitimate views, such as the need for lustration and improved efficiency of courts, but in an inappropriate manner; some politicians even went as far to say that they would refuse to obey court decisions.[218]

There exist no comprehensive statistics on the average duration of litigation: the general impression is that it is unjusifiably long. There are about 2,600 judges in Serbia, and 234 in Montenegro. Comparisons with countries with similar populations indicate that with a judiciary just half the size of that in the FRY, civil suits are handled much faster.[219]

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[215] HLC Press Release, 31 January; *Danas*, 1 February, p. 2 and *Glas javnosti*, 11 February, p. 11.

[216] In the section on the right to privacy, II.2.7., see more on damages awarded to Veljković for being libelled in the police release issued after his arrest.

[217] See *Human Rights in Yugoslavia 2000*, II.2.5.1.

[218] See II.2.6.1. for DOS's reaction to the Federal Constitutional Court's decision on the revocation of the mandates of DSS parliamentary deputies.

[219] See *Compatibility of Yugoslav Law and Practice with the Requirements of the ECHR,* CoE, October 2002, p. 98.

2.6.1. Pressures on courts – In June 2002, Serbian Prime Minister Zoran Đinđić, and particularly his colleague Vladan Batić, minister of justice, accused courts of sloth and leniency, at the same time threatening judges with lustration. Batić set the judiciary twelve tasks, including that "100 judges be lustrated in 15 days ... the proceedings against 50 to 100 Milošević aides be completed within two months ... and ... the detention policy be radicalised". Most judges, including Vida Petrović Škero, the then president of the District Court in Belgrade, said Batić's demands represented "direct pressure by the executive branch". "The judiciary must be lustrated, but only in accordance with law. This means that the legislative branch should adopt a law on lustration", she said. Reacting to the demands for a radicalisation of the detention regime, she said: "detention is not a penalty but a coercive measure infringing on human rights and civil liberties, and is therefore to be applied selectively" (*Blic*, 13 June, p. 2).

Calls by the government and its head for sacking errant judges, punishing leading figures in the former regime and speeding up the work of the judiciary and making it more efficient have certainly been justified. However, what provokes concern is the manner in which they were voiced and the inappropriate stance of the premier and minister of justice in their verbal crackdown (BCHR, Press Release, 14 June; *Blic,* 15 June, p. 2).

A similar tone was evident in criticism voiced of the prosecutorial authorities and investigating judges in connection with the arrests of a number of people suspected of involvement in the murders of police general Boško Buha and others.[220] Following the arrests of the suspects in the Buha case, an investigating judge released from detention one of them, Dragan Ilić. The government reacted by saying that the judiciary was not helping in the struggle against organised crime. A panel of judges of the Supreme Court of Serbia said that neither had the judge had any information about Ilić's links with organised crime, nor had the prosecutor filed a request for Ilić to be remanded in custody. The Serbian Judges' Association also protested (*Danas*, 2 November, p. 4).

After the Federal Constitutional Court ordered that 45 deputies of the DSS, who had been stripped of their mandates by the ruling DOS for failing to observe the DOS coalition agreement, be returned to the Serbian parliament, the DOS said it would ignore the decision (*B92 news*, 16 October).[221] This was attended by a personal attack on the then acting president of the Constitutional Court, professor Momčilo Grubač (*Blic*, 17. October, p.2). Such conduct of the ruling coalition was certainly not conducive to the creation of an autonomous and impartial judiciary. DSS deputies did subsequently return to the parliament, but it was on the basis of a political deal struck by the DOS and the DSS (*Politika*, 6 November, p. 7).

2.6.2. War crimes trials – For more on war crimes trials, see the section on the prosecutions in connection with violations of humanitarian law by VJ and police personnel II.2.2.2.

2.6.3. Other trials – A group of 24 Bosniaks was sentenced in 1994 to jail from one to six years for "attempted secession and establishment of a republic of Sandžak". The Supreme Court of Serbia overturned the judgment in March 1996. The case lay dormant in the District Court in Novi Pazar until 20 June 2002, when re-trial was postponed for the second time. An attorney for the defendants said that the charges had not been proven and that the authorities were "stalling in an effort to avoid payment of sizeable sums of money in compensation" for time spent in custody. As the same period, a similar process had been mounted in Montenegro against 21 Bosniaks, but they received perdons from the former Montenegrin President Momir Bulatović, and were compensated for time spent in detention (Beta, 20 June; *Danas*, 8 August, p. 6).

A group of 25 mainly Bosniak policemen from Novi Pazar, sacked three years ago after refusing deployment in Kosovo, were reinstated early in April. A court ordered them returned to work on 20 June 2001, but its decision was not enforced until April 2002 (*Politika*, 2 February, p. 12; *Glas javnosti*, 12 April, p. 5). However, a similar ruling by a court in Niš concerning five policemen has remained without effect (*Danas*, 20 March, p. 13).

After more than 18 months, Vladislav Jabučanin and Aco Đukanović, brother of Montenegrin Prime Minister (and until 25 November President) Milo Đukanović, went on trial in connection with a 5 June 2000 incident in which they allegedly inflicted light injuries on Miroslav Šćepanović and Zoran Kljajić.

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[220] More on Gen. Buha's murder II.2.2.1.

[221] More on the revocation of deputies' mandates II.2.14.

Aco Đukanović was arrested at the time, but the duration of his subsequent detention was not clear from local media coverage. After the incident was reported, he accused the media of an organised campaign against him. The trial resumed on 29 October and was not completed by the end of the year (*Vijesti*, 23 February and 19 March, pp. 5 and 6; *Dan*, 23 February, 19 March, p. 9; *Vijesti*, 29 October, p. 9).

One death-row inmate, originally sentenced in 1996, was re-tried in 2002 and acquitted of a murder charge. In its ruling in the case of Saša Stanojević, the District Court in Belgrade said that "the evidence offered by the police and prosecution failed to prove the charges" (*Blic*, 23 May, p. 2).

2.6.4. Trials of ethnic Albanians – After the withdrawal of Yugoslav and Serbian security forces from Kosovo and Metohija in 1999, a total of 2,071 prisoners were moved to institutions in Serbia proper.[222] Gradimir Nalić, advisor to President of FRY said that after the enforcement of the federal and Serbian amnesty laws in 2001, reviews, completed sentences, acquittals and other grounds in January 2002 there were in Serbian prisons a total of 188 persons of Albanian natinality, including 158 from Kosovo, 16 from Serbia proper, one from Albania and one from Bosnia and Herzegovina. The International Committee of the Red Cross (ICRC) has identical data. "Not all of them are political prisoners – some are in prison for ordinary crimes", stated ICRC coordinator François Blancit (*Reporter*, 19 February, p. 98). Of the above total, 76 were jailed for terrorism. Many Yugoslav legal experts have questioned the validity of the charges and the fairness of the trials (*Danas*, 18 January, p. IV).[223]

After UNMIK asked Yugoslavia to allow Albanian prisoners to be moved to Kosovo on humanitarian grounds, the federal and Serbian authorities concluded a deal with the international administration on a transfer of Albanians to prisons in Kosovo in exchange for some of the 36 Serb convicts held in that province (*Reporter*, 19 February, p. 27). Late in March, 155 Albanian prisoners[224] were handed over to UNMIK Province (*Danas*, 27 March, p. 1; *Blic*, 30 March, p. 11); 80 were released later after being deemed to have been "jailed on political grounds by the Serbian authorities" (Beta, 27 March). For the Serb prisoners, the authorities in Belgrade decided that "those who so demand and whose families have been exiled to Serbia will be transferred to prisons in central Serbia" (Beta, 27 March); late in May, six such convicts were moved to prisons in central Serbia. It was announced that other Serb prisoners would also be moved (*Danas*, 27 May, p. 2). In mid-September, according to official data published by the federal and Serbian governments, five Serbs remained in prison in Kosovo, all of them accused of very serious crimes (Beta, 17 September).[225]

Ruling in a re-trial, the Military Court in Niš sentenced Kosovo Albanian Elez Hagjilari, 22, to 35 months' imprisonment on charges of preparing terrorist actions. Oddly enough, the duration of the sentence corresponded with the time Hagjilari had spent on remand. This is not the first time courts have issued such rulings – defendants are thereby denied the right to seek compensation for wrongful imprisonment. During the hearing, the prosecutor amended the charges to include preparing terrorist attacks. The court admitted the new charges citing the defendant's confession that he had undergone KLA training in Albania. The first and secondinstance judgments and 20-year sentences for Hagjilari on charges of conspiring to carry out hostile activities and terrorism had earlier been overturned by the Federal Court. Denying all counts during the hearing, Hagjilari said that in 1999 he had fled to Albania, where the KLA had forcibly mobilised him and threatened to kill him if he resisted (HLC, Press Release, 15 March).

Late in January, the last four of 26 ethnic Albanian members of the so-called "Uroševac Group" were released from prison. In 1999, the 26 had been sentenced to penalties totalling 58 years' imprisonment on charges of terrorism (Beta, 5 February).

2.7. Right to the Protection of Privacy, Family, Home and Correspondence

No major violations of the right to privacy were reported in 2002.

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[222] More in *Human Rights in Yugoslavia 2000,* II.2.5.1.

[223] More in *Human Rights in Yugoslavia 2001,* II.2.5.3, II.2.6.1.

[224] Another seven prisoners refused to go, "fearing vendetta" (*Večernje novosti*, 27 March, p. 3).

[225] See IV.1.4.

Courts in Serbia ordered the state to pay a number of compensations for non-pecuniary damages in connection with treatment by the police of members of the Otpor movement and other opponents of Slobodan Milošević. The court in Požarevac awarded 100,000 dinars (1,666 euros) to Momčilo Veljković for libel in a police statement after his arrest on 2 May 2000, in which he was described as a "person disposed towards delinquent behaviour". A month earlier, the same court decided identically regarding to another *Otpor* member, Nebojša Sokolović, who had been arrested together with Veljković and similarly defamed by the police (*Danas*, 16 May, p. 18).

The Municipal court in Smederevo awarded in March 100,000 dinars to Đ. Đ. for the mental anguish suffered, and breach of reputation and civil rights. In September 2000, the teenager was putting up *Otpor* posters in Smederevo when two policemen forced him to take them down and to eat them (Beta, 21 August).

Several awards granted in 2001 in connection with cases of violations of personal reputation and civil rights were enforced in 2002. In mid-January, the enforcement took place of a judgement of the Fourth Municipal Court in Belgrade ordering the Republic of Serbia to pay compensatation, on account of illegal police conduct, to *Otpor* activists Jelena Radovanović from Čačak (60,000 dinars, or 1,000 euros),[226] Radoslav Mojsilović from Vranje (50,000 dinars, or 833 euros) and Milan Brašnjević from Prijepolje (10,000 dinars, or 166 euros) (HLC, Press Release, 18 January). There was no information by the end of 2002 whether any of the other damages awarded in 2000 and 2001 to wrongfully arrested opponents of the Milošević regime had been enforced.

Vuk Drašković, President of SPO, took the Republic of Serbia to court in August 2001, demanding that the State Security Service (SDB) remove bugs they had planted in his home and party offices.[227] On 22 January, the First Municipal Court in Belgrade ordered the devices removed within 15 days, under threat of enforcement. The court said that "the plaintiffs' constitutionally guaranteed right to privacy, freedom of political activity and inviolability of home have been breached" (*Danas*, 23 January, p. 4). The SDB refused to allow the presence at the removal of the equipment of the media and Drašković himself, stating that according to regulations only authorised personnel could attend (*Danas*, 9 August 2001, p. 4). Late in May, the Fourth Municipal Court in Belgrade ordered the police to pay a fine of 40,000 dinars (666 euros) for failing to remove the bugs, and ordered it done within eight days (*Danas*, 22 May, p. 5; *Glas javnosti*, 28 May, p. 11). It remains unknown if the SDB has in fact obeyed the court order.

Early in 2002, the Croatian weekly *Globus* published transcripts of former Yugoslav President Slobodan Milošević's conversations with members of his family and aides intercepted by Croatian intelligence service. The articles were carried by a number of Serbian media; the HLC appealed for the transcripts not be published, saying it was a "gross violation of the right to privacy". The organisation said the private conversations of the Milošević family had nothing to do whatsoever with their political activities (HLC, Press Release, 6 February; Beta, 6 February).

In June 2002, a *NIN* reporter found out that patients about to undergo surgery in the Institute for Oncology and Radiology of Serbia were unknowingly being screened for the HIV virus (*NIN*, 20 June, p. 29).

2.8. The Right to the Freedom of Thought, Conscience and Religion

The year 2002 was marked by a public debate on reducing the term of alternative military service, a politically motivated conflict between the Serbian Orthodox Church (SPC) and the Montenegrin Orthodox Church (MOC) in Montenegro,[228] and a number of attacks on religious objects and alternative religious communities.[229]

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[226] *Human Rights in Yugoslavia 2001,* II.2.5.5.

[227] *Human Rights in Yugoslavia 2001*, II.2.7.

[228] *Human Rights in Yugoslavia 2000*, II.2.7.

[229] *Human Rights in Yugoslavia 2000, 200*1, II.2.7, II.2.8.

The most serious incident in 2002 took place outside the SPC's Patriarchate in Belgrade on 24 December, when a group of several dozen extremists prevented a planned Christmas service of the Anglican Church in the Partiarchate chapel. Ignoring appeals by SPC clergymen, the extremists hurled insults at Anglican worshipers and blocked the ceremony. Police said they had identified ten persons and charged of them for obstructing a religious ceremony, for which the law prescribes relatively light penalties (a fine, or imprisonment of up to a year). In Yugoslav law other criminal offences defined, with harsher penalties; elements of them were present in the incident (inciting ethnic, racial or religious intolerance, hatred or divisions, Article 134, Federal CC) (*B92 news*, 26 December).[230]

Religious education, introduced as an optional subject in primary and secondary schools in 2001, causing much controversy at the time,[231] was upgraded in April – from the 2002/2003 school year, children and their parents will have to choose either religious instruction or its alternative, civic instruction (*Večernje novosti*, 25 April, p. 4).

The January 2002 amendments to the Yugoslav Army Act (*Sl. list SRJ,* No. 3/02) reduced alternative civilian VJ service to 13 months. The term was initially two years, twice as long as regular service, and was in December 2001 cut to 18 months. The proposal to cut this further to 13 months came up against opposition from the VJ, which said this would create a "discouragingly small gap between those who serve under arms (nine months) and those without arms (13 months)". The Lawyers Committee for Human Rights (YUKOM) said that the principal problem had not been solved, because "the right to conscientious objection remains, contrary to resolutions of the UN and the Council of Europe, within the purview of the military rather than civilian authorities" (*Danas*, 18 January, p. 4).

About 70 conscripts opted for alternative service in the 1992 – 2001 period; they remained within military jurisdiction and served their terms on army farms (*NIN*, 29 August, p. 26).

2.8.1. SPC – MOC conflicts – The biggest conflict between supporters of the SPC and those of the MOC in 2002 took place on the Orthodox Christmas Eve, 6 January, in Berane, northern Montenero, when SPC supporters tried to prevent those of the MOC from igniting their Yule log. Police intervened, arresting eighteeen. The daily *Dan*, close to Montenegro's opposition *Zajedno za Jugoslaviju* (Together for Yugoslavia) coalition said police had "lunged at the people they arrested with assault rifles" (*Dan*, 8 January, p. 5). In contrast, the pro-government *Vijesti* reported that "police prevented SPC supporters from attacking MOC adherents" (*Vijesti*, 7 January, p. 2) and quoted Minister of Interior Andrija Jovičević as saying that the opposition coalition and the SPC had provoked the conflict and that "armed protesters provoked and assaulted the police" (*Vijesti*, 10 January, p. 2).

Early in February, a conflict arose between the SPC and MOC over two churches on the isle of Beška in Lake Skadar which MOC supporters tried on 2 February to take over with keys received from state officials. The SPC protested, saying they were the rightful owners. On 7 February, the court in Bar barred MOC supporters from the churches, and two days later SPC clergymen moved into them. Pro-Montenegrin government media accused the VJ of stationing troops on the island to back the SPC; the army denied the charges. On 23 March the court in Bar reversed its decision barring the MOC from Beška, saying the "SPC metropolitanate provided no proof of the right of management" (*Dan*, 4, 8 and 14 February, p. 3; *Vijesti*, 9 February and 24 March, p. 8).

2.8.2. Alternative religious communities – Acts of hostility towards alternativne religious communities, depreciatingly called sects, continued to happen in 2002. According to media information, some 300 such communities are active in the FRY; 70 of them are registered (*Glas javnosti*, 3 March, p. 10). What provokes concern is the fact that all alternative religious communities without exception are viewed as a threat. Police lieutenant Momčilo Jović was quoted as saying that "all sects, regardless of whether they are Christian, Oriental or Satanist, demolish the family and society and destroy human values and human identities" (*Politika*, 3 February, p. 11).

Belgraders holding similar views about alternative religious communities formed late in March the Association for the Protection of Citizens from Sects and Mental Manipulation called *Bedem* (*Glas javnosti*, 28 March, p. 17). Early in April, over 1,000 T-shirts sent to Valjevo by the London-based

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[230] <http://www.freeb92.net>.

[231] *Human Rights in Yugoslavia 2001*, II.2.8.1.

Orthodox Aid Association were burned; the director of the local social work centre and a local SPC clergyman said this was done because the shirts carried "Satanist messages" (*Vreme*, 18 April, p. 34).

2.8.3. Attacks on religious facilities – In 2002, temples of the Catholic, Adventist, Orthodox and Islamic faiths were attacked in Cetinje, Bačka Palanka, Tutin, Sremska Mitrovica, Smederevo, Belgrade and Podgorica (*Dan*, 17 January, p. 8; HLC, Press Release, 23 January, 29. August; *Večernje novosti*, 31 July, p. 6; Beta, 24 January, 8 March, 4 September; *Vijesti*, 28 February, p. 7; *NIN*, 21 March, p. 28; *Danas*, 3 May, p. 8).

The Orthodox religious school in Cetinje filed on 6 November a criminal complaint against persons unknown who had assaulted a second-grader (Beta, 6 November). Another similar attack took place about ten days later (*Vijesti*, 17 November, p. 9).

2.9. Freedom of Expression

The legal position of the media in the FRY improved in 2002. Although open repression of the media is a thing of the past, the policy of exerting pressures on them did continue, albeit in a much reduced scope. There were several instances of investigating authorities exerting unwarranted pressure on journalists.

2.9.1. Violations of the freedom of expression – An exhibition of American photographer Ron Haveev photographs taken during the wars in the former Yugoslavia under the title *Krv i med (Blood and Honey)* was closed prematurely in Užice and Čačak, while in Kragujevac it was not even opened, after war veterans and opposition party members said it presented a distorted view of the Serbs (*Danas*, 26 August, p. 2). On 15 July, Igor Ivanović from Čačak set off a hand grenade while the show was being opened, injuring an organiser. The District Court in Čačak sentenced Ivanović to five months' imprisonment for violent behaviour and to another 16 months for illegal possession of a weapon, combining the sentences to an 18-month term. Haveev's exhibition was re-opened on 17 August (*NIN*, 19 September, p. 32; Beta, 17 August, 19 November). The exhibition caused no disturbances in Belgrade and Bečej, while minor incidents were reported in Novi Sad, Kragujevac and Kraljevo (Beta, 20 September).

The entire circulation of the Podgorica daily *Publika* was withdrawn from sale after the paper carried an anti-American statement made by a Montenegrin businessman during a charity dinner hosted by the wives of the Montenegrin president and the U.S. ambassador in the FRY. The businessman was quoted as saying he would give no contributions because he was opposed to the policies of the U.S. ambassador. A new run without the offending statement was printed the same night (*Vijesti*, 10 March, p. 5). Freimut Duve, spokesman for the OSCE's Permanent Council, reacted several days later. "We are worried about this reported attempt by President Đukanović to prevent the publication of the entire print run on 9 March of the Podgorica daily *Publika*", the OSCE said. "Seizure of newspapers is not an appropriate reaction... in an OSCE member-country for preventing negative publicity", the report said (*Vijesti*, 16 March, p. 2).

2.9.2. Pressures on jouirnalists – Radio Free Europe and a columnist of *Danas,* Nataša Odalović, and the editor-in-chief of the weekly *Reporter*, Vladimir Radomirović, were on 11 July ordered by the prosecutor in Belgrade to report to police for questioning. In both cases, police wished to question them in connection with some of their texts (BCHR, Press Release, 12 June).[232]

Responding to public criticism voiced over these summonses and the manner in which police had entered *Reporter's* premises, the District Prosecutor said Radomirović had been summoned "in his capacity of private citizen", because the text published [by the weekly] indicated that "someone had committed a criminal offence" (*Blic*, 12 July, p. 10; *Reporter*, 16 July, p. 12).

Journalists must be guaranteed the right to protect their sources of information to ensure the full realisation of the role of the media in a democratic society. According to international standards and comparative law, reporting on matters of public interest would be impossible if journalists were compelled to reveal their sources. International standards do, however, allow this right to be restricted in exceptional

[232] Similar actions were taken by prosecutors in 2001, in the case of the publication by *Blic* and *Reporter* of alleged list of policemen suspected of crimes by the ICTY; see *Human Rights in Yugoslavia 2001*, II.2.9.1.

cases, where there exists a significant social interest – for example the need to protect lives, detect the perpetrators of the most serious criminal offences or obtain evidence in favour of an unjustly condemned person.

Early in April, Belgrade police took into custody Ljubodrag Stojadinović a former military officer and columnist of *Politika* with the explanation that he had not responded to a June 2000 summons to appear at a defamation trial. Claiming that he had received no summons from a court at his home address, Stojadinović said he believed it was an "attempt at intimidation" (*Politika*, 9 and 10 April, pp. 11). On 11 October, military police arrested in Niš cameramen of the *RTS* and local *TV Belle Amie* outside the Military Court, explaining that they might have shot footage of the building, a "military installation," without permission. The crews were covering the trial of four VJ servicemen later found guilty of war crimes (*Danas*, 12 October, p. 3).

Some journalists received threats in 2002, among them the chief editor of *ANEM* and the *Danas* correspondent in Šabac (*Danas*, 9 January, p. 14 and Beta, 22 June), Prokuplje-based *TV Grk* staff members, journalists of the Belgrade daily *Nacional* and of *TV Jagodina* (*Dan*, 6 February, p. 8, *Danas*, 5 February, p. 3; Tanjug, 27 February) and correspondents of the Podgorica daily *Publika* on account of articles about the former Bosnian Serb leader Radovan Karadžić (*Blic*, 15 March, p. 8). Beta news agency's Priština correspondent, a Kosovo Albanian, also came under pressure; he was accused of biased reporting by radical Serbs in Kosovska Mitrovica, who linked this with his ethnic origin. The agency said this represented hate speech (Beta, 29 April).

2.9.3. Defamation trials – Several journalists and media were found in 2002 guilty of the criminal offences of slander, libel and defamation. The prevailing view is that it is inappropriate to discuss matters connected with freedom of speech and editorial policy in criminal proceedings. Contemporary practice is to recommend to states to forgo criminal prosecution in such cases and to replace it with civil litigation and other available legal remedies. Criminal prosecution may be appropriate only where damage is suffered by private individuals, but not public figures.[233]

Vladislav Ašanin, editor-in-chief of the Podgorica daily *Dan*, received on 29 August 2001 a five-month suspended sentence following a private charge of libel brought by a businessman.[234] In November 2002, the Higher Court in Podgorica transformed the sentence into a month's unconditional imprisonment (*Dan*, 19 November, p. 5). Ašanin also received a three-month suspended sentence for libel in a case brought on the basis of a private complaint by the then President Đukanović.[235] The Higher Court in Podgorica confirmed the judgment in March 2002. Ašanin was also ordered to pay the president 15,500 euros (the currency in use in Montenegro) for "mental anguish" in June 2002. This, the court said, would "enable the party who suffered damage to restore with the help of the damages awarded his mental balance, by elimination of the suffering of non-pecuniary damage" (*Vijesti*, 29 March p. 5; *Dan* 13 June, p. 5). Claims for damages against *Dan* have also been filed by Đukanović's security adviser Vuk Bošković, the *Budućnost* basketball club, trade union leader Danilo Popović and managers of the Kotor based firm Jugopetrol, after *Dan* had hinted at abuse of office and unlawful use of funds (*Dan*, 13, 16 and 28 February, 3 April, 3 October, pp. 8, 9, 5 and 9).

Late in January, the First Municipal Court in Belgrade sentenced the editor-in-chief of the weekly *NIN* Stevan Nikšić to prison for five months, two years suspended, for libel. Nikšić was convicted following a complaint by Aleksa Đilas, son of Milovan Đilas, one of the most famous dissidents in the Tito epoch, after *NIN* had published a signed letter to the editor criticising Đilas senior's conduct during the Second World War. The court found that linking former Yugoslav Communist Party leaders to crimes was libellous. It remains doubtful whether the court could have assessed the said events properly and whether it had even tried to do so. Pointing out that *NIN* had also published texts praising Milovan Đilas, Nikšić said that the judgment was a "warning to all editors and journalists that they can be prosecuted simply for publishing an opinion, regardless of the facts" (*Glas javnosti*, 29 January, p. 5). The OSCE protested, stressing that the judgment was unwarranted in a member country of the organisation (*Vijesti*, 16 March, p.

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[233] See I.4.9.

[234] For more about earlier *Dan* trials, see *Human Rights in Yugoslavia 2001*, II.2.9.

[235] More in *Human Rights in Yugoslavia 2001*, II.2.9.

2). *NIN* and its then editor-in-chief fulfilled the demand of due journalistic care and the usances of their profession. What was involved was a reader's letter, and the weekly had not shown bias, as it had also carried letters with different opinions. One of the tasks of the media is to provide a venue for public debates on subjects of this kind. The tolerance threshold of criminal legislation must therefore be raised, as indicated in Article 96 of the Serbian Criminal Code. In mid 2002, first instance judgment in Nikšić case was revoked. Unitl the end of the year there was more information on this case.

Early in August, the Third Municipal Court in Belgrade ordered the daily *Danas* and its editor-in-chief Grujica Spasojević to pay the sum of 300,000 dinars (5.000 euros) to a former FRY President, the writer Dobrica Ćosić, who had filed a private suit. The sum was awarded as non-pecuniary damages for a tert in by *Danas* maintaining in that Ćosić had ordered as president the shelling of Vukovar in 1992 (*Danas*, 6 August, p. 1).

The Basic Court in Podgorica rejected in mid-October a private libel suit filed by a former *RTS* journalist, Mila Štula, against the editor-in-chief of the weekly *Monitor*, Branko Vojičić, for observing that "during the past decade she spread hatred, fear and ethnic intolerance, serving to produce bloodshed". Judge Miroslav Bašović opined that Vojičić had "presented his opinion, based on facts" (*Monitor*, 18 October, p. 7).

Politika was ordered in April to pay 100,000 dinars for mental anguish inflicted by its correspondent in 1999 to the then mayor of Zrenjanin (*Danas*, 19 April, p. 16). A month later, Željko Bodrožić, editor-in-chief of *Kikindske novine,* was punished with 10,000 dinars for slandering former SPS official Dmitar Šegrt. On his way out of court, Bodrožić was assaulted by a group of workers in the factory managed by Šegrt (*Glas javnosti*, 15 May, p. 15). Also in May, Rudolf Mihok, director of the Novi Sad daily *Magyar Szo*, was ordered to pay 13,500 dinars (225 euros) for defaming the director of the Subotica firm *Pionir* (*Danas*, 17 May, p. 5).

In southern Serbia, the municipal courts in Bujanovac and Vranje held in May four trials of a total of 14 journalists, all based on complaints filed by former public officials and directors of major state firms. *Politika*'s correspondent in Bujanovac and NUNS's coordinator in southern Serbia, Života Matić, was sued by the director of the local spa, Vrelo, and former deputy in the Serbian Parliament Ranđel Veljković, who demanded 200,000 dinars (3.333 euros) for mental anguish. The Municipal Court in Vranje handled a case based on a criminal complaint brought by the firm Simpo against Ljubica Marković, director of Beta news agency, the agency's chief editor, Dragan Janjić, and its correspondent from Southern Serbia, Vojkan Ristić. Nenad Stanković, president of the local firm YUMCO, filed libel suits against several journalists. Former police head in Vranje Stojan "Šuka" Stojmenović sued *Vranjske* journalist Slađana Veljković (Vranje Human Rights Committee, 26 April). Nothing was heard about development these cases by the end of 2002.

The state and its civil servants also took journalists to court. In February, ten policemen sued the weekly *Reporter* for publishing a list allegedly drafted by the Hague Tribunal and containing the names of policemen linked with crimes committed in Kosovo in 1999[236] (*Danas*, 6 February, p. 3). Nothing was reported about the outcome by the end of 2002.

The Serbian Ministry of Transport and the Republican Road Directorate filed in May a criminal complaint against the weekly *Blic News,* which had claimed that the ministry had not called for tenders for road reconstruction but instead commissioned a firm close to one of the ruling parties. Sources in the weekly said pressure had been exerted on their reporter in the Directorate to renounce his statements, which he did. "The Directorate did not deny a single claim made in the text but effectively arrested our journalist and demanded that he distance himself from the text", the editor-in-chief said (*Glas javnosti*, 12 May, p. 7; *Blic*, 17 May, p. 8). It was not known at the end of the year whether the trial had begun.

2.9.4. Unprofessional conduct by journalists – Some journalists overstepped in 2002 the accepted limits of freedom of speech and the rules of their profession.[237] Newspapers often assumed the role of arbiter; sensation-seeking tabloids revealed "reliable" information, mostly from anonymous sources, about major criminals, the criminal activities of prominent figures and details of the private lives of celebrities.

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[236] See *Human Rights in Yugoslavia 2001*, II.2.9.1.

[237] See *Human Rights in Yugoslavia 2001*, II.2.6.3, II.2.6.4.

The most drastic such case happened in Valjevo in February. A man suspected of taking part in an armed robbery was interrogated in the police station in the presence of reporters from local *TV Vujić* and the *RTS*'s Valjevo bureau. Both reporters posed their own questions to the suspect, and his answers were video-taped, with the consent of the police. The footage was then repeatedly aired on both stations. It was a breach of criminal procedure, "because it took place at a moment when not even the suspect's lawyer was permitted to attend, and it all happened against the will of my client", the man's defence attorney said. Col. Milan Janković, local head of police, said what was involved was an "attempt to show the people, especially young people, what happens when they take a wrong turn in life, what they can except and what are the consequences for their lives" (*Politika*, 13 and 14–15 February, p. 11).

2.9.5. Hate speech – A number of instances of public use of hate speech were recorded in 2002, but very few were prosecuted. Reactions from the public and some political figures to the hate speech were somewhat better.

Velimir Ilić, the mayor of the central Serbian town of Čačak, often resorted to open hatred and insults in his comments about political opponents, journalists and NGOs. In one instance, Ilić questioned the ethnic origin of Yugoslav Deputy Prime Minister Miroljub Labus, a candidate at the Serbian presidential elections (*Dan*, 4 April, p. 32). Senior state officials avoided condemning Ilić for resorting to hate speech, instead explaining that Labus was a Serb and that, as Serbian Prime Minister Đinđić said, "he comes from Krajina ... from the deepest roots of the Serb people" (*Vreme*, 18 April, p. 19). Ilić was quoted as telling émigré Serbs in Australia: "Would you believe it – Energy Minister Goran Novaković, a Croat, in the Serbian Government ... Mayor of Belgrade, Mrs. Hrustanović, her husband a Moslem" (*Večernje novosti*, 16 January, p. 2). Yugoslav Foreign Minister Goran Svilanović described Ilić's outburst as hate speech and demanded that the practice be halted, while Ilić himself denied the charges and said he had simply been "answering questions" (*Večernje novosti*, 16 and 22 January, pp. 2 and 3).

In July 2002, Ljubica Džaković, a deputy in the Montenegrin Parliament, said the (ruling) "DPS will bow to no one, least of all Vesna Perović, an immigrant from Serbia" (*Dan*, 24 July, p. 3). The Montenegrin Women's Lobby depicted this statement as "open nationalism and spreading hatred and intolerance" (*Dan*, 25 July, p. 11).

First graders in schools in the Belgrade municipality of Palilula received from the local authorities a book by Moša Odalović entitled *Zavičajni bukvar* (A Homeland Reader). Among other advice offered to the children, the author notes that "the church is a human being's most important home, and those who do not go to church should go and see a doctor" (*Večernje novosti*, 12 December, p. 6).[238]

A Montenegrin periodical named *Istok* wrote that Nataša Kandić and Sonja Biserko, who head two NGOs involved in the protection of human rights, come from ethnically-mixed marriages. *Istok* said that they were women "who see in the Serbs the root of all evil" and whose "love for (ethnic) Albanians can be described as veritable avarice ... The one person who knows this is Madeleine Albright, the only woman with whom these two ladies can be compared as regards their beauty and also their virulence" (*Danas*, 20–21 April, p. III).

A number of individual and group anti-semitic outbursts were also recorded in 2002. Aca Singer, a leader of the Jewish community in the FRY, which has about 3,200 members, said the community had lodged a number of criminal complaints without any results (*Dan*, 24 January, pp. 3 and 4).

Anti-semitic books and pamphlets continued to be published and sold, notably works by Dimitrije Ljotić (1891–1945),[239] president of a movement named *Zbor*, a pro-fascist organisation active in Serbia before and during the Second World War, and the ultra-conservative and anti-European Serbian Orthodox Church Bishop Nikolaj Velimirović (1880–1956).

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[238] The book also contains numerous popular advice, such as using garlic as defence from evil.

[239] The local authorities in Smederevo named a street in that eastern Serbian town after Ljotić, and demands were voiced for one of Smederevo's main squares to be named after him. But the procedure was suspended by a municipal commission, which demanded an investigation of all the circumstances surrounding Ljotić's life and activities (interview with Commission members, BCHR archives).

The extreme nationalistic *Obraz* movement continued activities in 2002.[240] Its list of "Serbian enemies" includes "Zionists, Jewish racists", (Croatian) Ustashi, "whose centuries-old pathological hatred of everything Serb and Orthodox is the fruit of state incompetence and cultural impotence", "(ethnic) Albanians, who are the ethnic disgrace of Europe" and "democrats, false peace-makers, sectarians..." (*Danas*, 26–27 January, p. IV).[241]

Obraz's views were mirrored by other, informal, groups openly advocating anti-semitism, notably the skinheads, who propagate their views mainly through the medium of graffiti.

Some SPC clergymen openly advocated anti-semitism, the champion being the retired Belgrade Parish Rector, Archpriest Žarko Gavrilović. The SPC Synod condemned Gavrilović's views and distanced themselves from them (*Danas*, 6 February, p. 5).

Anti-semitic books were freely available in 2002. *The Protocols of the Wise Men of Zion*,[242] published by *Centar*, could be found in all major bookshops in Belgrade (BCHR archives).

Also published was *The Riddle of the Wise Men of Zion,* a book in which author Oleg Platonov speaks about an alleged Jewish conspiracy against humankind and strives to prove the authenticity of *The Protocols of the Wise Men of Zion* (BCHR archives, August 2002). It was not known at the end of the year whether any legal proceedings had been instituted in the case. The Alliance of Jewish Communes filed in 2001 a criminal complaint against Marinko Arsić Ivkov of the Belgrade-based *Altera* publishing house, alleging that he was guilty of provoking ethnic, religious and racial hatred, divisions and intolerance by publishing Platonov's book *The Secret World Government*.[243] The Belgrade district prosecutor did not initiate an investigation, ruling that no elements of a criminal offence were evident (BCHR archives).

In June 2002, the first hearing was held in the procedings against Živojin Savić, author of the book *Holy Scripture – Reflection on the Jews,* and Ratibor Đurđević,[244] who wrote the preface, on charges of provoking ethnic, religious and racial hatred, divisions and intolerance. The trial was postponed due to the defence attorney's illness (BCHR archives), and had not resumed by the end of 2002.

No prosecutions were initiated in connection with other anti-semitic works. *Slobodna knjiga,* a publisher once called *Velvet* founded by Vladimir Maksimović, is in a series called *Ideje* publishing numerous books with anti-semitic and fascist content (BCHR archives). Aleksandar Željko Jelić's private publishing house contains in a series entitled *Masonerija* a book called *Slobodno zidarstvo ili masonerija*, a re-print of an anti-Masonic work published by the working committee of an anti-Masonic exhibition organised by the occupying German authorities in 1941. In its introduction, the book states that it is an anti-Masonic, anti-Jewish and anti-communist work whose aim is to "explain to our public the nature of Freemasonry and its links with Judaism and communism". Also published were anti-semitic works liks Dietrish Eckart's *Bolshevism from Moses to Lenin*, and Dimitrije Ljotić's *Now is Your Hour* and *The Region of Darkness*. An appendix to this book contains a list of what the author says are Jews "involved in the Yugoslav crisis or the Jewish war against the Serbs from 1989 until 1999".

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[240] See *Human Rights in Yugoslavia*, II.2.9.3.

[241] In the Serbian original, *Obraz* deliberately used a derogatory term for ethnic Albanians.

[242] The book is a forgery by the Russian Imperial secret service justifying the then persecution of the Jews.

[243] The book includes this sentence: "The United States was created as the epicentre of the Judeo-Masonic civilisation. The country was formed mainly under the influence of Jewish elements and has proved to be, according to Zombart, as the 'emanation of the Jewish spirit'. All the forces of evil, brutality, debauchery and disintegration chacteristic of the Judeo-Masonic civilisation found their true and their fullest embodiment in the history of the U.S."

[244] Ratibor Đurđević founded the publishing firm *Ihtus hrišćanska knjiga*, which published several series of anti-semitic literature, including *Judejci – Zlotvori i Bogoborci,* devoted in full to the Jews and consisting of numerous works by foreign authors about Jewish-inspired Judeo-Masonic and Satanic conspiracies. Đurđević himself has also written a number of anti-semitic books.

Graffiti reading “Jewish Criminals” and “Evil Jews Rule the World” appeared in August 2002 in Zeleni Venac, one of Belgrade's busiest public transport hubs. Graffiti depicting the star of David with the Devil's “666” superimposed appeared in Novi Sad and Zrenjanin (Beta, 8 February, 20 and 21 June).

Other minorities came in for similar treatment. In February, the headquarters of the Hungarian-language daily *Magyar Szo* in Novi Sad were defaced with the slogan “Serbia for the Serbs, Hungarians Out” (Beta, 8 February, 20 and 21 June). In April, graffiti signed “Skins” and reading “Death to the Gypsies”, “Serbia for the Serbs, Gypsies Out” and “Boycott the Gypsies and the Chinese” appeared in Niš (Beta, 26 April).

Anti-Roma graffiti decorated with swastikas appeareed in the Montenegrin port city of Bar in February (*Vijesti*, 4 February, p. 7).

A number of mayors and senior party officials reacted, mounting actions named “Erase the Disgrace” and “Campaign Against the Language of Hatred” in which the graffiti were painted over. “This is not a dominant manner of conduct in Novi Sad, but if you fail to react to extremism of this kind, you effectively encourage it”, Novi Sad Mayor Borislav Novaković said (Beta, 8 February). Civic Alliance of Serbia (GSS) activists in Niš said they had decided to paint over the graffiti because “not a single (other) party, religious community or public authority reacted to the racist graffiti “ (Beta, 26 April). In Požarevac, activists of the local Human Rights Committee, the DSS and the GSS erased graffiti with nationalist and anti-semitic messages (*Glas javnosti*, 19 December, p. 23). Early in August, Zrenjanin police arrested persons writing graffiti (Beta, 7 August).

2.10. Freedom of Peaceful Assembly

No major violations of the right to peaceful assembly were recorded in 2002. Opposition parties often accused the authorities and the police of violations of that right, but apparently without any foundation.

Early in January, Montenegrin police clashed with locals in Berane in what the police said was an intervention mounted by them after they had been attacked. Police in Belgrade, Kragujevac, Negotin, Bar and Zelenika intervened after young people celebrating the national basketball team's world title went on a rampage, destroying property and attacking bystanders (*Blic*, 10 September, p. 10; *Dan*, 10 September, p. 5; *Vijesti*, 10 September, p. 7).

According to Serbian police data, in the first six months of 2002 a total of 22,919 public gatherings were held, assembling around six million people. Law and order were breached in just three cases. Seventeen policemen and 12 protesters were injured at an opposition demonstration held in Belgrade on 28 June. Police arrested 77 people, 20 of whom were later prosecuted (*Glas javnosti*, 12 July, p. 11).

2.11. Freedom of Association

The media monitored by the BCHR did not report any violations of the right of association in 2002.

In mid-January, a disciplinary commission of the Yugoslav police ruled to terminate the employment of Milisav Vasić, the president of the Independent Police Trade Union. Vasić was suspended from duty after a protest by his union in July 2001,[245] and subsequently fired. He then filed an action for wrongful dismissal, claiming that he had received permission for union operation, that Serbian law allowed trade union organising in the police and that this was common practice in all democratic countries.

The Federal Ministry of the Interior invoked provisions of the Yugoslav Constitution prohibiting trade union organising in the police. In April, the First Municipal Court in Belgrade dismissed Vasić's appeal. Vasić said this was a politically motivated decision and added that he would approach the OSCE and other international forums (*Danas*, 15 January, p. 4; *Glas javnosti*, 18 February, 28 March, 14 April, pp. 19, 11, 19).

Although a ban on trade unions in the police reduces possibilities for the protection of policemen's interests, the European Court of Human Rights has permitted states to ban trade union organisation in the

[245] See *Human Rights in Yugoslavia*, II.2.11.

state administration (see *Civil Service Trade Union Council v. United Kingdom*, EComHR, App. No. 11603/85 (1987)). The Yugoslav Constitution prohibits police and army personnel from organising in unions (Art. 42 (3)) and denies them the right to strike (Art. 57 (3)), while the Serbian Constitution does not regulate these issues.

2.12. Right to Peaceful Enjoyment of Property

The unresolved problem of nationalised property continued in 2002 to be the main obstacle to unimpeded enoyment of the right to private property. Members of the Belgrade based League for the Protection of Private Property protested on several occasions in an attempt to protect the rights of the former owners of property confiscated and nationalised by the communist authorities after World War Two, and to prevent its sale to new owners (*Danas*, 1 and 2 May, p. 5). Some property was, however, returned in 2002 to its former owners: the grounds for this unequal treatment remain unclear. In Niš, the local authorities returned the Hotel Atina to the descendants of the Aradski family (*Večernje novosti*, 5 February, p. 5). The authorities in the Belgrade suburb of Zemun returned a building to the SPC (*Glas javnosti*, 7 March, p. 13). The building, however, housed a school for children with hearing and eyesight deficiencies and those with special needs; after a protest by parents, the process of transferring the property slowed down and the problem has remained unsolved. The Fourth Municipal Court in Belgrade stopped the sale of the *Ruski car* restarurant pending final resolution of ownership relations (*Večernje novosti*, 25 March, p. 12).

2.13. Minority Rights

The new authorities continued in 2002 their efforts aimed at regulating the status of national minorities, who make up one-third of the country's population.

The Yugoslav Parliament adopted on 26 February the Act on the Protection of the Rights and Freedoms of National Minorities (*Sl. list SRJ,* No. 11/02). The Act has been assessed as a major step in the right direction. It guarantees the right to public and private use of language and script, and the preservation and development of cultural and national values and ethnic specificities.[246] National minorities will be able to form their national councils who will take part in drafting educational programmes and thereby help preserve minority languages and cultures. The Hungarian, Romanian, Ruthenian and Croatian national councils were formed (Tanjug, 18 December). However, by the end of 2002 the state had not seriously begun to fulfil some of its own obligations under the Act: classes in language with elements of national culture and bilingual tuition had not begun in areas where a national minority makes up at least 10 percent of the local population (*Danas*, 16 May, p. 6).

The federal Ministry for National and Ethnic Communities continued in 2002 campaigns to promote tolerance and stimulate differentness. There are in Serbia about 180 media using national community languages (*Danas*, 21 September, p. 5).

Some verbal and physical assaults on minority groups did take place.

According to the results of a survey conducted in September by the Novi Sad-based Humanitarian Centre for Integration and Tolerance and, persons belonging to minority are aware of 50 to 60 percent of the rights to which they are entitled under the law. On the average, Roma, Vlachs and Bosniaks know even less (*Danas*, 7 October, p. 13).

2.13.1. Ethnic Albanians – No major violations of ethnic Albanians' rights were reported.

The 2002 population census indicates that some 61,647 ethnic Albanians live in Serbia proper. According to the 1991 poll, Montenegro's ethnic Albanian population was about 44,500, or 7% of the republic's total population. Ethnic Albaians are the majority in Kosovo and Metohija, a region which under the terms of UN Security Council Resolution 1244 (1999) has an international military and civilian administration.[247]

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[246] See I.4.13.

[247] S/RES/1244, 10 June, 1999.

In Serbia proper, most ethnic Albanians live in three southernmost municipalities bordering on Kosovo: Bujanovac, Medveđa and Preševo. Yugoslav Minister for National and Ethnic Communities Rasim Ljajić said during a visit to Medveđa that some 30% of the municipality's population of 11,823 were ethnic Albanians; in Bujanovac, the figure is over 60% (HLC Report, *Albanci in Serbia – Preševo, Bujanovac i Medveđa*, 2002).

Between the end of 1999 and May 2001, local ethnic Albanian members of the "Preševo, Bujanovac and Medveđa Liberation Army" clashed with Yugoslav and Serbian security forces.[248] After Yugoslav forces assumed protection of the border strip, tensions waned and in June the Yugoslav Parliament adopted an amnesty law covering all FRY citizens who between 1 January 1999 and 31 May 2001 committed or are suspected of having committed in the Preševo, Bujanovac and Medveđa municipalities the criminal offence of terrorism defined in Article 125 or conspiracy to conduct hosile activities from Article 136, taken together with Article 139, Federal CC (*Glas javnosti*, 15 June, p. 2; Beta, 11 July).[249]

In spite of their numbers, few ethnic Albanians are actively involved in their communities' public life. Local elections organised with the help of the OSCE in late July and early August represented a most important step towards bringing the Albanians into public life and politics.[250] The aim of the elections is to enable ethnic Albanians' representatives in all three municipalities to have a say in the exercise of the rights of the Albanian national community (HLC Report, *Albanci u Srbiji – Preševo, Bujanovac i Medveđa*, 2002).

The HLC reported that says disproportionally few ethnic Albanians were employed in the civil service (they worked only in essential positions, like registrars, translators or clerks in local offices in Albanian-populated villages). Their numbers in the administration at the republican level, in courts, prosecutorial authorities and the police were inadequate. Most managerial posts are held by Serbs, although they are in a minority in the three municipalities.

The poor media situation motivated representatives of the OSCE, the Coordinating Centre, the media and the Albanians to adopt in 2002 *The Basic Principles for Reorganising the Media* for Bujanovac. As a result, on 20 September 2002, five-minute Albanian-language news broadcasts started in Bujanovac. Although planned, similar agreements were not signed in Medveđa and Preševo (HLC Report, *Albanci u Srbiji – Preševo, Bujanovac i Medveđa*, 2002). A local TV which will broadcast in Albanian was opened in Preševo late in October (Beta, 31 October).

Representatives of the Albanian national minority violated some provisions of the Act on the Protection of the Rights and Feedoms of National Minorities on several occasions. This Act guarantees the right to choose and use national insignia, but bans the display of flags of foreign states, such as the flag of Albania. On 28 November, a state holiday in the Republic of Albania, members of the Albanian minority displayed the Albanian national flag on some of public buildings in the southern Serbian municipalities. Serbian police removed the flags with the support of Nagib Arifi, the Mayor of Bujanovac and his Preševo colleague Riza Hallimi; there were no major incidents (*Glas javnosti*, 29 November, p. 2). The authorities in Serbia protested (HLC Report, *Albanci u Srbiji – Preševo, Bujanovac i Medveđa*, 2002).

2.13.2. Roma – Roma most certainly continue to be the most vulnerable minority in the FRY.[251] Romanies who are victims of discrimination are very seldom provided with any legal remedies. The Act on the Protection of the Rights and Freedoms of National Minorities has for the first time given the Roma the status of national minority.

The 2002 population census recorded some 108,193 Roma in the FRY, but activists of Romany organisations say there are more than 750,000 in Serbia alone (*Glas javnosti*, 9 September, p. 14). These numbers are indirectly confirmed by the authorities of Belgrade, who say there are in and around the capital city 197 Roma communities with a total population of around 105,000 (*Danas*, 31 July, p. 15).

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[248] More in *Human Rights in Yugoslavia 2000, 2001,* II.2.2.1, II.2.2.1.

[249] More on this Act I.1.4.

[250] More on early elections I.4.14.

[251] See II.2.1. and II.2.3.

Many Roma displaced from Kosovo and living in shanty towns in Serbia still have no personal documents of any kind (HLC, Press Release, 8 April).

The authorities in Belgrade continued to evict Roma squatters without providing any alternative housing. The HLC filed a suit against the FRY, Serbia, the City of Belgrade, the *IMT* motor and tractor manufacturer and the private firm *Gaj* in connection with violations of the rights of 717 people living in the Stari Aerodrom shanty town in the Novi Beograd district. The Roma were first ordered to move to provide room for construction planned by *Gaj*; late in August, unidentified persons commissioned by *IMT* wired off part of the settlement and deployed security personnel with guard dogs who allowed the Roma access only to pick up their belongings (HLC, Press Release, 7 November).

The municipal authorities did nothing to find alternative accomodation for 124 Roma families, including 64 displaced from Kosovo. In spite of promises by federal and republican officials that the eviction would be suspended until alternative housing was found, the private investor began demolishing the houses on 21 October. Bulldozers stopped only after some Roma had started to protect their homes by their own bodies. Unidentified persons have continued to threaten and intimidate the Roma, and many families have moved out under pressure (HLC, Press Release, 23 October).

The exercise of the rights of the Roma is hampered by the fact that many have no documents and are not even registered anywhere (European Roma Rights Center*,* Press Release, 8 September).

Romany activists say their peoples' average lifespan is 50 years, some 20 years below the Yugoslav average (*Danas*, 9 August, p. 5). "Some 78 percent of all Yugoslav Roma have not completed primary education, and just 0.4 percent have a university degree," Assistant Yugoslav Minister for National and Ethnic Relations Agnes Kartag Odri said (*Politika*, 26 October, p. 9). In 2002. just over 150 Roma were enrolled at the universities.

Thirty percent of all Roma children did not attend primary school, although it is compulsory (Beta, 22 and 25 January, *Glas javnosti*, 1 July, p. 5). The Stability Pact for South-East Europe placed the number at 75,000 (*Večernje novosti*, 2 February, p. 5). A major problem for Roma children is their poor command of Serbian, the language in which school competency testing is performed. Some 37 percent of all Roma first-graders do not speak Serbian, and another 46 % speak it poorly. The Serbian Ministry of Education reported that fully 65 percent of children in special schools for handicapped were Roma (*Danas*, 3 October, p. VI).

Programmes preparing Roma children for entering school were still conducted only by local and foreign NGOs. Just 7 to 10 percent of all Roma children have attended pre-school institutions (HLC, Press Release, 8 April). In 2001 and 2002, several kindergartens were opened in which Roma children are taught Serbian in preparation for primary school (*Blic*, 14 March, p. 19); their number is certainly not sufficient to cover the large juvenile Roma population. The number of schools with optional classes in the Romany language and elements of national culture has somewhat increased (Obrenovac, Lazarevac, some towns in Vojvodina) (*Glas javnosti*, 14 January, p. 13).

The federal Ministry for National and Ethnic Communities and the Serbian Ministry of Education have promised to provide 1,300 sets of school books for Roma children. In October, the federal ministry fulfilled its promise partially, while the Serbian ministry did nothing before the end of 2002 (*Danas*, 3 October, p. VI).

The position of the roughly 20,000 Roma in Montenegro is similar. Problems with the education of Roma children displaced from Kosovo have been partially overcome, and 67 Roma in Podgorica completed first grade successfully. A first-grade reader in Romany published in Montenegro, in a print run of 1,000, will be used in Podgorica, Nikšić and Cetinje (*Vijesti*, 10 April, 19 and 22 May, pp. 11, 11, 13).

Almost 20 percent of all adult Roma are absent from electoral rolls (Beta, 7 September).

The Romany media scene improved a little in 2002: *TV Grk* in Prokuplje began Romany broadcasts (Beta, 14 March) and a Romany language newspaper, *Roma*, appeared in the Boka Kotorska (Bay of Kotor) area in Montenegro (Beta, 8 April).

2.13.3. Bosniaks – The results of the 2002 population census indicate that 136,087 Bosniaks lived in the FRY, most of them in the Sandžak region. There were several cases of harassment of Bosniaks in

2002, but even more importantly, most of the serious violations of the human rights of Sandžak Bosniaks which happened in 1992 and 1993, had not been properly investigated by the end of 2002.[252]

Late in April, ethnic tensions in Sandžak rose after the local authorities in Novi Pazar, where Bosniak parties hold 34 of the 47 seats in the local council, decided to change the municipal statute to read that in that area "besides the Serbian language and script, the Bosnian language and Latin script – the language and script of the Bosniak people – shall be in equal use". Twelve Serb council members walked out of the session, claiming that the local authorities were trying to usurp the competences of the republican authorities and that the decision represented "abuse of the law" (*Danas*, 30 April, p. 4; *Blic*, 30 April, p. 2).

2.13.4. Minorities in Vojvodina – No major violations of minority rights were reported from Vojvodina province, where ethnic Hungarians are the biggest national minority – some 293,299 were recorded in the FRY in the 2002 census.

Early in February, the Serbian Parliament adopted an act amending 70 existing statutes and legislative acts returning to Vojvodina[253] the powers it once had in the fields of economy, management of natural resources, social and pension security, regulating of official use of languages and scripts etc. In Vojvodina, Hungarian, Slovak, Romanian and Ruthenian are in parallel use with Serbian, and both the Cyrillic and Latin scrits are official, in a manner defined by law (*Politika,* 10 January, p. 7; *Blic*, 5 February, p. 2).

In June, the local authorities in the northern Vojvodina city of Subotica, in conformity with the minorities act and the new Local Self-Government Act changed the municipal statute to prescribe official use of Serbian, Hungarian and Croatian, as well as use of the Hungarian name of the city – *Szabatka*. These provisions, which had already existed in the municipal statute, were abolished by the Serbian Constitutional Court in January 2001.[254] In the 2002/2003 school year, classes in three primary schools in Subotica are conducted in Croatian (*Glas javnosti*, 3 September, p. 15).

The descendants of the 400,000 ethnic Germans who once lived in Vojvodina and who were deported by the post-World War Two communist authorities stepped up their efforts to protect their rights, particularly in respect of the return of or indemnification for confiscated property (Beta, 21 April).[255] Several authors touched on the value of that property; one claimed that in the Belgrade suburb of Zemun alone, confiscalted property was worth over 100 million euros (*Glas javnosti*, 17 May, p. 17). The 2002 census registered 3,901 ethnic Germans in Serbia (Beta, 21 April).

2.14. Political Rights

In 2002, presidential elections were held in Serbia and in Montenegro, early general elections and regular local elections in Montenegro, as well as early local elections in three municipalities in southern Serbia along the Kosovo administrative boundary – Preševo, Bujanovac and Medveđa.[256] Verbal and physical assaults against political opponents continued, albeit somewhat less intensively than in 2001.

The political year 2002 in the FRY passed in the sign of efforts to reorganise the federal state into a new Serbia-Montenegro union. The process involved the active participation of the EU, which assisted in the drafting of the Belgrade Agreement of 14 March, which established new and much looser foundations for the Serbia-Montenegro state. The agreement was followed by the establishment of a Constitutional Commission, made up of members delegated by the federal and both republican legislatures (*Vreme*, 21

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[252] See II.2.2.3. and II.2.3.1.

[253] In 1989, the Milošević-controlled legislature stripped the northern Serbian Province of Vojvodina of the wide-ranging autonomy it had enjoyed under the 1974 SFRY Constitution, but subsequently even the constricted autonomy was not respected by Serbia's authorities. The 5 October 2000 democratic shift was followed by renewed calls for full autonomy.

[254] See *Human Rights in Yugoslavia 2001,* II.2.13.4.

[255] See *Human Rights in Yugoslavia 2001,* II.2.13.6.

[256] More on situation in the region II.2.13.1.

March, p. 13). After almost six months of work, the Commission adopted a draft constitutional charter of the future state sommunity (*Danas*, 7 December, p. 1). The two republican parliaments had not discussed the text by the end of 2002.

Politics in Serbia were marked by a conflict between the two major rivals in the former DOS coalition – the Democratic party (DS) and the Democratic Party of Serbia (DSS). Absenteeism by DSS deputies in the Serbian parliament initially led to their being stripped of their mandates by the DOS (*Blic*, 7 June, p. 3). DSS filed an appeal with the Federal Constitutional Court, which annulled the offending DOS decision (*Blic*, 27 July, p. 2). Informed about the court's decision before its publication in the *Sl. list SRJ*, DOS quickly expelled the DSS from the coalition, on grounds of allegedly violating the coalition agreement thereby stripping it of its 45 seats. On 29 July, the Administrative Committee of the Serbian parliament cancelled the DSS deputies' mandates (Danas, 30 July, p. 1). DSS lodged a new complaint with the Federal Constitutional Court and also approached the OSCE.

On 16 October, the Federal Constitutional Court made a temporary order suspending the execution of this decision (*Blic*, 17 October, p. 2; *Sl. list SRJ*, No. 57/02).[257] The ruling coalition then launched a series of personal attacks against the Court's president, Professor Momčilo Grubač.

After the Court's decision and on the initiative of the Otpor movement, the Constitutional Court of Serbia took on itself to assess the constitutionality of provisions of the Serbian parliament's Rules of Procedure invoked by the Administrative Committee. On 1 November, the Court found the Rules to be in conformity with the Serbian Constitution. The court also started the procedure to examine the constitutionality of Article 88 of the Act on the Election of Peoples Deputies, under which members of parliament are automatically deprived of their mandates if their memberships in the parties or coalitions on whose electoral lists they had been elected are terminated. No decision on this matter had been made public by the end of 2002 (*Vreme*, 2 January 2003, p. 11; *Blic*, 2 November, p. 2).

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) reacted to the ouster of the DSS deputies on 26 April, recommending the abolition of the law under which deputies' mandates were terminated (*Vreme*, 2 January 2003, p. 11). Some independent sources claim that the ODIHR allegedly drafted a report criticising the removal of the DSS deputies as incompatible with OSCE standards. This report was not published.

After agreement had been reached by the DSS and the DOS, the DSS deputies returned to the parliament on 5 November (*Politika*, 6 November, p. 7). Nonetheles, the conflict did not abate; towards the end of the year it contributed to the failure of two unsuccessful rounds of presidential elections in Serbia.

2.14.1. Elections in Serbia – Presidential elections were held in Serbia on 29 September and 8 December, and a run-off vote also on 13 October.[258] On 29 September, 3,637,062 of the total electorate of 6,553,042 voted; the turnb out was thus 55.50%. Vojislav Koštunica got 1,123,420 votes (31.56%), Miroljub Labus got 995,200 (27.96%) and Vojislav Šešelj 845,308 (23.74%); no candidate thus won the legally required vote of more than one-half of the turnout (*Sl. glasnik RS*, No. 63/02).[259]

CeSID reported at the time that no major complaints had been made in connection with the electoral campaign.[260] There were nevertheless some incidents in Novi Sad, Velika Plana, Belgrade and Čačak (*Danas*, 6, 23 and 26 September, pp. 1, 4, 4; *Blic*, 24 September, p. 2; *Danas*, 25 September, p. 5). The most serious incident took place in Novi Beograd, where Slobodan Pop – Lazić, a SRS activist, assaulted Nemanja Ranković and his brother Nenad as they were putting up Labus campaign posters. Pop – Lazić was arrested on 1 October and ten days later charged with inflicting minor injuries (*Glas javnosti*, 2 October, p. 9; *Politika*, 11 October, p. 16).

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[257] More on decision in I.4.14.5.3.

[258] Vojislav Koštunica, Vojislav Šešelj and Borislav Pelević ran in the repeat elections.

[259] Other candidates: Vuk Drašković 159,959 votes (4.9%), Borislav Pelević 139,047 (3.91%), Velimir "Bata" Živojinović 119,052 (3.34%), Nebojša Pavković 75,662 (2.13%), Branislav "Bane" Ivković 42,853 (1.20%), Vuk Obradović 26,050 (0.73%), Tomislav Lalošević 25,133 (0.71%), Dragan Radenović 8,280 (0.23%).

[260] See <http://www.cesid.org/predsednicki2002/cesid_o_izborima/index.htm>

Koštunica faced Labus in the run-off vote on 13 October, but the tournout of one-half of the electorate was not reached: 2,979,254 people voted, or 45.46% of the electorate. Koštunica won the support of 1,991,947 (68.38%), and Labus of 921,094 voters (31.62%) (*Sl. glasnik RS*, No.67/02).

According to data published by the Electoral Commission of Serbia (RIK), the turnout at the repeated elections on 8 December was once again below par: 2,947,748, or 45.17% of the total electorate of 6,525,760. The DSS candidate Vojislav Koštunica got 1,699,098 votes (57.66%), Vojislav Šešelj of the SRS got 1,063,296 (36.08%), and Borislav Pelević of Party of Serbian Unity (SSJ), won 103,926 (3.53%). Some 80,396 ballots were invalid (Beta, 10 December; *Sl. glasnik RS*, No. 85/02). Assessing the vote very favourably, CeSID stated that the biggest problems still lay in deficient legislation and in the electoral rolls, which, it added "are nevertheless not as incomplete as some would have it".[261]

DSS complained to RIK, claiming that the DSS candidate had in fact won as the electoral register contained over 835,000 non-existent voters. After RIK dismised the complaint DSS took its case to the Supreme Court of Serbia, which also decided against it (*Večernje novosti*, 11 December, p. 3; *Blic*, 12 December, p. 3; *Danas*, 17 December, p. 1).

2.14.1.1. Local elections in southern Serbia – Local elections were held late in July in the southern Serbian municipalities of Bujanovac, Medveđa and Preševo, which lie along the Kosovo administrative boundary and have ethnic Albanian majorities. The vote, seen as an essential part of the Plan for Resolving the Crisis in Southern Serbia adopted by the federal and Serbian authorities in 2001,[262] passed without major incidents and conformed with international standards.[263] This was the finding of the international election-monitoring mission,[264] which said some improvements were nevertheless necessary, especially as regards the drafting of voter registers; in fact, most of the complaints were raised by people unable to vote as they were not on the roll,[265] and in connection with insufficient privacy. Fewer voters than their ethnic kin had expected turned out: in Bujanovac, about 60% of the Serb voters and a like percentage of ethnic Albanians, and very few Roma, who therefore won no seats in the local council. The turnout in Preševo was about 52%, and in Medveđa just 43% (HLC Report, *Albanci u Srbiji – Preševo, Bujanovac i Medveđa*, 2002).

In Medveđa, the election for mayor was won by Slobodan Drašković, candidate of a coalition of Serb parties, which won 31.1% of the vote for the local council. SPS won 19.33%, DSS 16.64%, the Albanians' Party for Democratic Action (PDD) took 16.17%, SPO 9.03% and SRS 6.11% (*Danas*, 30 July. p. 1).

In Preševo, where ethnic Albanians are 90 percent of the population, the turnout was over 50 percent. PDD leader Riza Hallimi was elected mayor with 48.41% of the votes cast. Ethnic Albanian parties took 18 seats in the municipal council, and a Serb coalition the remaining three (Beta, 6 September).

The turnout in Bujanovac was about 62%; the new mayor became Nagib Arifi of PDD, which took 35% of all votes (*Danas*, 30 July, p. 2). Albanian parties won 23 council seats, and Serb parties the other 18 (*Glas javnosti*, 2 September, p. 26).

Two Serb coalitions protested after some polling stations in Bujanovac were found to have remained open until the early morning hours. Complaints were made to electoral commissions and local courts; Serbs staged public protests in Bujanovac for several days. The Yugoslav authorities and the OSCE stated that the vote had passed "without major problems" (*Danas*, 29 and 31 July, pp. 1, 2).

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[261] See <http://www.cesid.org/predsednicki2002/ocena_izbora.htm>

[262] See *Human Rights in Yugoslavia 2001,* II.2.13.1.

[263] See *Background report: Assisting Elections in South Serbia*, OSCE Mission to the FRY, 28 August 2002, and Congress of Local and Regional Authorities of the Council of Europe Press Release, 29 July 2002.

[264] OSCE/ODIHR and Congress of Local and Regional Authorities of the Council of Europe press release 8 July, International Election Monitoring Mission, 29 July 2002, the Mission issued a statement on preliminary findings and conclusions.

[265] See <http://www.cesid.org/Izbori_bpm/drugi_krug.htm>

2.14.2. Elections in Montenegro – Regular presidential elections held in Montenegro on 22 December failed after the turnout was under the legal minumum of 50 percent of the electorate (*Monitor*, 27 December, p. 3). The Montenegrin RIK said the turnout was 46%, or 209,800 voters. The vote will be repeated on 9 February (CeSID news, 30. December).[266]

The year 2002 passed in Montenegro in the sign of bitter rivalry between the opposition pro-Yugoslavia *Zajedno za Jugoslaviju* (ZZJ) coalition, headed by the Socialist People's Party (SNP), and the ruling pro-independence bloc, led by the Democratic Party of Socialists (DPS) and the then president and later prime minister, Milo Đukanović.

After the Liberal Alliance of Montenegro (LSCG) pulled out of the ruling coalition, the government failed in a no-confidence vote in parliament and general elections were called for 20 October (*Vijesti*, 23 May and 21 July, pp. 3, 1). The campaign was marred by mud-slinging between the rival coalitions (*Dan*, 17 October, p. 5; *Vijesti*, 12, 15 and 16 October, pp. 2, 5, 5). CeSID considered the campaign to be very negative – vilification of political opponents sometimes bordering on a hate speech.[267] Đukanović's *Demokratska lista za evropsku Crnu Goru – Milo Đukanović* took 39 of the 75 seats in the parliament, the *Koalicija za promene* won 30, the LSCG took four and ethnic Albanian parties the remaining two *(Vijesti*, 23 October, p. 3).

2.14.2.1. Local elections in Montenegro – Scheduled local elections were held in Montenegro in May 2002.[268] President Đukanović's ruling coalition won in six municipalities, the opposition ZZJ coalition took seven; in four municipalities jointly with the LSCG, while ethnic Albanian parties gained control in Ulcinj (*Vijesti*, 16 and 17 May, pp. 1, 4; *Dan*, 16 May, p. 10) The OSCE mission monitoring the vote reported that it had been held in line with accepted democratic standards, with just a few minor deficiencies. The biggest objection remained that parties still control the distribution of mandates, which means that voters cannot know which actual candidates they support. All media showed some bias in one direction or the other, and some newspapers violated the pre-vote political publicity ban[269]. The *ZZJ* coalition objected to irregularities in electoral rolls and unlawful erasure of voters from the register in Bijelo Polje (*Dan*, 9 and 11 April, pp. 11, 10) and CeSID voiced some complaints in connection with voter registers (*Vijesti*, 15 May, p. 3). During the campaign ZZJ and other opposition candidates were assaulted in Nikšić (*Vijesti*, 3 May, p. 7), Budva (*Dan*, 16 May, p. 12) and Šavnik (*Dan*, 9 May, p. 12). The most serious incidents happened when a hand grenade blew up in ZZJ office in Nikšić, fortunately hurting no one (*Vijesti*, 15 May, p. 5).

Early local elections were also held in Podgorica and Tivat, but no political group managed to win power outright (*Vijesti*, 12 October, p. 5).

2*.14.3. Attacks and menaces against political opponents* – Fewer attacks on political opponents were reported in 2002 than in the preceding year. SPO supporters in Bor complained in February that police had taken them illegally into custody during a visit by the Serbian prime minister; police denied the charge (Beta, 23 February). An activist of the Social Democratic Union (SDU), a member of the ruling DOS, was assaulted in Kikinda in February (Tanjug, 16 February). Bombs were thrown at the DSS headquarters in Belgrade (*Večernje novosti*, 1 March, p. 2) and the DS's local office in the suburb of Kaluđerica in March (*Glas javnosti*, 10 March, p. 7). In April, the local office of Vojvođanski pokret (Movement for Vojvodina) in Sombor was pelted with rocks on two occasions (Beta, 8 and 14 April), a DSS member of the local council in Požarevac was beaten up by members of the opposition Socialist Party (*Glas javnosti*, 5 April, p. 16), and a Civic Alliance (GSS) deputy received death threats in Veliko Gradište (*Danas*, 19 April, p. 16). The SPO's office in Laćarak was bombed (*Večernje novosti*, 2 September, p. 10) and the DSS premises in Čačak ransacked in September (*Danas*, 1 October, p. 4), while SRS supporters attacked a DSS activist in Belgrade early in December (Beta, 12 December).

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[266] See <http://www.cesid.org>

[267] See <http://www.cesid.org/cg_parl_2002/monitoring_medija.htm>

[268] On 15 May, local elections were held in 19 of Montenegro's 21 municipalities – in Podgorica and Herceg Novi, they had been elected at early elections in 2000.

[269] See <http://www.cesid.org/vesti/index.shtml?d=16&m=5&y=2002&submit=Izlistaj+%3E%3E>

During a protest held in Belgrade on 28 June, SPS supporters injured a policeman and a reporter and smashed windows on the building housing the Serbian Government[270] (*Blic*, 29 June, p. 2). The same month, rocks were thrown at vehicles of the opposition Party of Serbian Unity (SSJ) in Šabac (Beta, 19 June), while two weeks later a hand grenade exploded outside the home of a leading SPS member in Kikinda (*Večernje novosti*, 5 July, p. 11).

2.15. Special Protection of the Family and the Child

The position of children in the FRY remained very bad. One out of five children in Serbia was anemic, and one out of twenty suffered from hypertension; this was shown by a health study conducted in late 2001 and early 2002 covering 17,000 respondents. "No fewer than 38% of all children drink little milk or none at all, just one child out of two eats fresh fruit and vegetables daily, and one out of four eats meat less than once a week", the report says. The conclusion was that the reason lay in general poverty: one-half of all Serbian families spent 70% of their total income on food (*Večernje novosti*, 7 February, p. 5).

In May 2002 the Serbian Government formed in May 2002 the Children's Rights Council, tasked with shaping a comprehesive and coherent policy in this area, in line with the Convention on the Rights of the Child (*Sl. glasnik RS*, No. 26/02).

The media gave in 2002 more room to violence in the family, shedding some light on a long neglected and underrated problem. Early in the year, the Serbian Goverment announced that 10,000 secondary-school pupils would be tested for drugs; the procedure is supposed to be part of a pilot project aimed at analysing the overall situation in primary and secondary schools.

Substance abuse is a major problem among young people: there are 80,000 registered drug addicts in Serbia, including 35,000 in Belgrade. The Child Rights Centre (CRC) has welcomed efforts to tackle the problem, but pointed to the inappropriate nature of urine testing for the presence of narcotics on a representative sample (CRC, Press Release, 25 February). The CRC also stated that the planned procedure was psychologically and medically unacceptable, and that children's rights to life, survival and development (Art. 6), to the realisation of their best interests (Art. 3), to participation in making decisions which concern them (Art. 12), and a number of other rights prescribed in the Convention could not thus be enjoyed.

The reasons given for the testing and the manner of its application violate children's right to health care, which *inter alia* implies an obligation by the state to provide for children the best possible health care and protection. The purpose and manner of application of such procedures need to be defined very precisely, the CRC said (CRC, Press Release, 25 February; *NIN*, 14 February, p. 24).

The testing was carried out in eight towns in Serbia. Its results were processed statistically and will represent a basis for a national strategy for combatting drug addiction to be co-drafted by the ministries for health and education and sport (interview with Žarko Mihajlović, Assistant Serbian Minister for Education and Sport, BCHR archives, January 2003).

Some 12,000 children spent holidays in summer camps organised between 15 July and 19 August by the Serbian Ministry of Education and Sport. In the second half of August, local leaders in Niš of the Nova Srbija party claimed that "impermissible sexual abuse and mental and physical torture of children" had taken place in the summer camp in Sremska Mitrovica. The incident concerned workshops organised by the Yugoslav Aids Association (JAZAS), where some of participants had stripped voluntarily.

The incident was exploited by a number of political parties, the SPC and several daily newspapers, which published photographs taken in the camp. The church accused the ministry and the summer camp of "undermining the spiritual moral values of their people and thereby the universal human moral values". The SPC said it would have to "protect our children and our nation" from "poisoning, abuse and the influence of the new world order," and demanded the resignation of the minister for education and sport. The Ministry looked into the case and said some JAZAS instructors had overstepped their guidelines and thereby motivated some children to behave indecently (*Danas*, 2 September, p. 1; *Vreme*, 29 August, p. 24; *Glas javnosti*, 27 August, p. 4). The BCHR thought that children's rights were being grossly violated under

[270] See II.2.10.

the pretext of their protection. Publishing pictures of minars without permission and forging their statements was a breach of law; generalisations and attacks on all similar camps organised in the past months challenge the entire concept of supplementary and alternative education, and several thousand children are linked to indecent and obscene behaviour (BCHR, Press Release, 29 August).

There are 17 homes for children without parental care in Yugoslavia with a total of 1,928 charges, while another 2,100 children live with foster parents. “Over 50% of these children have parents who live with spouses but do not want to take charge of their children”, said professor Bora Kuzmanović, coordinator of the study, the first in a quarter century (Tanjug, 27 February).

2.15.1. Violence in the family and child abuse – Serbia's and Montenegro's parliaments adopted in 2002 amendments to criminal laws making violence in family as such punishable by law.[271] The amendments could serve to change existing legal practice. In the 1998–2001 peroid, Serbian courts were usually lenient in regard to violence in the family, passing suspended sentences in 99 of the 134 cases surveyed (93 jail terms and six fines). Eight defendants received warnings, 20 were fined and just seven sent to prison (*Blic*, 13 November, p. 10).

Mental abuse, threats, beatings and injuries and similar acts committed within the family are treated as criminal offences of violence within the family subject to automatic prosecution. The results of a study covering 700 women indicate that one out of two had experienced mental abuse in the family and one of three physical abuse, said Vesna Nikolić Ristanović, President of the Victimological Society of Serbia. The Society reported that one out of three women in Serbia was victim of violence in the family, while one out of seven reported it to the police. In over 63% of all cases the offender was her husband, while “more than seven percent of all women have actually had family members use a weapon against them” (*Danas*, 28 June, p. 1; *Glas javnosti*, 2 December, p. 5).

URBAN-IN, an NGO based in Novi Pazar, said violence in the family was a huge problem in Sandžak. Police have shown little interest in such violence, which is a effectively a taboo subject; relevant institutions just record instances of such violence and file them away (URBAN-IN, Press Release, 23 February).

Violence against wives was also a problem in Montenegro. “Physical violence attended by verbal, economic and sexual abuse takes place in about 40% of all marriages”, says Vesko Đurković of the Social Work Centre in Podgorica (*Monitor*, 22 February, p. 30). SOS Telephone volunteer staff in Podgorica say violence in the family is on the increase (*Vijesti*, 8 January, p. 9). SOS Telephone activists in Pljevlja say 14 percent of all women exposed to physical violence remained crippled for life (*Vijesti*, 29 July, p. 7).

In a campaign launched late in June, the Victimological Society of Serbia and the Institute for Criminology and Sociology Studies called for pardons for eleven women sentenced to lengthy terms of imprisonment for manslaughter. “Those women do not kill because they are treacherous but because they are in extreme fear for their own lives and the lives of their children, a state in which they arrived after years of extreme violence and intimidation, which usually precede the homicide”, the organisations wrote in a letter to the Supreme Court of Serbia. Dr. Nikolić Ristanović said poor legal protection of the victims of violence within the family and inadequate penalisation of offenders led the victims and the perpetrators of the violence to swap places. She said she hoped the situation would improve following the adoption of the amended Criminal Code, which makes violence in the family punishable by jail terms ranging from two to 40 years (*Blic*, 1 July, p. 11). The Supreme Court reduced the sentence handed down to Radmila Asl for the murder of her husband from eleven to four years the mitigating circumstance was that Ms. Asl had been victim of abuse in the family (*Blic*, 1 July, p. 11).

Also very serious is the situation in regard to child abuse. “Between 30 and 40 of the roughly 3,000 calls we get every year are made by children aged between 8 and 14”, said Vesna Stanojević, coordinator of the Belgrade-based Counseling Centre for Victims of Violence in the Family. “In our society children are regarded as personal property and many parents behave correspondingly,” she said. Ljiljana Raičević of the Women's Safehouse in Podgorica claimed that “over 54% of all children were exposed to physical and mental abuse” (*Blic*, 14 January and 21 October, pp. 10, 7).

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[271] See I.4.15.1.

Prosecutions of the child-abuse including sexual abuse, were reported in 2002 in Belgrade, Smederevo, Kragujevac, Zrenjanin, Zaječar and Vlasotince (*Blic*, 24 May and 31 October, pp. 10, 11; *Glas javnosti*, 22 July, 3 and 24 October, pp. 4, 9, 9; Tanjug, 1 July; *Večernje novosti*, 16 March, 17 September, 23 and 25 October, 23 November, pp. 10, 12, 11, 15, 11; *Danas*, 28 November, p. 18). There were angry reactions in the Montenegrin public early in April after social workers escorted by police forcibly took from her mother two-year-old Vasilisa Đukanović, the illegitimate daughter of Aco Đukanović, brother of the then Montenegrin president.[272] Gordana Kovačina, the mother, said social workers assisted by about a dozen policemen had taken the child with no prior announcement or court order. She denied that she had given Đukanović custody consent. There are indications that pressure was exerted on the Social Work Centre (*Vijesti* 25 May, p. 3; *Dan*, 27 May, p. 9).

Aco Đukanović sued Kovačina for allegedly forcibly taking from him the child whose legal guardian he was by virtue of a decision of the Social Work Centre. Kovačina's lawyer dismissed the accusation, saying the Social Work Centre was only an advisory organ and was "not competent to decide on the merits of the custody of children". She said only a court could do so, and that the Centre's action was thus "unlawful and represented a criminal offence". The trial, which opened in Podgorica in June 2002, was postponed at the request of the defendant's counsel, who challenged the court and the judges on account of their "closeness to the Đukanović family" (*Dan,* 6 and 9 June, p. 9, *Vijesti*, 6 June, p. 5). Proceedings resumed in October (*Dan*, 4 October, p. 5), but no judgment was rendered by the end of 2002.

2.16. Right to Citizenship

Double nationality has been far easier to get in the FRY since the democratic changes. The Federal Parliament adopted in February 2001 the Act on Amending the Citizenship Act making it possible for the citizens of former republics of the SFRY with residence in the FRY to acquire Yugoslav citizenship without having to renounce foreign citizenships. Refugees were in 2002 in a much more favourable position in regard to the exercise of their citizenship rights.[273]

A total of 437,077 applications for Yugoslav citizenships were filed from 1 January 1997 (when the 1996 Yugoslav Citizenship Act became effective) to 20 July 2002, according to Assistant Minister of the Interior Brankica Grupković has said (*Danas*, 30 August, p. VIII).

Deciding on these applications, the Federal Ministry of the Interior granted Yugoslav citizenship to 527,404 persons, some 260,440 of them under the institution of admission into citizenship (Art. 48 of the Yugoslav Citizenship Act). Between March 2001 and 20 July 2002, some 15,000 more applications were processed than the number of those filed, as the Ministry also decided on some filed years ago. Ms. Grupković said the citizenship by the admission procedure had once lasted several months, and even years, and that as a rule such applications had not even been processed in the period between April and September 2000 (*Danas*, 30 August, p. VIII).

The admission procedure is quite complex, as opinions also have to be sought from the republican interior ministries. Technical difficulties are also frequent – incomplete documentation, e.g. information on refugee status or residence, errors in documents; applicants are also often unable to obtain all the necessary documents. Finally, about 70,000 case files were destroyed in NATO bombing of the federal interior ministry building in 1999 (*Danas*, 30 August, p. VIII).

The citizenship status of some members of the Karađorđević dynasty, which had ruled Yugoslavia until 1945, was restored in 2002 (*Danas*, 11 January, p. 12).

2.17. Freedom of Movement

In the media monitored by the BCHR, no violations of the freedom of movement were reported in 2002.

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[272] More on Aco Đukanović II.2.6.3.

[273] See I.4.16.

2.18. Social and Economic Rights

Yugoslavia continued to face serious social and economic problems in 2002, at the conclusion of which the registered unemployment rate was 970,000 – almost 30 percent of the working-age population. Some 890,000 jobless were in Serbia; 250,000 of them had lost their jobs in 2002. Montenegro's unemployment figure is 80,000 (*Blic*, 19 November, p. 8; *Večernje novosti*, 11 December, p. 2).

A poll commissioned by the Serbian Government and the World Bank for the *Profiles of Poverty in Serbia* project indicated that 800,000 people, or 10.6% of the population, were rated as poor.[274] Most of them are persons aged over 65 (14.8 %), children between seven and 14 (12.7 %) and families with five or more members (Tanjug, 18 December).

Research conducted by the Centre for Social and Democratic Studies shows that 12% of Serbia's population cannot cover even their food needs and that 43% have money only for that purpose. "About 73% of those polled say life was better in the socialist period, 2% think it was better under Milošević, and 12% live better now than before", the research indicated (*Glas javnosti*, 30 April, p. 8). According to data provided by the UN Development Programme in Yugoslavia, 36% of the people of Serbia have monthly incomes below USD 30. Some 18% have incomes of up to USD 20, and are rated as living in total poverty. What especially provokes concern is the fact that one child out of two is poverty-stricken, and one out of four lives in absolute poverty (*Blic*, 21 May, p. 7).

The situation in Montenegro is similar. Its government holds that one out of four, or at least 165,000 people, live below the poverty line, defined as less than 50 euros a month (*Dan*, 30 May, p. 4).

Even people earning average incomes did not have it easy in 2002. In October, the average monthly wage in Serbia was 164 euros, while a minimum of 217 euros were needed to cover even basic needs (*Večernje novosti*, 11 October and 21 November, pp. 5, 7).

In Montenegro, where the situation is very similar, trade unions have repeatedly accused the authorities of deliberately undervaluing basic family needs, which official data set at 733 euros in October, while the average net monthly wage was 210 euros (*Vijesti*, 9 November, p. 6).

The acute unemployment problem, also inherited from the preceding period, was further aggravated in 2002 by the process of economic transition and government efforts to get the ruined economy back on its feet. The wave of strikes begun in 2001 continued, motivated by closures of firms, privatisation problems, unpaid or low wages, poor working conditions, low purchase prices of agridultural produce. A number of hunger strikes, a novel mode of protest in this society, were recorded in Serbia and Montenegro in 2002.

Payment of pensions and social benefits continued to be relatively regular in 2002, the only outstanding problem being unpaid pensions in the agricultural sector; late in February, the Serbian authorities still owed about 450,000 farmers 12 monthly pensions (*Večernje novosti*, 27 February, p. 5).

2.18.1. Status of disabled persons – Serbia's estimated 800,000 disabled persons (although just 142,000 are registered with disabled persons' organisations) are also in a precarious position. Poverty is even more pronounced in this segment of the population: just 13% of all disabled persons are employed and just one out of 100 work in conditions adapted to disabled persons (*Danas*, 27 May, p. 5). Instead of viewing disabled people as active participants in all areas of social life, they are mainly still ostracised in Serbia. Cultural barriers and prejudices are widespread (conclusions of the conference on the legal aspects of the protection of disabled persons in Serbia, Centre for Advanced Legal Studies (CUPS), April 2002).

Physically handicapped persons in Serbia face numerous obstacles in their access to educational, health, cultural and other public institutions. NGOs dealing with disabled persons' rights report that more than 160,000 disabled people live in Belgrade, where only the Faculty of Philosophy of the Belgrade University has facilities for physically handicapped students. The situation is very similar in hospitals, schools, cultural institutions, sports facilities, bus and railway stations, and large-scale residential projects. Just one institution housing physically handicapped persons with full mental capacities exists in the FRY.

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[274] The poll, conducted from 15 May to 15 June 2002, encompassed 6,383 households or 19,725 persons in Serbia without Kosovo and Metohija.

The high illiteracy rate among disabled persons in Serbia can be seen as being linked to the lack of appropriate educational facilities. The Association of University Students with Disabilities says that just only percent of all such students succeeded in obtaining a university degree. Serbia's new authorities have still not produced a programme to adequately stimulate disabled persons to seek higher education (Conclusions of the Conference on the Legal Aspects of the Protection of Disabled Persons in Serbia, CUPS, April 2002).

III

HUMAN RIGHTS IN THE LEGAL CONSCIOUSNESS OF THE CITIZENS OF YUGOSLAVIA

1. Introduction

This is the fourth time that research into the legal consciousness of the citizens of Yugoslavia has been conducted; it was organised by the Scan agency from Novi Sad and conducted for the Belgrade Centre for Human Rights. Research of this kind was conducted for the first time back in 1998; it was repeated in 2000, 2001 and 2002. The research is longitudinal in character, which makes it possible to follow the changes and trends in the legal consciousness of citizens. The first survey was conducted two years before the 2000 election, whereas the last one was conducted two years after the change of power that occurred in 2000, which gives it a special quality and makes possible a comparative monitoring of changes. It is also important in that it was carried out after the failed presidential elections in Serbia and immediately before their re-run. The circumstances in which it was conducted in Montenegro were similar to those in Serbia, because the process of gathering data was also burdened with electoral procedures. Immediately prior to the commencement of field work in Montenegro, parliamentary elections had just been concluded and presidential elections had already been announced; the electoral procedures were already under way and there was uncertainty over the success of those elections.

The period during which the survey was conducted differed from that of the previous year owing to the fact that after the 2001 poll, the process of disintegration of the ruling political coalition in Serbia began, the euphoria over the victory in the 2000 election was slowly dissipating and events took a different turn.

The gathering of data in the field was carried out between 22 November and 1 December 2002.

The research sample was made up of 2200 respondents from all parts of Yugoslavia, from 96 towns located in 58 municipalities.[275] The sample is multiphase and representative in terms of the regional distribution of the respondents' places of residence, comprising 1820 respondents from Serbia (820 respondents from outside Belgrade and Vojvodina, 500 from Belgrade and 500 from Vojvodina) and 400 respondents from Montenegro. As before, the number of respondents from Montenegro was intentionally increased, so that the proportion of Montenegrin respondents in the overall sample exceeded the proportion of adult Montenegrins in the structure of the inhabitants of Yugoslavia. In this way, the validity of conclusions drawn from the research was increased not only on the republican level, but also on the level of some social strata of the population. In terms of territorial distribution, the respondents were evenly distributed in all the regions. In Montenegro, the poll encompassed 10 municipalities, whereas in Serbia it encompassed 48 municipalities, of which 12 in Vojvodina and 36 in other parts of Serbia and Belgrade.

Chart 1: The regional structure of the sample

The representative nature of the sample and the adequate presence of all the socio-demographic segments of the overall electorate was ensured, in methodological terms, by a combination of the random sample and a partially stratified quota sample.

50% of the respondents were men and 50% women.

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[275] As on the previous two occasions, the research was conducted on the territory of Serbia and Montenegro, with the exception of Kosovo and Metohija.

In ethnic terms, the majority of the respondents were Serbs (68%), followed by Montenegrins (9%), Yugoslavs (7%), Muslims (5%), Hungarians (2%), Slovaks (1%), Albanians (1%) and Croats (1%); other nationalities or those who did not declare their nationality made up 6% of the overall sample. Among the Montenegrin respondents in the sample, there were Montenegrins (43%), Serbs (25%), Yugoslavs (8%), Albanians (5%), Muslims (14%), Croats (1%), while other nationalities and those who did not declare their nationality made up 5% of the sample.

In terms of occupation, the respondents included skilled and highly skilled workers and technicians (29%), pensioners (22%), intellectuals and experts (12%), students and pupils (9%), housewives (11%), farmers (4%), the unemployed (7%), unskilled workers (3%), entrepreneurs (2%) and other professions (1%). In graphic terms, the structure of the sample according to the age and educational level variables looks like this:

Chart 2: The age structure of the respondents

Chart 3: The educational structure of the sample

The circumstances under which the gathering of data in the field was carried out were characterised by the fact that immediately before and after the field work elections were held in both republics. In Serbia, presidential elections were held. However, even after the second round, Serbia was still without a president elect. In the meantime, electoral regulations had been changed and new elections were called and held seven days after the gathering of data in the field was completed. Research indicated that there would not be a sufficient turn-out of voters for successful elections on 8 December (50%+1). In Montenegro, parliamentary elections were held in October; the Coalition for a European Montenegro, led by the ruling Democratic Party of Socialists (DPS), won the majority in Parliament. In this republic, too, presidential elections were called, to be held in December. In Montenegro, the gathering of data in the field coincided with the moment of closing the list of candidates for the presidential election. Even though in the course of the field work it was not known who would be participating in the electoral race, the research findings showed that there was a possibility of these elections failing as well. All this means that the survey was carried out at the height of election campaigns in both republics. The election campaigns and the election results in both republics led to shifts in the political preferences among the respondents in relation to the previous opinion polls. These shifts were evident in the course of this survey and are reflected in its other results as well.

The survey showed that the trend of a decrease in the number of supporters of the Democratic Party of Serbia (DSS), evidenced in the 2000–2001 period, was reversed in December 2002; the number of supporters of this party has risen from 21% in 2001 to 22% in December 2002. In the period between the polls of 2000 and 2001, the number of Democratic Party (DS) supporters increased from 8% to 16%; however, over the last year (from November 2001 to December 2002), the number of DS supporters has decreased to 10%. At the same time, the number of Serbian Radical Party (SRS) supporters has increased from 6% to 10%. In view of these trends, it is reasonable to suppose that one of the reasons for this is the fact that the leaders of the two parties whose support exhibited an upward trend both participated as candidates in the presidential election, and that both DSS and SRS were engaged in a very intense election campaign from the summer till the period when the research was conducted.[276]

In contrast to the preceding polls, when no significant party allegiance shifts were observed in Montenegro, significant shifts within the electorate were observed during this poll. The poll results reflected the changes on the political scene of the republic that were manifested in the parliamentary election. The poll results indicate that the number of citizens who would have voted for the Democratic Socialist Party (DPS) if the election had been held during the field research, and if all the parties had run on their own, has increased. This increase is significant in view of the fact that, back in December 2001 26% of adult citizens of Montenegro would have voted so, whereas in December 2002 their number increased to 36%. No changes were observed in the number of supporters of the Socialist People's Party (SNP), which remained at the 22% level of the year before. However, there was one change concerning the

[276] The presented figures concerning party preferences pertain to the overall number of the respondents in both republics. In view of the fact that these two parties mainly operate in Serbia, the majority of their supporters come from this republic. This means that the percentages in question are considerably higher on the level of Serbia alone.

supporters of this party: they exhibited a significant tendency to abstain from participating in the election.[277] The greatest change was observed among the supporters of the Liberal Alliance of Montenegro (LS). The number of supporters of this party has fallen from 7% in 2001 to 2% in December 2002. The insight into party preferences made possible by this poll is important on account of the fact that the previous polls showed a very significant correlation between party preferences on the one hand, and views on many issues that were investigated through research into the legal consciousness of the citizens. This correlation is of particular significance in Montenegro.

The respondents were given a questionnaire containing 46 questions dealing with their knowledge of human rights. As in the polls of 1998, 2000 and 2001, the so-called KOL standard (Knowledge and Opinion about Law) was not applied, because that way of differentiating between the questions pertaining strictly to legal regulations, those pertaining to legal practice and those pertaining to desirable legal regulations would have caused great methodological problems. This is the reason why the questionnaire consisted of questions phrased as simply as possible, with no distinction between those human rights that were normatively in effect, those actually applied in practice and those that would be desirable. In addition, the same instrument was also used in the three preceding polls in order to make possible comparative analyses and longitudinal monitoring of the trends and changes in the legal consciousness of the citizens of Yugoslavia. If the research instrument were changed in this segment of the research, such comparisons would not be possible. The difference from the previous polls consists in offering an additional set of questions dealing with violence in this poll.

2. Understanding of Human Rights

Conducting a survey on the knowledge of specific human rights presupposes, to begin with, finding out what adult citizens of Yugoslavia understand human rights to be. Human rights are talked about more and more often in these parts, and in the course of negotiations over the future set-up of the joint state of Serbia and Montenegro agreement was reached that one of the joint ministries of the new state should be the Ministry of Human Rights, which has not existed as such until now. But has this increasingly frequent talk of human rights been accompanied by changes in the knowledge of human rights? In all the previous polls, and in this one as well, the first question asked was: "What are human rights to you?" In asking this question, we relied on the knowledge that it is possible to discuss human rights as a category of *ius naturalis* (human rights are non-positive rights preceding state law), a category of legal positivism (human rights are rights prescribed by the Constitution and international law), a category of *realpolitik* (human rights are merely a means used in struggle for power) and a category in terms of a world-wide conspiracy (human rights are merely a means used in struggle for power) and a category in terms of a world-wide conspiracy (human rights are merely an excuse used by the high and mighty of this world to blackmail *us* and *our government*).

The results obtained indicate that the majority of the respondents still have a positive (in terms of *ius naturalis* or legal positivism) view of human rights. Slightly less than two-thirds of the respondents consider human rights to be *ius naturalis* rights, rights that "everybody has" irrespective of the state legal regulations, and as rights in terms of legal positivism, originating from legal norms, regulated by international documents or by the Constitution. The most prominent among the respondents are the proponents of the *ius naturalis* view of human rights (35%). They are followed by those respondents leaning more towards a legal positivist view of human rights (25.7%), rights regulated by international documents, the Constitution and the law. Even though the *ius naturalis* and the legal positivist views of human rights are the most frequent ones, a considerable number of the respondents were closer to a *realpolitik* view of human rights. This is true of more than one-fifth of the respondents (22.1%), for whom human rights are "a mere piece of paper used by politicians when it is in their interest". At the same time, the number of those respondents who tend to view human rights in terms of a world-wide conspiracy is not negligible – (13.5%); to them, human rights are "merely a means used by the world powers to blackmail small states".

[277] Such trends were observed in the course of the polls carried out by the Scan agency during the months of September and October.

In the analysis carried out two years ago (in the year 2000), it was established that, in relation to the poll of 1998, the number of those in favour of a *ius naturalis* view of human rights had increased to a greater extent than the number of those tending towards a legal positivist view of human rights. This tendency was characterised as a "*ius naturalis* euphoria" at the time, and was ascribed to the processes occurring after the change of power of 5 October 2000. In the poll carried out one year later (in December 2001), the changes that were observed confirmed the assumption of a post-election "*ius naturalis* euphoria", for the number of those who considered human rights to be rights that everybody has irrespective of the Constitution and the law had decreased in the meantime. In 2001 this number decreased to the level observed in the poll of 1998. Along with the decrease of those in favour of a *ius naturalis* view, there was a slight increase in the number of those in favour of a legal positivist view of human rights. It was concluded then that it would take a lot of time for trust in institutions of the system to be re-established, which would increase the legal positivist tendencies in attitudes towards human rights. The changes observed did point to such a tendency and were thus encouraging, but at the same time they constituted a warning that the process of building trust in legal institutions would be a very slow one. What had happened in the meantime and the direction in which knowledge of human rights was heading can be seen from Table 1.

Table 1: Understanding of human rights

ŽZ_TBL_BEG = COLUMNS(5), DIMENSION(IN), COLWIDTHS(1.8817,E1,E1,E1,E1), ABOVE(.0788), BELOW(.0591), HGUTTER(.0551), VGUTTER(.0118), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF), L2(R7C0..R7C5)

ŽZ_TBL_BODY = TABLE L -, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2

"There has been a lot of talk about human rights lately. What are human rights to you?", July 1998, December 2000, December 2001, December 2002

ŽZ_TBL_BODY = TABLE L -, TABLE R, TABLE R, TABLE R, TABLE TEXT

1. Part of overall rights regulated by international documents and the Constitution, 22.3, 25.6, 27.7, 25.7
2. A means of blackmailing small states like the FRY used by world powers, 11.1, 7.7, 10.9, 13.5
3. Rights that everybody has, irrespective of the Constitution and the law of the state he/she lives in, 38.8, 46.7, 38.7, 35.1
4. A mere piece of paper used by politicians when it is in their interest, 24.9, 17.1, 18.7, 22.1
5. Other, 2.9, 2.1, 1.6, 2.2
6. Does not know/no reply, –, 0.8, 2.3, 1.3

ŽZ_TBL_BODY = TABLE R, TABLE R, TABLE R, TABLE R, TABLE TEXT

Total, 100, 100, 100, 100

ŽZ_TBL_END =

The assumptions derived from the preceding polls proved to be correct. The changes in the poll results observed in the year 2000 (in relation to the poll of 1998) were marked by a significant increase in the number of those who tended to view human rights as rights belonging to everyone. The poll carried out

one year later (in December 2001) indicated that the process of establishing trust in the institutions of the system would be difficult and very slow. In 2001 the number of respondents leaning towards a *ius naturalis* view of human rights decreased, whereas the number of those leaning towards a legal positivist view increased only slightly. The mistrust of the institutions of the system, deeply rooted over the preceding years, obviously called for more visible changes of the system and a systematic building of trust. Unfortunately, the results of the poll carried out in December 2002 are not at all encouraging in that respect. The trend they indicate is a negative one. The number of respondents tending towards a *ius naturalis* view of human rights has decreased in relation to the previous year (2001: 39%; 2002: 35%); this, however, was not in favour of those tending towards a legal positivist view of human rights (2001: 28%; 2002: 26%). At the same time, the number of respondents who reduced human rights to the level of *realpolitik*, a mere piece of paper used by politicians when it suited them, has increased (2001: 19%: 2002: 22%). This attitude probably reflected a feeling of dissatisfaction with the speed of the expected changes. The number of respondents for whom human rights represent a means of blackmail used by great powers (2001: 11%; 2002: 14%) has increased not only in relation to the previous year but also in relation to the results obtained in the 1998 poll. It is possible that such results are the consequence of the demands of international institutions for cooperation with the ICTY and the attitudes of our citizens towards that institution. At the same time, it is quite possible that they reflect developments on the international scene (Afghanistan and Iraq).

Lack of trust in legal institutions is not just a consequence of the power set-up until the year 2000; this mistrust is still based on, and is partly a consequence of a rift within the ruling coalition in Serbia. The entire year 2002 has been marked by the negotiations about the way the future joint state of Serbia and Montenegro should be organised; the second half of the year has been characterised by election campaigns full of accusations from all sides. The consequence of these processes was a further weakening of the legal security of citizens. However, the slowness with which laws have been passed and the conflicts over the jurisdiction of state and legal institutions have not contributed to easing the feeling of legal insecurity shared by many citizens but clearly supported precisely the opposite trends. On account of this, we continued to monitor the way citizens regard the hierarchy of legal acts. With this in mind, the respondents were asked what took precedence in cases when legal norms were not mutually compatible.

The results obtained indicate that most respondents give priority to constitutional norms (30%), a trend that has been observed since 2000. However, irrespective of the fact that this is the most frequent answer, the fact that this attitude was observed in less that one third of the overall number of respondents is a warning of sorts. At the same time, what is even more worrying is the fact that fewer respondents think so today than last year and in 2000. Next come the respondents who give precedence to the law (21%). It sounds surprising that the respondents giving precedence to people who have power came in third (16%), followed by those who favoured clever people (15.4%). In this poll, international norms lost in the race with all the other options on offer, coming in fifth, with the lowest percentage since we started monitoring the legal consciousness of the citizens of Yugoslavia. The data thus presented already make it quite clear that negative trends have occurred between the two polls on the attitudes of Yugoslav citizens towards the hierarchy of norms. It is interesting to note what changes have occurred in the citizens' attitudes concerning the priority of legal norms since 1998. The answers are presented in Table 2.

Table 2: Lack of mutual compatibility of legal acts

ŽZ_TBL_BEG = COLUMNS(5), DIMENSION(IN), COLWIDTHS(1.8817,E1,E1,E1,E1), ABOVE(.0984), BELOW(.0984), HGUTTER(.0555), VGUTTER(.0118), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF), L2(R8C0..R8C5)

ŽZ_TBL_BODY = TABLE L -, TABLE 90-10 1, TABLE 90-10 1, TABLE 90-10 1, TABLE 90-10 1

“If legal norms are not mutually compatible,, what takes precedence?”, July 1998, December 2000, December 2001, December 2002

ŽZ_TBL_BODY = TABLE L -, TABLE R, TABLE R, TABLE R, TABLE TEXT

1. What is written in international documents, 15.6, 14.4, 19.0, 13.9
2. What is written in the Constitution, 21.5, 32.4, 33.6, 29.9
3. What is written in the law, 14.6, 18.1, 20.6, 21.1
4. What people who have power say, 22.9, 13.4, 10.0, 16.0
5. What clever people say, 22.9, 18.9, 12.8, 15.4
6. Other, 2.5, 1.7, 0.9, 2.5
7. Does not know/no reply, –, 1.0, 3.0, 1.1

ŽZ_TBL_BODY = TABLE R, TABLE R, TABLE R, TABLE R, TABLE TEXT

Total, 100, 100, 100, 100

ŽZ_TBL_END =

In relation to the poll of December 2001, unfortunately entirely negative changes have occurred in regard to the question of what takes precedence in the case when legal norms are not mutually compatible. What is particularly worrying is the fact that the number of citizens who claim that, when legal norms are not mutually compatible, what people who have power say takes precedence has significantly increased. The number of citizens thinking so is the greatest since 2000, and is smaller only in comparison to the result obtained in 1998. The number of citizens who, in such situations, favour what clever people have to say has also increased in relation to 2001. The only answer where no negative trend was exhibited pertains to the number of respondents giving precedence to the law in the case of a lack of compatibility of legal norms. The number of respondents opting for this answer has remained at last year's level. The number of citizens who give precedence to the most important legal documents in the legal hierarchy – the Constitution and international documents – has decreased. These are worrying indicators, pointing to tendencies entirely different from those observed in last year's poll. With regard to all four polls conducted from 1998 to this day, the figures in the table indicate a situation that is less favourable in this respect than the situation observed immediately after the 2000 election.

3. Individual Rights

3.1. Prohibition of Discrimination

Prohibition of discrimination was operationalised in this poll, as in the preceding three polls, in five different forms, formulated by means of five questions. Three questions dealt with the prohibition of discrimination on the basis of sex (in the spheres of politics, employment, job promotion and marriage); one question each dealt with prohibition of discrimination based on ethnic grounds (when it comes to employment) and sexual orientation (homosexuality).

Inequality of women is manifested in various spheres of life, and has been in evidence throughout the post-communist period in the FRY. Research shows that women, as well as men, clearly recognise the areas where the inequality of women is most evident. Both men and women agree that women are unequal when it comes to being elected for political functions, appointed to managerial positions and in marriage as well. At the same time, analyses show that women's presence in the labour market is significantly higher than that of men, which points to the conclusion that women are not equal in the sphere of employment either.

The unequal position of women in the political life of the FRY has been evident for a number of years. According to a report of the Council of Europe, Yugoslavia is still at the bottom of the list of European countries concerning the percentage of women in the federal Parliament (6%). This is one of the reasons why this year organisations striving for the equality of the sexes and for improving the political and economic position of women, together with women's political network, have been engaged in a

campaign for introducing electoral list quotas of a minimum of 30% of women and for introducing national mechanisms for achieving the equality of the sexes.[278]

The Act on Local Elections was passed which included a provision to that effect, advocated also by the Beijing Charter of the United Nations on the position of women; it was in accordance with this law that local elections in municipalities in the south of Serbia (Preševo, Bujanovac, Medveđa) were held. Observance of this provision contributed to the fact that the percentage of women in the local councils of these municipalities today is almost the highest in Serbia (in one half of Serbian municipalities today there is just one woman or there are no women at all). In October 2002 a republican parliamentary election was held in Montenegro. In this republic, a campaign for a minimum of 20% of women in electoral lists was led during last year. No law to that effect was passed before the election, and in the electoral lists of the coalitions and parties participating in the parliamentary election, the percentage of women was merely symbolic. The effect of this policy was that there are less women in the Montenegrin Parliament today than there were during its previous term (there were 10% women at that time, and since the parties that have won seats in Parliament have not yet verified their representatives, it is not yet known how many women will be there. However, in view of their percentage in the electoral lists, it is clear even now that their number will not reach the level of the previous term).

In this poll, conducted in December 2002, as in the preceding ones, we surveyed the respondents' views on the representation of women in our political life. The majority of the respondents think that there are too few women in politics. This view was expressed by every second respondent (51%). Despite the objectively very unsatisfactory representation of women in politics, more that one-third of the respondents (35%) think that women are represented in politics in the right measure today. In addition to these, 8% of the respondents think that there are too many women in politics and 6% of them did not know how to answer this question. If we consider the gender structure of the answers, the high degree of correlation with the sex of the respondents will be readily evident. Of the total number of women polled, 63% think that there are too few women in politics. Every fourth woman (25%) thinks that women are represented in politics in the right measure, whereas every thirtieth woman (3%) thinks that there are too many women in politics. Men's answers were entirely different. Among men, the most frequent opinion expressed was that that women were represented in politics in the right measure (46%), and 12% of men think that there are too many women in politics. As opposed to the great majority of women, 38% of the men polled think that women are underrepresented in politics. If we put together the number of men thinking that today women are represented in politics just as much as they should be and the number of men thinking that there are too many women in politics, we see that, in their fight for equality, women have to count on the opposition of no less than 58% of adult male citizens when they run for political functions. These findings coincide with those of the preceding polls, which pointed to totally opposed attitudes of men and women towards the question of the equality of women in politics. In relation to the preceding polls, the number of citizens thinking that women are overrepresented in politics has continued to decrease; unfortunately, it did not mark an increase in the number of those thinking that there are too few women in politics but an increase in the number of citizens thinking that women are represented in politics in the right measure, just as much as they should be. But as objective indicators show, women's presence in politics is merely symbolic.

All this points to the necessity of passing anti-discrimination regulations and introducing quotas, as suggested by the Beijing Declaration on the position of women, or normatively regulating the equality of the sexes when it comes to being elected for political functions. Also, such indicators of the citizens' attitudes and the objective picture of representation of women in politics impose the necessity of establishing mechanisms for ensuring the equality of the sexes at all levels.

The respondents are still aware of the discrimination of women in the sphere of employment and job promotion. When asked about the spheres in which women had less rights than men, the respondents chose

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[278] In April, the International Conference on National Mechanisms for Achieving the Equality of the Sexes was held in Belgrade. The conference was organized by Star, an organization for improving the political and economic position of women, and the co-organisers were OSCE, the Stability Pact for Southeastern Europe and the Government of the FRY. The conference adopted recommendations for establishing a parliamentary and government organ for achieving the equality of the sexes and introducing electoral list quotas at all levels.

employment almost as frequently as being appointed to managerial positions or elected for political functions. Every tenth respondent opted for this answer. When asked directly what chances women had of getting employed and being promoted, more that one half of the respondents (53%) answered that their chances were the same as men's. But when we analyse this answer in a more subtle manner, we observe marked differences between the answers of male and female respondents. There was again a high level of correlation between specific answers and the sex of the respondents. Of the overall number of male respondents, 60% think that women have the same chances of getting employed as men. The female respondents chose this answer much less frequently: of the overall number of female respondents, 45% maintain that women have equal chances of getting employed. In relation to the poll of December 2001, no significant changes were observed here. Every third participant in the poll (33%) answered that women had less of a chance than men when it came to getting employed. Here, too, there was a marked difference in the way male and female respondents answered. Of the overall number of male respondents, only every fifth respondent (22%) thinks that the chances of women are worse than those of men, whereas twice as many women (45%) think so. In relation to the poll of 2001, the number of respondents who think so has increased as much as the number of respondents claiming that women have a better chance of getting employed and promoted than men has decreased (2001: 13%; 2002: 10%).

Objective indicators are still in favour of those who claim that women are in a worse position than men when it comes to getting employed. When one examines the data pertaining to the situation on the labour market, one is easily led to conclude that this is indeed so. Let us, for example, take the structure of those registered with the employment bureau. At the end of 2001, among those registered on the labour market who lack education 58% were women, among those with secondary-school education 62% were women, and among those with university-level education 58% were women. This proves that the claim, often heard in public, that there are more women than men on the labour market and that they wait for employment longer than men because they are less educated, is true. In one opinion poll dealing with the equality of the sexes conducted by the Scan agency, we asked the respondents what prospective employers had asked them when they applied for a job. From an overwhelming majority of women we received the reply that they had been asked whether they had any children or intended to have children, and what age their children were. Men, for the most part, had not been asked this question. Therefore, there are more women than men on the labour market not because they lack education but because they are women.

Considering the situation in each republic, Montenegrin respondents perceived the unfavourable position of women looking for employment to a greater degree (46%) than their Serbian counterparts (30%). In relation to the 2001 poll, the number of respondents who claim that women are in a worse position than men when looking for a job has increased considerably in Montenegro (by 10%) whereas in Serbia the number has almost remained at last year's level.

The third area where the unequal position of the sexes is perceived is that of marriage and marital relations. Until the poll of 2001, a positive trend of a change in attitudes had been observed. The number of respondents who thought that the equality of the sexes existed in marriage had increased from 49.5% in 1998 to 54% in 2000 and 62.5% in the December 2001 poll; on the other hand, the percentage of those thinking that men were still dominant decreased from 41.4% in 1998 and 37.9% in 2000 to 33.4% in 2001. In the poll conducted in December 2002, there were almost no changes in relation to the previous poll. The results of these two polls are almost identical.

Of the overall number of the respondents, 63% of them still maintain that men and women are equal in marriage today. Every third respondent claims that men are still dominant, while at the same time 1.6% of the respondents claim that today the inequality of women has turned into the domination of women. If we examine the results obtained from the perspective of the sex of the respondents, very significant differences are observed, but there are no shifts in relation to last year's analyses. Today, almost 71% of the men polled think that women have achieved emancipation in marriage, and this has contributed to a general increase in the frequency of the view that the equality of the sexes does exist in marriage. At the same time, only every fourth male respondent notices that in our circumstances women are still unequal in marriage, which is an increase in relation to last year's poll. As opposed to this, twice as many women (42%) think that women are unequal in marital relations, which is a decrease in relation to last year's figure (43%), or to the figures of 2000 (53.1%) and 1998 (49.3%). If we look at the figures pertaining to the republics or autonomous provinces individually, the perception of the inequality of the sexes in marriage is most strongly manifested in Montenegro (52%), which marks an increase in relation to the results of 2001, and

least strongly in Vojvodina (28%), which also marks an increase in relation to last year, and in Belgrade (25%), marking a decrease in relation to 2001.

The poll results point to the conclusion that the trends observed earlier have not changed, that is to say, that there remain marked differences in views between men and women concerning the equality of the sexes; what is more, these differences are even more pronounced that in the case of some other attitudes. This points to the conclusion that it will be difficult for women to succeed in striving to establish mechanisms that will enable them to have an equal position to men and that in this process, according to the findings of the current poll, they will nor have the support of the majority of men. However, from the above data we may conclude that the trends observed earlier still continue, that the citizens of the FRY, especially women, have become more sensitive to various forms of discrimination against women and that they are increasingly ready to call into question the existence of equality between the sexes. The situation concerning the discrimination of women is bad throughout the country, but still remains worse in Montenegro than it is in Serbia. This points to the need for passing a national action plan and for introducing national mechanisms for achieving gender equality, which exist in most European countries today, and also for striving to introduce electoral list quotas in accordance with the United Nations recommendations contained in the Beijing Declaration on the position of women.

In this poll, the discrimination of ethnic minorities was analysed in the area of employment and job promotion. Answering the question of what chances of employment and job promotion members of ethnic minorities had, the respondents continued the trend observed in the preceding polls. The majority of the respondents (68.8%) answered that national minority members had the same chances of employment as Serbs and Montenegrins. In relation to the poll of 2001, this marked an increase of about 2%, and as for the 2000 and 1998 polls, the increase was 13% and about 16% respectively. As opposed to last year's results, there was an increase in the number of respondents who think that members of national minorities have a better chance of employment and job promotion than Serbs and Montenegrins (2001: 10%; 2002: 12%).

As opposed to the previous polls, when a considerable difference was observed in the attitudes towards the position of national minorities in connection with employment and job promotion, no such differences were observed in this poll. The differences referred to above are manifest especially if we compare the views of the respondents in Vojvodina, where we recorded the fewest answers to the effect that national minority members have difficulties in finding employment, and Montenegro, where this view was most frequently offered.

In the previous polls, the view of the difficulties faced by national minority members was ascribed to pre-election tensions, where fear of interethnic conflicts played a very prominent part. However, the gathering of data in the field for this poll was also carried out immediately after parliamentary elections and on the eve of presidential elections, and yet no differences were observed in relation to the views voiced in other parts of the country. This could point to the conclusion that the election campaign organised this autumn did not generate inter-ethnic tensions, as was the case with the previous campaigns. Such a conclusion, however, could only be a provisional one; more sophisticated surveys would be required for further analyses, with more detailed sets of questions that would make such analyses possible. What can be observed without any reservations on the part of the researcher is the fact that the latest poll points to the conclusion that there exist no regional differences in the FRY today in answers pertaining to the difficulties faced by national minority members seeking employment. The comparative results of the three polls on the chances of getting employed and being promoted are presented in Table 3.

Table 3: Employment and job promotion of ethnic minority members

ŽZ_TBL_BEG = COLUMNS(5), DIMENSION(IN), COLWIDTHS(1.8700,E1,E1,E1,E1), ABOVE(.1378), BELOW(.1378), HGUTTER(.0555), VGUTTER(.0555), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF)

ŽZ_TBL_BODY = TABLE TEXT, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2

“What chances of employment and job promotion do national minority members have?”, July 1998, December 2000, December

2001, December 2002

ŽZ_TBL_BODY = TABLE L, TABLE R, TABLE R, TABLE R, TABLE R

1. Better than Serbs/Montenegrins, 13.1, 13.2, 10.3, 12.3
2. The same as Serbs/Montenegrins, 53.1, 55.7, 67.1, 68.8
3. Worse than Serbs/Montenegrins, 20.5, 21.3, 11.7, 8.5
4. Don't know, 13.3, 9.7, 10.9, 10.4

ŽZ_TBL_BODY = TABLE R, TABLE R, TABLE R, TABLE R, TABLE R

Total, 100, 100, 100, 100

ŽZ_TBL_END =

Differences were observed between the attitudes of Serbs and Montenegrins on the one hand, and those of members of national minorities on the other. These differences were less manifest than in the previous polls; hence the low correlation between the answers to this question and the nationality of the respondents (C = 0.22). The poll findings indicate that Croats, Hungarians and Albanians claim somewhat more often than others that minority members encounter difficulties when seeking employment. As opposed to this, the answers given by Muslims were almost at the level of those given by Serbs, Montenegrins and Yugoslavs. These lower values of differences probably contributed to the fact that no regional differences among the respondents were observed concerning this question. In the 1998 and 2000 polls, the prevalent attitude among Albanians and Muslims was that there did exist discrimination in the case of job applicants who are minority members. In the poll conducted in 2001, the attitudes of members of these two national minorities were at the level of others; Hungarians, however, stood apart, because they often claimed that minority members were discriminated against when seeking employment. Today, fewer Hungarians opt for this answer than Croatians and Albanians. In this poll, as before, the attitudes of Muslims concerning this question were mid-way between the views of other minorities and Serbs and Montenegrins.

Our poll also contained a question about the discrimination of homosexuals. In the previous polls, negative trends were observed to a greater extent than positive ones, but in the latest poll slight shifts could be observed. In relation to the poll of 2001, there has been a slight increase in the number of answers saying that today there is no social condemnation or boycott of homosexuals (2001: 12%; 2002: 15%). In relation to last year, the number of respondents who think that there does exist social condemnation and boycott of homosexuals has decreased to a great extent. Today, 29% of the respondents think so, which is a 3% decrease in relation to last year. On the other hand, the number of those who believe that homosexuals are treated too leniently today has increased by 3% (2001: 33%; 2002: 36%). At the same time, the number of those unable to answer this question has decreased (2001: 23%; 2002: 20%). The findings of this poll also justify last year's conclusion that the citizens of the FRY have become somewhat readier to admit the existence of social condemnation and boycott of homosexuals, but also that they have more openly shown their earlier tendency to deprive this segment of the population of the rights they do not have anyway; this conclusion remains entirely valid after this year's poll. It is quite clear that any shifts in this area of the public opinion are occurring very slowly indeed.

3.2. Right to Life

The attitudes of the citizens of the FRY about respecting the right to life were monitored using examples of two variant forms of this right: freedom from extrajudicial executions and freedom from the death penalty. In the case of the former, the respondents were asked the question: “What should be done with people who are known to be dangerous criminals but there is no evidence to prove this?” As in the previous polls, the question contained a trap in the form of the phrase “known to be dangerous criminals”, pointing to the fact that no conclusive proof of the alleged crimes of these “dangerous criminals” existed. Among the instruments offered, apart from the regular ones, there were also options unequivocally characteristic of repressive regimes – organising secret trials of these “dangerous criminals” (without recourse to the usual procedural guarantees) or even having them liquidated by the National Security Service without a trial.

The results obtained were similar to those of the three preceding polls, the only difference being that there was a slight increase in the number of citizens who claimed that nothing happened to them until evidence was found; at the same time, the number of those who claimed that such people were liquidated by the National Security Service has slightly decreased. More than two-thirds of the respondents (69.6%) think that no secret trials and liquidations are organised in the FRY, so they opted for the answer stating that nothing is done until sufficient evidence is found. In relation to the results of the poll of 2001, the frequency of this answer has increased by 2%, which need not be statistically relevant. The belief that secret trials of these "dangerous criminals" whose guilt has not been proved has remained at the level of the two preceding polls (6.8%), the level of difference being expressed in decimal points, so that it is entirely negligible in statistical terms. Changes were observed in connection with the alleged practice of liquidation of the said "dangerous criminals" by the National Security Service. In the poll of 1998, 18.5% of the respondents claimed that such a thing was possible, in 2000 the number of these decreased to 14.1%, in 2001 to 11.3%, whereas today 10.2% of the respondents think so. At the same time, the number of respondents who do not know the answer to this question has increased.

Significant changes were observed as regards the citizens' attitudes towards the death penalty. In this area, the situation was chaotic until this year: the republican regulations were not in accordance with the Federal Constitution, which had abolished the death penalty. The republican constitutions made it possible for the legislators to prescribe the death penalty for the most serious crimes. In the course of this year, there has been a change in the Serbian Criminal Law, which has obviously influenced the citizens' attitudes towards the death penalty. In relation to the poll of 2001, the number of citizens who claim that there is no death penalty in the FRY has increased by 17%. This represented a continuation of the trend in evidence since 1998, when 27% of the respondents shared this view; in 2000 36% of them thought so, in 2001 49%, while 66% of the respondents think so today. At the same time, the number of citizens who claim that the death penalty still exists has significantly decreased. In the 1998 poll, 39% of the respondents thought so, in 2000 this view was expressed by 34% of them, in 2001 24% thought so, while today only 8% of the respondents think so. At the same time, the number of citizens who claim that the death penalty still exists in their republic but is not applied has decreased by 1% (from 7% in 2001 to 6% in 2002).

Today, only 3% of the respondents claim that the death penalty not only exists in the republican law but is also applied. The percentage of those who were unable to offer an opinion amounted to 17.7%. In the preceding two polls (in 2000 and 2001), the greatest difference was observed in Belgrade and Montenegro.[279] Today, the opinion that there is no death penalty is comparatively evenly distributed in all parts of the FRY; its frequency is highest in Belgrade (74%) and in Vojvodina (62%), but it is not appreciably lower in central Serbia (62%) and Montenegro (61%). The conclusion from the preceding polls, that the respondents were to a large degree convinced that in the FRY there were no secret trials of "dangerous criminals" for whose "crimes" there is no conclusive proof, was further confirmed by the results of this poll. At the same time, although it was observed in the previous reports that the respondents exhibited no detailed knowledge of the possibilities for passing a death sentence afforded by the Yugoslav legislature (both federal and republican), two conclusions may be drawn from this poll. Firstly, that the trends observed in the preceding polls concerning the answers to the question about the existence of the death penalty have continued and, secondly, that the respondents have followed carefully the changes in the criminal legislation this year.

3.3. Prohibition of Torture, Inhuman or Degrading Treatment or Punishment

This poll involved two forms of prohibition of torture: freedom from torture and state reprisals (this freedom is operationalised in the specific procedural guarantee to a person under suspicion that he/she will be spared from being forcibly made to confess) and freedom from court sentences involving corporal punishment.

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[279] See *Human Rights in Yugoslavia 2000* and *2001*.

In order to survey their attitude towards freedom from torture and state reprisals, the respondents were asked the following question: “Is it allowed to use force for the purpose of getting a confession from a person suspected of having committed a serious crime for which the death penalty is prescribed?” A negative answer to this question was given by 59.5% of the respondents, which represents a 4% increase in relation to last year's poll (55.3%), when fewer respondents gave this answer than was the case in 2000 (58%). As opposed to this, every fourth respondent (24.7%) thinks that the use of force is allowed, which represents a decrease of 2% in relation to last year. Among those who think that the use of force is allowed, the majority of respondents claim that it is allowed, but not beyond the limit where the suspect's health would be endangered (15%). In relation to last year's poll, the number of respondents who claim that the use of force is allowed as long as it is not life-threatening has remained the same (9.3%); however, the number of citizens who say that they do not know whether the use of force for the purpose of obtaining evidence is allowed has decreased by 2% (2001: 18.2%; 2002: 15.8%). Overall, the replies of the respondents who claim that the use of force is allowed and of those who say that they do not know whether it is allowed indicate that we still have a great number of citizens who do not know whether the use of force is allowed or not, that is to say, that 38% of the citizens do not know the actual content of freedom from torture and state reprisals.

In relation to the preceding polls, significant shifts have occurred in citizens' attitudes towards freedom from court sentences involving corporal punishment, and trends towards the right answer have been observed. To the question “Is there corporal punishment in the FRY?”, the majority of the respondents (71.2%) gave the right (negative) answer, which was an increase in relation to the 2001 poll (63.9%) and the 2000 poll (57.3%). A significant shift has occurred in relation to the 1998 poll. Back then, the existence of corporal punishment was disputed by less than one half of the respondents (45.8%). As an expected consequence of this change, fewer and fewer participants in the polls have claimed that corporal punishment exists. In relation to the poll of 2001, the number of citizens who claim that there is corporal punishment in this country has decreased by 3% (from 12% to 8%), and in relation to the poll of 1998 (24%), the number is three times lower. To these, we can add 3.5% of the respondents who answered that question in the affirmative but restricted the application of corporal punishment to their own republic. As opposed to the 2001 poll, when there was an increase of citizens whose answer was “I don't know”, today the number of these has decreased to 16.4%, which is 5% lower in relation to the preceding poll, but their number still remains higher than in the 2000 poll, when there were the fewest of these so far (14.8%).

On the basis of these poll results, one is led to conclude that significant shifts are occurring, even though the conclusion from 1998 – that there is disbelief in the FRY concerning the possibility that the individual may preserve his/her physical integrity and avoid being maltreated in the course of judicial proceedings (both during the phase of investigation and during the phase of executing a court sentence). If we add those citizens who have resorted to methodologically grey options by answering “I don't know”, we could conclude that two-fifths of our citizens still doubt the possibility of preserving one's physical integrity in the course of judicial proceedings. That is why the conclusion that physical violence as a means of forcing a confession and as a form of judicial punishment still exists in the legal consciousness of the citizens of the FRY.

3.4. Prohibition of Slavery and Forced Labour

The survey did not encompass questions about the prohibition of slavery and Forced Labour because of an obvious existence of cognisance of the prohibition of slavery in the legal conscionsness of the people of the FRY.

3.5. Right to Liberty and Security of Person and Treatment of Persons Deprived of Their Liberty

In order to conduct research into our citizens' consciousness of the right to freedom and security of the person, we asked the question: “How long may one be detained in the course of investigation according to our law?” The majority of the respondents (47.2%) opted for the right answer (a month, and only in exceptional circumstances up to six months), which represents an increase of 2% over last year. The findings of this poll and the preceding ones indicate that the majority of citizens did not opt for the right

answer. Every tenth respondent (5.3%) claims that detention may last between six months and three years, whereas as many as 25.1% of the respondents think that detention may last as long as it takes to obtain evidence, which represents an increase of 7% in relation to the poll of 2001. Even though the number of respondents opting for the answer "I don't know" has decreased, the number of those still remains considerable. On the basis of the increase in the number of correct answers and the decrease of the number of citizens who claim that detention may last up to three years, one might observe that the situation in this respect is improving; however, we could not draw the conclusion that there exist positive trends. The increase in the number of citizens who claim that in our circumstances detention may last for as long as it takes to obtain evidence (as many as 7% more than a year before), points to the conclusion that the number of citizens opting for the right answer has indeed increased, but the number of those opting for one of the incorrect variants has increased even more. Therefore, the latest shift has resulted in an increase in the number of those who felt certain of an incorrect answer, whereas the number of those who were uncertain, opting for "I don't know", has in fact decreased. The answers to the questions on how long detention may last indicate a considerable degree of correlation with the level of education of the respondents, which was also observed in the course of the preceding polls. The more educated the respondents are, the more correct their answers tend to be, and vice versa. If the answers are considered in relation to the level of education and compared to the preceding polls, one observes that two-thirds (65%) of those with a higher education gave the right answer; in this segment of the population there has been an increase in the frequency of correct answers in relation to the 2001 poll (61% of the respondents with a higher education gave the correct answer). However, even among those with a higher education there are those who opted for one of the incorrect answers. Every fourth respondent with a university degree claims that detention may last up to three years (7%) or until evidence is obtained (17%). Interestingly enough, the view that detention may last for up to three years is more frequent among the respondents with a higher education than among the lower educational strata. The lower the level of education, the greater the number of those who answer "I don't know." As many as 58% of the uneducated respondents opted for this answer, and the frequency of the answer that detention lasts for as long as it takes to obtain evidence also increases among these. The correlation between the answers concerning the duration of detention and the sex of the respondents observed earlier was characteristic of the latest poll as well. Male respondents gave the right answer more frequently (58%) than female respondents (37%), whereas women opted for "I don't know" more frequently than men (32% : 13%).

The results obtained still point to the conclusion derived from the earlier poll, that the awareness of the limits of intrusion of the state into the freedom and personal security of the individual is slowly growing, but is still far from being fully developed. The legal consciousness of our citizens is still characterised by a conspicuous lack of knowledge about the right to freedom and security of the person; as a consequence if this, a considerable number of citizens still think that state organs conducting an investigation have "the right" to keep a suspect in detention indefinitely.

3.6. Right to a Fair Trial

The greatest problem concerning human rights in the FRY is to be found in the sphere of independence the judiciary. The fact that citizens are not certain of whether they will be able to realise their rights, be it in the area of judicial proceedings or in the area of executing final judicial decisions, has contributed to a high degree of fear of non-observance of the law and of corruption. Today, two years after the change of power, not only has this fear failed to decrease – according to research results, is has even increased.[280]

As in the three preceding polls, the first question in the set dealing with various forms of the right to a fair trial was: "What is the deadline for bringing a detainee before a judge?" The answers to this question showed that the citizens' views were quite dispersed. None of the answers offered was chosen by the majority of the respondents. In relation to the poll of last year, certain shifts have been observed concerning the frequency of some answers. Analysis of the results of the 2001 poll showed that the most frequently chosen answer was "I don't know", which was chosen by two-fifths of the respondents. The next

[280] According to research conducted by the Scan agency of Novi Sad during 2002, this fear is present in almost 80% of adult Yugoslav citizens.

most frequently chosen answer was “within a month” (31.6%), which was correct at the time of the poll. Therefore, only about one-third of the citizens opted for the right answer then, while all the others either gave an incorrect answer or said that they did not know the answer to that question. In relation to these results, this year's results differ in that the number of citizens who do not know what the deadline for bringing a detainee before a judge is has decreased by 7% (to 32.6%), so that it is no longer the most frequently chosen answer. The most frequent answer was that a detainee had to appear before a judge within 24 hours (37.2%), and the number of respondents who think so has increased by 5% since the 2001 poll. The remaining 2% of the respondents were evenly distributed over the remaining two incorrect answers; as a result, a slight increase of 1% in either case was observed in relation to last year, which does not represent a significant statistical change.

As regards the question “Is in force the rule that all judicial proceedings have to be public?”, only slight shifts have been observed. It is interesting to note that the answers, with few exceptions, have been rather stable since the 1998 poll to the present day. The greatest change in the results occurred last year, when there was an increase in the number of respondents who chose the answer “I don't know”. This answer has remained at the same level this year, with a slight decrease that may be at the level of statistical error. The greatest change observed was the increase in the frequency of the answer that all judicial proceedings are public, although the increase is not a large one. This answer is almost as frequent as “I don't know”, and comes last in the order of frequency. Every fourth respondent (25.8%) is convinced that this rule is not at all in force today. From Table 4 we can conclude that the number of respondents opting for this answer has not changed either in relation to last year's poll or in relation to the preceding polls. Although the percentage of answers to the effect that there are exceptions to that rule has decreased, this answer still remains the most frequent one in relation to the preceding polls.

Table 4: The public character of judicial proceedings

ŽZ_TBL_BEG = COLUMNS(5), DIMENSION(IN), COLWIDTHS(1.8700,E1,E1,E1,E1), ABOVE(.1575), BELOW(.1575), HGUTTER(.0555), VGUTTER(.0630), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF)

ŽZ_TBL_BODY = TABLE TEXT, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2

“Is the rule that all judicial proceedings have to be public still in force?”, July 1998, December 2000, December 2001, December 2002

ŽZ_TBL_BODY = TABLE L, TABLE R, TABLE R, TABLE R, TABLE R

1. Yes, 24.5, 21.5, 18.9, 22.6
2. There are exceptions to that rule, 34.3, 39.9, 30.6, 28.4
3. No, 22.5, 24.6, 25.4, 25.8
4. Don't know, 18.6, 13.9, 25.1, 23.2

ŽZ_TBL_BODY = TABLE R, TABLE R, TABLE R, TABLE R, TABLE R

Total, 100, 100, 100, 100

ŽZ_TBL_END =

The results of the polls of 2000 and 2001 pointed to the conclusion that among the respondents from Montenegro the most widespread view was the one about there being many exceptions to the rule on the public character of judicial proceedings. This poll brings changes in that this answer is at the same level of frequency in Montenegro and in other parts of Yugoslavia; however, the explicit answer that this rule is not in force is more frequent in Montenegro (29.1%) than in other parts of Yugoslavia. Differences were

observed in the frequency of answers, but this poll, too, showed that statistical methods did not confirm that there was a difference in attitudes towards the public character of judicial proceedings depending on the place of residence of the respondents.

When asked if the rule that everyone is presumed innocent until proved guilty still applied in the FRY, there were almost no shifts in the three preceding polls of 1998, 2000 and 2001. However, significant changes were observed in this poll. The greatest change was observed in the increased number of respondents who claim that the rule that everyone is presumed innocent until proved guilty is applied without any exceptions. Today, 47% of the respondents claim this, as opposed to 40% last year. At the same time, the number of citizens claiming that there are many exceptions to that rule has decreased by 3% (2001: 40%; 2002: 37%). The number of respondents who claim that this rule is not in force in our country has decreased by 2% (from 9.2% in 2001 to 7.4% in 2002). The remaining 9% of the respondents opted for the answer "I don't know". The results show that more than one half of the citizens of the FRY have expressed scepticism concerning the validity of the rule of presumption of innocence in the FRY, which is still less than the two-thirds of sceptical respondents from last year's poll.

Answers to the questions pertaining to the right to a fair trial are still discouraging, with the exception of the answers to the question "Can everyone freely choose a lawyer to represent him/her?". In relation to the results of the 2001 poll, there were almost no changes in the latest poll. The overwhelming majority of the respondents (69%) claim that this rule is observed without exception, 5% of them called the observance of this right into question, while 17.9% of them pointed to the existence of many exceptions to this rule (the change observed here amounts to 2%). The remaining 8.2% of respondents said they did not know the answer. This year's results are almost identical to last year's results, and the differences are measured in decimal points only.

Having answered this set of questions, the respondents were given an opportunity to express their opinions about the judges working on the territory of the FRY today. Comparing the results of this poll with last year's results, we observe only slight, though positive changes. In relation to last year's poll, the number of respondents whose opinion is that judges are mainly bad and dependent on politicians has decreased (from 47.6% in 2001 to 46.1% in 2002). In the 2001 poll, a significantly low number of respondents, only every tenth one of them (9.5%) claimed that judges were good and independent, which was at the level observed in 2000. Today, the number of these has increased to 13.5%, which marks the greatest change in answers to this question. The number of respondents who claim that judges are trying to stay honest under the current very bad circumstances has decreased by 1% (there are 29.7% such answers in this poll). The number of respondents who do not have any opinion of our judges has also decreased by 1%, to the level of 10.8%. If we compare the data from all four polls, we can see that, in relation to the year 2000, the sinking of the reputation of judges, in evidence between 1998 and 2000, has been halted; this trend has continued in 2002, but the shifts observed are minimal, so that one might almost conclude that they are stagnating, in view of the fact that an exceptionally high percentage of citizens do not think that judges are good and independent but are convinced that the opposite is the case. The impression originating from the 2001 poll, that the attitude towards judges shows signs of stagnating, is still valid. In this poll no differences were observed in the attitudes of citizens depending on their place of residence; no changes have been observed in connection with other sociodemographic features either, except that more educated respondents tend to have an opinion about judges more often than those who are uneducated or have primary school education.

The results of this poll, as well as those of all the preceding ones, point to the fact that our citizens perceive the erosion of the judiciary in the FRY and think that the judiciary is not independent even today. The citizens often have a very unclear view of the possibilities that the domestic procedural law offers, so that most respondents to a greater or lesser degree call into question the existence of procedural guarantees such as bringing a detainee before a judge without delay, the public nature of judicial proceedings and the presumption of evidence (as opposed to the right to a free choice of a lawyer, which the respondents perceive as mostly realised).

3.7. Right to the Protection of Privacy, Family, Home and Correspondence

In view of the fact that in this year's poll on the legal consciousness of the citizens of the FRY we used the identical instrument as in the three preceding polls, the right to privacy was also represented in two of its forms: freedom from having one's mail opened and having one's telephone conversations monitored, and freedom from police search of one's home without a warrant.

Answers to the question “Is it allowed to open mail and monitor telephone conversations?” indicate that the most frequent view among the respondents is that in the FRY there exists unconditional freedom of communication by mail and by telephone (58.5%). Even though this answer is the most frequent one, the number of respondents thinking so today is lower than in the poll of December 2001, when 60% of them thought so, or in relation to 2000, when this view was expressed by 63.5% of the respondents. This negative change could be the consequence of the scandals connected with the monitoring of telephone calls of the highest-ranking officials in the country, which has been dealt with by the parliament and by investigative committees. The number of respondents who claim that for reasons of national security it is necessary to open mail and monitor telephone calls has increased by 5% (to 30.8%), while at the same time the number of those who think that phone tapping is allowed for the sake of protecting the present powers-that-be has decreased (from 6.1% in 2001 to 3.9% in the 2002 poll). The number of those who could not decide on an answer has not changed (7%).

The views of right to protection of privacy, the home and the family were surveyed through the question “In what cases can the police search a private flat?” Several answers to this question were offered, so that the results presented in Table 5 exceed a total of 100%. Of the overall number of respondents, 51% of them gave two answers, 28% of them gave three answers, the rest gave one answer.

Table 5: Grounds for searching a private flat

ŽZ_TBL_BEG = COLUMNS(5), DIMENSION(IN), COLWIDTHS(1.8700,E1,E1,E1,E1), ABOVE(.1575), BELOW(.1575), HGUTTER(.0555), VGUTTER(.0555), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF)

ŽZ_TBL_BODY = TABLE TEXT, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2, TABLE 90-10 2

“In what cases can the police search a private flat?”, July 1998, December 2000, December 2001, December 2002

ŽZ_TBL_BODY = TABLE L, TABLE R, TABLE R, TABLE R, TABLE R

1. If they have a search warrant issued by a court of law, 71.7, 77.0, 73.2, 77.1
2. If they have a warrant issued by the National Security Service, 32.7, 25.4, 19.7, 18.4
3. If they have a warrant issued by the Ministry of the Interior, 43.2, 34.7, 34.4, 35.3
4. Whenever security is endangered, 19.4, 14.7, 15.4, 22.4
5. Whenever it is considered necessary, 20.6, 15.3, 11.3, 18.0

6. Don't know, 5.3, 5.7, 6.6, 6.9

ŽZ_TBL_BODY = TABLE R, TABLE R, TABLE R, TABLE R, TABLE R

Total, 182,4, 171,8, 160,7, 178,1

ŽZ_TBL_END =

Compared with the three preceding polls, the latest results exhibit the characteristics of trends in some elements; in other elements, however, they exhibit behaviour entirely opposed to trends and differ greatly from those of the preceding poll. Almost four-fifths of the citizens polled (77.1%) maintain that the police may search a private flat if they have a court warrant for doing so. In relation to last year's poll, that represents an increase of 4%. The frequency of answers to the effect that a flat may be searched whenever security is threatened has also increased. The increase amounts to 7%, from last year's 15.4% to 22.4%. The number of respondents who claim that a flat may be searched whenever it is considered to be necessary has also increased by 7% (from 11.4% in 2001 to 18% in 2002). The trend of a decrease in the number of citizens who think that in order to search a flat it is sufficient to have a warrant issued by the National Security Service has continued (1998: 29.8%; 2000: 25%; 2001: 19.7%; 2002: 18.4%). The number of respondents who claim that a warrant issued by the Ministry of the Interior is sufficient to search a flat has increased from 34.4% in 2001 to 35.4% this year. The poll results point to the conclusion that, in relation to 2001, the number of respondents who claim that no warrant is necessary to search a private flat, that it will suffice if someone decides that security is threatened (22.4%) or that it is simply necessary (18%), has increased. Last year, every fourth respondent claimed so, whereas this year two-fifths of them do. On the basis of the results presented above, we may note that the frequency of some answers has increased not because the frequency of others has decreased but because more respondents who did not choose the second or third option on offer did so in 2002. This led to the result that a significant number of respondents claimed that a court warrant is a necessary precondition for searching a flat; at the same time, however, the number of those who think that somebody's assessment of the security situation or the need to effect a search is enough to have a private flat searched has also increased.

3.8. Right to the Freedom of Thought, Conscience and Religion

The right to the freedom of thought, conscience and religion was surveyed through two of its forms: the freedom from state ideology in schools and the freedom of confession and expression of religious beliefs.

The freedom from state ideology in schools is the first form of the right to the freedom of thought, conscience and religion analysed in this poll. The question asked was as follows: “Do school programmes have to be in conformity with any official doctrine?” As in last year's poll, the majority of the respondents answered that they did not know whether school programmes had to be in conformity with any official doctrine (43.2%). The number of respondents who opted for this answer has decreased by approximately 3% in relation to last year, but still remains significantly higher than in the 2000 poll, when 31% of the respondents opted for this answer, or in the 1998 poll, when 37% of them did so. Next in the order of frequency is the answer that school programmes need not be in conformity with any official doctrine (30.1%), which is considerably lower than the frequency observed in the preceding polls. Today, 9% of the respondents claim that school programmes need not conform to any official doctrine. As opposed to this, the number of citizens who claim that school programmes today are brought into conformity with some official doctrine has increased by 12% (2001: 15.3%; 2002: 26.7%). Among the respondents who opted for this answer, the majority of them, as in the preceding polls, did not say which official doctrine school programmes had to conform to. As opposed to last year, when the most frequent answer was “The one determined by the Minister of Education” or “The one advocated by the party in power”, this year the number of those who opted for Orthodox Christianity has significantly increased. This result is no surprise in view of the fact that, immediately prior to the gathering of data in the field religious education was introduced in primary schools as a compulsory optional subject. The citizens are evidently still confused and wait to see what will happen with the educational system; hence more than two-fifths of them still do not know what is happening with school programmes at the moment. In addition to this, the majority of the respondents opting for this answer are elderly citizens. At the same time, among those who claim that

school programmes today are brought into conformity with Orthodox Christianity, the number of citizens who oppose the introduction of Christian Science in schools and who have children of school age is not at all negligible.

The other form of the freedom of thought, conscience and religion that we surveyed pertains to the freedom of confession and expression of religious beliefs. When asked "In what measure is the freedom of confession and expression of religious beliefs present?", 55% of the respondents answered "In the right measure", which represents an increase of 8% over last year. This means that the trend observed in 1998, when 39% of the respondents thought so, has continued. Parallel with this, the number of citizens who are dissatisfied with the degree of the freedom of expression of religious beliefs has been decreasing (2001: 12%; 2002: 8%). At the same time, the number of the respondents who opted for the answer "I don't know" has decreased, so that today there are 5% of them, as opposed to last year's 9%. The number of respondents who think that there is even too much of it has remained at last year's level (31.8%). In last year's report, it was observed that in the FRY there existed a polarisation in the opinions about the situation concerning the freedom of confession and expression of religious beliefs. It was noted then that the degree of polarisation was lower in the case of national minority members than in the case of the Serbs. Today's results show that the polarisation observed earlier has almost disappeared, in view of the fact that the number of the Serbs who think that today there exists the right measure of the possibility of expressing religious freedoms has increased. However, the frequency of this answer is still considerably lower than in the case of national minorities. The greatest difference, in connection with the nationality of the respondents, was observed in the case of Yugoslavs, 44% of whom think that this freedom is excessive today; this percentage is considerably higher than in the case of members of other nations (35%). Apart from this slight correlation, we might say that, in statistical terms, the level of correlation between answers pertaining to the freedom of confession and expression of religious beliefs and the nationality of the respondents is low.

3.9. Freedom of Expression

Freedom of expression was one of the most denied rights in the Socialist Federal Republic of Yugoslavia (SFRY). Critical thinking was particularly suppressed by means of the so-called "verbal offence" provision, contained in Article 133 of the Criminal Code of SFRY.[281] Formally, the FRY has abolished "verbal offence"; in view of the fact that it remains a moot point whether fragments of this institute have survived or not, since 1998 we have been monitoring the views of citizens concerning the question of whether there have been changes in the meantime. The respondents were offered three options: absolute freedom of disseminating information, freedom of disseminating information up to the limits defined by international law (the restrictions on damaging people's reputations were offered as an example) and freedom of disseminating information restricted by a ban on criticising the authorities. One of the questions asked for this purpose was: "Can anyone be punished for disseminating information?" The results indicate that 28.7% of the respondents claimed that there was absolute freedom of disseminating information in our country. In terms of frequency, this answer has remained at the same level since 2000. As opposed to this, the number of respondents who believe that there exist restrictions concerning the freedom of disseminating information if it should damage the reputation of some person(s), which is in accordance with the international standards, has increased. In relation to last year's poll, the number of respondents opting for this answer has increased by 6% (from 38.4% in 2001 to 44.3% in 2002). Thus the frequency of this answer has almost reverted to the level of the 2000 poll (45.5%). The number of citizens who claim that the freedom of disseminating information is restricted in the cases when such information is used to criticise the authorities has decreased. In 2002, 16.3% of the respondents claimed so, which means that the trend of decreasing frequency of this answer from 1998, when every third respondent claimed that our citizens may be punished for criticising the authorities, has continued. From 1998 onwards, their number has been decreasing: in 2000 the frequency of this answer decreased to 19.1%, and has continued to decrease slightly since then. Every tenth respondent in this poll said that he/she did not know if a person could be punished for disseminating information, which marked a 5% decrease in relation to 2001.

[281] See papers in the collection *Misao, reč, kazna* (*Thought, Word, Punishment*). *Verbalni politički delikt* (Verbal political offence) Belgrade, Institut za kriminološka i sociološka istraživanja, 1989.

These results show that the positive trends observed in the preceding poll have continued; as opposed to last year's poll, when for some reason the number of citizens who think that the freedom of disseminating information is in accordance with international standards decreased, positive shifts were observed in the latest poll.

In the case of the question “Is there censorship of works of art?”, a shift has occurred in relation to the year 2001. The most significant change has occurred concerning the answer that there in no censorship of works of art. The number of respondents who think so has increased by 10% (from 28.6% in 2001 to 38.5% in 2002). At the same time, the number of citizens who opted for the answer “I don't know” has decreased from 40.7% in 2001 to 33.3% in 2002. This means that even today every third citizen does not know if there is censorship of works of art or not. Also, the number of respondents who claim that officially there is no censorship in this area of creation, but that it is unofficially practised in state art institutions. This view is held by 8.7% of the respondents today. Every fifth respondent (19.6%) claims that there is censorship of works of art in our country. In relation to last year, the number of citizens who think so has not changed.

The next question from this set had to do with the freedom of expression in the press. The question was: “Is there censorship of the press?” The answers to this question in all the preceding polls were discouraging. Unfortunately, they are not appreciably better in this poll either, even though those shifts that have been observed are positive. However, it is evident that things are progressing very slowly in this area and that, in view of previous experiences, the citizens are very cautious. In relation to last year, the number of citizens who explicitly state that there is censorship of the press in our country has decreased by 3%. More than two-fifths of the respondents (44.2%) think so today. The number of those who claim that censorship of the press does exist has increased by 4%, to the level of 29.5%. There has been a slight increase in the number of citizens who claim that censorship officially does not exist but is practised in one part of the press (there were 6.8% of those in 2001, and today there are 7.8% of them). In the two preceding reports, it was observed that there existed differences in the attitudes of the citizens of Serbia and Montenegro towards this issue. As opposed to the preceding polls, no such differences were registered in this poll.

In the context of surveying views on the freedom of the press, we surveyed the views of the respondents on the attitude of the authorities towards that segment of the press of which they are not the founders, that is, which is not under the control of the authorities. When asked about the position of the so-called independent press, the respondents gave answers similar to those from 2001. The differences observed are minimal and are manifested in another increase of the number of respondents who claim that the attitude of the authorities towards it is the same as towards any other segment of the press; therefore, the frequency of this answer almost reached the level of the 2000 poll (35.2%). The answer that the authorities tolerate it because they consider it unimportant (18.9%) was almost at the level of last year. Every fourth respondent (24.5%) still claims that the authorities do a lot with a view to suppressing it, which is a decrease of about 2% in relation to last year. The number of respondents who opted for the answer “I don't know” remained the same as a year before (21.3%). In last year's report, it was observed that there was a difference in views on the position of the so-called independent press depending on which republic the respondents live in. As in the case of the preceding question, no such differences were observed in this poll.

When asked about the position of independent publishers, the respondents gave answers similar to those about the so-called independent press. No significant shifts have been observed here in relation to the results of the 2001 poll. Of the answers offered, the most frequently chosen one (34.5%) was that the authorities had the same attitude towards them as towards any other publishers, which marked an increase of 3% in relation to the preceding poll. There was a slight decrease in the number of respondents who think that the authorities tolerate private publishers because they consider them unimportant (from 17.9% in 2001 to 16.9% in 2002). The trend of a gradual decrease of respondents opting for this answer has been in evidence since 1998. The number of respondents who claim that the authorities do a lot with a view to suppressing them has decreased by 1%, so that this view is held by every fifth respondent (19.5%) today. Here, too, the trend of a decrease in the frequency of this answer has continued: the difference in relation to the 1998 figure amounts to 19%. The number of citizens who opted for this answer remained the same as last year (29%). As opposed to the results of the preceding polls, in the case of this answer no statistically significant differences depending on which republic the respondents live were observed.

The next important question from the set dedicated to freedom of expression is the one about the position of independent radio and TV stations (that is, those that have not been founded by the state or its institutions). The respondents were asked to give their views on the position of independent radio and TV stations. Looking at the results of this year's poll in relation to those of 2001, we can observe minimal shifts. The number of respondents who opted for the answer "I don't know" has decreased by 2%, to the level of 19%. The frequency of the answer that the authorities tolerate them because they consider them to have very little influence has decreased by 1.6% (from 18.7% to 17.1%). The number of respondents who claim that the authorities do a lot with a view to suppressing them has decreased by 1% (from 25.4% to 24.4%). At the same time, parallel with the decrease of the frequency of all the above answers, the number of citizens who think that the authorities treat them the same as any other radio and TV station has increased to 34.5%, meaning that every third citizen thinks so. In the two preceding reports it was observed that the citizens of Montenegro were more dissatisfied with the attitude of the authorities towards independent radio and TV stations; however, as with other questions from this set, no statistically significant differences in the views of the citizens of Serbia and Montenegro were observed in connection with this question.

The results obtained concerning citizens' views on the freedom of the media indicate that their awareness of the existence of censorship is still deep-rooted. The changes observed exhibit a positive trend, but the experience gathered over the years evidently cannot be changed either simply or easily. The most significant shifts were observed immediately after the changes of 5 October 2000; since then, however, shifts have been observed but they are minimal. The reservations observed the next year concerning the freedom of the media have persisted until the present day, so that the citizens are still waiting. In the meantime, the greatest shifts have occurred in Montenegro. A possible reason for this is that, in the course of this year, there have been changes of coalition partners in the Montenegrin Parliament, and consequently there have been changes in the founding rights in the state-owned media. This year the major Montenegrin parties have been both the power-that-be and the opposition. This has obviously led to a change in the attitude of the authorities (whichever) towards the media, which was reflected in the citizens' perception of the freedom of the media.

On the territory of the FRY, many organisations monitoring human rights violations have been operating over a longer or shorter period of time, informing the public at home and abroad of their findings. For years, the authorities have conducted a very negative campaign against these organisations, calling them all sorts of bad names and describing their employees as traitors, mercenaries of foreign powers and the like. After the changes of 5 October 2000, one gets the impression that the attitude of the authorities towards these organisations has changed. Since then, positive shifts have been observed in the attitudes of our citizens towards them. However, in view of the very negative previous attitudes, negative attitudes are still very much in evidence. Intending to find out whether any changes have occurred in that respect, we asked citizens what they thought now about organisations that monitor human rights violations. The results of this year's poll indicate that slight shifts have indeed occurred, but negative ones. The number of citizens who claim that these are useful organisations that contribute to the observance of human rights has decreased by about 1% (from 38.9% in 2001 to 38% in 2002). The next answer in order of frequency was that these are useless organisations that have not done anyone any good yet (30.9%). The number of citizens thinking so has increased by 1.6% in relation to last year. At the same time, the number of citizens who claim that these are illegal, mercenary organisations dangerous to the state has increased by 2.3% (to 16.7%). The number of citizens who opted for the answer "I don't know" has decreased. If we consider these shifts in relation to all the previous polls, we can observe that after the changes of October 5th 2000 there has been a positive shift in the attitudes towards organisations that monitor the realisation human rights. In the year 2000, the number of citizens who claimed that those were useful organisations increased by 18% in relation to the 1998 poll. However, soon enough, in 2001, the number of citizens thinking so decreased by almost 11%. The only positive thing in this year's shift in attitudes towards these organisations is the fact that the change in question is not as dramatic as it was in last year's poll. But irrespective of this, the fact remains that the attitude of the citizens of Yugoslavia towards organisations monitoring human rights violations is more negative than positive. It is quite clear that they have not quite established a good reputation in the eyes of the general public. This is due to the fact that organisations of this kind are relatively young in these parts, so that the citizens still know very little about their activities; on the other hand, the previous regime had a great influence in establishing their image in the eyes of the

public. It is obvious that it will take a lot of time for organisations monitoring human rights violations to win the support of the public.

3.10. Freedom of Peaceful Assembly

Among other things, in this poll we surveyed the citizens' views of the conditions under which it is lawful for people to gather in public places for the purpose of protesting. The question was: “When is it lawful for people to gather in public places?” The majority of the respondents (48.7%) opted for the answer “Only when this has been allowed by the authorised organ”, which marks a 1% decrease in relation to last year's figure. The frequency of the answer to the effect that it is allowed as long as it does not interfere with the traffic has decreased by 1% since last year's poll (to 9.4%), as has the number of citizens who answered “I don't know” (6.6%). Proportionately to this decrease, there has been an increase in the number of citizens who claim that gatherings of people in public places are lawful as long as they are peaceful (35.3%). The shifts in answers to the questions about the lawfulness of gathering in public places since 1998 to the present day have been minimal. If we took into consideration the possibility of statistical error, we could almost conclude that nothing has changed since 1998 concerning the conditions under which public gathering is lawful. When referring to these conditions, our citizens are still opting for a restrictive condition which is not constitutionally and legally prescribed (permission of the authorised organ) more often than for a restrictive condition which *is* prescribed by the Constitution and the Act on Public Gathering of Citizens. As before, no correlation between the answers and the sociodemographic characteristics of the respondents was observed. No differences exist in the answers about lawful public gathering given by respondents belonging to different age groups, professions or even different ethnic and regional groups.

3.11. Freedom of Association

At the time Yugoslavia was a socialist state, membership in the Communist Party was an important precondition of social promotion and informal control. Wishing to find out what has happened in the meantime in the sphere of freedom of association, we asked the respondents to state in which cases membership in the ruling party was required by law. The question contained a trap in the form of the phrase “by law”. In view of the fact that it was possible to give more than one answer, the total in Table 6 exceeds 100%.

Table 6: Cases in which membership in the ruling party is required

ŽZ_TBL_BEG = COLUMNS(5), DIMENSION(IN), COLWIDTHS(1.8700,E1,E1,E1,E1), ABOVE(.1575), BELOW(.1181), HGUTTER(.0555), VGUTTER(.0555), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF)

ŽZ_TBL_BODY = TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT

“In what cases is membership in the ruling party required by law?”, July 1998, December 2000, December 2001, December 2002

ŽZ_TBL_BODY = TABLE L, TABLE R, TABLE R, TABLE R, TABLE R

1. When the manager of a state-owned or mixed-ownership company is appointed, 31.5, 23.4, 22.8, 21.1
2. When officials and staff in state organs are appointed, 38.7, 25.7, 26.2, 25.7

3. When judges are appointed, 27.9, 18.3, 18.8, 17.0

4. Never, 28.1, 45.7, 43.0, 47.5

5. Don't know, 25.0, 19.3, 22.4, 18.3

ŽZ_TBL_BODY = TABLE R, TABLE R, TABLE R, TABLE R, TABLE R

Total, 150.8, 132.3, 133.2, 129.6

ŽZ_TBL_END =

From Table 6 we can see that the answers to this question have varied very little since the year 2000. Fewer than one half of the respondents (47.5%) say today that membership in the ruling party is never legally required. In relation to the preceding polls, this is the greatest frequency of the only correct answer observed so far. In the case of this answer, the greatest change was observed after the 2000 election. In both polls conducted after 2000 (in 2001 and 2002), no significant shifts were observed. The fact still remains that more than one half of the citizens of the FRY either do not know that membership in any political party is not legally required or think that it is required in the case of people being appointed to managerial positions or to posts in the civil service. More than one-fifth of the respondents (21.1%) claim that in the case of appointment of managers in state-owned or mixed-ownership companies, membership in the ruling party is required by law, which represents a decrease of only 1.7% in relation to last year's poll. Every fourth respondent claims that membership in the ruling party is legally required when people are appointed as state officials or to posts in state organs, which is the same level of frequency as last year. The number of citizens who believe that membership in the ruling party is required in the case of appointment of judges has decreased; however, no less than 17% of the citizens still hold this view. A slightly higher percentage (18%) of citizens opted for the answer “I don't know”. Answers to this question do not depend on which republic the respondents live in. The correlation between the answers to this question and the profession of the respondents observed earlier was confirmed in this poll, too. The greatest number of correct answers (“Never”) came from experts and intellectuals (64%), students (57%) and entrepreneurs (51%); housewives (24%) and farmers (28%) were at the other end of the scale. Correlation was also observed between the answers and the educational level of the respondents. The greatest number of correct answers came from respondents with higher education (63%), with the uneducated at the other end of the spectrum (19%). The answers to this question do not depend on the age and sex of the respondents. The greatest degree of correlation was observed when it came to party and electoral preferences. The greatest number of correct answers came from supporters of the GSS (Civil Alliance of Serbia), LSV (League of Socialists of Vojvodina), DS and LS parties. The supporters of the two major Montenegrin parties gave an approximately equal percentage of correct answers.

In the changed circumstances following the collapse of socialism, trade unions as a specific form of association have not yet managed to reach workers in their struggle for their rights. Following the poll of December 2001, several companies collapsed, so that a lot of workers were left unemployed. Under these circumstances, various trade union organisations have been trying to find their proper place. The previous poll showed that their attempts to promote themselves as the legitimate representatives of workers over the past few years have not been entirely successful. Judging by the respondents' views, this latest poll does not present trade unions in a better light; almost no changes were observed in that respect. Today, only 11.7% of the citizens are satisfied with the way trade unions function and say that trade unions are good, well organised and that they represent the interests of their members well. In relation to the earlier polls, the number of citizens who are satisfied with trade unions has decreased, and this decrease has assumed the characteristics of a trend (2000: 17.9%; 2001: 13.4%; 2002: 11.7%). The critical attitude towards trade unions has decreased almost not at all since 1998. Three-fifths of the respondents (61%) have a negative view of independent trade unions. The most frequent critical remark at their expense is still that they are bad, disorganised and that they manage the interests of their members poorly (22.4%); they are also criticised for being a cover used to hide the manipulations of managers and politicians (19.9%) and for existing on paper only (19%). This last reply is the one whose frequency has increased the most since last year. More than one-fourth of the respondents replied that they did not have an opinion of trade unions. The results point to the conclusion that independent trade unions have not yet achieved the position of workers' protectors and are not trusted much by those whom they are supposed to represent. No correlation between attitudes towards trade unions and social and demographic characteristics has been observed.

3.12. Right to Peaceful Enjoyment of Property

Social ownership was one of the basic elements of the legal system of SFRY; in the nineties, it remained the basic form of ownership in Serbia, whereas it was abolished in Montenegro.[282] After the 2000 election, the Act on Privatisation was passed with a view to privatising a large part of state- or socially-owned property. During the nineties, the awareness of the necessity of this process developed among our citizens, all the more because socially-owned property came to be seen more and more often as a means for the privileged to get rich, so the attitude towards social and private ownership changed accordingly. In view of its importance, this issue has been surveyed since the beginning of the nineties; for several years now, a predominantly positive attitude towards private ownership has been observed, but at the same time, the attitude towards "getting rich" has changed very slowly and with difficulty, so that, concerning the attitudes towards getting rich, the public has split into three equal segments. One third of the citizens have developed a positive attitude towards this notion, one third have retained a negative attitude qualified by the additional explanation "They are all crooks", while one third of them are neutral about it, having neither a positive nor a negative attitude.[283] The importance of this process was the reason why, in this poll too, we surveyed the attitude of our citizens towards social and private ownership in the FRY. Once again, the majority of the respondents (42.7%) were of the opinion that social ownership was just a cover-up for illegal acquisition of private ownership, which represents a decrease of 3% in relation to the poll of 2001 (45.5% of the respondents claimed so then). Although this answer was the one most frequently given, the trend of a decrease in the number of citizens holding this view has continued, which may be due to the ongoing process of privatisation. In this poll, the number of citizens who claim that these two forms of ownership are equal as regards their status amounted to 32%, which represents an increase over the 2001 figure, when every fourth respondent claimed so. Every eighth respondent in this poll was unable to answer the question about the relationship between social and private ownership, which equals last year's figure. On the basis of the poll results presented, we may conclude that, as over the past several years, the citizens have a very strong feeling of having been robbed and tend to stress the manipulative character of social ownership. In this poll too, differences were observed concerning the attitude towards social and private ownership depending on the age of the respondents and their educational level, particularly between the youngest and most highly educated adults, on the one hand, and the oldest and least educated respondents on the other.

3.13. Minority Rights

In the poll, we also surveyed the special rights of minority members by asking about the rights to publish and to be educated in one's native tongue. When asked "Do national minority members have the right to publish books and receive education in their native tongue?", the majority of the respondents (56.5%) answered in the affirmative, without any additional qualifications, which represented an increase of 10% over last year's figure. However, irrespective of the fact that this is a significant increase, the number of citizens who think that national minorities have an unconditional right to education and publishing in their native tongue did not reach the 2000 peak, when this view was held by about 60% of the respondents. At the same time, the number of citizens who think that national minorities have the right to publish and be educated in their native tongue, but need the prior approval of the authorised state organ, has decreased by 3% (in 2001 this view was held by 33.7% of the respondents and today the figure is 30.6%). A similar trend in relation to last year's poll was observed in the case of those citizens who are in favour of denying this right to "all disloyal ethnic minorities". The number of respondents who opted for this answer has decreased from 12% in 2001 to 7.1% in 2002. The number of those unable to answer this question has also decreased (to 5.8%). Comparing these results with those from the preceding polls, we observe that, following the negative shifts observed in 2001 in relation the results of the 2000 poll, the process has exhibited a positive shift again. In last year's report, it was noted that the attitudes differed

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[282] On the links between the "new" and "old" social ownership; see A. Molnar, "The Collapse of Self-Management and Rise of Führerprinzip in Serbian Enterprises", *Sociologija*, No. 4/96, pp, 539–559.

[283] The Scan agency has surveyed the attitudes towards private and social ownership since 1990 in all its public opinion polls.

depending on the nationality of the respondents, but those differences were not confirmed by this poll. However, even though this year's results are more favourable than last year's figures concerning the rights of national minorities, comparisons with previous polls indicate that one should be cautious when drawing conclusions because new tensions in this area might reverse the process again.[284]

3.14. Political Rights

The issue of political rights was surveyed by inquiring about the existence and the functioning of a multiparty system on the one hand, and the possibility of the existence of a peaceful opposition that would automatically take power if it won an election. This poll was conducted in the midst of election campaigns in Serbia and Montenegro, the latter republic having a reputation as one with the greatest number of elections held over the last ten years.

The respondents were asked the same question as in the two preceding polls: "Is there a multiparty system in the FRY of the kind that exists in the West?" Almost every second respondent (47.7%) answered in the affirmative, which marked a continuation of the trend of increased frequency of this answer observed since the 1998 poll to the present day. Compared to last year's poll, there has been an increase in the number of citizens who voiced reservations to the effect that one party ruled supreme although opposition parties had the right to participate in elections. In the 2001 poll, 35.7% held this opinion, whereas today 37.9% think so. In the preceding polls, a difference concerning this view was observed depending on which republic the respondents lived in. The citizens of Montenegro showed more reservations and were more prone to observe that in their republic there existed a multiparty system only partly similar to that in the West because one party ruled supreme. This year's poll did not confirm the existence of those differences. This attitude was expressed in the same degree by Serbs and Montenegrins. The view that ex-Communists won't relinquish power is held by 3.4% of the respondents today, which continued the downward trend this answer has exhibited from 1998 onwards (in 1998 20.1% of the respondents opted for this answer, 7.5% of them did so in 2000 and 3.9% in 2001). The rest was made up of the respondents who did not know what to answer (11.6%), whose number has decreased by 2.5% in relation to the 2001 poll, although it is still higher than in 2000 (6.6%).

The next question from the set dealing with political rights was what would happen *according to our law* if an opposition party or coalition won an election. The respondents were asked to state their view of the legal regulations pertaining to a change of power as a result of the electoral will of the people. The majority of the respondents answered that if an opposition party won the election, it automatically took over power. Almost every second respondent (47.9%) answered so. In relation to the poll of 2001, this marks an increase of 3% (from 44.5% in 2001). The number of respondents who could not answer this question has decreased in the same degree (from 13.4% in 2001 to 9% in 2002). The number of answers to the effect that the election is repeated in such a case remained at the same level (10.2%), while one-third of the respondents (32.9%) still claim that in such a case the Supreme Court has to confirm the election results. These results also point to the conclusion that an absolute majority of the citizens of the FRY still think (or do not know) that in the legal system itself there exist mechanisms that prevent or obstruct an oppositional takeover of power. For the sake of caution, we should point out that this attitude of the citizens is possibly due to previous experiences, because after several elections in the past we had to wait for the Supreme Court to decide on the appeals of not only those who lost the elections but also those who won. That is what happened after the 1996 election and after the 2000 election, but also after this year's presidential elections in Serbia (in September and December). It is possible that such events have led the citizens to conclude that election results have to be confirmed by the Supreme Court. No differences were observed in answers to this question depending on which republic the respondent live in.

3.15. Special Protection of the Family and the Child

The negative processes that have spread across the territory of the former SFRY after its disintegration have reflected upon the family and marriage. In this poll, special attention was paid to the possibility of contracting mixed marriages. The respondents were asked the following question: "What, in

[284] See *Human Rights in Yugoslavia 1998, 2000,* and *2001*.

your opinion, is the greatest obstacle to contracting mixed marriages today?" The majority of the respondents (52.4%) are of the opinion that no such obstacles exist today, more than in any of the preceding polls (1998: 38.3%; 2000: 40.6%; 2001: 50.3%), continuing the trend observed since the first poll onwards. The frequency of the answer that obstacles are due to propaganda which has infiltrated people's private lives has continued to decrease from 32% in 1998, 27.6% in 2000 and 19.6% in 2001 to 14.8% in 2002. As opposed to the preceding polls, when the number of citizens who claim that obstacles are to be found in the minds of people who think that it is bad to mix the blood of different nations tended to decrease, in this year's poll it increased to 27.1% (1998: 18.8%; 2000: 24.7%; 2001: 22.7%). The number of respondents who think that the obstacles are to be found in repressive state measures remained at last year's level (2.3%), whereas the number of those who could not answer this question has decreased to 3.4%. Despite the fact that positive shifts have been observed when it comes to the views of obstacles to contracting mixed marriages, many respondents are still aware of obstacles to contracting marriages, but most often tend to attribute them to men and women themselves or to propaganda. No correlations between this answer and the sociodemographic characteristics or nationality of the respondents were observed.

3.16. Right to Citizenship

As a consequence of the disintegration of the former SFRY, the problem of citizenship has affected many citizens, not only those who, due to wars, devastation and maltreatment, were forced to leave their former republics; it has also affected many citizens living in Serbia and Montenegro who, due to economic migrations, starting families, attending schools, have come to these republics and lived there for decades. This problem has also affected many citizens of the FRY whose parents have come from other republics of the former common state and who, in accordance with the legal regulations in effect at the time, were upon birth entered in the citizenship register in their parents' (especially father's) birthplace. Such problems were most in evidence in Vojvodina, which was the greatest migration area in the previous century. After the establishment of independent states on the teritory of the former SFRY, the position of refugees who were trying, with great difficulties, to settle their citizenship status became very complicated indeed. That is why we surveyed our citizens' views of the problems connected with obtaining Yugoslav citizenship.

After the election of 2000, the new authorities initiated a campaign for settling citizenship status in a speedier fashion, as a result of which the attitude towards this problem has changed noticeably. The procedures for obtaining citizenship status have been speeded up so that, according to the Federal Ministry of the Interior, which is in charge of these matters, over the last two years between 30,000 and 50,000 requests for settling citizenship status have been processed per month. The campaign has not finished yet, and according to the information supplied by the authorised organ, about 500 requests are processed every day. Such campaigns have contributed to a change of the citizens' attitude towards this problem.

The greatest change in the citizens' attitude was observed between the polls of December 2000 and December 2002. There has been a considerable increase in the number of citizens who, when asked about the requirements for obtaining Yugoslav citizenship, replied that they were "fair" irrespective of where they were from and what their request for citizenship was based on. The trends observed in last year's poll have continued. The number of citizens who claim that the requirements for obtaining citizenship are fair (41.7%) has increased in relation to the preceding polls (1998: 28.4%; 2000: 25.3%; 2001: 38.9%). The number of citizens who claim that the situation in this area is chaotic has remained at last year's level (22.8%), but there has been a decrease in the number of respondents who think that the requirements for obtaining citizenship are discriminatory because it tends to be forgotten that we used to live in the same state. Today, every ninth respondent (11.1%) shares this view, which marks a decrease in relation to the preceding polls (1998: 22.1%; 2000: 25.5%; 2001: 13.2%). The trend of an increase in the number of citizens who are able to answer the question about the requirements for citizenship status correctly has also continued. However, irrespective of the trends observed and the increase in the number of citizens who consider these requirements to be fair, every third citizen still perceives difficulties and considers them to be discriminatory. No correlation with sociodemographic characteristics was observed.

As was noted in the previous reports, there are various categories of persons in the FRY who have initiated the procedure for obtaining citizenship status. Apart from "veteran residents", who have not obtained citizenship status due to some formal requirement, there are also refugees, immigrants from Albania who have never submitted a request for or obtained citizenship status, as well as persons who have

already obtained the citizenship of some foreign state but also wish to obtain Yugoslav (dual) citizenship. That is the reason why in this poll, too, we surveyed the attitudes of the respondents towards various categories of persons lacking citizenship. The results obtained are presented in Table 7, along with a comparative presentation of the results from the preceding polls from the year 2000 to the present.

Table 7. Attitude of the state towards persons applying for citizenship

ŽZ_TBL_BEG = COLUMNS(17), DIMENSION(IN), COLWIDTHS(1.1108,E1,E1,E1,E1,E1,E1,E1,E1,E1,E1,E1,E1,E1,E1,E1,E1), ABOVE(.1378), BELOW(.1181), HGUTTER(.0555), VGUTTER(.0555), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF)

ŽZ_TBL_BODY = TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT

Persons applying for citizenship, July 1998, +, +, +, December 2000, +, +, +, December 2001, +, +, +, December 2002, +, +, +

ŽZ_TBL_BODY = BODY TEXT, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8, TABLE 90-8

Č, Inflexible, Fair, Flexible, Don't know, Inflexible, Fair, Flexible, Don't know, Inflexible, Fair, Flexible, Don't know, Inflexible, Fair, Flexible, Don't know

ŽZ_TBL_BODY = TABLE 8L, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1, TABLE 90-8-1

1. Refugees applying for citizenship, 30.7, 46.4, 23.0, -, 40.5, 38.3, 17.8, 3.5, 21.7, 52.9, 13.3, 12.0, 18.7, 52.6, 11.7, 17.0
2. Albanians not applying for citizenship, 20.2, 29.3, 50.6, -, 19.6, 29.6, 45.0, 5.8, 9.9, 34.5, 40.5, 15.1, 8.2, 33.1, 38.4, 20.4
3. Citizens of B&H Federation wishing to have Yugoslav (dual) citizenship, 28.9, 50.8, 20.3, -, 32.8, 43.1, 17.8, 6.4, 16.8, 52.3, 15.3, 15.5, 13.8, 52.0, 13.6, 20.5
4. Citizens of states formed on the territory of the former Yugoslavia wishing to have Yugoslav (dual) citizenship, 28.0, 52.1, 19.9, -, 31.7, 43.4, 17.8, 7.0, 16.0, 53.9, 13.9, 16.2, 13.5, 53.1, 12.6, 20.8
5. Citizens of other states wishing to have Yugoslav (dual) citizenship, 23.0, 56.1, 20.9, -, 21.9, 49.4, 21.6, 7.1, 10.8, 58.0, 14.3, 16.9, 9.7, 54.8, 13.8, 21.7

ŽZ_TBL_END =

On the basis of the results obtained, we can conclude that the positive changes in the attitude of the state towards persons applying for Yugoslav citizenship have continued, and that this is so in the case of all the categories of persons seeking citizenship, from inflexible towards fair. The number of citizens who

think that the state is too flexible has decreased again. In last year's report, the greatest positive shift from inflexible towards fair was observed in the attitude of the state towards refugees and the citizens of Bosnia and Herzegovina and other states formed on the territory of the former SFRY wishing to have dual citizenship. However, in view of the fact that last year more than half the respondents claimed that the state had a fair attitude towards these persons, further shifts are not as large as in last year's poll.

In last year's report, it was observed that there was a difference in the citizens' views of the attitude of the state towards the above-mentioned categories of citizens applying for citizenship and Albanians lacking Yugoslav citizenship, who are living on the territory of the FRY and not applying for citizenship. This can be seen from Table 7 and from this year's poll. Viewed in the context of last year's poll, the citizens' views of the attitude of the state towards these persons have changed inasmuch as the number of respondents who say that they do not know what the attitude of the state towards them is has increased, while the number of respondents who claim that the attitude of the state is flexible has slightly decreased.

On the basis of the results of this year's poll, we can conclude that the campaign for a speedier procedure of obtaining Yugoslav citizenship, initiated by the authorised organs, has contributed to a positive shift in the citizens' views. The conclusions made in last year's report, that there was no big difference any longer in the respondents' views of the attitude of the state towards various categories of persons applying for citizenship, except for Albanians who do not seek citizenship, hold true in this poll as well. In the case of the former, our citizens still think that the state treats them in a fair manner, whereas the respondents who do not share this view have split into two equal groups: those who think that the state exhibits a discriminatory attitude towards them and those who believe it treats them in a flexible manner. The respondents are also split in their views of the attitude of the state towards Albanians who do not seek citizenship. A little more than one-third of the respondents think that the state treats them flexibly, one-third think that the state treats them fairly. Every fourth respondent could not answer this question, whereas every twelfth one thinks that the state has a discriminatory attitude towards them.

3.17. Freedom of Movement

We surveyed the views of our citizens on the freedom of movement on the territory of the FRY by asking them the question: “Can every citizen of the FRY live where he/she wants to?” Of the overall number of respondents, an absolute majority of them (59%) hold the view that every citizen of the FRY may live where he/she wishes to without any conditions to be fulfilled. Every fourth respondent (24.5%) was of the opinion that one needs to have a permit issued by the authorised organ in order to settle down. The number of those who think that citizens may settle down only where they are considered to be desirable has decreased. Every eighth respondent (11.5%) thinks so today, whereas 5% of the respondents were unable to answer this question. In relation to last year's poll, slight positive shifts have continued, so that no differences were observed in this poll depending on the sociodemographic characteristics of the respondents.

In this poll we recorded a slightly unfavourable trend in answers to the question “Can every citizen of the FRY freely leave the country?”, but the actual results were almost identical to last year's. From the researcher's point of view, it would be correct to say that no change has actually been observed in relation to the 2001 poll. Most respondents still claim that every citizen can leave the country without having to fulfil any requirements. Today, 45.2% of the respondents think so (in 2001 45.1% of them said so). A little more than one-third of them (35.3%) think that a permit must be obtained from the authorised organ, which is also at the level of last year's answer. The number of respondents who claim that one can leave the country only if he/she has enough money to pay the exit toll has remained the same (13.2%), even though the exit toll was abolished. The number of citizens who could not give an answer about the conditions for leaving the country has also remained the same (6.6%). Respondents still believe that in the FRY there exist much greater restrictions when it comes to leaving the country than when it comes to resettling.

In answers to the question about whom the state may expel from its territory, slight shifts have been observed in relation to the results of the December 2001 poll. The number of respondents who gave the correct answer (“only a foreign citizen, never a Yugoslav citizen for any reason whatsoever”) has increased by 3% in relation to 2001, which is still less than two-fifths (39%). Next in the order of frequency (20.1%) is the answer that the state may not expel anyone, which also marks an increase of 3% in relation to 2001. The answer to the effect that the state may expel “a foreigner and a citizen of the FRY if he/she has

committed a serious criminal offence" remained at last year's level (16.3%). The poll results note that there are citizens who still think that the state may expel a foreigner, and also a disloyal citizen of the FRY (6.5%), or a foreigner and a disloyal minority member (3.2%). A total of 14.9% could not answer this question today.

3.18. Economic and Social Rights

The citizens' attitudes towards economic and social rights were surveyed through questions dealing with three rights. One of them dealt with the employment of minors. To the question "Is it legal to employ a minor under 16 years of age?", fewer respondents gave the correct answer ("Yes, in any case") in December 2001 than in 2000 (when 47.7% of them said so, whereas in 2001 43.2% of them did). As opposed to last year's negative shift, in this poll more than one half of the respondents (53.5%) gave the correct answer to the question about employing minors. At the same time, the number of those who opted for one of the incorrect variants has also decreased: "Yes, if the child is equal to the job requirements in psychophysical terms" (13.6%), "No, if the child supports him/herself and his/her family in this way" (24.5%). The number of respondents who could not answer this question has also decreased (8.4%).

The second question from the set dealing with economic and social rights had to do with the documents required when seeking employment. The respondents were asked to say which documents, apart from the employment record booklet and school certificates, were required to get employment in the FRY. The majority of the respondents (46.6%) opted for the only correct answer, that no other document was required. This marks an increase of 5% over last year's figure, which continues the trend observed then. In this poll, too, the second answer in order of frequency (17.4%) was the one to the effect that a certificate of permanent residence in the place of employment was required, which marks a decrease of 3% in relation to the 2001 poll. The same number of citizens as last year (9.3%) claimed that a membership booklet of a political party was required. Among these, the most frequent answers were of the type "the ruling party", either DOS (in Serbia) or DPS (in Montenegro). The non-existent certificate of nationality was considered to be required by 5.9% of the respondents, an increase over last year's figure and at the same level as the 2000 poll figure.[285] The results confirm the observation made in the course of the previous polls that a relatively high number of citizens still lack information about the documents required when seeking employment.

In this set, we also asked a question pertaining to the use of contraceptives. The respondents were asked: "How much, in your opinion, are contraceptive devices (for preventing unwanted pregnancies) used today?" As opposed to the poll conducted in 2001, when significant changes were observed, in this year's poll only slight shifts were observed. The trend of a decrease in the number of respondents who claim that contraceptives are used all too infrequently because the state does nothing to popularise them and facilitate their purchase has continued. This view is held by 32.4% of the respondents (2000: 52.3%; 2001: 34.4%). The number of those who say "In the right measure" has increased by 5%, to 26.3%. As opposed to last year's poll, the number of respondents claiming that contraceptives are used too frequently has decreased to the level of the 2000 poll (11.3%). As before, in this poll too, a correlation was observed between the answers and the age and educational level of the respondents. The view that contraceptives are used too infrequently is mostly held by the youngest and most educated respondents. The older and less educated the respondents are, the less frequent is the answer "too infrequently". No correlation between this answer and other sociodemographic characteristics was observed.

4. Realisation of Human Rights

In an attempt to find out how satisfied our citizens are with the degree of realisation of their human rights, we asked two questions at the end of the questionnaire. The first one was: "To what extent are you satisfied with the realisation of your human rights?" In relation to the 2001 poll, there has been an increase in the number of citizens claiming that they manage to realise all their human rights. However, irrespective of the 8% increase, only two-fifths of the respondents (40.4%) claim so today (2000: 20.8%; 2001; 32.1%). On the other hand, the number of those who claim that they manage to realise most of their human rights

[285] See *Human Rights in Yugoslavia 1998, 2000,* and *2001*.

has decreased. Compared to last year's figure of 38.4%, every third respondent (34.3%) opted for this answer in 2002. Every tenth respondent (10%) claims that his/her human rights are threatened by the state, which marks a decrease of 1% in relation to last year's figure. The number of citizens claiming that the realisation of their rights has been left to mere chance because everyone can endanger them without bearing responsibility for doing so has also decreased (from 18.2% in 2001 to 15%). Even though positive changes have been observed, a considerable number of citizens still feel threatened. There is no correlation between the answer to this question and any sociodemographic characteristics.

The previous polls indicated that the majority of the citizens preferred non-institutional mechanisms of human rights protection to the institutional ones. When asked to whom one should turn if his/her human rights were denied, more than one half of the respondents opted for some non-institutional mechanism such as influential officials of the powers-that-be (22.4%) and influential people with good connections (20.1%); also, the number of respondents who think that the best thing to do in such situations is turn to people who would do anything for money is not negligible (9.1%).

Table 8: Solutions for the protection of human rights

ŽZ_TBL_BEG = COLUMNS(5), DIMENSION(IN), COLWIDTHS(1.8700,E1,E1,E1,E1), ABOVE(.1575), BELOW(.1772), HGUTTER(.0555), VGUTTER(.0555), BOX(Z_DOUBLE), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF)

ŽZ_TBL_BODY = TABLE L, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT

“If one is denied some previously mentioned human right today the best thing to do is turn to...”, July 1998, December 2000, December 2001, December 2002

ŽZ_TBL_BODY = TABLE L, TABLE R, TABLE R, TABLE R, TABLE R

1. Influential officials of the powers-that-be, 17.2, 18.4, 19.9, 22.4
2. An international court, 9.7, 7.6, 7.4, 8.3
3. A domestic court, 17.5, 26.9, 34.7, 36.8
4. People who would do anything for money, 17.7, 9.7, 8.6, 9.1
5. Influential people with good connections, 32.1, 31.0, 24.4, 20.1
6. Someone else, 5.7, 4.4, 2.2, 1.7
7. No answer, –, 2.0, 2.8, 1.7

ŽZ_TBL_BODY = TABLE R, TABLE R, TABLE R, TABLE R, TABLE R

Total, 100, 100, 100, 100

ŽZ_TBL_END =

Despite the increase in the number of respondents who are in favour of turning to regular courts of law, the level of trust in these institutions is still very low (the same holds true in the case of international courts), which could have been inferred from the citizens' attitudes towards courts and judges referred to earlier.

5. Conclusion

The analysis of the results of this year's poll points to the conclusion that the shifts in the legal consciousness of our citizens observed in 2000 have continued. Although it was expected that the shifts in the citizens' attitudes, occurring as a result of emotional reactions to the change of power, could change direction afterwards, they partly continued in 2001 and partly stagnated as a result of waiting to see what might happen next. Hence a certain amount of reservations on the part of the researcher in the previous reports concerning the prospective changes in the legal consciousness of the citizens of the FRY. The results of the 2001 poll indicated that the shifts observed before continued even more dynamically in some respects, but stagnated concerning some issues, leaving one with the impression of waiting cautiously to

see what would happen. This was particularly true of the citizens' attitudes towards institutions where certain rights are realised and which provide mechanisms for human rights protection. This year's poll confirmed most of the findings from 2001. In areas where attitudes towards some rights or a lack of knowledge of one's own rights was manifest, despite the positive shifts, a significant number of citizens still show a great lack of knowledge or express dissatisfaction with the current situation (a case in point is the freedom of the media). The findings point to the conclusion that the earlier dissatisfaction with the functioning of some institutions is changing slowly and with difficulty, and that the process will take a lot more time than it was thought immediately after the changes of 5 October 2000. A case in point is the lack of trust and dissatisfaction with the work of courts and judges. As a consequence of the slow and difficult process of building trust in institutions, the deep-rooted trust in non-institutional mechanisms for protecting one's own rights (officials in power and people with good connections) is still very much in evidence, which slows down and partly prevents speedier changes in the legal consciousness of citizens, for whom positive experiences are of crucial importance.

The changes observed in 2000 and 2001 pertaining to the correlations between the sociodemographic characteristics and the legal consciousness of the citizens were partly confirmed by this poll and partly disappeared. Apart from these changes, there were also changes pertaining to the correlations between the citizens' answers and their political or electoral preferences. The greatest change in this respect was observed among the citizens of Montenegro, where the correlations between the citizens' views and the realisation of some human rights and party preferences were more significant than in Serbia in the first place. This was partly the result of a shift in the authorities' attitude towards the future of the common state, but also of the change in the Montenegrin Parliament on account of which the parliamentary election was called before it was due. This shift was particularly pronounced in the attitudes towards the functioning of the media.

The conclusion drawn earlier, that in some respects the citizens of Serbia are slowly becoming more critical towards the new authorities, but that their critical attitude remains very cautious, patient, and even characterised by tolerance, and that the citizens' awareness of the fact that it takes time to overcome difficulties (“nothing is achieved overnight”) is growing. This conclusion has been confirmed by this year's poll.

IV

MAIN TOPICS – 2002

1. Kosovo and Metohija

1.1. Introduction

The international civilian and military administration in Kosovo and Metohija was established in 1999 by the UN Security Council Resolution 1244.[286] The civilian administration rests on four pillars: the United Nations Interim Administration Mission in Kosovo (UNMIK), which covers the entire civilian sector, the OSCE, which is in charge of organising elections and building up democratic institutions, the European Union, tasked with reconstruction and economic development, and a joint pillar made up of UNMIK police and the Department of Judicial Affairs. The heads of the pillars are also deputies to the Special Representative of the UN Secretary General (SRSG), who heads UNMIK and has supreme legislative and executive power. In 2001, that post was filled with German diplomat Michael Steiner, former security and foreign affairs advisor to the German Chancellor. The OSCE mission in Kosovo was headed in 2002 by French diplomat Pascal Fieschi, with Britain's Andy Bearpark heading the EU's mission.

In 2002, the SRSG speeded up somewhat the gradual transfer of administrative powers from UNMIK to the local authorities, but that process was made dependent on their proper functioning. The SRSG established a set of benchmarks used to gauge the stability of Kosovo institutions and the level of democracy exhibited in them.[287] UNMIK and Steiner assumed a position according to which the ultimate status of Kosovo must depend on the progress achieved by that society in its development, under the slogan "standards first, status later". The new government of Kosovo does not have a ministry of defence; security is fully guaranteed by international troops in NATO led KFOR, whose commander was French General Marcel Valentin until 4 October 2002, when he handed over his duties to Italian General Fabio Mini.

1.2. Elections

Local elections were held in Kosovo on 26 October 2002. The turnout was 711,200 of the total electorate of 1,32 million, or about 54%. Seats in the parliament were won by representatives of fully 40 of the 68 political parties, coalitions and civic associations that had run, as well as several independent candidates; the system used to calculate mandates (Saint-Lague), favours smaller political entities. No less than 15 percent of the seats in local self-government councils were taken by small parties and groupings, in fact twice as many as in the preceding local elections. Explaining why the customary D'Hondt system had not been applied, OSCE mission spokesman Jeff Bieley said: "In a place like Kosovo, with a wide diversity of small ethnic groups and a pronounced tendency to vote along ethnic lines, securing representation for smaller entities has been a priority in the last three elections".[288]

Although the turnout was lower than in the first local elections organised by the international administration late in 2002, (also lower than that recorded at the first post-war parliamentary vote in 2001), these were the first local elections in which Kosovo Serbs took part, winning power in five of the total of 30 municipalities in Kosovo (Leposavić, Zubin Potok, Zvečan, Novo Brdo and Štrpce, which have majority Serb populations). In the other municipalities, the Serbs boycotted the vote.[289] Oliver Ivanović, a

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[286] UN/S/RES/1244, 10 June 1999.

[287] See Steiner's address at 4518 session of the UN Security Council on 24 April 2002.

[288] Jeff Bieley, "Result: Clear but incremental change", *Focus Kosovo*, October 2002.

[289] Although Serbs are a majority in the northern part of Kosovska Mitrovica, the majority population in the entire municipality are ethnic Albanians. Just 59 people voted in northern Mitrovica.

Serb “Povratak” (“Return”) coalition member in the Presidency of the Kosovo Parliament, said after the ballot that the expected result had been achieved. “It is both a maximum and a minimum. The Serbs can take an active part in political life in those municipalities. It is an achievement or an error by the international community, which did not manage to establish the necessary conditions for the creation of coalitions in areas where the Serbs are in a minority, but where coalitions appear possible,” Ivanović said.[290] President Ibrahim Rugova's Democratic League of Kosovo (LDK) took some 46 percent of all votes and majorities in 11 municipalities, and will be able to rule another seven by forming coalitions. Hashim Thaqi's Democratic Party of Kosovo (PDK) is in control of six municipalities, and Ramush Haradinaj's Alliance for the Future of Kosovo (AAK) won power in Haradinaj's hometown Dečani. Fully 28.5% of all local council members are women.

In Kosovo, local Serbs also took part in two votes for the president of Serbia held in the autumn; as expected, those elections were boycotted by the other communities.

No Kosovo party or coalition managed to win a two-thirds or even simple majority in the November 2001 parliamentary vote. Months of bickering among the ethnic Albanian parties meant that the parliament only elected a Kosovo president and prime minister early in 2002. Head of the LDK Ibrahim Rugova was elected president, while PDK leader Thaqi became prime minister.

Provisional Institutions of Self-Government (PISG) were officially formed on 4 March 2002. They consist of the Prime Minister, ten ministries, and the Inter-Ministerial Co-ordinator for Returns. There are no ministries of defence or foreign affairs. Under the Constitutional Framework and UNMIK Regulations defining the composition and jurisdiction of the PISG, the SRSG maintains the power to intervene in the self-government in certain key areas whenever necessary.[291] Ethnic Albanians head eight of the ten ministries, the ministry of health is run by a member of the “Vatan” coalition, made up of Kosovo Bosniaks and the southern Kosovo Gorani community, and a “Povratak” member is the minister for agriculture. The Serbs' political representatives insisted on the formation of a ministry to deal with the return of refugees and displaced persons which would be headed by a Serb. The post of Inter-Ministerial Co-ordinator for Returns attached to the prime minister's office was established as a compromise solution, as was a Special Advisor for Returns attached to the office of the SRSG.

In November 2002, Serb deputies walked out of the Kosovo Parliament in protest over a number of instances of discriminatory behaviour by their Albanian colleagues and the Speaker, and no agreement on their return had been reached by the end of the year.

1.3. Human Rights in Legal Provisions in 2002

For more on Constitutional Framework for Provisional Self-Government in Kosovo and human rights in UNMIK Regulations, see *Human Rights in Yugoslavia 2001*.[292]

1.4. Human Rights in Practice in 2002

Although the law prescribes protection of human rights in Kosovo and Metohija according to the most stringent international standards,[293] the human rights situation in the province is very poor, mainly on account of a lack of security guarantees. But the general security situation in Kosovo nevertheless improved somewhat in 2002 compared to the preceding period, reflected mainly in the fall in the number

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[290] *Radio B92*, 3 November 2002.

[291] See Preamble to Constitutional Framework, Article 4.6 and Chapter 8 on “Powers and Responsibilities Reserved to the SRSG”, Articles 9.1.45, 9.4.8, Chapter 12 on “Authority of the SRSG” and Article 14.3. See also Sections 6, 7 and 8 of UNMIK Regulation No. 2001/19 of 13 September 2001, “On Executive Powers of the PISG in Kosovo”.

[292] Part IV.1.2.

[293] See: UNMIK/REG/1999/24 *On the Law Applicable in Kosovo*, 12 December 1999, Section 1, 1.3; UNMIK/REG/2000/59, *Amending UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo*, 27 October 2000: UNMIK/REG/2001/9 (Constitutional Framework), 15 May 2001, Chapter 3, Section 3.3.

of homicides and other serious violent crimes and a slight improvement in the position of minorities.[294] In the first nine months of 2002, 51 murders and 102 attempted murders were recorded in Kosovo; this is respectively 43 and 44 less than the in the same period of 2001. There was a similar decline in the number of kidnappings and attempted kidnappings in the same period of 2002: 81, and 40, respectively.[295]

In spite of the improvements, in particular the security situation, everyday life in Kosovo is still marked by numerous cases of intimidation, harassment, physical assaults and especially arson; most of the victims come from the minority communities. More than three years after the end of the conflict in Kosovo, the region is still far from achieving the necessary level of ethnic tolerance.

The OSCE mission in Kosovo (OMIK) said in a report on the position of minorities in 2002 that "minorities continue to be vulnerable to attack, especially when moving outside circumscribed residential areas, even as numbers of incidents are on the decline."[296] The gradual decline in serious incidents seemed to have yielded place to lower-intensity violence, in particular the torching of property, theft of livestock or the stoning of vehicles driven by minorites outside their enclaves; there were more such incidents in 2002 than in the preceding period. The report adds that in that way "Lower level violence also serves as a reminder that more serious or fatal acts can (and do) occur, admittedly at less frequent intervals than previously, but the threat of serious violence remains ever present, making it difficult to raise minority confidence levels".[297] The International Crisis Group said in a report that the "drop in violence is partly a result of Serbs re-grouping in secure enclaves, restriction of movement, and their diminished population numbers in Kosovo."[298]

The intensity of ethnic violence is therefore closely linked to physical protection provided for minorities by KFOR and UNMIK police (CIVPOL) and the fact that minorities continue to live in enclaves they seldom leave. Lack of security guarantees adversely affects the freedom of movement of minority populations. Although in 2002 more members of minorities did leave their enclaves without escort, such increased mobility should not be equated with freedom of movement. A growing number of people are simply taking a deliberate risk of venturing out of their safe havens after more than three years in veritable detention, and this decision is also the result of some objective circumstances, as well as subjective assessments of the level of security in one's environment. In spite of some improvement, the three-year long negative experience leads to continuing distrust and caution.

Starting from mid-2002, announcing an improvement in the security situation, KFOR removed a number of fixed checkpoints near enclaves and suspended strong escorts of minorities moving outside their safe havens. Initially, this provoked protests, especially among the Serbs, and for a time discouraged travel. But it turned out that the removal of checkpoints contributed to the creation of a more favourable perception of security and elimination of barriers between various communities. Much as the measure was essential in the first years after KFOR's deployment in Kosovo, it also affected perceptions of segregation and served to support the widespread view that minorities are a security threat. With the cooperation of UNMIK police, instead of keeping fixed checkpoints and powerful traffic escorts KFOR begun implementing more flexible measures in the protection of vulnerable communities such as more frequent patrols and stationing its personnel in public transport, which helped people get used to a more normal situation.

Other measures implemented by the international community also helped increase the mobility of minority groups; one of them is the opening of a network of roads around the Serb enclave of Gračanica to

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[294] As in the previous reports, we are using the term "minority" to designate ethnic groups which constitute a numerical minority in a given part of Kosovo, rather than groups given such status officially. In Kosovo as a whole, minority peoples are Serbs, Roma, Ashkali, Gorani and ethnic Turks, and also a very small number of Croats, while ethnic Albanians are a minority in land north of the river Ibar.

[295] "Nine Months Crime Statistics", *Focus Kosovo*, October 2002.

[296] OSCE/UNHCR, *Ninth Assessment of the Situation of Ethnic Minorities in Kosovo* (Period covering September 2001 to April 2002).

[297] *Id.*

[298] ICG, Balkans Report, No. 134, "*Finding the Balance: The Scales of Justice in Kosovo*", 12 September 2002, Pristina/Brussels.

another enclave in Kosovo Polje and Obilić, enabling Serbs to avoid passing through Albanian-populated urban areas. But in spite of all that has been said, the OSCE concluded in its report that security measures and guarantees were still needed for most minority populations. Vehicles carrying members of minorities are attacked with rocks almost daily. A Serb schoolteacher from the northern part of Kosovska Mitrovica who travels to work in a school in a Serb enclave near the town of Vučitrn said that Albanian villagers throw at least one rock every day at the bus carrying Serb workers as a warning.[299] UNMIK has admitted that public service workers who are members of minorities often stay away from work or even leave their jobs because of insufficient security. Incidents happen even in the presence of KFOR escort: the most drastic took place in Peć on 10 October, when several hundred ethnic Albanians attacked a bus carrying Serb pensioners to the Pension Fund office in that western Kosovo town. Although KFOR was protecting the bus, the attackers pelted it with rocks – several members of the escort were injured in the violence. At one time there was a campaign against the return of Serbs: in July, posters with a picture of an Albanian child allegedly killed by a Serb appeared, carrying the inscription: "Do not allow the criminals to return". On 13 March 2002, an unknown assailant threw a car tyre at a vehicle carrying Serbs passing through Podujevo under KFOR escort. There was extensive damage to the car, but luckily no one was hurt.

But it is also important to understand that restricted freedom of movement is the cause of restrictions of many other rights, especially of access to public services and health-care, educational, judicial and other institutions; it also degrades employment prospects. The lack of security, which has a strong effect on freedom of movement, is therefore at the root of all problems facing minorities every day. Such a climate also adversely affects prospects for a return of refugees and displaced persons to their homes.

Besides ethnic intolerance, inherited from the past and increased after the crimes committed during and after the armed conflict, the low efficiency of the judiciary and the police also has a considerable effect on the overall security climate. Although tangible improvements did take place in this area in 2002, their scope was not sufficient to build up peoples' confidence in those institutions, both in the majority and minority communities. The number of international and KPS (Kosovo Police Service) personnel was increased somewhat last year, but their work – especially investigation of criminal offences – continues to be obstructed by numerous systemic deficiencies. The International Crisis Group's said in its report that "in Kosovo the capacity to gather and utilise forensic evidence suffers from infrastructure shortcomings, the low investigative capacity of the police, and the significant passage of time for crimes committed in 1999 and 2000."[300]

There is no central data base in Kosovo for evidence; on numerous occasions key items of evidence were lost. Frequent rotation of police personnel also hinders tenacious investigative work. Another problem often seen is lack of readiness in the population to assist in investigating crimes, especially where victims are of a different nationality. On the other hand, distrusting the police and judiciary, many people do not even try to report cases of harassment.[301] No police emergency telephone number exists in over half of Kosovo, and language is a major problem – numerous international policemen know no language but their own and perhaps a little English, let alone the languages spoken in Kosovo. But regardless of the shortcomings, in 2002 police carried out more arrests than in the preceding year, especially in connection with serious crimes. In August 2002, UNMIK police arrested a large number of people, including former KLA fighters and Kosovo protection Corps personnel, in connection with crimes committed in 1998 and 1999. The best known are Daut Haradinaj, the brother of AAK leader Ramush Haradinaj, and Rrustem Mustafa, popularly known as Commander Remi. They are accused of illegally arresting, torturing and murdering five Kosovo Albanians. The arrests provoked outrage among many ethnic Albanians and their leaders. Condemnation came from *Koha ditore* editor Veton Surroi, who voiced distrust of the police and

[299] Interview with a teacher, Kosovska Mitrovica, BHCR archives, 3 December 2002.

[300] ICG, Balkans Report No. 134, *Finding the Balance: The Scales of Justice in Kosovo*, 12 September 2002, Pristina/Brussels.

[301] OSCE/UNHCR, *Ninth Assessment of the Situation of Ethnic Minorities in Kosovo* (Period covering September 2001 to April 2002).

judiciary.[302] Similar reactions came from Serbs in northern Kosovo after the arrest of Slavoljub 'Pagi' Jović, one of the "bridge guards" in Mitrovica, a parallel security structure in Kosovo the SRSG and UNMIK officially describe as "the bridge gang". Jović was arrested on 8 April 2002 during the most serious incident in Mitrovica since the major demonstrations and disturbances there in 2000. A group of Serbs protested against the positioning of a police checkpoint near the bridge linking/separating the "Serb" and "Albanian" parts of the town. Over 22 UNMIK police and several protesters were hurt in clashes between Serbs and UNMIK and KFOR personnel. Just before the end of the year, Jović was sent to prison for 18 months.

Deficiencies in police investigations are closely linked with shortcomings in judicial procedures, which are based mainly on eyewitness accounts rather than material evidence. The most serious criminal offences, like war crimes and ethnically-motivated crimes, are still tried by international judges, in order to avoid the partiality seen right from the start of the establishment of the judiciary There were in Kosovo until June 2002 fourteen international judges and 12 international prosecutors, but this number is insufficient to handle the mass of pending cases. More serious attempts to create an integrated judicial system in Kosovo began in mid-2002, when the entire judiciary contained just nine Bosniaks, four Serbs, seven Turks and two Roma, but no Serb judge or prosecutor. Such an ethnic picture played a large part in the distrust of the minorities in the judiciary: Serbs in northern Kosovo kept taking their business to parallel Kosovo courts unrecognised by the international community – municipal and district courts transferred to Serbia proper. On 9 July 2002, after lengthy negotiations, the Serbian government and UNMIK signed a "Joint Declaration on Recruitment of Judges and Prosecutors of Serb Ethnicity into the Multi-Ethnic Justice System in Kosovo."[303] Albanians came out against the deal: their media said it made possible the return to Kosovo of Serb judges who had during the Milošević regime violated Kosovo Albanians' right to a fair trial.[304]

On 12 December, the SRSG appointed a new group of judges and prosecutors, including 19 Albanians, 21 Serbs, one Bosniak and one Goranac.

Several former Kosovo Albanian members of the KLA better known as the "Dukagjini" group, arrested in August 2002, were on 17 December sentenced by the District Court in Priština to jail terms totalling 31 years.[305] Three Albanians arrested in February 2002 on charges of murdering a Serb near Kamenica in June 2001 were found guilty and sentenced in April.

The international community has also admitted that the share of non-Albanians working in the public services was "unacceptably small".[306] Early in 2002, 93 percent of all public service workers declared themselves as Albanians, 1.5% as Bosniaks, 1.0% Serbs, 1.7% Turks and 0.5% as "others", while 1,5% declined to declare ethnicity. There were no Roma, Gorani, Egyptians, Ashkali or Croats.[307]

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[302] "More than 60 KLA fighters have been detained in less than a year, yet Milan Ivanović, leader of the infamous Mitrovica "bridge guards" has escaped arrest and at the same time humiliated the UN by freely turning up in the town to hold a press conference." IWPR, Balkan Crisis Report, No. 361, Veton Surroi, "*Comment: Kosovars Say Judiciary Unfair*," 23 August 2002. Ivanović, a member of the Mitrovica-based Serb National Council, later fled to Serbia and returned to Kosovo only after being given guarantees that he would not been held in detention during his trial and after the charges were reduced from attempted murder to participation in disturbances.

[303] The Declaration was signed in Belgrade on 9 July by Serbian Justice Minister Vladan Batić and Jean-Christian Cady, deputy SRSG and head of UNMIK's police and judiciary pillar. "Protocol for Integration of Serb Judges in Kosovo Judiciary Approved", *VIP*, 8 July 2002.

[304] *Zeri*, "Will Milošević's Judges Work in Kosovo Again?", 8 July 2002.

[305] Idriz Bal, Daut Haradinaj, Bekim Zekaj, Ahmet Elshani and Ramush Ahmetaj, found guilty of the murder of Bashkim Baljaj, Rexhe Osaj, Sinan Musaj and Idriz Peje in June 1999. IWPR, Balkans Crisis Report No. 392, Arben Qirezi, "*Senior KLA Men Jailed*", 20 December 2002.

[306] OSCE/UNHCR, *Ninth Assessment of the Situation of Ethnic Minorities in Kosovo* (Period covering September 2001 to April 2002).

[307] *Id.*

This situation is definitely not contributive to the return of refugees and displaced persons to their homes, although the efforts of the international community in that direction in 2002 were more visible than before. According to the International Crisis Group's report on the return of displaced persons, just 5,800 of their total figure of over 230,000 have returned to Kosovo.[308] The OSCE has actually spotted gradual migration away from Kosovo, especially from the semi-urban areas such as the Gračanica region, where more people had sold their property or left than returned.[309]

1.5. Conclusion

A delegation of the UN Security Council which visited Belgrade and Priština on a fact-finding mission in late December said in its report that "considerable progress" had been made in Kosovo but that "much work remains to be done in several areas, including the rule of law and the return of minority communities".[310] Although there were fewer incidents in Kosovo in 2002 than in any other year since the deployment of international forces, the human rights situation in the province is still poor. Quite a lot has been done on the stabilisation of Kosovo and the establishment of an efficient administration, but the police and judiciary, institutions without which there can be no rule of law, have not been developed in the past three years to a degree sufficient to guarantee the security of all people in Kosovo. In spite of the progress made in the security sphere and other areas and a tougher line taken by the judiciary against extremism, the improvements made are not sufficient for the people of Kosovo, especially minority communities, to be able to increase their trust in institutions. This means that a climate of impudence is still very strong in Kosovo. Owing to the insufficient number of international judges and prosecutors in charge of serious crimes which have an ethnic background, and a shortage of qualified and experienced local personnel, legal proceedings move very slowly and some detainees have been waiting for trial for more than a year. There is also a shortage of well-trained police personnel, and KFOR servicemen are still forced to resort to policing activities from time to time. The shortcomings in the police are the most evident in investigations and collection of evidence, and many trials are founded solely on eyewitness accounts. But the general atmosphere of fear which still exists in Kosovo means that witnesses often change their testimony during trials or even withdraw completely. In the first few days of 2003, Tahir Zemaj, his son and nephew, a former member of the KLA and Rugova's LDK, were murdered neat Peć. Zemaj was one of the key witnesses in the trial of the five former KLA and Kosovo Protection Corps members.

But the lack of better security guarantees still affects the minorities more than the majority people; the freedom of movement of the minorities is restricted, therefore also access to health-care, educational and all other public institutions. This position of the minorities, who in spite of somewhat improved mobility still generally choose to stay within the relative safety of their enclaves, serves to increase discrimination in employment, even where it is not institutionalised; the few people who dare leave their safe havens to got to work face serious risks on a daily basis. Although there were fewer serious ethnically-motivated incidents in 2002, there was an increase in more cunning and frequent forms of harassment of the minorities, such as attacks on motorised travellers, arson, destruction of property and crops, and livestock theft.

We can therefore conclude that the progress made in Kosovo in 2002 was mainly achieved thanks to the international factor, rather than local institutions and genuine efforts by the population to strengthen their institutions and build up mutual confidence.

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[308] ICG, Balkans Report No. 139, *Return to Uncertainty: Kosovo's Internally Displaced and the Return Process*, 13 December 2002, Pristina/Brussels.

[309] OSCE/UNHCR, *Ninth Assessment of the Situation of Ethnic Minorities in Kosovo* (Period covering September 2001 to April 2002).

[310] UNMIK, Press Release, 19 December 2002, <http://www.unmikonline.org>

2. International Criminal Tribunal for the Former Yugoslavia (ICTY)[311]

The International Criminal Tribunal for the Former Yugoslavia (ICTY) currently operates with a staff of about 1,300, from 82 countries. Its 2002 and 2003 budget is USD 223,000,000. At the end of 2002, the ICTY's detention unit in Scheveningen held 42 indictees. Eleven persons have been released on their own recognizance, while 24 indictees are still at large.[312]

Since it was formed, the ICTY tribunal has completed 30 cases. Another eight are under way, including three begun in 2002.[313] Judgments have been brought in, fifteen persons have been sentenced, while proceedings against 26 accused persons are in the pre-trial stage.[314]

In 2002, the Tribunal's Statute was amended several times,[315] as were its Rules of Procedure and Evidence (Rev. 24, 11 and 12 July, and 10 October).

2.1. Voluntary Surrenders

So far 8 persons from the FRY have surrendered to the ICTY of their own free will; in 2002, eight of them appeared before the Tribunal: Nikola Šainović, Dragoljub Ojdanić, Milan Martić, Blagoje Simić, Momčilo Gruban, Miodrag Jokić, Pavle Strugar, and Mile Mrkšić.

2.2. Indictments

An indictment was confrimed against Ljubiša Beara on 26 March 2002 and it was sealed until 21 October. Beara is charged with commission of or complicity in genocide; murder, persecution, forced resettlement and crimes against humanity; murders as violations of the laws and customs of war in Srebrenica. In May 1992 (the onset of the war in Bosnia and Herzegovina), he was appointed head of security in the General Staff of Army of the Republika Srpska (VRS).

Darko "Dado" Mrđa, 35, was indicted on 16 April 2002. The indictment, made public on 14 June, lists crimes against humanity and violations of the laws and customs of war in conflict in Bosnia and Herzegovina (B&H) in August 1992. Mrđa is charged with planning and taking part in the extermination of over 200 Bosnian Moslem men on 21 August that year on a road on Mt. Vlašić, in a column heading from Trnopolje and Tukovo towards Travnik.

Miroslav Deronjić, 57, wartime president of the Crisis Centre in the Bosnian town of Bratunac, was indicted on 3 July 2002 in connection with crimes which took place in the area. According to the prosecution, from his post Deronjić effectively controlled units of the Territorial Defence (TO), in particular on 9 May 1992, when he ordered the attack on the village of Glogova. The village was shelled and burned down, and about fifteen Moslem men executed. Deronjić is also charged with persecution, homicide, reckless destruction of human settlements and religious facilities, and an attack on an undefended village.

Indictments connected with the Srebrenica massacre have been filed against Drago Nikolić, Vujadin Popović and Ljubomir Borovčanin. At the time of the VRS assault on Srebrenica and subsequent killing

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[311] ICTY basic data and chronology: See *Human Rights in Yugoslavia 1998, 1999, 2000* and *2001.*

[312] Željko Meakić, Goran Borovnica, Radovan Karadžić, Ratko Mladić, Ivica Rajić, Miroslav Radić, Veselin Šljivančanin, Gojko Janković, Dragan Zelenović, Milan Milutinović, Milan Lukić, Sredoje Lukić, Stojan Župljanin, Ante Gotovina, Vladimir Kovačević, Dragomir Milošević, Savo Todorović, Mitar Rašević, Vinko Pandurević, Janko Bobetko, Ljubiša Borovčanin, Vujadin Popović, Drago Nikolić and Ljubiša Beara.

[313] The Slobodan Milošević (IT–02–54), Milomir Stakić (IT–97–24) and Radoslav Brđanin (IT–99–36) cases.

[314] See *Human Rights in Yugoslavia 2001,* IV.2.5.

[315] UN Security Council Resolution 1411, 17 May 2002, accessible on <http://www.icty.com>

and executions of Bosnian Moslem men, Nikolić, 42, was tasked with security in the VRS's Zvornik Brigade, and was on duty at the time of the said crimes. His responsibilities included being in charge of Bosnian Moslem prisoners from July until November 1995. Borovčanin, 42, is charged with complicity in genocide, extermination, homicide, persecution, forcible relocation and inhuman conduct as crimes against humanity and murder as violation of the laws and customs of war in Srebrenica. Between late 1994 and the end of the war, he served as deputy commander of a special brigade of the Republika Srpska (RS) police.

Late in August 2002, the Chief Prosecutor filed charges against the Croatian general Janko Bobetko, 83, in connection with events in the Medak region in Croatia in 1993. Gen. Bobetko was once a high-ranking officer of the former Yugoslav People's Army (JNA). During the war in Croatia, he held various senior posts in the Croatian Army (HV) and state, and from 1993 until mid-1995 served as the HV Chief of Staff – the commander-in-chief of the army. According to the indictment, Bobetko played a central role in drawing up, planning, approving, ordering and/or carrying out an HV operation in the Medak region in 1993. He is charged with murders, persecution, looting of property and reckless destruction of settlements.

2.3. Judgments

On 12 June 2002 judgments in the second instance were delivered for Dragoljub Kunarac, Radomir Kovač (IT–96–23) and Zoran Vuković (IT–96–23/1). The Appeals Chamber upheld the original sentences: 28 years' imprisonment for Kunarac, 20 for Kovač and 12 for Vuković.[316]

The ICTY's Trial Chamber II on 29 November 2002, sentenced Mitar Vasiljević, 48, to twenty years' imprisonment for persecution, including individual responsibility for the murders of five persons (as crimes against humanity) and inhuman treatment of two survivors, as well as violation of the laws and customs of war. Vasiljević was found to have been an active member of the "White Eagles" and "Avengers" – paramilitary groups in the Višegrad region during the war in B&H,[317] and to have been responsible for extermination, persecution, murders, violence against life and limb, and inhuman conduct. In 2001, the chamber decided to try Vasiljević alone, as his co-defendants remain at large. In proceedings lasting almost two years, 30 witnesses were heard and over 130 items of evidence presented.

Milan Simić, a Bosnian Serb charged in connection with events in Bosanski Šamac between 1992 and 1995, together with Blagoje Simić, Miroslav Tadić and Simo Zarić, on 15 May 2002 entered a plea of guilty to two counts of the indictment. Simić had appeared before the Tribunal for the first time in February 1998 after surrendering voluntarily, at which time he had pleaded not guilty. He then accepted a plea bargain with the Prosecution and admitted the counts relating to torture; subsequently all other charges were dropped. The sentence was passed on 17 October 2002. Taking into account circumstances like the element and character of the offence, the position of the accused at the time of its perpetration, the position of the victims, admission of guilt, expression of remorse and personal circumstances the Chamber sentenced Simić to two five-year terms of imprisonment, to run concurrently. It also decided on an interesting matter: i.e., whether time spent while out on bail counts as detention time and therefore time to be served. Opining that although the accused was subject to some restrictions of his freedom of movement, his status could nevertheless not be equated with full detention, the court concluded that this time could not be counted against service of a prison sentence.

Milorad Krnojelac, former warden at the prison in Foča (Srbinje), was sentenced on 15 March 2002 to seven-and-a-half years in prison. The history of the Krnojelac case is of some interest; in the first indictment he was charged with crimes against humanity, breaches of the laws and customs of war and serious breaches of the 1949 Geneva Conventions. While preparing for the trial, the prosecution admitted they were not able to convince the court that the accused actually took part in the events in the Foča prison complex. Instead, they tried to establish Krnojelac's responsibility for taking part in criminal activities together with others. The defence sought to prove that Krnojelac had had no authority in the army-controlled segment of the prison and that non-Serbs were housed in that section. The trial chamber established that Krnojelac had played no direct role in the incarceration of the latter, nor had any authority

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[316] See *Human Rights in Yugoslavia 2001*, IV.2.5.

[317] Vasiljević was charged together with the group leader Milan Lukić and his brother Sredoje.

to order their release. It was nevertheless established that as the prison's head he must have been aware of the overall situation in it and that the relevant imprisonment and treatment were illegal: from (1992 to 1995), numerous civilians passed through the prison in Foča without ever been formally charged, let alone convicted. The court ruled that Krnojelac had not been a participant in a group criminal undertaking but had aided and abetted its chief organisers.

The sentencing of former RS President Biljana Plavšić[318] is expected in the near future. Ms. Plavšić, who was released on bail late in 2001, pleaded guilty to some of the charges, and struck a deal with the Prosecution; she pleaded guilty to charges of political, racial and religious prosecution, in return for which the Prosecution agreed to propose that in ruling on the sentence the other counts of the Indictment be disregarded.[319]

Nenad Banović, charged in connection with alleged war crimes committed in the Keraterm detention camp, was released on 10 April 2002 after the indictment was withdrawn due to lack of corroborating evidence.[320] Banović and his brother Predrag were arrested on the FRY territory and flown to the Hague in November 2001.[321]

2.4. The Trial of Slobodan Milošević

Attention focused in 2002 on the trial of former Serbian and Yugoslav President Slobodan Milošević. Numerous aspects of the conflict in the former Yugoslavia, including serious violations of international humanitarian law, have revolved around this case. Charges brought against Milošević were based on the creation and running of a criminal conspiracy involved in ethnic cleansing, war crimes, breaches of the Geneva Conventions and of international law. Virtually everything that has already been processed by the ICTY exists on the list of crimes for whose planning and indirect perpetration Milošević (and his aides) are held responsible in the three indictments, particularly those relating to Bosnia and Herzegovina and Croatia. The trial went on throughout the year, with several breaks occasioned by reasons of Milošević's health. The trial chamber has given the prosecution until April 2003 to present its case.[322]

Milošević has somewhat altered his conduct in court and his attitude towards the Tribunal – initially, he had vehemently challenged its very legitimacy.[323] The former Yugoslav leader criticised the manner in which the ICTY was established, its rules of procedure and the conduct of the parties, in particular the Prosecution. He claimed that the entire Serb people rather than himself were on trial, that the responsibility for the crimes committed during the conflict in the former Yugoslavia lay with the international community, that all Serbia had done was to protect the very survival of Serbs living in Croatia and B&H. He described the events in Kosovo in the 1980s and 90s as a legitimate struggle of the Serbian authorities against terrorism carried out by rebel ethnic Albanians and their Kosovo Liberation Army ("KLA").[324]

Milošević's trial opened with the so-called Kosovo Indictment; he is charged in connection with crimes committed in that province. The indictment does not charge him with taking part personally in the perpetration of any crimes, but states that they were all the result of a criminal plan inspired and run by Milošević. The Prosecution is basing its case on Serbian and Yugoslav internal legal and political

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[318] See *Human Rights in Yugoslavia 2001,* IV 2.5.

[319] See <http://www.un.org./icty/bhs/decision/kra-pla(IT–00–39 i 40)/plea–1-bcs.pdf.>

[320] See <http://www.un.org/icty/glance/banovic/htm.>

[321] See *Human Rights in Yugoslavia* 2001, IV.2.5.

[322] *Danas,* 11 April, p. 14.

[323] IWPR, *Tribunal Update, No. 253,* Part I. See Vojin Dimitrijević, "Justice Must Be Done and Be Seen to Be Done: The Milosevic Trial", *East European Constitutional Review*, 1–2/2002, p. 59–62.

[324] On one occasion Milošević said he intended to summon as witnesses Bill Clinton, Madeleine Albright, Tony Blair, Jacques Chirac, Gerhard Schroeder and others.

documentation, the findings of Yugoslav and foreign experts and analysts, and the testimony of witnesses.[325]

The first witness was Mahmut Bakalli, a former senior Yugoslav Communist Party official and a deputy in the present Kosovo Parliament, in what was an attempt by the Prosecution to shed light on Milošević's behaviour in the late 1980s and plans he made during his 13-year rule. Milošević resorted to tactics he would continue to apply for the duration of the proceedings: useing as much time as possible for his own speeches and observations, in fact considerably more time than he uses for cross-examination. Such conduct is unprecedented in the Tribunal. The chamber has cautioned Milošević only rarely, usually allowing him to speak past the time allowed for a given witness. On the other hand, the Prosecution is also not particularly zealous in objecting to breaches of procedure; analysts say its intention is to lend thereby even more support to its assertion that Milošević is very knowledgeable about everything that happened during all the wars in the former Yugoslavia and to prove that he played a decisive role in those events.

The first so-called "insider witness"[326] in the trial was code-named K 4. His identity was later made public: Nike Peraj, a Catholic Kosovo Albanian who served as an officer in the Yugoslav Army (VJ) in 1999.[327] Peraj gave the Prosecution a written deposition[328] describing events in the area of the town of Đakovica, southern Kosovo. Peraj claimed that the VJ, Serbian Police (MUP) and paramilitary forces[329] committed crimes against civilians in actions carried out even before NATO intervention against the Federal Republic of Yugoslavia. One of Milošević's principal claims was that mass suffering in Kosovo had began after 24 March 1999 the staring date of the bombing, and was a direct consequence of NATO intervention. Peraj talked about the torching of ethnic Albanians' homes in the village of Međa and transports of bodies in lorries operated by Yugoslav security forces' personnel. The witness said he had personally seen about a twenty of people killed in actions conducted by forces loyal to the authorities in Belgrade in the spring of 1999.[330] He also claimed that groups of about a dozen men, mostly criminals, were sent to Kosovo from Belgrade to take part in these actions.[331]

Former head of the Serbian State Security (SDB) Radomir Marković appeared for the prosecution in July, but he rejected accusations against Milošević. Marković denied that police had carried out ethnic cleansing in Kosovo, and claimed that he had on numerous occasions conveyed to the local authorities orders from Belgrade that the refugee exodus be stopped. Marković said MUP and VJ had received strict orders to protect ethnic Albanian civilians during NATO bombing, and that the authorities had filed no fewer than 200 criminal complaints against MUP personnel and almost as many against VJ servicemen in connection with alleged war crimes.[332] Asked about Milošević's knowledge, Marković said the president had received daily SDB reports, and had asked him to provide additional verbal or written explanations about points of special interest. "In every country it is the president who makes policy ... We were simply the executive organ which carried out orders ".[333]

The mass graves containing the bodies of ethnic Albanians found in the Belgrade area and near Tekija, on the river Danube, were the subject of testimony by Marković, MUP Colonel Dragan Karleuša,

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[325] IWPR, *Tribunal Update,* No. 253, Part I.

[326] The term is used for witnesses who were close aides of the accused – persons who took part in the events encompassed by the Indictment.

[327] Peraj remained in Kosovo after the withdrawal of he Yugoslav security forces in June 1999. A court in Niš subsequently sentenced him in his absence to 15 years' imprisonment for desertion.

[328] Rule 92bis of the Rules of Procedure and Evidence.

[329] The witness especially pointed to the roles played by Željko "Arkan" Ražnatović's "Tigers", the "White Eagles" units and forces loyal to Serbian Radical Party head Vojislav Šešelj.

[330] IWPR, *Tribunal Update,* No. 265.

[331] *Id.*

[332] See <http://www.mediamonitors.net.>

[333] Beta*,* 24 July.

head of a working group dealing with the graves, and Časlav Golubović, retired Serbian police colonel and regional police head in the town of Bor at the time of the alleged dumping of the bodies into the Danube.[334]

Presentation of evidence in connection with the Kosovo Indictment ended on 11 September 2002; later that month, the Prosecution called its first witnesses in support of the Croatia and Bosnia and Herzegovina indictments.

Dejan Anastasijević and Jovan Dulović, journalists of the Belgrade weekly *Vreme,* testified in mid-October. They spoke about their experiences in war zones near Vukovar, Croatia, about JNA plans and operations and concrete events. Their appearance at the Hague provoked numerous reactions in the Serbian public.[335]

One of the most important testimonies about the involvement of the former Serbian political and military establishments in events in Croatia and Bosnia and Herzegovina came from Slobodan Lazarević, a former officer in the JNA's Counter-Intelligence Service. Lazarević was active for several years in the Army of the Republic of Serb Krajina (VRSK), continuing military service in the VJ after 1995. He confirmed that all VRSK officers were also VJ officers, "during and after the war," adding that funds, weapons and other equipment arrived periodically from Serbia, often under the guise of humanitarian assistance. He illustrated the assertion that the Serbian RDB controlled the intelligence and other security services by the example of Tošo Pajić, the Krajina Security Service head, who, Lazarević said, was in daily contact with the then Serbian RDB head Jovica Stanišić.[336]

Former RSK President Milan Babić testified in connection with the Croatia war crimes indictment. Although initially listed as protected witness C 061, Babić's identity was revealed at the conclusion of his appearance in court. He confirmed accusations of Belgrade's and Milošević's personal involvement in the war in Croatia in 1991. Babić said that instructions had flowed in from the Serbian RDB, at the time headed by Stanišić, and that Milošević had had good operational information. He said that the accused had "exploited the secret service and part of Krajina's leadership for his own goals".[337] He pointed to the existence of two chains of command: one from the SFRY Presidency down to JNA and Territorial Defence units, and another the Serbian secret police used to run their people in the RSK authorities.[338] Responding to a question from the judges, Babić said that Milošević had been the "supreme commander".[339]

2.5. Protected witnesses

Discusion on protected witnesses and possible violations of the right to a fair trial in regard to that followed the Milošević trial from its very start. But such a procedure existed even before the Milošević case. The principal problem lies in the absence of publicity and possibility of abuses by the Prosecution. The court discussed the issue on several occasions and gave an opinion on the following Rule No. 69 of the Rules of Procedure and Evidence:

Protection of victims and witnesses

A In exceptional circumstances, the Prosecutor may apply to a Judge or Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.

B In the determination of protective measures for victims and witnesses, the Judge or Trial Chamber may consult the Victims and Witnesses Section.

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[334] *Večernje novosti,* 4 September, p. 8.

[335] *Danas,* 21 October, p. 8.

[336] *Freeserbia*, 29 October.

[337] IWPR, *Trubunal Update* No. 291.

[338] IWPR, *Tribunal Update* No. 290.

[339] *Id.*

C Subject to Rule 75, the identity of the victim or witness shall be made disclosed in sufficient time prior to the trial allow adequate time for preparation of the defence.

The identity of protected witnesses remains unknown to the public, but not to the accused and the defence, and the Prosecution also has an obligation to duly inform the defence about them. The Tribunal seriously considers every such request by the Prosecution, and has in fact turned down several.

Invoking Rule 79, the court named three a*mici curiae* ("friends of the Court") in the Milošević case: Branislav Tapušković, Michail Wladimiroff and Stephen Key, whose role is to contribute to the proceedings by their legal experience and views.

Presiding judge Richard George May on October 10, 2002 issued to the secretary a verbal instruction "ordering the revocation of the decision on the appointment of Michail Wladimiroff as *amicus curiae*."[340] On 22 November, the Trial Chamber designated Timothy McKormak, a humanitarian law expert from Australia, to act as *amicus curiae* instead of Michail Wladimiroff.[341]

2.6. Yugoslavia's Cooperation with the ICTY

After almost two years of delays and political bickering, the National Assembly of the Federal Republic of Yugoslavia adopted early in April an act on FRY-ICTY cooperation. The Act entered into force on April 12 (*Sl. list SRJ,* No. 18/02).[342] The object of the law is to regulate cooperation with the ICTY on the basis of which competent organs of the member republics will decide on ceding criminal proceedings and handing over indictees to the Tribunal (Art. 1 (1)). The FRY will honour and carry out judicial decisions of the Tribunal and render it legal assistance (Art. 1 (2)).

The Act also provides for the establishment of the National Council for Cooperation with the ICTY, tasked with the maintenance of various forms of cooperation, especially "in connection with the status of indictees, rendering assistance to their families, the position of witnesses, access to archives and other questions of interest for the cooperation" (Art. 7). Particularly important is Article 18, which deals with the surrender of accused persons and states that it concerns "all persons indicted by the ICTY who are on FRY territory, regardless of their rights and privileges proceeding from their state, political, public or official duty." The accused must have a counsel in the surrender procedure Communique, the Hague, 11 October, 2002, JL/P.I.S/702-t. 20, § 1). An investigating judge shall order detention of indictees whose surrender is sought, or implement other measures to secure their presence (Art. 21 (1)).

The biggest controversy has surrounded Article 39, under which, in relation to Yugoslav country, the Act is applicable only to those publicly indicted by the date the Act entered into force. All other cases shall be tried before Yugoslav courts (Art. 39).[343]

The Federal minister of justice, Mr. Savo Marković, said in July that Article 39 could be the only point of contention as regards the position of the international community on the Act. Among the demands made to Belgrade by the Council of Europe – which should be met upon admission to that organisation – is "revision of the Law on FRY-ICTY Cooperation in accordance with the Statute of the International Criminal Tribunal for the Former Yugoslavia and the corresponding UN Security Council resolution ".[344]

Although Goran Svilanović, President of the National Council, pointed on several occasions to the need for a full cooperation with the Tribunal, he did list a number of results of the application of the Act.

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[340] The decision came after the accused had objected to the content of interviews Wladimiroff had given to two newspapers. Judge May concluded, inter alia, that Wladimiroff's statements cast doubt about his continued engagement as a "friend of the Court" because he had voiced opinions about evidence still to be presented. The court ruled that such statements could reasonably be seen as bias by the *amicus curie*. Communique, the Hague, 11 October, 2002, JL/P.I.S/702-t.

[341] <http://www. un.org/icty/glance/milosevic.htm>

[342] See "Nove sankcije SRJ?"*, Politika,* 1 April, p. 7; "Ševeningen specijalis"*, Vreme,* 11 April, p. 18–19; "Programirani cajtnot*", Danas,* 3 April, p. 7.

[343] Montenegro's SNP was the chief advocate of this provision, *Danas,* 9 April, p. 1.

[344] Tanjug*, 5* July.

Svilanović said 32 persons had been freed of the obligation to keep official, state or military secrets, and that 14 of the total of 27 indicted persons were in custody at the Hague. Six of them were arrested by the Yugoslav authorities and handed over to the ICTY, and another eight surrendered voluntarily in response to calls by the Yugoslav Government, which had promised to issue guarantees to the Tribunal making possible their release on bail.

However, throughout the year Tribunal officials kept issuing warnings that the level of cooperation was insufficient and that non-cooperating countries, notably the FRY and Croatia, would be placed under increasing pressure until they began to realise their international obligations in full. The Tribunal's annual report to the UN General Assembly listed serious complaints aimed at the Federal Government. Complaints centred mainly on the absence of results in the finding and surrender of indictees, notably former Army of Republika Srpska (VRS) commander Gen. Ratko Mladić. Although Prosecutor Del Ponte said on numereous occasions that Mladić was in the FRY, the Yugoslav authorities have maintained that they have no such information and that for a long time he has not been seen at any of the listed addresses on Serbian and Montenegrin territory. The patience of both sides seems to be running out gradually, and the exchange of accusations has been building up.[345]

In December, the UN Security Council in a presidential statement once again warned Yugoslavia and Rwanda about the lack of cooperation with the international criminal tribunals. Calling for constructive dialogue between governments and the tribunals in resolving all outstanding issues, the Security Council emphasised that such dialogue, or the lack of it, must not be used by states as an excuse for not meeting obligations specified by UNSC resolutions and the statutes of the two tribunals.[346]

2.7. Reactions of the Authorities in the FRY

At the beginning of 2002, the Yugoslav public was embroiled in debates on the legitimacy and legality of the Tribunal, the need to enact a law on cooperation, and the extradition of Yugoslav citizens. Early in April, Yugoslav President Vojislav Koštunica admitted that Yugoslavia had a duty to cooperate and denied reports of an alleged threat of street protests in the event of extraditions to the ICTY. Koštunica said excessively slow adoption of the law on cooperation was the reason why several cases had not been dealt with by the Yugoslav judiciary.[347] Čedomir Jovanović the head of the ruling DOS's group in the Serbian Parliament said at the time that the difficulties arising out of cooperation were the results of a reluctance by some political circles to "assume political responsibility".[348] The expert past of Serbian Government in charge of economic affairs warned about the possible consequences of the abolition of financial aid in the event of a "selective fulfillment of international obligations."[349]

Vlajko Stojiljković, Serbian minister of interior under Milošević, and indicted together with the latter, committed suicide on 11 April 2002. Stojiljković was indicted in connection with war crimes in Kosovo in 1999.[350] His attorney placed the blame for for his client's death on those who adopted the cooperation act, saying Stoiljković was the first victim of the new law.[351] Views continued to diverge in 2002 around the desirable extent of cooperation, not only between the authorities and the opposition, but also inside the once harmonious DOS. But although Koštunica's DSS is now officially outside DOS, the quarrels around the Hague tribunal appeared less noisy than those centred on other issues. Some DOS leaders nevertheless tried to link Stoiljković's act with the allegedly dificult and humiliating position of

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[345] Assistant federal minister of justice Nebojša Šarkić said Carla Del Ponte was "increasingly aggressive in her demands because she is increasingly bad in her indictments". Šarkić said that the cooperation was good and that some arrests were "impossible to achieve", Beta, 19 December.

[346] See <http://www.un.org>

[347] *Danas,* 1 April, p. 3.

[348] *Id*.

[349] Id.

[350] See *Human Rights in Yugoslavia 1999,* IV.4.2.

[351] *Danas,* 13 April, p. 3.

indictees who appear before the court.[352] Socialist Party supporters tried to organise street protests after the suicide, but without a massive support.

International organisations also had their say on the cooperation with the Tribunal. Amnesty International said in a statement issued after the first voluntary surrenders (Ojdanić, Šainović, others) that the question of handing over indictees could not be a matter for bargaining. As a member of the UN, the FRY had a duty to meet its obligations to the Tribunal by promptly arresting and transferring all indicted persons.[353]

There are no serious indications at the moment that the authorities are undertaking effective efforts to arrest the indictees that the Hague Prosecution claims are on the Yugoslav territory. Public figures, including politicians in the ruling coalition, are exploiting warnings coming from the Hague and New York and well-founded criticism of certain statements made by the Prosecution to incite public opposition to cooperation with the ICTY. In this manner they are further reducing the already low level of awareness about the need to cooperate with the ICTY and to cast light on war crimes and other serious violations of humanitarian law in the former Yugoslavia.

2.8. Public Reactions in Yugoslavia[354]

Certain changes were recorded in 2002 in the attitudes of the public in the Federal Republic of Yugoslavia towards those indicted for war crimes by the ICTY. Compared to the poll conducted in December 2001, a negligible change was recorded in the percentage of those who believed all indictees should be tried by domestic courts (the figure in March 2002 was 54%, compared to 46% in December 2001). The percentage of those who thought all war crimes suspects should be tried by the Tribunal dropped by 3%, while 7% think they should be prosecuted in that former Yugoslav republic where their alleged crimes had been committed; this is about equal to the figure recorded in December 2001.

There was a shift in attitudes towards the activities of the ICTY compared with the 2001 poll. In the September 2002 poll, there were more of those who thought the ICTY was a tool of U.S. foreign policy (55%), while the number of those who had a positive attitude to the institution dropped by 5% (from 30% to 25%) (They are a price which we must pay and are welcome so we never again have to put each other on trial and create bad blood among the people). Compared with 2000, in the December 2001 poll there was a drop in the number of those who had no opinion on the Hague Tribunal, leading to a conclusion that attitudes in the Yugoslav public towards the ICTY were gradually gaining in definition. The polls carried out in 2002 confirm the results established earlier.

Former Yugoslav President Slobodan Milošević and a number of other senior governmant figures went on trial before the ICTY in 2002. The start of Milošević's trial provoked a shift in public attitdes on the Tribunal, its prosecutors and the question whether all persons wanted by the court should be handed

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[352] Mr. Velimir Ilić, president of the Nova Srbija party, said it was the “act of a very brave man who did not want to go to the Hague and experience (mental) torture in the Tribunal”, *Politika,* 13 April, p. 7.

[353] See Amnesty International, Press Release, accessible on <http://www.amnesty.org/ai.nsf/Index/EUR7000322002.htm.>

[354] Several questions in the 2001 study of the legal consciousness Yugoslav public focused on the ICTY. The handover of Slobodan Milošević to the ICTY in June 2001 created sharp divisions in political and professional public, but also in public opinion as a whole. Conflicting views existed both in regard to the overall position on the Tribunal and its jurisdicion. There were increases in 2001 both in the number of those who had a positive attitude to the ICTY and those opposed to it. Fully 43% held that the Hague was nothing but a tool of U.S. foreign policy, some 30% had a positive attitude towards the Tribunal and 20% avoided being explicit, instead picking one of the “grey” answers (“don't know” and “cannot form a valid estimate because the Milošević regime prevented people from gaining a complete insight into the Tribunal”). But the incidence of these “grey” answers nevertheless dropped considearbly, and this was the biggest change against the 2000 poll. There were no major differences between the 2000 and 2001 polls in regard to opinions about the ICTY's jurisdiction and the question about Milošević's responsability for war crimes. Here, the biggest change was a decline in the incidence of those who had no opinion about the former Serbian leader's personal responsibility.

over to it. Immediately after the start of the trial, the biggest change was recorded in the response to the question whether Milošević should have been surrendered to the ICTY: in December 2001, that action of the government had enjoyed the support of 43% of those polled, while 44% had been opposed to it. In the March 2002 survey, the percentage of those supporting the handover had dropped to 27%, as against 62% who were against it. In December 2001, some 51% had believed all other indictees should also be handed over to the ICTY, 24% were against, with a relatively high precentage undecided. By March 2002, there had already been a sharp drop (down to 24%) of those in favour of a mass handover, while the percentage of those against it had grown to 62%. In the April 2002 survey, the trend continued, while in the June 2002 poll the pro-handover figure once again rose (to 30%), and the percentage of those opposed dropped to 53%.

The 2002 surveys also looked into public attitudes towards the ICTY's Prosecution. Using a rising scale from 1 to 5, respondents were asked to rate the work of the Tribunals's prosecution, the way it conducted its proceedings, its judges' attitudes towards the defendants, the chances of a fair trial, Milošević's defence, the attitude of the Serbian Government and the Yugoslav President towards the ICTY's activities. Fully 95% of those polled responded to all the questions, leading to the conclusion that most people had a well-defined view on the issues. The prosecution was rated the worst, no less than 57% of its grades being the lowest and just 6% being higher than 3 (4 or 5). The manner in which cases are tried got the lowest rating from 52% of those polled; once again just 8% rated it higher than 3. The attitude of the judges towards the defendants was rated a little better: 18% of all respondents gave it a 4 or a 5, while 40% gave it a 1. The chance of being given a fair trial were given the lowest mark by 53% of the respondents, while 10% gave a 4 or a 5. Some 33% rated the Government's attitude towards the Tribunal with a 1, and 15% gave it a 4 or a 5. The Yugoslav President's attitude was given a 1 by 23%, while 20% gave a 4 or a 5. Milošević's defence got the best ratings in the survey: just 10% gave it the lowest grading, while 50% gave it a 4 or a 5.

The following average grades were calculated: Milošević's defence got 3.5; the Yugoslav President's attitude 2.6, and that of the Serbian Government 2.3; the judges' attitude towards defendants 2.2; the manner of conducting trials 1.8; the chances for a fair trial 1.9, and the Prosecution 1.7.

3. Security Forces and Human Rights

3.1. Introduction

The Federal Republic of Yugoslavia had in 2002 two parallel sets of security forces, at the federal level and at the republican level. The Yugoslav Army and state security service are federal institutions. As to the federal police – only the service for the protection od state organs functions. At the republican level, there were the police forces of Serbia and Montenegro and state security services of both republics.[355]

The central role of the security forces is to guarantee citizens' security; however, their activities have been enveloped in secrecy. Operating funds come from state budgets, which are parliament-approved. But parliaments have exerted insufficient influence on the size and structure of the army and security service budgets, as well as expenditures. Approved funds are sometimes spent before the end of the budget period, and requests are then filed for additional funding.

The public and parliaments must be allowed some insight into the work of these services. Parliaments should be able to control the services' personnel strengths and structure, their powers and competences, expenditure of approved funds, and observance of human rights. Their personnel also need to be made aware of their rights under the law and the mechanisms of protecting the latter.

3.2. Restrictions of the Human Rights of Security Service Personnel

International instruments allow some restrictions of the rights of members of armed and police forces: restriction on the right of association defined by Article 22 (2) of the ICCPR, Article 8 (2) of the

[355] Miroslav Hadžić, *Civil-Military Features of the FR Yugoslavia* at <http://www.ccmr-bg.org>

ICESCR, Article 11 (2) of the European Convention on Human Rights (ECHR) and others. Under the Federal Constitution, "Professional members of the armed forces and police force of the Federal Republic of Yugoslavia may not organize in trade unions ... (or) belong to political parties " (Art. 42, (3 and 4), Federal Constitution).

The ban on membership in political parties is aimed at ensuring political neutrality and depoliticising security forces. However, it excludes a considerable segment of society from political life. A difference should be made between political orientation and agitation.

The European Court of Human Rights ruled in the *Rekvenyi v. Hungary* case (App. No. 25390/94 (1999)) that bans on policemen joining political parties and taking part in political activities do not contravene Articles 10 (freedom of expression) and 11 (freedom of association) of the ECHR.[356]

3.3. State Security Services

3.3.1. Federal State Security Service – Until 2002, the only document governing the work of the security service was the 1984 Law on the Bases of the System of State Security of the SFRY (*Sl. list SFRJ*, No. 15/84). The SFRY no longer exists, and its social system has also been changed. The law employed terms like *social self-management*, *self-management interest communities* and similar, causing confusion and disorder into the regulation of the service's work. It was therefore understandable that no adequate democratic control of the services' work could exist. By their very nature, some of their activities must be far from the public eye, but they also took advantage of their poorly defined legal status to expand the scope of their secret activity.

The new Act on the Security Services of the FRY (*Sl. list SRJ*, No. 37/02, hereinafter: ZSB), adopted in July 2002, defines the tasks of the security services as protection of the constitutionally prescribed order, security, sovereignty and territorial integrity of the FRY, as well as of the constitutionally and legally defined human rights and liberties (Art. 2 (1), ZSB).

The federal security establishment is made up of the Military Security Service (the former Military Counter-Intelligence Service – KOS) and the Military Intelligence Service, as well as the Foreign Ministry's Research and Documentation Service (SID) and the Security Service (Art. 5, ZSB).

The ZSB defines the activities and powers of the security services and their control, as well as other questions of importance for their work. For the first time ever, it also lays serious foundations for the democratic control thereof. Chapter VII prescribes that control of the security service is performed by the Federal Assembly and a body formed by it – the Permanent Commission for the Control of the Security Services of the FRY[357] (Art. 47 (1) and (2), ZSB). Besides the President of the FRY, the Federal Government and competent courts, that control is also within the purview of the public (Art. 7, ZSB). Under the Act, the services must at regular intervals and also on request submit reports on their work to the Federal Assembly, the President of the FRY, the Federal Government and the Supreme Defence Council (Art. 2 (3), ZSB). Although the Commission holds its sessions in camera, its president has a duty to inform the public about its work (Art. 48 (8), ZSB).

Internal control of the security services of the FRY is performed by an Inspector General (Art. 57 (1), ZSB), who shall submit reports on control activities to the Commission at least once a year, and is answerable for his/her work to the Federal Government (Art. 57, (2 and 4), ZSB). Before appointing the Inspector, the Government must consult Commission members (Art. 57 (3), ZSB). The Inspector General may not be member of any political party (Art. 57, ZSB).

The Service's chief executive officer is answerable to the Federal Government, or to the appropriate federal minister (Art. 20, ZSB), i.e., the Minister of Defence. The head and deputy head of the Military Security Service and the Military Intelligence Service are appointed and relieved of duty by the Federal Government at the recommendation of the Supreme Defence Council. The head of the foreign ministry's

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[356] *Human Rights in Yugoslavia 2001*, IV.4.11.5.

[357] The Commission, formed in November 2002, has eight members. The members were drawn from both chambers of the Federal Parliament, from all parties represented, in proportion to their total representation.

SID and the Security Service are appointed and relieved of duty by the Federal Government, after consulting the Commission (Art. 21 (3), ZSB).

FRY Security Service personnel must perform their duties in accordance with the Constitution and law, and may not belong to political parties (Art. 37, (1) and (2), ZSB).

Under the ZSB, anyone who believes their constitutionally guaranteed rights may have been infringed by an action by a member of the Security Service may file a petition with the Commission or an action with the Federal Constitutional Court (Art. 58, (1 and 2), ZSB). The state is accountable for any damages suffered by legal or physical persons as a result of illegal or irregular activities by the Security Service (Art. 58 (3), ZSB). State Security Service personnel are entitled to directly submit written communications to the Inspector General or the Commission, without adverse consequences (Art. 43, ZSB).

The Commission is inter alia empowered to control the respect of human rights by the Security Service (Art. 49, item 3, ZSB), monitor and control the use of special means and methods for the secret collection of information which temporarily restrict constitutionally and legally guaranteed human rights (Art. 49, item 5, ZSB), handle complaints by service personnel (Art. 49, item 12 ZSB), review petitions and complaints and inform their authors (ZSB Art. 49, item 13, ZSB). But the Act does not prescribe any deadlines for responding to petitions and complaints.

This is the first law under which security service personnel can in the event of violations of rights approach a parliamentary body directly, but it still remains to be seen how the mechanism will function in practice. It is, of course, also necessary to inform the Service's staff about this new way of protecting their rights and liberties.

3.3.2. Serbian State Security Service – The Act on the Security and Information Agency of the Republic of Serbia (*Sl. glasnik*, No. 42/02; hereinafter: Act on BIA), was adopted in July 2002. It provides for the establishment of a Security and Information Agency (BIA) by separating the theretofore State Security Department from the Serbian Ministry of the Interior. In contrast to the federal ZSB, the Act on BIA fails to precisely define the control mechanism of the Serbian security service. Although the matter is covered by Section IV of the Act on BIA, it is in fact limited to an obligation by the Director of the BIA, who is appointed by the Serbian government, to submit biannual reports to the parliament and government (Art. 17, Act on BIA).

Concerning the rights of BIA personnel, the Act on BIA only prescribes that regarding their rights, duties and responsibilities they are subject to the same rules and regulations as Interior Ministry staff – they may not be members of political parties or trade unions and may not go on strike (Art. 20, Act on BIA). This law does not provide for the protection of the rights of physical or legal persons whose rights have been violated by BIA personnel. Neither does it define mechanisms for protecting the rights of BIA personnel. The exception is Article 25 (1), under which active and former BIA members are entitled to free legal aid if subject to a criminal or other procedure brought as a result of the application of certain measures or coercive means, except where the BIA itself initiated the procedure. This provision is inappropriate, as there can be no justification for affording BIA personnel free legal assistance in cases where they do not meet conditions for pauper rights.

The Decree on the Disciplinary Accountability of BIA personnel *(Sl. glasnik RS*, No. 68/02) governs disciplinary procedures and relevant sanctions.

Legal analysts[358] hold that the Act on BIA was drafted and adopted off-hand, bypassing the existing practice of consulting experts from the non-governmental sector, who have criticised the Act in its present form believing that it "clearly favours the public interest over private interests"[359].

The non-governmental *Liga eksperata-LEX* (The League of Experts-LEX) has presented a draft law on intelligence and security service providing for parliamentary control of its work and a government-

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[358] Bogoljub Milosavljević, *Novo zakonsko uređenje Službe državne bezbednosti Republike Srbije* at <http://www.ccmr-bg.org/analize>

[359] *Id.*

appointed inspector general. Under the proposal, the secret police would not enjoy regular police powers of coercion, arrest or detention.

3.3.3. The Security Service of the Republic of Montenegro – The State Security Service of the Republic of Montenegro acted in 2002 under the Act on Interior Affairs (*Sl. list RCG*, No. 29/94; hereinafter: ZUPCG).

Soon after the adoption of the Act on BIA in Serbia, Montenegro's legal community called for the adoption of a similar law there. The procedure was begun and a draft act placed before parliament, but was soon suspended. Work on its adoption is, however, expected to be completed in 2003. Given that the state security is still part of the Montenegrin Interior Ministry, its members' status is governed by regulations relevant to that ministry.

3.4. The Police

Protection of law and order[360] is just one of the tasks of the police. Modern police forces should render assistance to people and protect their rights. It is also necessary that police personnel enjoy their rights and that efficient mechanisms exist to protect their rights.

Police personnel at the federal level are not allowed to join political parties and trade unions and may not go on strike. The ban on political activity is intended to prevent police personnel from being guided by political interests in their enforcement of law. Impartiality and neutrality in the performance of police work are prescribed by the UN Code of Conduct of Law-Enforcement Officers.[361]

Federal and Montenegrin police are constitutionally barred from belonging to political parties, but neither Serbia's Constitution nor its the Interior Affairs Act places such a ban on Serbian police personnel. Article 6 (1) of the State Administration Act of the Republic of Serbia (*Sl. glasnik RS,* Nos. 20/92, 6/93, 48/93, 53/93, 67/93, 48/94, 49/99) states that in the performance of their duties, employees of the state authorities "may not be guided by their political convictions, nor may express and espouse them".

Neither the Serbian nor Montenegrin constitutions nor other laws bar trade union organisation of civil servants. In contrast to the Federal and Montenegrin Constitutions, Serbia's does not contain a provision barring Serbian Interior Ministry personnel from going on strike.

The Act on Interior Affairs the Republic of Serbia (*Sl. glasnik RS*, Nos. 44/91, 79/91, 54/96, 30/00, 8/01; hereinafter: ZUPS) and the Decree on Disciplinary Responsibility of the Serbian Ministry of the Interior (*Sl. glasnik RS*, No. 71/92) define the protection of human rights of the Serbian police; the issue is covered by Montenegro's Interior Affairs Act.

In the Serbian police, immediate superiors handle minor disciplinary infractions, and decisions are made by competent officers. Appeals against decisions are processed by the Disciplinary Tribunal, which also handles more serious violations in the first instance, the second-instance institution being the Higher Disciplinary Tribunal. Disciplinary proceedings are open to the public, except if they involve "information and documents representing official, state or military secrets, or if necessitated by reasons of morals" (Art. 54 (2 and 3), ZUPS).

In the Montenegrin police, unit heads impose disciplinary sanctions for minor violations of duty (Art. 56, ZUPCG), while more serious breaches are within the purview of the competent minister (Art. 57, ZUPCG). Appeals can be lodged with the minister within eight days. Disciplinary proceedings are conducted by the Disciplinary Commission, appointed by the Minister (Art. 59, ZUPCG). All civil servants

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[360] Public order is "a harmonised state of relations between citizens created by their conduct in public and the activity of public authorities and organisations aimed at securing equitable conditions for the realisation of citizens' right to the security of their person and property, to peace and tranquility, to a private life, freedom of movement, the preservation of public morals and human dignity and the right of minors to protection" (Art. 2, Public Order Act, *Sl. glasnik RS*, No. 48/94; Art. 2, Public Order Act, *Sl. list RCG,* No. 41/94).

[361] The Code is not of obligatory nature, and consequently is not subject to ratification. It was adopted by UN General Assembly Resolution 34/169 of 17 December 1979.

are entitled to initiate a disciplinary proceeding (Art. 58 (2), ZUPCG), but the law gives private citizens no such right.

3.5. The Yugoslav Army

The Yugoslav Army Act governs the structure, organisation and functions of the Yugoslav Army (*Sl. list SRJ,* Nos. 43/94, 28/96, 44/99, 74/99, 3/02, 37/02, hereinafter: VJ Act). In wartime and peacetime, the Yugoslav Army shall be under the command of the President of Yugoslavia, pursuant to decisions by the Supreme Defence Council (Art. 135 (1), Federal Constitution; Art. 4, VJ Act). The VJ is a standing army made up of professional servicemen and conscript soldiers and an army reserve: reserve officers, NCOs, soldiers and the women's reserve (Art. 7, VJ Act). The army's highest professional organ of authority is the General Staff (Art. 5, VJ Act).

The Supreme Defence Council is made up of the President of Yugoslavia and presidents of the member republics. President of Yugoslavia shall preside over the Supreme Defence Council (Art. 135 (2) and (3), Federal Constitution). He executes the decisions of the Supreme Defence Council. The procedure of the Council and its responsibilities have not been regulated by law. Under Article 41 (3) of the National Defence Act (*Sl. list SRJ,* Nos. 43/94, 11/95 (SUS), 28/96, 44/99, 3/02), the Supreme Defence Council shall inform the Federal Government or the Federal Parliament about its work "when necessary," but no law specifies who shall gauge this necessity. Everything points out to the conclusion that this decision is in the hands of the Council itself. This could open the door to arbitrariness.

The VJ Act prescribes that the (Yugoslav) President appoints and relieves of duty generals and other high-ranking officers in the armed forces, while the Chief of the VJ General Staff is in charge of lower-level appointments. But the procedure of appointing and relieving of duty the Chief of Staff himself is not defined by law; in practice, this is done by the Yugoslav President – choosing a man to fill this important post is thus left to the discretion of the President.

On 24 June 2002, FRY President Vojislav Koštunica issued a decree[362] relieving of duty the then Chief of the VJ General Staff, Col. Gen. Nebojša Pavković.[363] Pavković refused to acknowledge the receipt of the Decree,[364] and requested the Federal Constitutional Court to assess its constitutionality. The Court turned down the initiative, explaining that the Decree has the character of an individual legal act, and that the Federal Constitutional Court is not authorised to assess the constitutionality and legality of individual legal acts. It ruled that other legal remedies were at the disposal of the appellant.

In issuing the Decree, President Koštunica cited his constitutional and legal powers. Under Article 151 of the Yugoslav Army Act, the President of the Republic is authorised to decide on "admission to professional military service and the termination of service of generals". Article 107 of the act provides that the service of professional officers can be terminated by decision of the President of the Republic, if required by special needs of the service and interests of VJ. Koštunica said in a public address that he had reached his decision "both for the sake of civilian control, democracy and the preservation of the Army as an institution".[365]

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[362] Decree on the Termination of Professional Military Service for Hitherto Chief of the General Staff Col.-Gen. Nebojša Pavković; under the same decree, Lt.-Gen. Branko Krga was appointed acting Chief of VJ General Staff. On 27 December Koštunica promoted Krga to the rank of Colonel-General and appointed him Chief of General Staff.

[363] Immediately prior to Koštunica's decision, the Council held its sixth session, at which its other members did not support the replacement of Pavković, while at its preceeding meeting late in March 2002, Koštunica came out against a proposal for Gen. Pavković's replacement. According to Minister of Defence Radojević, at the sixth session the Presidents of Serbia and Montenegro "did not declare themselves on Pavković", *Danas*, 28 June 2002 at <http://www.danas.co.yu>

[364] After he was informed about the decision, Pavković called a news conference at the Army General Staff (24 June) and called Koštunica's decision a "classical abuse of the law", *Politika*, 25 June 2002, <http://www.politika.co.yu>

[365] *Politika*, 25 June 2002 at <http://www.politika.co.yu>

3.5.1. Rights and freedoms[366] – The basic restrictions on the rights of VJ personnel are prescribed by the Federal Constitution, and defined more closely by the VJ Act. However, many regulations dealing with this area are classified and are thus not in the public domain.

Yugoslav Army personnel are subject to restrictions on the freedom of movement. These restrictions comply with international standards (ICCPR, Art. 12 (3)). Under the FRY Constitution, freedom of movement "may be restricted by federal statute, if so required for (...) the defence of the Federal Republic of Yugoslavia" (Art. 30 (2), Federal Constitution). Article 33 (1) of the VJ Act defines restrictions more precisely: "professional soldiers may travel abroad, provided they register their trips with their superior officers...". This refers to peacetime; in wartime, states of an immediate threat of war or states of emergency, clearance must be obtained from the Chief of the General Staff or other officers authorised by him (Art. 33 (3), VJ Act). Civilians employed in VJ also need such permission (Art. 149, VJ Act), as do conscript soldiers (Art. 33 (2), VJ Act) and men subject to compulsory military service (Art. 321 (1), VJ Act). The latter and members of the VJ reserve may be refused permission for foreign travel if they have been called to a military exercise, if they have avoided receiving such a summons, and if criminal proceedings have been initiated on charges of not responding to a call-up and avoiding military service, or criminal charges of avoiding military services by disablement or deception (Art. 321 (6), VJ Act).

Under the VJ Act, "professional soldiers and students of military academies and secondary military schools may not belong to political parties and are not allowed to join trade unions and to go on strike" (Art. 36 (1), VJ Act). Members of the VJ reserve and conscript soldiers serving their tours of duty are not allowed party political activity (Art. 36 (3), VJ Act); although these are civilians in uniform and not career soldiers, we cannot speak about a violation of the very essence of a right, as the restriction is temporary.

3.5.2. The right to conscientious objection – Exercise of the right to conscientious objection and to alternative military service in a civilian institution has always run up against many obstacles in the FRY. This right is not explicitly mentioned in international documents, but proceeds from the freedom of thought, conscience and religion. The right to conscientious objection has been recognised by recommendations and resolutions of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe.[367] In the section dealing with the VJ (rather than that on human rights), Article 137 of the Federal Constitution guarantees objectors the right to serve in the VJ without bearing arms or in civilian service.[368]

3.5.3. Mechanisms of protecting VJ personnel – The VJ Act contains only one provision referring to violations of rights that is, Article 190 (9): "Actions by military personnel (...) injuring the dignity of subordinates or juniors and violating their legally guaranteed rights shall be regarded as breaches of military discipline". Disputes are handled by disciplinary military courts.

The Federal Criminal Code defines injuring the dignity of person in the VJ as the criminal offence of maltreatment of subordinate or junior. Article 208 of the Code states:

Military officers maltreating subordinates or juniors in service or in connection with service, or acting towards them in a manner injuring human dignity, shall be punished by imprisonment from three months to three years.

If the offence specified in para. 1 of this Article is committed against several persons, the perpetrator shall be punished by imprisonment ranging from one to five years.

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[366] See V. Dimitrijević – J. Radojković, *Ljudska prava i pripadnici oružanih snaga*, Belgrade Centre for Human Rights, Belgrade, 2002.

[367] Council of Europe instruments concerning conscientious objection – Parliamentary Assembly documents: Resolution 337 (1967), *Right of Conscientious Objection*; Recommendation 478 (1967), *Right of Conscientious Objection*; Recommendation 816 (1977), *Right of Conscientious Objection to Military Service*; Recommendation 1518 (2001), *Excercise of the Right of Conscientious objection to military service in Council of Europe member states*; Committee of Ministers document – Recommendation (87) 8 regarding *Conscientious Objection to Compulsory Military Service*.

[368] See I.4.8.

This provision was the basis for an investigation initiated by the Military Court in Podgorica in 2001 against Gen. Spasoje Smiljanić, the Commander of the Air Force and Air Defence, against whom six air force officers based at the Golubovci airfield near Podgorica had complainted accusing him of denigrating and humiliating them by calling them traitors in the presence of their fellow officers.[369] By the date of completion of this Report, the media monitored by the Belgrade Centre for Human Rights had covered case any further.

3.6. Military Courts

Article 138 of the Federal Constitution states: "Military courts and military prosecutors shall be established by federal statute. Military courts shall be independent and shall adjudicate on the basis of federal legislation". Under Article 2 of the Act on Military Courts (*Sl. list SRJ*, Nos. 11/95, 1/96 (SUS), 74/99, 3/02, 37/02), in the "performance of their judicial function, military courts shall be independent and self-contained".

In contrast to regular courts, whith elected judges, judges of military courts have been appointed and relieved of duty by the FRY President, at the recommendation of the FRY Minister of Defence. The independence of the military judiciary is thus threatened by the (unquestionable) power of the executive branch to appoint and dismiss judges.

The independence of a military judge is also jeopardised by the fact that his position depends on his superior's official assessment, which is extremely important for the promotion of all military officers, hence also judges. Two consecutive unfavourable assessments for a professional soldier lead to automatic discharge (Art. 107, VJ Act). Two consecutive unfavourable assessments for a judge in a military court are also grounds for discharge. Judges are rated by the president of a court, and presidents by officers outside the military judiciary.[370]

A question often raised is the very purpose of military courts in peacetime, especially in small countries with relatively small standing armies, given the ongoing tendency of reducing military forces. But a much more important criterion in this country is the wide jurisdiction of military courts.

Military courts have jurisdiction to try military personnel, but also civilians, for certain offences defined by the Federal Criminal Code. These are: preventing struggle against enemies (Art. 118), serving in hostile armed forces (Art. 119), assisting the enemy (Art. 120), undermining military and defensive capacities (Art. 121), armed insurrection (Art. 124), terrorism (Art. 125), demolition (Art. 126), sabotage (Art. 127), espionage (Art. 128), divulging state secrets (Art. 129), violation of territorial sovereignty (Art. 135), conspiracy to carry out hostile activities (Art. 136), criminal offences against the VJ (Art. 201–236) and criminal offences against property and official position, if the object of the offence is an object whose purpose is the defence of the country (Art. 10 (2), Military Courts Act). Military courts are also competent to try prisoners of war (Art. 15, Military Courts Act). It is important to note that military courts exclude VJ personnel from the jurisdiction of civilian courts. A civilian seeking redress for a wrong committed by a VJ servicemen must first file a suit with a military court; if the dispute is not resolved there, only then may he/she approach an ordinary court.[371]

Requests for protection of legality filed against legally final decisions of the Supreme Military Court are processed by the Supreme Military Court in general session (Art. 73, Military Courts Act). The Supreme Military Prosecutor is empowered to seek protection of legality against final decisions of military courts and other bodies of the VJ (Art. 14, Military Prosecutor Act, *Sl. list SRJ,* Nos. 11/95, 1/96 (SUS), 3/02). The Federal Court may assess final decisions of the Supreme Military Court only on the basis of a request for an extraordinary revision of a judgement of the Supreme Military Court for criminal offences

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[369] *Politika*, 21 February 2001 at <http://www.politika.co.yu>

[370] Jovan Buturović, *Vojni sudovi i ljudska prava*, Archives of the Centre for Civilian-Military Relations.

[371] *Pregled jugoslovenskih propisa o sektoru bezbednosti: status ljudskih prava i demokratske kontrole*, Geneva Centre for Democratic Control of the Armed Forces and the Centre for Civilian-Military Relations, Belgrade, 2002, pp. 62–73.

defined by federal statute, if the sentence passed is imprisonment for at least one year (Art. 426, CPC). This right is exercised in practice with much difficulty.[372] The Federal Court, under Article 108 (4) of the Federal Constitution, decides on conflicts of jurisdiction between military courts and other courts.

The Decree under which there are no public hearings in the Supreme Military Court when it reviews appeals against decisions in criminal cases violates the right to a fair trial.[373]

The proposed Constitutional Charter of the new Serbia-Montenegro community would abolish military courts.

4. Truth and Reconciliation

4.1. The Overall Atmosphere after the 2000 Changes

Before the historic changes which took place in Yugoslavia and Serbia in October and December 2000, war crimes, reconciliation between individuals, peoples and states in the region of the former Socialist Federal Republic of Yugoslavia (SFRY), the prosecution of those responsible for the tragic events and generally coming to terms with the past were questions which could only be raised within the civil sector. The state maintained a vigorous propaganda campaign aimed against those blaming the then authorities for the break-up of the SFRY, the conflicts and wars in it and the assistance those authorities rendered to the protagonists of armed conflicts and persons accused of war crimes and crimes against humanity. The cultural and media spheres were dominated by those who rejected completely every thought that the Serb leaders in Serbia and outside could bear any responsibility for the bloody post–1990 period.

Following the democratic changes in 2000, the public debate on establishing the truth, liability and reconciliation among all feuding sides came out into the open and gained legitimacy. There was now more public exposure and thus also awareness of the experiences of other countries, visits by representatives of foreign truth and reconciliation bodies, and their statements and reports.

4.2. The Truth and Reconciliation Commission of the President of the FRY

4.2.1. The Establishment of the Commission and its initial activities – The President of FRY Vojislav Koštunica established the Truth and Reconciliation Commission by his Decree published in the *Sl. list SRJ*, 30 March, 2001.

According to the Decree, the mandate of the Commission is "organising research work on uncovering evidence in connection with the social, ethnic and political conflicts which led to the war and shedding light on the causes of those events; informing the domestic and foreign public about its work and findings; establishing co-operation with similar commissions and other bodies in the neighbouring and other countries for the purpose of exchanging operational experiences." The President did not quote the constitutional or legal basis for establishing the Commission, but instead cited the "obligation of the President of the Republic to oversee compliance with and enforcement of constitutionality and legality and to contribute to the exercise of human rights and civil liberties".

The Decree also appointed the following to the Commission: Radovan Bigović (Dean of the Theological Faculty of the Serbian Orthodox Church), Mirjana Vasović (scientific counsel at the Institute of Social Sciences), Tibor Varady (professor at the Central European University in Budapest, former minister of justice in the federal government of Milan Panić), Svetlana Velmar Janković (writer from

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[372] See Jovan Buturović, "Mehanizmi za zaštitu ustavnosti i zakonitosti u JNA i VJ" in Miroslav Hadžić (ed.), *Demokratska kontrola vojske i policije*, Centre for Civilian-Military Relations, Belgrade, 2001, p. 112.

[373] See Vojin Dimitrijević, "Jugoslovensko vojno zakonodavstvo: usaglašenost sa standardima ljudskih prava i principima demokratije", in *Pregled Jugoslovenskih propisa o sektoru bezbednosti: status ljudskih prava i demokratske kontrole*, Geneva Centre for Democratic Control of the Armed Forces and the Centre for Civilian-Military Relations, Belgrade, 2002, p.16.

Belgrade), Mihajlo Vojvodić (professor and former Dean of the Faculty of Philosophy of the University in Belgrade), Đorđije Vuković (Assistant Professor at the same Faculty), Sava Vuković (Bishop of Šumadija of the Serbian Orthodox Church), Vojin Dimitrijević (Director of the Belgrade Centre for Human Rights, former Professor at the Faculty of Law of the University in Belgrade), Ljubodrag Dimić (Professor at Faculty of Philosophy of the University in Belgrade), Slavoljub Đukić (free-lance journalist, former editor of the weekly *NIN*), Aleksandar Lojpur (attorney-at-law from Belgrade), Boško Mijatović (scientific counsel at the Institute of Economic Sciences), Radmila Nakarada (scientific associate of the Institute for European Studies), Predrag Palavestra (member of the Serbian Academy of Sciences and Arts), Latinka Perović (historian from Belgrade, a senior official of the League of Communists of Serbia in the 1960s and early 1970s), Gen. Zoran Stanković (forensic medicine expert, Yugoslav People's Army /JNA), Svetozar Stojanović (scientific counsel at the Institute of Social Sciences, held the post of advisor to former FRY President Dobrica Ćosić), Darko Tanasković (Professor at the Faculty of Philology of the University in Belgrade, former FRY Ambassador to Turkey) and Sulejman Hrnjica (Professor the Faculty of Philosophy of the University in Belgrade).

Latinka Perović, Vojin Dimitrijević and Tibor Varady submitted immediately their resignations. The first two explained their reasons in open letters to President Koštunica.[374] Latinka Perović said that she had expected the commission to be a fully independent rather than a state-appointed body, while Vojin Dimitrijević said that in his view the Commission lacked sufficient powers (for example to summon witnesses), that its mandate was too broad (going back too far into the past) and that it lacked a single member from Montenegro, Serbia's smaller partner in the federation.[375]

The remaining members of the Commission adopted at their first session the Commission's Basic Rules of Procedure, including the following:

"The purpose of the Commission is the facing with the truth on the conflicts in the SFRY and the successor states, which resulted in crimes against peace, numerous violations of human rights, as well as the laws of war and humanitarian law thus to contribute to the general reconciliation inside Yugoslavia and with the neighbouring nations" and ... The Commission shall comprehensively examine and establish the causes and courses of conflicts conducive to the disintegration of the former state and the war, causing enormous human sufferings and destruction in the past decade."

The "Commission shall organise research on the state crisis and social conflicts which resulted in the outbreak of the war. The Commission shall also seek to clarify the chain of causality of the events concerned. The Commission shall notify the public on the results of its work as established by these and other Rules of Procedure the Commission may adopt."

The Commission shall also "seek to establish co-operation with similar commissions and other governmental and non-governmental bodies in the neighbouring countries, as well as with international governmental and non-governmental organisations and bodies."

The Commission shall be completely independent: "The Commission shall consist of individuals who shall fully retain their personal status and professional independence with respect to the Commission Founder as well as any other political, state, international or other body or organisation. The Commission's work shall be free of unwarranted interference by any individual or group, the Commission founder or any other state or political agency or body. The Commission shall consist of people whose names are listed in the Decision. The Founder may, if needed and subject to the previous written approval of the Commission, decide to appoint a new member or terminate the membership of a Commission member. The Commission's consent on entry or termination of its membership shall be deemed existent if the Decision to that effect is voted in by a two-third majority of Commission members."

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[374] *Danas*, 18 April 2001, pp. 1, 6 and 21–22 April 2001, p. II.

[375] Dimitrijević reiterated his objections a year later in an interview to the Belgrade daily *Blic*. The Commission's new Coordinator, Aleksandar Lojpur retorted in the same paper that the persons who had resigned should have stayed in the Commission and helped remedy its alleged defects. Nevertheless, he added that the remaining members had found that the Commission did not need the powers to issue subpoenas. *Blic*, 23 April, p. 2.

"The Commission shall, upon the Founder's proposal, elect one of its members for the Commission Co-ordinator. The Co-ordinator shall organise the work of the Commission .... The Commission shall elect one of its members to act as its Spokesperson. The Spokesperson shall represent the Commission in its relations with the public, state bodies, international organisations and other organisations and bodies. The Spokesperson shall be elected for a period of six months. However, any Commission member may propose him/herself or another member to act as Spokesperson. Decisions on such proposals shall be taken by secret vote. In the event of more than one candidate being proposed, the one who obtains the largest number of votes of the members present shall be elected. If the proposal for the replacement of Spokesperson is given before the expiry of the anticipated six-month tenure, the new Spokesperson may be elected only providing he/she obtains the votes of over half the Commission members. If need may be, the Spokesperson may, in co-operation with the Co-ordinator appoint a delegation of Commission members to establish co-operation with other similar bodies, domestic or international government and non-governmental organisations.

Using the authorities vested in it by the Founder in Section 3 of the above-mentioned Decision, the Commission shall elect a Secretary who shall be an employee in the Office of the Founder and shall have the job of providing the relevant services to the Commission and its bodies. The Commission Secretary shall be appointed by the Co-ordinator in agreement with the Office of the Commission Founder.

The Commission shall operate through working groups to be set up for such areas as historical data, constitutional issues, media, culture, economy, social-political relations etc. The Secretary shall notify all Commission members on the meetings of all working groups and all such meetings shall be open to all Commission members. General sessions of the Commission shall review the results of all working groups.

Using the authority vested in it by the Founder in Section 3 of the above-mentioned Decision, the Commission shall establish that the Co-ordinator or the Commission working groups may decide to employ professionals or expert teams, as well as institutes and NGOs in specific research undertakings. The work of these auxiliary bodies shall be financed from the Commission's budget.

The Commission's operations shall be financed from the state budget and public donations, subject to the agreement of the Co-ordinator and the Office of the Founder."[376]

Under the rules, the work of the Commission is public, in that after each Commission session the Spokesperson shall "convene a press conference to inform the public on the Commission's proceedings." The Commission shall also "publish collections of works presenting the results of the research carried out by the Commission ... and reports which will provide a clear and synthesised overview of its work as well as that of its working groups and expert teams."

Some provisions were added to the Rules on 10 December 2001. They now provide that the Commission shall complete its work "three years after the commencement of its activity". According to the statements of its members, made at a press conference on 22 January 2002, when the Commission moved into its permanent premises, this term is calculated from the latter date.[377]

In accordance with the rules, on 17 April 2001 Ljubodrag Dimić was elected to the Coordinator and Radmila Nakarada to Spokesperson.

The Commission adopted at its first meting the Elements for the Programme Document of the Commission for Truth and Reconciliation. According to the text, "attempting to find the truth and accomplish historical reconciliation means:

– critically reappraising oneself, in the first place, as well as the others – reassessing one's own actions, failures, responsibilities, share in events and processes;

– relinquishing suggestive and emotional views arising from a public opinion consciousness and the need to force one's own views, self-assertiveness and value systems on others,

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[376] Coordinator Lojpur, in a statement in may 2002, said that the Commission was financed only from the state budget and that it was receiving 250,000 dinars monthly from that source while members of the Commission had waived their fees. *Reporter*, 14 May, p. 15.

[377] *Politika,* 23 January, p. 6.

– openly appraising the situation in a state which is materially impoverished, morally damaged, extensively neglected, spiritually confused, destruction-riddled, eroded by separatisms and demolished by nationalisms;

– coming face to face without complexes and in a rational manner with the frightening contours of the image the world has formed of the Serbs and Serbia in the last decade of the 20th century;

– reaching new self-assertion and identity by reappraising the demographic state of the nation, its physical capacities, economic and technological potential, natural resources, social needs, institutions, political structures, national consciousness, ideas, the "dangerously" eroded standards of moral values, knowledge, tradition, habits, patriarchal and modern environments;

– carefully assessing the accumulated experience with a knowledge that it is possible to live with it and draw lessons from it only if has been thoroughly studied and rationally imparted."

According to the Elements, "The Commission would stimulate investigation of the causes and course of ethnic strife in the region of the former Yugoslavia with the aim of acquiring information which would offer an objective picture of the events and annul good-and-evil perceptions of victims and executioners. In that context, the Commission would organise comprehensive historical, legal, economic, sociological, political science, psychological, cultural, linguistic research ... The Commission and the research teams it would form would endeavour to recognise the internal and international circumstances in which wars were waged, identify the real interests which initiated them, uncover their brutal character, establish the consequences they left as their legacy, and identify the scars etched into social and individual consciousness".

The Commission seeks the "understanding and support of state authorities, which would have to allow its members and associate expert teams insight into records kept by the Archives of Yugoslavia, the Presidential Archives, the Yugoslav Army Archives, the Interior Ministry Archives, the Foreign Ministry Archives and others".

Bishop Sava died on June 17, 2001. Darko Tanasković was later appointed FRY Ambassador with the Holy See. Mirjana Vasović became professor at the Faculty of Political Science of the Belgrade University and Gen. Zoran Stanković was appointed Head of the Military Academy of Medicine in Belgrade.

4.2.2. The Truth and Reconciliation Commission in 2002 – President Koštunica filled the vacated posts and appointed new members of the Commission on 28 October 2002. The new members are Mira Beham, writer and journalist from Munich and Belgrade, Đorđe Vukadinović, political philosopher and editor-in-chief of the journal *Nova srpska politička misao (*New Serbian Political Thought*)*, Miomir Dašić, professor of the Faculty of Philosophy in Nikšić and member of the Montenegrin Academy of Sciences and Arts and of the Russian Academy of Natural and Social Sciences, Mustafa Jusufspahić, imam of the Belgrade Bajrakli Mosque, Andrija Kopilović, Pro-Rector of the Theological-Catechistical Institute in Subotica, Ljubiša Lazarevic, professor emeritus of the Faculty of Law in Belgrade, Emir Kusturica, film director, Slobodan Reljić, editor-in-chief of the Belgrade weekly *NIN*, and Ljiljana Smajlović, journalist of the same magazine.

Very little has been heard about the work of the Commission since the Conference "The Search for Truth and Responsibility – Towards a Democratic Future", organised by the *Radio B92* in Belgrade in May 2001[378] until 21 January 2002, when it was announced that the Commission had finally obtained its permanent premises and when its members held a press conference, where they announced that the Commission would start to work seriously in order to complete most of its projects, the most important of them being the creation of a "huge documentation on events in the territory of the former Yugoslavia in the latest fifteen or more years", assembling evidence "of a huge number of persons – victims, witnesses, perpetrators, of all those related to dramatic events", and that these testimonies "would be public". Other projects of the Commission were presented as a study on the war of information and the use of ethnic stereotyping, as well as the publication of collections of documents related to the dissolution of the SFRY

[378] See *Human Rights in Yugoslavia 2001*, IV.4.2.

and on Kosovo and Metohija.[379] Before the end of 2002 the publication of a collection of documents of the Serb Orthodox Church covering the decade 1080–1990 was expected, as well as a "bibliography of Yugoslav and foreign titles dealing with the Yugoslav crisis."[380]

Until the end of 2002 no public hearing was held by the Commission, neither the one on Srebrenica, originally scheduled for September,[381] nor the public presentation of the report on the Srebrenica case published by the Netherlands Institute for War Documentation, on which occasion, in the words of Radmila Nakarada, the Commission planned to hear "the victims and their families, as well as members of international forces, of the army and the authorities of Republika Srpska." On the same occasion Nakarada told the press that the members and collaborators of the Commission were working on "the demographic picture of that area before the war and nowadays, a chronology of war operations and a report on the presentation of the Srebrenica events in the media".[382]

The work of the Commission was discussed at a round table organised by the Commission itself on 28 May.[383] As at the conference in 2001, some participants criticised the activity of the Commission, its composition, methods and programme. Within the Commission itself divergences become visible between its new coordinator, Aleksandar Lojpur, and other members. Lojpur, while protesting against foreign pressures on the Commission to only deal with the responsibility, even collective liability, of the Serbs, deplored the absence of moral and political condemnation of crimes in the Serbian society: "Everyone knows what happened in Sarajevo, Vukovar, Srebrenica, but they do not to speak about that and turn to 'Bljesak', 'Oluja' and NATO bombing instead", said Lojpur.[384] Stressing that he spoke in his personal capacity, Lojpur admitted that he was even willing to discuss the collective guilt of Serbs, "but not in terms of criminal law", for "some events which were most conspicuous in the conflicts". The mention of collective liability was strongly opposed by other members of the Commission. Some of them even doubted Lojpur's and other discussants' assertions that some facts were well known or notorious. Among the persons invited to the round table there were, apart from the critics of the Commission, those who used the opportunity to attack the non-governmental organisations in Yugoslavia who had been advocating the overcoming of the past and cooperation with the ICTY.

The statements of the Commission and of its members have met with some reactions in the media. The two basic attitudes were probably best defined by the political philosopher Dušan Pavlović in his column in the periodical *Reporter:*[385]

"There are now two dominant approaches to war crimes ... The first has been advocated by the Commission ... the other by some non-governmental organisations. Roughly speaking, the followers of the former approach do not deny that Serbs have committed war crimes, but their principal aim is to demonstrate that the crimes of ones have caused the crimes of others, so that the responsibility for crimes is equally distributed among all nations. Neither does the other side deny that the responsibility is shared but emphasises the fact that it is necessary to establish the guilt of the Serbs."

Mirjana Vasović, the new spokesperson of the Commission, published an article in the journal *Prizma* dealing with the issue of guilt and responsibility.[386] She believes that Serbs have been victims of

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[379] *Reporter*, 14 May, p. 15. According to Aleksandar Lojpur, two historians, members of the Commission, were researching for that purpose in the Archives of the President of the FRY. *Blic*, 23 April, p. 2.

[380] *Blic*, 29 May, p. 2.

[381] *Blic*, 12 May, p. 2

[382] *Id*.

[383] The full transcript of the round table can be found on the web site of the Commission <http://www.komisija.org/transkript.htmp>.

[384] "Oluja" (Storm) and "Bljesak" (Lightning) were code names for the offensive operations of the Croatian Army against the forces of the then Republic of Serbian Krajina in May and August of 1995.

[385] 9 July, p. 19.

[386] "Pobornici 'zvanične verzije'*", Prizma,* May 2002, p. 40. The article was reproduced in the daily *Danas*, 20 June, p. 6. and 21 June, p. 6

specific hate speech, based on negative stereotypes created about them, and that the most responsible for war those who created the preconditions for war, including such stereotypes. This contributes to a "Manichean picture and simplified interpretation of the complex causes, currents and consequences of the dramatic events and situations which accompany international conflicts – from Markale I to Markale II, from Sarajevo to Srebrenica, from Vukovar to Račak". Top which Pavlović replies: "If we except Markale and Račak,[387] I would like to ask Mirjana Vasović why is Manichaeism controversial in the cases of Sarajevo, Srebrenica and Vukovar. Did Sarajevans bomb themselves, were the wounded in the Vukovar hospital killed by Croats disguised in Yugoslav People's Army uniforms, did the seven thousand inhabitants of Srebrenica commit suicide? A crime necessarily has a Manichean structure, because one side is guilty and the other not. If it is different, we are not dealing with crime."

Returning to the role of the Commission Pavlović continues: "The Commission which was established by the Serbian State should nevertheless preoccupy itself with Serb crimes, i.e. the attitude of Serbs towards the latter. This does not mean that the Commission must say that Serbs are the only culprits, but it must communicate the nature of thing that happened and say clearly who is the perpetrator. What the Commission does not understand is that it is not there to pass judgment on anyone, but to make citizens face the truth ... all these cases have to be communicated by a State authority."[388]

4.3. The Role of Non-governmental Organisations

In 2002 most initiatives to attempt to establish the truth and achieve reconciliation came again from the non-governmental sector, the most prominent being the media group's B92's "Truths, Responsibilities and Reconciliations" project. Its publishing house, *Samizdat Free B92,* continued to publish books on the subject and its television station broadcast, every Monday in the season, relevant films, followed by debates in its studio. In the autumn of 2002 this TV station has started to broadcast a series of conversations with the authors of the chapters in the collection *Srpska strana rata* (The Serbian Side of the War). This book, edited by Nebojša Popov, was published for the first time in 1996, when it was ignored by the official media and hardly available in bookstores.[389] Its second edition was published by *Samizdat Free B92* in 2001 and it has found its way to many more readers.

The Council for Civic Initiative from Niš organised in 2001 and 2002 a series of workshops on "The Question of Guilt and the Response of Responsibility".[390]

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[387] Bombs that exploded on two occasions on the Sarajevo market Markale in 1993 and 1994 resulted in many casualties; the Moslem side attributed the attacks to the Bosnian Serbs, and the latter to Bosnian Moslems. The dead Albanian villagers, found in Račak in Kosovo in January 1999 were considered by Albanians and the head of the OSCE verification mission to be civilians massacred by the Serbian police, whereas the officials of the Serbian government held that they were rebels killed in open combat. See *Human Rights in Yugoslavia 1999*, III.2.2.

[388] Professor Vasović also engaged in a lively polemic with Teofil Pančić, a columnist of the Belgrade weekly *Vreme.* He went so far as to call the Commission a body "to avoid truth, make responsibility relative and reconciliation ridiculous ". *Vreme,* 28 November, p. 77. Previous instalments of their exchange can be found in *Vreme* of 14 and 21 November.

[389] The translation into English appeared as *The Road to War in Serbia,* Budapest, Central European University Press, 2000.

[390] See <http://www.ogi.org.yu>

Appendix 1

The Most Important Human Rights Treaties Binding the Federal Republic of Yugoslavia

– Convention against Discrimination in Education (UNESKO), *Sl. list SFRJ (Dodatak)*, No. 4/64.

– Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Međunarodni ugovori)*, No. 9/91.

– Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, No. 6/01.

– Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ (Dodatak)*, No. 8/58.

– Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ (Dodatak)*, No. 11/58.

– Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, *Sl. list FNRJ (Dodatak)*, No. 3/61.

– Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatak)*, No. 13/64.

– Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ (Međunarodni ugovori)*, No. 11/81.

– Convention on the High Seas, *Sl. list SFRJ (Dodatak)*, No. 1/86.

– Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, *Sl. list SRJ (Međunarodni ugovori)*, No. 7/02.

– Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, No. 7/58.

– Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, *Sl. list SFRJ (Međunarodni ugovori)*, No. 50/70.

– Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, No. 7/54.

– Convention on the Prevention and Punishment of the Crime of the Genocide, *Sl. vesnik Prezidijuma Narodne skupštine FNRJ*, No. 2/50.

– Convention on Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, No. 7/60.

– Convention on the Rights of the Child, *Sl. list SFRJ (Međunarodni ugovori)*, No. 15/90; *Sl. list SRJ (Međunarodni ugovori)*, Nos. 4/96, 2/97.

– Convention Relating to the Status of Stateless Persons and Final Act of the UN Conference Relating to the Status of Stateless Persons, *Sl. list FNRJ (Dodatak)*, Nos. 9/59, 7/60; *Sl. list SFRJ (Dodatak)*, No. 2/64.

– Convention for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, No. 2/51.

– European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, *Sl. list SRJ (Međunarodni ugovori)*, No. 1/02.

– International Convention on the Elimination of All Forms of Racial Discrimination, *Sl. list SFRJ (Međunarodni ugovori)*, No. 6/67.

– International Convention on the Suppression and Punishment of the Crime of Apartheid, *Sl. list SRFJ,* No. 14/75.

– International Covenant on Civil and Political Rights, *Sl. list SFRJ*, No. 7/71.

– International Covenant on Economic, Social and Cultural Rights, *Sl. list SFRJ*, No. 7/71.

– Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *Sl. list SRJ (Međunarodni ugovori)*, No. 7/02.

– Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, No. 4/01.

– Second Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, No. 4/01.

– Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, No. 6/01.

– Protocol Amending the Convention on the Suppression of Trade in Adult Women, *Sl. list FNRJ*, No. 41/50.

– Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Dodatak)*, No. 6/55.

– Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, No. 6/01.

– Protocol on Relating to the Status of Refugees, *Sl. list SFRJ (Dodatak)*, No. 15/67.

– Slavery Convention, *Sl. novine Kraljevine Jugoslavije,* XI-1929, No. 234.

– Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak),* No. 7/58.

Appendix 2

Legislation Concerning Human Rights in the Federal Republic of Yugoslavia

Constitutions

– The Constitution of the Federal Republic of Yugoslavia, *Sl. list SRJ,* No. 1/92.

– The Constitution of the Republic of Serbia, *Sl. glasnik RS*, No. 1/90.

– The Constitution of the Republic of Montenegro, *Sl. list RCG,* No. 48/92.

Federal Legislation

– The Act on the Association of Citizens in Societies, Social Organisations and Political Organisations, *Sl. list SFRJ*, No. 42/90; *Sl. list SRJ*, Nos. 16/93, 31/93, 41/93, 50/93, 24/94, 28/96, 73/00.

– The Act on Bases of Labour Relations, *Sl. list SRJ*, Nos. 29/96, 51/99.

– The Act on Bases of the Pension and Disability Insurance, *Sl. list SRJ*, Nos. 30/96, 58/98, 70/01, 3/02, 39/02.

– The Act on Defence, *Sl. list SRJ*, Nos. 43/94, 11/95, 28/96, 44/99, 3/02.

– The Act on Election of Federal Deputies in the Chamber of Republics of the Federal Assembly, *Sl. list SRJ*, Nos. 32/00, 73/00.

– The Act on Election and Term of the President of the Republic, *Sl. list SRJ*, No. 32/00.

– The Act on Election of Deputies to the Chamber of Citizens of the Federal Assembly, *Sl. list SRJ*, Nos. 57/93, 32/00, 36/00, 73/00.

– The Act on Enterprises, *Sl. list SRJ*, Nos. 29/96, 33/96, 29/97, 58/98, 74/99, 9/01, 36/02.

– The Act on Finansing of Political Parties, *Sl. list SRJ*, No. 73/00.

– The Act on Foreign Investments, *Sl. list SRJ*, No. 3/02.

– The Act on Movement and Residents Aliens, *Sl. list SFRJ*, Nos. 56/80, 53/85, 30/89, 26/90, 53/91; *Sl. list SRJ*, Nos. 16/93, 31/93, 41/93, 53/93, 24/94, 28/96.

– The Act on the Principles of Property Relations, *Sl. list SFRJ*, Nos. 6/80, 36/90; *Sl. list SRJ*, No. 29/96.

– The Act on Protection of Rights and Freedoms of National Minorities, *Sl. list SRJ*, No. 11/02.

– The Act on Repealing the Decree passed by the Presidium of the FPRY National Assembly by which the Karađorđević royal family were denied of their Yugoslav citizenship and their property confiscated, *Sl. list SRJ*, No. 9/01.

– The Act on Security Services of the FRY, *Sl. list SRJ*, No. 37/02.

– The Act on Yugoslav Citizens' Travel Documents, *Sl. list SRJ*, Nos. 33/96, 46/96, 12/98, 44/99, 15/00, 7/01, 71/01, 23/02, 68/02.

– The Amnesty Act, *Sl. list SRJ*, No. 28/96.

– The Amnesty Act, *Sl. list SRJ*, No. 9/01.

– The Amnesty Act, *Sl. list SRJ*, No. 37/02.

– The Bonds Act, *Sl. list SFRJ*, Nos. 29/78, 39/85, 45/89, 59/89; *Sl. list SRJ* No. 31/93.

– The Communication System Act, *Sl. list SFRJ*, Nos. 41/88, 80/89, 29/90; *Sl. list SRJ*, Nos. 34/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96.

– The Criminal Procedure Code, *Sl. list SRJ*, Nos. 70/01, 68/02.

– The Decree on the Borba Federal Public Company, *Sl. list SRJ*, Nos. 15/97, 56/98, 10/00, 17/00, 34/00,7/01, 12/01.

– The Federal Criminal Code, *Sl. list SFRJ*, Nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90, 54/90, *Sl. list SRJ*, Nos. 35/92, 37/93, 24/94, 61/01.

– The General Administrative Procedure Act, *Sl. list SRJ.* Nos. 33/97, 31/01.

– The Introduction of the Register Numbers of the Citizens Act, *Sl. list SFRJ*, No. 58/76.

– The Pardons Act, *Sl. list SRJ*, No. 90/94.

– The Personal Data Protection Act, *Sl. list SRJ*, Nos. 24/98, 26/98.

– The Procedure for the Registration in the Court Register Act, *Sl. list SRJ*, No. 80/94.

– The Rules on the Manner of Operation of Assemblies of Electors for the Election of National Councils of National Minorities, *Sl. list SRJ*, No. 41/02.

– The Strikes Act, *Sl. list SRJ*, No. 29/96.

– The Yugoslav Army Act, *Sl. list SRJ*, Nos. 43/94, 28/96, 44/99, 74/99, 3/02, 37/02.

– The Yugoslav Citizenship Act, *Sl. list SRJ*, Nos. 33/96, 9/01.

– The Yugoslav Enviroment Protection Act, *Sl. list SRJ*, No. 24/98.

Republic of Serbia

– The Act on Abortion in Medical Facilities, *Sl. glasnik RS*, No. 16/95.

– The Act on Assembly of Citizens, *Sl. glasnik RS*, Nos. 51/92, 53/93, 67/93, 48/94, 29/01.

– The Act on Assets Owned by Republic of Serbia, *Sl. glasnik RS*, Nos. 53/95, 3/96, 54/96, 32/97.

– The Act on Broadcasting, *Sl. glasnik RS*, No. 42/02.

– The Act on Child Welfare, *Sl. glasnik RS*, Nos. 49/92, 29/93, 53/93, 67/93, 28/94, 47/94, 48/94, 25/96, 29/01, 16/02.

– The Act on Elementary Schools, *Sl. glasnik RS*, Nos. 50/92, 53/93, 67/93, 48/94, 66/94, 22/02.

– The Act on Employment and on the Rights of Unemployed Persons, *Sl. glasnik RS*, Nos. 22/92, 73/92, 82/92, 56/93, 67/93, 34/94, 52/96, 46/98, 29/01, 80/02..

– The Act on Financial Support for Families with Children, *Sl. glasnik RS*, No. 16/02.

– The Act on Financing of Political Parties, *Sl. glasnik RS*, No. 32/97.

– The Act on Judges, *Sl. glasnik RS*, Nos. 63/01, 42/02.

– The Act on Labour Relations in Government Agencies, *Sl. glasnik RS*, Nos. 48/91, 66/91, 44/98, 49/99, 34/01.

– The Act on Local Self-government, *Sl. glasnik RS*, Nos. 4/91, 79/92, 82/92, 47/94, 48/99, 49/99, 27/01.

– The Act on Medical Insurance, *Sl. glasnik RS*, Nos. 18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 46/98, 54/99, 29/01, 18/02, 80/02.

– The Act on the Official Use of Languages and Scripts, *Sl. glasnik RS*, Nos. 45/91, 53/93, 67/93, 48/94.

– The Act on Organisational Structure of Courts, *Sl. glasnik RS*, No. 63/01, 42/02.

– The Act on Organisation and Jurisdiction of State Bodies in Suppressing Organised Crime, *Sl. glasnik RS*, No. 42/02.

– The Act on Pensions and Disability Insurance, *Sl. glasnik RS*, Nos. 52/96, 48/98, 29/01, 80/02.

– The Act on Political Organisations, *Sl. glasnik RS*, No. 37/90, 30/92, 53/93, 67/93, 48/94.

– The Act on Secondary Schools, *Sl. glasnik RS*, Nos. 50/92, 53/93, 67/93, 48/94, 24/96, 23/02, 25/02.

– The Act on the Security and Information Agency of the Republic of Serbia, *Sl. glasnik RS*, br. 42/02.

– The Act on Shares Fund, *Sl. glasnik RS*, No. 38/01.

– The Act on Social Organisations and Citizens Associations, *Sl. glasnik SRS*; Nos. 24/82, 39/83, 17/84, 50/84, 45/85, 12/89, *Sl. glasnik RS*, Nos. 53/93, 67/93, 48/94.

– The Act on Special Conditions for Real Property Transactions, *Sl. glasnik SRS*, Nos. 30/89, 42/89; *Sl. glasnik RS*, Nos. 55/90, 22/91, 53/93, 67/93, 48/94.

– The Act on Social Security and Provision of Social Welfare, *Sl. glasnik RS*, Nos. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01.

– The Act on the State Administration, *Sl. glasnik RS*, Nos. 20/92, 6/93, 48/93, 53/93, 67/93, 48/94, 49/99.

– The Act on Tax and Extra Profit and Extra Property, *Sl. glasnik RS*, No. 36/01.

– The Amnesty Act, *Sl. glasnik RS*, No. 10/01.

– The Building Lots Act, *Sl. glasnik RS*, Nos. 44/95, 16/97, 23/01.

– The Courts Act, *Sl. glasnik RS*, No. 46/91, 60/91, 18/92, 71/92, 63/01 (this act ceased producing effect on 1 January 2002, except provisions of Art. 14 - 20, which would cease to produce effect on 1 March 2003).

– The Criminal Code, *Sl. glasnik SRS*, Nos. br. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90; *Sl. glasnik RS*, Nos. 16/90, 26/91, 75/91, 9/92, 49/92,51/92, 23/93, 67/93, 47/94 i 17/95, 44/98, 10/02, 11/02, 80/02.

– The Decree Introducing Religious Instruction and an Alternative Subject in Elementary and Secondary Schools, *Sl. glasnik RS*, No. 46/01.

– The Decree on Opening State Security Service Secret Files, *Sl. glasnik RS*, Nos. 30/01, 31/01.

– The Election Act, *Sl. glasnik RS*, No. 35/00.

– The Elections of the President of the Republic Act, *Sl. glasnik RS*, Nos. 1/90, 79/92, 73/02.

– The Enforcement of Criminal Sanctions Act, *Sl. glasnik RS*, Nos. 16/97, 34/01.

– The Enviroment Protection Act, *Sl. glasnik RS*, Nos. 66/91, 83/92, 53/93, 67/93, 48/94, 44/95, 53/95.

– The Expelled Persons Relief Decree, *Sl. glasnik RS*, No. 47/95.

– The Expropriation Act, *Sl. glasnik RS*, Nos. 53/95, 23/01.

– The Health Protection Act, *Sl. glasnik RS*, Nos. 17/92, 26/92, 50/92, 52/93, 53/93, 67/93, 48/94, 25/96, 18/02..

– The High Judicial Council Act, *Sl. glasnik RS*, No. 63/01.

– The Inheritance Act, *Sl. glasnik RS*, No. 46/95.

– The Internal Affairs Act, *Sl. glasnik RS*, Nos. 44/91, 79/91, 54/96, 27/00, 30/00 (SUS), 8/01 (SUS).

– The Labour Act, *Sl. glasnik RS*, Nos. 70/01, 73/01.

– The Marriage and Family Relations Act, *Sl. glasnik SRS*, Nos. 22/80, 24/84, 11/88; *Sl. glasnik RS,* Nos. 22/93, 25/93, 35/94, 46/95, 29/01.

– The Pardons Act, *Sl. glasnik RS*, Nos. 49/95, 50/95.

– The Privatisation Act, *Sl. glasnik RS*, No. 38/01.

– The Privatisation Agency Act, *Sl. glasnik RS*, No. 38/01.

– The Public Information Act, *Sl. glasnik RS*, Nos. 36/98, 2/01.

– The Public Prosecutors Office Act, *Sl. glasnik RS*, Nos. 63/01, 42/02.

– Regulation on the Use of Force, *Sl. glasnik RS*, Nos. 40/95, 48/95, 1/97.

– Rules on Entry of Trade Union Organisations in Register, *Sl. glasnik RS*, Nos. 6/97, 33/97, 49/00, 18/01.

– The Refugees Act, *Sl. glasnik RS*, Nos. 18/92, 45/02.

– The Safety of Work Act, *Sl. glasnik RS*, Nos. 42/91, 53/93, 67/93, 48/94, 42/98.

– The State of Emergency Act, *Sl. glasnik RS*, No. 19/91.

– The Unique Registration Numbers of Citizens Act, *Sl. glasnik SRS*, Nos. 53/78, 5/83, 24/85, 6/89; *Sl. glasnik RS*, Nos. 53/93, 67/93, 48/94.

– The University Act, *Sl. glasnik RS*, No. 21/02.

– The Decision on Designation of Locations in Belgrade for Public Assembly, *Sl. list grada Beograda*, No. 13/97.

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– The Act on Abortion Procedure, *Sl. list SRCG*, Nos. 29/79, 31/79, 29/89, 39/89; *Sl. list RCG*, Nos. 28/91, 17/92, 27/94.

– The Act on Broadcasting, *Sl. list RCG*, Nos. 51/02, 62/02.

– The Act on Consitutional Court of Montenegro, *Sl. list RCG,* No. 21/93.

– The Act on Election of Deputies and Councilors, *Sl. list RCG,* Nos. 16/00, 9/01, 41/02.

– The Act on Electoral Rolls, *Sl. list RCG*, Nos. 14/00, 30/01.

– The Act on the Enforcement of Criminal Sanctions, *Sl. list RCG,* Nos. 25/94, 29/94.

– The Act on Health Protection and Medical Insurance, *Sl. list SRCG*, Nos. 39/90, 21/91; *Sl. list RCG*, 48/91, 17/92, 30/92, 58/92, 6/94, 27/94, 30/94, 16/95, 20/95, 22/95, 23/96.

– The Act on Finansing of Political Parties, *Sl. list RCG*, No. 44/97.

– The Act on Montenegrin Citizenship, *Sl. list RCG*, br. 41/99.

– The Act on Non-governmental Organisations, *Sl. list RCG,* Nos. 27/99, 9/02, 30/02.

– The Act on Pensions and Disability Insurance, *Sl. list SRCG,* Nos. 14/83, 4/84, 12/85, 23/85, 3/86, 14/89, 29/89, 39/89, 42/90, 28/91; *Sl. list RCG*, Nos. 48/91, 17/92, 18/92, 14/93, 20/93, 27/94, 26/00 (SUS).

– The Act on Public Assembly, *Sl. list RCG,* Nos. 57/92, 27/94.

– The Act on Public Broadcasting Services, *Radio Montenegro* and *Television Montenegro*, *Sl. list RCG*, Nos. 51/02, 62/02.

– The Act on Social and Child Protection, *Sl. list RCG*, Nos. 45/93, 27/94, 16/95, 44/01.

– The Citizens Associations Act, *Sl. list SRCG,* Nos. 23/90, 26/90, 13/91; *Sl. list RCG*, Nos. 48/91, 17/92, 30/92, 21/93, 27/94, 27/99.

– The Criminal Code, *Sl. list RCG,* Nos. 42/93, 14/94, 27/94, 30/02.

– The Decision on Competencies and Composition of the Republic Council for Protection of the Rights of the Members of the National and Ethnic Groups, *Sl. list RCG,* No. 32/93.

– The Decree on Displaced Persons, *Sl. list RCG*, No. 37/92.

– The Decree on Registration of Trade Union Organisations, *Sl. list RCG,* No. 20/91.

– The Election of the President of the Republic Act, *Sl. list RCG,* Nos. 49/92, 50/92, 30/97, 66/02.

– The Elementary School Act, *Sl. list RCG,* Nos. 34/91, 48/91, 17/92, 56/92, 30/93, 32/93, 27/94, 2/95, 20/95, 64/02.

– The Employment Act, *Sl. list SRCG,* Nos. 29/90, 27/91, 28/91; *Sl. list RCG*, Nos. 48/91, 8/92, 17/92, 3/94, 27/94, 16/95, 22/95.

– The Enviroment Act, *Sl. list RCG*, Nos. 12/96, 55/00.

– The Family Law, *Sl. list SRCG,* No. 7/89.

– The Internal Affairs Act, *Sl. list RCG,* Nos. 24/94, 29/94.

– The Labour Relations Act, *Sl. list SRCG,* Nos. 29/90, 42/90, 28/91; *Sl. list RCG*, Nos. 48/91, 17/92, 27/94, 16/95, 21/96, 5/00.

– The Media Act, *Sl. list RCG*, Nos. 51/02, 62/02.

– The Pardons Act, *Sl. list RCG,* Nos. 16/95, 12/98, 21/99.

– The Personal Names Act, *Sl. list RCG,* Nos. 20/93, 27/94.

– The Referendum Act, *Sl.list RCG*, Nos. 9/01, 17/01 (SUS).

– The Rules on Register of Political Organisations, *Sl. list RCG,* Nos. 25/90, 46/90.

– The Secondary Schools Act, *Sl. list SRCG,* No. 28/91; *Sl. list RCG*, Nos. 35/91, 48/91, 17/92, 56/92, 27/94, 64/02.

– The Unique Registration Numbers of Citizens Act, *Sl. list RCG,* Nos. 45/93, 27/94.