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HUMAN RIGHTS IN YUGOSLAVIA 2000
LEGAL PROVISIONS, PRACTICE AND LEGAL CONSCIOUSNESS
IN THE FEDERAL REPUBLIC OF YUGOSLAVIA COMPARED
TO INTERNATIONAL HUMAN RIGHTS STANDARDS

Editor
Vojin Dimitrijević

Assistant Editor
Tatjana Papić

Publisher
The Belgrade Centre for Human Rights
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For the publisher
Vladan Joksimović

Proof-reading
Kristina Lillico

Photograph
Milan Aleksić

Layout
Mirko Milićević

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Belgrade Centre for Human Rights

Belgrade, 2001

Contents

Abbreviations

AI	Amnesty International
ANEM	Association of the Independent Electronic Media
BCHR	Belgrade Centre for Human Rights
B&H	Bosnia and Herzegovina
CESCR	International Covenant on Economic, Social and Cultural Rights of 16 December 1966
CeSID	Center for Free Elections and Democracy
CPA	Criminal Procedure Act
DOS	Democratic Opposition of Serbia
ECHR	European Convention on Human Rights and Fundamental Freedoms of 4 November 1950
FEC	Federal Electoral Commission
FCC	Federal Constitutional Court
FRY	Federal Republic of Yugoslavia
FRY Constitution	Constitution of the Federal Republic of Yugoslavia of 27 April 1992
HLC	
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.
	Humanitarian Law Center
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights of 16 December 1966
ICTY	International Criminal Tribunal for the Former Yugoslavia

ILO	International Labour Organisation
IJAS	Independent Journalists' Association of Serbia
IWPR	Institute for War and Peace Reporting
"KLA"	"Kosovo Liberation Army"
KFOR	Kosovo Forces
"LAPBM"	"Liberation Army of Preševo, Bujanovac and Medvedja"
LBLR	Bases of Labour Relations Act
LCEMP	Elections of Members of Parliament Act
LMFR	Marriage and Family Relations Act
LF	Families Act
LE	Expropriation Act
LGAP	General Administrative Procedure Act
LSCSIP	Act on the Special Conditions of Sales of Immovable Property
Montenegro	Republic of Montenegro
MUP	Ministry of Internal Affairs
NATO	North Atlantic Treaty Organisation
OSCE	Organisation for Security and Co-operation in Europe
PC	Penal Code
PSEA	Penal Sanctions Enforcement Act
REC	Republic Electoral Commission
RM Constitution	Constitution of the Republic of Montenegro of 13 October 1992
RS Constitution	Constitution of the Republic of Serbia of 28 September 1990
RTS	Radio Television of Serbia
SDB	State Security Service
Serbia	Republic of Serbia
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)
SRM	Socialist Republic of Montenegro
SRS	Socialist Republic of Serbia
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
UNDP	United Nations Development Programme
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
YCRC	Yugoslav Child Rights Centre
YUCOM	Yugoslav Lawyers Committee for Human Rights

Preface

The aim of this Report is to provide readers, both in Yugoslavia and abroad, with relevant and up to date information on the protection of internationally guaranteed human rights in the FRY. The Report thoroughly examines the human rights situation in the FRY from legal and practical standpoints. The aim of the Centre was to show how the internationally guaranteed human rights are enjoyed in reality, to examine how they are manifested, regulated, restricted or violated, as well as to point out to the most important circumstances influencing the enjoyment of human rights in FRY.

This is the third time the Centre publishes such a report. The report for 2000 can thus be usefully read in conjunction with the Centre's reports for 1998 and 1999, especially if the reader wants to follow the origins of present events.

The Report is divided into five parts.

The first part describes and analyses the constitutional, statutory and administrative norms pertaining to human rights. It compares them to international human rights standards and to Yugoslavia's obligations under relevant international treaties. Findings in this part rely on information and documents collected by the Centre and kept in its archives.

The second part of the Report is devoted to actual practice. It describes the application of human rights standards and the *de facto* enjoyment of human rights in FRY. It draws on reports by Yugoslav media, as well as on reports issued by international and domestic human rights organisations, both governmental and non-governmental. The abundance of data collected and the sometimes contradictory conclusions reached by the respective sources have sometimes prevented the Centre from taking a firm stand. The aim was however to faithfully reproduce information and to accurately identify sources so as to enable the readers to reach their own conclusions

As in 1998, the Centre conducted in 2000 a survey on the state of legal consciousness of FRY citizens: a large representative sample was used to determine the citizens' perception of human rights as practised in FRY. Also, the expert evaluation of the overall human rights situation, done in 1998 and published in the corresponding report, was repeated in 2000 and again compared to the situation in 1983.

A comprehensive report on the human rights situation in Yugoslavia must provide wider information on some issues that had a direct bearing on respect for human rights. Thus the forth part of the Report briefly covers topics which appeared to be of special relevance: the situation in Kosovo, the International Criminal Tribunal for the former Yugoslavia, initiatives that could lead to the reconciliation and the discovery of truth in Yugoslavia and the wider surrounding area and position of Roma in FRY. It is advised to that read other parts of the Report in conjunction with the relevant portion of the third part.

In the fifth part, the Centre undertook a comparative analysis of the situation in the former Yugoslavia (1983) and in the FRY (2000).

Preparations for this Report started on 1 January 2000 and the text was completed on 20 January 2000. The last phase of work, which came after the dramatic showdown in Serbia on 5 October, was particularly sensitive and difficult: changes in law and practice went on until the last days of December. The Centre hopes that readers will understand that some of the relevant events were not faithfully recorded.

The Centre would like to thank all those who helped prepare this Report, in particular friends and colleagues from other organisations and institutions, for their support, perseverance and patience. The Centre would like to express special gratitude to Mr. Milan Aleksić, who gave his photographs free of charge for the third time.

Introduction

The Federal Republic of Yugoslavia (FRY) was officially created by the Constitution of 27 April 1992. It had in fact been informally politically present before that as an alliance of the communist political leaderships of two republics of the former Socialist Federal Republic of Yugoslavia (SFRY), Serbia and Montenegro. During the crisis in the late 1980s and early 1990s they rallied around Slobodan Milošević, then President of the Presidency of Serbia, President of Serbia and since 1996 President of FRY. Under the pressure of various disintegrative processes the SFRY formally ceased to exist, leaving behind itself five new states: the FRY, B&H, Croatia, Macedonia and Slovenia.

FRY is one of the successor states of the former Yugoslavia and is thus bound by all international human rights treaties ratified by the SFRY. The number of these treaties is not small. However, no case was recorded when a court or another organ of the SFRY applied them in practice, although this was possible under the SFRY constitutions.

The SFRY was a "socialist" state with a soft variant of the "actually existing socialism". Marxism was the official state ideology and the communist party ("League of Communists of Yugoslavia") had the monopoly of political decision-making. There was even no formal separation of powers. In the Yugoslav party-state law did not play an important role: it was dependent on the political decisions of the party leadership, which both personally and functionally were intertwined with the formal state structures.

All successive constitutions of the SFRY, as well as those of its federal units, proclaimed human and civil rights which, however, were easily restricted by simple legislative acts and administrative regulations, or were simply ignored in practice. SFRY constitutions did not contain the full catalogue of human rights enshrined in the treaties ratified by the SFRY. The deputies of the last session of the SFRY

Federal Assembly, still almost without exception members of the League of Communists, belatedly recognised this: on 16 May 1990 (shortly before the dissolution of the SFRY), the upper house of the Parliament provisionally adopted a series of constitutional amendments; they included, *inter alia,* the proclamation of some hitherto ignored human rights, such as the freedom of thought and religion, the right to private property, the right to privacy and the prohibition of discrimination on the basis of political opinions and social origin. This was an occasion for the parliamentarians to recognise that even torture had not been prohibited by the previous constitutions![1] Nevertheless, the SFRY Constitution remained unchanged because the proposed amendments failed to receive the support of all constituent republics.

SFRY enjoyed the reputation of a state "freer" than its ideological relatives in Central and Eastern Europe and the Far East. Improvements had started after the end of the initial phase of the revolutionary communism and in particular after 1948, the years of the open conflict between the Communist Party of Yugoslavia and its leader, Josip Broz Tito, and the international centre of the communist movement, embodied in the Information Bureau of Communist Parties (*Informbureau*) and the omnipotent Secretary General of the Communist Party of the USSR, Joseph Stalin. The regime in Yugoslavia manifested great ideological resilience in its showdown with the whole "socialist camp". However, facing challenges to its legitimacy it started to reduce the intensity of political repression and even to adopt some liberal reforms.[2] Liberalisation did not affect the narrower political sphere, but new measures in economy and administration signified a partial retreat from ideological dogmatism and resulted in the reduction of powers of the central bureaucracy. These changes also affected the sphere of

1 "Nacrt amandmana na Ustav SFRJ", *Skupštinski pregled,* No. 40, Belgrade, 21 May 1990.

2 Nevertheless, the conflict with Stalin resulted in the merciless persecution of pro-Stalin and pro-Soviet communists in Yugoslavia. Without trial thousands of persons were submitted to what was euphemistically called "administrative measures", i.e. interned in camps in the isolated Adriatic islands, the most notorious being the Bare Island (*Goli Otok*).

human rights. In the second part of the 1960s the unlimited powers of the secret police were restricted. The issuance of passports to citizens was facilitated and exit visas abolished, thus making the Yugoslav citizens the first subjects of any "socialist" country with relative freedom of international movement. To be sure, communist authorities did not recognise this freedom as a human right, in spite of SFRY obligations under the International Covenant on Civil and Political Rights, which it had ratified in 1971.

As a founding member of the Non-Aligned Movement, a group of states playing at the time an important role in international relations, the SFRY had more influence in the United Nations and other universal organisations than suggested by its size and power. Yugoslavia's relations with the "capitalist" West, the "socialist" East and the "non-aligned" South were in the last period of its existence equally good, which enabled it to play an active diplomatic role. One of the favourable consequences for its citizens was the agreements abolishing visa requirements for their travel to many states.[3]

In accordance with the ideological wish to favour the working class, the last FRY Constitution of 1974 divided Yugoslavs into "working people" and "citizens": only the first category was entitled to all "self-managing rights". The system of socialist self-management, to which the 1974 Constitution devoted more space than to anything else, did not free the "working people" from the absolute rule of the party, but allowed them a share in the decision-making at the place of work. Nonconformist statements by ordinary "workers", even when they were directed at their superiors appointed by the League of Communists, did not as a rule result in severe consequences or criminal prosecution. However, the system strongly controlled the activity of the intellectual elite, which was also limited through state ownership of the media, publishing houses, film companies, theatres, universities and research institutions. Resistance by the intellectuals was suppressed by police measures and other drastic means, such as the

3 After the armed conflicts had erupted in Slovenia and Croatia, this circumstance enabled many SFRY citizens to find refuge abroad.

dismissal of university lecturers after the student protests in 1968. The infamous Article 133 of the Penal Code, making any statement which could "disturb the public" a punishable offence, was abolished only in 1988.

Even the faintest hint of an intention to establish political parties other than the League of Communists was dangerous. In their repression of persons who attempted to create political organisations, the authorities did not refrain from any means: "dissidents" were harassed and punished from the beginning to the end of the communist Yugoslavia. The freedom of non-political association was also severely limited: it was even formally dependant on the approval of the communist party, i.e. its transmission in the form of the National Front (later: the Socialist Alliance of the Working People), without the approval of which no registration of any "association of citizens" was possible. Elections were empty rituals. With the 1974 Constitution elections lost their formal meaning and ceased to be direct: a system of balloting for intermediate delegations was introduced instead, with the ordinary "working people and citizens" participating only at the lowest level. The names of prime ministers and other high elected officials were announced before the cumbersome electoral procedure had even started.

A description of the crisis which emerged in the SFRY and led to its disappearance is not a part of this Report. Nevertheless, the reader should bear in mind that in the twilight of the former Yugoslavia, and especially during the armed conflicts which erupted in 1991, fundamental human rights were seriously violated by all political actors, from those who alleged to be state organs to sundry criminal groups attempting to ennoble their deeds by posturing as fighters for the national interest or the liberation of some of the ethnic groups. Although rules of international humanitarian law had been faithfully reproduced in the SFRY Penal Code and in the field manuals of the army, no person suspected to have committed war crimes or crimes against humanity was until the end of 2000 criminally persecuted in any successor state of the SFRY, including the FRY.

In the time of the crisis and dissolution of the former federal state the decisive role in Serbia and Montenegro was played by local communist parties and their successors. In Serbia it was the Socialist party of Serbia (SPS) and in Montenegro the Democratic Party of Socialists (DPS). Although both parties have denied their ties to the communist past, there were until late 2000 few personalities in the upper echelons of both republics and the federation who before 1992 had not been officials of the League of Communists. The communist-indoctrinated Yugoslav People's Army (JNA) also changed its name and became the Army of Yugoslavia (VJ); the military forces were declared apolitical but the officer corps remained faithful to the communist-nationalist project and did not until the end of 2000 undergo any personal changes, except for the initial removal of many officers belonging to non-Serbian and non-Montenegrin nations and of some high ranking officers who fell into political disgrace.

The first signs of serious disagreements among former communists became visible only in 1996 in Montenegro and led to an open rupture in the ruling DPS. Its reformist wing, led by Milo Djukanović, emerged victorious: it gained power in Montenegro and entered into a coalition with Montenegrin opposition parties with a similar orientation. The disgruntled opponents of the new course established a new political party, the Socialist People's Party (SNP). The outcome of this conflict, and the resulting political changes in Montenegro, led quickly to a clash between the government of Montenegro, on the one side, and the government of Serbia and the federal government (which until 5 October 2000 still remained under the control of Slobodan Milošević and the parties supporting him), on the other. Voices in Montenegro demanding a referendum on its becoming an independent state have remained loud even after that date.

The power at the federal and the Serbian level were until October 2000 in the hands of a coalition of three Serbian political parties. Two of them (the Socialist Party of Serbia – SPS and the Yugoslav Left – JUL) claim to be on the political Left, while the third (the Serb Radical Party – SRS) speaks and acts as a party of the

extreme right wing. At the federal level, these parties were joined by the Montenegrin SNP, which even provided the Prime Minister, Momir Bulatović. The governing coalition in Montenegro does not throughout 2000 recognise the federal government.

The turning point for democracy and human rights in the post World War II history of Yugoslavia came in September and October 2000. For reasons that still remain unclear, then President of FRY, Slobodan Milošević, decided in July the FRY Constitution amended through the rubber stamp Federal Assembly. This was vigorously protested by the government and the ruling parties in Montenegro, but the constitutional changes were formally enacted and federal elections called for 24 September 2000. The most important amendments introduced the election of President and members of the upper house of the Parliament (the Council of Republics) by direct popular vote.

As the most serious opponent of Milošević and the political parties supporting him emerged a coalition of eighteen Serbian parties, under the name of Democratic Opposition of Serbia (DOS). The candidate of DOS coalition for the President of FRY was Dr. Vojislav Koštunica, president of the Democratic Party of Serbia (DSS). The federal elections were boycotted by the ruling parties in Montenegro; the Montenegrin government also appealed to the voters not to take part in the elections referring to the illegitimacy of the constitutional changes, effected without the participation of the legitimate representatives of Montenegro. The voter turnout in Montenegro was low.

Boycott in Montenegro did not influence much the outcome of the presidential election because of the small percentage of Montenegrin voters in the total electoral body. As had been consistently predicted by pollsters, the DOS candidate defeated his principal opponent, Slobodan Milošević. Surprising was only Koštunica's victory in the first round. However, the low turnout of the voters in Montenegro resulted in that republic being represented in the federal parliament only by candidates of SNP and similar small Montenegrin parties, all close to Milošević.

The outcome of the September residential elections did not remove deep doubts and anxieties. Namely, whereas the result of the

elections has been foreseeable, it was not certain that Milošević and the supporting power structure were willing to concede defeat and allow the winners to govern. As expected, they offered stiff resistance, using, as in former occasions, all means at their disposal. Besides aggressive propaganda through government controlled media, replete with threats and insults, the stage was again taken by corrupt electoral commissions and malleable courts, attempting at all costs to forge the results of the elections, to repeat, and ultimately to annul the elections.[4]

Massive attempts at manipulation of the electoral will increased general popular dissatisfaction, leading to strikes and massive demonstrations in Serbia which cultivated on 5 October, when demonstrators flooded the squares and streets of Belgrade and took the building of the Federal Assembly and Radio Television of Serbia, the hotbed of vicious official propaganda. After attempts at armed intervention, the policy and army abandoned the use of force against citizens so that Milošević had eventually to concede defeat.

Municipal elections in Serbia were held on the same day, as well as the elections for the Provincial Assembly of Vojvodina. They were also won by the opposition to the Milošević regime, which had already been installed in many municipalities after the 1996 elections and the ensuing protests in 1997. The difference was that the Serbian Renewal Party (SPO) remained outside DOS and run alone at both the federal and local Serbian level and was convincingly defeated. The scope of the landslide was so impressive that after the elections the representatives of DOS were chosen as municipal officials even in those municipalities where the former ruling coalition (SPS, JUL, SRS) won the majority of councillors.

Vojislav Koštunica thus became the unchallenged head of state but in the Federal Assembly DOS had to make compromises with the Montenegrin SNP, which obtained a number of seats in the federal government, including that of prime minister.[5]

4 More in I.4.13

5 Usage demands that the federal President and prime minister not be from the same republic.

Given the competencies of the federation and the constituent republics, the victory of DOS and the change of the whole political system were not accomplished without decisive changes in Serbia. Changes started cautiously through the temporary agreement between the old and the new forces, exemplified by the transitional government of Serbia, composed of ministers from DOS, SPS and SPO. Such a government could not have effected much so that real changes had to be postponed after the parliamentary elections in Serbia, which took place on 23 December 2000 and resulted in an impressive victory for DOS, which won 176 of the 250 seats in the Assembly of Serbia. However, until the end of 2000 the Assembly did not meet due to numerous and repeated lawsuits initiated by SRS, a member of the previous ruling coalition. At the very beginning of 2001 the claims of the Radicals were rejected and the Assembly was able to proceed.

The majority of political parties in the FRY have verbally supported human rights. However, since the beginning of the conflict in the former SFRY they have been burdened by the desire to present and legitimise themselves predominantly as nationalists and patriots. Consequently, collective rights of their nation have been paramount in their considerations: their attainment has been treated as the prerequisite for the enjoyment of the individual rights of its members. This applies also to the political parties of national minorities. Their main aim has been the right to self-determination, which should lead to independence (Albanian parties) or to broad autonomy, territorial or personal (parties of other minorities). As in other European countries in transition, the inability of most political parties to recruit members belonging to both majority or minority ethnic groups has impoverished political life.

Unlike most other states that have emerged on the territory of former Yugoslavia, the FRY has remained pointedly non-homogenous in terms of the ethnicity of its citizens. The results of the latest census (1991) showed that the FRY then had 10,394,026 inhabitants, of whom only 7,023,814 were Serbs and Montenegrins (67.5%), while the rest were Albanians, Hungarians, Moslems, Roma, Slovaks and members

of other ethnic groups. The prevalent official Serb nationalist rhetoric has alienated a third of the population of the FRY and has weakened their civic motivation, which in turn has led the authorities and the ruling parties to express their strong doubts in the loyalty of citizens belonging to national minorities. The vicious circle of mistrust has thus been completed.

Respect for human rights, and especially of economic and social rights, has been eroded by the difficult economic situation in the country. By decision of the UN Security Council the FRY was struck by economic sanctions almost immediately after its creation. This measure was justified by the involvement of the organs of the Yugoslav state in the war in B&H. Together with the war, sanctions have contributed to the criminalisation of the Yugoslav society.

Until the end of 2000 the new authorities were not able to decisively alter the attitudes towards the respect of human rights in Serbia, and in Yugoslavia in general. Legislative change was cumbersome due to the balance of political forces in the federal parliament and the impossibility to have parliamentary elections in Serbia before late December. Some advances were made, however, by simply disregarding some of the worst pieces of legislation, to which contributed the long awaited reactivation of constitutional courts, so that finally some of the blatantly unconstitutional provisions were stricken.[6]

The most conspicuous advance was made at the international level. FRY abandoned its futile insistence on international identity with the former SFRY and was admitted to the United Nations and some specialised agencies. Yugoslavia also returned to the Organisation for Reopen Security and Co-Operation (OSCE). The application of FRY to be admitted to the Council of Europe is seriously being considered and Yugoslav parliamentarians are again special guests of the Parliamentary Assembly of the Council.

6 See e.g-the Decision on the evaluation of the constitutionality of Art. 191. para 2.3 and 4, Art. 196, Art. 210, para. 1 and Art. 417 of the Code of Criminal Procedure, *Sl. list SRJ*, No. 71/2000.

Finally, the civil society, which in Serbia survived almost clandestinely, facing enormous obstacles and difficulties, has been functioning in Serbia under much more favourable circumstances. Non-governmental organisations in the field of human rights do not have to suffer police harassment and the application of repressive legislation and can count on open support of governmental and non-governmental international organisations and to entertain transparent relations with the latter.

I
LEGAL PROVISIONS RELATED TO HUMAN RIGHTS

1. Human Rights in the Legal System of the FR Yugoslavia

1.1 Introduction

The present report discusses Yugoslav legislation in relation to standards for the protection of civil and political rights guaranteed by international treaties binding the FRY. The analysis focuses on the compatibility of Yugoslav legislation with those rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), as the main international instrument in this field. Other standards established by international treaties that deal in more detail with specific human rights (e.g. the UN Convention against Torture and the Convention on the Rights of the Child) are also taken into account.

This analysis of Yugoslav legislation also considers, to a certain extent, the standards contained in the European Convention on Human Rights and Fundamental Freedoms (ECHR). It is the hope of the Belgrade Centre for Human Rights that FRY will become a member of the Council of Europe and that it will ratify the Convention.[7]

7 At a meeting of the foreign ministers of 41 member – states of the Council of Europe, FRY expressed the wish to accede to the organisation. ‹http://press.coe.press›.

However, it must first harmonise its legislation and practice with the ECHR standards. This report, therefore, should represent an initial step in an analysis of the compatibility of Yugoslav legislation with the standards embodied in the ECHR.

The report deals with all Yugoslav legislation (federal and republic) relevant to each right that is reviewed (constitutions, laws and other regulations). Of course, it goes beyond the actual legislative texts to include also their judicial interpretation (if applicable). The following elements were used to evaluate the compatibility of Yugoslav legislation with international standards:

a) whether a particular right is guaranteed at all;

b) if the answer to the above question is positive, what the actual formulation is and does it differ from that contained in the ICCPR (ECHR);

c) whether guarantees of a certain right provided by Yugoslav legislation and their interpretation by state authorities ensure the same scope and content of the right in question as the ICCPR (ECHR);

d) whether restrictions of a right in question envisaged by Yugoslav legislation correspond to those allowed by the ICCPR (ECHR);

e) whether or not effective legal remedies exist for the protection of the right in question.

Prepared in the course of 2000, the report considers legislation that was in force on 31 December 2000.

1.2. Constitutional Provisions on Human Rights

According to the Constitution adopted on 27 April 1992, the Federal Republic of Yugoslavia (FRY) is a federal state based on the equality of citizens and of its constituent republics, Serbia and Montenegro (Art. 1 of the FRY Constitution). The rule of law and separation of powers are principles proclaimed by the Constitution (Art. 9 and Art. 12). The FRY Constitution and the constitutions of the

republics have separate chapters on human rights and fundamental freedoms (chapter II of the FRY Constitution; chapter II of Republic of Serbia (RS) Constitution; part II of Republic of Montenegro (RM) Constitution). Besides the civil and political rights that will be discussed in this report, the Constitution also provides guarantees of economic, social and cultural rights, such as the right to work, the right to social security and health protection and the right to education. According to its Constitution, the FRY "shall recognise and guarantee the rights and freedoms recognised under international law" (Art. 10).

The exercise of human rights and freedoms is based directly on the FRY Constitution. However, those freedoms and rights are restricted by "the equal rights and freedoms of others and in instances provided for in the present Constitution" (Art. 9, para. 3), as well as by the manner of their implementation prescribed by law (Art. 67, para. 2 – see also I.3.1.1).

A number of laws inherited from the Socialist Federal Republic of Yugoslavia (SFRY), which are still in force, are not in conformity with the FRY Constitution. The Constitutional Act for the Implementation of the FRY Constitution (*Sl. list SRJ*, No. 1/92) prescribes that the FRY Constitution shall be implemented as of the date of its promulgation, unless the said Act provides otherwise in specific cases (Art. 1). According to the Constitutional Act, all federal statutes that have not been explicitly abolished shall continue to be in force "until they are harmonised with the Constitution, within the time frame determined by the present Act..." (Art. 12). Deadlines for the harmonisation of these laws have been extended several times and many laws have not been brought into conformity with the Constitution although eight years have passed since its promulgation. This could have produce grave consequences in the field of human rights, since the laws of the former SFRY indirectly restrict the present constitutional rights.

1.3. International Human Rights and the FR Yugoslavia

International human rights treaties that the Socialist Federal Republic of Yugoslavia (SFRY) had ratified are binding on the FRY. The Preamble of the FRY Constitution speaks about the "unbroken

continuity of Yugoslavia" proclaiming, hence, the internal continuity of the SFRY. The Federal Assembly made a statement that it would abide by all the international commitments of the former SFRY[8]. According to the interpretation of the Human Rights Committee, all states created after the break-up of the SFRY would in any case be bound by the International Covenant on Civil and Political Rights since, once the Covenant was ratified, the rights enshrined in the treaty belong to the persons living in the territory of the state party, regardless of the fact that a state party dissolved into several states.[9]

Under to the FRY Constitution, ratified international treaties form an integral part of the internal legal system and as such are a segment of the federal law. In the legislative hierarchy, international treaties are on a higher level than both the federal and the republic laws[10]. Hence the conclusion that only the provisions of the FRY Constitution are of a higher legal "power" than ratified international treaties. In addition to international treaties, customary international law is also part of the Yugoslav legal system (Art. 16 the FRY

8 "The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally". Quoted in: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (B&H vs. Yugoslavia)*, ICJ, Judgement of 11 July 1996.

9 "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 the territory and continues to belong to them, notwithstanding change in government of the state party, *including dismemberment in more than one state*" (italics added). See para. 4 of the General Comment No. 26(61) on the issues related to the continuity of obligations under the Covenant on Civil and Political Rights, *Human Rights Committee*, UN Doc. CCPR/C/21/Rev.1/Add.8/Rev.1, 8 December 1997.

10 According to the FRY Constitution, the Federal Constitutional Court decides on "conformity of statutes, other laws and general prescriptions with the *Constitution and with ratified and promulgated international treaties* (italics added, Art. 124, para. 1, line 2). It is therefore clear that all laws, including federal, must be compatible with international treaties. In addition the Constitution determines that the FRY implements international treaties that it has ratified in good faith" (Art. 16, para. 1).

Constitution). In practice, however, state authorities and courts paid scant attention to the provisions of international human rights treaties.

The former SFRY ratified all the major universal human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and other Cruel, Inhuman or Degrading Punishment or Treatment, etc. (see Appendix 1 for the list of major international human rights treaties ratified by the SFRY).

The SFRY signed, but never ratified, the Optional Protocol to the International Covenant on Civil and Political Rights, nor has it been ratified as yet by the FRY. However, the SFRY recognised the right of individuals to submit petitions to the Committee Against Torture on the basis of Article 22, and the possibility for submission of interstate petitions on the basis of Article 21 of the Convention against Torture and other Cruel, Inhuman or Degrading Punishment or Treatment, which is also binding on the FRY. The RM Constitution provides for the right of all persons to "approach international institutions for the purpose of the protection of individual rights and freedoms guaranteed by the Constitution" (Art. 44, para. 2), but the enforcement of this right depends first and foremost on the readiness of the federal state to ratify the Optional Protocol.

Considering a report on relations between the FRY and the Council of Europe, the Federal Government noted Yugoslavia's interest in becoming a member of the Council. It will propose to the Federal Assembly to speed up the ratification of Council of Europe instruments and, on behalf of the Federal Government, the Minister of Foreign Affairs will submit a request to the Council Secretary for the admission of FRY in accordance with the customary procedure.[11]

11 Federal Government statement of 7 November 2000, ‹http://www.gov.yu/institucije/saopstenja/2000/00saop0711.html›.

2. The Right to Effective Remedy for Human Rights Violations

Article 2, para. 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 person 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 FRY Constitution prescribes that "the rights and freedoms recognised and guaranteed by the present Constitution shall enjoy the protection of the courts" (Art. 67, para. 4). The Serbian Constitution contains similar provisions (Art. 12, para. 4). The Constitution of Montenegro guarantees (Art. 17) the right to the protection of rights in a "procedure established by law", which may suggest that judicial protection is not ensured in all circumstances. Nevertheless, judicial protection in Montenegro is eventually secured through the constitutional appeal to the Constitutional Court of Montenegro, if some other requirements are met.

Parties to judicial proceedings and courts in Yugoslavia seldom invoke international treaties, although they have the same legal force as federal statutes (see I.1.). However, the right to effective remedy

does not necessarily require that victims of violations of human rights guaranteed by an international treaty can directly invoke such a treaty before domestic courts. It is enough that the victim's claim in essence corresponds to a right guaranteed by an international treaty.[12]

In cases of human rights violations, protection can be sought either in civil or in criminal judicial proceedings, or through the administrative procedure. The victim's choice between the above possibilities does not depend solely on the actual right that has been violated, but also on the manner in which the violation occurred and on the kind of compensation sought. Specific remedies are discussed in chapters dealing with concrete rights.

While in some cases criminal proceedings may be initiated by private action, for most criminal offences action by the public prosecutor is required. In the latter case, only if the prosecutor is of the view that there are no grounds for criminal prosecution may a victim pursue the matter on his/her own initiative (Art. 60 of the Criminal Procedure Act – CPA). In practice, public prosecutors often failed to initiate criminal proceedings for human rights violations committed by state authorities, thereby preventing victims from proceeding with their cases. This was particularly true when serious human rights violations occurred, for example, when the police resorted to torture or inhuman treatment in order to extract confessions. Also, prosecutors frequently failed to inform the victim that the matter would not be prosecuted, although a notice to that effect should be served within eight days of a decision to discontinue prosecution (Art. 60, para. 1 CPA). As a result, a victim may be deprived of the possibility to initiate criminal proceedings, since he/she must act within a period of three months of the date when the prosecutor dismisses a criminal complaint or decides to discontinue prosecution, whether or not he/she is notified of the prosecutor's decision (Art. 60, para. 4 CPA).

12 See, e.g., judgements of the European Court in *Soering vs. United Kingdom*, A 161, 1989, para. 120 and *Vilvarajah vs. United Kingdom*, A 215, 1991, para. 122.

The effectiveness of legal remedies for human rights violations in the FR Yugoslavia was in recent years reduced in practice by the state authorities' non-compliance with constitutional and other legal norms: 1) prosecutors often delayed criminal proceedings in cases of human rights violations, thereby preventing victims from using adequate legal remedies; 2) the judiciary was under the strong influence of the executive branch and courts were seldom prepared to deliver a judgement against the state or state officials and to provide compensation to victims – this was particularly true if human rights were violated by members of the police force; 3) there was evidence that court proceedings were deliberately delayed in cases when victims of human rights violations pressed charges; 4) there were serious problems with and delays in the enforcement of court decisions.

Following the changes in the 24 September – 5 October 2000 period, no cases were registered of the institution of criminal proceedings or handing down of judicial decisions that would mark a definitive break with the hitherto practice of delay, failure to initiate proceedings or to enforce court decisions.

2.2. Constitutional Appeal

The constitutional appeal is a special legal remedy, introduced by the 1992 FRY Constitution. The Constitution of Montenegro also provides for this remedy. A constitutional appeal may be lodged with the Federal Constitutional Court (Constitutional Court of Montenegro) in cases of "a ruling or action violating the rights and freedoms of a man and the citizen enshrined in the present Constitution" (Art. 124, para. 1, line 6 of the FRY Constitution; Art. 113, para. 1, line 4 of RM Constitution). A constitutional appeal cannot be filed for human rights violations caused by general legal acts (laws, decrees, etc.), even if such acts, by virtue of their existence, represent a direct violation of constitutionally guaranteed human rights. The only way to challenge such legislation is to initiate proceedings for the evaluation of their

compatibility with the Constitution and other laws, an initiative that the Constitutional Court may or may not accept at its own discretion (Art. 127 of the FRY Constitution).

Articles 19 to 66 of the Constitution enumerate human rights that can be protected by constitutional appeal. They include human rights guaranteed by international treaties that the FRY has ratified or those that in accordance with Article 10 of the FRY Constitution are "recognised and guaranteed" on the basis of international law, and which, pursuant to Article 16 of the Constitution, are part of the internal legal system as generally accepted rules of international law. A constitutional appeal may be lodged with the Constitutional Court of Montenegro only when "such protection is not within the competence of the Federal Constitutional Court" (Art. 13, para. 1, line 4 of RM Constitution). However, the Constitutional Court of Montenegro has never clarified this provision, and it has not created, so far, obstacles for those wishing to file constitutional appeals.[13]

A constitutional appeal can be lodged only by persons whose rights have been violated, by a federal agency in charge of human and minority rights (on its own initiative or on behalf of a victim), as well as by non-governmental organisations for human rights protection on behalf of a person whose rights have been violated (Art. 37 of the Federal Constitutional Court Act, *Sl. list SRJ*, No. 36/92). The state agency in charge of human rights has never filed a constitutional appeal. As far as non-governmental organisations are concerned, the

13 One possible interpretation would be that constitutional appeal can be lodged with the Constitutional Court of Montenegro only for violations of human rights that are not guaranteed by the Federal Constitution or by international treaties, but which are guaranteed by the Constitution of Montenegro. There are few rights guaranteed by the Constitution of Montenegro which are not mentioned in the Federal Constitution, e.g. the right to a healthy environment (Art. 19), the right to participate in regional and international non-governmental organisations (Art. 44, para. 1), the right to approach international institutions for the protection of constitutional human rights (Art. 44, para. 2), and the right of members of national and ethnic groups to proportional representation in public services and state organs (Art. 73).

Court has had, so far, a restrictive approach in interpreting their right to file constitutional appeals on behalf of individuals concerned. The Court held that non-governmental organisations can file an appeal only upon the request of a victim (decisions No. U 1/95 of 22 February 1995 and 2/95 of 11 October 1995, *Odluke i rešenja SUS*, 1995, p. 245–246 and 261–262). Such interpretation renders the authority of non-governmental organisations to file constitutional appeals meaningless: they (their lawyers) can file a constitutional appeal anyway as legal representatives of a person whose rights were violated (Art. 20, para. 1 of the Federal Constitutional Court Act). It should also be noted that a person filing a constitutional appeal could remain anonymous, i.e. unknown to the public, a prospect which may discourage some of the potential appellants.

The most controversial is the provision stating that a constitutional appeal can be filed only "when other legal remedies are not available" (Art. 128 the FRY Constitution). Although some authors have held the view that this provision should be understood to mean that prior to the filing of a constitutional appeal all other legal remedies should be exhausted, the Constitutional Court held that constitutional appeal was available only if in a given case no other legal protection existed in law, from the very outset:

> ...a discontented party can challenge the final decision of the Republic Labour Exchange Bureau through the administrative litigation before the Supreme Court of Serbia. (...) The Court established that the person who filed the constitutional appeal had at his disposal other means of legal protection before the competent regular court *which he had used*. (...) For those reasons ... the Court ... decided to reject the constitutional appeal (italics added; No. Už 10/95 of 10 May 1995, *Odluke i rešenja SUS*, 1995, p. 256. See also decisions No. Už 19/95 and 21/95, *ibid*, p. 259 and 265).

The Court thus reduced the constitutional appeal to a theoretical legal remedy, since the Yugoslav legal system formally provides remedies for protection against almost all types of human rights violations.

Similarly, the Montenegrin Constitution envisages that a constitutional appeal may be filed with the Constitutional Court only when "other legal remedies are not available." In the practice of the Montenegrin Constitutional Court, the provision was interpreted in the same way as at the federal level – that a constitutional appeal is supposedly admissible only when no judicial protection exists, and not when all legal remedies have been exhausted (see e.g. the decision of the Constitutional Court of Montenegro No. U. 62/94 of 15 September 1994).

The Federal Constitutional Court and the Constitutional Court of Montenegro do not take into consideration whether a certain form of legal protection is effective or not. The only important issue for the two courts is that legal protection is available *per se*, even if it is a mere formality. For example, the Federal Constitutional Court rejected a constitutional appeal in the case of the failure of the administration to act, both in the first instance and upon the subsequent complaint, in proceedings to obtain approval for the sale of real estate. The Court held that remedies were available, that is to say, that an appeal to a higher authority had been filed. The fact that the constitutional appeal was filed precisely because that higher organ failed to act was disregarded.[14]

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

14 See V. Djurić, *Ustavna žalba,* Belgrade Centre for Human Rights, 2000.

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. Restrictions

3.1.1. General Restrictions

According to the Yugoslav constitutions, the general basis for the restrictions of human and civil rights are the rights and freedoms of other persons (Art. 9, para. 4 the FRY Constitution; Art. 11 RS Constitution; Art. 16, para. 2 RM Constitution), and the prohibition to abuse such rights (Art. 67, para. 3 the FRY Constitution; Art. 12, para. 3 RS Constitution, Art. 16, para. 3 RM Constitution). Constitutions do not provide more details on this issue. Also, it has been impossible so far to develop an adequate interpretation of these provisions in jurisprudence of courts.

All constitutions in the FRY contain similar general provisions dealing with the "exercise" of human rights (the FRY Constitution Art. 67, para. 2; RS Constitution Art. 12, para. 1 and para. 2; RM Constitution Art. 12, para. 1, line 1). According to Article 67, para. 2 of the FRY Constitution:

The manner in which various rights and freedoms of a man and the citizen are to be exercised may be prescribed by law when so

provided for by the Constitution or when necessary for their implementation.

Therefore, the manner in which some freedoms and rights are to be exercised can be prescribed by law in two cases: 1) when so provided by the Constitution, and 2) when necessary for the implementation of those freedoms and rights. In the first situation the Constitution itself determines that law shall prescribe the manner in which certain rights will be exercised. This does not necessarily mean that these rights will be restricted, although a possibility to limit the scope of application of the right in question exists (see e.g. I.4.7. regarding "conscientious objection"). In spite of the fact that the wording in the Constitution is "the manner of the exercise" and not restrictions, it is safe to say that this provision implies inherent restrictions (restrictions *per definitionem*) that correspond to the nature of the right in question. Secondly, this provision implies the recognition of a position that some of the rights are considered to be non-self-executing and that the Constitution as such can point to that when it determines that the manner in which those rights will be exercised shall be prescribed by law.

The second situation provides opportunities to prescribe the manner in which human rights will be exercised *if that is necessary for their implementation*. This provision also speaks about human rights that cannot be directly implemented and authorises the parliament to decide through law how they should be implemented. However, the difference between this and the first hypothesis is that the Constitution does not determine which rights can be directly implemented and which cannot, and leaves this to the discretion of the legislator. This may result in an abuse of authority and in restrictions of rights through ordinary laws. So far, neither the parliament nor the courts have offered an interpretation as to which rights are considered to be self-executing and which are not. This provision may be in collision with the provision of Article 67, para. 1 of the FRY Constitution, which emphasises that the rights and freedoms shall be exercised "in conformity with the Constitution".

3.1.2. Optional Restrictions

Constitutions provide for optional restrictions and define them. In this connection, the Constitution of Serbia explicitly states that human rights may also be restricted when "the Constitution determines so" (Art. 11 RS Constitution). Although the constitutions of the FRY and Montenegro do not contain explicit provisions concerning possibilities for constitutional human rights restrictions, both documents prescribe certain human rights restrictions in articles dealing with specific rights. For example, the FRY Constitution has a provision stating that the freedom of peaceful assembly may be restricted by a decision of the competent authorities "in order to obviate a threat to public health and morals or for the protection of safety of human life and property" (Art. 40, para. 2). Similarly, the freedom of movement may be restricted by federal statute "if so needed for criminal proceedings, the prevention of contagious diseases or for the defence of the FRY." (Art. 30, para. 2).

As far as human rights restrictions are concerned, the Yugoslav legal system does not accept the principle of proportionality. Yugoslav jurisprudence does not recognise it either. In considering human rights restrictions, lawyers in Yugoslavia are not accustomed to seeking a balance between the common (public) interest that would justify human rights restrictions and the underlying interest behind a specific human right in question.

3.2. Derogation in ''Time of Public Emergency''

3.2.1. General

The FRY and RS constitutions provide for the derogation of certain guaranteed human rights during the state of war. Both constitutions use the rather clumsy term "restriction" for actual derogation (suspension). That may create some confusion. The Constitution of

Montenegro does not prescribe that human rights guaranteed by that act may be derogated in emergency situations.

There are evident discrepancies between the FRY and RS constitutions. Namely, the question is how some rights can be derogated pursuant to the Serbian Constitution when the proclamation of a state of war is, according to the Federal Constitution, the exclusive prerogative of the Federal Assembly or the Federal Government (Art. 77, para. 1, line 7, Art. 78 and Art. 99, para. 1, line 10). Furthermore, since the Federal Constitution contains a complete list of human rights, derogation based on the Serbian Constitution would not make any sense in view of the fact that those rights would in any case guaranteed by the Federal Constitution. However, it should be understood that the Serbian Constitution was written as a constitution of an independent state, which creates serious problems for the enforcement of the Federal Constitution. There is, therefore, always a possibility to invoke the Serbian Constitution to justify for human rights derogation during a state of war.

3.2.2. Derogation during a State of War[15]

According to the FRY Constitution, it is within the jurisdiction of the Federal Assembly to proclaim a state of war, a state of imminent threat of war and state of emergency (Art. 78, para. 3). When the Federal Assembly is unable to convene, the Federal Government is authorised to approve the derogation after having sought the opinion of the President of the Republic and the speakers of the Assembly chambers (Art. 99, para. 1, lines 10 and 11). If the Federal Assembly is not able to meet, the Federal Government is also authorised, applying the above procedure, to adopt legislation concerning issues that are within the jurisdiction of the Federal Assembly. However, the Government may adopt acts derogating certain human rights only during a

15 For more details on decrees that restricted certain rights and freedoms during the state of war in FRY in 1999, see *Human Rights in Yugoslavia 1999*, I.3.2.4.

state of war (but not at the time of an imminent threat of war or state of emergency).

> Enactments adopted during a state of war may throughout the duration of the state of war restrict various rights and freedoms of man and 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 Assembly for those measures as soon as it is able to convene. (Art. 99, para. 1, line 11 of the FRY Constitution).

This implies that the Federal Assembly, if able to convene – and not the Government – is the body authorised to adopt legislation derogating certain human rights during the state of war.

The Constitution of Serbia contains similar language. However, the President of Serbia is empowered, when the People's Assembly cannot be convened, to declare a state of war after having sought the opinion of the Prime Minister (Art. 83, para. 1, line 6 of RS Constitution). The President of Serbia can issue acts, independently or proposed by the Government, which derogate certain human rights. The President should submit those acts to the People's Assembly for approval once it can be convened (id. line 7). In fact, it appears that on this issue the RS Constitution contradicts the FRY Constitution, according to which the declaration of the state of war, imminent threat of war and state of emergency is exclusively within the federal jurisdiction. Provisions in both the FRY and the RS constitutions requiring that legislation by which certain human rights are being derogated should be submitted to the federal and assemblies, respectively for approval as soon as they can meet, is in line with the OSCE standards in this field (*Documents of the Moscow Meeting of CSCE on Human Dimension*, 1991, para. 28.2.)[16].

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

Derogation of certain human rights during the state of war, as prescribed by the Federal and the Serbian constitutions, is in accordance with the obligation under Article 4 of the International Covenant on Civil and Political Rights, which states that a derogation can be declared "in time of public emergency which threatens the life of the nation". However, the said constitutional provisions are even more liberal since they limit the authority to proclaim a derogation to the state of war only, while Article 4 of the Covenant allows a derogation to be declared in other emergency situations as well. It is clear from the Constitution that a state of war must be formally declared, which is also in accordance with the Covenant.

Neither constitution prescribes that derogation measures during a state of war should be proportionate to the danger for the state, i.e. "to the extent strictly required by the exigencies of the situation" (Art. 4 ICCPR, *Documents of the Moscow Meeting of CSCE on Human Dimension*, 1991, para. 28.7.). The Yugoslav legal system does not accept the principle of proportionality concerning human rights restrictions. Therefore, the federal and republic authorities may use this omission to fully suspend certain human rights during a state of war, whether or not that would be justified and commensurate to the actual danger to the state.

The Constitution of Serbia does not have any provision enumerating the rights that may not be derogated during the state of war. That could lead to violations of Article 4, para. 1 and para. 2 of the Covenant. Since full discretionary rights of the President of the Republic in this respect have been recognised (Art. 83, line 7). All rights can be abolished during the state of war.

On the other hand, the Federal Constitution states that some rights may not be derogated during a state of war. However, the rights in question (Art. 99 the FRY Constitution) are not exactly the same as those listed in the Covenant. In accordance with the Covenant, the Federal Constitution prescribes that derogation measures must not invalidate the prohibition of discrimination based on race, sex, language, religion or social origin. The FRY Constitution prohibits dis-

crimination based on other elements as well, such as political and other beliefs, education, property and other personal status (Art. 20). Furthermore, derogation of the prohibition of torture is not allowed (Art. 22, para. 1 and Art. 25), as well as the derogation of the principle of legality in criminal law (Art. 27) and of the freedom of conscience (Art. 35 and Art. 43).

However, the main defect of the FRY Constitution in this respect is the fact that the prohibition of the derogation of the right to life is not mentioned at all. (Art. 6 ICCRP, Art. 21 the FRY Constitution). This right has been omitted from the list of non-derogable rights! Also, the Constitution does not mention as non-derogable rights the prohibition of slavery and servitude (Art. 8 ICCPR), the prohibition of detention on the ground of inability to fulfil a contractual obligation (Art. 11 ICCPR) and the right to the recognition of legal personality (Art. 16 ICCPR), since these rights are not explicitly guaranteed by the Constitution. Nevertheless, the Federal Constitution acknowledges some other rights as non-derogable, not listed in the Covenant, such as the right to privacy, personal rights and the right to personal dignity and security (Art. 22), the right to equal legal protection, including the right of appeal (Art. 26), *ne bis in idem* (Art. 28), the right to fair trail (Art. 29) and the freedom of expression (Art. 35).

3.2.3. State of Emergency

The FRY Constitution does not provide for the derogation of rights during a state of emergency or a state of imminent threat of war. The same applies for the Constitution of Serbia. Nevertheless, the Serbian State of Emergency Act (*Sl. glasnik RS,* No. 19/91) prescribes that the President of the Republic of Serbia, who can declare a state of emergency on the basis of a government proposal, can issue orders and other acts in order to eliminate such a situation. For that purpose the President may: "establish a labour obligation; restrict the freedom of movement and residence; restrict the right to strike, the freedom of assembly and of other gatherings; restrict the freedom of political,

trade union and other activities" (Art. 6, para. 1 of the State of Emergency Act).

As already mentioned, the Serbian Constitution explicitly authorises the President of the Republic to issue, during a state of war, acts that restrict rights and freedoms (Art. 83, line 7 RS Constitution). On the other hand, during a state of emergency the President can issue acts "in order to take measures required by such circumstances state of emergency, in accordance with the Constitution and law". Restrictions of human rights are not mentioned. If an explicit constitutional authorisation is necessary to restrict human rights at the time of the ultimate threat to the nation – the state of war – it is then impossible to interpret the lack of such authorisation at the time when the threat is less imminent – during a state of emergency – as an authorisation for decisions to restrict human rights. Therefore, the provision of Article 6, paragraph 1 of the State of Emergency Act of the Republic of Serbia is probably unconstitutional. The State of Emergency Act is contrary to the Constitution of Serbia, which itself is, as far as that part is concerned and as already mentioned, contrary to the FRY Constitution, the latter confirming the exclusive jurisdiction of the Federation to declare a state of emergency.

According to the Serbian State of Emergency Act, derogation of rights is not subject to parliamentary ratification, which is not in conformity with the OSCE standards (*Documents of the Moscow Meeting of CSCE on Human Dimension*, 1991, para. 28.2.).

While during the state of war certain human rights may be restricted, the Constitution of Serbia prescribes that at during a state of emergency measures may be taken which are "required by such circumstances" (Art. 83, para. 8 of RS Constitution). In addition, the State of Emergency Act introduces a sort of proportionality – the objective of the measures adopted during a state of emergency is to "ensure the elimination of the state of emergency as soon as possible, with as little negative consequences as possible" (Art. 2, italics added). The list of those rights that may be restricted is in conformity with Article 4, para. 2 of the Covenant.

4. INDIVIDUAL RIGHTS

4.1. Prohibition of Discrimination

Article 2, para. 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

Besides the relevant provisions of the International Covenant on Civil and Political Rights, the FR Yugoslavia is, in terms of the prohibition of discrimination, also bound by the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the ILO 1958 Discrimination (Employment and Occupation) Convention (No. 111), and the UNESCO Convention against Discrimination in Education.

The three constitutions in Yugoslavia contain provisions on the prohibition of discrimination: the FRY Constitution (Art. 20), the RS

Constitution (Art. 13), and the RM Constitution (Art. 15). The most comprehensive are the provisions of the FRY Constitution:

> Citizens shall be equal irrespective of their nationality, race, sex, language, religion, political or other beliefs, education, social origin, property, or other personal status.
>
> 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 above provisions differ substantially from the obligation of the FRY on the basis of Article 26 ICCPR. On the one hand, the FRY Constitution guarantees in the same manner as the first part of Article 26 ICCPR that everyone shall be equal "before the law" (*devant la loi*), meaning that laws apply to all persons in the same manner. However, the FRY Constitution, as well as the republic constitutions, guarantee only to FRY nationals the right to "equal protection of the law" (*une egale protection de la loi*), the right which is also based on Art. 26 of the Covenant. The right to equal protection of the law has two aspects: the prohibition of discrimination through laws and other regulations and the obligation to provide equal and effective legal protection against every form of discrimination. A literal interpretation of Article 20 of the FRY Constitution leads to the conclusion that foreigners, refugees and persons without nationality who find themselves on the territory of Yugoslavia can be subjected to discrimination through law. In this connection it is also worth noting the provision of the FRY Constitution stipulating that "Aliens (in the FRY) shall enjoy the freedoms and the rights and duties laid down in the Constitution, federal law, and international treaties" (Art. 66, para. 1). Hence, foreigners in the FRY can only invoke the provisions of the Covenant and other international treaties that are binding on the FRY in order to seek protection against discrimination. Although international treaties are, according to Article 16 of the Constitution, higher in the FRY legal hierarchy than domestic laws, the Yugoslav courts have not taken into account international treaties, especially not human rights treaties.

Therefore, the constitutional protection against discrimination remains vague and precarious.

Unlike the Covenant (Art. 2, para. 1), the FRY Constitution does not contain a provision that would specifically prohibit discrimination with regard to the rights guaranteed by the Covenant. Article 13 of the Constitution of Serbia provides for such a protection, but only to nationals, while the Covenant guarantees this right to all persons (e.g. freedom of association and assembly, see I.4.9. and I.4.10).

The types of discrimination described in Article 20 of the FRY Constitution are the same as those described in relevant international instruments. The FRY Constitution also includes as a basis of discrimination "other personal status", therefore leaving possibilities for the prohibition of other forms of discrimination that are not specifically mentioned. ICCPR and ICESCR contain the same language.

The Constitution of Montenegro has an original feature concerning the definition of discrimination (Art. 15). Unlike other domestic or international documents this provision does not list specific forms of discrimination:

> Citizens are free and equal, regardless of any specificity or personal status.
>
> Everyone is equal before the law.

The fact that the Constitution of Montenegro does not list the usual forms of discrimination and instead prohibits differentiation based on any "specificity or personal status" could open space for a broader interpretation of discrimination. That could provide a possibility to cover new forms of discrimination if they emerge. The Constitutional Court of Montenegro has not had, so far, an opportunity to give an interpretation of this provision.

The Constitution of Serbia (Art. 13) contains the following provision on the prohibition of discrimination:

> All citizens are equal in rights and duties and shall have equal protection before state organs and other authorities irrespec-

> tive of race, sex, birth, language, nationality, religion, political or other beliefs, education, social origin, property and any personal status.

The Constitution of Serbia does not contain a provision to the effect that all persons are equal before the law. This is certainly a major omission. Furthermore, it speaks solely of "citizens." Discrimination is prohibited only if originating from state organs or other authorities. Such an interpretation leads to the conclusion that the state is not constitutionally bound to prohibit discrimination if it is carried out by other social factors. Such a situation can have significant effects, for example in the field of employment (see ILO Convention No. 111).

Nevertheless, according to the Yugoslav penal legislation all forms of discrimination against citizens constitute criminal acts; discrimination concerning the use of language and script is also punishable (Art. 60 and Art. 61 PC of RS; Art. 43 PC of RM; Art. 154 PC of the FRY). Article 60 of the Penal Code (PC) of Serbia reads as follows:

> Any person who denies or restricts the rights of citizens laid down in the Constitution, laws or other regulations or common acts, or in ratified international treaties, on the basis of nationality, race, religion, political or other beliefs, ethnic origin, sex, language, education or social position, or provides benefits or privileges to citizens based on these differences, shall be imprisoned for the period of three months to five years.

The fact that discrimination is defined as a criminal offence means that the obligation based on Article 2, para. 1(a) of the Convention on the Elimination of All Forms of Racial Discrimination, according to which all States Parties should "prohibit racial discrimination carried out by persons groups or organisations ", has been fulfilled. Also, the FRY PC, in accordance with Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, prohibits the incitement of racial hatred and intolerance (Art. 134 the FRY PC; see I.4.8.4).

4.1.2. Examples of Discrimination in Yugoslav Legislation

4.1.2.1. Real estate transactions. – The Act on Special Conditions for Real Property Transactions (*Sl. glasnik SRS,* No. 42/89) has been strongly criticised ever since its adoption because of the discriminatory provisions whereby it restricts the right to peaceful enjoyment of property. The main objective of the Act was to maintain an ethnic balance and to prevent members of minority ethnic groups in certain parts of the territory of Serbia from selling their property and moving out under pressure. Its discriminatory character Act is even more obvious in view of the fact that it does not apply to Vojvodina (Art. 1), a region which also has an ethnically mixed population. The real purpose of the Act was to prevent the migration of Serbs from Kosovo, not a desire to maintain the ethnic balance of all groups that live there. The Act also provides for punishment for real estate transactions that are carried out without official consent, but only for the buyers who are mainly Albanians, and not sellers, who are mainly Serbs (For more details see I. 4. 11.)

4.1.2.2. Some criminal offences against the dignity of person and morals. – According to the existing criminal legislation, rape is defined as an act involving a woman as a passive object, if she is not married to the perpetrator (Art. 103 of the RS PC; Art. 86 of the RM PC). The law remains silent about the rape of a woman by her husband. The same applies to forced intercourse and intercourse with an infirm person. Therefore, the marital status of women is a basis for discrimination.

Definitions of all these criminal acts (except rape, a victim of which is always a woman) envisage that men can be victims only if "unnatural fornication" is committed against them, implying sodomy. There are provisions in criminal legislation penalising homosexual rape (Art. 110, para. 1 of RS PC; Art. 91 of RM PC). However, criminal legislation does not take into account the situation in which a man is a victim and a woman the perpetrator of rape, forced inter-

course, intercourse with and infirm person, as well as intercourse based on abuse of authority (prescribed only in the RS PC, Art. 107).

4.1.2.3. Refugees and citizenship. – The situation and status of refugees in the Federal Republic of Yugoslavia are governed by relevant international instruments, in particular the 1951 Convention and the 1967 Protocol on the Status of Refugees. The republics also adopted legislation in this field (The Refugee Act of Serbia, *Sl. glasnik RS*, No. 18/92; the Decree on the Assistance to Displaced Persons, *Sl. list RCG*, No. 37/92). These regulations have been strongly criticised because they unjustifiably limit the scope of the definition of refugees and their rights. According to the Refugee Act of Serbia (Art. 1) refugees are:

> Serbs and citizens of other nationalities "who were forced to leave their places of residence in other republics and take refuge in the territory of the Republic of Serbia due to pressures of Croatian authorities or authorities of other republics, threats of genocide, as well as because of persecution and discrimination on the basis of their religion and nationality or political beliefs.

The fact that the text begins with words "Serbs and citizens of other nationalities" gives ample proof of the discriminatory character of the Act. Serbs are in a certain manner distinguished from other refugees, although their legal and social status must be equal. In addition, the Act deals only with refugees from the territory of the former SFRY who were persecuted by authorities of the former Yugoslav republics. It is not clear how the Act could apply to refugees from countries other than the former SFRY.

The problem of the discrimination of refugees is evident also in connection with the Citizenship Act (*Sl. list SRJ*, No. 33/96, see I.4.15). Under this Act, all citizens of the former SFRY who had their residence on the territory of the FR Yugoslavia on 27 April 1992 – including numerous refugees who had been granted residence by that date – can acquire Yugoslav citizenship on the basis of their request, provided that they had no other citizenship (Art. 47). However, those

who became refugees after that date can acquire Yugoslav citizenship only by a decision of the Federal Ministry of the Interior, which at its own discretion evaluates whether the "reasons quoted in the request are justified", taking also into account "the security and defence interests, and the international position of Yugoslavia" (Art. 48). Hence, refugees who have come to Yugoslavia after 27 April 1992 have been unjustifiably placed in an unfavourable position.

4.2. The 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, para. 1 of the FRY Constitution; Art. 14, para. 1 of RS Constitution; Art. 21. para. 1 of RM Constitution). The term "inviolable" is used to emphasise the fundamental nature of the right to life. On the other hand, while the FRY Constitution does not provide for capital punishment and prescribes that criminal offences prescribed by federal statute may not carry the death penalty (Art. 21, para. 2 of the FRY Constitution), the constitutions of Serbia and Montenegro allow capital punishment: "Capital punishment can be prescribed on an exceptional basis and it can be imposed only for the most serious forms of grave criminal offences" (Art. 14, para. 2 of RS Constitution; Art. 21, para. 2 of RM Constitution). This contradiction creates the paradox that capital punishment may not be prescribed for some of the most serious criminal offences, which fall under federal jurisdiction, such as war crimes, genocide or international terrorism, while some types of murder that are within the republic jurisdiction can carry the death penalty.

In view that the Covenant requires that "sentence of death may be imposed only for the most serious crimes" (Art. 6, para. 2), the language of the Serbian and Montenegrin constitutions that capital punishment may be prescribed only exceptionally, and can be imposed for the "most serious forms of grave criminal offences" is in accordance with international standards.

The constitutions also contain guarantees of fair trial and the principle of *nulla poena sine lege* (Art. 27 of the FRY Constitution;

Art. 23 of RS Constitution: Art. 25 and Art. 26 of RM Constitution; for more details I.4.5). This is in line with Article 6, paragraph 2 of the Covenant, pursuant to which a death sentence may be imposed only in accordance with the law in force at the time of the commission of a crime, and can only be carried out pursuant to a final judgement rendered by a competent court.

The state has special obligations towards persons who have been deprived of liberty or whose freedom has been restricted. Failure to provide medical assistance or food, as well as torture or failure to prevent suicide of persons deprived of liberty, can represent a violation of Article 6, paragraph 1 of the Covenant. In this connection, the Yugoslav constitutions proclaim the inviolability of physical and psychological integrity of the human being, the respect for human dignity, as well as prohibition of any use of force against a person deprived of liberty (Art. 25, para. 1 and 2 and Art. 22 of the FRY Constitution; Art. 28 of RS Constitution; Art. 24 of RM Constitution).

Regarding the right to life, states have the obligation to take active measures to prevent malnutrition, improve health care and take other social policy measures aimed at the decrease of death rate and the increase of life expectancy (see the General Comment of the Human Rights Committee, No. 6/16 of 27 July 1982). Hence, the Yugoslav constitutions proclaim the right to health care: "children, expectant mothers and the elderly shall be entitled to publicly financed health care, if they are not covered by another insurance programme, while other persons shall receive such care under conditions prescribed by law" (Art. 60 of the FRY Constitution; Art. 30 of RS Constitution; Art. 57 of RM Constitution).

It is worth noting that the FRY Constitution does not prohibit derogation of the right to life in case of war or emergency, which is contrary to the relevant Covenant provisions. The Constitution of Serbia also allows for derogation of human rights during a state of war and fails to indicate that there are rights that may not be derogated.

4.2.2. Criminal Legislation

The federal and republic criminal legislation defines criminal offences against the right to life. The competent public prosecutor has the duty to prosecute perpetrators of such acts. The FRY Penal Code deals with criminal acts against humanity and international law, such as genocide (Art. 141), war crimes (Art. 142–144), unlawful killing and injuring of an enemy (Art. 146), and incitement of an aggressive war (Art. 152). This is in line with the obligations of the FRY based on international treaties, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the 1949 Geneva Conventions on the Protection of Victims of War and the 1977 Additional Protocols on international and non-international armed conflicts.

The penal legislation concerning criminal offences against life of the two republics is almost identical (Art. 47 of RS PC; Art. 30 of RM PC). Minimal penalties range from 5 years imprisonment for murder and 10 years for aggravated forms of murder.

Article 51 of the Serbian Penal Code deals with the criminal act of incitement and assistance to commit suicide: "A person who instigates or assists suicide, if suicide was committed, shall be punished by one to five years of imprisonment" (same in Art. 34, para. 1 of RM PC). Obviously, Yugoslav legislation does not recognise euthanasia, even as a mitigating circumstance for assistance to commit suicide. It is interesting to note that the legislation of the Kingdom of Yugoslavia, before World War II, had considered euthanasia as a mitigating circumstance.

4.2.3. Abortion

Abortion is regulated by the legislation of the republics. The relevant laws are: in Serbia, the Act on the Abortion Procedure in Health Institutions of Serbia (*Sl. glasnik RS*, No. 16/95), and in Montenegro the Act on Requirements for and Procedure of Abortion (*Sl. list SRCG*, No. 29/79). These laws provide that abortion may be performed only at the request of the pregnant woman. The Serbian Act requires the explicit written consent of the woman concerned. Such a

request is sufficient requirement for abortion to be performed up to the tenth week of pregnancy (Art. 6 of the Serbian Act; Art. 2 of the Montenegrin Act).

After the tenth week, abortions are considered "exceptional" and may be performed only in the following cases:

1) in order to a save woman's life or to eliminate a serious health problem (health reasons);
2) if there is a risk that a child could have serious bodily or mental disabilities (eugenic reasons);
3) conception resulted from a criminal offence, e.g. rape (social reasons).

In the course of the first ten weeks of pregnancy an individual physician makes a decision on abortion. After that and up to the twentieth week, a commission of physicians must approve. Thereafter, the ethical board of the medical institution has to decide on the issue.

4.2.4. Capital Punishment

According to the Federal Criminal Procedure Act (CPA, *Sl. list SFRJ*, No. 26/86), defendants in cases that carry capital punishment must have defence counsel. If a death sentence is pronounced, the convicted person is entitled to free counsel in the subsequent appeal procedure under extraordinary legal remedies (Art. 70, para. 2 and para. 4).

CPA prescribes also that a person sentenced to death cannot waive the right to appeal or withdraw an appeal (Art. 361, para. 4). If a death sentence was pronounced, or it was confirmed, there is the possibility to appeal to a court of third instance (the republic supreme courts or the Federal Supreme Court; Art. 391, para. 1 CPA).

Regulations in both republics dealing with pardon procedure prescribe that the request for pardon has to be submitted *ex officio* if the convicted person failed to do so (Art. 4, para. 3 of the Pardons Act of Serbia, *Sl. glasnik RS*, No. 49/95 and 50/95; Art. 5, para. 3 of the

Pardons Act of Montenegro, *Sl. list RCG*, No. 16/95). Therefore, the obligation pursuant to Article 6, paragraph 4 of the Covenant has been implemented.

The penal codes of Serbia and Montenegro prescribe, in accordance with Article 6, paragraph 5 of the Covenant, what categories of persons may not be subjected to capital punishment. Article 3a of the Act on Amendments of the Penal Code of Montenegro (*Sl. list RCG*, No. 27/94) reads as follows:

> Capital punishment may not be prescribed as a sole principal punishment for a specific criminal offence.
>
> Capital punishment may not be pronounced to a person who at the time of the commission of the crime was under 18 years of age, or to a pregnant woman.

The Act on Enforcement of Penal Sanctions of Montenegro (*Sl. list RCG*, No. 25/94) elaborates on the issue:

> A person who is seriously physically or mentally ill, during the illness, as well as a pregnant woman during pregnancy and until her child has reached the age of three may not be subjected to the sentence of death. (Art. 9 (2)).

This provision recognises the interpretation of the Covenant, according to which a pregnant woman should not be executed even after childbirth, since that would be contrary to fundamental principles of humanity. The PC of Serbia contains a similar provision, but with an important omission – the Act fails to state that minors may not be sentenced to death (Art. 7, para. 1 PC RS).

4.2.5. Use of Force by State Authorities

Legislation concerning the enforcement of penal sanctions of Serbia (*Sl. glasnik RS*, No. 16/97) and Montenegro (*Sl. list RCG*, No. 25/94) spells out the conditions for the use of force against convicts. The Serbian Act states that force may be used against a prisoner only if necessary to prevent: "1) escape; 2) physical assault on another person; 3) self-inflicted injuries; 4) material damage; 5) active and

passive resistance during the enforcement of a lawful order of an official" (Art. 136). The relevant Act of Montenegro contains the same provision (Art. 61).

The Act on Execution of Penal Sanctions of Serbia describes in considerable detail cases in which the use of firearms is allowed (Art. 138). These provisions are mostly based on the relevant parts of the Internal Affairs Act of Serbia. However, other regulations dealing with the use of force should also be taken into account, such as the Rules on the Manner of and Conditions for the Use of Force in Detention Facilities (*Sl. glasnik RS*, No. 30/178–1739). The Rules allow the use of firearms, with possible deadly consequences, to prevent the escape of convicts from a high security detention facility, regardless of the sentence of the convict in question (Art. 4, para. 1, line 1). Hence, security guards are authorised to use lethal force, both if the prisoner is a multiple killer or a petty thief. There are, however, provisions in the Rules that introduce a measure of control over the use of force: the means of force that in given circumstances have the least negative effects for the person concerned have to be used; the fugitive must be warned before firearms are used (first orally, then by a shot in the air); the use of firearms is prohibited if the fugitive is hiding within a group of persons and their lives may be at risk.

The internal affairs acts of Serbia (*Sl. glasnik RS*, No. 44/91) and Montenegro (*Sl. list RCG*, No. 24/94) define the powers of the members of the police to use force. Further elaboration in considerable detail is found in other regulations. The Serbian Act states that firearms may be used only if other means of force cannot ensure the protection of objects in question (Art. 23, para. 1, lines 1–6). Firearms may be used, *inter alia*, "to repulse an attack on an facility" (line 6). It appears that the use of firearms on this basis resulting in fatalities would probably not meet the requirement of "strict proportionality" laid down in ICCPR. First, in such a case the loss of life would not correspond to any of the exceptions envisaged by this Covenant. Secondly, the requirement of strict proportionality would not be met (*Stewart vs.*

United Kingdom, No. 10044/82, 39 DR 162, 1982, p. 171). Similar provisions exist in the Internal Affairs Act of Montenegro (Art. 17 and Art. 18), with the additional safeguard that a police officer is required to issue a warning before using firearms (Art. 19, para. 2).

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 the obligation concerning the prohibition of torture based on Article 7 of the Covenant, Yugoslavia is bound by the Convention on the Prohibition of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention against Torture), ratified by the SFRY. At the time of ratification, the SFRY recognised the jurisdiction of the Committee Against Torture regarding the receipt of interstate (Art. 21, para. 1 of the Convention against Torture) or individual petitions (Art. 22, para. 1).

The Yugoslav constitutions also prohibit torture. The analysis of the FRY Constitution in this regard (Art. 22 and Art. 25) fully applies to the constitutions of Serbia (Art. 26) and Montenegro (Art. 24). According to the FRY Constitution:

> The inviolability of physical and psychological integrity of the individual, his privacy and personal rights shall be guaranteed.
>
> The personal dignity and security of individuals shall be guaranteed (Art. 22).

> 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, shall be guaranteed.
>
> 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 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 dealing with the protection of the human personality may be questioned.. A possible explanation is that Article 22 establishes the general prohibition of torture and similar treatment, i.e. the obligation to respect the inviolability of physical and psychological integrity. Hence, this article covers not only acts of state authorities but of private individuals as well. Consequently, Article 25 should only elaborate a general obligation prescribed by Article 22, and do so in relation to the state and its officials, prohibiting torture and similar treatment "in criminal and all other proceedings". In such a manner, the responsibility of state organs has been emphasised, in particular of the police, which plays a significant role in criminal proceedings.

Paragraphs 3 and 4 of Article 25 use the language of Article 7 of the Covenant, but not in its entirety, since the prohibition of cruel and inhuman treatment and punishment has been left out. Similar omissions exist in the last paragraph of Article 25 of the FRY Constitution, which prohibits medical and other scientific experimentation without the consent of the individual concerned. However, the provision does not state that consent should be "free". Most commentators believe that this term is essential in the wording of Article 7 of the Covenant dealing with the prohibition of experimentation.

The Federal Constitution also guarantees the right to compensation for damages sustained as a result of the "unlawful or improper actions" of an official or a state agency, which should also include compensation in cases of torture and similar treatment (Art. 123). Compensation can be claimed in civil proceedings, but also in criminal proceedings against perpetrators of criminal acts of torture and similar treatment (Art. 103, FRY CPA).

According to the Federal Constitution, the prohibition of torture may not be derogated even during a state of war. However, the Constitution of Serbia allows unrestricted derogation during a state of war (see I.3).

4.3.2. Criminal Legislation

The Convention against Torture provides that all acts of torture and other similar treatment should be prohibited by law, as well as that punishment of such acts should take into account their "serious nature" (Art. 4). Yugoslav legislation has responded to this obligation to a large extent. Several provisions dealing with abuse of authority prohibit torture. It should be noted that the federal Penal Code covers such criminal acts only if committed by federal agencies' officials. (Chapter XIX FRY PC). The most important criminal offence in this group is abuse in the exercise of official duties (Art. 191 of FRY PC):

> An official who in the exercise of official duties abuses another person, inflicting serious physical or mental suffering, or harasses, insults or generally treats that person in a manner which adversely affects that person's human dignity, shall be punished by imprisonment of three months to three years.

Although the term "torture" is not explicitly used, the commission of this criminal offence includes, *inter alia*, infliction of serious physical and mental suffering, which corresponds to the description of torture. In addition, this definition is comprehensive and applies to the enforcement of criminal sentences. An important element of the definition is that "intent" has been left out, unlike in the definition of

torture contained in the Convention against Torture (Art. 1). Harassment is also included, even if it does not result in serious physical and mental harm. Abuse, insults and violation of human dignity are included as well: acts that could be identified as inhuman or degrading treatment depending on actual circumstances.

The federal Penal Code also prohibits extortion of testimony (Art. 190 of FRY PC). Imprisonment for the period of three months to five years is prescribed for an official who in the exercise of duties "uses force, threats, or other prohibited means in order to extort testimony or other statement from a defendant, witness, court expert or other person". Imprisonment of at least a year is prescribed if the extortion of testimony or a statement has been carried out by the use of "serious violence", or if such testimony had particularly grave consequences for the defendant in criminal proceedings.

The Committee against Torture criticised the FRY for the fact that Yugoslav penal codes do not contain the provision incriminating torture *per se*, in accordance with Article 1 of the Convention against Torture. The Committee recommended that the FRY should abide by the definition of the torture in the Convention.[17]

Although the FRY PC does not speak about the acquisition of testimony through experiments or other medical interventions, Article 190 bans the obtaining of testimony by "other prohibited means". It can be held that experiments and medical interventions, as clearly prohibited means, are covered by this provision.

The Convention against Torture goes beyond the prohibition of torture by an official or a person acting in that capacity. The Convention also applies to situations in which serious pain and suffering has been inflicted at the instigation and with the agreement and consent of an official. The FRY PC prohibits incitement to abuse in the exercise of duty, extortion of testimony or violation of the equality of citizens.

17 See UN Doc. CAT/C/YUGO of 16 November 1998, para. 10 and 17.

However, the question is whether there is a basis for the responsibility of an official who agrees with or condones torture. In such a situation the following provisions of the FRY PC could be applied, depending on circumstances: Article 174 (abuse of official function); Article 182 (failure to act in good faith while on duty); Article 199 (failure to report the commission of a criminal act – if a five-year or longer prison sentence could be pronounced in the given case).

In view of the gravity of the crime of torture, it would seem that the punishment for the act of abuse in the exercise of official duties (Art. 191 of FRY PC) – three months to three years of imprisonment – is not severe enough. On the other hand, an attempt to commit this offence is not punishable, since the prescribed minimal punishment is below the legal limit necessary to punish an attempt.

The penal codes of Serbia and Montenegro deal with the offence of torture in a similar way. Extraction of testimony is prohibited by both codes (Art. 65 RS PC: Art. 47 RM PC), as well as abuses in the exercise of official duties (Art. 66 RS PC; Art. 48 RM PC). The analysis of the FRY PC fully applies to the republic criminal legislation. Some differences exist, however, regarding abuse in the exercise of official duties:

> An official who in the exercise of official duties abuses another person, insults or generally treats that person in a manner which insults the person's human dignity, shall be punished by imprisonment of three months to three years (Art. 66 RS PC; similar provision in Art. 48 RM PC).

This formulation is incomplete, since the prohibition of the infliction of "serious physical and mental suffering" and of "harassment", contained both in Article 191 of the FRY PC and the Convention against Torture (Art. 1), is missing. The republic legislation prohibits the use of force (Art. 62, para. 1 RS PC), but that cannot make up for the failure to prohibit the infliction of suffering. First, the use of force does not always necessarily result in pain and, secondly, the prosecution for the use of force is initiated by private complaint, except if there existed a threat to life or of serious bodily harm.

4.3.3. Criminal Proceedings and the Enforcement of Sanctions

The FRY Criminal Procedures Act provides that the investigating judge or the police may order pre-trial detention (Art. 196 of CPA). It is limited to 72 hours. In reality, the most serious cases of violations of the prohibition of torture and similar treatment occur during the 72 hours of police detention. Procedural guarantees during the police detention are weak. For example, during the first 24 hours of detention the police are not obliged to afford legal counsel. These provisions of Yugoslav legislation were also criticised by the Committee against Torture; the Committee was on the view that the length of detention should be limited to 48 hours, and that the detainee should be allowed unlimited access to legal counsel immediately upon the arrest.[18]

The CPA states that "... the personality and dignity" of a detainee shall not be "... violated ..." (Art. 201). Also, extortion of testimony or other statements from a "defendant or another person during the proceedings" is prohibited. Furthermore, a physician may visit a detainee, upon request, under the supervision of an investigating judge (Art. 203. para. 1). As far as interrogation is concerned, it should be carried out in a manner that shall ensure "full respect for the personality of the defendant" (Art. 218, para. 7). In addition, "force, threats and similar means should not be used against a defendant ... in order to obtain a statement or a confession". All medical interventions and means that may influence the will of persons testifying are strictly prohibited (Art. 259, para. 3).

Nevertheless, it is interesting to note that the CPA when speaking about the rights of detainees mostly uses the term "defendants", implying persons who have been detained on the basis of an order of an investigating judge pursuant to Article 192. However, every person in police detention is not necessarily a defendant.

The status of persons serving sentences is defined and described in detail in the Enforcement of Criminal Sanctions Act of Serbia (*Sl.*

18 *Ibid,* para. 12 and 17.

glasnik RS, No. 16/97). This Act deals with the status and the rights of prisoners, the most important of which is the right to humane treatment. According to Article 56 of the Act, all persons concerned should respect the dignity of a prisoner. Provisions of the said Article prohibit violation of the bodily or mental health of a convict. Articles 57 to 103 deal with the treatment of a convict. These provisions ensure, at least formally, humane treatment and do not leave much room for violations of the prohibition of torture and inhuman and degrading punishment and treatment.

Article 5 of the Act does not provide for absolute prohibition of torture and similar treatment, but it generally states that the rights of a prisoner are restricted "only to the extent necessary for the enforcement of a sentence, and in conformity with the law".

4.3.4. Use of Force by the Police

Pursuant to the Internal Affairs Act of Serbia (*Sl. glasnik RS*, No. 44/91) the police may use force only in a manner that would cause "minimal adverse effects" (Art. 3). The Rules on the Conditions for and the Manner of the Use of Force (*Sl. glasnik RS*, No. 40/91) provide more details on the issue. According to Article 2 of the Rules an official may:

> ... use force in such a manner that shall ensure that the official task is accomplished with minimal adverse effects for a person against whom force has been used and only as long as reasons ... for the use of force exist.

While using force, an official must respect the life and human dignity of the person affected (Art. 3). The means of force described by the Rules are: physical force, baton, handcuffs, special vehicles, specially trained dogs, cavalry, chemical agents and firearms. Within 24 hours the immediate superior officer is in charge of control of the means applied, (Art. 32, para. 1). An officer authorised by the Ministry of the Interior is entitled to evaluate whether the means of force applied were justified and used properly. In the case of unjustified and

improper use of force, this official should advise the minister to take appropriate steps (Art. 31, para. 4).

4.4. The Right to Freedom and Security of Person and Treatment of Persons in Custody

4.4.1. 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 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 enforcement 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 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 victim of unlawful arrest or detention shall have an enforceable right to compensation.

4.4.1.1. Prohibition of arbitrary arrest and detention. – The basic purpose of Article 9 ICCPR is to ensure procedural guarantees against arbitrary and unlawful arrest. It compels signatory states to precisely define the cases where arrest is allowed, and to assure the judiciary control of the legality of arrests. This Article, according to the interpretation by the Human Rights Committee, guarantees the right to personal security which imposes on the states the obligation to undertake "reasonable and appropriate" measures to protect the personal integrity of every individual against the violations which could be inflicted to him or her (see *Delgado Paéz vs. Colombia*, No. 195/85, para. 5.5).

The Yugoslav constitutions guarantee the right to personal liberty (Art. 23 of the Constitution of the FRY, Art. 22 of the Constitution of Montenegro, Art. 15 of the Constitution of Serbia). Thus according to the Constitution of the FRY "everyone has the right to personal freedom" (Art. 23). Furthermore, the constitutions of the FRY (Art. 22, para. 1) and of Montenegro (Art. 20, para. 2), guarantee the right to "security of persons". Such provision does not exist in the Constitution of Serbia.

The demand that arrest be lawful and the prohibition of arbitrariness in Article 9, para. 1 ICCPR do not only concern the detention in criminal proceedings, but also all cases of deprivation of liberty, e.g. because of mental disease, vagrancy, alcohol and drug addiction, etc. The Yugoslav constitutions use the terms "deprivation of liberty" and "confinement", where the term "confinement" concerns criminal cases only[19], while "deprivation of liberty" includes all cases of detention, and not only the criminal cases. Nevertheless, the constitutional provisions do not make a difference between these two categories: Article 23 of the Constitution of the FRY, about arrest, prescribes the right of persons deprived of liberty "to hire a counsel of their choice" (para.

19 Thus according to Art. 24 of the FRY Constitution, Art. 16 of the Constitution of Serbia and Art. 23 of the Constitution of Montenegro, "persons under founded suspicion of having committed criminal acts may be ... arrested and kept in detention".

5), and that such persons must be "informed that they are not obliged to make any statement" (para. 4); this could lead to the conclusion that the provisions about the deprivation of liberty concern only criminal cases. Article 22 of the Constitution of Montenegro has the same shortcomings, while the Constitution of Serbia does not mention such guarantees at all.

The Constitution of the FRY stipulates that the arrest of a person is allowed "only in cases, and according to the procedure defined by federal law" (Art. 23, para. 2). This means that the republic laws on internal affairs, and other republic laws containing provisions on arrests (e.g. the petty offences acts) could only reproduce the provisions of the federal acts, and could by no means envisage other grounds or other procedure for arrest.

Regarding the reasons for detention, there is a contradiction between the Constitution of Serbia and the Federal Constitution. The latter provides in its Article 24 that a person may be arrested only if there exists "a well founded suspicion that this person has committed a criminal offence ..." or "that is necessary for the criminal proceedings". Contrary to that, Article 16 of the Constitution of Serbia allows arrest also when it is "necessary for the ... security of persons".

There is also a major discrepancy regarding the authority which may order detention. Namely, the FRY Constitution says that detention may be ordered only by the decision of the competent court of justice (Art. 24, para. 1), and not "by decisions of other competent organs ...", as it was under the previous Constitution of 1974. Thus the provisions of the CPA envisaging the order of detention by the police (Art. 196) or by a judge who is not competent in the case (Art. 194) are incompatible with the Constitution of the FRY; however, because of the perpetuation of the deadline for the harmonisation of the CPA with the Constitution, they are still in force, while at the same time it is not possible to challenge their constitutionality. This incongruity represents one of the most important problems in the protection of human rights in criminal proceedings.

In June 2000, the former Federal Government submitted to the Federal Assembly for adoption an anti-terrorism bill. The draft contained a number of provisions envisaging new grounds for arrest, detention and the admissibility of evidence which, had they been adopted, would have directly violated the right to the security and liberty of the person and the right to a fair trial. Fortunately, the Assembly found the bill defective, returned it to the drafting commission for further elaboration, and it never reappeared on the Assembly's agenda.

Examining the constitutionality of Art. 191, para. 2, lines 3 and 4; Art. 210, para. 2, and Art. 417, para. 2 of the Criminal Procedure Act, the Federal Constitutional Court ruled that disturbing the public through the manner in which a criminal offence was committed, the consequences and other circumstances of the act, and preventing a danger to public safety did not constitute grounds for ordering a person to be detained. The Court also found that it was unconstitutional for police to order detention before the institution of an investigation. (*Sl. list SRJ*, No. 71/2000).

4.4.1.2. The right to be informed of the reasons for arrest and of charges. – Para. 2 of Article 9 ICCPR guarantees the right of everyone who is arrested to be informed about the reasons for his or her arrest "at the time of arrest", and the right to be informed of any charge against him or her, without delay, i.e. "promptly". The Constitution of the FRY and the Constitution of Montenegro contain provisions on the right of arrested persons, "to be informed immediately, in their own language, or in the language they understand, of the reasons for the arrest" (Art. 23, para. 3 of the Constitution of the FRY; Art. 22, para. 2 of the Constitution of Montenegro). These provisions are in accordance with the somewhat more precise guarantee of the ECHR, for they provide that an arrested person must be informed of the reasons for the arrest and about the charge in the "language he or she understands" (Art. 5, para. 2 of the ECHR). However, the Constitution of Serbia does not give those guarantees to arrested persons. In a similar view, the federal and Serbian constitutions contain provisions

on the right of the arrested person to get the "reasoned decision at the moment of the arrest, or not later than 24 hours after arrest" (Art. 24, para. 2 of the FRY Constitution, Art. 23, para. 2 of the Constitution of Montenegro), while the Serbian Constitution does not contain such a provision.

The provisions of the CPA, in this part, are not in conformity with the FRY Constitution. Namely, the CPA does not prescribe the obligation of the police to submit, at the moment of arrest (i.e. immediately), the information about the reasons for the arrest. Thus e.g., the police are obliged to bring without delay the person to the competent investigative judge ..." (Art. 195, para. 1), but it can occur that due to "unavoidable hindrances it is not possible to take the arrested person to the investigation judge within 24 hours ..." (para. 2); in that case the time within which the arrested person has to be informed of the reasons for arrest is extended. Contrary to that, both republic acts on internal affairs prescribe that in the cases of arrests envisaged by that Act[20], "an authorised person from the ministry must ... inform immediately the arrested person about the reasons for arrest ..." (Art. 15, para. 4 of the Internal Affairs Act of Montenegro, Art. 11, para. 4 of the Internal Affairs Act of the Republic of Serbia).

Regarding the obligation to inform, as soon as possible, the arrested person of the charges, it seems that the provisions of the CPA are in accordance with international standards, for the defendant must "be informed already during the first interrogation of the offence for which he or she is charged, and of the reasons for the charges" (Art. 4, para. 1), i.e. the investigative judge must state, before interrogation, "why the person is arrested, and what are the grounds for the suspicion against that person" (Art. 218, para. 2).

20 Art. 11 of the Internal Affairs Act of the Republic of Serbia prescribes the "detention of persons" if "the establishment of order and peace and the prevention of the endangering of the security or of the defence of the country cannot be achieved in other ways" (para. 1), and when the "identity (of a person) may not be established by showing ones identity card, or in other ways" (para. 2). The Internal Affairs Act of the Republic of Montenegro does not use the term "detention (keeping)", but "depriving of liberty", and prescribes as the reason, besides the need to establish public order and peace, the "safety of traffic" (Art. 15, para. 1).

4.4.1.3. Prompt appearance before a judge and right to trial or release within reasonable time. – This set of rights concerns only criminal cases: it guarantees prompt appearance before "a judge or other officer authorised by law", and, subsequently, trial within a reasonable time, or release. It is difficult to define the term "promptly", but it seems that the delay should not exceed, even in exceptional cases (e.g. terrorism), four days, and in normal conditions should be much shorter (the European Court of Human Rights in *Brogan vs. the United Kingdom*, A 145, p. 33). The expression "other officer authorised by law to exercise judicial power" means that such an organ must be independent and impartial; independent, first and foremost of the executive and of the public prosecutor, who is authorised to detain or free an arrested person (the European Court in *Schiesser vs. Switzerland*, A 34, 1991, p. 31).

By Yugoslav law detention can be ordered, as a rule, either by the investigative judge or by a chamber of the court, either *ex officio* or at the request of the public prosecutor. The decision taken by the investigative judge can be considered as a decision taken by a judge or "other officer, authorised by law to exercise judicial power (see, *mutatis mutandis*, the European Court of Human Rights in *Bezicheri vs. Italy*, A 164, 1989, p. 200). According to the CPA, detention may in certain cases be also ordered, by the police (Art. 196), which is not in accordance with international standards. As already mentioned, this provision is also not in conformity with the FRY Constitution.

Concerning time-periods, the provisions of the CPA are compatible with international standards, since they provide that a person caught *in flagranti* can be arrested by anybody, but must be "immediately taken to the investigative judge" (Art. 191, para. 4), i.e. that a person arrested by the police due to any reason prescribed by the CPA must be "taken without delay to the competent investigative judge ..." (Art. 195, para. 1).

A person ordered to be taken into custody has the right to be tried within a reasonable time, or to be released. In the Yugoslav law, the duration of custody is limited only during the period before the

trial, and not during the trial, when only a periodical control of the justification of further detention is required.

In accordance with international standards, and following the constitutional provisions which require the duration of the detention to be reduced to the "shortest period" (Art. 24, para. 3 of the FRY Constitution, and Art. 23, para. 3 of the Constitution of Montenegro; "shortest necessary period", Art. 16, para. 2 of the Constitution of Serbia), the CPA not only repeats those guarantees, but compels "all organs who take part in the criminal procedure and all organs who provide legal assistance to them to act with special urgency if the defendant is detained" (Art. 190, para. 2). Moreover, the detention order shall be revoked "as soon as the reasons due to which detention was ordered cease to exist" (para. 3). According to the letter of the law, the end of detention does not depend on the request of the parties; however, such a request is not ruled out. The Supreme Court of Serbia took the contrary view that "during the investigation, the defendant and his or her counsel are not entitled to propose the revocation of the detention order, therefore no decision should be taken in response to the proposals of the counsel of the defendant requesting the cancellation of detention" (Penal Code, 403/81).

All three constitutions prescribe that detention may not last more than three months by an order of the court of original jurisdiction, and that it can be prolonged to another period of three months by a decision of a higher court. The duration of the detention is counted from the day of arrest, and "if until the expiration of these terms (3 + 3 months), there is no charge, the defendant shall be released" (Art. 24, para. 4 of the FRY Constitution; Art. 16, para. 3 of the Constitution of Serbia, Art. 23, para. 4 of the Constitution of Montenegro). The CPA defines in more detail, but basically in the same way, the duration of detention in regular proceedings (Art. 197), while the duration of the detention until the submission of the indictment in summary proceedings is limited to eight days without possibility of prolongation (Art. 433, para. 2), and in the proceedings against minors to three months (Art. 474, para. 2).

The duration of detention after the charge is filed is not limited in time, and it may last as long as the proceedings; however, the court chamber "is bound to check, two months after the coming in force of the last decision on custody ... whether the reasons for detention still exist and to decide on the prolongation of the detention or on its cancellation" (Art. 199, para. 2 of the CPA). In summary proceedings, the chamber "must check each month whether there still exist reasons for detention" (Art. 433, para. 3 of the CPA).

4.4.1.4. The right to complain to the court against arrest or detention. – The right to complain to the court against detention concerns all cases in which other organs, and not the court, took the decision on detention (see the European Court on Human Rights in *De Wilde, Ooms and Versyp vs. Belgium*, A 12, 1971, p. 76). According to the FRY Constitution, only courts can order custody of a person reasonably suspected of having committed a criminal offence (Art. 24). However, in other cases the FRY Constitution does not provide for the right to have a court re-examination of the lawfulness of detention. True, the Constitution guarantees to everyone "the right to ... legal means against decisions which deal with his or her rights or lawful interests" (Art. 26, para. 2); however, the right to the lawfulness of detention guaranteed by Art. 9, para. 4 ICCPR cannot be identified with the right to complain in the case of violation of a right. Constitutions of Serbia and Montenegro contain identical provisions to that effect (Art. 15, 12, para. 2 and Art. 22, para. 2 of the Constitution of Serbia; Art. 22 and 17, para. 2 of the Constitution of Montenegro). Accordingly, the republic laws on internal affairs (*Sl. glasnik RS*, No. 44/91; *Sl. list RCG*, No. 24/94) prescribe e.g. that a detained person can complain to the minister of the interior (Art. 16 of the Montenegrin, and Art. 12 of the Serbian Act); there is no reference to the right to complain to a court, which is not in conformity with international standards.

4.4.1.5. The right to compensation for unlawful arrest or detention. – The FRY Constitution prescribes that " a person ... detained without a legal basis, is entitled to rehabilitation, to compensation of

damages by the state, and has other rights defined by federal law" (Art. 27, para. 4). Identical provisions exist in the constitutions of Montenegro (Art. 25, para. 4) and of Serbia (Art. 23, para. 4). Furthermore, both the Constitution of the FRY and the Constitution of Serbia contain a general provision on the right to compensation in all cases in which damage is done to individuals "by illegal or irregular work ... of an official or of a state agency or organisation ..." (Art. 123, para. 1 of the FRY Constitution; Art. 25, para. 1 of the Constitution of Serbia). The Constitution of Montenegro does not contain such a provision.

The CPA also envisages compensation for unlawful arrest. Arrest which is not in conformity with law, or detention which lasts more than prescribed by law, or failure to deduct the time spent in detention from the final sentence, are considered unlawful. E.g., arrest was unfounded if the arrested person is not proclaimed guilty after trial, or if he/she is not punished by imprisonment, or if a person is arrested due to an error or to irregular action of state agencies (see Art. 545 of the CPA).

The procedure of compensation consists of two phases, administrative and judicial (lawsuit). The arrested person must file a request to the administrative organ "in order to reach an agreement on the existence of damage and on the kind and amount of compensation" (Art. 542, regarding Art. 545, para. 4). If such a request is not accepted, or if the state agency does not take a decision within three months from the day of the submission of the request, the damaged person can file an appeal to the court, requesting compensation. If agreement is reached only concerning a part of the request for compensation, the damaged person may also submit an appeal as to the rest of the request (Art. 543, para. 1).

The acts on internal affairs of Serbia and of Montenegro also prescribe that a person arrested "without foundation ... or longer than prescribed ... is entitled to compensation" (Art. 11, para. 6 of the Serbian, and Art. 15, para. 4 of the Montenegrin Act).

4.4.2. 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 not convicted 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.

4.4.2.1. Humane treatment and respect of dignity. – According to the ICCPR (Art. 10, para. 1) "persons deprived of liberty are entitled to treatment with humanity ... and respect of the inherent dignity of the human person", which means, in the interpretation of the Human Rights Committee, that all restrictions which are not inherent in the very nature of the deprivation of liberty, and of life in a closed environment, are prohibited (General Comment No. 21/44, April 1992). Thus Article 10 in fact complements Article 7 ICCPR, which contains the general prohibition of torture, inhuman, cruel or degrading treatment or punishment (see I.4.3.).

All three Yugoslav constitutions "guarantee ... the respect of the human person and dignity in criminal and in all other proceedings, in the case of deprivation or restriction of liberty, or when serving the sentence" (Art. 25, para. 1 of the FRY Constitution; Art. 24, para. 1 of the Constitution of Montenegro, Art. 26, para. 1 of the Constitution of Serbia).

The Federal Penal Code prescribes that a criminal offender can be deprived of certain rights or such rights may be limited during the enforcement of the penal sanction "only to the degree corresponding to the nature and the content of the sanction" and "only in a way which assures the respect of the person of the offender and of his or her human dignity" (Art. 6 of the PC of the FRY; see, *mutatis mutandis*, Art. 6, para. 2 of the PC of the Republic of Serbia). Also, it is prohibited to "insult the person or the dignity of the defendant during criminal proceedings" (Art. 201, para. 1 of the CPA).

The Penal Sanctions Enforcement Act of Montenegro (PSEA of Montenegro, *Sl. list RCG*, No. 25/94) prescribes that the treatment of convicted persons must be "humane, and in a way which assures the respect of his or her person, dignity, and the preservation of his or her physical and mental health" (Art. 15, para. 1). A similar provision exists for minors who serve corrective sentences; besides, it is emphasised that they must be treated "in a way which is appropriate to their psychological and physical development" (Art. 107, para. 2).

The Penal Sanctions Enforcement Act of Serbia (PSEC, *Sl. glasnik RS*, No. 16/97) prescribes that "everyone must respect the dignity of the convicted", and that nobody shall endanger his or her physical and mental health (Art. 56). Minors who are sentenced to corrective sentences in institutions or to juvenile imprisonment have the same rights as adults; those rights can be expanded (Art. 218, para. 1). Unfortunately, the PSEC of Serbia does not prescribe special protection of minors sentenced to disciplinary measures or to measures of increased supervision, as does its Montenegrin counterpart (PSEC of Montenegro, Art. 107, para. 2). Finally, according to the Serbian Act, a person on compulsory psychiatric treatment and custody "has the same rights and obligations as the persons serving sentences of imprisonment, if medical reasons do not require different treatment" (PSEC of Serbia, Art. 191).

According to the PSEC of Serbia, prison authorities are bound to inform convicted persons about their rights and obligations, and the "text ... of the prison rules must be accessible to the convicted during

the entire time of their sentence" (Art. 51, para. 2 and 3). This rule is also applied to detained persons, juvenile convicts, and to persons subject to compulsory psychiatric treatment (Art. 314, 218, para. 1 and Art. 191). The PSEC of Montenegro does not contain a provision on the access to information and on guaranteed rights. Also, Yugoslav regulations do not explicitly prescribe that the training of the prison personnel must include familiarisation with the provisions on the protection of convicts.

Under the PSEC of Serbia the directorate for the enforcement of sanctions of imprisonment is responsible for the supervision of the persons deprived of liberty (Art. 9, para. 1 and 346, para. 1 of the PSEC of Serbia). The professional level of the work of the "prison hospitals, psychiatric institutions and health services in penal institutions is supervised by the Ministry of Health" (Art. 353). Furthermore, the legality of the enforcement of the security measures of compulsory psychiatric treatment and custody in mental institutions is supervised by the court which pronounced the sentence in the first instance (Art. 195, para. 1). The application of the measure of detention is supervised by the "President of the District Court with the jurisdiction over the institution in which the person is detained" (Art. 320; see also Art. 205 of the CPA, which regulates in detail the way of supervision and the time intervals of supervision). According to the PSEC of Serbia, convicts are entitled "to present their grievances to authorised persons who supervise the work of the penal institution, without the presence of employees or appointed persons" (Art. 103, para. 4). In Montenegro, the Ministry of Justice is entrusted with the control of the legality of the enforcement of the sentences of imprisonment, the sentences of detention of minors, and of the measures of compulsory psychiatric treatment (Art. 21, 69, 82 of the PSEA of Montenegro). The supervision of the enforcement of corrective measures is done by the organs of guardianship, while the court which pronounced the sentence controls the legality of the enforcement (Art. 113).

The right of convicted persons to complain against the conditions under which they serve sentence is very much limited and not

precisely regulated. According to the PSEC of Serbia, convicts are entitled to present to the director their grievances "on the violations of their rights and other irregularities" (Art. 103, para. 1); if they do not get answers to such grievances, or if they are not satisfied with the answers, they can submit written petitions to the Director of the Directorate (para. 3)[21]. Unfortunately, the Serbian Act does not prescribe the time period within which the director of the directorate must consider the grievance. The PSEA of Montenegro contains an even less favourable solution, according to which a prisoner is entitled to submit a "grievance to the head of the organisation" (Art. 34, para. 2), which does not prescribe the deadline for the answer to the grievance, nor the right to subsequent grievances. According to the PSEC of Serbia, this also applies to the detained persons (Art. 314), juvenile convicts in institutions or prisons for minors (Art. 218, para. 1), and for persons subjected to compulsory psychiatric treatment (Art. 191).

The PSEC of Montenegro does not contain provisions on the right of such persons to present grievances.

4.4.2.2. The segregation of accused and convicted persons, juveniles and adults. – According to the ICCPR (Art. 10, para. 2) accused and convicted persons must be separated "save in exceptional circumstances", while accused juvenile persons must be segregated, without exception, from adults, with the requirement to be "brought as speedily as possible for adjudication".

The CPA prescribes that "as a rule ... accused persons and convicted persons may not be put in the same premises", while the

21 According to the PSEC of Serbia, hierarchically speaking, there exist the Director of the Administration, the Director of the Institution, and the Head of the Service. The directors are appointed by the Government of the Republic of Serbia at the proposal of the Minister of Justice, while the heads of services are appointed by the Minister of Justice. In Montenegro, according to the Regulation on the establishment, internal organisation and mode of operations of the Institution for the Enforcement of Penal Sanctions of Montenegro (*Sl. list RCG*, No. 31/94) there is a director of the Institution for the Enforcement of Penal Sanctions, appointed by the Government of Montenegro, with the heads of organisational units, appointed by the director.

PSEC of Montenegro (Art. 16, para. 4) and the PSEC of Serbia (Art. 312, para. 1) prescribe, without exception, the separation of detained and the convicted persons, which is in accordance with the international standards. However, the PSEC of Serbia contains also the general rule according to which "the detained persons stay in institutions under the same conditions as the convicted persons, if the CPA does not prescribe differently" (Art. 314). This runs counter to the requirement of ICCPR (Art. 10, para. 2.a *in fine*) that accused persons shall be submitted, "to separate treatment appropriate to their status as unconvicted persons".

As concerns detention, the CPA allows for some exceptions from the unconditional rule that juveniles must be separated from adults; however, it limits those exceptions to the cases when the judge for minors is of the opinion "that solitary confinement of a minor would last for a long time, and there is a possibility to place the juvenile offender in a room with adults who would not exert negative influence on him" (Art. 475). Nevertheless, this appears as an inadmissible deviation from the standard defined by Art. 10, para. 2.b ICCPR. The PSEA of Montenegro prescribes that "minors and adults serve juvenile imprisonment and imprisonment sentences, as a rule, separately" (Art. 16, para, 3), but does not precise in which cases deviations are permitted. Only the PSEC of Serbia does not permit deviations in that respect, and even prescribes that adults sentenced to imprisonment for juveniles, and minors who come of age serving the sentence, are to be put "in a special department of the institution" (Art. 282).

4.4.2.3. The penitentiary system. – According to the ICCPR, the essential aim of the treatment of prisoners shall be their reformation and social rehabilitation. According to the PC of the FRY, the purpose of the punishment is "to prevent the convicted person from committing criminal offences, and his or her re-education ... corrective influence preventing others from committing criminal offences ... strengthening morals and influence on the development of social responsibility and of the discipline of citizens". The PSEA of Montenegro (Art. 14)

prescribes that the purpose of imprisonment is the "... re-socialisation of convicted persons", while the PSEC of Serbia does not especially mention the aim of punishment. However, in order to prove whether that provision ICCPR is fully implemented, it is necessary to analyse the provisions on the education of the convicts, on their training for certain professions and useful work, on guaranteed post-penal assistance, which is outside the realm of this text.

4.5. Right to Fair Trial

Art. 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 of 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.

4.5.1. Independence and Impartiality of Courts

The Constitution of Serbia (Art. 96, para. 1) and the Constitution of Montenegro (Art. 100) proclaim the courts to be autonomous and independent and bound only by the Constitution and by other general acts; the federal Constitution does not contain such provisions. All three constitutions proclaim the principle of separation of powers (Art. 12 of the FRY Constitution; Art. 9 of the Constitution of Serbia; Art. 5 of the Constitution of Montenegro). However, the integrity of the judiciary does not depend so much on constitutional provisions, but rather on how courts act. The general impression in the FRY is that the courts are not fully independent though such allegations are difficult to prove. In some cases, however, e.g. the annulment of the local elections in Serbia in November 1996, in which the judiciary, including the Supreme Court of Serbia, had a major role, and the part played by the Federal Constitutional Court in the attempt to falsify the results of the presidential election in 2000, the allegations proved to be true.

The principle of the independence of courts has not been fully implemented, both on practical and normative levels. E.g., courts are not entrusted with the supervision of the judiciary administration and the decisions on the budgets of the courts, nor is that duty divided between the judiciary and the executive; it is completely beyond the influence of courts. The republic laws on the courts entrusted ministries of justice only with the affairs of the judiciary administration (Art. 32 of the Courts Act of Serbia, *Sl. glasnik RS*, No. 46/91, 60/91, 18/92 and 71/92, Art. 27 on the Courts Act of Montenegro, *Sl. list RCG*, No.

20/95), while the proposal of the budget of the courts is subject to a procedure which cannot be influenced by the judiciary.

Judges have tenure of office (Art. 101, para. 1 and 126, para. 2 of the Constitution of Serbia, Art. 5, para. 1 of the Courts Act of Serbia; Art. 103, para. 1 of the Constitution of Montenegro); the judges of the Federal Court and of the Federal Constitutional Court have limited terms of office (nine years – Art. 109, para. 2 and 125, para. 2 of the FRY Constitution), this applies also to the judges of the Constitutional Court of Montenegro (Art. 111, para. 2 of the Constitution of Montenegro). Furthermore, the principle of immovability of judges is also guaranteed – judges must not be transferred without their consent – except in military courts (Art. 101, Art. 5 of the Constitution of Serbia and Art. 53 and 54 of the Courts Act of Serbia; Art. 103, para. 4 of the Constitution of Montenegro and Art. 27 of the Courts Act of Montenegro). Judges must not perform other public or professional duties, and their political activity is limited (Art. 42, para. 4; 109, para. 6; 125, para. 4 of the FRY Constitution; Art. 100 and 126, para. 4, of the Constitution of Serbia, Art. 5, para. 2 of the Courts Act of Serbia; Art. 106 and 111, para. 5 of the Constitution of Montenegro, Art. 28, para. 1, line d. of the Courts Act of Montenegro).

However, the provisions on the independence of military courts are problematic in many respects. Although the independence and autonomy of military courts was proclaimed (Art. 138, para. 2 of the FRY Constitution, and Art. 2 of the Military Courts Act, *Sl. list SRJ*, No. 11/95), they have been relativised by the provision which prescribes that judges and judges-jurors in military courts are appointed, not elected (Art. 26, para. 1 of the Military Courts Act), by the rule that the regulations "which regulate the service relations and the rights, duties and responsibilities of the military", also apply to presidents and judges of military courts (Art. 41 and 42). Furthermore, a judge of a military court "may be relieved of his duties if the competent organ decides to decrease the number of judges in a military court" (Art. 37, para. 1); this jeopardises the principle of the tenure of a judge, otherwise confirmed in the Military Courts Act (Art. 28, para. 1–3). Fur-

thermore, if a judge is assigned temporarily to another military court, his consent is not required (Art. 40) as it is with judges of other courts.

4.5.2. Fairness and Transparency of Trials

4.5.2.1. Fair trial. – The requirement of the fairness of a trial is especially important in criminal proceedings, where it opens the possibility of the expansion of the rights of the defendant beyond the enumerated minimum rights to which the defendant is entitled. When fairness is assessed, the procedure is assessed as a whole, so that the cumulated defects which would not individually represent a violation of Article 14, can result in the violation of the requirement for fair trial. In that sense, oral and controversial proceedings are especially important, the use of unlawfully acquired evidence is prohibited, the prosecutor is compelled to reveal to the defence all material evidence in favour or against the defendant.

Under Yugoslav criminal procedure, the trial, as a rule, is oral. Consequently, all written documents (indictment, the findings of experts, etc.) are presented orally at the main trial. When a higher court adopts a decision in the session of the chamber, and not on the basis of the hearing, the adopted decision has to be based, as a rule, on written documents. The principle of directness requires that the decision of the court be based on facts established by the court (e.g. on hearing of witnesses, and not by reading the minutes). This principle leads to the obligation of the court to base its judgement only on the evidence presented at the main trial (Art. 347, para. 1 of the CPA).

One of the most important elements required by the guarantee of fair trial is the equality of arms (*audiatur et altera pars*). According to the CPA, the defendant has the right "to present his or her opinion about all facts and evidence against him/her, and to present all facts and evidence in his or her favour" (Art. 4, para. 2). This principle is elaborated in a number of provisions – the defendant can study the documents and the piece of evidence (Art. 131, para. 5); can be present at the performance of certain investigative actions and to participate actively in such actions, and the investigative judge is bound to inform

the defendant and his or her counsel "about the time and place of the performance of investigative actions, except in cases where there is a danger of postponement" (Art. 168), para. 5, regarding Art. 73, para. 2). These rights may be temporarily abolished, until the charge is brought. A regular charge must be submitted to the defendant without delay, and if the defendant is in prison, "not later than 24 hours after receipt" (Art. 266, para. 1). The provision of Article 369 of the CPA on the compulsory submission of the complaint to the opposing party for reply has the same sense. Disregard of these provisions represents a substantial violation of the rules of criminal procedure.

Adversity is achieved easily and thoroughly at the main oral hearing. The equality of arms is endangered by the provision of the CPA prescribing that the public prosecutor must be always informed about the sessions of the chambers of the court of second instance, (Art. 370, para. 3), whereas the defendant and his or her counsel receive notice only at their request, or if the court believes that it is "useful for the explanation of the situation" (Art. 371, para. 1). Nevertheless, the failure to inform the defendant and his or her counsel in the cases in which they requested such information represents a substantial violation of the provisions of the CPA. The Supreme Court of Serbia emphasised that such omission "represents a violation of the right of the defendant to defence, which could influence orderly judgement" (SCS, PC, 35/80, 25 December 1971).

According to the CPA, a decision of the court cannot be based on minutes and information, such as information acquired by the police outside criminal procedure (Art. 151, para. 3); the statements by the defendant given in the absence of his or her counsel or under duress (Art. 218, para. 10; see also Art. 228 and 244, para. 1), must be "separated," that is, removed from the court record, but may be used at the main hearing, at the explicit request of the defendant (Art. 84, para. 1). However, in exceptional cases, for criminal offences leading to 20 years of imprisonment, or to capital punishment, the court may decide that statements given in the absence of counsel and information acquired by police outside criminal procedure can be used without the

consent of the defendant, if important facts in the procedure may be cleared and the court is satisfied that the use of such facts would contribute to the clarification of the case (Art. 84, para. 2). However, "a conviction cannot be based exclusively on the statements in such minutes and information" (Art. 86). Accordingly, the court may use otherwise unlawful evidence in cases when the heaviest sentences may be pronounced, where the strictest guarantees of fair trial should prevail. These provisions of the CPA place the public prosecutor in a better position and thus endanger the principle of equality of arms.

Instead of containing the obligation of the prosecutor to reveal to the defence all material evidence for and against the defendant, the CPA prescribes in Art. 15 that "the court and the state agencies participating in the criminal proceedings are bound to ascertain, truthfully and fully all facts which are important for the adoption of a lawful decision" (para. 1), and to "consider with equal attention and ascertain both the facts which are against the defendant and those in favour of the defendant" (para. 2). The CPA also prescribes the possibility to copy documents in the possession of the prosecutor, with the prosecutors consent (Art. 131, para. 2). Since they do not include the explicitly prescribed right of the defence to have access to all material evidence and the unconditional obligation of the prosecutor to show all evidence to the defence, these provisions are incompatible with the standards of the ECHR (see the European Court of Human Rights in *Edwards vs. the United Kingdom*, A 247 B, 1992, para. 36).

4.5.2.2. The transparency of the hearing and judgement. – In addition to the general provision on the transparency of the work of all state agencies (Art. 10), the Constitution of Serbia contains a special provision on the transparency of court hearings (Art. 97, para. 1). On the other hand, the federal Constitution contains only the provision on the transparency of work of all state agencies (Art. 122, para. 1), while the Constitution of Montenegro guarantees the transparency of court hearings (Art. 102). The Federal Court Act (*Sl. list SRJ*, No. 27/92) prescribes that the proceedings of the court are public and determines

how transparency must be assured, e.g. by public hearings and by informing the public on the activities of the Court (Art. 6, para. 1 and 2). The republic laws on courts do not contain special provisions on public hearings; however, such provisions are included in the corresponding laws on criminal procedure.

There is a general rule according to which the main hearing must be public, and that persons of legal age, who are not allowed to carry weapons or dangerous objects may attend the hearings (Art. 287 of the CPA; Art. 306 of the Contentious Procedure Act, *Sl. list SFRJ*, No. 4/77). The rule of transparency does not concern the deliberation and the voting in the chamber (Art. 118, of the CPA; Art. 130 of the LA). As concerns the session of the chamber of a court of second instance, the rule of transparency is applied when there is a hearing, i.e. when the parties attend the session (Art. 371, para. 5, of the CPA; Art. 364 of the LA). Unlawful exclusion of the public from the main hearing represents a substantial violation of the provisions of criminal procedure and is a basis for an appeal (Art. 364, para. 1, line 4 of the CPA; Art. 354, para. 2, line 12 of the LA).

Under the CPA, the public is always excluded from the trials of minors (Art. 482 of the CPA). The public may also be excluded "officially, or at the request of the parties, but always after hearing the parties, if that is necessary to protect a secret, public order, morals, the interests of minors or to protect other special interests of the society". These grounds are generally in accordance with the standards ICCPR, except the last one – the protection of other special interests of the society – which appears to be too broad.

Similar provisions are found in the LA, which prescribes that the public can be excluded from "the entire main hearing or from a part thereof if it is in the interest of the protection of official, business or personal secrets, or of the interests of public order or morals" (Art. 307, para. 1). The public may also be excluded when order in the courtroom cannot be otherwise maintained (Art. 307, para. 2).

Judgements must be pronounced publicly both in criminal and civil cases, even if the public was excluded during the proceedings

(Art. 352, para. 2 of the CPA; Art. 336, para. 3 of the LA). However, the announcement of the reasoning depends on the previous exclusion of the public: if it had been excluded, "the chamber shall decide whether to exclude, and in what degree the public during the announcement of the reasoning of the judgement" (Art. 352, para. 4 of the CPA; Art. 336, para. 3 of the LA). In accordance with the decision on the exclusion of the public from the proceedings against minors, the CPA prescribes that the consent of the Court is necessary for the publication of the record of the proceedings and of the judgement (Art. 461, para. 1). Nevertheless, "the name of the minor and other data which reveal the identity of the minor" cannot be published (Art. 461, para. 2).

4.5.3. Guarantees to Defendants in Criminal Cases

4.5.3.1. Presumption of innocence. – According to Yugoslav law, everyone has the right " considered innocent of a criminal offence, until his or her guilt is established by a final decision of the Court" (Art. 27, para. 3 of the FRY Constitution, Art. 23, para. 3 of the Constitution of Serbia, Art. 25, para. 3 of the Constitution of Montenegro). Although the wording differs somewhat from the wording in ICCPR, according to which everyone shall have the right to be presumed innocent until proved guilty, there is no practical difference, and both wordings result in the same legal consequences: they relieve the defendant of the burden to prove his/her innocence and, if guilt is not established with certainty, bind the Court to act in a manner most beneficial to the defendant – to give him/her the benefit of doubt.

The CPA affords the presumption of innocence in the same way as the constitutions (Art. 3), and it elaborates the principle *in dubio pro reo* when providing that the Court is bound to adopt the judgement of not guilty if guilt is not proven for the lack of evidence, although the suspicion remains (Art. 350, para. 1, line 3). The burden of proof falls exclusively on the prosecutor, which arises primarily from his

obligation to cite in the indictment the evidence on which the accusation is based (Art. 158, para. 3 and Art. 262, para. 1, line 5 of the CPA).

4.5.3.2. Prompt notice of charge, in language understood by the defendant. – The defendant must be notified about the criminal offence for which he or she is accused, and about the facts which support the accusation. The CPA considers that right as one of its basic principles (Art. 4, para. 1), and repeats it in the provisions on the interrogation of the defendant, stipulating that the defendant must be notified, during the first interrogation "why he or she is accused, and what are the grounds ... of suspicion" (Art. 218, para. 2). This provision is applied to the suspect, i.e. to the "person for whom there is a reason to be suspected of having committed an offence" (Art. 156, para. 3 of the CPA) and/or "to a person for whom an investigation is requested" (Art. 159, para. 2 and 4), and/or in the case of filing a direct charge (Art. 160, para. 2), i.e. before the start of criminal proceedings. The charges are "served on the defendant who is not immediately detained and, if detained, within 24 hours after reception" (Art. 266, para. 1).

4.5.3.3. Adequate time and facilities for the preparation of the defence and the right to communicate with counsel. – The obligation to allow sufficient time for the preparation of the defence represents one of the basic principles of the CPA (Art. 11, para. 3). However, it seems that the minimum deadlines prescribed by the CPA for the preparation of the defence are too short (in regular proceedings, eight days – Art. 281, para. 3, in summary procedure three days – Art. 439, para. 3). If the charge is modified at the main hearing, there is only a possibility prescribed, but not the obligation to adjourn the main hearing to allow for the preparation of the defence (Art. 337, para. 2). The assurance of time for the preparation of the defence does not include the interrogations of the defendant in the preliminary procedure, where there is no time left between the notice of the charges and the interrogation. Namely, before the first interrogation the defendant is given a 24-hour period to secure counsel, but is not notified of the charges against him.

In the second instance, although there are no special provisions in the CPA, the court jurisprudence took the view that the court to which the complaint is addressed "must take into account ... when sending notice about the session of the chamber ... to leave enough time to the parties to prepare themselves for the session" (see the Federal Supreme Court in the Decision of the SS Kzs. 24/76). The shortcoming is partly eliminated also by Art. 369 of the CPA mandating the delivery of charges to the opposite party and allowing the possibility to file a reply within eight days.

The right of the defendant "to present his or her view regarding all facts and evidence against him or her and to present all the evidence in his or her favour" (Art. 4, para. 2 of the CPA), is one of the assumptions without which the defendant could not organise or present the defence; according to the CPA that assumption is one of the basic principles of procedure. It is spelled out in a set of provisions which give the right to the defendant to study the documents and the objects serving as evidence (Art. 131, para. 5), to be present at some investigative actions, and to take active part in such actions (Art. 168). The rights of the defendant can be temporarily withdrawn, "during the preliminary proceedings until charges are brought ... when that is necessary because of special reasons of national defence or national security" (Art. 73, para. 2).

Oral and written contacts between a suspect held in custody and counsel are not possible before the first interrogation of the suspect (Art. 74, para. 1). This provision is contrary to the constitutionally guaranteed right of a detained person to retain counsel (Art. 23, para. 5 of the FRY Constitution, Art. 22, para. 5 of the Constitution of Montenegro; the Constitution of Serbia does not contain such a provision). Moreover, a detained suspect may correspond and speak with his counsel freely and without supervision only after the investigation is completed or direct charges brought (Art. 72, para. 2 and 3 of the CPA). This means that the defendant does not have a lawyer until that time, although he or she retained one. This is also contrary to the FRY Constitution, which considers the right to counsel as a constitutional right (Art. 29, para. 1).

4.5.3.4. The right to be tried without undue delay. – According to the CPA (Art. 14), the court is bound "to try to initiate proceedings without delay and to prevent any kind of abuse of the rights belonging to persons who participate in the procedure". This principle has been elaborated in a number of provisions of the CPA (e.g. Art. 175 – the deadline for the completion of the investigation, Art. 181 – the right to complain to the President of the Court because of unwanted extensions of the procedure (or because of other irregularities) during the investigation, Art. 279, para. 2 – the deadline for the convocation of the main hearing, Art. 292 – on the conduct of the main hearing, Art. 336, para. 1 – the deadline for the elaboration of the charge). Furthermore, the CPA requires, in proceedings against minors, special expedience (Art. 462, 479 and 484). The court is authorised to fine the participants in the procedure (except the public prosecutor) "if their actions are obviously intended to drag the criminal procedure"; if that is done by the public prosecutor, a higher prosecutor shall be informed about that (Art. 144, para. 1 and 3).

4.5.3.5. Prohibition of trial in absentia *and right to defence*. – The FRY Constitution and the Constitution of Serbia prohibit trial in absence if the accused is "accessible to the court or to another organ competent for the conducting of the procedure", while the Constitution of Montenegro does not contain such a provision (Art. 29, para. 2 of the FRY Constitution; Art. 24, para. 2 of the Constitution of Serbia). According to the CPA, trial in absence is allowed only exceptionally, in the cases when the defendant is responsible for the absence, e.g. "if the defendant is in flight or is otherwise inaccessible to the organs of the state, and there exist especially important reasons for the trial in his/her absence" (Art. 300, para. 3 and 4; for summary procedure, see Art. 442, para. 3). Furthermore, the defendant who is tried in absence must have an advocate immediately after the decision on the trial in absence is taken (Art. 70, para. 3). Minors may never be tried *in absentia* (Art. 454, para. 1). At the request of a person tried *in absentia* or of his or her counsel, the criminal procedure must be repeated (Art. 410). In this part the regulations of the FRY are in conformity with international standards.

The FRY Constitution guarantees the right to defence, which is regulated in more detail by the CPA. According to the FRY Constitution (Art. 29):

> Every person shall be guaranteed the right to defend himself and the right to engage a defence council 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 statute.
>
> 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 take his/ her own defence only in the cases where the law does not demand compulsory counsel (Art. 11, para. 1 and 2 of the CPA). In any case, the court is bound to inform the defendant about his or her right to have an advocate (Art. 13, 67, para. 2, 183, para. 3, and 193, para. 1). Counsel is appointed by the court in two cases: when the defence is compulsory, and the defendant does not hire an advocate, and when the defendant invokes indigence. The law defines situation where the defendant must have an advocate: if the defendant is dumb, deaf, or unable to defend himself or herself successfully, or if the trial is for an offence for which capital punishment may be pronounced (from the first interrogation on); if the defendant is accused of a crime, for which a sentence of more than ten years imprisonment may be pronounced (from the time of the submission of the charges); if the defendant is tried in absence (when a decision on trial in absence is adopted (Art. 70). Instead of an officially appointed advocate, the defendant may always retain another one (Art. 72, para. 1). Furthermore, the defendant may request that the President of the Court "dismiss the appointed advocate if he or she is not diligent in the performance of his or her duties"; the President may do that on his own initiative, but with the consent of the defendant

(Art. 72, para. 4). Concerning the right to indigence, the CPA prescribes that an advocate may, but not necessarily, be appointed to defend persons who, because of their poverty, cannot bear the expenses of the defence, when the trial is for a criminal offence which may result in sentences of over three years imprisonment (Art. 71).

4.5.3.6. The right to examine witnesses. – During the entire procedure, the defendant may request that new witnesses or experts be called, or new evidence presented (Art. 282, 322, para. 4, 335 and 336). The consequences of not responding to the summons of a court or for refusal to testify are the same, whether a witness or an expert were proposed by the prosecutor or by the defendant. With the permission of the presiding judge, the defendant may himself question witnesses and experts (Art. 327).

4.5.3.7. Right to the assistance of an interpreter. – Article 49 of the FRY Constitution prescribes that everyone "has the right to use his own language in proceedings ... and in the course of these proceedings to be informed of the facts in his own language." The Constitution of Serbia contains an identical provision (Art. 123, para. 2) whereas the Constitution of Montenegro prescribes that "the right to use their own language in proceedings before state agencies" is granted only to members of national and ethnic groups (Art. 72) and hence fails to ensure this right to all.

Under the CPA, the parties, witnesses and other participants in the proceedings have the right to use their respective languages; therefore, interpreters must be secured (Art. 7). When "the defendant, his counsel ... are deprived, contrary to their request, of the right to use their respective languages during the main hearing and to follow the main hearing in those languages", there is a substantial violation of the criminal procedure (Art. 364, para. 1, line 3).

4.5.3.8. The prohibition of self-incrimination. – A suspect has the right to remain silent and must be informed at the first interrogation that he/she need not present a defence or answer questions" (Art. 218, para. 2). But they must also be warned that they could thereby hinder

the gathering of evidence for the defendant. The defendant has also the right not to express his or her opinion about the charge, nor to present his or her defence (Art. 316, para. 5).

The CPA prohibits the use of "violence, threats or similar means in order to obtain statements or admissions from the suspects" (Art. 218, para. 8). Also, the decision of the court may not be based on the statement extracted from the suspect in a way contrary to that prohibition (Art. 218, para. 10). The organ conducting the procedure is bound "to collect other evidence, besides the confession of the suspect ..." (Art. 223), and the court is bound to present other evidence, even when the defendant pleads guilty at the main hearing (Art. 323).

4.5.3.9. Special treatment of minors. – According to the ICCPR (Art. 14, para. 4), the proceedings against minors must be adapted to their age and to the needs of their resocialisation. In the FRY, the criminal-legal status of minors is not regulated by special laws, but by special provision of the laws applicable to adult delinquents. Thus the CPA regulates in a special chapter (XXVII) the treatment of the juvenile offenders. The provisions of that chapter are applied when the persons who committed criminal offences as minors are less than 21 years of age at the time of the beginning of the criminal procedure (Art. 452, para. 1). Some of the provisions are also applied to young persons of legal age, under certain conditions (Art. 452, para. 2).

The preliminary procedure is conducted by a judge of the juvenile court and the main hearing is before a juvenile court. The judges-jurors must be specialised. Proceedings against juveniles are not open to the public, but the public need not necessarily be completely excluded – a limited number of professionals may attend (Art. 482). Also, there is an absolute prohibition against trying minors *in absentia* (Art. 454). A minor may not waive the right of appeal, nor desist from a filed appeal. Finally, the court plays a special role in supervising the enforcement of the measures it pronounces (Art. 491 and 492).

4.5.3.10. The right to appeal. – The FRY Constitution (Art. 26, para. 2 and Art. 119) "guarantees to everyone the right to appeal or other legal remedy against a decision which concerns his or her rights

or interests in conformity with the law". Identical provisions are found in the Constitution of Montenegro (Art. 17, para. 2) and of Serbia (Art. 22, para. 2).

The two-instance principle is a rule without exception – an appeal against the decision of the court of first instance is never excluded, and an appeal to the third instance is allowed under certain conditions (Art. 391, para. 1, line 3 of the CPA). The problem with a court of third instance, as a "higher court" arises in cases when the judgement is pronounced in the first instance by a district court, since in such a case the higher (second instance) court is the Supreme Court. There is no court of third instance in the Republic: in such cases a chamber of that same (supreme) court decides in the third instance, only with a different composition (since Art. 39, para. 1, line 5 of the CPA excludes from the trial judges who handed down the decision challenged by the appeal). The same situation exists in the case of military courts, where the Supreme Military Court always conducts second and third instance trials, but in different chambers (Art. 20 of the Military Courts Act).

Besides an appeal against the judgement, as a regular legal remedy, the convicted persons have at their disposal several extraordinary legal remedies: the request for a new trial, the request for the extraordinary mitigation of the sentence and the request for extraordinary re-examination of the sentence (Chapters XXIII and XXIV of the CPA).

4.5.3.11. The right to compensation. – The FRY Constitution prescribes that "a person unfoundedly convicted for a criminal offence ... has the right to rehabilitation, to the compensation of damages by the state, as well as other rights prescribed by the federal Act" (Art. 27, para. 4). The Constitution of Serbia contains an almost identical provision (Art. 23, para. 4), while the Constitution of Montenegro (Art. 25, para. 4) prescribes only the right to the compensation of damages.

4.5.3.12. Ne bis in idem. – International standards (Art. 14, para. 7 ICCPR and Protocol 7 para. 4 line 1 ECHR) prescribe that "no one shall be liable to be tried and punished again for an offence for which

he has already been finally convicted or acquitted ...". The ECHR, unlike the ICCPR, allows a deviation from that principle – the procedure may be repeated "if there is evidence of new or newly discovered facts or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case" (Art. 4, para. 2 of the Protocol No. 7, with the ECHR).

Art. 28 of the FRY Constitution does not formulate in an appropriate way the principle *ne bis in idem*, since the Constitution prohibits a repeated conviction and/or liberation and does not – which is the substance of this principle – prohibit repeated procedure for the same criminal offence against a person against whom such a procedure already took place and have been duly terminated. The solution in the Constitution of Montenegro is much better: "no one can be held responsible twice for one and the same criminal act" (Art. 27). Unfortunately, the Constitution of Serbia contains no provision on this procedural principle.

The *ne bis in idem* principle is not specially defined in the CPA, but is obviously observed to a certain degree: the violation of that principle represents a basis for a decision of non-admissibility. However, in some cases deviation from the principle *ne bis in idem* is allowed, and the repeated procedure may take place, even to the detriment of the defendant (Art. 403 and 404 CPA).

4.6. The Right to the 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.

4.6.1. Privacy

According to the generally accepted interpretation of the international treaties on human rights, the private life includes the identity, integrity, intimacy, autonomy and sexuality of an individual, and communication with others. The FRY Constitution guarantees "the inviolability of the physical and psychological integrity of the individual, his privacy and personal rights " (Art. 22, para. 1 of the FRY Constitution). The Constitution of Montenegro contains an identical wording (Art. 20, para. 1 of the Constitution of Montenegro), while the Constitution of Serbia prescribes: "human dignity and the right to private life are inviolable" (Art. 18 of the Constitution of Serbia).

4.6.1.1. Access to personal data. – The FRY Constitution explicitly guarantees, in Article 33, 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.

A similar provision is included in the Constitution of Montenegro (Art. 31), while the Constitution of Serbia also guarantees the protection of personal data, but does not envisage court protection in the case of abuse, nor the right of individuals to be informed about data concerning them (Art. 20 of the Constitution of Serbia).

The Personal Data Protection Act (*Sl. list SRJ*, No. 24/98) prescribes that personal data may be collected, processed and used only for the purposes specified by the Act, and for other purposes only with the written consent of the individual concerned. (Art. 13). It is also prescribed that citizens may request data about themselves, or may request to see such data, and the deletion of the data which are not in

accordance with the law, and the prohibition of the use of erroneous data (Art. 12). However, a citizen may not use such rights if the data collected are in accordance with the regulations on penal records, or in accordance with the regulations on records in the field of security of the FRY (Art. 13). Such a broad definition of the grounds for the prohibition of access to data practically hollows those rights, and leaves to the state agencies broad discretionary powers to refuse access to the data.

4.6.1.2. Sexual autonomy. – FRY law does not prohibit voluntary sexual relations between adult homosexuals (above 18 years of age), which is in accordance with the international interpretation of sexuality as an element of the right to private life. The penal codes incriminate voluntary sexual relations between homosexuals of whom one is under 18 years of age, with possible punishment of up to one-year imprisonment (Art. 110, para. 4 of the PC of Serbia; Art. 91, para. 4 of the PC of Montenegro).

4.6.1.3. Protection of privacy by criminal law. – The penal codes in the FRY sanction the violations of the right to private life. Thus e.g., unauthorised photographing (Art. 195a of the PC of the FRY; Art. 71 of the PC of Serbia; Art. 55 of the PC of Montenegro), publishing other persons writings, portraits, photographs, films or phonograms of personal character (Art. 71a of the PC of Serbia; Art. 56 of the PC of Montenegro) and unauthorised eavesdropping and audio recording (Art. 195 and 195a of the PC of the FRY; Art. 70 of the PC of Serbia; Art. 54 of the PC of Montenegro) are criminal offences.

4.6.2. The Home

The FRY Constitution prescribes that homes are inviolable and that officials may enter and search them only with a court warrant (Art. 31, para. 1 and 2). The search must be performed in the presence of two witnesses (Art. 31, para. 3). Exemptions exist in the following cases:

> An official may enter a home or other enclosed space without a warrant and search them without the presence of witnesses if

necessary to arrest a perpetrator or to protect persons and property, in a way prescribed by federal law (Art. 31, para. 4).

The constitutions of Serbia and of Montenegro guarantee in the same way the right to the inviolability of the home (Art. 21 of the Constitution of Serbia; Art. 29 of the Constitution of Montenegro).

Article 206 through 210 of the Federal CPA regulate the search of homes and of persons In exceptional cases, police may conduct searches without warrants (Art. 210, para. 1) and without witnesses if these cannot be found and a delay would pose a danger (Art. 210, para. 3). In such cases, the police are bound immediately to notify the investigative judge or public prosecutor if an investigation has not been instituted. (Art. 210, para. 5).

The provision of the CPA on the search without warrant is not in accordance with the FRY Constitution, for it introduces new grounds for searches. Thus the possibility to conduct a search because evidence cannot be assured otherwise, or in order to arrest a person who must be apprehended by force and who did not commit a criminal offence (but e.g., a traffic misdemeanour) is unconstitutional.

In the opinion of the Federal Constitutional Court, Art. 210, para. 1 of the CPA, which reads ...” an official may enter a home or other closed space without warrant and search them without warrant if it is evident that evidence cannot be otherwise secured...,” is not in accordance with the FRY Constitution and constitutes an impermissible departure from the principle of the inviolability of the home (*Sl. list SRJ*, No. 71/2000).

The Internal Affairs Act of Montenegro (*Sl. list RCG*, No. 24/94) prescribes, in Art. 3, that “authorised officials” may enter an apartment and search it without a warrant and without the presence of witnesses, “if it is necessary for the direct arrest of a person who committed a criminal offence, or to save persons and property”. Regardless of the fact that this text respects the exceptions prescribed by Art. 31, para. 4 of the FRY Constitution, the entire provision is unconstitutional, for the exceptions of the guarantee of inviolability of apartment may be prescribed only by a federal law. Also, there is no

mention of any supervision of such procedure, which opens space for abuses.

The penal codes in the FRY punish violations of the right to the inviolability of home. The provisions of the PC of the FRY concern the officials of the federal agencies. The prescribed criminal offences are the violation of the inviolability of dwellings (unauthorised penetration into somebody else's apartment or into closed premises – Art. 192 of the PC of the FRY; Art. 68 of the PC of Serbia; Art. 50 of the PC of Montenegro) and unlawful search (unauthorised search of apartments, of premises or of persons – Art. 193 of the PC of the FRY; Art. 69 of the PC of Serbia; Art. 51 of the PC of Montenegro).

In the jurisprudence of Yugoslav courts the notion of a dwelling is broadly interpreted as any premises which serve for residence or for short or long stay. Any premises belonging legally to a person, regardless of where such person lives, are also considered an apartment.

4.6.3. Correspondence

The term correspondence does not include only letters, but all kinds of communication (telephone, cable, telex, facsimile, and other mechanical and electronic means of communication) as well. The FRY Constitution guarantees the secrecy of letters and of other means of communication (Art. 32, para. 1). This right may be limited by law; however, that has been done in a way which allows the deviation from the principle only on the basis of a court decision, if it is necessary for criminal procedure or for the defence of the FRY (Art. 32, para. 2). Both republic constitutions contain such provisions (Art. 30 of the Constitution of Montenegro; Art. 19 of the Constitution of Serbia).

The Criminal Procedure Act covers in more detail the deviations from the right to the secrecy of letters. An investigative judge may order the post, cable and other organisations to submit to him (with a receipt), letters, cables and other pieces of mail sent to the defendant or by the defendant, if there exist circumstances which lead to well-founded conclusion that such pieces of mail might be used as evidence in the procedure (Art. 214, para. 1). The pieces of mail are opened by

the investigative judge in the presence of two witnesses. When letters are opened, care must be taken to preserve the seals, and to keep the envelopes and the addresses. Minutes on the opening must be taken (Art. 214, para. 3). If the interests of the procedure allow, the defendant or the person to whom the mail is addressed may be informed, completely or partially, about the content of the mail; the mail may be also given to such persons. If the defendant is absent, the piece of mail shall be given to some of his relatives, and if there are no such relatives, it will be sent back to the sender, if that is not against the interests of the procedure (Art. 214, para. 4).

When the defendant is in custody, and has already been interrogated, his or her counsel may correspond with or talk to the defendant (Art. 74, para. 1). Nevertheless, the investigative judge may order that the correspondence between the defendant and the counsel is sent only after being seen by him, the investigative judge, or that the defendant may talk to the counsel only in the presence of the investigative judge (para. 2). It seems that this rule is too broad, and it could represent a violation of the right to fair trial.

The Act on the Bases of the State Security System (*Sl. list SFRJ*, No. 15/84), adopted in the former SFRY, remains in force and makes possible major departures from the guaranteed privacy of correspondence and other communications:

> An official in charge of an agency concerned with state security affairs may ... order certain measures to be taken against persons and organisations which depart from the principle of the privacy of mail and other communications (Art. 21).

Considering a petition to examine the constitutionality of this provision, the Federal Constitutional Court found it in accordance with the Constitution of the former Yugoslavia but not with Art. 32 of the FRY Constitution (*Sl. list SRJ*, No. 15/200).

As concerns convicted persons, their status is regulated by the Implementation of Penal Sanctions Act (*Sl. glasnik RS*, No. 16/97). This law prescribes that a convicted person has unlimited right to correspondence (Art. 65 and 66).

The Internal Affairs Act of Serbia (*Sl. glasnik RS*, No. 44/91) foresees a procedure on the basis of which the police may control letters and other means of communication (Art. 13). At the request of the Public Prosecutor or of the Minister of the Interior, the Supreme Court of Serbia may allow the perusal of letters or eavesdropping (tapping), if that is necessary for the conducting of the criminal procedure or for the security and defence of Serbia. The Supreme Court of Serbia, i.e. its President or a judge appointed by the President, decides on such requests. Following the decision of the court, the Minister orders "measures enabling a deviation from the principle of the inviolability of the secrecy of letters in regard to some individuals or organisations ..." (Art. 13, para. 3). It must be stressed that this Act is not in compliance with the Constitution of Serbia and of the FRY, since it envisages the "security" of the Republic of Serbia as one of the grounds for the opening of correspondence; this ground does not exist in any constitution.

The penal codes in the FRY punish violations of the right to inviolability of the correspondence and of other communication. The provisions of the PC of the FRY concern the officials of the federal agencies. The prescribed criminal offences are the violation of the secrecy of letters or of other pieces of mail (unauthorised opening or violation of secrecy in other ways, as well as keeping, concealing, destroying or giving to other persons – Art. 194 of the PC of the FRY; Art. 72 of the PC of Serbia; Art. 52 of the PC of Montenegro) and unauthorised wiretapping and recording (Art. 195 of the PC of the FRY; Art. 70 of the PC of Serbia; Art. 54 of the PC of Montenegro).

4.6.4. Honour and Reputation

In accordance with Art. 17 ICCPR, the penal codes of the republics foresee the criminal offences of slander and insult (Art. 92 and 93 of the PC of Serbia; Art. 76 and 77 of the PC of Montenegro). Also, the disclosure of personal and family circumstances of a person which might be detrimental to his or her honour and reputation is prescribed as a criminal offence (Art. 94 of the PC of Serbia; Art. 78 of the PC of Montenegro).

4.7. The Right to 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 are 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.

All constitutions in Yugoslavia guarantee the freedom of thought and conscience (FRY – Art. 25; Serbia – Art. 45; Montenegro – Art. 34 para. 1 and 2). In addition, the constitutions of the FRY and Montenegro expressly guarantee the freedom of belief. The freedom of belief, thought and conscience, as well as the freedom of religion, are absolute and cannot be restricted in the state of war (see I.3.2.2). In the framework of the general prohibition of discrimination (Art. 20 of the FRY Constitution), religious, political and other beliefs are cited as forbidden grounds for distinctions. According to the FRY Constitution (Art. 137, para. 2) conscientious objection is accepted.

Freedom of religion is also guaranteed by the Yugoslav constitutions (FRY – Art. 43; Serbia – Art. 41; Montenegro – Art. 11 and 34). It should be noted that the constitutional provisions regarding the freedom of religion are quite specific and do not include some important elements found in the applicable international treaties. According to Art. 43 of the FRY Constitution:

> 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.

The constitutions of Serbia (Art. 41) and Montenegro (Art. 11 and 34) almost identically describe the scope of the freedom of religion. It includes believing, the expression of beliefs and religious practice. There are also provisions declaring that religious communities are separate from the state. Religious communities are free to practice their religion, and administer their affairs as they choose. They can establish religious schools and charitable organisations. The state can provide material assistance to religious communities.

According to ICCPR the freedom of religion consists of the freedom to have or adopt a religious belief and to manifest religion or belief through worship, observance, practice and teaching. The Constitution of Serbia specifies the freedom of religion as the freedom of belief, the manifestation of belief and worship, but not of religious teaching. This Constitution allows religious communities to establish religious schools. However, the teaching of religion is not defined as a part of the individual right to the freedom of religion, but only as one of the legitimate activities of religious communities.

According to Art. 18 para. 4 ICCPR, states parties are under the obligation "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". In Yugoslavia, neither the federal nor the republic constitutions guarantee this right. When this right of the parents is interpreted in conjunction with

Art. 13, para. 3 and 4 of ECHR[22] it can be concluded that parents have the right to establish private schools to educate children in accordance with their religious beliefs. However, in the FRY private persons cannot establish elementary schools – this can be done only by the state (Art. 9 of the Serbian Elementary Schools Act – *Sl. glasnik RS,* No. 50/92; Art. 17 of the Montenegrin Elementary Schools Act – *Sl. list RCG,* No. 34/91). This leads to the conclusion that the FRY does not fulfil its obligations under Art. 18, para. 4 ICCPR.

The FRY Constitution also guarantees the right to conscientious objection (Art. 137 para. 2), in accordance with the new tendency to recognise this right as part of the freedom of conscience and religion:[23]

> A citizen who for religious or other reasons of conscience does not want to fulfil his military obligations under arms will be given the opportunity to fulfil this obligation in the Army of Yugoslavia without bearing arms, or in civilian service, in accordance with federal statute.

Conscientious objection is regulated in more detail by the Army of Yugoslavia Act, according to which recruits who invoke conscientious objection serve their term in double duration, i.e. 24 months. This Act allows the recruit 15 days to request in written form that he perform military service as a civilian. However, the state is not under

22 According to Article 13, para. 3 and 4 of CESCR:
"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."

23 See Resolution 1989/59 of the UN Commission of Human Rights and the recommendation of the Council of Ministers of the European Union R (87) 8 of 9 April 1987. See also the interesting *obiter dictum* of the Human Rights Committee in its views in the case of *J. P. vs. Canada* (No. 446/91, para. 4.2) where the Committee explicitly states that conscientious objection is protected under Art. 18 ICCPR.

an obligation to inform the recruit about the availability of this alternative service; if the recruit misses this opportunity, he cannot invoke his beliefs as an objection to serve under arms. The recruitment commission decides on the request within 60 days. Its decision can be appealed, but not before a court.

The most important difference between the relevant provisions of the Yugoslav constitutions and the international standard relates to the freedom of adopting a new religion or belief. The 1993 General Comment 22 (48) of the Human Rights Committee explicitly states that the freedom to have or to adopt religion or belief "necessarily entails the freedom to choose religion or belief, including, *inter alia,* the right to replace one's current religion or belief with another". The right to change one's religion is mentioned in Art. 18 of the Universal Declaration of Human Rights. Neither the FRY Constitution nor the constitutions of the constituent republics have any provisions relating to the right to change one's religion or belief.

If conscientious objection is recognised as pertaining to the freedom of conscience and religion, then the same logic must apply to a person's freedom to change his or her religion or belief. However, the Army of Yugoslavia Act (*Sl. list SRJ,* 67/93) does not offer this possibility to those who have performed their military service normally to choose to later do their reserve duties without arms on the basis of a newly acquired belief. The Federal Constitutional Court has dismissed a petition to examine the constitutionality of the relevant provisions of the Army of Yugoslavia Act (Decision No. 51/94 of 25 May 1994, *Odluke i rešenja SUS,* 1994, p. 28–29). According to the Court, the Constitution itself determines that conscientious objection is practised "in accordance with federal law". The Court stated that the relevant federal law in the case under consideration was the Army of Yugoslavia Act, which states that conscientious objection can be invoked only at the time of recruitment and not later (Art. 298). Obviously the Court believes that the scope of conscientious objection is determined only by law and that there has never been an obligation of the legislator to take into account the possibility of changing religious and other beliefs. It is interesting to note that the Army of Yugoslavia

Act allows the opposite: namely, if a recruit who has previously invoked conscientious objection changes his beliefs and decides to bear arms, he may do so (Art. 297, para. 2, Army of Yugoslavia Act).

4.8. 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 Art. 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 or morals.

4.8.1. General

Constitutions in Yugoslavia guarantee the freedom of opinion, expression and information. However, legislative methods in Yugoslavia differ from those applied in international treaties: namely, on many occasions the freedom of opinion and expression, on the one side, and the freedom of the press and other media, on the other, are separately regulated.

All constitutions guarantee the freedom of public expression of opinion (FRY – Art. 35; Montenegro – Art. 34 para. 2; Serbia – Art. 45). Additionally, the FRY and Montenegrin constitutions contain a

separate provision guaranteeing "the freedom of speech and public appearance" (FRY – Art. 39; Montenegro – Art. 38). The Montenegrin Constitution in its Art. 34 para. 2 also states that "no one is under an obligation to declare one's opinion ...".

The freedom of the press and other mass media in the FRY is covered by separate provisions in all three constitutions. The FRY Constitution devotes three Articles to the press (36, 37 and 38) and expressly guarantees the freedom of the press ("the freedom of the press and other means of public information is guaranteed" – Art. 36 para. 1 of the FRY Constitution). It recognises both the right of citizens to participate in the work of the media in order to express their opinions and the right freely to establish press organisations and other media, with the exception of radio and television, which are regulated by law. The rights to reply, correction and compensation for damage caused by publication of false information are also guaranteed (Art. 37 of the FRY Constitution). The FRY Constitution prohibits censorship but provides for the circumstances under which media can be restrained (Art. 38):

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

The Constitution of Montenegro contains almost identical provisions (Art. 35–37), with minor departures in terminology.

On the other hand, the Constitution of Serbia devotes only one Article (46) to the freedom of the press; it covers this area in the same manner as the other two constitutions, but with the following very significant differences:

– there is no guarantee of the right of reply – only rights to correction and compensation are included;

– when enumerating the reasons for restrictions of the freedom of information the Serbian Constitution adds that "no one can prevent the distribution of the press and circulation of other information ... unless they *provoke and incite to* national, racial or religious intolerance and hatred (Art. 46 para. 6, italics added). Accordingly, restrictions are possible not only if the press provokes *intolerance and hatred* (as in the FRY Constitution and the Montenegrin Constitution) but also if it *incites* it. "Incitement" is a wider term than "provocation", which means that the Serbian Constitution offers more possibility for the restriction of the freedom of the press. Nevertheless, it should not be concluded that this is a significant departure from international standards; such restrictions can rather be viewed as the enforcement of Art. 20 para. 2 ICCPR dealing with the prohibition of "hate speech" (see I.4.8.4);

– according to the Serbian Constitution there is an explicit obligation of the media financed by public means to "timely and impartially inform the public" (Art. 46 para. 7).

Provisions on the freedom of expression in Yugoslav constitutions appear to be generally in accordance with international standards. However, these constitutions do not follow international treaties in their entirety and do not refer to the freedom to seek and receive information irrespective of frontiers the medium of transmission (cf. General Comment of the Human Rights Committee No. 10 (19) of 27 July 1983, p. 2). Even if granted that "receiving" information is generally covered by the guarantee of the freedom of the media, the question of the freedom to seek information from the government agencies remains open.

4.8.2. Restrictions on Media Freedom in Serbia Imposed by Legislation Passed in 1998

The freedom of the media in Serbia was drastically curtailed by the adoption of the Public Information Act on 20 October 1998 (*Sl. glasnik RS*, No. 36/98). Though it remained in force in 2000, the Act

was not applied and the new heads of the relevant ministries have announced the enactment of a new law, which will be in accordance with European and international standards in this field.

Three groups of provisions of the Act have caused major concern according to commentators and representatives of the media. Their objections relate to administrative proceedings against the media (Articles 72–74), misdemeanours and their punishment (Articles 67–71) and the prohibition of re-broadcasting (Art. 27).

Administrative proceedings against the media, prescribed by the Act, have been compared to summary trials. Magistrates, who in the FRY are not judges but officials of the executive branch,[24] have only 48 hours at their disposal to decide on the guilt and liability of the media and of their responsible editors. After receiving an appeal against a medium, the magistrate must set a hearing within 24 hours and announce a decision within the next 24 hours. In the proceedings, which are criminal in nature, there is a presumption of guilt of the accused who is not allowed to prove the veracity of the statements he or she has published. If the magistrate imposes a fine, the convicted person is left only 24 hours to pay – after that the property of the convicted medium or the responsible person will be impounded. This property will be auctioned within 7 days.

The provisions described above are incompatible with the guarantees of the freedom of expression in international law and in the Constitution of Serbia (Art. 19 ICCPR, Art. 10 ECHR, Art. 46 Constitution of Serbia).

The scope of sentences available to the magistrate according to the new Act has also given rise to serious concerns. The seminal Misdemeanours Act provides for maximum and minimum limits of sanctions for petty offences: however, the new Act prescribes fines, which exceed the maximum limit by more than 400 times! According to the Misdemeanours Act, the maximum fine is YUD 1,000 for an

24 See the decision of the Constitutional Court of Serbia of 10 July 1997, *Sl. glasnik RS,* No. 37/97.

individual, and YUD 10,000 for a legal entity. The new Public Information Act prescribes that a natural person (e.g. the responsible editor of a newspaper) can be sentences to a fine up to YUD 400,000 and a legal person (e.g. the company publishing the newspaper) up to YUD 800,000.

The ban of re-broadcasting of foreign programmes "with a political-propagandistic content" was transferred to the Public Information Act (Art. 27) from the Decree which preceded it. The Act prohibits the re-broadcasting of programmes produced by "organisations for radio-diffusion founded by foreign governments or their organisations" and broadcast in Serbian or in languages of national minorities in Serbia, with a content described by the use of the quoted terms. To be sure, there is a provision in the Act enabling re-broadcasting under the condition of diplomatic reciprocity, "determined by international treaty" (whatever this may mean). As already stated in the critique of the Decree, this provision violates the constitutions of Serbia and Yugoslavia and is contrary to the international obligations of the FRY.

Finally, the Federal Constitutional Court held vast number of the Public Information Act articles (Art. 17, 26. para. 1, 27, 38. para. 3, 41 para. 3, 44. para. 1, 47. para. 2, 48, 42. para. 2 and 3, 43, 44. para. 2, 45, 46, 52, 54, 61 to 64, 67, 68, 69, 72, 70 para. 1 line 3, 71. para. line 1, 73, 74 and 76) unconstitutional and incompatible with intenational law and federal legislation (*Sl. list SRJ*, br. 1/2001).

4.8.3. Establishment and Operation of Electronic Media[25]

The greatest difficulties with the implementation of the freedom of expression and information in Yugoslavia and Serbia have occurred in the work of electronic media. Provisions on the establishment, beginning of operation and activity of electronic media are dispersed in many federal and republic acts and regulations. They are often

25 See more *Human Rights in Yugoslavia 1999*.

incoherent or controversial and have created a situation where it is practically impossible legally to establish and manage a private radio or television station. Legal problems facing private stations are almost entirely linked to the application of provisions relating to the law on telecommunications (acts on radio and television and acts on the systems of communications). On the other hand, provisions that directly deal with the operation of the media itself (acts on information) caused lesser problems until 1998. It should be noted that the provisions on the operation of electronic media in the FRY, and in particular in Serbia, grant large privileges to the state electronic media (public broadcasting enterprises); the latter practically have a free hand in using frequencies. On the other hand, Montenegrin legislation is much better adapted to international standards; the relevant Montenegrin 1998 Public Information Act (*Sl. list RCG,* 4/98) was drafted with the assistance of OSCE experts. The following review will therefore be limited to the activity of radio and television stations in Serbia.

Noting that the federal and republic acts regulating allocation of frequencies are not in harmony, the new FRY Government instructed the Federal Ministry for Telecommunications to propose measures, which will remain in force until the situation in this field is systematically regulated.[26]

4.8.4. Relevant Criminal Legislation

The nature of the restrictions imposed in Yugoslavia on the freedom of expression and information can be best observed by the perusal of the Penal Code of Serbia, which in many respects departs from international standards and made it possible for the authorities to subject journalists and the media to criminal prosecution and intimidation. To be sure, some offences are described in such a way to include exculpation if the act was committed in the exercise of the

26 Federal Government press statement of 16 November 2000, ‹http://www.gov.yu/yu/institucije/saopstenja/2000/00saop1611.htlm›; for more details see *Human Rights in Yugoslavia 1999.*

profession of a journalist. The Act provides that, when determining the nature of the offence, the court has to take into account the manner in which a text was written, which corresponds to the requirement of the European Court of Human Rights that the seriousness of a journalist's contribution is an important element to determine whether a restriction is "necessary in a democratic society" (*Jersild vs. Denmark,* A 298 1994, para. 34). Thus, the FRY Penal Code (Art. 157, para. 2) and the Penal Code of Serbia (Art. 98, para. 2) contain identical provisions determining that an act against the reputation of the state will not be punishable if:

> ...derogatory remarks were made in a scientific, literary or artistic work, in serious criticism, in performance of official duties, *in the exercise of the profession of a journalist,* in political and other social activity, in the defence of a right or in protection of justified interest, *if the manner of expression and other circumstances do not indicate that the statement was made with the intention to denigrate,* or if the author proves the veracity of the statements, or proves that there were justified reasons to believe that the statement made or reproduced was true.[27]

The definition of some offences in Yugoslav law is at variance with international standards. A particularly restrictive clause is found in the description of the offence of "circulating false information", contained in the Serbian Penal Code (Art. 218, para. 1):

> A person making public or reproducing false information or *statements* with the intention to cause malaise *or disquietude among citizens* or to endanger public order or peace, or with the intention *to obstruct the enforcement of decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures* will be punished by imprisonment for a maximum three years.[28]

27 Italics added.

28 Italics added.

Stipulating that circulation of false information is punishable if there is an intention "to cause malaise or disquietude among citizens" is very general and vague and cannot meet the requirements of Art. 20 ICCPR and Art. 10 ECHR.

The offence of circulating false information "with the intention to obstruct the *enforcement of* decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures" is evidently too broadly defined and makes possible the persecution of political opponents.

Such a broad definition of a criminal offence creates a major potential for abuse by the authorities and constitutes undue restriction of the freedom of speech and public appearance, guaranteed by both the FRY Constitution and relevant international acts. Circulation of false information (Art. 218, para. 1; Art. 219, para. 2 in conjunction with Art. 219, para. 1 of the Serbian Penal Code) may be defined as a criminal offence in some instances, but only if the incrimination is in keeping with the international obligations of FRY.

The definition of the offence of "unlawful possession and operation of a radio station" in the Serbian Penal Code is noteworthy:

> A person *possessing* a radio station in violation of the provisions on the system of communications or operating such a station without permission, will be punished by imprisonment for up to one year.
>
> An offender under para. 1 of this Art., making public or circulating false information or statements which have led or *could have led* to the disquietude of citizens or to a threat to public order or peace, will be punished by three months to three years of imprisonment.
>
> If the criminal offence contains the features of the offence described in Art. 218 of this Act, or if it resulted in present disquietude of citizens or a threat to public order and peace in a wider area, the perpetrator will be punished by one to eight years of imprisonment.[29]

29 Italics added.

Journalists and editors working for the media not controlled by the state have in most cases been prosecuted because of alleged offences under Art. 218 of the Serbian Penal Code (journalists and editors of printed and electronic media) and under Art. 219 of the Code (those working for the electronic media).

4.8.5. The Prohibition of Propaganda for War and of 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.

The relevant Yugoslav constitutional and legal provisions generally correspond to the prohibitions imposed in Art. 20 ICCPR. However, there have been very few instances of criminal prosecution for advocacy of national, racial and religious hatred or for propaganda for war, although "hate speech" and propaganda for war were very much present immediately before and, in particular, after the outbreak of hostilities in the territory of the former Yugoslavia in 1991.

The constitutions in the FR Yugoslavia do not prohibit propaganda for war, but such propaganda is a criminal offence under the federal Penal Code, which in Art. 152 simply states that persons "advocating or instigating to *aggressive* war" will be punished by imprisonment from one to ten years. There is a glaring difference between this Article and the corresponding Art. 20 of the ICCPR, which prohibits "*any propaganda for war.*"[30]

The provision of the Yugoslav Penal Code can nevertheless be tolerated in view of the interpretation of the term "propaganda for war", given by the Human Rights Committee. The Committee held

30 Italics added.

that only propaganda aiming at the commission of acts of aggression and breaches of peace contrary to the UN Charter was prohibited, but not of military activity in the protection of the sovereign right to self-defence or of the right of peoples to self-determination (General Comment 11/19 of 29 July 1983). Hence the greatest difficulty in the application of Art. 152 of the FRY Penal Code is to establish whether the war advocated is a war of aggression, self-defence or a war for the self-determination of peoples.

Similar difficulties should not arise in the application of the corresponding provisions regarding the prohibition of instigation and incitement to national, racial and religious hatred in Art. 50 of the FRY Constitution:

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

A similar provision is found in Art. 43 of the Constitution of Montenegro. However, an explicit prohibition of "hate speech" does not exist in the Serbian Constitution, which indirectly refers to "incitement and instigation of national, racial and religious intolerance and hatred". The first corresponding reference is related to the prohibition of political, trade union and other organising and activity (Art. 44). For the second time it is mentioned as a reason for the banning on the distribution of articles in the press and the dissemination of other information (Art. 46). Articles 37 and 42 of the Montenegrin Constitution are worded in a similar manner. The provisions of the Federal Constitution correspond to the nature to the obligation undertaken by Yugoslavia under Art. 20 ICCPR; this is not the case with the Constitution of Serbia, which links the prohibition of the instigation of hatred only to the abuse of the freedom of association and information, thus ignoring other forms of incitement and instigation to hatred.

The field of application of the corresponding provisions of the constitutions of the FRY and Montenegro is wider than demanded by Article 20 ICCPR; they could include incitement and hatred against

other social groups; e.g. homosexuals. On the other hand, whereas international norms refer to "incitement to hatred" the Yugoslav Constitution declares punishable incitement to "inequality" and "intolerance". The first notion is probably covered by the general prohibition of discrimination and the latter is quite imprecise. Art. 20 ICCPR establishes a causal link between advocacy and incitement. Not any advocacy of hatred shall be prohibited by law, but only advocacy "that constitutes incitement to discrimination, hostility or violence". Art. 50 of the FRY Constitution does not include this narrower determination so that it reads rather as a political declaration than a binding legal norm.

Art. 134 of the FRY Penal Code, which explicitly prohibits the incitement of national, racial and religious hatred, discord or intolerance, nonetheless calls for criticism.

> Any person instigating or inflaming national, racial or religious hatred or intolerance among the nations and national minorities living in the FRY will be punished by imprisonment from one to five years. If an act defined in para. 1 of this Article was committed by coercion, ill-treatment, endangering of security, defamation of national, ethnic or religious symbols, causing damage to the property of others, desecration of monuments, memorials or tombs, the perpetrator will be punished by imprisonment from one to eight years.
>
> Anyone committing the acts referred to in para. 1 and 2 of this Article through the abuse of his/her position or powers, or if such acts have led to disorders, violence or other serious consequences to common life of peoples and national minorities living in the FRY, the perpetrator will be punished for an act in para. 1 of this Article – by imprisonment from one to eight years, or for an act in para. 2 of this Article – by imprisonment from one to ten years.

The first paragraph of the Article hardly meets the requirements of the international standards envisaged by the ICCPR since it refers only to the "nations and national minorities living in FRY."

The Covenant, on the other hand, prohibits "any" incitement or instigation of national hate, hence against any national group irrespective of where the group lives.

The prohibition of the advocacy of national, racial or religious hatred is reflected in two other Articles of the FRY Penal Code. Art. 100 declares punishable the derision of peoples, national minorities and ethnic groups, but again only of those living in Yugoslavia. Art. 145 defines the criminal offence of instigation of genocide and other war crimes: the prohibited conduct broadly corresponds to serious forms of activity prohibited by Art. 20 ICCPR.

4.9. The Right to 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.

4.9.1. General

The freedom of peaceful assembly is guaranteed in the Yugoslav constitutions, and both republics regulated in more detail, in their laws, the enjoyment of this right (Public Assemblies of Citizens Act of Serbia, *Sl. glasnik RS*, No. 51/92; Public Meetings Act of Montenegro, *Sl. list RCG*, No. 57/92). Art. 20 of the FRY Constitution states:

> 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 exist in the constitutions of Serbia (Art. 43), and of Montenegro (Art. 38); however, they do not mention the freedom of "peaceful" assembly, but the freedom of "public" assembly. In this part, the wording of the FRY Constitution follows the wording of the international instruments which refer to the right to "peaceful" assembly.

The FRY Constitution (Art. 40, para. 2) and the Constitution of Montenegro (Art. 39, para. 2) regulate in the same way the possibility of restriction of the freedom to assembly, stipulating that it may be temporarily limited by the decisions of the competent authorities, in order to prevent the endangering of health and morals, and in order to protect persons and property". These grounds are in accordance with the international standards. It is not stated that they must be "necessary in a democratic society", but the refusal to adopt the principle of proportionality regarding the restriction of human rights obviously represents a defect of the Yugoslav legal system.

The Constitution of Serbia (Art. 43), mentions, besides the restrictions prescribed by the FRY Constitution and in the Constitution of Montenegro, as a reason for the restriction of peaceful assemblies, the "prevention of the disruption of public traffic". This provision opens broad avenues for abuse.

The Yugoslav constitutions guarantee the right to the freedom of assembly to "citizens" only, and not to "everyone". Nevertheless, according to the Citizens Assemblies Act of the RS, a foreigner may convene a public meeting, with previous approval from the police. Furthermore, the law says that police approval is necessary a foreigner to address an assembly (Art. 7).

According to the Serbian Act, public meetings may take place in one place, or may be moving (Art. 3, para. 1 of the Citizens Assemblies Act of RS). Such a provision, which regulates the modali-

ties of public meetings, has its sense in a country in which the tradition of public demonstrations by private individuals did not exist for a long time.

The Serbian Act defines assembly as the "convening and holding of a meeting or other gathering at an *appropriate place''* (italics added, Art. 2, para. 1). An "appropriate" space is defined by the Act:

> A space is considered appropriate for a meeting if it is accessible and suitable for gatherings of persons whose number and identities are not known beforehand and in which the gathering of citizens does not cause disturbances of public traffic, and does not endanger health, public morals or security of persons and property (Art. 2, para. 2).

It follows that, in order to hold a public meeting in a certain area, such a meeting, must not *inter alia* provoke "disturbances of public traffic". As already stated, this reason for the restriction is already found in the provisions of the Constitution of Serbia. True, the law somewhat mitigates this restriction, for it prescribes that a meeting may be held in an area with public traffic, if it is, *inter alia*, possible to change temporarily the regime of public traffic (Art. 2, para. 3). It seems that the "disturbance of public traffic" represents an excessively restrictive basis for the restriction of the freedom of assembly, and that is incompatible with international standards.

Where the location of public assemblies is concerned, the federal Strikes Act (*Sl. list SRJ*, No. 29/96) stipulates that workers on strike may assemble only on the premises of their enterprise. (Art. 4, para. 5, line 3). This, in effect, prevents public demonstrations by strikers. The Federal Court dismissed a petition to examine the constitutionality of these provisions, considering that they do not affect the enjoyment of human rights, guaranteed by the FRY Constitution. According to the Court:

> Limiting by law the location of assemblies of strikers to the premises in which they work does not constitute a restriction on the personal and political freedoms of citizens, which are mani-

fested in the freedom of all citizens to move, to think, speak and assemble (Decision IU, No. 132/96, of 9 October 1996, Decisions of the FCC, 1996, p. 33–34);

According to the republic laws, 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 public meeting (Art. 6, para. 1 of the Assemblies of Citizens Act of RS; Art. 3, para. 1 of the Public Meetings Act of RM). According to the Serbian law, if a public meeting is held on a place with public traffic, which means that the traffic regime should be changed, the meeting must be announced 5 days earlier (Art. 6, para. 2). The Serbian Act prescribes that the police shall dispel a meeting which is held without previous announcement and that "measures for the establishment of public order and peace shall be undertaken" (Art. 14).

4.9.2. Prohibition of Public Meetings

According to the Assemblies of Citizens Act of RS, the police may prohibit public meetings for reasons established by the Constitution (health hazard, dangers to public morals or to security of persons or property), including the disturbance of public traffic (Art. 11, para. 1). The organiser must be informed about the ban at least 12 hours before the beginning of the meeting. It is possible to appeal against the decision on the prohibition of a meeting (which does not postpone the enforcement of the decision); administrative suits may be conducted against the final decisions. The greatest shortcoming of this provision lies in the fact that it does not determine specific criteria for the prohibitions of public meetings; it only copies the restrictions prescribed by the Constitution of Serbia. The police are given *carte blanche* to prohibit public meetings. Furthermore, the legal protection is not supported by urgent procedure, which makes it possible to the police to simply ban a meeting, while the legal remedies against such a prohibition may bring results months after the prohibition, when the public meeting is deprived of any purpose.

The police may also prohibit meetings temporarily, if the meetings are directed at the violent overthrow of the constitutional order, at the violation of human rights or at the instigation of racial, religious or national intolerance and hatred (Art. 9, para. 1). A temporary prohibition can be issued before the meeting, and in such cases the organiser must be informed about the ban at least 12 hours before the time determined for the beginning of the meeting (Art. 9, para. 2). However, a temporary prohibition may become permanent only by the decision of the court. The police must address the request for the prohibition of a public meeting to the district court and the court has to decide upon it within 24 hours. The organiser may complain against the decision of the district court to the Chamber of the Supreme Court of Serbia (within 24 hours from the receipt of the decision); the Chamber must decide within 24 hours (Art. 10).

If there appears the need for a temporary or permanent prohibition of a meeting during the meeting itself (see above), the police may disperse it (Art. 12, para. 1).

In Montenegro, a public meeting may be prohibited or dispersed for reasons similar to those envisaged in Serbia for temporary prohibitions (e.g., violent overthrow of the constitutional order; Art. 7 of the Public Meetings Act of RM). Furthermore, a meeting is dispersed if rioting breaks out, and if circumstances which could endanger the public peace, safety of traffic, etc. appear (Art. 6, para. 1, linked to Art. 5, para. 3). The police may temporarily ban a public meeting if such a prohibition is necessary for the security of persons and property, for the protection of public morals or for preventing hazards to health (Art. 8). In this part, the provisions of the Montenegrin law are in accordance with international standards.

Concerning legal protection, the Montenegrin law allows complaints to a higher administrative body; an administrative suit is possible against the decisions of such authorities. The Montenegrin law prescribes that a public meeting may be held if the competent organ does not take a decision on the complaint within 24 hours from the reception of the complaint (Art. 10, para. 4).

4.10. 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 protection 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.

4.10.1. General

The federal and republic constitutions guarantee the freedom of association. The constitutions of the FRY and of Montenegro use the same wording: "The freedom of political, trade union and other association and action, is guaranteed to the citizens without preliminary permission, by simple registration with the competent authority" (Art. 41, para. 1 of the FRY Constitution, Art. 40, para. 1 of the Constitution of Montenegro). Similar wording is found in the Constitution of Serbia (Art. 44, para. 1).

The constitutions of Serbia and of Montenegro guarantee the freedom of trade union association as well, while the FRY Constitution

underlines that the trade unions are established in order to protect the rights and to promote the professional and economic interests of their members (Art. 41, para. 3 of the FRY Constitution). This wording of the function of the trade unions corresponds to Art. 8, para. 1(a) CESCR, but is narrower than the wordings in the ICCPR and in the CESCR (Art. 11). According to ICCPR and CESCR, the freedom of trade union association is the right of every individual to establish and join trade unions in order to protect "his or her interests", a wording which is included in Article 22 ICCPR, in order to emphasise the fact that the trade unions also stand for the human rights of their members.

Political and trade union associations in the FRY whose activities cover the whole territory of the FRY are established and operate according to the federal Act on Association of Citizens into Societies, Social Organisations and Political Organisations established for the territory of the FRY (*Sl. list SFRJ*, No. 42/90; further on "The Association of the FRY Citizens Act"). The status of the organisations whose activities are limited to the territory of only one republic is governed by separate republic laws. Montenegro adopted the Association of Citizens Act (*Sl. list RCG*, No. 23/90), while in Serbia, there are two laws; 1) The Social Organisations and Citizens Associations Act (*Sl. glasnik SRS*, No. 24/82), which regulates the establishment and activities of social organisations and of citizens associations; and 2) The Political Organisations Act (*Sl. glasnik SRS*, No. 37/90), which deals with political organisations. There are two laws in Serbia because the Social Organisations and Citizens Associations Act was adopted in 1982, in the time of the one-party system.

All these laws were adopted before the coming into force of the present constitutions and consequently do not conform fully with them. In Serbia, the trade union organisations and of citizens associations are still established on the basis of the 1982 Social Organisations and Citizens Associations Act, which is very much burdened by socialist rhetoric and archaic restrictions.

4.10.2. Registration and the Termination of Activities of an Association

The FRY and Serbian constitutions guarantee freedom of association. No prior permission is required to establish an association but it must be registered with the competent authority (Art. 41, FRY Constitution; Art. 4, Serbian Constitution). Registration is a formal precondition for an association to commence its activities. Prohibition of association is possible only in those cases specified by the constitutions (Art. 42, FRY Constitution; Art. 44, Serbian Constitution). Political organisations register with the competent Ministry of Justice (Art. 11, FRY Citizens Association Act; Art. 4, Serbian Act on Political Organisations), while unions register with the competent Ministry of Labour (Art. 4, Regulations on Entry of Trade Union Organisations in the Register, *Sl. glasnik* RS, No. 6/97, 33/97). The organisation acquires the status of a legal person on the day of its registration. The registration procedure starts with the submission of an application to the competent authority, which is obligated to enter the organisation in the relevant register within 15 days (30 days in the case of political organisations in Serbia (Art. 13, FRY Citizens Association Act; Art. 10, Serbian Act on Political Organisations).

In Serbia, citizens' associations are registered with the Ministry of Internal Affairs, pursuant to the procedure laid down in the Act on Social Organisations and Citizens Associations. The Ministry is obligated to decide on the registration within 30 days of the submission of the application. When registered, the organisation acquires the status of a legal person and may commence its activities (Articles 34 and 35).

However, the Act, passed during the socialist system, prescribes the purposes for which an association may be established: "... developing personal affinities and creativity in social, humanitarian, economic, technical, scientific, cultural, athletic, educational and other activities." This provision clearly clashes with the FRY and Serbian constitutions, which envisage no restrictions as to the aims of an organisation. The constitutions only prohibit the establishment of or-

ganisations seeking to forcibly overthrow the constitutional order, violate the human rights of others, or to incite certain forms of hate and intolerance (see 4.10.4.1.). In practice, this unconstitutional provision gives the Ministry of Internal Affairs broad discretionary powers, which it often abuses by denying registration. One characteristic example was the refusal to register the Serbian Association of Judges. Regrettably, the decision was upheld by the Serbian Supreme Court in considering the Association's appeal against the Ministry decision.[31] The Court argued, unconvincingly, that the Act on Social Organisations and Citizens Associations was a substantive regulation on the basis of which applications for entry into registers were decided and that, though the regulation does not conform with the Constitution, there was no need to apply the latter. It did not deem it necessary to say why it gave precedence to a law over the Constitution.

All Yugoslav laws prescribe that an organisation ceases to exist: a) by the decision of the organ determined by the statute of the organisation, b) if its membership falls below the limit determined for the establishment of the organisation, c) if it is found that the organisation discontinued its activities (except for political organisations in Serbia), or d) if the activity of the organisation is prohibited.

ILO Convention No. 87 prescribes explicitly, in its Article 4, that administrative authorities may not dissolve or suspend trade union organisations. Contrary to that, the decisions on the prohibition of the activities of the trade union organisations in Serbia, and of political and trade union organisations registered at the FRY level, are taken by the administrative body which is competent for their registration (Art. 67 of the Association of Citizens of the FRY Act ; Art. 20 of the Social Organisations and Associations of the Citizens of Serbia Act). The Social Organisations and Associations of Citizens of Serbia Act, unlike

31 The Serbian Association of Judges applied for entry in the Register of Citizens Association on 29 May 1998, and was denied by the Ministry of Internal Affairs on 7 September 1998. It appealed the first-instance decision and was again denied. Its next step, an appeal to the competent court in administrative procedure, was also dismissed, and the Serbian Supreme Court dismissed the complaint on 17 February 1999.

the Association of the Citizens of the FRY Act, does not require that the decision on the prohibition of activities be reasoned. Furthermore, both laws contain a pernicious provision, according to which organisations are bound to cease their activities on the day when they receive the decision, and not on the date of the coming of the decision into force. The Association of the Citizens of the FRY Act foresees the possibility of administrative dispute before the Federal Court against decisions on the prohibition. However, the Social Organisations and Associations of Citizens of Serbia Act does not prescribe any kind of special court protection.

Decisions on the prohibition of the activities of political organisations in Serbia are taken by the Supreme Court, at the proposal of the public prosecutor (Art. 12, para. 5 of the Political Organisations of Serbia Act). Complaints may be filed against the decisions of the Supreme Court (Art. 13, para. 4). In Montenegro, the Constitutional Court decides on the prohibitions of political organisations or of citizens associations, at the proposal of the public prosecutor or of the administrative body which keeps the registry of the organisations (the Constitutional Court of Montenegro Act, *Sl. list RCG*, No. 44/95).

4.10.3. Associations of Aliens

Unlike the ICCPR and the CESCR, which guarantee the freedom of association to "everyone", the federal and Montenegrin constitutions guarantee that right only to "citizens" The Constitution of Serbia is different, for, in accordance with the formulation of that freedom in the international instruments, it does not make a difference between citizens and the aliens.

Nevertheless, the laws do not deny completely the freedom of association of aliens. The Montenegrin Association of Citizens Act and the Serbian Social Organisations and Associations of Citizens Act allow the establishment of associations of aliens, but not of their political and social organisations, including trade unions. Aliens' associations are subject to a special regime, which is regulated in more detail by the federal Movement and Residence of Aliens Act (*Sl. list*

SFRJ, No. 56/80). According to Article 68, para. 1 of this Act, "associations of foreigners are established on the basis of permission of the competent authorities". Permits for the establishment of associations of foreigners, established for activities in the territory of the FRY, and for activities in the territory of Serbia, are issued by the federal and republic organs of the interior (police), respectively.

Besides being subject to a very restrictive system of permits, the right to the freedom of association of foreigners is additionally limited by the absence of judicial protection. According to Serbian and Montenegrin law, if the police refuse to issue a permit for the establishment of an association of foreigners, if they refuse its entry into the register or prohibit an association, a complaint can be submitted to the government. However, it is not possible to file an administrative suit against such the decision of the government (Art. 32 of the Association Act of RM and Art. 70 of the Social Organisations and Citizens Association Act of RS).

4.10.4. Restrictions

4.10.4.1. Prohibition of an organisation. – All constitutions in the FRY prohibit political and trade union organising and activities if they are directed at the violent overthrow of the constitutionally established order, the violation of the territorial integrity and independence of the country, the violation of constitutionally guaranteed human and civil rights, or at inciting national, racial and religious intolerance and hatred (the FRY Constitution, Art. 42, para. 1; Constitution of Serbia, Art. 44, para. 2; Constitution of Montenegro, Art. 42). Such activities are incriminated in the penal legislation as well. The requirements of ICCPR and CESCR are used to determine the legal basis for the restriction of political and trade union activities. To these conditions, the federal and Montenegrin constitutions add the prohibition related to the instigation of "other intolerance and hatred", which is not qualified. This formulation can cover anything, including "intolerance" of the government, of which the opposition could be accused. The Yugoslav laws on the freedom of association also prescribe that trade

union or political organising may be prohibited if it is directed at the achievement of legally prohibited objectives.

It should be underlined again that the Yugoslav legal system does not accept the principle of proportionality in the restrictions of human rights, and does not take into account that all restrictions must be "necessary in a democratic society" as required by the ICCPR and the CESCR with regard to the freedom of association.

Furthermore, the existing laws expand in an inadmissible way the scope of the prohibition of the activities of organisations and associations. Thus the Association of the Citizens Act of the FRY prescribes that political and trade union organisations may be prohibited not only if they act in a way which is not in accordance with the law, but also if they do not act in accordance "with the objectives for which they were established, or with a certain programme orientation, or programme of a political organisation" (Art. 20). According to that provision, a political organisation may be prohibited if, for instance, it declares in its programme that it is a royalist organisation, and does not act, according to the assessment of the competent body, in accordance with its royalist orientation. Such a provision permits inadmissible interference in the activities of trade union and political organisations, making it possible for the authorities to judge what is the meaning of a programme of a political organisation, whether it behaves in accordance with that programme, etc. It is very difficult to see what general social interest could stand behind a provision, which allows direct interference of the state in the freedom of association – one of the fundamental human rights.

The Political Organisations Act of Serbia prescribes in Art. 12, para. 2, that a political organisation may be banned if it accepts minors as members and/or if "it abuses minors for political purposes". Although the objective of this provision is the protection of minors, the wording "abuse of minors for political purposes" is wide and vague and requires more precision.

The FRY Constitution prescribes, in Art. 41, para. 2, that "the sources of revenue of political parties are accessible to the view of the

public", an understandable provision in that it makes transparent the financing of political parties, which is desirable in a democratic society. On the other hand, political organisations are not allowed to receive funds from abroad, either from physical or from legal persons (Art. 5, para. 2 of the Association of Citizens Act of the FRY; Art. 11, para. 2 of the Association of the Citizens Act of Montenegro; Art. 2, para. 1 of the Financing of the Political Organisations Act of Serbia, *Sl. glasnik RS*, No. 32/97). Although it can be said that such a restriction is among the admissible grounds for restricting the freedom of association, like e.g. the protection of the public order or of national security (the prohibition of foreign funding of political parties is designed to prevent inadmissible external interference in internal political life), it is still a question whether the complete prohibition of such financing could be considered as "necessary in a democratic society".

The Citizens Associations Act of Montenegro (Art. 28, para. 3) and the Political Organisations Act of Serbia (Art. 12, para. 3) prescribe that a political organisation shall be prohibited if it acquires funds from abroad for the achievement of its objectives. This measure does not correspond to the interest, which protects and could not be considered as necessary in a democratic society.

4.10.4.2. Other restrictions. – The Associations of Citizens of Montenegro and the Political Organisations Act of Serbia prescribe that founders of political and trade union organisations, or in Serbia of political organisations only, may not be persons convicted of certain criminal offences, for a period of five years after they have served sentence, were pardoned, or the enforceability of their sentence expired (Art. 5 of the Association of Citizens Act and Art. 5, para. 2 of the Political Organisations Act). The criminal offences concerned are in the category of "criminal offences against the social order and security". According to the Montenegrin law, they also include criminal acts against the FRY Army, against humanity and international law, against human and civil rights and liberties, and the instigation of national, racial and religious hatred and intolerance.

The prohibition of the establishment of political and trade union organs (but not including the prohibition to take part in them), five years after serving a sentence, or after pardon or the expiration of the enforceability of a sentence, is laid down by law.

An association is prohibited if its activities are directed at the violent overthrow of the constitutional order, the incitement of racial or national hatred, etc. In that case, it is the consequence that is penalised – prohibition of an organisation is the extreme sanction for its unlawful activities. The fact that an organisation is founded by persons who have been convicted of certain criminal offences and have served their sentences, does not imply that their association would necessarily be involved in unlawful activities. The right to the freedom of association of such persons thus is completely abolished: this freedom includes the right to establish political or trade union associations. There are other ways of monitoring the activities of political and trade union organisations and of preventing their unlawful activities. This is the most severe measure, which is obviously not necessary in a democratic society for the achievement of the legitimate interest of the protection of the public order or of national security.

4.10.5. Restrictions of Freedom of Association of Members of the Armed Forces and the Police

The ICCPR and the CESCR allow states to restrict the right to free association of the members of the armed forces or of the police, and, in keeping with the CESCR, of the members of the state administration as well (Art. 22, para. 2 ICCPR and Art. 11, para. 2 of the European Convention). The Yugoslav constitutions and laws provide for the absolute prohibition of political and trade union association of the professional members of the army and of the police. Under the FRY Constitution, " professional members of the army and of the police of the Federal Republic of Yugoslavia may not organise in trade unions" and "may not be members of political parties" (FRY Constitution, Art. 42, para. 2 and 3). A similar provision is contained also in

the Army of Yugoslavia Act (*Sl. list SRJ*, No. 43/94), which prescribes, in Art. 36, that "professional soldiers, students of military academies and students of military secondary schools may not be members of political parties, are not entitled to trade union organisation and to stage strikes." Unlike this general prohibition, para. 2 of the same article prescribes that "conscripts, when doing military service, and members of the reserve, while on military duty in the army, may not participate in the activities of the political parties".

The Constitution of Montenegro does not prohibit trade union organising of members of the police force; however, Art. 41, para. 2 prescribes that "professional members of the police may not be members of political parties". The Constitution of Serbia does not contain such provisions.

Banning members of the armed forces and police force from membership in political parties is controversial as it excludes a major segment of the population from political life. The prohibition constitutes a serious restriction on the freedoms of association and of expression. In its 1998 report on human rights in Yugoslavia, the Belgrade Centre was of the opinion that such an absolute prohibition was not in conformity with the ICCPR and ECHR.[32] However, in *Rekvény vs. Hungary*, the European Court of Human Rights ruled on 20 May 1999 that prohibiting members of the police force from joining political parties and participating in political activities was not contrary to Art. 10 (freedom of expression) and Art. 11 (freedom of association) of the ECHR.[33]

In view of the European Court's decision, the Yugoslav constitutional prohibition appears in principle to be a permissible restriction. It should be borne in mind, however, that the Yugoslav armed forces and police force were not politically neutral and identified with the ruling political structures and, up to October 2000, were a mainstay of their power.

32 See *Human Rights in Yugoslavia 1998*, part 1.4.10.5.

33 European Court of Human Rights, *Rekvény vs. Hungary*, judgement of 20 May 1999.

Where the constitutional prohibition of union organisation of professional members of the armed forces and police is concerned, this general prohibition constitutes an unwarranted restriction on the freedoms of association and expression. The reasons cited with regard to association in political parties, such as ensuring the political neutrality of the security forces, cannot apply to union organisation. Prohibiting members of the armed forces and police force from establishing or joining a union prevents them from protecting their labour interests and consequently cannot be considered "necessary in a democratic society."

The restrictions of the freedom of association extend, in the Yugoslav constitutions, to other persons not referred to in international instruments. Therefore, such restrictions should be evaluated in the light of generally permitted restrictions. Thus the FRY Constitution prescribes that the "judges of the Federal Constitutional Court, judges of the Federal Court, the Federal Public Prosecutor ... may not be members of political parties" (Art. 42, para. 3 of the FRY Constitution).[34] The Constitution of Serbia does not contain that prohibition; however, the Serbian Public Prosecutor's Office Act (*Sl. glasnik RS*, No. 43/91, Art. 7) and the Courts Act (*Sl. glasnik RS*, No. 46/91, Art. 5) prescribe that the public prosecutors, deputy public prosecutor and judges "may not hold political office."

Restriction of the freedom of political organisation of judges and public prosecutors is intended to protect a legitimate interest – ensuring an impartial and independent judiciary, and, consequently, the protection of public order – and may be considered necessary in a democratic society, like the restrictions placed on the political organisation of members of the armed forces and police force. Judges of the highest courts in Serbia, however, were loyal to the former regime until its demise. Indeed, some who served on election commissions

34 However, judges of the highest courts in Serbia were loyal to the former regime until of its end. Some of them, as the members of the electoral commission, are indicated for the election fraud of the presidential election results from 24 September 2000.

were accused of falsifying the results of the 24 September 2000 presidential election. The complete denial of the right to political organising of these persons as established by the FRY Constitution is nonetheless an exceedingly radical measure in view of the fact that the laws of the two republics place lesser restrictions on this right. Thus the Serbian laws on the prosecutor's office and on the courts do not deny the right of political organisation to public prosecutors and judges; they only limit it by not allowing them to hold political office. An even more precise solution is found in the Constitution of Montenegro, where Art. 41, para. 3 prescribes that the "judges, judges of the Constitutional Court and public prosecutors may not be members of the *organs* of political parties" (italics added).

The Act on Labour Relations in the Organs of the State of Serbia (*Sl. glasnik RS*, No. 48/91) expands the restriction of the freedom of political organising to persons employed in state agencies and to appointed persons. Art. 4, para. 3 of that law prescribes that such persons "may not be members of the organs of political parties". This restriction is in accordance with the CESCR, which permits the restriction of the enjoyment of the right to free association of the employees in the state administration. Unlike the European Convention, the ICCPR prescribes such restriction only for members of the army and of the police, and not for persons employed in the state administration. In this case, that restriction should be evaluated in accordance with the general conditions of the restriction of the freedom to association. Concerning those persons, the prohibition is too broad, for persons employed in the state administration includes translators, typists, librarians, etc.

The Constitution of Montenegro prohibits "political organisation in state agencies" (Art. 41, para. 1). Also, State Administration Act (*Sl. glasnik RS*, No. 20/92) prescribes, in Article 6, that it is prohibited "to organise political parties and other political organisations or various organisational forms of such organisations in the organs of the state administration". This prohibition is in accordance with the international standards, for its purpose is to prevent the identification of the state organs with any political organisation.

4.10.6. The Right to Strike

The right to strike is guaranteed by Art. 8, para. 1 (d) of the CESCR and by Art. 6, para. 4 of the European Social Charter, but not explicitly by the ICCPR or the ECHR.[35]

The Yugoslav constitutions guarantee the right to strike. Under the FRY Constitution "employees have the right to strike, in order to protect their professional and economic interests, in conformity with federal law" (Art. 57, para. 1; the same in the Constitution of Montenegro, Art. 54, para. 1). The Constitution of Serbia does not define the term strike and only states that " employees have the right to strike, in conformity e with the law" (Art. 37 of the Constitution of Serbia).

The CESCR prescribes that the right to strike should be "exercised in conformity with the laws of the particular country" (Art. 8, 1d), which permits the introduction of certain restrictions in order to mitigate the harmful effects and consequences of strikes to public order; however, the right to strike itself cannot be denied. This is the sense of the restriction of the rights to strike in the FRY Constitution by stipulating its lawful objectives, i.e. the protection of professional and economic interests, which is permitted by international standards.

According to the FRY Constitution, Art. 57, para. 2, "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." The Strikes Act (*Sl. list SRJ*, No. 29/96) establishes a special regime of strikes "in operations of public interest or in operations where the interruption of work could, due to the very nature of the operation,

35 Unlike the Human Rights Committee which decided, in a controversial view, that the right to strike was not included in the right to association guaranteed by the ICCPR (*Alberta Union vs. Canada*, No. 18/82), 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 are still to be elaborated in the jurisprudence of the Court (*Schmidt and Dahlstrom vs. Sweden*, A 21, 1976). The ILO Committee for the freedom of association also took the view that the right to strike, which is not explicitly mentioned in the ILO Convention No. 87, represents a legitimate and essential way in which the trade unions promote the interests of the employees (No. 118/82, para. 2.3).

endanger the health and lives of the public, or cause great damage" (Art. 9, para. 1). Operations of public interest include the activities important for the defence and security of the FRY, and the activities necessary for the fulfilment of international obligations (Art. 10, para. 3). In such operations, the right to strike may be exercised if some special conditions are fulfilled "to assure the minimum of the working process which guarantees the safety of persons and property or represents an irreplaceable condition of life and work of citizens, or of the operation of other enterprises ..." (Art. 10, para. 1) or the continuation of activities important for the defence of the FRY and for the international obligations of the FRY. The minimum working process is determined by the director, and, in the case of public services and public companies, the founder, in the way determined by the general act of the employer, in accordance with the collective contract (Art. 10, para. 3).

Under to the FRY Constitution "persons employed in state organs, professional members of the army and of the police do not have the right to strike" (Art. 57, para. 3 of the FRY Constitution). The same provision, concerning persons employed in state organs and professional members of the army and of the police, is found in the Constitution of Montenegro (Art. 54, para. 2). The Serbian Constitution does not contain that provision, but it is superfluous, since the prohibition established by the federal constitution applies to the persons employed in the republic state organs and to the members of the republic police. According to Art. 8, para. 2 of the CESCR, the national legislation may establish restrictions of the right to strike to the members of the armed forces, of the police or of the state administration. The FRY Constitution thus introduced a prohibition instead of a restriction, and completely prevented the exercise of the right to strike. The consequence of these repressive solutions is seen in the provision of the Strike Act, according to which the employees in state agencies, members of the FRY Army and members of the police are to be discharged if it is established that they organised a strike or took part in it (Art. 18).

4.11. The Right to Peaceful Enjoyment of Property

Article 1 of the First Protocol to ECHR:

> Every physical or legal person has the right to unhindered enjoyment of his or her property. Nobody shall be deprived of property, except in public interest, and under the conditions prescribed by the law and by the general principles of international law.

The mentioned provisions, however, are without any prejudice to the right of states to apply laws which it deems necessary to regulate the use of property in accordance with the general interests or in order to assure the payment of taxes or of other duties or fines.

4.11.1. General

The FRY Constitution guarantees the right of to own property "in conformity with the constitution and laws (Art. 51). Art. 69, para. 3 states:

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

Similar guarantees of this right exist in the Constitution of Montenegro (Art. 45) and in the Constitution of Serbia (Art. 34 and 63). These provisions of the Yugoslav constitutions are in keeping with international standards.

The competence in the field of the legal control of ownership relations is divided in the FR of Yugoslavia, so that the Federation regulates the bases of legal-ownership relations, while other areas are within the competence of the member republics. (Art. 77, para. 5, of the FRY Constitution). The most important statute at the federal level is the Law on the Bases of Ownership Relations Act (*Sl. list SFRJ*,

No. 6/80, 36/90, *Sl. list SRJ*, No. 29/96). This review focuses only on areas where there is discrepancy with the international standards.

4.11.2. Expropriation

The Expropriation Act (EA – *Sl. glasnik RS*, No. 53/95) regulates the restrictions on and deprivation of the right to own real estate, which represent the gravest forms of interference in the right to the peaceful enjoyment of property.

The Act, for instance, makes it possible for the beneficiary of the expropriation to take possession of immovable property before the day of the coming into effect of the decision on compensation or before the conclusion of the agreement on compensation, if the Ministry of Finance assesses that this is necessary because of the urgency of the construction of a certain building or carrying out of certain works (Art. 35, para. 1). Because of the vague nature of the wording "urgency of construction of a certain building or carrying out of works", this provision gives broad powers to the Ministry of Finance and cannot be considered precise enough to meet the conditions of legality in accordance with the European standards. Namely, according to the jurisprudence of the ECHR, in order to satisfy the conditions of legality, a law must be accessible, foreseeable (precise enough in given circumstances) and must provide protection against arbitrariness on the part of state agencies.

In the jurisprudence of the European Court of Human Rights, in any interference with the rights to peaceful enjoyment of property, it is necessary to find a balance between the public interest on the one hand, and the rights of individuals on the other. The seriousness of state interference (confiscation of property or restrictions on its enjoyment) should influence the decision on whether circumstances justify such measures and the amount of compensation. However, that does not mean that the question of monetary compensation appears only in the case of confiscation of property: compensation may be required for restrictions of less intensity as well (*Sporrong and Lonnroth vs. Swe-*

den, A 52, 1982). The Expropriation Act does not provide an adequate possibility to establish the required balance.

Firstly, Art. 20 of the Expropriation Act does not prescribe the obligation of the Government of Serbia to take into account the interest of the owner of real property when determining the existence of the general interest for expropriation, nor to examine whether the interest of the owner to keep the property and to continue to be engaged in his or her activities is possibly stronger than the general interest. The manner in which the Serbian Government decided the public interest showed that the interest of the individual was not taken into account.

Individual interests are endangered in the procedure before municipal bodies empowered to decided on expropriation. In most cases, the owner is not allowed to build on his or her real estate, and the enjoyment of property is also made difficult because a notice on expropriation is entered in land registers. The EA does not set a time limit for the conclusion of that phase of the procedure, nor is there a possibility to compensate the owner in the case of very long procedure. Experience showed that owners could remain in such an unfavourable position for more than ten years. The reason was primarily in the overburdened and ineffective judiciary, and in some cases in the interest of the beneficiaries to drag out the procedure until they raised the necessary funds for construction and payment of compensation.

A similar situation occurs when a decision on expropriation is taken but the amount of compensation remains undetermined. The position of the (now former) owner of the expropriated property becomes even worse, since the beneficiary of the expropriation acquired the right of ownership over the immovable property, and the former owner retains only factual possession. If Art. 35, para. 1 of the EA is applied, the owner forfeits another safeguard, and payment of compensation is delayed. This phase can also last for more than ten years. The amount of compensation also represented a problem, because, although Art. 44 of the Act guarantees that material compensation cannot be lower than the market value of the real property, owing to the method of fixing the amount of compensation and delays in its payment, the owner received far less than the market value of his or her property.

4.11.3. Real Property Transactions

The Act on Special Conditions for Real Property Transactions (SCRPT – *Sl. glasnik SRS*, No. 30/89) requires the approval of the Ministry of Finance on a case to case basis for all real estate sale/purchase contracts in the territory of central Serbia and Kosovo and Metohija.[36] Approval is granted if such sales/purchases do not contribute to altering the ethnic structure of the population or the migration of members of a certain ethnic group (Art. 3). If the Ministry of Finance does not approve a contract, a Commission of the National Assembly of Serbia decides upon the complaint of the interested person in the second instance. The Act explicitly excludes the possibility of an administrative suit against the decision of the Commission. Sales contracts concluded contrary to the provisions of this Act considered are null and void, and the physical or legal person who take possession of the property without the approval of the Ministry of Finance faces up to 60 days in jail or may be fined.

Article 3 of the Act, which does not clearly define the criteria for approval of sale/purchase contracts, gives broad discretionary powers to the Ministry of Finance and thereby places potential sellers in a situation of complete uncertainty. Therefore, it is not sufficiently foreseeable and allows arbitrariness in decision-making and, hence, does not conform to the condition of legality.

The Act furthermore fails to regulate in a satisfactory manner the balance between the legitimate public interest and the need to protect the rights of individuals. Even if it is assumed that in certain cases, in order to preserve the ethnic balance, it would be necessary to prohibit some transactions of immovable property, and if the fact that the Act is not precise is disregarded, it is still necessary to fulfil the condition of the proportionality of interference. However, the SCRPT makes it possible for a seller to be deprived of a part of the

36 The Act was repealed in the territory of Kosovo by the United Nations Interim Administration in Kosovo (Regulation on the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property, No. 1999/10 of 13 October 1999).

substantial rights of ownership and does not prescribe the possibility of material compensation for the damage incurred.

4.11.4. Inheritance

The Inheritance Act of Serbia (*Sl. glasnik RS*, No. 46/95) provides that a person subject to military service who leaves the country in order to avoid participation in the defence of the country, and does not return to the country until the death of the testator, is considered unworthy of inheritance (Art. 4, para. 5). Since the FR of Yugoslavia insisted, from the outset of the armed conflicts in the territory of the former Yugoslavia, that it was not a belligerent, it is not clear whether that provision is meant for the future or will apply only to the persons who refused to take part in those conflicts. However, it is quite clear that the provision represents a drastic violation both of the right of the owner to dispose of his or her property after his or her death and an unlawful restriction of the right to inheritance, which can in no way constitute a danger to the "defence of the country".

4.11.5. Transformation of forms of ownership in favour of state ownership

Shortly after the opposition victory at the 1996 local elections, the Serbian government swiftly adopted legislation making possible the centralised nationalisation of socialised and municipal property. The aim was to prevent the management and disposition of such property by the newly elected local governments.

The Act on Assets Owned by the Republic of Serbia (*Sl. glasnik RS*, No. 54/96) defines these assets as all those acquired from government agencies, organs and organisations of units of territorial autonomy and local governments, public services and other organisations founded by the Republic or territorial units, and all other assets and revenues realised on the basis of state capital investments. In addition, the Act restricted management and disposition of property by local

governments by requiring the Serbian Government's approval for sale of real property owned by public services (Art. 8).

The former government also changed forms of ownership by decree. One of the most glaring examples was that of the *Borba* media company which, by decree of the Federal Government, was transformed from a socialised company into state-owned public company (Federal Government Decree on the *Borba* Federal Public Company, *Sl. list SRJ*, No. 15/97).

4.12. 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.

All the Yugoslav constitutions contain provisions treating the rights of minorities. However, there are substantial differences in the degree of the prescribed protection of minorities. On the one hand, the Constitution of Serbia does not contain a separate article on the general protection and rights of minorities, but contains, within the general guarantees of human rights several provisions on minorities. The Constitution of Montenegro, on the other hand, ensures significant protection of minorities.

The FRY Constitution (Art. 11 and 46–48) undoubtedly has stronger legal force than the constitutions of the republics, and therefore the standards it prescribes for the protection of minorities represent the minimum which must be observed in the territory of the FRY. The republics may offer broader minority rights than those afforded by the federal state, as does the Constitution of Montenegro where the protection of minorities is regulated much more precisely and compre-

hensively than in the constitutions of the FRY and of Serbia. Conversely, the Constitution of Serbia gives less guarantees to minorities than the FRY Constitution, which, due to the circumstance that minority rights are regulated by law in accordance with the Constitution, results in a lower level of protection of minority rights than the one prescribed by the federal Constitution. This is also because the provisions on minorities of the FRY Constitution are not directly applicable and are not further elaborated in federal legislation.

Concerning the protection of the identity of the members of the minority communities, Art. 11 of the FRY Constitution states that:

> 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.

The Constitution of Montenegro (Art. 67) contains a similar provision, while the Constitution of Serbia, as mentioned above, does not. The obligation to protect minorities in Serbia may be derived indirectly by the interpretation of Article of the Serbian Constitution which guarantees "personal, political, *national*, economic, social, cultural and other rights of man and the citizen " (italics added; Art. 3, para. 2 of the Constitution of Serbia). This is obviously less than adequate for a multiethnic state like Serbia.

The Serbian Act on Election of National Deputies (*Sl. glasnik RS*, No. 35/2000) impedes the participation of minority communities in parliamentary life. Under Art. 4, Serbia became a single electoral district and only those election lists that secure at least five percent of the total number of votes are eligible for seats in parliament. Thus, unless they join in broader coalitions, political parties of the minorities are practically excluded from parliament.

With respect to the specific elaboration of the rights of minorities, there is a lack of uniformity in relation to the general provisions of the existing constitutions of the FRY and of the republics and their approaches. In the FR of Yugoslavia, the right to the use of minority

languages is guaranteed (Art. 45 of the FRY Constitution). All Yugoslav constitutions (Art. 15, para. 2 of the FRY Constitution; Art. 8, para. 2 of the Constitution of Serbia; Art. 9, para. 3 of the Constitution of Montenegro) guarantee the right to use minority languages before the organs of the state. Thus according to the FRY Constitution (Art. 15, para. 2): "In the regions of the FRY, inhabited by national minorities, their languages and alphabets are in official use, in accordance with law".

In Serbia, this right is elaborated in the Serbian Act on Official Use of Language and Script (*Sl. glasnik RS*, No. 45/91). Under to the Act, the decision on whether the language of a particular minority will be in official use is taken by the municipality in which the minority lives (Art. 11, para. 1). The law does not specify the criteria which the municipal authorities must apply when deciding on the official use of a language. This shortcoming has resulted in different responses in the communities.[37]

Regarding the names of towns and villages and other geographic names, the Act (Art. 19) prescribes:

> In regions where the languages of minorities are also in official use, the names of towns and villages and other geographic names, the names of streets and squares, the names of organs and organisations, traffic signs, public information and warning signs and other public inscriptions shall be also in the languages of the minorities.

The law does not allow the replacement of the geographic and personal names contained in public inscriptions by other names; it only prescribes that they be inscribed in the minority languages (Art. 7). This means that it is not allowed to replace geographic and personal names on public signs by traditional names in the languages of minorities; it is only permitted to use the orthography of the languages of the minorities, while the official names in Serbian have still to be used.

37 See in more detail, M. Samardžić, *Položaj manjina u Vojvodini*, Centar za antiratnu akciju, Belgrade, 1998.

The result is dissatisfaction among minorities, especially since traditional names were freely used in the previous period (e.g. Szabadka – Subotica, Ujvidek – Novi Sad).

The right to education in the languages of the minorities is guaranteed in all three Yugoslav constitutions (Art. 46, para. 1 of the FRY Constitution; Art. 32, para. 4 of the Constitution of Serbia; Art. 68 of the Constitution of Montenegro). Furthermore, the FRY Constitution and the Constitution of Montenegro guarantee to persons belonging to minorities the right to information in their languages (Art. 46, para. 2 of the FRY Constitution; Art. 68 of the Constitution of Montenegro).

According to the Montenegrin Act on Primary Schools (*Sl. list RCG*, No. 34/91), instruction in Albanian shall be assured in schools "in the regions with significant numbers of members of the Albanian nationality". Also, if necessary prerequisites exist, teaching in Albanian can be introduced in other schools as well (Art. 11).

In Serbia, education in minority languages is regulated in a more precise way: if more than fifteen pupils apply, teaching must take place in the language of the minority (Primary Schools Act of Serbia, *Sl. glasnik RS*, No. 50/92). If there are less than fifteen pupils, teaching may take place in the minority language with the approval of the Minister of Education (Art. 5). Teaching can be conducted in the languages of the minorities only, or in two languages. If the teaching is in the language of the minority, then the pupils are bound to attend lessons of the Serbian language.

The FRY Constitution and the Constitution of Montenegro provide that minorities have the right to establish and maintain contacts with the homelands of their co-nationals, which is a step further from the Article 27 of ICCPR, and in accordance with the European Framework Convention for the Protection of National Minorities (Art. 17). On the other hand, the Constitution of Serbia does not guarantee that right.

The provisions of the Yugoslav and Montenegrin constitutions regarding that right are not identical. According to Article 48 of the FRY Constitution:

> Members of national minorities shall be guaranteed the right to establish and foster unhindered relations with co-nationals within the Federal Republic of Yugoslavia and outside its borders with co-nationals in other states, and to take part in international non-governmental organisations, provided these relations are not detrimental to the Federal Republic of Yugoslavia or to a member republic.

The Constitution of Montenegro (Art. 44, para. 2) adds that members of national minorities have the right to apply to "international institutions in order to protect their rights and liberties guaranteed by the Constitution."

In Montenegro, there is a special institution, the Council for the Protection of the Rights of the Members of National and Ethnic Groups, with the task to preserve and protect the identities and rights of the minorities (Art. 76 of the Constitution of Montenegro). The President of Montenegro chairs the Council, and members of the Council are representatives of minority groups. This provision, too, represents a step further from the FRY Constitution (Art. 47), which prescribes that:

> Members of national minorities have the right to establish, in accordance with law, educational and cultural organisations or associations, financed voluntarily; the state may assist such organisations.

A general clause treating the protection of minorities against persecution and hatred is contained in the constitutions of the FRY and Montenegro (but not in the Constitution of Serbia):

> 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. (Art. 50 of the FRY Constitution; Art. 43 of the Constitution of Montenegro).

Besides this general prohibition, all three constitutions prescribe the possibility of the restriction of the freedom of expression and the

freedom of association if their exercise is aimed at the "... instigation of national, racial or religious hatred and intolerance" (see I.4.8. and I.4.10).

However, there are no special legal remedies for the protection of specific minority rights guaranteed by the Yugoslav constitutions. Hence, these rights are more of a declarative nature. An established political mechanism for the protection of minority rights, in the form of the Council for the Protection of the Rights of the Members of National and Ethnic Groups, exists only in Montenegro.

The Montenegrin Act on Use of National Symbols proscribes the use and hoist of national symbols in front of and in all state organs, including organs of the local government (Art. 4). This Act only allows the national symbols to be used and hoisted together with the state symbols during national holidays in local communities in which persons belonging to national and ethnic groups are the majority (Art. 5).

4.13. 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.

4.13.1. General

The FRY Constitution proclaims that power is vested in the citizens who exercise it directly and through freely elected representatives. Upon attaining the age of 18, a Yugoslav citizen has the right to vote and to be elected to public office (Art. 34). The constitutions of Serbia and Montenegro also proclaim that power is vested in the people, and universal and equal suffrage (Serbia – Art. 2 and 42; Montenegro – Art. 2, 3 and 32).

Political parties are freely established and act freely (see I.4.10.). Up until 1997, coalitions dominated by parties that emerged from the former communist parties were in power in both Serbia and Montenegro. The reform-oriented wing of the Democratic Party of Socialists came to power in Montenegro in 1998 in what was the first election in FR Yugoslavia to be positively assessed by domestic and foreign observers. Up to the September 2000 elections, Serbian opposition parties, now in power, held that none of the elections held since the introduction of the multiparty system in 1990 were genuinely free and fair, including the presidential, parliamentary and local elections in September 2000. Their chief objections related to the organisation of the elections, irregularities in procedure and the biased reporting of state-controlled media. The elections were also criticised in the reports of OSCE observers.[38]

The Serbian elections in December 2000 were the first free and democratic elections since Serbia became a federal unit of Yugoslavia in 1945. Up to the formal introduction of parliamentary democracy in 1990, real elections were not possible because of the constitutionally declared one-party system and, after that, because of a series of legal and *de facto* obstacles imposed by the regime.[39]

38 See e.g., *Republic of Serbia: Parliamentary Election September 21 1997, and Presidential Election September 21 and October 5 1997,* OSCE Office for Democratic Institutions and Human Rights (hereafter *OSCE Report 1997*) and *Assessment of Election Legislation in the Federal Republic of Yugoslavia*, 2000.

39 See *Human Rights in Yugoslavia 1998* and *Human Rights in Yugoslavia 1999.*

In spite of the evident shortcomings and criticism by both OSCE and domestic analysts and observers, there was no improvement in the Yugoslav election procedure. On the contrary, the regime that lost the federal election in 2000 did everything in its power to obstruct free and democratic elections and to make the bad conditions even worse.

A one-round majority representation system was introduced by amendments to the Law on Local Government (*Sl. glasnik* RS, No. 49/99). In 2000, the FRY Constitution was also amended (*Sl. list SRJ*, No. 29/2000). Amendments III and IV introduced direct election of the FRY president and deputies to the upper house of the Federal Assembly. Pursuant to the Constitutional Act passed along with the amendments to the FRY, another two pieces of legislation were enacted: the Act on Election and Expiry of the Term of the President of the Republic and the Act on Election of Deputies to the Chamber of Republics of the Federal Assembly (*Sl list SRJ*, No. 32/2000).

Political opponents of the former regime received virtually no coverage on state television and any reference to Serbian and Montenegrin opposition politicians was negative. Neither domestic observers nor OSCE observers were allowed to monitor the regularity of balloting.

Nonetheless and despite all these impediments to free and democratic elections, candidates fielded by the former regime lost the local, parliamentary and presidential elections in the territory of Serbia. In Montenegro, victory went to the Socialist People's Party, which was initially part of the left-wing coalition but after the elections formed the Federal Government together with parties that won the elections in Serbian territory.

Unwilling to concede the presidential election, the former regime did everything in its power to alter the results:[40] the number of voters on the electoral rolls was reduced; the votes for the incumbent Slobodan Milošević were increased while those secured by the contender, Vojislav Koštunica, were reduced.[41] This election fraud pro-

40 See II.13.3.

41 The most important and numerous complaints against the balloting procedure pertained to polling stations in the Vranje, Prokuplje and Leskovac areas.

duced the percentage of votes required for a second round of balloting, which was duly scheduled.

The second round of the presidential election, however, did not take place. Following massive protests and strikes, which peaked in Belgrade on 5 October 2000, the former regime acknowledged defeat. On the basis of rulings by the Federal Constitutional Court (Pp No. 33/2000 and 33/1–2000 of 4 October 2000), the Federal Electoral Commission announced the final results and officially confirmed the victory of the Democratic Opposition of Serbia candidate (*Sl. list SRJ*, No. 55/2000).

Soon afterwards, a completely new law on election of deputies to the Serbian parliament was enacted (*Sl. glasnik* RS, No. 35/2000) and parliamentary elections were called in Serbia.

4.13.2. The Right to Vote and to be Voted For

The right to vote in elections for the National Assembly of Serbia and the National Assembly of Montenegro, as well as in municipal elections in both republics belongs to Yugoslav citizens who have attained the age of 18 and reside in the republic in which the elections are being held (Art. 10 of the Act on Election of Parliamentary Deputies; Article 122 of the Law on Local Government; Art. 11 of the Act on Election of Parliamentary Deputies and Local Councillors (*Sl. list* RCG, No. 4/98).

Whether or not a person may vote and be voted for depends on whether they are registered in the election 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. As previous elections brought out, there were numerous irregularities and electoral rolls proved to be defective. The new Montenegrin Act on Electoral Rolls elaborates a system of control designed to keep the rolls updated. Among other things, it specifies who is responsible for the keeping and updating of the rolls and envisages sanctions for failures to comply with obligations (Art. 16). It also ensures transparency of the rolls and

states that political parties fielding candidates have the right to receive copies of the entire electoral roll (on diskettes) within 48 hours.

A single electoral roll was used for all three elections held on 24 September 2000. This denied citizens the right to choose at which election they would cast their ballots (e.g. a person who voted in the presidential election was marked in the rolls as having voted in all the elections though he or she may have wished to abstain from voting in the parliamentary or local elections).

The new Serbian Act provides that persons "who have temporarily moved from their domiciles (refugees)" are entered in the electoral roll in the place where they are registered as refugees (Art. 13). It is unclear why the term "refugees" is used, and not displaced persons which the lawmaker must have had in mind, since only displaced persons have the right to vote as, in contrast to refugees, they are FRY citizens displaced from Kosovo and Metohija. The new Act on Election of Parliamentary Deputies does away with mobile ballot boxes for the infirm and sickly, convicts and members of diplomatic and consular missions abroad.

Neither federal nor Serbian election legislation envisages any penalties for improperly kept electoral rolls.[42] Unlike the Montenegrin Act, laws in Serbia do not foresee the possibility of nominators of election lists to receive copies of the complete electoral roll. Access to this roll is of exceptional importance for control of the regularity of elections: electoral rolls are kept by the municipal authorities and it is possible for one person to figure on rolls in two or more municipalities. The fact that the law allows citizens to inspect rolls and request changes is not sufficient for they cannot be expected to check out each municipal election roll.

The new Serbian Act introduced a number of changes enabling more effective control of balloting: spraying the index fingers of voters

42 The corresponding Serbian Act provides for the criminal responsibility of a person unlawfully not entering into the roll or removing from the roll another person *with the intention to prevent the latter from voting in the elections* (Art. 105 of the Elections for People's Deputies Act of Serbia – italics added).

to prevent casting of more than one ballot, (Art. 68, paras 3 and 4), and transparent ballot boxes (Art. 3, Instructions on Shape and Size of Ballot Boxes, *Sl. glasnik RS*, No. 42/2000).

4.13.3. Electoral Procedure

4.13.3.1. Electoral commissions. – In addition to the statutes on elections, very important rules governing the electoral procedure are found in the decisions of the federal and republic electoral commissions. These commissions supervise the legality of the electoral process, the uniform application of electoral laws, the appointment of the permanent members of the electoral commissions in each electoral districts (in Montenegro: municipal electoral commissions), and hand down instructions for the work of other electoral commissions and polling committees.[43] Finally, the federal and republic commissions consider election complaints in the second instance (under Art. 96, para. 2 of the Serbian Act on Election of Parliamentary Deputies, the republic Electoral has competence to consider complaints in the first instance).

The federal and republic commissions are appointed by the respective parliaments (Art. 33, para. 1 of the Act on Election of Federal Deputies; Art. 38, para. 1 of the Serbian Act on Election of Parliamentary Deputies; Art. 29 of the Montenegrin Act on Election of Parliamentary Deputies). Members of electoral commissions are of two kinds: there are six permanent members and the permanent chairperson who are appointed by the parliament[44] while the rest are representatives of organisations that have submitted election lists (political parties, coalitions or groups of citizens). The permanent nucleus of the commission is expected to be politically neutral as its members

43 Just prior to the 24 September 2000 elections, the Federal Electoral Commission handed down an instruction that required those voting in the presidential election only to show their ballots to a member of the polling committee. The rule constituted a violation of the secrecy of ballots and was aimed at intimidating voters.

44 The Serbian Act increased the membership of the Commission, which now comprises the chairperson and 16 members (Art. 33).

as a rule come from the judiciary. Due, however, to the dependence of the judiciary on the executive branch, the permanent members of the election commissions in fact advocated the interests of the parties in power up to the Serbian parliamentary elections in 2000. Non-permanent members come from all interested political parties and become active only after the electoral rolls have been made public in the respective electoral districts.

4.13.3.2. Control of ballots and safekeeping of electoral documentation. – Federal and republic laws state that members of the central electoral commissions decide on the method, place and control of the printing of ballots. However, there have been no detailed instructions regulating this process and setting out control mechanisms (*OSCE Report 1997*, p. 11). The instructions of the central electoral commissions do not specify the obligation to safeguard electoral materials before they are handed to the local electoral commissions and how this should be done (such as sealing the premises, etc.). In order to prevent the appearance of forged ballot slips at the federal elections in 2000, the ballots were printed in one location and on paper with a watermark (Art. 63, para. 4, Act on Election of Deputies to the Chamber of Citizens of the Federal Assembly, *Sl. list SRJ*, No. 32/2000).

4.13.3.3. Grounds for annulment. – The Serbian Act on Election of National Deputies of provides two kinds of reasons for the annulment of elections at a polling station. If there exists a reason to conclude that they were *null and void*, elections at a polling station have to be repeated, the polling board dissolved and new members appointed (Art. 90, para. 9). On the other hand, when reasons are of lesser significance the electoral commission, acting on an appeal, is free to determine whether the elections shall be annulled or not (see Art. 72 of the Montenegrin Act on Election of National Deputies). Federal statutes very concretely and in detail determine the reasons for finding elections null and void. As a result, elections are on occasion annulled on mere technicalities which could not have affected the results, e.g. if a member of the polling committee has not explained the method of voting to a voter upon request (Art. 71) or if emblems

of political parties were posted within a diameter of 50 metres of the polling station (Art. 58 of the Act on Election of Federal Deputies to the Chamber of Citizens.

4.13.3.4. Legal remedies. – According to the existing electoral laws the basic legal remedy relating to irregularities of elections is the complaint which any voter or other participant in the elections can lodge with the respective electoral commission.

There is a significant lack of uniformity with regard to competence over election complaints. Thus, at the federal elections in September 2000, municipal, city and election district commissions had first-instance competence in considering complaints against decisions, actions or mistakes by polling committees at local, city and parliamentary elections, while first-instance competence in the federal elections went directly to the Federal Electoral Commission. Competence and multi-instance decision making are differently defined in dependence on the kind of election being held (e.g. the Federal Constitutional Court may be a second– or third-instance while it has no competence at all with regard to municipal and city elections.

No electoral act contains rules on the procedure which the electoral commission should apply when considering a complaint; this has resulted in the lack of uniformity in the determination of facts, the use of evidence, and, in particular, equality of arms. It is only the new Montenegrin Election of Deputies Act (Art. 111) that provides for the subsidiary application of the federal Administrative Procedure Act (*Sl. list*, 55/96).

Montenegrin law states that all decisions on complaints shall be delivered in accordance with the procedure prescribed by the federal Administrative Procedure Act, which means that all interested parties are informed of the contents of a decision. There is no corresponding provision, however, in federal and Serbian law; not all participants in federal elections and elections in Serbia have always been informed about complaints and able to take part in ensuing proceedings.

The absence of provisions securing the application of the federal Administrative Procedure Act has led to arbitrariness in the proceed-

ings dealing with elections, especially regarding evaluation of evidence. Namely, the Administrative Proceeding Act provides that facts in administrative proceedings must be determined correctly and fully and supported by evidence (Art. 8 and 149), whereas in many proceedings decisions were made on the *grounds* of uncorroborated assertions of interested parties.[45]

Electoral legislation provides for appeal against the decisions of competence electoral commissions: to the municipal court in the case of local elections in Serbia (Art. 156 of the Act on Local Government), to the Serbian Supreme Court in the case of parliamentary and presidential elections in the republic (Art. 97 of the Acton Election of National Deputies), to the Montenegrin Constitutional Court with regard to all elections in that republic (Art. 110 of the Act on Election of Deputies and Councillors), and to the Federal Constitutional Court in the case of federal elections (Art. 105 of the Act on Election of Deputies to the Chamber of Citizens of the Federal Assembly).

Under Serbian electoral legislation, courts apply the Administrative Procedure Act when considering appeals but the legislation specifically rules out the possibility of extraordinary legal remedies envisaged by the Act (Art. 156 of the Act on Local Government; Art. 97, para. 6 of the Act on Election of National Deputies).

4.14. Special Protection of the Family and of 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.

45 See the report of the Commission of Experts of the Serbian Association of Jurists for the analysis of judicial proceedings related to the November 1996 local elections in Serbia (Izveštaj komisije Udruženja pravnika Srbije za stručnu analizu postupaka vođenih povodom izbora održanih u Srbiji u novembru 1996) BCHR documentation.

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.

4.14.1. Protection of the Family

The FRY Constitution guarantees "special protection of the family, mothers and children" (Art. 61, para. 1). Similar provisions exist in the constitutions of Serbia and Montenegro (Art. 28, para. 1 and Art. 29, para. 1 of the Constitution of Serbia; Art. 59, para. 1 and Art. 60, para. 1 of the Constitution of Montenegro). The principle of the protection of the family prescribed by the constitutions is further elaborated in the republic laws – in the Marriage and Family Relations Act of Serbia (LMFR of Serbia – *Sl. glasnik SRS*, No. 22/80) and the Families Act of Montenegro (LF of Montenegro, *Sl. list SRCG*, No. 7/89).

Thus e.g., according to the LMFR of Serbia, the society assures, by its development policy, and by special measures in the fields of education, culture, social welfare and health the conditions for the

establishment of families and for harmonious common life in marriage and in the family (Art. 19). These principles are further elaborated in a series of special provisions. Special legal procedure concerning the family and matrimonial relations, and the legal effects of extramarital common life and the property relations in the families are regulated as well.

The Yugoslav regulations in this field do not define the legal concept of the family. Most provisions of the family law, however, concern the nuclear family (parents and children), while a smaller number of provisions (e. g. those concerning the obligation of alimony or kinship as an obstacle for marriages) regulate the relations among a broader circle of relatives.

The LMFR of Serbia is not harmonised with the Constitution of Serbia, which was adopted after that law, and therefore, at least formally, some institutions which have not existed for a long time are supposed to care about the family (e.g. "self-managed communities of interests", etc.).

Yugoslav law prescribes the obligation of support in the family circle. That is the duty and the right of a member of the family and of other relatives, and the expression of their family solidarity (Art. 10 of the LMFR of Serbia; Art. 9 of the LF of Montenegro). The non-observance of the duty of support is sanctioned by the penal codes of the republics (Art. 119 of the PC of Serbia and Art. 102 of the PC of Montenegro). Also, the penal codes punish the offences which violate the family obligations – leaving families in difficult conditions or abandoning a member of the family who is not capable of taking care of himself or herself (Art. 120 of the PC of Serbia; Art. 101 of the PC of Montenegro).

4.14.2. Marriage

The FRY Constitution mentions marriage only in the context of the assurance of the equality of legitimate and illegitimate children (Art. 62, para. 2). According to the Constitution of Serbia, marriage and marital relations are prescribed by the laws (Art. 29, para. 2), while

the Constitution of Montenegro emphasises that a marriage may be concluded "only with the free consent of the woman and of the man" (Art. 59). Detailed provisions on marriage are found in the already mentioned republic laws (the LMFR of Serbia and the LF of Montenegro). According to those laws, marriage is concluded by a free consent of a woman and a man (Art. 6, para. 2 of the LMFR and Art. 3 of the LF of Montenegro), which is in complete accordance with the ICCPR (Art. 23, para. 3).

Marriage may not be concluded if there are legal obstacles. Some of them concern free consent of the future couple (marriage is void in the cases of coercion, error, incapacity), other provisions prohibit marriages of relatives (up to the fourth degree of lateral kinship) or relatives by marriage (until the second degree of kinship by marriage). Finally, only nubile men and women can marry, which is in accordance with the ICCPR (Art. 23, para. 2). As a rule, one can enter marriage at the age of 18, and, with the dispensation of the court, at 16. In the latter case, the court ascertains the physical and mental maturity for marriage. If the court allows the conclusion of a marriage to a minor elder than 16, then such a person acquires full capacity that cannot be denied even if the marriage is dissolved before the age of 18. Spouses are equal in marriage.

Divorce is permitted, and it can be pronounced either by the agreement of the spouses (Art. 84, para. 1 of the LMFR; Art. 56 of the LF of Montenegro) or at the request of one of them in the cases when the matrimonial relations are seriously and durably disturbed or if the purpose of matrimony is voided due to other reasons (adultery, mental disease, etc.) (Art. 83 of the LMFR; Art. 55 of the LF of Montenegro). However, during the pregnancy of the wife, or before a child completes one year of age, law permits only divorce by mutual agreement (Art. 84, para. 2 of the LMFR of Serbia; Art. 57 of the LF of Montenegro). Still a court may refuse to pronounce divorce based on mutual agreement of the spouses if this is in the interest of minor children (Art. 84 of the LMFR of Serbia; Art. 56 of the LF of Montenegro).

The property acquired by the spouses by joint work during marriage represents their communal property, while the property owned by one of the spouses at the time of the conclusion of the marriage remains separate property (Art. 70 of the LMFR of Serbia; Art. 279 of the LF of Montenegro). Separate property may also be acquired during the marriage, for instance by inheritance or gift. Common property is the property earned by the spouses by work during the existence of the marriage; spouses dispose jointly of that property (Art. 234 of the LMFR of Serbia and Art. 284 of the LF of Montenegro).

4.14.3. Special Protection of the Child

4.14.3.1. General. – Yugoslavia ratified the Convention on the Rights of the Child in 1990 (Act on Ratification of the UN Convention on the Rights of the Child, *Službeni list SFRY – Međunarodni ugovori*, No. 15/90).

Yugoslav law does not specifically define the child. The federal and republic constitutions link the attainment of majority with attainment of the right to vote. Article 15, para. 1 of the Serbian LMFR states that majority is attained at the age of 18; the Montenegrin Act has no such provision. Under Article 82 of the FRY Criminal Code, 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.

4.14.3.2. "The measures of protection ... required by the position of minors". – According to Art. 24, para. 1 ICCPR "every child shall have without any discrimination ... the right to measures of protection ... on the part of his family, society and the state". Although the ICCPR contains the general prohibition of discrimination (Art. 2 and 26, see I.4.1), the cited provision specially emphasises the obligation of the state to assure that inadmissible discrimination does not affect the protection of children. In accordance with that, the FRY Constitution (Art. 20) explicitly prescribes (Art. 61, para. 2) that illegitimate children have the same rights (and duties) as the children born in wedlock.

The republic constitutions contain corresponding provisions (Art. 13 and 29, para. 4 of the Constitution of Serbia, Art. 15, 17, para. 1 and 60, para. 2 of the Constitution of Montenegro); they are further elaborated in the republic acts on marriage and family (Art. 5 of the LF of Montenegro and Art. 7 of the LMFR of Serbia).

Parents have the right and duty to care about the personalities, rights and interests of their children. It is their duty to bring them up and educate them, to care about their lives and health, their education and professional training in accordance with their abilities. Parents are bound to secure financial means for the sustenance of their children in accordance with their financial possibilities. Parents are also bound to guide their children towards the adoption of family and other values (Art. 113–117 of the LMFR of Serbia, and Art. 58–61 of the LF of Montenegro).

It is a general rule that the parents use their rights over their children jointly and in agreement. Nevertheless, they do not have to perform all family rights jointly, but may agree that one of them performs certain rights. If there is a dispute between the parents concerning their parental rights, the final decision is taken by the organ of guardianship. Both parents decide upon the questions of substantial importance for the development of the children even if they do not live together, but only under certain conditions (Art. 123 and 124 of the LMFR of Serbia, and Art. 66–74 of the LF of Montenegro).

In matrimonial disputes, courts are bound to decide upon the custody and education of minor children regardless of the agreement between the parents respecting the interests of the children. Personal relations between the parents and their children may be limited or temporarily prohibited only in order to protect the health and other personal interests of minor children (see in more detail Art. 125–131 of the LMFR of Serbia, and Art. 66–74 of the LF of Montenegro).

The basic forms of protection of children without parental care are adoption and placing in another family (Art. 148 and 149 of the LMFR of Serbia). Adoption is permitted if it is beneficial to the adopted child (Art. 152 of the LMFR of Serbia). Family accommoda-

tion is assured in families which can successfully fulfil parental duties (Art. 202 of the LMFR of Serbia, Art. 217 of the LF of Montenegro).

Children may possess property, which they can acquire by inheritance, gifts or other forms of acquisition without compensation. The assumption is that children under fifteen years of age do not acquire property by their work, but such a possibility cannot be excluded.

4.14.3.3. Protection of Minors in Criminal Law and Criminal Procedure. – The Penal Code of the FRY prescribes special rules regarding the treatment of juvenile delinquents. These provisions are found in a special chapter and applied to minors alongside the provisions of the republic penal codes, while other provisions of the penal codes are applied only if not contrary to these special rules (Art. 71 of the PC of the FRY).

Penal sanctions may not be imposed on children who are under the age of fourteen; children between 14 and 16 years of age (younger minors) are subject to educational measures only. Children between 16 and 18 (elder minors) are subject to educational measures, and, exceptionally, to imprisonment (for grave criminal offences). The purpose of the educational measures is to provide protection and assistance to children who committed criminal acts and to assure their appropriate development and upbringing (see in more detail Art. 72 – 75 of the PC of the FRY).

Criminal procedure against children are subject to the provisions of a separate chapter of the CPA (chapter XXVII, Art. 452–492), while the other provisions of the act are applied to children if not at variance with the provisions in that chapter. Since penal sanctions cannot be applied, according to the Penal Code of the FRY, on children under 14 years of age, the CPA prescribes that criminal procedure against children under the age of 14 at the time of the commitment of the criminal act should be suspended, and that the organ of guardianship shall be informed about that (Art. 453 of the CPA). Furthermore, the CPA contains a specific provision, which prohibits trials of children in absentia. The agencies that take part in the procedure, when under-

taking actions in the presence of the child, and especially during the interrogations of the child, must take into account the mental development of children, their sensibility and their personal characteristics, in order to prevent influences of the procedure on the development of a child (Art. 454 of the CPA). A child must have an advocate from the very beginning of the procedure, if the procedure concerns a criminal act which is liable to more than 5 years imprisonment, and in other cases if the judge is of the opinion that the child needs an advocate. Only members of the bar at law may defend children (Art. 456 of the CPA).

The public prosecutor is bound to inform the organ of guardianship about all starts of procedure against children (Art. 459 of the CPA). Also, the records may not be made public without the permission of the court, and when permission is obtained, the name of the child or other data which could identify the child must not be made public (Art. 461 of the CPA). The public shall always be excluded from trials of children (Art. 482 of the CPA).

The procedure against children is conducted by judges for minors, or by chambers for minors; also, a court may be designated to try, in the first instance, all criminal cases of children from the districts of several courts. The jurors who participate in the cases concerning children are selected among educators, teachers, and other persons with an experience in the upbringing of children (Art. 463 of the CPA).

4.14.3.4. Birth and the personal name of the child. – To ensure that every child is registered immediately after birth, the law lays down that births are reported orally or in writing to the Registry Office in the place where the child was born. A child born on a means of transport is registered by the Registry Office in the place in which the mother's journey ended. The medical institution in which a child was born must also report the birth. When a child is born outside of a medical institution, the birth must be reported by the father or, if he is prevented, by another member of the family, or the mother as soon as she is able to. Other persons bound by law to report the birth of a child include the person in whose apartment or house the child was

born, persons who assisted the delivery (medical doctor or midwife) or, if they are prevented, by any other person who has knowledge of the birth of the child. Births must be reported within 15 days and stillbirths within 24 hours. If the parents of a child are unknown, the child is entered in the Register of Births in the place where he or she was found on the basis of a decision issued by the competent child welfare agency (Articles 17 and 25 of the Serbian Public Records Act; Articles 5, 7 and 9 of the Montenegrin Public Records Act).

Having a personal name (first and last names) is a right that belongs to every individual. It is realised by entry into the Register of Births and the name is chosen by both parents within two months of the child's birth. In the event that the parents do not agree on a name within this 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 (Articles 393 through 396 of the Serbian LMFR; Articles 1 through 6 of the Montenegrin Act on Personal Names). Articles 389 and 7 of these two Acts, 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.

4.15. Nationality

Article 15 of the Universal Declaration of Human Rights:

Everybody has the right to a nationality.

No one shall be arbitrarily deprived of his or her nationality, nor denied the right to change his nationality.

Article 24, para. 3 ICCPR:

Every child has the right to acquire a nationality.

4.15.1. General

The Universal Declaration of Human Rights prescribes the right of every individual to nationality, and the prohibition of arbitrary deprivation of citizenship and of the denial of the right to change nationality (Art. 15). The ICCPR does not mention separately the right to citizenship. Nevertheless, Article 24 ICCPR which deals with the status of children (see I.4.14) guarantees, in para. 3, the right of every child to acquire a nationality. This is done in order to avoid the increase of the number of stateless persons. This provision only obliges states to enable newborn children to acquire citizenship, and not necessarily to give their respective citizenship to every child. The manner of and the conditions for the acquisition of citizenship are governed by national law. In any case, there should be no discrimination among the newborn children, on any possible grounds (citizenship of the parents, legitimacy).

The FRY Constitution provides that the acquisition and the termination of the nationality of Yugoslavia shall be prescribed by federal laws. Yugoslav citizens also possess the citizenship of one of the member republics. Yugoslav citizens may not be deprived of citizenship, expelled from the country or extradited to another country (Art. 17 of the FRY Constitution). Following the federal Constitution, the constitutions of Serbia (Art. 47) and of Montenegro (Art. 10), contain identical principles in accordance with Article 15 of the Universal Declaration.

The Constitution of Serbia, unlike the federal and Montenegrin constitutions, proclaims that citizens of Serbia with another citizenship may be deprived of Serbian citizenship "only if they refuse to fulfil the constitutionally prescribed duties of citizens" (Art. 47, para. 4). On the other hand, the FRY Constitution prescribes that every Yugoslav citizen is at the same time a citizen of a Member Republic" Furthermore, the regulation of Yugoslav citizenship is within the competence

of the federation (Art. 17, para. 2 and 5). Deprivation of the Serbian nationality, according to the Constitution of Serbia, may result in a situation in which one person would have Yugoslav, but not the republic citizenship, which would be contrary to the federal Constitution.

During the existence of the SFRY, the dissolution of which raised doubts as to the nationality of a large group of its citizens, four federal nationality acts were adopted. 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 law of 1976 was in force at the moment of the dissolution of the SFRY. Today, all states which emerged on the territory of the former SFRY have new nationality acts. In the FRY, the nationality is regulated by the Citizenship Act of the FRY (*Sl. list SRJ*, No. 33/96).

4.15.2. Responses to Problems Arising after the Dissolution of the Former SFRY Yugoslavia

For four years, the FRY hesitated to adopt a new nationality act. In spite of the fact that the old Citizenship Act of the SFRY was in force until the adoption of the new law on citizenship in 1996, the state organs did not apply that law. In that way, many citizens of the former SFRY, who found themselves in the territory of the new FRY, were in a situation of extreme legal insecurity. They were, first of all, exposed to serious discrimination, for they could not enjoy certain rights (e.g., the right to education, the right to employment) or could not get documents (passports, identity cards) because they were not considered Yugoslav citizens.

Under the new Citizenship Act of the FRY, the citizens of the former SFRY who had, on the day of the promulgation of the FRY Constitution, on 27 April 1992, the citizenship of the Republic of Serbia or of the republic of Montenegro, and their children, born after that day, are considered as Yugoslav citizens (Art. 46).

The acquisition of the Yugoslav citizenship is facilitated for two other categories of persons:

1. citizens of the former SFRY, who had the citizenship of another republic, not of Serbia or Montenegro, if they had their place of residence, on 27 April 1992, in the territory of the present FRY, if they do not have foreign citizenship. This provision is valid also for the descendant of that category of persons, if they are born after the proclamation of the FRY (Art. 41, para. 1);
2. citizens of the former SFRY who had another republic citizenship, not Serbian or Montenegrin, and who accepted to become professional officers or non commissioned officers or civilians working in the Yugoslav Army, their spouses and descendants, if they do not have foreign citizenship (Art. 41, para. 1).

The Citizenship Act prescribed another way of acquiring of FRY citizenship – " acceptance into Yugoslav citizenship" (Art. 48). This manner of naturalisation is limited to the citizens of the former SFRY who emigrated into the territory of the FRY because of their religion or nationality, or because of their struggle for human rights and liberties (para. 1), or reside abroad, and do not have foreign nationality (para. 2). The request for the acceptance into Yugoslav citizenship is submitted to the Federal Ministry of the Interior, which examines it and takes into account, in its decision, the interests of the "security, defence and international position of Yugoslavia" (para. 3). The person submitting a request must add a statement that he/she has no other nationality or that it renounced it (Art. 5). Also, persons who were granted asylum as citizens of the former SFRY must include a statement about the persecutions they suffered (Art. 6).

4.15.3. Acquisition of Yugoslav Nationality

Yugoslav citizenship may be acquired by origin, by birth in the territory of Yugoslavia, by naturalisation and according to international agreements (Art. 2). Yugoslav citizenship by origin is acquired, ac-

cording to the law (*ex lege*) by the children whose parents are Yugoslav citizens, regardless of their place of birth, and children with only one Yugoslav parent, if born in Yugoslavia. Furthermore, children born abroad, with one Yugoslav parent, acquire Yugoslav citizenship by origin if the other parent is unknown or without citizenship (Art. 7) or if one of the following conditions is fulfilled (Art. 8):

1) if their Yugoslav parent registers children, before they attain 18 years of age, as Yugoslav citizens in a diplomatic representation of the FRY (if the children are older than 14 years of age, their consent is needed, and if they are between 18 and 23 years of age they may submit the requests by themselves).
2) if they would remain stateless without obtaining the Yugoslav citizenship.

According to the Yugoslav law, the basic criterion for the acquisition of citizenship by origin (*ius sanguinis*) is corrected by the acquisition of the citizenship by place of birth (*ius soli*). Thus the children born or found in the territory of the FRY get the Yugoslav citizenship if their parents are unknown or stateless. In that way, the prevention of the statelessness from birth is relatively well achieved. Nevertheless, the statelessness from birth is possible when children born in Yugoslavia have parents with the nationality of a country which accepts only the system of acquisition of citizenship according to the place of birth (*ius soli*)

4.16. 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 which 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.

4.16.1. General

The Yugoslav constitutions, both federal and republic, guarantee the freedom of movement and generally follow the approach of the international instruments on human rights. According to Article 30 of the FRY Constitution:

> The freedom of movement and residence and the right to leave the FRY and to return to the FRY is guaranteed to the citizens.
>
> The freedom of movement and of settling and the right to leave the FRY may be limited by federal law, if that is necessary to conduct criminal procedure, to prevent the spreading of contagious diseases or for the defence of the FRY.

Article 17 of the Constitution of Serbia guarantees the freedom of movement in a similar way, while the Constitution of Montenegro is less precise: although Article 28, para. 1 guarantees the freedom of movement and of settling, there is no mention of the freedom to leave freely Montenegro and to return to Montenegro.

4.16.2. Restrictions

The restrictions of the freedom of movement contained in the Yugoslav constitutions are formulated in accordance with international standards. It is prescribed that a restriction must be established by law and necessary for the attainment of a legitimate goal. There are only a few reasons for restrictions mentioned in the Yugoslav constitutions,

and they are formulated in a narrower way than those referred to in the ICCPR.

On 7 November 2000, the new Federal Government revoked a 1993 Decision under which all persons paid a special tax when travelling abroad (*Sl. list SRJ*, No. 61/2000), thereby doing away with a non-legislative act which constituted a direction restriction of the rights of FRY citizens.

4.17. Economic, Social and Cultural Rights

The Federal and republic constitutions contain general provisions dealing with the fundamental social rights of the citizens and specific social groups (children, women, mothers, and the elderly). The kinds and scopes of social rights are defined in corresponding republic laws and other enactments. Organisations through which these rights are realised are in the category of public services and are called "institutions."

The 1991 Law on Public Services, under which such institutions may be founded by an individual, paved the way for private initiative in the spheres of social and cultural rights. Article 10 of the statute cites the sources of revenue for affairs classified as "rights and needs of the citizens." The private sector, however, cannot apply for financing from public funds and budgets; these are earmarked only for state public services. Although the statute was passed almost a decade ago, private institutions have not yet been integrated in systems of health care, social welfare, child welfare, education and the like, either in terms of organisation or financing. This makes it possible for state institutions to retain a monopoly, especially where taxes on the personal incomes of all employed persons and other contributions and levies are concerned. Other negative results are a lack of transparency and a legally undefined system of cohabitation of the private and state

sectors in the sphere of public services, in particular through personal connections and political and economic centres of power.[46]

4.17.1. Right to Work

The right to work is explicitly guaranteed by the constitutions of Serbia and of Montenegro (see Art. 35 of the Constitution of the RS, and Art. 52 of the Constitution of the RM), but not by the FRY Constitution. All constitutions guarantee the right to free choice of profession and of employment, and prohibit forced labour (see Art. 54 para. 1 of the FRY Constitution). The Constitution of Serbia is the only, which prescribes that jobs and functions are accessible to all, under the same conditions (see Art. 54, para. 1 of the Constitution of the RS).

The Constitution of the FRY and the Constitution of Serbia guarantee, to a certain degree, the safety of jobs, by stipulating that employed persons may lose their employment against their will only under the conditions and in the cases prescribed by the law and in collective agreements (see Art. 54, para. 2 of the Constitution of the FRY and Art. 35, para. 2 of the Constitution of the RS). The laws on labour relations and collective bargaining explicitly determine the conditions for the termination of labour relations regardless of the will of employees; dismissals because of other reasons would be unlawful. The decision on the dismissal which must be reasoned, is taken by the director, and it is final (see Art. 65 of the Bases of Labour Relations Act, *Sl. list SRJ*, No. 29/96). The disciplinary measure of the termination of labour relations may be taken also only in the cases of the violations of labour relations explicitly prescribed by the law or in the

46 An audit of the financial records of a leading Belgrade hospital, St. Sava's, after the dismissal of its director in October 2000 brought out that a part of the hospital was leased to a private medical practice owned by the son of a hospital nurse (who held the post of advisor to the director, with a salary eight times higher than of a full professor at Belgrade University). The director sold two ultrasonographic devices and an ECG to the private practice at giveaway prices, and leased it a sophisticated colour-Doppler device valued at 250,000 DEM and donated to the hospital by the Federal Customs Administration (*Blic*, 25 October 2000, p. 6).

collective agreement. This measure is also pronounced by the director, and in companies which have a board of management, the board is competent, to re-examine the decision in the second instance, at the complaint of the employee (see Art. 56, para. 2 of the Bases of Labour Relations Act).

The decision on the termination of the job, and the reasons for the adoption of that decision must be handed over to the employee in written form, with an instruction about the legal remedy. The employee may initiate a lawsuit before a competent court, within 15 days after receiving the decision. The basic feature of labour lawsuits is urgency. The decision ordering a legal person to reinstate the employee must be implemented, under the threat of fine; the fine may be pronounced only thrice. The non-enforcement of the order to reinstate the employee represents a criminal act (see Art. 91 of the Penal Code of the RS, and Art. 75 of the Penal Code of Montenegro).

Republic laws also prescribe the compulsory term for giving notice, which cannot be shorter than one month, nor longer than three months, or six months in Montenegro (see Art. 55 of the Labour Relations Act, *Sl. list RCG*, No. 29/90, 42/90, 28/91 and Art. 112 of the Labour Relations Act, *Sl. glasnik RS*, No. 55/96). An employee may cease to work before the expiration of the term of notice – in Serbia, with the consent of the employer, and in Montenegro by a decision of the employer; in any case, the employee is entitled to reimbursement of salary until the expiration of the term of notice. If an employee is called to military reserve duty, or to complete his military service (up to three months), or is unable to work during that time, the term of notice is stopped and continues to run after the cessation of those circumstances (see Art. 112, para. 3 of the Labour Relations Act of the RS and Art. 56 and 57 of the Labour Relations Act of RM).

The law prescribes the special rights of the employees, which belong to the so-called technological surplus. These are persons who lose their jobs because of the cessation of the need for their work in the case of the introduction of technological, economic or organisa-

tional changes. These persons may terminate their labour relations only if they get one of the rights prescribed by the law, and that is a job in another company, or professional training, or retraining or additional qualification, purchase of retirement time, or a lump compensation amounting to at last two yearly salaries. If one of these rights cannot be fulfilled, the labour relations may cease after the payment of the severance pay, the amount of which depends on the duration of the payments for insurance (see Art. 43 of the Bases of Labour Relations Act). Until one of those conditions is fulfilled, the employee is entitled to reimbursement of salary (see Art. 31, para. 3 of the Labour Relations Act of the RS).

The right to work includes the right to free assistance when persons seek a job. In order to fulfil that function, and a number of other functions concerning the employment and the problem of unemployment, there are labour exchanges in the Republics, with the task to implement employment programmes and to harmonise demand and supply at the labour market. They offer free professional assistance in the form of information given to interested persons about the conditions and possibilities of employment and are also engaged in the mediation in the cases of employment, between the unemployed and the employers. Exchanges also offer professional guidance in the choice of professions and of jobs, they prepare persons for employment, through retraining, additional qualification and the innovation of knowledge.

4.17.2. Right to Just and Favourable Conditions of Work

The Yugoslav constitutions guarantee a set of rights of employees. First of all, all constitutions guarantee the right to fair wages (see Art. 55 of the FRY Constitution, Art. 56 of the Constitution of the RS and Art. 53, para. 1 of the Constitution of RM).

The Act on the Bases of Labour relations reiterates that employees are entitled to appropriate earnings, and that earnings are determined in accordance with the law and with the collective agreement.

The earnings are paid at least once a month (see Art. 48 of the Labour Relations Act). The employed have the right to the compensation of the pay for holidays when they do not work, during their annual holidays, during paid leaves, military exercises and in other cases determined by the law and by collective agreements. The law guarantees to employees the right to increased earnings in the case of work during national holidays, and for overtime and night work (see Art. 49 of the Bases of Labour Relations Act). Besides the earnings – salaries, employees are entitled to other allowances, like the allowances for covering the costs of the holidays, of hot meals, transport, etc. (see Art. 51 of the Bases of Labour Relations Act).

In order to assure the financial and social security of employees, in the cases in which the employer is not capable, due to difficulties in the operations, of paying their earnings, the law prescribes the right of employees to minimal guaranteed earnings. The amount of the guaranteed net earnings is determined by the decision of the government of the republic. The employer is bound to pay to the employees, under the conditions determined by individual collective agreements, the difference between the guaranteed net earnings and the income they got in accordance with the collective agreement (see Art. 65 of the Labour Relations Act of the RS).

The constitutions guarantee in a generalised way the right of employees to limited working hours, and to paid annual holidays and leaves, while the constitutions of the FRY and of Serbia guarantee the right to daily and weekly rest, without giving a precise definition of those rights (see Art. 56, para. 1 of the FRY Constitution, Art. 38, para. 1 of the Constitution of the RS, and Art. 53, para. 2 of the Constitution of the RM).

Full working time amounts, according to the regulations on labour relations, to 40 hours in a working week. The law prescribes the obligation to introduce of reduced working hours for persons performing especially difficult, strenuous, and hazardous work, proportional to the noxious influence on health, i.e. on the working capacity of employees; in Montenegro that reduction is limited to 36 hours

weekly (see Art. 19 of the Labour Relations of the RS and Art. 17 of the Labour Relations Act of the RM). The working hours of an employed person may exceed the full working hours, but not for more than 10 hours weekly, except in cases explicitly prescribed by the law, when there are obligations to work overtime, and more than 10 hours weekly (e.g. in the cases of natural disasters, fires, explosions etc., see Art. 20 of the Bases of Labour Relations Act).

Regarding the right to rest, employees have the right to rest of 30 minutes during a working day: that rest may not be at the beginning or at the end of the working hours. Then there is the right to rest between two workdays of at least twelve hours without interruption, except during seasonal works, when this minimum is ten hours, and the right to weekly rest of at least 24 hours without interruption The employed have the right to annual holidays of at least eighteen days, and proportionally to the duration of employment. The employed may not be deprived of the right to any of these rests. The employed have also the right to paid and unpaid leaves in the cases determined by law and by collective agreements (see Art. 26–31 of the Bases of Labour Relations Act).

The constitutions also guarantee the protection of employed at work, also without detailed description of that right. Special protection is guaranteed to women, disabled and young persons (see Art. 56 para. 2 and 3 of the FRY Constitution, Art. 38, para. 2 and 3 of the Constitution of the RS and Art. 53, para. 3 and 4 of the Constitution of the RM).

The Bases of Labour Relations Act prescribes the obligation of the employer to assure the necessary conditions for the protection at work. An enterprise may start to operate only after the competent inspectors have reported that, *inter alia* security measures have been introduced (see Art. 18 of the Enterprises Act, *Sl. list SRJ*, No. 29/96). The employer is bound to inform the employees about all work hazards and about the rights and obligations concerning the protection at work and working conditions. The employees have the right to refuse to work because the precautions have not been taken, but only if there is

objective danger to their life and health (see Art. 33–34 of the Bases of Labour Relations Act).

In order to assign an employee to a job where there is an increased danger of injuries and professional and other diseases, such a person must satisfy the requirements regarding his or her state of health, psychophysical capabilities and age. In order to protect such persons the law prescribes compulsory preliminary and periodical medical checks (see Art. 30–35 of the Protection at Work Act, *Sl. glasnik RS*, No. 42/91, 53/93, 67/93). To that same aim, the law prescribes the reduction of the working hours for such persons, and their right to longer annual holidays, up to 40 workdays (see Art. 56, para. 2 of the Labour Relations Act of the RS).

Detailed provisions of the protection at work in Serbia are found in the separate Protection at Work Act, while in Montenegro they are included in the Labour Relations Act. These regulations, and the by-laws adopted on the basis of these regulations prescribe more specifically the obligations of the employers regarding the measures and means necessary for safe working conditions, the organisation of the protection at work, the training of employees to work safely, and the assurance of emergency and rescue services. The enforcement of these laws, regulations and collective agreements in the field of protection at work is supervised by the labour inspection. Non-observance of the measures of protection at work represents a basis for the termination of the operations of an enterprise (see Art. 100, para. 1, line 1 of the Enterprises Act), and represents, under some conditions, a criminal act (see Art. 90 of the Penal Code of the RS and Art. 74 of the Penal Code of the RM).

4.17.3. Right to Social Welfare

The right to social insurance includes the right to social security and the right to welfare assistance.

In the Yugoslav constitutions, the right to social security is prescribed as the institution of compulsory insurance of employees, which guarantees to them and to their families all forms of social

security (see Art. 58 of the FRY Constitution and Art. 55 of the Constitution of the RM). The Constitution of Serbia enters in a more specific way into the content of this right, and prescribes that employees, in accordance with the law, acquire trough compulsory insurance the right to health protection and other rights in cases of disease, pregnancy, decrease or loss of working capabilities, unemployment and old age, and the right to other forms of social security, and for the members of their families the right to health protection, the right to family pension, and other rights based on social security (see Art. 40 of the Constitution of the RS).

Social security includes retirement, disability, health and unemployment benefits, and health insurance. Additional statuses regulate various fields in the domain of social security.

Compulsory insurance covers all employed and self-employed persons and farmers. Besides compulsory insurance, there is the possibility of voluntary insurance for persons who are not compulsory insured, and for persons who want to provide for themselves and for their families broader benefits than those prescribed by law (Art. 16 of the Act on the Bases of Retirement and Disabled Persons Insurance, *Sl. list SRJ*, No. 30/96).

An insured person acquires the right to old age pension if he/she fulfils cumulatively the conditions regarding the age and the duration of the insurance (see Art. 22 of the Act on the Bases of Pension and Disabled Persons Insurance). The amount of the old age pension is determined by the base for pension and the duration of insurance. The base for the pension is the monthly average of earnings, i.e. of the base of the insurance premiums during the ten year period which is the most favourable for the insured person. The law limits the amount of the pension basis to 3.8 average net salaries of employees in the territory of the Republic of Serbia in the previous year (Art. 10 of the Act on Pension and Disabled Persons Insurance, *Sl. glasnik RS*, No. 52/96). The amount of the pension is determined as a percentage of the pension base, which depends on the number of years of insurance. The law limits that percentage, to not more than 85% of the pension base

(see Art. 35, para. 3 of the Act on Bases of Pension and Disabled Persons Insurance).

The rights in the case of invalidity include the right to disabled persons pension and the rights connected to the remaining working capacity. These rights include the right to retraining or additional qualification, the right to get another appropriate full time job and the right to monetary compensation linked to the enjoyment of those rights. The reason of invalidity, i.e. whether the invalidity was caused by an injury at work, by professional disease, by injuries outside the workplace or by other illness, does not influence the determination of invalidity; however, it is of importance for the determination of the conditions for the acquisition of certain rights, and of their scope.

The right to disabled persons pension is acquired by insured persons whose health conditions have deteriorated and cannot be eliminated by treatment or rehabilitation leading thus to the loss of working capacity, or the insured persons whose working capacities decreased, but under the condition that because of their age (over 50 for men, over 45 for women) they do not have the right to retraining or additional qualification (see Art. 45, para. 1 of the Act on the Bases of Pension and Disabled Persons Insurance). If the invalidity is caused by injury at work or by professional disease, the right to disabled persons pension is acquired regardless of the duration of the insurance, and the pension amounts to 85% of the pension base. If invalidity is caused by an injury outside the workplace, or by other illness, then the acquisition of the right to the disabled persons pension depends on the duration of insurance, and the amount of the pension is determined according to three criteria: the gender of the insured person, the age at the moment of the invalidity and the duration of the insurance (see Art. 48 and 49 of the Act on the Bases of the Pension and Disabled Persons Insurance).

The Act contains provisions on the lowest age for disabled persons' pensions; they are of protective nature, and are aimed to assure the minimum existence to those who have been insured for a short time and/or have had low earnings. The base for such pensions

is not the average ten-year earnings or the duration of the insurance period, but the average net earnings of employees in the territory of the Republic in the previous year. The lowest pension is determined as a percentage depending on the duration of the insurance: that percentage is between 40%, for insurance periods up to 20 years, and 80%, for insurance periods of 35 years or more (men) or 32 or more years (women), (see Art. 77 of the Act on the Bases of Pension and Disabled Persons Insurance).

In the cases of danger of invalidity, the law prescribes the right to retraining or additional qualification, and the right to be transferred to another full time job (see Art. 63 of the Act on the Bases of Pension and Disabled Persons Insurance).

The law also prescribes the right to monetary compensation in the case of physical injury, but only if it is caused by injuries at work or by professional disease or has impaired total abilities by at least 30% (see Art. 74, para. 2 of the Act on the Bases of Pension and Disabled Persons Insurance).

In the case of the death of an insured person, or of a beneficiary of old age or disabled persons pension or beneficiary of rights on the basis of reduced working capacity, the members of his or her family shall have the right to family pensions. They shall have that right if they fulfil certain conditions, which are different for various members of the family (Art. 64–73 of the Act on the Bases of Pension and Disabled Persons Insurance).

The retirement and disabled persons insurance is managed by the corresponding republic Fund.

Unemployment benefits are regulated at the republic level, by the Act on Employment and on the Rights of Unemployed Persons in Serbia, and by the Employment Act in Montenegro. All the constitutions guarantee the right to financial security in the case of temporary unemployment (see Art. 55, para. 2 of the FRY Constitution, Art. 36, para. 2 of the Constitution of the RS, and Art. 53, para. 1 of the Constitution of the RM).

The right acquired according to this insurance is to monetary compensation in the case of terminating employment, under the condition that the person was insured for not less than 9 months without interruption or 12 months with interruptions, within the last 18 months (see Art. 13 of the Act on Employment and on the Rights of Unemployed Persons, *Sl. glasnik RS*, No. 22/92, 73/93, 82/92 and Art. 28 of the Employment Act, *Sl. list RCG*, No. 29/90). Monetary benefits are not granted in all kinds of the termination of employment. In Serbia, cases in which persons are entitled to benefits are enumerated (see Art. 12 of the Act on Employment and on the Rights of Unemployed Persons of the RS), while the Montenegrin law prescribes exceptions when the insured person does not have that right (see Art. 31 of the Employment Act of the RM). In principle, if employment is terminated because of a breach on the part of the employee, or of his own volition, the employee forfeits the right to benefits. Benefits are paid for a determined time period which depends on the duration of the insurance and may last between 3 and 24 months (see Art. 13 of the Act on Employment and on the Rights of Unemployed Persons of the RS and Art. 33 of the Employment Act of the RM). Benefits are also provided after that period in certain cases, such as during the time the unemployed person is preparing for employment, being trained or acquiring additional qualification, during pregnancy and birth and during temporary inability to work (see Art. 15 of the Act on Employment and on the rights of Unemployed Persons of the RS and Art. 34 of the Employment Act of the RM). The base for benefits is the average monthly net earnings of the unemployed person during the last three months of employment; it is paid at the end of the month, and under certain conditions it may be paid as a lump sum. During the time they receive benefits, the unemployed have the right to health and retirement insurance (see. Art. 27 of the Employment Act of the RM and Art. 8 para. 6 of the Health Insurance Act of the RS). The competent labour exchange decides upon the rights of the unemployed.

As a difference from social security, where employees save a part of their income in order to assure certain rights for themselves and for the members of their families in cases of old age, disease,

invalidity and death, social welfare assistance relies on contributions from public funds, formed by taxes, which individuals receive on the basis of their positions and their social needs.

The constitutions of the FRY and of Montenegro prescribe that the state assures the financial security to the citizens who are unable to work and have no means of existence, and to the citizens who only have no means of existence, while the Constitution of Serbia guarantees social security only to the citizens who both are unable to work and have no means of existence (see Art. 55 of the Constitution of the RM, Art. 58 of the Constitution of the FRY and Art. 39 para. 2 of the Constitution of the RS). Social protection is regulated by the Act on Social Protection and the Assurance of Social Security of Citizens in Serbia and by the Act on Social and Child Protection in Montenegro.

The fundamental right in the field of social protection is the right to financial security. In Serbia, that right belongs to individuals or families with earnings below the level of social security. The level of social security is determined by the law in percentages; the percentage depends on the number of family members and on the average net earnings per employee in the previous quarter in the economy of the Republic (see Art. 11 of the Act on Social Protection and on the Assurance of the Social Security of Citizens, *Sl. glasnik RS*, No. 36/91, 33/93, 67/93, 53/93, 46/94, 48/94, 52/96). Besides this general prerequisite the law foresees a series of additional individual conditions, i.e. lack of ownership on movable or immovable property, etc. (Art. 12 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of the RS). Financial security benefits are determined in monthly amounts, which represent the difference between the average monthly income of individuals, or of the family, earned in the previous quarter, and the level of social security (Art. 20 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of Serbia). The amount of financial insurance is harmonised with average earnings. Similar solutions regarding financial security are found in the Act on Social and Child Protection of Montenegro (*Sl. list RCG*, Nos. 45/93, 27/94, and 16/95).

Other rights in the system of social protection, prescribed by both republic laws, are the right to supplements and assistance for the help and nursing by other persons, the right to assistance in vocational training for work and the right to be placed in institutions of social welfare or in another family (Art. 37 of the Montenegrin Act on Social and Child Protection; Articles 25 and 27 of the Serbian Act on Social Welfare and Security).

The appropriate social welfare institutions decide upon all these rights.

4.17.4. Right to the Protection of the Family

The right to the protection of mothers, children and families is comprehensively protected by the republic constitutions. The FRY Constitution only guarantees special protection for families, children and mothers; children born out of wedlock have the same rights and duties as legitimate children. The republic constitutions guarantee some other rights and prescribe some other obligations. Thus the Constitution of Montenegro prescribes that marriage may be concluded only with the free consent of the woman and the man, while the Constitution of Serbia prescribes that it is a human right to decide freely on the birth of children. Both constitutions prescribe the right and the obligation of the parents to care about children, to bring them up and educate them, and the obligation of the children to care about their parents who need assistance (see Art. 61 of the FRY Constitution, Art. 27 and 29 of the Constitution of the RS and Art. 58 and 59 of the Constitution of the RM).

Employed women enjoy special protection, according to the law on labour relations, both because of their special psychophysical characteristics as women, and because of pregnancy and motherhood. Special protection of working women at work and of young and disabled persons is guaranteed by all constitutions (see Art. 56, para. 3 of the FRY Constitution, Art. 38, para. 3 of the Constitution of the RS, and Art. 53, para. 4 of the Constitution of the RM). The major part of these rights, and of the rights based on the special protection

of youth are prescribed by the Bases of Labour Relations Act. Labour Relations Act of Serbia reproduces all the provisions of the federal law, and contains some more precise supplementary rules, as a difference from the Labour Relations Act of Montenegro, which has few provisions on the special protection of women and youth.

The Bases of Labour Relations Act prescribes that employed women may not work on jobs with prevailing hard physical work, work under grounds and underwater, or on jobs which could be detrimental to and hazardous for their health and lives (see Art. 35, para. 1). Furthermore, employed women may not work during pregnancy on jobs where there are increased risks for the maintenance of the pregnancy and the development of the embryo (see Art. 35, para. 2 of the Bases of Labour Relations Act). There are also some restrictions regarding the possibilities of night and overtime work. The Bases of Labour Relations Act prescribes that pregnant women, or women with children up to three years of age may not exceed full working hours, or work at night. Exceptionally, women with children older than two years may work by night, but only on the basis of written request. Also, single parents with children up to seven years of age or with heavily disabled children may work overtime or by night only on the basis of their written requests (see Art. 36 of the Bases of Labour Relations Act). Furthermore, the Labour Relations Act of Serbia contains a prohibition of night work for women in industry, construction or transport, with the possibility of deviation from that rule in exceptional circumstances.

The basic right of employed women concerning pregnancy and birth is the right to maternity leave. A woman may go on maternity leave 45 days before delivery; she must go on leave 28 days before delivery (Art. 36, para. 3 of the Bases of Labour Relations Act). Maternity leave lasts at least until the child is one year old or, according to the Labour Relations Act of Serbia, until the end of the second year of life of the third child (Art. 37 of the Bases of Labour Relations Act and Art. 79 of the Labour Relations Act of the RS). In case of a stillborn child, or of the death of a child before the expire of the

maternity leave, employed women have the right to prolong their maternity leave for the time they need to recover after the loss of the child, but not less than 45 days; during that time they have all rights based on maternity leave (Art. 39 of the Bases of Labour Relations Act).

During maternity leave employed women have the right to compensation amounting to the earnings they would have at their workplace, under the condition that they have been employed for not less than six months; otherwise, they have the right to compensation in the amount of a certain percentage thereof (Art. 13 of the Act on Social Care About Children, *Sl. glasnik SR*, No. 49/92, 29/93, 53/93 and Art. 73 of the Act on Social Welfare and Protection of the Child of the RM). The Act on Social Welfare and Protection of the Child of the RM prescribes, besides the right of employed women to compensation given to employed women, that unemployed women who give birth and are registered in the Labour Exchange have the right to monetary compensation amounting to 40% of the lowest salary in the Republic in the month when the compensation is paid, during 270 days after child birth (Art. 81 and 82 of the Act on Social Welfare and Protection of Children of the RM).

If the child needs special care because of a health condition, or if the child is heavily handicapped, the mother of the child has the right to additional leaves, after the expire of the maternity leave (see Art. 37, para. 4 of the Bases of Labour Relations Act). In Serbia, such women have the right to be absent from work (in that case they receive compensation for their lost earnings according to the regulations on health insurance), or to work half-time; in the latter case they have the right to the earnings for the time they work and the right to the compensation of the earnings for the second half of the working hours, but not longer than three years after child birth (see Art. 40 of the Labour Relations Act of the RM). The republic regulations also prescribe that one parent, or only the mother in Montenegro, may be absent from work until the child is three years of age. During that period, the rights and obligations of that person are suspended; in

Montenegro, mothers have the right to health and retirement insurance if they benefit from that right (see Art. 86 of the Labour Relations Act of the RS and Art. 42 of the Labour Relations Act of the RM).

The law assures, to a certain degree, the safety of the employment of women during pregnancy, maternity leave and the exercise of the right to additional leave. Namely, the employment may not be terminated in such cases only because the job has become superfluous (Art. 38, para. 3 of the Bases of Labour Relations Act), but may cease for other reasons.

All these rights belong primarily to women; however, in the case of death of a woman, or if she abandons her child, or if she is prevented from enjoying those rights, they may be enjoyed by an employed father (see Art. 38, para. 1 of the Bases of Labour Relations Act).

Besides those rights, the republic laws on the protection of children prescribe some other rights. The most important of them is the right to child allowance. In Serbia, the allowance is given for the first three children, and the right to allowance depends on the financial position of the family, except where there are three children, when the right to the allowance comes with the third child, regardless of the financial circumstances of the family. The allowance is given for children under nineteen, if they attend regular education, and the amount of the allowance depends on the financial position of the family, and on the place of the child in the order of birth (Art. 21–29 of the Protection of Children Act of the RS). Similar rules exist in Montenegro; however, in Montenegro the right to the allowance does not depend on the financial position of the family, and its amount varies with the age of the child, the degree of education and the psychophysical state of the child (Art. 42–50 of the Act on Social Welfare and Protection of Children of the RM).

All Yugoslav constitutions guarantee special protection to children. The Constitution of Montenegro also prohibits child abuse and the employment of children and minors on jobs detrimental to their health and development (Art. 61 of the Constitution of the RM).

The constitutions extend to youth the same guarantees as given to women. The lower limit for employment is 15 years of age (Art. 7 of the Bases of Labour Relations Act), and employees under 18 years of age enjoy special protection. Regarding employment on certain jobs, there are prohibitions identical to those concerning women. Also, persons under 18 years of age may not be ordered to work longer than during the full working hours, while the collective agreements, or the general acts of the employers, may prescribe shorter working hours. For persons under 18 years of age employed in industry, construction and transport, night work is prohibited (see Art. 41 of the Bases of Labour Relations Act). The Bases of Labour Relations Act also prescribes the right to longer annual leave for such persons (see Art. 56 of the Labour Relations Act of the RS).

4.17.5. Right to Health

The Yugoslav constitutions guarantee the right to the protection of health to all. Furthermore, the constitutions prescribe that health protection must be assured from public revenue, if there is no health protection of other origin (see Art. 60 of the FRY Constitution, Art. 30 of the Constitution of the RS and Art. 57 of the Constitution of the RM). The right to health insurance is included in the rights of employed persons and of the members of their families on the basis of compulsory social security.

Health protection is within the competence of the republics. In Serbia relevant legislation are the Health Insurance Act and Health Protection Act, and in Montenegro the Health Protection and Health Insurance Act. There are no substantial differences between the laws of the republics in this field.

The republic laws cover compulsory insurance; there is also a possibility to establish voluntary insurance for persons who are not subject to compulsory insurance or who want to secure broader rights. They prescribe the categories of persons who are subject to compulsory insurance and pay contributions for their health insurance. Besides

these persons, the members of their families enjoy the right to health insurance.

Poor persons, who are not insured, receive the means for their health protection from the budget. The republic laws regulate that matter in somewhat different ways. In Serbia, the Health Protection Act prescribes the categories of persons enjoying health protection covered by the budget, if such persons are not included in compulsory insurance schemes. This affects children up to 15 years of age, or until the completion of their education, but not after 26 years of age, pregnant women and mothers, persons above 65, handicapped and disabled persons, persons who receive certain social welfare benefits and persons with certain serious diseases (Art. 7 and 8 of the Health Protection Act, *Sl. glasnik RS*, No. 17/92, 26/92, 50/92, 53/93). Furthermore, means for the prevention and suppression of epidemics and for the prevention and elimination of damage to health caused by natural disasters and other calamities come from the budget.

The Act on Health Protection and Health Insurance of the RM does not prescribe categories of persons, but only compulsory forms of health protection which are provided for all citizens, and to which persons who are unable to work and earn, and are without means of existence and health protection assured, are also entitled. Compulsory forms of health protection include the diagnostics, suppression and treatment of certain heavy diseases, like tuberculosis, contagious and malignant diseases, etc., and the health protection of children, pregnant women, mothers, and persons over 65 years of age (Art. 32 and 22 of the Health Protection and Health Insurance Act, *Sl. list RCG*, No. 39/90, 21/91).

The basic rights of health insurance are the rights to health protection, to compensation of earnings during temporary inability to work, to compensation of travel expenses associated with treatment and to the compensation of funeral costs.

Health protection includes measures of medical control and prevention, treatment, medicines, rehabilitation, etc. and it is determined in more detail by the Institute of Health Insurance. The costs

of health protection are born by the health insurance, to the measure prescribed by those acts. Costs in excess are born by beneficiaries. Furthermore, the law introduces the participation of the beneficiaries in the costs of health insurance, which in fact represents additional payment for health services. In Montenegro, it is prescribed that the participation may not be introduced for the compulsory forms of health protection (Art. 34, para. 1 of the Health Protection and Health Insurance Act of the RM), while in Serbia, the introduction of the participation is limited by the provision that such participation must not deter citizens from protecting their health (see Art. 28 of the Health Insurance Act, *Sl. glasnik RS*, No. 18/92, 26/93).

The possibility to assign patients to treatment abroad is limited and belongs as a right in Serbia, only to the persons under 15 years of age, for diseases or conditions that cannot be treated in Yugoslavia and there are prospects of successful treatment in the country to which the insured person is sent. In Montenegro, the age limit is not prescribed (Art. 31 of the Health Protection and Health Insurance Act of the RM and Art. 27 of the Health Insurance Act).

The right to the compensation of the earnings belongs only to certain active insured persons, i.e. those who pay the contribution for the insurance, but not to the members of their families. Such persons are entitled to that right if they are temporarily unable to work due to disease or injury, or if they are ordered to care for member of their close family, or to escort a patient sent for treatment or for medical examination outside the place of residence. The base for determining the compensation is the net earnings of the insured person, effected in the month immediately before the month of the occurrence of the insured case, and it amounts to not less than 75% and not over 85% of the base. If temporary impossibility to work is caused by an injury at work, by professional disease or by donations of organs or tissue, the beneficiary has the right to 100% of the base. The compensation of the earnings during the impossibility to work because of pregnancy also amounts to 100% of the base, but under the condition that the employed woman has a certain seniority of insurance; otherwise, the

compensation is lower, but may not be lower than 80% of the base (Art. 44 and 47 of the Health Insurance Act of the RS). The law also guarantees the minimum amount of the compensation of earnings by stipulating that the compensation may not be lower than the guaranteed monthly net wages.

Compulsory health insurance covers also the transport costs for travel for treatment or check-ups, and the funeral costs. The compensation of funeral costs is paid to the person who arranged the burial, and it is determined as a certain percentage of the average net earnings of employees in the Republic. That right is not guaranteed in Montenegro.

As a rule, the Institute of Health Insurance and its subsidiaries decide upon the rights resulting from health insurance. The decision in the second instance is final, and cannot be challenged in administrative procedure. However, the protection of a right may be sought in the competent court (Art. 68 of the Health Insurance Act of the RS).

The law envisages the possibility of insured persons paying part of the costs of medical care, on condition that their share is not so high as to deter them from seeking medical treatment. (Art. 28).

Forms of voluntary medical insurance also exist (Art. 3). They provide broader coverage "for persons who do not have compulsory insurance under this law." Voluntary insurance may be introduced by the Serbian Health Insurance Institute (a public service through which medical insurance rights are realised) for persons who are not covered by compulsory insurance or those who wish to ensure broader coverage than prescribed by the Act on Health Insurance.

Alternative medical insurance was introduced a few years ago in a number of private hospitals (such as Belgrade's *Anlave*). It is not known, however, how many people have this coverage, who owns the system and what guarantees there are of its reliability.

A system of vouchers for payment of medical costs in the private sector by persons who are covered by compulsory insurance does not yet exist. These persons can realise their right to medical care

only in the public sector, and pay the full costs of medical care in private practices.

The Decree on the Planned Network of Medical Institutions (*Sl. glasnik* RS, No. 13/97) determines the kind, number, structure and disposition of state medical institutions and the number of hospital beds. The criterion for the kind of medical institution that is to be organised (medical centres, clinics, infirmaries, pharmacies and the like) is the size of the population of a given area. The law does not envisage forming of mobile medical teams or infirmaries that would make medical care more accessible to people in distant or sparsely populated areas. The focus is on urbanised districts and adapted to densely populated areas.

4.17.6. Housing

The right to housing does not figure in either the Federal or republic constitutions. Several observations are required to clarify the housing situations in Serbia and Montenegro. In the 1991–1993 period, persons who had been allocated socialised apartments were given the right to buy these apartments at extremely low prices (a square meter on the average cost under 100 DEM). The hyperinflation in 1992 and 1993 drastically reduced the figure so that a considerable number of apartments were sold for less than 100 marks. Before that, socialised and state-owned apartments made up about 24 percent of the total housing in Serbia and Montenegro, and were mainly located in urban centres. In Belgrade, for instance, over half the housing was either socialised or state owned. The remainder was private housing. At present, close to 99 percent of housing is privately owned. It should be noted that socialised and state-owned apartments in the former Yugoslavia were not akin to the public housing, HLM, building co-operatives and the like in West European countries. People who were allocated such apartments in the former Yugoslavia were from all social groups. Those in higher strata, however, in particular officials in government agencies, the party *nomenklatura,* the economy and military, were more likely to be allocated housing and could choose more desirable locations, better buildings and larger homes. As a result

of this privatisation policy, the most important means of funding housing construction (subsidised credits, mortgages, etc.) were suspended, though they are envisaged by the 1992 Housing Act (*Sl. glasnik RS*, No. 50/92).

This Act regulates: (1) purchase of the socialised apartments that have not yet been sold; (2) rental of socialised apartments; and (3) the "protected" status of persons who are legal occupants of apartments owned by other private persons. In all other areas, housing in Serbia and Montenegro is regulated by the market and has become a commodity. Only Art. 2 of the Act says that "the state shall take measures to create favourable conditions for housing construction and ensure conditions for meeting the housing needs of underprivileged persons, in conformity with law." All the other elements of housing policy designed to protect vulnerable social groups and which exist in various forms in all European countries, are no longer the concern of state or government agencies in Serbia and Montenegro. Since only persons/families eligible for social welfare benefits (whose *per capita* incomes of 1 USD a day place them far below the poverty line) are considered underprivileged, the number of those who can hope for some kind of assistance in securing housing is indeed negligible.

The state, however, retained some rights under the previous housing legislation and some elements of the housing policy of the former Yugoslavia (allocation of occupancy rights over apartments, granting use of apartments which shortly afterwards were purchased on easy terms, selective granting of favourable bank credits to functionaries, etc.) and which are not contained in the present Housing Act. This confirms how widespread were the privileges enjoyed by the ruling *nomenklatura* and non-compliance with legal standards and laws.[47]

47 Documentation which came to light following the political changes in October 2000 brought out the extent to which the Housing Act was violated by government agencies and the parties of the ruling coalition. Although the 1992 Act abolished the possibility of allocation of apartments (except in the case of housing for the underprivileged), senior government, party and other functionaries were allocated large and luxurious apartments, which they then purchased at prices far below the market rates.

An acute problem in the housing sphere is the repair and maintenance of apartments and apartment buildings. The area is precisely regulated by the Housing Act and its amendments adopted in 1993. Regulations on the maintenance of apartment buildings passed in 1993 list in detail all the works necessary to keep a building in good condition, and the obligations of apartment owners to finance these works in proportion to the size of their apartments. As in other areas, in this one too non-compliance with regulations and no obligation on the part of owners to compensate their neighbours for damage caused by failure to effect timely repairs or poor maintenance contribute to the ruination of existing housing and bring down the value of real property.

Minimum housing standards are not fixed in Serbia and Montenegro. Thus housing can mean anything from shacks without running water, toilets or electricity to luxuriously appointed mansions with pools and tennis courts. The lack of a definition of what constitutes proper housing is an insurmountable difficulty in the attempt to statistically determine the number of substandard dwellings.[48]

Retirees are the sole vulnerable group for which special Regulations on Housing Needs have been adopted (*Sl. glasnik RS*, No. 38/97).

Little public housing for poor families is available at local/municipal level. No systematic record of such dwellings and their quality exists, nor are the criteria for their allocation and use defined.

Since housing is now considered to be among the fundamental human rights[49], the new Serbian and Yugoslav authorities may be expected to propose changes in legislation and encourage financial,

48 The Housing Act defines a dwelling as follows: "A dwelling within the meaning of this 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 dwelling as a constructural unit consists of one or more rooms with ancillary rooms (kitchen, pantry, entranceway, bathroom and similar) or *without ancillary rooms* and may have one or more entrances (emphasis added).

49 See *Instrumenti Saveta Evrope*, Belgrade Centre for Human Rights, Belgrade, 2000, p. 261.

institutional and organisational support to housing construction, especially for vulnerable groups of the population.

4.17.7. Mentally and Physically Disabled Persons

The Serbian Constitution guarantees to disabled persons training for jobs they are capable of performing and ensures conditions for their employment, in conformity with the law. The state provides social security for persons who are unable to work and have no means of living.[50]

4.17.8. Nutrition

Neither the constitutions nor laws in FR Yugoslavia contain provisions treating the right of citizens to proper nutrition. Hence there are no special subsidies to improve the diets of the most vulnerable social groups. The prices of some basic foods are "protected" in order to maintain them at a relatively low level. Relief aid in food donated by foreign and domestic humanitarian organisations is distributed to refugees, the poor, unemployed and other vulnerable groups by the Red Cross, churches and others.

4.17.9. Poverty

There is no fixed poverty line or an official estimate of the number of poor in FR Yugoslavia. Various income levels are used in professional literature: that of international organisations (1 to 2 USD *per capita* a day); incomes below regional or national levels; complex indices of incomes needed to satisfy basic needs, and the like. The category of underprivileged persons and families include families whose monthly incomes and considerably below the line of absolute poverty – one USD per day, even for families with several members.

50 See more on social welfare of mentally and physically disabled persons 4.17.3.

4.17.10. Education

The FRY Constitution states that education is accessible to all under equal conditions, and that elementary education is compulsory and free, in conformity with the law (Art. 62). An identical provision is contained in the Montenegrin Constitution (Art. 62). In its Art. 32, the Serbian Constitution ads that tuition fees are not payable "for regular education financed from public funds." Every child must receive eight years of elementary education.

The law expressly prohibits "political organisation and activity is schools and use of school facilities for such purposes" (Art. 7, Serbian Elementary Education Act, *Sl. glasnik RS*, No. 50/92).[51]

The Serbian Government determines the number and location of schools in the republic. The Ministry of Education, at the proposal of the municipalities, determines the area from which children are enrolled in a particular school. Financing of schools (salaries and other payments to teachers and other staff, operating funds) is centralised through the Ministry of Education. The municipalities (and the city of Belgrade) "provide funding for: professional training of teaching staff, bussing of children who reside four kilometres from their school, bussing of disabled children regardless of the distance to their schools, for repair and maintenance of school facilities, equipping of schools" and the like. If a municipality cannot meet the expense of bussing, parents may participate in the costs and their share is determined by the school. The law does not envisage organised bussing of schoolchildren, even in sparsely populated areas where villages are dispersed. In such areas, where the number of children who have reached the age of enrolment in elementary schools is small, the law provides for the establishment of extension schools with combined classes. From grades one to four, combined classes may consist of two different

51 The law was drastically violated by the ruling coalition during the campaign for the 24 September 2000 elections. Various events were organised in schools at which senior officials of the ruling parties presented to students gifts with emblems of these parties. The events were given extensive coverage by media under the control of these parties.

classes, in which case the number of students is up to 20, or three or four classes when the number of students is up to 15. The poor quality of instruction provided in combined classes, which are mostly held in decrepit buildings, often without running water and toilets in the building, without libraries, kitchens and laboratories does not motivate children to achieve more.

The law does not prescribe penalties for local authorities or the Ministry of Education if they fail to ensure that children attend school in the conditions it lays down. It does, however, provide for the punishment of parents: "A parent who deliberately fails to enrol a child in school or the child is absent from school without justifiable excuse shall be punished with a fine of 1,000 to 20,000 dinars or a jail term of up to 30 days" (Art. 141).

5. Conclusions

1. Although Yugoslav laws and regulations are generally in accordance with international human rights standards, serious structural flaws in the legal system, as well as non-compliance with international standards in several important areas compel the conclusion that the Yugoslav legal system as a whole does not yet guarantee sufficient protection of human rights. In addition, the rule of law is not established in the FR Yugoslavia, primarily for the following reasons: a great number of contradictory regulations are in force, laws that restrict constitutionally guaranteed human rights are nevertheless enforced, and the prolonged absence of an independent judiciary.

2. Human rights guarantees in the federal constitution and particularly the provision that ratified international treaties prevail over ordinary legislation establish a basis for the development of a system for the protection of human rights and the rule of law. However, a significant number of federal and republic laws and regulations have not been harmonised with the federal constitution. As a result, some of the most important constitutional guarantees of human rights are not

effectively implemented and the unconstitutional and restrictive provisions of old laws and regulations are enforced. A particularly grave problem is the contradiction between the Serbian constitution and the federal constitution.

3. Particularly significant is the fact that the federal Criminal Procedure Act (CPA) has not been harmonised with the federal constitution. As a consequence, enforcement of the CPA for all practical purposes annuls some constitutionally guaranteed rights. For example, the CPA (as well as the Serbian constitution) provides additional legal grounds for detention. Contrary to the federal constitution, which provides that only a judge may order detention, the CPA extends this authority to the police. This defect was partly rectified by the Federal Constitutional Court, which on 7 December 2000 ruled that the relevant CPA provision was unconstitutional.[52] In addition, police do not have the obligation to inform detained persons of the reasons for their detention. This is also contrary to the federal constitution.

4. The Yugoslav legal system still does not provide effective legal remedies for the protection of human rights, primarily because the judiciary is not yet independent. For instance, courts cannot control the work of court administration, which is supervised by the justice ministry. Moreover, courts have no budgetary independence, which makes them dependent on the executive and legislature. Influence of the executive branch on the judiciary was particularly visible during the crisis over the local elections in Serbia held in November 1996, when the courts had a major role in the annulment of the election results. Subsequently, the president of a district court that had been instrumental in the crisis became the Serbian minister for justice. The position of the judiciary puts in question the implementation of the guarantee of fair trial contained in Article 14 ICCPR and particularly the right to a hearing by "a competent, independent and impartial tribunal."

52 *Sl. list SRJ*, No. 71/2000.

5. Although both the federal and Montenegrin constitutions provide that victims of human rights violations have the right to a specific remedy – constitutional complaint to the Federal Constitutional Court and the Constitutional Court of Montenegro, respectively – the possibility of filing a constitutional complaint has been so limited by the courts practice to render it only a theoretical remedy. Its ineffectiveness is evidenced by the fact that the Federal Constitutional Court has never declared a constitutional complaint admissible, while the Constitutional Court of Montenegro has considered a negligible number of the complaints made.

6. The concept of proportionality in restricting human rights is virtually unknown to the Yugoslav legal system and to the courts. This means that human rights may be limited to a degree that does not correspond to the legitimate concerns which underlie the proportionality test. As far as derogation of human rights "in time of public emergency" are concerned, there is no provision that would limit them "to the extent strictly required by the exigencies of the situation" as required by Article 4 ICCPR. In addition, the Serbian constitution provides that in a time of war all rights may be derogated, while the federal constitution fails to mention the right to life among the rights from which no derogation is allowed.

7. Guarantees of fair trial in criminal cases are insufficient. The prosecution is not under an unconditional obligation to make available to the defence all the evidence for and against the accused, and the matter left to the discretion of the public prosecutor.

8. Liberty of parents to ensure religious and moral education of their children in conformity with their own convictions is not expressly guaranteed. The enjoyment of this right is limited in practice because it is not possible to establish private elementary schools in the FR Yugoslavia, which is contrary to the International Covenant on Economic, Social and Cultural Rights.

9. Conscientious objection is allowed by the federal constitution but it is a guarantee without meaning because it has been severely restricted by the implementing legislation: conscripts must declare

their objection in an extremely short time (15 days) after having been called to the army and the state has no obligation to inform them about the possibility of civilian service. Persons who have done their military service under arms cannot plead conscientious objector status when subsequently called up for military duties, even when their military service was performed at a time when this right was not recognised in Yugoslavia.

10. Several criminal law provisions provide a basis for possible violations of freedom of expression and persecution of the press. This is particularly the case with "dissemination of false news," a criminal offence sanctioned by the Serbian Penal Code, whose broad and vague definition may be used for the persecution of political opponents and restrictions on freedom of the press.

11. Regulations governing the freedom of association allow prohibition of an organisation for reasons that are contrary to international human rights standards. Such is the case with the provision under which persons convicted of a criminal offence cannot found political or trade union organisations, and the complete ban on the right of membership to political and trade union associations for members of the armed forces and police force.

12. The Serbian constitution provides lesser guarantees of minority rights than the federal constitution, which in practice means that members of ethnic minorities living in Serbia enjoy the level of minority protection below the minimum provided by the federal constitution. In addition, it should be emphasised that no special legal remedies for the protection of minority rights are provided by Yugoslav constitutions. This means that these rights are mainly of a rhetorical nature.

II
HUMAN RIGHTS IN PRACTICE

1. Introductory remarks

In organising its reports, the Belgrade Centre for Human Rights (BCHR) has opted for an arrangement that provides an overview of how the rights guaranteed by the most important international treaties are exercised and complied with in practice.

The events of 5 October were crucial in 2000 and after them the human rights situation marked a major improvement.

1.1. Sources. – There were three main groups of sources for the present report: a) domestic press reports, including those which reflected the positions of government bodies on the issues treated; b) reports of domestic non-governmental human rights organisations; and c) reports of international governmental and non-governmental organisations.

Video recordings of Serbian Television (RTS) prime time news broadcasts made by the BCHR were also used.

1.2. Domestic press reports. – Nine daily newspapers are published in Serbia and Montenegro, the two constituent republics of the Federal Republic of Yugoslavia, of which six are politically relevant and are nationally distributed. There are also three weeklies, all privately owned, which are distributed throughout the country: *NIN* and *Vreme* come out in Belgrade, and *Monitor* in Podgorica.

For the purposes of this report, BCHR staff monitored the Belgrade daily *Politika*[53] and the Podgorica *Vijesti*, and the private dailies *Blic* and *Danas* of Belgrade. Also included was the *Borba* daily, which has a very small circulation but was until 6 October the mouthpiece of the most hard-line quarters in the former Yugoslav and Serbian regimes.

Besides reports in these dailies, the BCHR also used reports and articles published in the three weeklies, the news services of the state news agency Tanjug and the private news agency Beta, and some foreign agencies.

Judging by the press reports, the human rights situation in Yugoslavia remained the same from 1999 up until 5 October 2000. What did change, however, was the segment of the population whose human rights were most direly threatened.

In previous years, the rights of Albanians in Kosovo and Metohija were massively and frequently violated. Following the NATO intervention in the spring of 1999, the situation was reversed and Kosovo, where international military forces are now stationed, is the scene of widespread violations of the rights of its non-Albanian population. The Kosovo situation is treated in a separate section of this report.

Up to 5 October, the Serbian and Yugoslav authorities systematically violated the rights of those they considered to be their political opponents. Attempts to silence the private media, which were critical of government policies, took on the proportions of a campaign and threatened their very survival.

Private newspapers gave up over 60 percent of their space to coverage of violations of the rights to peaceful assembly and freedom of expression, and of political rights, in particular the attempts to manipulate the results of the federal presidential and parliamentary elections of 24 September. In the pro-government *Politika* and *Borba*, reports and articles on the opposition and political opponents of the then regime made up over 55 percent of material relevant to this report. These newspapers labelled the opposition and all those who held

53 Up to 6 October, *Politika* was very close to the former regime.

different political views as "traitors" acting in concert with "the NATO aggressors" and as threats to the country's constitutional order, territorial integrity and the public peace. Similar epithets were used for teachers, workers and pensioners who in 2000 staged strikes to force the government to pay what it owed them.

More than 30 percent of the reports were on the position of the non-Albanian population of Kosovo and were exploited by the pro-government dailies to claim that the situation in Kosovo was normal as long as the region was under the control of the Serbian administration, police and Yugoslav Army.

Reports and articles on the position of ethnic minorities, few and far between, were always positively intoned and full of praise for the then authorities for "affording national minorities all rights in accordance with the highest European and international standards."

BCHR staff in 2000 selected 17,928 reports and articles of relevance for human rights.

2000	*Politika*	*Vijesti*	*Borba*	*Danas*	*Blic*	*NIN*	*Vreme*	*Monitor*	*Total*
January	375	77	164	363	402	8	12	13	1414
February	329	74	174	410	464	6	9	12	1478
March	361	72	184	532	570	7	9	21	1756
April	347	77	162	441	411	6	8	15	1467
May	566	90	225	452	514	8	11	17	1883
June	531	74	164	479	395	25	6	13	1687
July	528	79	189	392	321	19	14	15	1557
August	452	73	175	386	294	21	17	19	1437
September	455	78	175	365	204	20	25	22	1344
October	429	91	193	225	310	25	21	27	1321
November	2263	1174	4134	2201	2250	112	114	12	1060
December	415	294	135	328	3301	21	17	13	1524
TOTAL	55051	1253	2074	4574	44436	178	163	199	17928

1.3. Reports of domestic non-governmental organisations

List of reports, press releases and other published material used in this report:

a) Repression of Political Opponents in Serbia, Humanitarian Law Center, September 2000;

b) Report of the HLC Executive Director on the Situation in Serbian Prisons, Humanitarian Law Center, November 2000;

c) Helsinki Charter, Nos. 27 and 28, Helsinki Committee for Human Rights in Serbia, 2000;

d) Dosije o represiji (Dossier on Repression), No. 5, Independent Journalists' Association of Serbia (NUNS), 2000;

e) Bela knjiga (White Book), G17 Plus, 2000;

f) Statements of the Yugoslav Centre for the Rights of the Child, April 2000;

g) Bulletins of the Centre for the Development of the Non-Profit Sector; No. 8 and 9, 1999–2000;

h) Humanitarian Law Center (HLC) reports and press releases, 2000;

i) Centre for Free Elections and Democracy (CeSID) reports and press releases, 2000;

j) Otpor reports and press releases, 2000;

k) Group 484 reports and press releases; 2000.

1.4. Reports of international organisations. – Reports and other publications of the United Nations and its agencies, e.g. the UN Children's Fund (UNICEF) and UN Development Fund (UNDP), were used in the writing of this report, as were also the Organisation for Security and Co-operation in Europe (OSCE) reports on the parliamentary election in Serbia and municipal elections in Montenegro. Last but not least, the BCHR also referred to numerous reports of international non-governmental organisations such as Human Rights Watch (HRW), Amnesty International (AI) and Institute for War and Peace Reporting

(IWPR). These reports are referenced with the respective organisation's acronym followed by the date of publication.

2. Individual Rights

2.1. Prohibition of discrimination

2.1.1. Discrimination on ethnic grounds. – This was the most frequent form of discrimination in FR Yugoslavia in 2000, in particular in Kosovo where the majority Albanian population discriminated against non-Albanians. The issue will be discussed in a separate section.

Several cases of discrimination against ethnic Albanians in Serbia outside of Kosovo were also registered. In Zrenjanin, Emina Rexhepi was struck several times by police officers who made derogatory remarks about her ethnicity when she asked to see their warrant as they arrested her neighbour, an Otpor activist (*Blic*, 24 May, p. 8). In another case, Goran Trajković, a judge in Vranje, wrote in one of his decisions: "At a time when the Serb nation is being demonised and a campaign is being waged against our country, it is alarming that the defence counsel proposed the calling of two witnesses of Albanian nationality..." (*Danas*, 14 January, p. 5). The Yugoslav Committee of Lawyers for Human Rights reacted by filing a criminal complaint against Judge Trajković, charging him with incitement of racial, religious and ethnic hate and intolerance. On 18 January, the district prosecutor dismissed the complaint as groundless.

Indications are that the physical assault on Husnia Bitiqi, a prominent Belgrade lawyer who acted as defence counsel for many Albanians accused of political offences, was also ethnically motivated. In March 2000, four masked assailants beat up Bitiqi in his apartment, fracturing his skull and inflicting multiple injuries to his body (*Blic*, 18 March, p. 8). Nataša Kandić, director of the Humanitarian Law Center (HLC), believes that the attack may have been organised by some Serb lawyers from Kosovo, who promising to arrange the release

of Albanians from Serbian prisons, took money from their families although they knew these Albanians would in any case be released. Ms. Kandić stated that Bitiqi had complained to her about receiving warnings and threats to keep silent about such cases (HLC press release, 18 March).

Physical assaults that may have been motivated by discrimination were registered also in Montenegro. A group of youths from Peć attacked and injured a Montenegrin Albanian, Fatos Gjonbalaj, in the Center of Andrijevica. The assailants were taken before a magistrate who gave them two days in jail each and ordered them to pay a fine (*Blic*, 10 April, p. 8).

The Roma Information Centre in Kragujevac believes that this ethnic community is the most exposed to discrimination in all areas of life. According to the 1991 census, there were 143,519 Roma in Serbia and Montenegro. The Roma Cultural Society, however, puts the number at between 600,000 and 700,000.[54]

In early November, graffiti reading "Out With the Jews", "Serbia for the Serbs – Out with the Jews", "Koštunica, Son of a Jewess" appeared in Belgrade and other Serbian cities. Stickers featuring swastikas and anti-Semitic slogans in English were affixed to the walls of the Belgrade synagogue and the Jewish Community offices. The Serbian Ministry of Religious Affairs strongly condemned these acts (Beta, 9 November).

2.1.2. Discrimination on political grounds. – Repression in all forms against political opponents was widespread up to 6 October, and discrimination on political grounds was much in evidence. The victims were mainly judges, university teachers and members of political parties.

On 12 July, at the proposal of Serbian Supreme Court President Balša Govedarica, the Serbian Parliament dismissed 18 "politically unfit" judges. The notice of dismissal of Belgrade District Court Judge

54 See IV.4.

Miroslav Todorović stated: "As a presidency member of the so-called Otpor organisation, he made public appearances although the organisation is not registered with the competent authorities, and engaged in activities aimed at changing through unconstitutional means, the bodies of state power." The procedure whereby these judges were dismissed was not in accordance with that laid down by law (BCHR documentation, July 2000).

Belgrade University faculty members were also dismissed or suspended because they did not share the political views of the then regime. The problem was most pronounced at the Department of Electric Engineering, whose dean, Professor Vlada Teodosić, who was appointed by the government under the Serbian University Act passed in May 1998, barred Professor Slavoljub Marjanović from the Department's building, alleging that he was a "NATO agent" and "head of the Otpor student organisation" (*Blic*, 23 May, p. 6). Assistant Professor Željko Djurdjević was terminated because he signed a petition against the dismissal of Professor Srbijanka Turajlić (*Blic*, 29 January, p. 6). Eight professors were ousted from the Academic Staff Council and barred from the building for, in the view of Dean Teodosić, being "politically unfit" (Beta, 14 June). Professor Ljubomir Mišković resigned from the Department after the dean denied him leave of absence to attend an advanced studies course in Switzerland. Professor Milan Merkle was ejected from his office and forbidden to hold classes, probably, as he said, because he was critical of the work of Associate Professor Miloš Laban, a Socialist Party of Serbia (SPS) official (*Blic*, 8 June, p. 6).

The situation at other Departments was not much better. Professor Obrad Savić of the Technology Department was first suspended in May 1998 and finally dismissed in July 2000 because he allegedly "was not present at work for 24 days" (*Blic*, 17 July, p. 1). Academician Milan Kurepa was banned from addressing a physicists' convention as he intended to analyse the consequences of the application of the University Act (*Danas*, 3 April, p. 1).

Before 6 October, people lost their jobs solely because of their membership of opposition parties. Predrag Djurić, a medical doctor in Bački Petrovac, was terminated because he was a member of the League of Social Democrats of Vojvodina. Ratko Borikić of Sopot, a member of New Democracy, was fired because, the party alleged, he was running in the 24 September municipal election (*Blic*, 14 September, p. 6). There are indications that some SPS members were dismissed after 6 October, again because of their party affiliation (documentation of the Center for Advanced Legal Studies).

Dr Ranko Kadić from Podgorica is one of the few persons in Montenegro who was allegedly dismissed because of his party affiliation. Officially, he was terminated because he "failed to appear at work for five consecutive days." But, according to Kadić, the real reason was his membership of the Socialist People's Party and election on 24 September as deputy to the Federal Parliament (*Politika*, 31 October, p. 12).

2.1.3. Discrimination on other grounds. – Besides the penury in which they live, persons displaced from Kosovo to Kraljevo also face various forms of discrimination, according to the Institute of War and Peace Reporting (IWPR). A sign posted at the entrance of a popular cafe there reads "No admission for Kosovo Serbs" and the town quarter with a large population of Kosovo displaced is derogatorily called "Little Albania" (IWPR's Balkan Crisis Report, No. 138, 9 May 2000).[55]

Homosexuals also complained of discrimination. The Serbian Orthodox Metropolitan of Montenegro assessed some photographs in the Podgorica daily *Pobjeda* as "an open homosexual act" and stated that homosexuality was "the greatest disgrace" in Montenegro (*Blic*, 24 July, p. 6).

At the first conference of Yugoslav sexual minorities in Novi Sad in January 2000, speakers said half a million Yugoslavs were gay

55 On the position of displaced persons generally, see *Human Rights in Yugoslavia 1999*, III.3.3.

or lesbian. The participants called on the authorities to ensure better treatment of homosexuals in the judicial system (*Blic*, 24 January, p. 6).

Vesna Perović and Labud Šljukić, deputies of the Liberal Union, came out with a proposal that persons over the age of 60 should have only "half a vote" in the coming referendum on Montenegro's status. The reason given was that sexagenarians could not have equal say in deciding on Montenegro's future as 20-year-olds (*Blic*, 20 December, p. 2).

2.2. Right to life

2.2.1. Situation in Preševo, Bujanovac and Medvedja Municipalities. – Low-intensity armed incidents continued in the southern Serbian municipalities of Preševo, Medvedja and Bujanovac. The municipalities are located within the five-kilometres-wide buffer zone set up along the administrative boundary with Kosovo pursuant to the Military-Technical Agreement signed by the Yugoslav Army and NATO on the basis of UN Security Council resolution 1244. Under the Agreement, the presence of only 1,500 lightly armed members of the Serbian police force is permitted in the zone.

There were frequent attacks on police patrols, Serbs as well as ethnic Albanians loyal to the Serbian government in these municipalities. Belgrade blamed the incidents on members of the Liberation Army of Kosovo (KLA), an armed formation that fought for the independence of Serbia's southern province. In the spring of 2000, a local "Liberation Army of Preševo, Bujanovac and Medvedja" (LAPBM) made its appearance, whose commander Shefqet Hasani stated that "the problems in the Preševo valley can be settled only with arms" (*Blic*, 9 April, p. 5).

According to data collected by private media, 31 persons were killed, of whom 22 civilians (22 Albanians and four Serbs) and nine police officers, 48 were wounded (9 civilians and 39 police officers), and two Albanians and four Serbs disappeared. The all-Albanian Hu-

man Rights Council in Bujanovac reported that 11 police officers and 22 ethnic Albanians (13 civilians and nine LAPBM members) were killed in the Preševo valley in 2000 (Beta, 6 January 2001).

Three Serbs were killed on 16 January at Pasjane near Gnjilane on 16 January. Gjemailj Mustafa, a school principal and leader of the local SPS organisation, was killed in Muhovac, Bujanovac Municipality, on 17 January. That same day, Blagica Trajković was injured in a bomb blast in Levosoj, a village also in the Bujanovac area (*Vreme*, 30 November, p. 9).

Isa and Shaip Shaipi were killed and a police officer was wounded in a clash between police and armed Albanians at Dobrosin village on 26 January. Ejup Hasani was killed in Leovac on 12 February (Beta Chronology, 19 April).

Police Major Slaviša Dimitrijević and an assailant, Fatmir Ibishi, were killed in an attack on a police patrol on 26 February, and three policemen were wounded. One of the UN staff members, Marcel Grogan was wounded in an attack on a UN vehicle at the end of February (Beta Chronology, 19 April).

Bari Musliu of Bujanovac was killed on 13 March, and the body of Agim Aliu from the village of Veliki Trnovac was found the next day. The body of an Albanian was found in a car parked beside the Preševo-Bujanovac highway on 26 March. The remains of two Veliki Trnovac villagers, Ismet Aliu and Destan Adili, were found in Dobrosin in April (Beta Chronology, 19 April).

Two Albanian assailants were killed ambushing a police patrol near Bujanovac in late April, and two policemen were wounded. Another police officer, Milovan Milovanović, was killed on 20 May at Končulj (*Blic*, 24 April, p. 9).

Five police were injured on the Bujanovac-Končulj road when their vehicle hit an anti-tank mine (*Vreme*, 30 November, p. 9). Bomb blasts in Preševo, Bujanovac and Vranje on 21 June slightly injured five people, including a police officer and a security guard at the

Preševo courthouse. Police sources stated that the bombs were planted by "Albanian terrorists" (*Danas*, 22 June, p. 2). Vlado Miletić and his daughter Persa disappeared in Mali Trnovac on 25 June and police found traces of blood and spent cartridges in their home. Three separate incidents occurred near Končulj on 13 July in which one Albanian died. Three policemen were injured five days later in an attack on a checkpoint outside this village (*Vreme*, 30 November, p. 9).

Goran Stanković and Zoran Tomić were abducted on 12 August on the Domorovci-Odanovce road, Bujanovac Municipality (*Vreme*, 30 November, p. 9). In late August, Milivoj Kankaraš was killed and his wife seriously wounded in Marovac, Medjvedja Municipality (*Danas*, 30 August, p. 2). Four LAPBM members were killed in clashes at Dobrosin on 20 September.

Saša Ristić was killed and his son Miodrag severely injured by an anti-personnel mine laid by "Albanian terrorists" (*Blic*, 4 October, p. 9).

A police vehicle hit an anti-tank mine in Mali Trnovac near Bujanovac on 13 October; two officers were killed and nine injured (*Blic*, 14 October p. 9). Another officer, Ivica Božinović, was killed in a similar blast on the road between Veliki and Mali Trnovac on 20 November (*Blic*, 21 October, p. 9).

Four policemen were killed, three seriously and 10 slightly injured at Končulj and Cerevajka villages on 22 November in an attack mounted, the Serbian authorities claimed, by several hundred LAPBM "terrorists" (*Politika*, 23 November, p. 1). Following this incident and the mounting of tension, some 5,000 people fled the three southern Serbian municipalities to Kosovo, the UNHCR reported. UNHCR spokeswoman Maki Shinohari said subsequently that about 1,400 of them had returned to their homes by 7 December and that the process was continuing (Beta, 7 December).

2.2.2. Trials for violation of the right to life during the NATO intervention. – Two trials were held in 2000 for crimes committed in Kosovo during the NATO intervention. On 19 July, the Požarevac

court found two police officers guilty of the murder of three Albanian civilians in the vicinity of Orahovac and sentenced them to four years and nine months and one year in prison, respectively (Beta, 19 July).

The Military Court in Niš on 20 December sentenced reservists Nenad Stamenković and Tomica Jović to four and a half years in prison each for the murder of an Albanian couple, Feriz and Rukije Krasniqi, in Gornja Sušica. Captain Dragiša Petrović was sentenced to four years and 10 months for incitement to murder. The Court established that Capt. Petrović on 28 March ordered the reservists to kill the elderly couple because they refused to leave their home when Yugoslav Army troops arrived in the village (HLC press release, 25 December).

The HLC considers that the sentences were too mild and that the Court made a serious mistake with regard to the legal characterisation of the criminal offences involved. Under the law, the criminal offence of which Stamenković and Jović were found guilty carries a minimum term of five years in prison. Incitement to the murder of more than one person, the offence with which Capt. Petrović was charged, carries a minimum of ten years' imprisonment. In the HLC's view, the military prosecutor failed to indict the accused of a war crime against the civilian population under Article 142 of the federal Criminal Code although all the elements of such a crime were present in this case. The law defines a war crime as an "act committed during a state of war or armed conflict..." and which may include "attacks on individual civilians or persons incapacitated for combat, which result in death..." or "the murder of civilians... their displacement or relocation..." The indictment stated that Capt. Petrović ordered Stamenković and Jović "to liquidate civilians from Gornja Sušica village who refused to leave their homes," and that an armed conflict was under way at the time the criminal offence was committed. The HLC further noted that the state of war was officially declared on 24 March 1999, hence the prosecutor should have brought an indictment for a war crime and not an ordinary crime (HLC press releases, 19 November and 25 December).

These trials raised the issue of ethnic cleansing in Kosovo, and were the first for the murder of Albanian civilians during the armed conflict in Kosovo.

2.2.3. Politically motivated murders. – The majority of murders presumed to have had a political background remained unsolved in 2000. The victims were all either politically active or had been close to the former regime. The former regime accused the opposition of some of these murders, claiming that the aim was to destabilise the country. Indications are that there were no investigations into such murders, although states are bound not only to protect the right to life but also to thoroughly investigate all such cases (see *McCann and others vs. UK*, 17/94/464/545).

Major publicity was given at home and abroad to the death of Željko "Arkan" Ražnatović, leader of the Serbian Volunteer Guard and of the ultra-nationalist Serbian Unity Party, a man for whom both the ICTY and Interpol had issued warrants and who was shot down in Belgrade's Intercontinental Hotel on 15 January (*Politika*, 16 January, p. 1). The murder of Yugoslav Defence Minister Pavle Bulatović followed on 7 February, and Žika Petrović, Managing Director of Yugoslav Airlines, was killed on 26 April (*Blic*, 27 April, p. 8). The then government characterised these two murders as "classic acts of terrorism" (*Blic*, 8 February, p. 8; 27 April, p. 8).

Head of the Vojvodina provincial government and senior SPS official Boško Perošević was killed on 13 May. The then government again accused the opposition. "Otpor and Serbian Renewal Party literature was found on the murderer, Milovan Gutović, and it has been established that he is a member of the Otpor organisation," said a press release issued by the Novi Sad Police Department the next day.[56] What the police neglected to say was that Gutović was actually a member of the ruling SPS and had a personal grudge against Perošević. A warrant for the arrest of two Otpor members was issued by police but was not confirmed by the court (*Blic*, 15 May, p. 3; 16 May, p. 4).

56 The RTS prime time news program on 16 May (BCHR video documentation).

Senior SPS officials used Perošević's murder to yet again accuse the opposition of being "traitorous" and "in foreign pay." Yugoslav Information Minister Goran Matić said the murder had a political background and that the aim of Otpor was "to destabilise Yugoslavia" (*Blic*, 16 May, p. 4). Officials also announced a settling of accounts with those in foreign pay through a new anti-terrorism act (*Blic*, 15 May, p. 3).

A murder assumed to have been politically motivated took place in Montenegro on 1 June when Goran Žugić, the Montenegrin President's advisor on security affairs, was killed in Podgorica. President Djukanović qualified it as "an act of terrorism against democracy in Montenegro" and promised a thorough investigation. The case, however, remained unsolved at the year's end (*Vijesti*, 1 June, p. 1; 2 June, p. 1).

Serbian Renewal Movement (SPO) leader Vuk Drašković was the target of fire from an automatic weapon on 15 June in his apartment in Budva on the Montenegrin coast. A few days later, the Montenegrin police took in two suspects and asked the Serbian police to turn over some other persons but the request was denied.[57] The suspects were shortly released. Drašković also survived a traffic accident on 3 October 1999 near Lazarevac (see *Human Rights in Yugoslavia 1999*, II.2.2.2., p. 218). He ascribed both incidents to the then Serbian government (*Vijesti*, 16 June, p. 1; 21 June, p. 1; *Blic*, 17 June, p. 2).

Ivan Stambolić, a former president of the Serbian state presidency, was abducted while jogging in Belgrade's Košutnjak Park on 25 August. "A guard outside the restaurant said he saw Stambolić taking a rest near the parking lot. A white van passed, stopped briefly and when it drove on, Stambolić was gone," said lawyer Nikola Barović. (*Blic*, 26–27 August, p. 2). Stambolić's disappearance is believed to have a political background.

57 See *Human Rights Watch Annual Report 2001* at ‹http://www.rrw.org/wr2k1/europe/yugoslavia.html›.

In late September, a Committee to Free Ivan Stambolić was set up and said in a press release that "state-controlled media and the country's top officials ... have not said a word to the public or the family." This, in the Committee's view, "confirmed suspicions that the investigation has produced no leads because the leads are under state protection."

The Committee received several tips that Stambolić was alive and in a prison somewhere in Serbia. The Serbian Justice Ministry, however, announced on 8 October that he was not in any prison over which the Ministry had jurisdiction. General Nebojša Pavković, Yugoslav Army Chief of General Staff, also stated that Stambolić was not in any military installation or prison (*The Investigation is Under Way*, brochure on the Stambolić case, Committee to Free Ivan Stambolić and Radio B92, November 2000).

In spite of the announced thoroughgoing investigation, the police had reported nothing about Stambolić's fate by the year's end. Živorad Kovačević, the Committee's chairman, said he had no evidence to accuse anyone of the abduction but that he could accuse the former government for failing to take steps to solve the case (*The Investigation is Under Way*, brochure on the Stambolić case, Committee to Free Ivan Stambolić and Radio B92, November 2000).

A document codenamed "Ćuran" (Turkey) on the undercover surveillance of Slavko Ćuruvija by State Security Service (SDB) agents surfaced in late October 2000, implicating the SDB in his murder. Ćuruvija, a prominent journalist and owner and editor of the *Dnevni Telegraf* newspaper and *Evropljanin* weekly, was gunned down in front of his apartment building in central Belgrade on 11 April 1999, during the NATO intervention (see *Human Rights in Yugoslavia 1999*, II.2.2.2., p. 217). According to this document, Milan Radonjić, the chief of the Belgrade SDB, placed Ćuruvija under surveillance on the orders of Serbian SDB chief, Rade Marković. The document, purportedly a copy of an official SDB report, says that Ćuruvija was shot by three men who then escaped the scene in a car, and that the three agents following him were called off a few minutes before he

was killed (HLC press release, 31 October). It also notes that Ćuruvija and his wife had an appointment that afternoon with a man who was subsequently identified as Dušan Veličković, a former editor-in-chief of the *NIN* newsmagazine. Veličković confirmed that the data contained in the document was accurate down to the last detail (*Danas*, 1 November, p. 5). Co-Minister for Internal Affairs in the provisional Serbian government Božo Prelević said the first two pages of the document appeared to be authentic as their form and content showed that they were written by someone with in-depth knowledge of SDB procedure. He noted, however, that there were some technical and formal defects on the third page which "cast doubts on its authenticity" (*Danas*, 3 November, p. 1). The document was not referred to again up to the year's end.

The remains of Nebojša Simeunović, an investigating judge with the Belgrade District Court who went missing on 7 November, were found on 3 December in the water at the confluence of the Sava and Danube Rivers. After the autopsy, Investigating Judge Branimir Todić said no injuries or traces of any kind of toxic substances had been established. He added that the body was in such an advanced state of decomposition that the cause of death could not be determined (Beta, 3 January 2001). The daily *Blic*, however, reported that the autopsy report was incomplete and incoherent (*Blic*, 4 January 2001, p. 8).

On the night between 3 and 4 October, Simeunović turned down the public prosecutor's request that he order 11 members of the strike committee at the Kolubara mines and Democratic Opposition of Serbia (DOS) leaders Nebojša Čović and Boris Tadić to be taken into custody. Simeunović was also the investigating judge in the murders of Police General Radovan Stojčić and Federal Defence Minister Pavle Bulatović (*Blic*, 13 November, p. 9; *Vreme*, 16 November, pp. 4 and 5; *Blic*, 4 December, p. 9).

In spite of the long series of unsolved homicides, whose victims included high-ranking officials, the Serbian police claimed to have one of the best success rates in Europe. The daily *Politika* gave extensive

coverage to a news conference at which Police General Dragan Ilić stated that "the solving of some 70 percent of the 1,216 homicides committed by unidentified perpetrators is a percentage that only a few European police forces have accomplished." General Ilić added that "Serbia is safer than countries in the region such as Bulgaria and Slovenia," and that the professional approach in solving homicides and the high success rate was a sure indicator of the professionalism and efficiency of the Serbian police force. (*Politika*, 5 February, p. 5).

2.2.4. Imperilling life through negligence. – A five-year-old girl from Kosovo, Valentina Stević, died on 27 April at the Končulj checkpoint on the administrative boundary with Serbia. The gravely ill Valentina waited for hours in an ambulance of the Russian contingent with KFOR for permission to cross into Serbia. Police at the checkpoint refused to allow the ambulance through and to provide an escort. Bujanovac Police Chief Novica Zdravković later stated that he had denied permission for the ambulance and police escort to drive to the Bujanovac hospital, some 10 kilometres from the boundary, as they would have had to pass through "an insecure area in the vicinity of two Albanian villages." The girl's parents subsequently filed against the officers on duty that night (*Blic*, 6 June, p. 9).

A number of families sued Serbia and sought compensation for the deaths of relatives during the NATO intervention against Yugoslavia. In late June, a court in Niš awarded the Vuković family one million dinars (then approximately 30,000 DEM) for the death of their son. Aleksandar Vuković (20) was killed in Kosovo in April 1999 in a NATO bombing raid. For the mental pain they suffered, the court awarded his parents 400,000 dinars each, and 200,000 dinars to his sister (*Blic*, 29 June, p. 8).

On 23 October, the families of workers killed in an explosion over five years ago in a rocket fuel plant of the Grmeč chemical company filed an appeal with the Serbian Supreme Court against the decision of the Belgrade District Court. Eleven persons were killed and nine seriously injured in the blast. Experts of Belgrade University's Chemistry Department and the police established that the explosion

was due to oversights in handling explosive substances and inadequate safety measures. The District Court dismissed the request for the institution of criminal proceedings against Grmeč Director Rajko Unčanin and another four senior managers on the grounds that company started rocket fuel production on the orders of the then Serbian President Slobodan Milošević and Serbian State Security Chief Jovica Stanišić. In their appeal, the families argued that the orders cannot exonerate the management of their responsibility for failing to comply with safety-at-work standards laid down by law, or constitute grounds for the exclusion of their liability (HLC press release, 24 October). The appeal was not considered by the Supreme Court by the year's end.

2.3. Prohibition of torture

The prohibition of torture was openly and frequently violated up to 6 October, both by uniformed police and young assailants who were presumably members of the former ruling parties. The victims were most often activists of the Otpor movement, who were subjected to the most brutal attacks, and opposition politicians, journalists and technical staff of private media.

The most dramatic cases were registered in Požarevac and Vladičin Han. Momčilo Veljković, Radojko Luković, Nebojša Sokolović and Dragan Milovanović, all Otpor activists in Požarevac, were beaten up on 2 May and two of them were seriously injured. They were accosted in a local cafe by three youths – Saša Lazić, Milan Lazić and Bojan Tadić – members of the Yugoslav United Left (JUL), which at the time was the personification of power in Serbia, and friends of Marko Milošević, the son of the former Yugoslav president. Brothers Lazić and Tadić physically assaulted the Otpor activists because one of them, Milovanović, refused to join the ruling SPS. Only Veljković, Lukić and Sokolović were arrested. JUL, led by Mirjana Marković, the wife of Slobodan Milošević and mother of Marko, portrayed the incident as an attempt on the life of one of its members (*Blic*, 16 May,

p. 3). Investigating Judge Djordje Ranković, District Court Judge Boško Papović and Prosecutor Jovan Stanojević did not concur, owing to which Ranković was dismissed and Stanojević was forced to resign (*Blic*, 12 May, p. 2). In spite of major protests, Veljković and Lukić were nonetheless charged with attempted murder and Sokolović as an accomplice. The *Politika* daily simultaneously launched a campaign to defame the Otpor activists and, in gross violation of medical ethics, published a medical history of Momčilo Veljković stating that he was "a mentally unstable person who suffers from permanent manic psychosis" (*Politika*, 4 May, p. 8).

Seven Otpor activists were beaten up by police in Vladičin Han on 8 September. "The police slapped and punched us and hit us all over the body with night-sticks. They beat one activist on the testicles with a nightstick and placed a rope around the neck of another and began to throttle him. They tied my legs with rope, hung me upside-down and beat the soles of my feet," said Vladica Mirčić. Doctors at the local medical centre established that all seven activists had suffered serious injuries (*Danas*, 11 September, p. 4). In early September, three of the police officers involved were dismissed but no proceedings against them were instituted by the end of the year (*Blic*, 3 December, p. 5).

Toward the end of August, police in Niš took in and beat up a minor, Nj. P., who suffers from cerebral palsy, inflicting severe injuries to his head and chest (*Danas*, 23 August, p. 18).

There were numerous attacks by uniformed and plainclothes police on Otpor activists pasting posters and stickers in towns and cities across Serbia. Even ordinary citizens wearing Otpor buttons were physically assaulted. D. M., a minor from Valjevo, was caught putting up Otpor posters by a plainclothes officer who beat him and broke his arm (Otpor press release, 22 September). A group of activists posting Otpor placards in Belgrade were beaten up by youths in civilian clothes while university students Miloš Došen and Nikola Radaković were beaten when they tried to take down anti-Otpor posters (*Blic*, 24 February, p. 4; 27 February, p. 4). Uniformed police beat two Belgrade

high school students because they were wearing Otpor buttons (*Blic*, 6 March, p. 2). On 23 September, a police officer in Smederevo forced two young Otpor supporters, Dj. Dj. and M., to strip Otpor posters from Cultural Center building and swallow them (Otpor press release, 23 September).

Marinko Varnješ, who was taken in by police five times from September 1999 to February 2000 because of his activities in Otpor and verbally and physically abused, sued the state for 300,000 dinars in damages for the mental pain he suffered. At the trial before the Municipal Court in Subotica, Inspector Zoran Ilićković of the Criminal Investigations Division testified that the orders to arrest Varnješ had come from higher quarters but denied that he had been beaten or insulted. Until the end of 2000, the trial was not over (HLC press release, 15 November).

Opposition politicians were also the target of attacks. Unidentified assailants beat Žarko Korać, leader of the Social-Democratic Union, outside his apartment building (*Blic*, 26 February, p. 6), and Radoje Cvetkov, an official of the League of Social-Democrats of Vojvodina, was seriously injured in a similar assault on 12 April (*Blic*, 13 April, p. 3).

On 11 June, police in Zaječar beat up several officials of the local Democratic Party (DS) organisation. "They included Aleksandar Djordjević, a lawyer, who was struck more than 30 times by the deputy police chief for no reason at all, and Olivera Stefanović, chairperson of the Zaječar Human Rights Committee, who was in the seventh month of pregnancy," said local DS activists (*Blic*, 11 June, p. 5).

Two physically disabled persons, Marin Barjaktarević and Marko Vuković, DS activists in Šabac, were beaten by a group of youths assumed to have been SPS members (*Danas*, 17 July, p. 18).

Journalists and technical staff of private media were also victims of violence (see section on freedom of expression, II., 2. 8.).

After a year's procrastination, Serbia finally paid the family of Nenad Pilipović court-awarded compensation for the death of their

son. Pilipović died on 16 June 1996 as a consequence of physical abuse by police. Two officers were sentenced to five and six years in prison (*Blic*, 22 May, p. 6). This was one of the few cases in Yugoslavia when compensation was paid for police abuse and the perpetrators were punished.

Four police officers from Prijepolje went on trial in late May on the charge of extraction of statements. In February 1994, these officers beat Hasim Hajdarević and Himza Kamberović at a local police station with the intent of forcing them to confess to possession of illegal firearms (*Blic*, 1 June, p. 8).

2.4. Right to liberty and security of person and treatment of persons in custody

2.4.1. Mass arrests. – The first ten months of 2000 saw a huge number of illegal arrests of members of opposition parties and others critical of the authorities. The previous regime thus attempted to intimidate political opponents and suppress any dissent with the situation in the country.

According to private newspapers monitored by the Belgrade Centre for Human Rights and Beta chronologies, Serbian police arrested 2,360 Otpor and opposition activists from 1 January to 24 September when the federal presidential and parliamentary elections were held. Among them were at least 57 journalists and 127 minors. Ninety-three were abused and 41 severely beaten.

In January and February, police took in 90 oppositionists and Otpor activists, and the number in March jumped to 190. They included the leaders of the local SPO organisations in Kučevo and Kruševac, the DS leader in Bač, and Marjan Rističević, a Vojvodina Coalition deputy to the Serbian Parliament (*Blic*, 25 March, p. 2). There was a fresh surge in the number of arrested following the murder of Boško Perošević on 13 May, of which the then regime accused the opposition and the Otpor movement. In addition, police files were opened on those arrested in which all their activities were recorded

(*Blic*, 25 May, p. 23). An average of 13 oppositionists were taken in daily. In all, 419 "opponents of the regime" were taken in May alone, including 40 reporters and photojournalists, according to the Independent Journalists' Association of Serbia (IJAS). Even two priests from Šabac and Nenad Čanak, leader of the opposition League of Social-Democrats of Vojvodina, figured among those arrested.

In June, 257 Otpor and opposition party activists were taken in or arrested, including six minors, nine reporters and Sredoje Mihajlov, a Vojvodina Coalition deputy to the Federal Parliament. One of the arrested was beaten up in a police station.

In the next month, the number climbed to 293 and included 12 minors and, once more, Serbian Parliament deputy Marjan Rističević. Four people were beaten up.

There were 361 arrests in August and included Mile Isakov, leader of the Vojvodina Reformists and deputy to the Federal Parliament, and 60 minors. Twenty persons were beaten.

In September, up to the elections on the 24th, a total of 377 persons were taken in or arrested, including four minors, six reporters, Civil Alliance of Serbia leader Goran Svilanović, Sandžak Coalition leader Rasim Ljajić, deputy leader of the League of Social-Democrats of Vojvodina Bojan Kostreš, and actors Gorica Popović and Nikola Djuričko. Thirteen persons were beaten up (*Blic*, 8 September, p. 8). A diplomatic scandal broke out when police bodily removed four Otpor activists from a reception to which they had been invited by Greek Foreign Minister Yorgos Papandreou. The Otpor activists said Papandreou's aides later told them that Greece deplored the incident and considered it the "biggest diplomatic scandal since 1952." The Greek Embassy twice intervened for the release of the Otpor activists, which happened two and a half-hours later (Beta, 7 and 8 September).

There were others instances of individuals being taken in by police in 2000. Thus SPO leader Vuk Drašković's advisors Miladin Kovačević and Ivan Kovačević were taken to a police station after the party issued a press release in which it accused the government of attempting to assassinate Drašković in October 1999 (*Danas*, 14 Janu-

ary, p. 5; *Blic*, 1 March, p. 3). In July, Montenegrin police took in for interrogation Miodrag Glomazić, defence counsel of one of the men accused of attempting to assassinate Drašković. After spending the night in the corridor of the police station, Glomazić was questioned about the personal life of his client. Believing that his terse replies indicated an unwillingness to co-operate, the police placed him in solitary confinement for another night. "That's how an interrogation became 36 hours in jail," Glomazić said (*Blic*, 21 July, p. 8).

From 24 September to 5 October, several hundred opposition activists and ordinary citizens were taken in. On 4 October, 26 people were arrested in Belgrade alone and sentenced from 10 to 20 days in jail for "disturbing the public peace" (Beta, 24–29 September; 2–5 October).

After the demonstrations on 5 October, police ceased taking in political opponents. Only one case was registered: on 13 December, two officers assaulted two activists who had stencilled the Otpor emblem on the Vojvodina Executive Council building. The activists were released a few hours later (Beta, 13 December).

On 11 January 2001, the Municipal Court in Loznica awarded 40,000 dinars (approximately 1,333 DEM) compensation to Dalibor Loznica for the mental pain he suffered as the result of unlawful arrest (Greek Helsinki Committee, press release of 11 January).

Branko Grubač was beaten up by three officers at the police station in Nikšić in late November. Grubač, a member of the Montenegrin Socialist People's Party (SNP), was arrested after an argument with a relative. "The police pushed me into their car and drove me to the police station. They beat me and five hours later took me to the hospital," Grubač said. He alleged that the motive was his party affiliation and the fact that he had allowed his family house to be used as a polling station in the 24 September federal elections (Beta, 23 November).

In late 2000, the Nikšić District Court sentenced police officers Milovan Šipčić, Žarko Dubljević and Živko Driničić to eight months

in jail each for infliction of serious bodily harm and civil injury. The three officers had in October 1998 beaten up Veselin Žižić, a former SNP member. Žižić was acquitted of the charge of obstructing police officers in the performance of their duty (*Vijesti*, 30 December – 3 January 2001, p. 11).

2.4.2. Prison riots. – Riots broke out in early November in several prisons in Serbia and were the most serious incidents of the kind since World War II. According to eyewitness reports, convicts in the Sremska Mitrovica Penitentiary rioted after a group of Kosovo Albanians were released and rumours that all the remaining Albanian inmates would be released too. Rioting broke out soon afterward in the Požarevac and Niš Penitentiaries. A number of buildings in the compounds were torched and the prison guards were forced to pull out to the perimeters.

The prisoners demanded a general amnesty for all those serving sentences for ordinary crimes, that those who had violated the rights of detainees and prisoners be called to account, better conditions in prisons and the establishment of public oversight, equal conditions for all convicts, the dismissal of the wardens and superintendents and payment of back wages to prison guards (HLC Report, 6–9 November). The convicts described the torture and beatings they were subjected to. They asserted that they received 150 blows with the bat, that they were slashed with razor blades and the cuts were then described as "self-inflicted injuries," that they were struck in the stomach so hard that their "intestines fell out," that they were starved, locked in rooms without windows and heating; that there was no hot or even cold running water, that sanitary conditions were extremely bad, and that the amount of food they received was barely enough to keep them alive."

One convict fell to his death from the roof of a prison block during the riots, and seven others and one police officer were injured.

Peaceful protests were staged at the prisons in Valjevo, Padinska Skela and the women's institution at Požarevac.

Miodrag Djordjević, warden of the Niš Penitentiary, accused HLC Director Nataša Kandić of encouraging the rioting when she visited some of the institutions. Some media and politicians imputed that the Socialists, defeated at the September elections, had organised or, at least, incited the rioting so as to embarrass and politically discredit the DOS ahead of the Serbian parliamentary election scheduled for 23 December, but provided no proof of the allegations. The Co-Ministers of Justice in the Serbian provisional government, who also met with the prisoners several times, assessed that the rioting was the result "primarily of the poor conditions in prisons and non-observance over a long period of the Act on the Execution of Criminal Sanctions by wardens and other prison officials."

The riots ended on 11 November. The Justice Ministry met all the prisoners' demands with the exception of amnesty since a relevant law could not be passed until the new Serbian Parliament was constituted. The convicts handed over knives and other weapons they had collected and, five days later, prison guards on lists approved by convicts re-entered the institutions (Beta, 7–16 November; *Blic*, 7, 12, 17, 20 November, pp. 8, 5, 8, 8; *Danas*, 11–12 November, pp. 1, 2; *Vreme*, 16 November, p. 11).

Conditions in Serbian prisons are poor. There is no heating and inmates have only thin blankets to cover themselves with. A convict at the Zaječar prison said he and his fellow-inmates worked "at the hardest jobs for 14 hours at a stretch and in the open" (Beta, 7 December).

Several serious incidents occurred at the Niš Penitentiary in early December. In a report headlined "Nailed to a Table, Raped and Beaten," the Belgrade daily *Blic* wrote of the severe abuse of prisoners serving short terms by inmates with multiple felony convictions (*Blic*, 4 December, p. 8).

In late December, rumours began circulating about private prisons in Serbia. Miroslav Todorović, a former Belgrade District Court judge, said that such prisons had existed for a long time and were run by persons who had made fortunes by usury, and debt-collection

agencies, adding that the people held in them were victims of various extortion rackets and members of their families (Beta, 21 December). *Vreme* newsmagazine carried a story about a Belgrade lawyer who was "held by debt collectors for four days in a prison-like cellar" and taken out every night, supposedly to be shot. He was released five days later when his debt was paid (*Vreme*, 28 December, p. 20).

2.4.3. Trafficking in human beings. – The first serious debate on trafficking in human beings took place in 2000 since such cases were not numerous in Yugoslavia in previous years. Now, however, the problem is most pronounced in Montenegro where young women from eastern Europe are forced to prostitute themselves in nightclubs. From Montenegro, girls are sold to buyers in Albania; others are sent to Republika Srpska via Serbia. Zornice Babachku of Bulgaria, herself a victim, testified that she knew at of at least 110 young women who had been bought for prostitution in Montenegro and Albania.

Acting on information from the OSCE office, the Montenegrin police in late July launched an operation which resulted in the repatriation of 80 women from the Ukraine, Moldova and Romania who were forced to prostitute themselves in bars and night clubs in Montenegro (*Vijesti*, 29 July, p. 3).

Toward the end of September, the Montenegrin police and Yugoslav Army arrested four Yugoslav citizens for trafficking in human beings. The four had bought two women from Moldova and two from Romania and organised their transport to Albania where they were to be sold for between 1,500 and 2,000 DEM each (Blic, 28 September, p. 8).

Two months later, police in the Montenegrin capital of Podgorica arrested two Yugoslavs and an Albanian national and charged them with "pandering of prostitution and illegal crossing of the state frontier." The police alleged that one of the suspects had bought eight young women in Moldova and brought them to Podgorica with the intent of transferring them to Albania and reselling them to local prostitution rings. The women, however, rebelled and sought help from Yugoslav border guards (*Vijesti*, 20 November. p. 3).

In early December, Serbian police arrested a Yugoslav and a national of the Republika Srpska for selling women from Moldova and Romania to nightclub proprietors in the Republika Srpska. When the Belgrade apartment of one of the men was searched, police found 17 women from Moldova, including minors, whom the men had bought for 500 DEM each and planned to transfer them illegally to the Republika Srpska and resell them there (*Danas*, 5 December, p. 10).

2.5. Right to a fair trial

2.5.1. Trials of Kosovo Albanians. – Some 2,000 Albanians were transferred from Kosovo to Serbia after the 1999 NATO intervention against Yugoslavia (AI, 15 September). The Serbian Ministry of Justice announced that 1,388 of these Albanians had been released from June 1999 to 26 October 2000. Assistant Minister Zoran Stefanović stated that 632 convicts and 30 detainees were still being held (Tanjug, 27 October).

According to the International Red Cross office in Priština, 693 Albanians are still being held in Serbian prisons and 1,336 have been released (Beta, 22 December). HLC staff attorney Teki Bokshi stated that 820 Albanians were prisoners in Serbia, "of whom 700 are charged with political offences and the remainder with common crimes" (*Danas*, 6 November, p. 6). Bokshi added that the distinctive features of proceedings against Albanians were the speed at which they were conducted, the lack of any interpretation or its poor quality, unpunctual delivery of indictments, failure in many cases to translate documents, and violation of the right of defendants to counsel of their own choosing (Beta, 23 May).

The Kosovo Albanian prisoners included Flora Brovina, President of the League of Albanian women, medical doctor and poet, who was found guilty by the Niš District Court of seditious conspiracy in conjunction with terrorism during a state of war, and sentenced to twelve years' imprisonment. UN Special Rapporteur on Human Rights

Jiri Dienstbier stated that the trial was in violation of Serbian law and legally absurd (*Danas*, 23 February, p. 8).

The first-instance court based its decision in the Brovina case exclusively on police reports, in contravention of Art. 86 of the Criminal Procedure Act under which convictions may not stand solely on reports and statements excluded from the court record. The CPA prescribes that information given by suspects to the police before the institution of criminal proceedings must be excluded from the court record (Art. 83, para. 2) and may be used only exceptionally. Considering the appeal filed by Brovina's counsel, in which they cited violations of the CPA and criminal legislation, the Serbian Supreme Court set aside the first-instance ruling (HLC, *Human Rights in FR Yugoslavia, 1999 Report*, p. 61).

Flora Brovina was pardoned by President Vojislav Koštunica and released on 1 November (Spanish news agency EFE, 1 November).

Riza Halimi, mayor of Preševo in southern Serbia and leader of the Party of Democratic Action, was in late March sentenced to three months in jail, suspended for one year, for "obstructing a law enforcement officer in the performance of his duty." In the opinion of Judge Goran Despotović, this obstruction consisted of Halimi's catching Dragan Mitić, the local police chief, by the arm as he urged him to discuss the dispersal by police of demonstrators in the town on 5 March 1998 (*Blic*, 1 April, p. 9). On 25 March, Halimi and four town councillors filed a criminal complaint against Dragan Mitić and several other police officers, charging them with physical abuse and unlawful arrest. The municipal prosecutor took no action on the complaint but, on 7 August 1998, instituted criminal proceedings against Halimi (HLC press release, 2 March 2000).

The District Court in Niš sentenced Albin Kurti, a former leader of the Kosovo Albanian student protests and Union of Albanian Students President, to 15 years in prison for attempting against the territorial integrity of FR Yugoslavia, of seditious conspiracy in conjunction with terrorism. Kurti's court-appointed counsel stated that his

client's intent to commit the acts had not been proved although intent is the basic element of criminal responsibility where the crimes Kurti was charged with are concerned. The court found grounds of Kurti's criminal responsibility in the fact that he organised demonstrations and failed to duly notify the competent authorities, which under the law constitutes a misdemeanour, not a felony (Human Rights Committee, Niš, March 2000).

The trial of the so-called "Djakovica Group", who were charged with terrorism (Art. 25 and punishable under Art. 139, para. 2 of the federal Criminal Code) was concluded on 22 May 2000. The defendants were found guilty of, as members of the KLA, organising and carrying out several acts of terrorism against Serbian police and Yugoslav Army members in the western part of Djakovica in April and the first half of May of 1999, during the state of war, in which three persons were killed and another 10 seriously or slightly wounded. This trial was the biggest ever held in Yugoslavia, and ended with 143 Albanians being sentenced to a total of 1,632 years in prison. The individual sentences ranged from seven to 13 years.

In its report, the HLC said the judgement was handed down although the only evidence against the defendants were the results of dermal nitrate or "paraffin glove" tests, which are used to determine whether an individual has recently fired a gun. This crude investigative technique has been discredited because it can give incorrectly positive results, and the majority of courts abroad as well as in Yugoslavia consider it only an indication, not as positive evidence. Furthermore, the tests were analysed by a mechanical engineer and not a chemist (HLC Report, 23 May). Defence counsel also raised the issue of jurisdiction since, according to the indictment, the target of the attacks were military personnel and installations; hence the case should have been heard by a military and not a civilian court (HLC Report, 23 May).

The judge presiding the panel in this case even said that since the individual responsibility of the defendants could not be precisely determined, they were collectively responsible (HLC press release, in

HAS, No. 92, p. 1, 25 April). This was a gross violation of the basic premise of criminal law that responsibility must be precisely determined in each separate case.

Amnesty International came out with the opinion that such a mass trial could hardly meet the requirements of justice, and that it threatened to violate the rights of the defendants and the presumption of innocence (AI press release, FRY – Mass Trial to Kosovo Albanians Makes a Mockery of Justice, 19 April 2000). Defence counsel maintained that a political trial was involved and complained of being taken in by police for identity checks (*Blic*, 9 May, p. 9). The members of the "Djakovica Group" were not amnestied by the end of 2000.

Five ethnic Albanian students of Belgrade University – Petrit and Driton Berisha, Shkodran Derguti, Driton Meqa, and Abdulah Islami – were arrested in early May 1999. On 10 July, the Belgrade District Court found them guilty of terrorism and seditious conspiracy, and sentenced them to prison terms ranging from six to 12 years. Zef Paluqa, a Belgrade goldsmith, who was charged with organising the group and was tried *in absentia*, received eight years. The prosecutor alleged that the students participated from February 1999 to April 1999 in the activities of a terrorist group organised by Petrit Berisha and Paluqa, collected funds for the KLA, and planned several acts of sabotage and terrorism in Belgrade (water reservoirs, the Main Post Office, public concerts on Republic Square, and the like), with the intent of causing civilian casualties and threatening the security of Yugoslavia. Petrit Berisha was in addition charged with killing several people, including police officers, in the Kosovo town of Peć as a KLA member and sharpshooter. The defendants pleaded not guilty to all the counts (HLC, press releases, 22 May, 23 June and 13 July).

The trial of these five students appeared to be rigged and, according to defence counsel, the court's decision was based on forcibly extracted confessions. But what made the trial unique in Serbian judicial practice thus far was that the court admitted as evidence a "confession" made by the defendants in front of TV cameras. In a current affairs program aired in May 1999, the defendants, then still

suspects in police custody, "admitted" to organising and preparing to carry out acts of terrorism in Belgrade. The court's ruling on the admissibility of such evidence – on the grounds that the defendants "made the statements voluntarily to a news reporter, not to the police" – was a novel interpretation, especially since the reporter testified that plainclothes police were present during the filming and several times warned the students to continue talking (HLC, press releases, 22 May, 23 June and 13 July).[58]

The defence moved that the film not be shown in court, underscoring that the defendants made the self-incriminating statements after torture lasting several days (beatings, deprivation of food, continual questioning for protracted periods, threats of being shot unless they admitted to the charges), and that State Security agencies thereby committed the criminal offence of extraction of statements (HLC, 22 May; 23 June; 13 July 2000). Furthermore, Petrit Berisha's description of how he allegedly tortured Siniša Perović, a captured police officer, did not tally with the findings of autopsy performed on Perović's body but, as his lawyer Ivan Janković stated, the court simply ignored the discrepancies (Interview with Ivan Janković, 23 December).

In another departure from the law, one count of the indictment charged that Petrit Berisha, in carrying out an act of terrorism, had intentionally killed three persons. The prosecutor, however, failed to name any of the three.

Although the judgement was handed down on 10 July, it was not delivered in written form to either the convicted students or their defence counsel until 26 December. This constituted a violation of the right to prepare a defence since an appeal may be filed only against a judgement in writing. Under the CPA, the written judgement must be delivered to convicted persons and their defence counsel within eight days or, in exceptionally complex cases, within 15 days.

In the appeal to the Serbian Supreme Court on 8 January 2001, the defence challenged in entirety the decision of the District Court

58 See *Human Rights in Yugoslavia 1999*, II.2.5.1.

and cited a series of major violations of due process, and wrongly and incompletely established facts of the case. At the time of writing, the five Albanians students were still being held in solitary confinement at the Belgrade Central Prison (Interviews with Ivan Janković, 23 December 2000 and 15 January 2001, BCHR documentation).

Two Kosovo Albanians, Luan and Bekim Mazreku, went on trial in Belgrade in September 2000. They were indicted by the district prosecutor in Priština on 15 February and charged with heinous crimes against civilians in the Kosovo village of Klečka. The prosecutor alleged that Luan Mazreku raped a small Serb girl, cut off the ear of a Serb boy and, together with co-defendant Bekim Mazreku and another 18 persons, participated in the mass shooting of their victims. In August 1998, the Mazreku cousins were forced to confess in front of Serbian Television cameras their involvement in the abduction and killing of Orahovac Serbs, burning of the bodies and raping the little girl. Of the many alleged victims, the prosecutor named only two – Faki Bitiqi and Agim Thaqi. However, when the court finally accepted the defence motion to examine the death certificates of Bitiqi and Thaqi, it turned out that they had died of natural causes, Thaqi back in 1981 and Bitiqi in April 2000. The court, however, refused to recall forensic experts who had previously given contradictory testimony (HLC press release, 23 September 2000). The trial of the Mazreku cousins has been postponed.

Even after 6 October, Serbian courts continued the practice of handing down sentences equalling the time defendants, who should have been acquitted, had spent in custody. Thus the Niš District Court on 23 November gave Bakim Sadiku, Azrem Zegrova, Feriz Kaci and Ekrem Jusufi 18 months in prison for an armed attack on Serbian police. The defendants had spent exactly that long in custody and were released the same day the judgement was pronounced because of jail credit (HLC press release, 24 November). Counsel for the defence had filed an appeal with the Serbian Supreme Court against the first-instance decision, which was based solely on dermal nitrate tests, and moved for the acquittal of the four Albanians. Finding that the decision

was based on wrongly established facts, that it was incoherent and contradictory, the Supreme Court in October 2000 set it aside and ordered a retrial. The Niš District Court, however, disregarded the Supreme Court's findings and again sentenced the four Albanians to 18 months in prison (HLC press release, 24 November).

In this way, courts make it impossible for citizens to sue the state and seek compensation for unlawful detention (HLC press release, 24 November).

2.5.2. Trials of foreign nationals. – Four Netherlands, two British and two Canadian nationals were arrested in early August. "The Dutch nationals planned to assassinate Yugoslav President Slobodan Milošević. Their aim was to try to kidnap Milošević and, if that failed, to kill and decapitate him and send the head abroad," said the then Minister of Information Goran Matić, quoting from confessions allegedly made by the foreign nationals. The two Britons were charged with terrorism and espionage and the Canadians with illegally crossing the border into Yugoslavia. All were released after the change of government in Yugoslavia in early October (*Blic*, 1 and 5–6 August, pp. 3 and 9; Beta, 6 October).

The most unusual trial was that of 14 leaders of the NATO countries which bombed Yugoslavia in the spring of 1999. Bill Clinton, Madeleine Albright, Tony Blair, William Cohen, Robin Cook, George Robertson, Jacques Chirac, Hubert Védrine, Alain Richard, Goerhard Schroeder, Rudolf Scharping, Javier Solana and Wesley Clark were in September 2000 sentenced to 20 years in prison each for war crimes committed during the bombing.

Slaviša Mrdaković, a lawyer from Kragujevac who was appointed by the court to defend French President Jacques Chirac, said in his closing argument that he would shoot leaders of all the countries which were involved in the bombing. "If I were a judge, and it's a good thing I'm not, I wouldn't let them have defence counsel. I would get a pistol and shoot Clinton and all the other scoundrels for the wicked things they did," Mrdaković said to loud applause from the public in the courtroom. In its report, the daily *Borba* wrote that "the

defence lawyers pointed out that Clinton abused NATO, that Solana is just a pencil pusher in that criminal organisation" and that "they were proud of belonging to a nation which found the strength to try the war criminals" (*Borba*, 22 September, p. 2).

As in the case of the four Albanian students, the judgement in writing was not delivered so that there is no possibility of appeal (Legal Department, Belgrade Centre for Human Rights). It is also noteworthy that two of these leaders[59] were on Yugoslav soil after 5 October and were not arrested.

2.5.3. Other trials. – Nor did courts in Serbia demonstrate independence and impartiality in other cases. Trials were geared to exert pressure on political opponents and to intimidate them.

Vladimir Nikolić, a former State Security officer, was arrested on 1 October 1999. On 3 March 2000, the Belgrade District Court sentenced him to 22 months in prison for disclosing state secrets and carrying a firearm without a permit. In the second-instance proceedings, Nikolić's lawyer Rade Mićunović said, Judge Dragoljub Todorović, who chaired the panel, refused to publicise the acquittal after the *in camera* trial. After absenting himself from the next four scheduled sessions, Judge Todorović requested that he be exempted. Bogoje Marjanović, the President of the District Court, granted the request and, at the same time, also exempted the four judges who had voted for acquitting Nikolić although they had made no such request (BCHR documentation, letter dated 29 June 2000). The Serbian Supreme Court reduced the sentence to 13 months – one year for disclosure of state secrets and one month for illegally carrying a weapon. Nikolić served the sentence and was released on 26 October (*Blic*, 28 October, p. 8).

In late April, the Military Court in Niš gave three members of the Serbian Liberation Army (OSA) – Boban Gajić, Milutin Pavlović and Radovan Djurdjević – five years in prison each for "seditious conspiracy and terrorism" because "they planned to assassinate FR

59 French Foreign Minister Hubert Védrine and German Foreign Minister Joschka Fischer.

Yugoslavia President Slobodan Milošević and Yugoslav Army Chief of General Staff General Nebojša Pavković." Miodrag Vukadinović and Ivan Milanović were sentenced to three years and Zoran Zdravković to one year and six months in prison. The defendants and witnesses denied the charges and said the group went no further than discussing how to fight for their goals (HLC press release, 29 April). Unknown until the end of 1999, the group was described by the then Yugoslav Information Minister Goran Matić as "the extended arm of foreign factors in destabilising the country" (*Blic*, 29 April – 2 May, p. 9). The Supreme Court on 16 November reduced the sentences by an average of one-year (Beta, 17 November), and the six OSA members were pardoned by President Vojislav Koštunica on 6 December (*Blic*, 7 December, p. 8).

Jugoslav Petrušić, Slobodan Orašanin, Branko Vlačo, Rade Petrović and Milorad Telemiš, members of the Pauk (Spider) group, were in mid-May 2000 charged with espionage, the murder of two Albanians in Kosovo, extortion and possession of illegal weapons. On 13 November, the Belgrade District Court acquitted them on the counts of espionage and the murder of the two Albanians, and sentenced them to a year in prison each for extortion and possession of illegal weapons. Since they had been in custody for a year, they were released immediately after the decision was rendered (Beta, 13 November).

In early September, the Belgrade District Court ordered Serbia to pay eight refugees from B&H 10,000 dinars each (slightly over 300 DEM) in compensation for their illegal arrest in July 1995 and detention in the Sremska Mitrovica collection centre. More than four years before, the Humanitarian Law Center had filed an action on behalf of the refugees, seeking monetary compensation for the mental and physical pain they suffered as a consequence of the actions of Serbian government agencies. On 10 December 1998, the First Municipal Court in Belgrade ordered Serbia to pay damages of 120,000 dinars to the refugees and, for the first time in Yugoslav judicial practice, invoked an international treaty – the Convention relating to the Status of Refugees and its Protocol. The appeal filed by the Serbian Solicitor

General was considered by the Belgrade District Court for two years (HLC press release, 25 December).

The District Court found that there was "no chain of causation" between the unlawful conduct of Serbian government agencies and the harm suffered by the refugees" when they were handed over to the police of the then Republic of Serb Krajina (RSK), dispatched to combat zones, captured and tortured (HLC press release, 25 December). The Court established that Serbian police illegally arrested and transported the refugees to the collection Centre at Sremska Mitrovica, and turned them over to RSK police and members of the paramilitary Serbian Volunteer Guard led by Željko "Arkan" Ražnatović. Serbian police then escorted the refugees to the Rača border crossing, from where they were dispatched to military units. The Court also established that all the refugees were captured and subjected to torture at the prison in Bihać, B&H, in August 1995. In the opinion of the District Court, the damages awarded by the Municipal Court were too high as the "deprivation of liberty and the intensity of pain suffered" up to the moment the refugees crossed the Yugoslav border were of brief duration (HLC press release, 25 December). In rendering its decision, the District Court disregarded Art. 33 of the Refugees Convention (ratified by Yugoslavia) under which states undertake not to return a refugee to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Nineteen members of opposition parties were sentenced by a Požarevac court to periods in jail ranging from five to 15 days "for making insulting remarks" at protest. The peaceful protests were staged on 9 May against the arrest of three Otpor members (*Blic*, 12 May, p. 2).

Misdemeanour charges were brought against many Otpor activists who received 10-day jail terms for disturbing the public peace and defacing public buildings with slogans. Hearing the case of Djordje Radojčić, Milan Radojčić and Aleksandar Maksimović, Magistrate Dragana Petrović did not allow defence counsel to be present when

the police officers who had arrested their clients gave testimony. She said she had given the Otpor activists a strict sentence believing that it would deter them "from behaving impertinently" in the future and thus disturbing the citizenry and disturbing the public peace (HLC press release, 17 September).[60]

Proceedings were also conducted against journalists up to 6 October. The most prominent case was that of Miroslav Filipović, a reporter for *Danas* and a local correspondent of Agence France Press. Filipović was sentenced to seven years in prison for espionage and dissemination of false reports because he had published articles on Yugoslav Army operations in Kosovo (*Danas*, 27 July, p. 1).[61]

Speaking of what he assessed "not too serious" problems in the judiciary, former Serbian Justice Minister Dragoljub Janković found an explanation in the "large number of young colleagues who are still learning and the fact that 70 judges retired or were dismissed last year" (*Politika*, 21 April, p. 21). Slobodan Vučetić, longstanding judge of the Serbian Constitutional Court who was dismissed because of his criticism of the authorities, does not concur: "Nine hundred judges, or one-third of the total, have left in the past few years. The low salaries [of judges] are no coincidence; in this country everything possible is done to pressurise judges to serve the oligarchy. Another problem is that the empty positions were filled with judges loyal to the ruling SPS-JUL-SRS coalition" (*Blic*, 6 May, p. 6).

2.6. Right to the protection of privacy, family, home and correspondence

The Federal Constitutional Court handed down two watershed decisions in 2000 concerning the protection of privacy, family, home and correspondence whereby relevant provisions of the Act on the

60 More on freedom of expression at II.2.8.

61 More on trials of journalists at II.2.8.

Bases of State Security and the CPA were declared unconstitutional (for analysis of pertinent legislation see: I.2.6.).

According to the HLC, police in July and August searched some 500 homes of Otpor activists and/or their parents, "disregarding the Criminal Procedure Act which prescribes that a search may be conducted only after the institution of a judicial investigation and with the approval of the investigating judge. Exceptionally, if postponing entry carries a clear danger, searches are allowed in the pre-judicial stage" (HLC Report, *Repression of Political Opponents in Serbia*, 20 September).

When police stormed into the home of Mile Veljković, Požarevac correspondent of the Beta news agency, he asked to see their search warrant. The response was: "This isn't America" (Radio B292, 11 May).

On September 15, police searched without a warrant the apartments of Milan Stefanović and Dejan Milošević of the Niš office of CeSID and seized Stefanović's personal computer (Group 484, Centre for Democracy Fund, 15 September)

Testifying at a trial before the Municipal Court in Loznica in the case of Dalibor Loznica who had pressed charges because of unlawful detention, police inspector Dragoslav Cvetinović said he had entered and searched apartments with signed but blank warrants which he filled in himself as he saw fit (Greek Helsinki Committee press release, 30 November).

2.7. Right to freedom of thought, conscience and religion

Relations between the Serbian Orthodox Church (SOC) and the Montenegrin Orthodox Church (MOC) went from bad to worse in early 2000. Because the MOC has not been "canonically recognised," the SOC does not accept it. Thus, the SOC Metropolitan of Montene-

gro and the Coastlands anathematised a Christmas concert in Podgorica because of the presence of MOC Metropolitan Mihajlo.

The 17 January registration of the MOC as a religious community by the Montenegrin authorities provoked strong reactions by the SOC and pro-Milošević quarters in Montenegro (*Politika*, 21 January, p. 18). The office of the SOC Metropolitan of Montenegro and the Coastlands expressed "concern at the attitude of the Montenegrin authorities towards the Church and their permitting of threats to its centuries-old rights and dignity and, thereby, to the basic human rights of the Orthodox faithful. How else can the registration of a group of reprobates who call themselves the Montenegrin Orthodox Church be interpreted?" (*Vijesti*, 7 January, p. 3).

Nine months earlier, the Montenegrin Constitutional Court found that the Law on the Position of Religious Communities under which the MOC was registered "is in effect although it has not been brought into conformity with the Constitution." Montenegrin police subsequently banned the MOC from performing a public Christmas rite for "reasons of public safety," that is, to prevent clashes between adherents of the two Churches (*Vijesti*, 14 March, p. 4; 7 January, p. 3).

Intolerance of all alternative religious communities, invariably dubbed "cults," continued to mount in 2000. The campaign against such communities dovetailed with official propaganda and its propensity continuously to disclose international conspiracies against Serbia and Serbs in general. Pro-government dailies frequently printed articles under headlines such as "Religious Cults as a Security Problem – Unctuous Missionaries Seek Only Money" (*Politika*, 4 May, p. 20), "Ritual Murders and Crimes for Gain" (*Politika*, 5 May, p. 21) and "When Ills Escape Pandora's Box" (*Borba*, 17 March, p. 7).

Amnesty International confirmed that Yugoslav Army members who deserted during the NATO bombing campaign were being prosecuted before military courts. The organisation cited the case of 10 Jehovah's Witnesses who were sentenced to prisons terms under regu-

lations that were in force during the state of war and were later released or had their terms reduced (AI, 19 July 2000).

On 17 November, Human Rights Watch stated that Yugoslavia should declare a general amnesty for all its citizens who did not respond to call-ups or deserted during the war in 1999. It added that, according to Yugoslav human rights organisations and lawyers, some 10,000 criminal prosecutions were under way or had concluded with the handing down of prison terms (HRW, Memorandum on Human Rights in FRY, 17 November).

The public debate on the introduction of religious instruction in elementary and secondary schools continued in 2000, with the Holy Synod of the Serbian Orthodox Church devoting a special session to the issue. In a press release issued after the session, the Holy Synod said a committee had been established to draw up a program of religious instruction.

In the opinion of the Yugoslav Centre for the Rights of the Child, religious instruction in schools would encroach on the right of every child, his or her parents or legal guardians to freely decide on religious matters." Recalling that Serbian Patriarch Pavle had requested the introduction of religious instruction in schools, chaplains in the Yugoslav army, and priests in hospitals and prisons from President Vojislav Koštunica, the Centre said in a press release: "The right to freedom of religion is guaranteed by the Convention on the Rights of the Child to which FR Yugoslavia is a signatory and, under the FRY Constitution, the provisions of the Convention are an integral part of Yugoslav national legislation" (*Blic*, 4 November, p. 6; Beta, 8 November).

Then came a peculiar statement by the Yugoslav Minister of Religious Affairs Bogoljub Šijaković who said: "The state must ensure to all its citizens genuine, not merely rhetorical religious freedom. Hence the introduction of religious instruction in schools is redundant from the point of view of human rights." Šijaković added that: "The Church does not need to be recognised by the state. Recognition of the

Church is not in the competence of the state because the state did not found it; the Church was founded by our Lord Jesus Christ" (*Politika*, 7 December, p. 8).

In the view of the Helsinki Committee for Human Rights in Serbia, introducing religious instruction in schools would in effect move religion, and only one – the Serbian Orthodox, from the private to the public sphere. The Serbian Orthodox Church responded by saying that the Helsinki Committee "in its narrow-mindedness probably does not know that the Orthodox Church, in particular the Serbian Orthodox Church of St. Sava, has never imposed anything on anyone but only offered the redemptory words of the Gospel of Jesus Christ" (Beta, 24 November; *NIN*, 16 November, p. 2).

When deciding on religious instruction in schools, FR Yugoslavia must take into account Art. 18, para. 4 of the Covenant on Civil and Political Rights which binds states to respect the freedom of parents or legal guardians to inculcate their religious and moral beliefs in their children. According to the General Comments of the UN Human Rights Committee, the "public education that includes instruction in a particular religion or belief is inconsistent with Art. 18 para. 4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parent and guardians" (General Comments or Recommendations, para. 6). The Committee noted that the study of the history of religions and ethics, given instead of religious instruction to students whose parents object to religious instruction, is not incompatible with Art. 18, para. 4, "if such an alternative course is given in a neutral and objective way and respects the convictions of parents and guardians who do not believe in any religion" (see *Hartikainen vs. Finland*, 1981, *Selected Decisions I*, p. 74).

In Yugoslavia, the right of parents to bring up their children in accordance with their moral and religious beliefs is restricted as the law does not allow the establishment of private elementary schools, which is in contravention of the International Covenant on Economic, Social and Cultural Rights.

2.8. Freedom of Expression

2.8.1. Persecution of journalists and private media. – Up to 5 October 2000, the Serbian authorities resorted to economic and physical measures to prevent privately owned media from reporting the serious political and economic situations in the country. Intimidation, detention and trials of journalists for opinions expressed in print were rife in the first ten months of the year. The most frequent accusations levelled by the government in its campaign against the private media were that "they are traitors who deserve only contempt," that they "are involved in the West's media terrorism and media aggression against Yugoslavia" and that the task of "the pro-American media is to destabilise the country and incite bloodshed in Serbia" (*Politika*, 19, 25, 26 and 31 March; *Blic*, 14 February, 28 March and 25 April).

Serbian Deputy Premier Vojislav Šešelj went so far as to threaten journalists of private media with physical liquidation. "You are being paid with American money to destroy your own country. You are traitors... It is among those of you who work for foreign intelligence services that we shall seek the murderers [of Yugoslav Defence Minister Pavle Bulatović]... You are murderers of your own people and state - you at *Danas*, Radio B2 92, *Glas Javnosti*, *Novosti*, *Blic*... The gloves are off now; everything is crystal clear. They that take the sword shall perish with the sword. Do you think we will let you kill us off like rabbits while we cosset you and handle you with kid gloves?" said Šešelj, addressing reporters of private media at a news conference (*Blic*, 11 February, p. 3).[62] The Yugoslav Minister of Telecommunications, Ivan Marković, used very similar rhetoric when referring to the private media.

62 In its prime time news program on 17 February, RTS reported that the SRS would bar NUNS, *B2 92, Index, Blic, Beta, Glas Javnosti, Republika, Vreme, NIN, Danas, Studio B, Fonet, TV Mreža* and *VIN* from attending any SRS events and news conferences and would not be granted any interviews... "They will never be allowed to attend any sessions of government agencies or local government bodies if these are headed by the Serbian Radicals..." (BCHR video-documentation).

Intimidation of journalists intensified following these statements. At the beginning of the year, TV Leskovac reporter Zoran Rakić was fired because "he co-operated with independent media" (*Danas*, 5 January, p. 4). Dobrosav Nešić, editor of the Leskovac *Prava čoveka*, was ordered by State Security to submit data on his newspaper (*Danas*, 19 January, p. 26). Men in police uniforms damaged equipment at Belgrade's private Studio B TV, and beat up staff member Mirko Slavković and Dragan Luković, a security guard in the building (*Blic*, 7 March, p. 6). In early May, the Požarevac correspondent of *Blic* received threats that his apartment would be blown up (*Blic*, 7 May, p. 3). Security at Belgrade University's Department of Electrical Engineering assaulted a TV Mreža cameraman and seized his tapes (*Danas*, 25 May, p. 3). In June, unidentified men seized the camera of a TV Mreža crew as they were filming a report in Zemun. Members of the crew recounted that the men had emerged from the Zemun Town Hall where the SRS was in power at the time (*Blic*, 8 June, p. 6).

Though they had the required accreditation, private media reporters were banned from covering the work of the Federal Parliament, the Serbian Parliament and the Yugoslav Chamber of Trade and Industry (Beta, June, July, August).

Up to the political changes of 6 October, reporters and photojournalists were taken in by police en masse. In mid-March, police in Vranje detained a *Danas* photojournalist for taking pictures in the town centre (*Danas*, 15 March, p. 24). Nebojša Ristić, editor-in-chief of TV Soko Banja, who was sentenced to a year's imprisonment in April 1999 for sticking a poster reading "Free Press in Serbia" on his office window, was taken in again in late May 2000 for handing out Otpor leaflets (*Blic*, 26 May, p. 3).

Reporters covering protests staged by the opposition and Otpor were also detained by police. Thus, in mid-March, Novi Sad police took in a photojournalist and a TV cameraman covering an Otpor demonstration (*Danas*, 18–19 March, p. 1). On 9 May, when an opposition gathering was scheduled to take place in Požarevac, police

detained or expelled from the town 29 domestic and foreign journalists. The Beta, *Blic*, *Danas* and Deutsche Welle correspondents were held for a time in the lockup at the police station. Foreign reporters were ordered to leave the town on the grounds that they did not have valid residence permits. Studio B TV journalists were barred from entering the town (HLC Report, 3–12 May). During protests against the closing down of Studio B TV, police injured four photojournalists and arrested three reporters (*Danas*, 18 May, pp. 1 and 3).

Journalists were put on trial for the opinions expressed in their articles. Dušica Radulović, director of *Borske Novine,* was sentenced to three months in jail because she said in an article that Yugoslav Deputy Prime Minister Nikola Šainović ought to be handed over to the International Tribunal for the Former Yugoslavia (ICTY), which had earlier issued a warrant for his arrest (*Vijesti*, 4 June, p. 2).

The most prominent was the trial of Miroslav Filipović, the Kraljevo correspondent of *Danas* and Agence France Press, who was arrested on 8 May. Filipović was charged with "gathering military secrets with the intent of selling them to foreign organisations" in the period from May 1999 to May 2000. On 26 July, the Military Court in Niš found him guilty of "espionage in conjunction with dissemination of false reports" because of an article in which he wrote about Yugoslav Army operations in Kosovo and which was published in the bulletin of the Institute for War and Peace Reporting, and sentenced him to seven years in prison (*Danas*, 27 July, p. 1). The charges against Filipović were brought because of articles he openly published and therefore could in no way be qualified as espionage and, his counsel stated, due process was seriously violated in the proceedings against him.

On 10 October, following the political changes in Serbia, the Supreme Military Court set aside the Niš Military Court's decision and Filipović was released after spending 144 days in jail (NUNS, *Dossier on Repression*, No. 5, August-September 2000).

In March 1999, former Serbian Deputy Premier Milovan Bojić filed a libel suit against Belgrade journalist Zoran Luković because of

an article published in the *Dnevni Telegraf*. Luković received a term of five months in jail and was arrested in August 2000 when he was registering his car and immediately dispatched to serve his sentence. He was pardoned by Serbian President Milan Milutinović and released on 21 October (*Blic*, 16 August, p. 6; 22 October, p. 6).

The former Serbian authorities also denied entry visas to foreign reporters. Police at the Yugoslav-Hungarian border turned back 27 foreign reporters who were to cover events marking the anniversary of the founding of Novi Sad (*Blic*, 2 February, p. 3). Bulgarian journalists, who had a meeting scheduled at the Association of Independent Electronic Media (ANEM), were not allowed into Yugoslavia even though they had all the required papers (*Blic*, 20 February, p. 5). Six foreign reporters who landed at Belgrade airport on 15 April also were not allowed entry though they too had all the required papers (*Blic*, 15 April, p. 6). A crew of the Duna TV station from Hungary was barred from this country (Beta, 26 August). A BBC reporter was even taken in by police because he was interviewing a Belgrade woman near the Serbian Parliament building (*Blic*, 21 April, p. 6). In a statement issued on 27 September, the Federal Ministry of Information threatened to withhold foreign journalists' accreditation because "it has been noticed that the reporting of some foreign correspondents in FR Yugoslavia is inaccurate and slanted..." (BCHR video documentation, RTS News 2, 27 September).

In July, the Ministry refused to register the Radio Free Europe bureau in Belgrade. "The only task of this bureau, a proponent of official American policy, is to promote that country's colonial goals by means which ignore the principles of objective reporting and by foul propaganda, and to influence the public in FR Yugoslavia in order to achieve those goals," said the then Information Minister Goran Matić (*Danas*, 22–23 July, p. 18).

2.8.2. Application of the Public Information Act. – Up to 6 October, the draconian Public Information Act was frequently used to financially break private media. Huge fines were pronounced in misdemeanour proceedings that were summary in nature and during which

the rights of the defence were curtailed.[63] Payment of 70 fines totalling 31,423,000 dinars (2,536,641 DEM or 1,342,786 USD) was ordered from 1988 when the Act was passed up to 5 October 2000.

No.	Medium	Date	Fine in dinars
1.	*Evropljanin*	24 October 1998	2,400,000
2.	*Dnevni telegraf*	09 November 1998	1,200,000
3.	*Politika*	12 November 1998	150,000
4.	*Glas javnosti*	17 November 1998	50,000
5.	*Monitor*	17 November 1998	2,800,000
6.	*Politika*	20 November 1998	150,000
7.	*Glas javnosti*	20 November 1998	380,000
8.	*Dnevni telegraf*	09 December 1998	450,000
9.	*Naša borba*	13 December 1998	150,000
10.	*Svet*	05 January 1999	150,000
11.	*Prava čoveka*	21 January 1999	150,000
12.	*Pančevac*	04 February 1999	35,500
13.	*Večernje novosti*	26 February 1999	260,000
14.	*Somborske novine*	10 March 1999	40,000
15.	*Kosova sot*	12 March 1999	1,600,000

63 See *Human Rights in Yugoslavia 1999*, I.4.8.2.

16.	*Glas javnosti*	13 March 1999	150,000
17.	*Blic*	13 March 1999	220,000
18.	*Danas*	13 March 1999	400,000
19.	*Gazeta shqiptare*	16 March 1999	1,600,000
20.	*Kombi*	21 March 1999	1,600,000
21.	*Koha ditore*	22 March 1999	520,000
22.	*Studio B TV*	23 March 1999	150,000
23.	*Glas javnosti*	26 March 1999	10,000
24.	*Parlament*	23 June 1999	65,000
25.	*Profil*	15 August 1999	150,000
26.	*Čačanski glas*	09 September 1999	350,000
27.	*Politika*	17 September 1999	70,000
28.	*Glas javnosti*	29 September 1999	200,000
29.	*Kikindske novine*	09 October 1999	200,000
30.	*Glas javnosti*	12 October 1999	270,000
31.	*Narodne novine*	19 October 1999	200,000
32.	*Danas*	26 October 1999	280,000
33.	*Promene (Savez za promene bulletin)*	26 October 1999	320,000
34.	*ABC grafika Printers*	27–29 October 1999	1,650,000

35.	*ABC grafika Printers*	10 November 1999	3,039,000
36.	*Nedeljni telegraf*	23 November 1999	160,000
37.	*RTS*	02 December 1999	160,000
38.	*Studio B TV*	08 December 1999	300,000
39.	*Blic*	08 December 1999	310,000
40.	*Danas*	08 December 1999	360,000
41.	*Kikindske novine*	20 December 1999	200,000
42.	*Novine vranjske*	23 December 1999	800,000
43.	*Nedeljne novine (B. Palanka)*	06 January 2000	150,000
44.	*Danas*	21 January 2000	270,000
45.	*Nezavisna svetlost*	28 January 2000	100,000
46.	*NIN*	10 February 2000	150,000
47.	*Danas*	18 February 2000	300,000
48.	*Večernje novosti*	24 February 2000	290,000
49.	*Studio B TV*	24 February 2000	220,000
50.	*Studio B TV*	06 March 2000	450,000
51.	*Srpska reč*	10 March 2000	450,000
52.	*Kikindske novine*	31. 03. 2000	280.000
53.	*Narodne novine*	06 April 2000	400,000

54.	*Studio B TV*	10 April 2000	450,000
55.	*Vreme*	11 April 2000	350,000
56.	Beta News Agency	18 April 2000	310,000
57.	*Kikindske novine*	19 April 2000	200,000
58.	*Napred (Valjevo)*	27 April 2000	23,500
59.	*Studio B TV*	03 May 2000	450,000
60.	*Studio B TV*	04 May 2000	280,000
61.	*Studio B TV*	05 May 2000	450,000
62.	*Blic*	05 May 2000	280,000
63.	*Vreme*	05 May 2000	200,000
64.	*Danas*	26 May 2000	570,000
65.	*NIN*	01 June 2000	230,000
66.	*Kikindske novine*	19 June 2000	100,000
67.	*Glas javnosti*	20 June 2000	280,000
68.	Tanjug News Agency	22 June 2000	60,000
69.	*Kikindske novine*	04 July 2000	90,000
70.	*Danas*	11 August 2000	340,000

The response of the authorities to any criticism of the Public Information Act was vilification. Thus *Politika* wrote: "Those who call themselves the democratic opposition threaten judges who observe and apply the Information Act" (*Politika*, 3 March, p. 15).

At a hearing in December 2000, the Serbian Constitutional Court examined the constitutionality and legality of the Public Information Act and found many of its provisions unconstitutional.[64]

Imposition of high annual taxes for the use of television channels and radio frequencies was another weapon the former authorities used against private and local media. Though the Federal Ministry of Telecommunications had not responded to applications for channels and frequencies since 1998, Minister Ivan Marković announced that private electronic media owed the government over 120 million dinars (*Politika*, 5 March, p. 17). Studio B TV was ordered to pay almost 11 million dinars for the use of its channels, which it did but was nonetheless closed down. RTV Kraljevo, TV Požege, TV Pirot, Radio Boom 93 in Požarevac, TV Nemanja, Radio Tira in Ćuprija, and RTV Pančevo were all taken off the air for the same reason. Only RTV Kraljevo had its transmitter returned when it paid up (*Politika*, 9, 10, 12, 13, 15, and 17 March; *Danas*, 9 and 10 March; *Blic*, 19 May, p. 6).

TV 5 in Niš and TV Bajina Bašta lost their premises by decision of the local authorities (*Blic*, 15 March, 14 April, p. 6), while a program of the SRS, then one of the ruling parties, was broadcast on the channel of the local TV Lav in Vršac (*Danas*, 8 March, p. 22).

Radio and television stations with news programs critical of the government were routinely jammed, in particular during the campaign for the presidential and parliamentary elections on 24 September 2000. The targets in August and September included NTV and TV Belami in Niš, Studio B TV in Belgrade, and TV Pančevo. Police impounded TV Čačak's relay for the Gornji Milanovac area and the programs of TV Montenegro, Croatian TV, Bosnia's OBN and Hungary's TV Duna were taken off the cable network in Novi Sad, on the grounds that they were programs of foreign media "whose retransmission is prohibited by the Public Information Act." At the same time, the signals of Radio 021 in Novi Sad, Radio Index in Belgrade, Radio Globus in Kraljevo

64 See I.4.8.

and Radio Jasenica in Smederevska Palanka were jammed (Beta, 17, 28 and 30 August, 9, 13, 14, and 21 September, 31 August, p. 6).

2.8.3. Other pressures on private media. – The former Serbian government resorted also to open economic pressures to force private media to alter their editorial policies. ABC Produkt of Belgrade, which printed most of the private newspapers and periodicals in Serbia, was most often subjected to such pressures. In late January, the Commercial Court in Belgrade instituted bankruptcy proceedings against ABC Produkt because of its alleged tax arrears. The receiver, aided by police, made a list of all the printing presses and fired 284 employees on the spot. A bodyguard hired by the receiver fired a shot from his handgun in a room full of people. One night in May, police and financial inspectors stormed into ABC Produkt's printing works in Opovo to check if the *Glas Javnosti* daily was being printed there. Police came with an eviction order to a division of the company in Belgrade, in which US capital had been invested and which contained the printing works, and the Commercial Court ordered two ABC Produkt's warehouses in Belgrade, with a floor space of 3,000 square metres, to be sealed.

On the basis of the Public Information Act, ABC Produkt found itself before the Magistrate's Court 50 times and paid over 100 fines totalling more than six million dinars (approximately 200,000 DEM). Financial inspectors imposed another 10 million dinars (300,000 DEM) in fines, and an interlocutory decree of the Commercial Court obliged the company to pay almost 170 million dinars (5.5. million DEM) (*Blic*, 29 January, p. 6, 1 February, p. 7, 2 February, p. 6, 3 February, p. 6, 19 May, p. 6, 20 May, p. 6; *Danas*, 25 may, p. 22; *Blic*, 21 June, p. 7; *Glas Javnosti*, 27 June, p. 6).

Another major target was Belgrade' s Studio B TV, which was under the control of the opposition Serbian Renewal Movement (SPO). Equipment was stolen from the station's repeater station near Belgrade in January (Blic, 17 January, p. 6). In March, more equipment was taken and men wearing police uniforms beat up two members of the staff (*Danas*, 7 March, p. 3). On the night of 17/18 May, police came

to the station's premises and ordered it off the air for "incitement of rebellion." Radio B2 92 and Radio Index, both located in the same building as Studio B TV, were also attacked (*Blic*, special issue, 18 May, p. 1). Commenting on this incident, Nikola Šainović, a ranking SPS official, said that "Serbia reacted because Studio B TV has become a part of the NATO war machine... has been used by NATO to incite conflicts in FR Yugoslavia... and has incited killing on the airwaves" (*Blic*, 19 May, p. 3).

In March, the Commercial Court in Belgrade handed down a decision under which the *Večernje Novosti* daily was merged with the state-owned Borba company, thus voiding the completely valid privatisation of *Večernje Novosti* and enabling the authorities to take control of one of the highest-circulation Yugoslav dailies (*Blic*, 3 March, p. 6).

Another problem encountered by private newspapers, one that the pro-government dailies did not have, was the difficulty of obtaining newsprint from the sole Yugoslav manufacturer of this commodity (Beta, 8 September). The then authorities remained deaf to the requests of private newspapers to be allowed to import newsprint and, in addition, ordered *Blic* and *Glas Javnosti*, the highest-circulation private papers, to roll back their prices to those at which pro-government papers were selling (*Blic*, 16 March, p. 7).

In spite of these and similar measures, government representatives disclaimed any "witch hunt against the media in Serbia" and said "all those who have permits and pay their frequency fees will be able to operate and need not fear being banned" (Tanjug, 11 April). Their claim that the media in Serbia were free and equal is refuted by a document of the Vojvodina organisation of the ruling SPS of April 2000, which brought out that local SPS committees advised the party leadership which radio and television stations should be allocated frequencies, mostly free of charge. The local committees approved granting frequencies to eight radio and television stations on the grounds that "from the very beginning, these media have unequivo-

cally placed themselves in the service of our policies and, through their program orientation, have given a major contribution to our election campaign." The local SPS committees also named media from which frequencies should be withheld (*Blic*, 18 April, p. 3).

Anyone abroad who expressed concern at the media situation in Serbia was threatened and denied Yugoslav entry visas. Federal Information Minister Goran Matić accused Freimut Duve, the OSCE's Representative on Freedom of the Media, and Aiden White, Secretary-General of the International Federation of Journalists, of being "accomplices in the crime" and said their support of the private media constituted "terrorism and a crime against a sovereign country" (*Danas*, 23 March, p. 22).

Even after 5 October, five US journalists were denied Yugoslav entry visas. The OSCE protested with the new Federal Information Minister Slobodan Orlić, who insisted that the competent authorities either issue the visas or, at least, explain why they had been denied (Beta, 11 November).

Several directors and editors-in-chief of pro-government media were dismissed after 5 October, including *Borba* Director Živorad Djordjević, *Večernje Novosti* Editor-in-Chief Dušan Čukić and his deputy Ivan Pajdić (Beta, 7 December). The Serbian Association of Journalists, which had been supportive of the previous regime, expelled from its membership Milorad Komrakov, the editor-in-chief of RTS News (*Danas*, 6 December, p. 3). Komrakov and Dragoljub Milanović, the RTS general director, were physically attacked by demonstrators on 5 October.

2.8.4. Other violation of the freedom of expression. – Besides the pressures on journalists and the private media, the former Serbian authorities also clamped down on the freedom of expression of other citizens, in particular Otpor activists who were jailed or fined for writing graffiti or taking down posters of the then FR Yugoslavia President Slobodan Milošević.

Three Otpor activists – Djordje Branković, Milan Radojčić and Aleksandar Maksimović – were in September 2000 sentenced to 10

days in jail for breaching the public peace by writing slogans on facades (HLC press release, 17 September 2000). The Zaječar Court gave another activist, Vladan Stanković, a one-year suspended jail sentence and fined him 700 dinars for writing graffiti (Beta, 8 August).

On 9 September, Aleksandar Cvetković of Pleš near Kruševac was sentenced to 10 days in jail because he had torn down a poster of Slobodan Milošević from the wall of the Aleksandrovac Town Hall. The court held that Cvetković's action was a "breach of the public peace" and that he had "caused anxiety and upset the tranquillity of citizens" (*Blic*, 9 September, p. 8).

Courts in Bečej and Velika Plana fined Otpor activists from 3,000 to 5,000 dinars (100–170 DEM) for "defacing socialised and private property" with graffiti (*Danas*, 8 June, p. 10; 18 July, p. 3).

Satirist Boban Miletić was on 9 June 2000 sentenced to five months in jail for defaming FR Yugoslavia and injuring the reputation of President Slobodan Milošević on 18 December 1998 when he read aphorisms from his book "Cry, Mother Serbia" at a literary event in Knjaževac. Miletić spent 20 days in jail before he was charged and the unsold copies of his book were confiscated. The court dismissed a defence motion to call expert witnesses to establish whether aphorisms were a literary genre, in which case Miletić would have been freed of any liability. The confiscated books were returned to Miletić on 7 December (*Danas*, 8 December, p. 4) and the Serbian Supreme Court was considering his appeal at the time of writing (Beta, 28 December).

2.8.5. Pressures on journalists in Montenegro. – The mainly pro-Milošević opposition in Montenegro on several occasions protested against the editorial policy of Montenegrin state television, alleging that it was biased in favour of the ruling coalition and denied opposition parties equal access to its programmes (*Vijesti*, 17 July, p. 3).

The Montenegrin government's attitude towards journalists of the pro-Milošević and independent media was not even handed. Radio Yugoslavia reporters on their way to cover the local elections in

Podgorica and Herceg Novi were arrested, and YU INFO TV reporters were denied accreditation (Tanjug, 12 June; *Blic*, 12 June, p. 3).

The ruling Democratic Party of Socialists (DPS) was extremely critical of the reporting of some Podgorica correspondents of Belgrade papers such as *Politika*, *Večernje Novosti* and *Politika Ekspres*, alleging they were perfidiously attacking the Montenegrin state leadership (Beta, 8 November).

For their part, Montenegrin journalists encountered problems with the Yugoslav Army. In August 2000, military police arrested a team of the Podgorica daily *Pobjeda* who were covering a protest in Pljevlje (*Danas*, 29 August, p. 24). Less than a month later, TV Montenegro's crew, who were filming a column of buses carrying supporters of the opposition SNP to Slobodan Milošević's election rally in Berane, were also arrested by military police, who seized their cameras because they were "filming a column of military vehicles" (Beta, 20 September).

2.9. Freedom of Peaceful Assembly

Systematic violation of the freedom of peaceful assembly by the former Serbian government continued in 2000, especially when gatherings organised by the then opposition were concerned. Police resorted to brute force in dispersing such gatherings, with the authorities claiming that all opposition rallies were hostile, destructive and constituted breaches of the public peace.

Following the forcible take-over of Belgrade's opposition Studio B TV on the night of 17/18 May, the then opposition staged protests over several days in which more than 80 civilians and 11 police were injured and 37 protesters were arrested. Police used tear gas and booming percussion grenades to break up the demonstrations and ran into protesters with their vehicles. A major clash occurred on 18 May, with protesters pelting police with bottles, stones and sticks. Police responded with tear gas, percussion grenades and truncheons (*Danas*, 18 May, pp. 1, 3; *Blic*, 19 May, p. 2). On 20 may, police again chased

people in their jeeps and beat them, especially those who sought refuge in the Belgrade City Hall. Marta Manojlović, a 17-year-old Otpor activist, was beaten by several police officers. She was bruised all over and required stitches to close a six-centimetre cut on her head (*Blic*, 21 May, p. 5).

The police did everything in their power to prevent opposition supporters from other parts of Serbia joining the rallies and protests in Belgrade. Regular buses and trains were cancelled on days when rallies were scheduled, purportedly for technical reasons, and bus companies were not allowed to rent their vehicles to protesters. If any buses managed to reach the vicinity of Belgrade, they were stopped by police and ordered to undergo technical inspections (*Danas*, 15 April, p. 3). On the day an opposition rally was to be held in Požarevac, the hometown of Slobodan Milošević, police halted buses carrying about 200 protesters just outside Belgrade. The drivers' papers were taken and they were told they would be returned only if they turned back to where they had come from (*Blic*, 10 May, p. 3).

Opposition and Otpor gatherings were also banned. A discussion forum of the Movement for Democratic Serbia (PDS), which was to have been held in Medvedja in February, was prohibited (*Danas*, 25 February, p. 24) as was also a Democratic Party of Serbia (DSS) rally in Leskovac in April (*Blic*, 23 April, p. 4). A rally of the Sandžak Coalition in Novi Pazar was banned and officials at the local Police Department told Rasim Ljajić, the Coalition's leader, that the order was based on a 1997 decision of the Town Council banning open-air public assemblies. The possibility of incidents breaking out and the organisers' plan to invite Otpor activists to attend were cited as additional reasons (*HAS*, No. 93–94, 5 June, p. 228).

2.10. Freedom of Association

Where freedom of association was concerned, the former Serbian authorities applied different yardsticks. Any kind of organising by the parties then in power was permitted, even if prohibited by law.

On the other hand, any other kind of organisation, especially if committed to protecting a group interest, was deemed suspect and unconstitutional.

JUL even organised its own trade unions, for example in the mining industry (*Politika*, 6 April, p. 13), while the leaders of legitimate trade unions were harassed and persecuted. In mid-March, financial inspectors in Kragujevac asked the public prosecutor to institute proceedings against the union of Zastava's military production division and its leader Zoran Nedeljković. Nedeljković had organised a series of strikes from 1992 to 1999 against the low wages which, in addition, were months in arrears, and demanding that the state pay its 70-million USD debt to the arms factory. Although an audit of the union's books showed no irregularities, the financial inspectors faulted it not having a double entry system of bookkeeping (*Danas*, 14 March, p. 5).

Although the law prohibits political organising in schools, JUL established a teachers' organisation, the aim of which was ostensibly to protect the schools and youth from "economic, political, media and military enslavement in the guise of globalisation... from the shaping of a subject mentality... from certain political parties and non-governmental organisations who are the fifth column... from union organising of teachers aimed at destroying the consciousness of the young generation and from the activities of the militant Otpor group, that is, from terrorist organisations" (*Politika*, 13 April, p. 14).

A variety of pressures was brought to bear on groups critical of the then government: from denying their applications for registration, over cancelling registrations, to sending financial inspectors and plain-clothes agents to their premises. The Federal Ministry of Justice twice, in May and June, turned down Otpor's applications for registration. The reason given was that Otpor's activism was contrary to the Ministry regulations and that the movement, among other things, organised gatherings at which it called for overthrow of the constitutional order (*Blic*, 14 June, p. 2). After the democratic changes, the Federal Court considered a complaint filed by the HLC, overturned the Ministry's decision and ordered it to reconsider the application. The Federal Court

found that the decision was based on wrongly established facts and wrong application of the law (HLC press release, 8 December). On 25 August, police struck the Leskovac Human Rights Committee from the Register of Social Organisations, stating that "it has been established that the members of the Committee do not engage in the activities envisaged in its statute but in certain activities of a political nature" (Decision No. 212–326, MUP Serbia, 23 August 2000, BCHR documentation).

Up to 5 October, police and unidentified persons on several occasions raided Otpor premises in Belgrade, Jagodina, Kragujevac, Mladenovac, Niš and Novi Sad and confiscated computers, documentation and even the movement's banners (*Blic*, 13 March, p. 2; Beta, September).

Plain clothes police on 15 September entered the Belgrade premises of "Vreme je" (It's Time), a canvassing group that focused on young people, and confiscated its equipment and promotional literature. Fifteen activists were taken in, most of whom were members of the Civil Alliance of Serbia and the Democratic Party (Centre for Democracy Fund, 15 September).

The official attitude toward non-governmental organisations was very similar. In an article headlined "NGOs as Extensions of Intelligence Services," *Politika* looked into the leading NGOs in Yugoslavia and concluded that "the programs of some of these organisations are a smoke screen for the activities of intelligence services" and accused the HLC of gathering evidence for The Hague Tribunal (*Politika*, 30 June, p. 22).[65]

On 2 June, financial inspectors came to the Helsinki Committee for Human Rights in Serbia to copy the list of donors and audit the Committee's books (Blic, 3 June, p. 9). The Centre for Free Elections and Democracy (CeSID) was also a target.[66] In the course of Septem-

65 The RTS prime time news program on 15 February aired a statement by Federal Information Minister Goran Matić that "a part of the terrorist activities are conducted through the so-called non-governmental organisations, and even humanitarian organisations" (BCHR video documentation).

ber, police several times raided CeSID offices in Belgrade, Leskovac, Niš, Novi Sad, Vranje and Zaječar, seizing equipment, promotional literature and regularly taking in CeSID activists for questioning (CeSID press release, 13 September).

The day before the elections, police took CeSID Director Slobodanka Nedović to the police station to question her about a ballot she had found in her mailbox on 21 September and handed to the Federal Election Commission. They asked Ms. Nedović to take a lie detector test, which she refused to do (Beta, 23 September).

2.11. Right to Peaceful Enjoyment of Property

The majority of violations in 2000 of the right to peaceful enjoyment of property pertained to the property of private citizens.

One of the ways in which the Serbian authorities infringed this right was through the Law on Sale of Business Premises, adopted in January 2000. A list of premises offered for sale included many properties that were nationalised after World War II and which the government had promised to return to their original owners. The promise was not kept and the local authorities in some municipalities in which opposition parties were in power advised the original owners to file for the restitution of their property as it could not be sold while proceedings were in course (*Danas*, 17 January, p. 10).

In an effort to find new budget revenues, the Serbian government in May 2000 imposed an exorbitant tax on uncultivated farmland (*Blic*, 4 May, p. 7).

RTS ceased paying royalties in 1993 and currently owes over one million DEM in compensation for Yugoslav copyrighted material. Courts handed down five rulings, which became final and should have

66 During the federal elections campaign, Federal Minister of Telecommunications Ivan Marković stated on the RTS prime time news program that CeSID was a US branch office, as were also the "moral refuse in G17 Plus" (BCHR video documentation).

been executed. However, President of the Commercial Court Milena Arežina held back the judgements without any legal grounds. She furthermore ruled that the Federation of Yugoslav Composers' Organisations (SOKOJ) be struck from the Register, after which the Federal Bureau for Intellectual Property withdrew SOKOJ's permit to protect copyrights. At the same time and in contravention of the Copyright Act, an Association of Composers and Performers was established and was headed by the then RTS Secretary-General (*Blic*, 9 August, p. 6).

In Montenegro, privatisation became a major obstacle to peaceful enjoyment of property. The republic's Economic Restructuring Agency in April decided to sell the Mogren Hotel in Budva. The heirs of the original owner, the Novaković and Kovačević families, went to court to seek restitution of the property. The hotel was not sold, which was not the case with other properties in Budva that were nationalised after World War II (*Vijesti*, 11 and 14 April, pp. 5 and 4). A contract under which a French company took over the management of the six best hotels on the Montenegrin coast caused a storm of protest in spite of the Montenegrin government's contention that the arrangement was very good business. The hotels' boards rejected the contract with the French company but Montenegrin government representatives and the Privatisation Council signed it. Nebojša Medojević, a distinguished Montenegrin economist, pointed out that the arrangement was concluded out of sight of the public and without an international invitation to tender bids as required by the basic principles of privatisation (*Vijesti*, 8 August, p. 4; *Monitor*, 18 August, p. 17).

2.12. Minority Rights

In connection with the position of some minority groups, see the sections on the prohibition of discrimination, torture, the right to life and the right to freedom and security of the person.[67] On the position of the Roma community in FR Yugoslavia see IV.4.

67 See II.2.1.1., 2.2., 2.3., 2.4.

2.12.1. Ethnic Albanians in Serbia and Montenegro. – Some 70,000 Albanians live in the southern Serbian municipalities of Preševo, Bujanovac and Medvedja, and are the majority population in the region. The municipalities are adjacent to Kosovo and lie within the five-kilometre-wide demilitarised zone established under the Military-Technical Agreement concluded between the Yugoslav Army and NATO pursuant to UN Security Council resolution 1244.

The Serbian government accused members of the former Kosovo Liberation Army (KLA), now the Kosovo Protection Corps, of instigating the armed incidents in the region. At the same time, leaders of a branch of the KLA operating in the municipalities stated that "only arms can settle the problems in the Preševo Valley" (EFE, 23 March). For more details on the frequent armed clashes in the region, see II.2.2.1.).

For his part, Shaip Kamberi, secretary of the local branch of the ethnic Albanian Party of Democratic Action, claimed that Albanians were subjected to constant pressures, and that 92 Albanian employees of factories in Vranje had been fired. Furthermore, all 11 ethnic Albanian members of the local police force were dismissed for allegedly disrupting ethnic relations during the NATO intervention (*Danas*, 7 March, p. 10).

When visiting the municipalities, UN Special Rapporteur on Human Rights in FR Yugoslavia Jiri Dienstbier noted the high tension and mutual distrust. He said it was normal for police to control the administrative border between Serbia and Kosovo but that it was not right for only police to be charged with dealing with the problems. Local Albanians should respect the authorities, he said, adding, however, that it was not right that they, the majority population, should not be present in the administration and police or not have a medium in their own language (EFE, 20 March).

There are some 42,500 ethnic Albanians in Montenegro, or 6.5 percent of the republic's population. An electoral district for which five seats in the 73-seat Montenegrin Parliament are reserved has been

established in Malesija, an area in which Albanians are mostly concentrated. Deputies to the Parliament elected from ethnic Albanian political parties have announced a platform under which these five seats would be held only by representatives of these parties (*Blic*, 1 March, p. 2).

The Democratic Union of Albanians (DUA) in early December came out with a "Platform on the Political and Legal Frameworks of Self-Government of Ethnic Communities in Montenegro." The platform envisages a bicameral legislature. Deputies to the Chamber of Ethnic Communities would be elected within their respective ethnic groups. The government would include at least one member from every ethnic community, administrative agencies would reflect the ethnic makeup of the Montenegrin population, and the speaker of the parliament and the Prime Minister would be from different ethnic communities. The platform also envisages Albanian as an official language in municipalities where at least five percent of the population is of Albanian ethnicity. The DUA proposes also the establishment of a National Council of Albanians to draw up school curricula, and a minimum of one medium-wave and one ultrashort wave radio station and one TV channel for the Albanian community (*Monitor*, 5 December, p. 7; Beta, 5 December).[68]

2.12.2. Muslims. – There were 345,000 Muslims in FR Yugoslavia according to the 1991 census. They are concentrated mainly in the Sandžak region, which comprises 11 municipalities in both Serbia and Montenegro adjacent to Kosovo. Neither moderate nor radical Muslim political groupings in the Sandžak are satisfied with the community's status and position.

A platform drawn up by the Sandžak Coalition calls for the Sandžak to have the status of a multiethnic region in a decentralised Serbia, which would have a bicameral parliament with a Chamber of Citizens and a Chamber of Regions. Cupertino with municipalities in

68 For more details on the position of ethnic Albanians in FR Yugoslavia, see section on the prohibition of discrimination (II.2.2.1.).

the Montenegrin part of the Sandžak would be only at functional level (*Danas*, 10 April, p. 10).

Serbia's former governing coalition saw such proposals as a major political threat, especially as ties between moderate Sandžak Muslim leaders and the Serbian opposition grew closer. In May, a Sandžak Coalition rally, scheduled to take place in Novi Pazar in which leaders of the then Serbian opposition were to participate, was banned. Police warned that they would intervene if people started assembling, and forbade putting up of posters (*Danas*, 27 May, p. 6). Vice-President of the Sandžak Coalition Riza Gruda and Jusuf Pucić, a local Coalition official, were arrested in Sjenica in early May for handing out leaflets. Gruda was released an hour later while Pucić was taken before a magistrate and threatened with 30 days in jail (Beta, 5 May).

2.12.3. Bulgarians. – The 1991 census showed 25,000 ethnic Bulgarians in FR Yugoslavia. Because of the ties between ethnic Bulgarian organisations and the DOS, the former Serbian government accused the minority and, in particular, the Bulgarian Cultural-Information Centre, of pursuing a pro-Bulgarian policy and of enmity toward the country in which they live. "The Bulgarian ethnic minority's Cultural-Information Centre, which was created by the present Bulgarian government, is working actively on the realisation of the Greater Bulgaria idea... Anti-Serb and anti-Yugoslav books are dispatched directly to the Centre from Bulgaria and distributed to visitors... Otpor propaganda material was handed out at the political workshop organised by the Centre in mid-May in which representatives of opposition parties participated... All the cultural activities of the Centre are merely a mask behind which an anti-state and anti-Yugoslav policy is pursued," said Dragan Kolev, leader of the local SPS organisation in Dimitrovgrad (*Politika*, 26 May, p. 16).

2.12.4. Minorities in Vojvodina. – Among the minorities in Serbia's northern province of Vojvodina, the largest is the Hungarian with 345,000 members. Ethnic Hungarian political parties participated regularly in all elections and endeavoured to protect the minority's

rights through dialogue with the Serbian government. Their proposals for personal autonomy and other ways in which they could exercise their constitutionally guaranteed rights were deemed by the former government as aimed against the state. "The claim of some opposition politicians in Vojvodina (BCHR note: a number of Vojvodina Hungarian parties are in the DOS) that Hungarians are threatened is a barefaced lie. There were 300,000 Serbs in Hungary in 1918, as many as there were Hungarians in Vojvodina. The 1991 census brought out over 300,000 Hungarians in Vojvodina while there were only 6,000 Serbs in Hungary," said Živorad Smiljanić, a former speaker of the Vojvodina Provincial Assembly (*Politika*, 24 February, p. 14).

His words were belied by several cases that came to light. Thus Novi Sad Television's security on 3 October ordered journalists on ethnic minority desks to leave the building because their programs would no longer be broadcast. Hajlanka Buda, a journalist, stated that the porter barred her from the building and said he had received the order from Director Milan Todorov (Greek Helsinki Committee, FRY Report, *TV Novi Sad Employees Dismissed*, 11 October).

2.13. Political Rights

The watershed political development in 2000 was the early federal presidential and parliamentary elections called by the then Yugoslav President Slobodan Milošević for 24 September. Municipal elections in Serbia and Vojvodina were held concurrently. An early Serbian parliamentary election took place three months later, on 23 December.

2.13.1. Federal elections. – The Federal Parliament on 7 July promulgated amendments to the Constitution envisaging the election of the FR Yugoslavia president by direct vote. Under the amendments, the president serves a four-year term and may be re-elected for another term, in contrast to earlier when the Constitution allowed only one term. In keeping with the new Electoral Act, deputies to the Parlia-

ment's Chamber of Republics are also elected by direct vote instead of by the Parliaments of Serbia and Montenegro as before (Beta, 7 July).[69]

The Montenegrin Parliament reacted the next day by adopting a Resolution on the Protection of the Rights and Interests of Montenegro and its Citizens in which it said that it "does not recognise any legal or political act passed without the participation of the legitimate and legal representatives of Montenegro in the legislature and judiciary of the federal state." The resolution went on to say that the "Parliament does not recognise or accept the amendments to the FRY Constitution as they were promulgated by an illegal and illegitimate Federal Assembly, against the will of the majority in Montenegro and in gross contravention of the constitutional rights of the Republic of Montenegro as an equal constituent of the federal state" (*Vijesti*, 8 July, p. 3).

The Montenegrin ruling coalition – To Live Better – led by President Milo Djukanović's DPS opted to boycott the federal presidential and parliamentary elections. The opposition SNP, however, decided to run. As rumours began circulating that the Montenegrin authorities would dismiss people who turned out for the elections, the federal government issued a decree to compensate the loss of earnings of those who would be left jobless if they went to the polls (*Blic*, 8 September, p. 2).

2.13.2. Election campaign. – Throughout 2000, while the opposition called for early elections at all levels, the Serbian authorities endeavoured to eliminate it from political life. Headlines such as "Otpor Is Preparing Acts of Terrorism" (*Politika*, 15 March, p. 16), "Fifth Column Works to Break Up the Country" (*Politika*, 13 April, p. 14), "Opposition Betrays Serb People; Djindjić Raised by Ustasha Officer Uncle"[70] (*Politika*, 13 April, p. 14), "Democratic Party Leader

69 For more details on the amendments, see Introduction and I.4.13.

70 In an open letter, Djindjić's uncle Risto Dušanić, a retired upholsterer and Republika Srpska combatant, categorically denied the allegations of Serbian Parliament Speaker Dragan Tomić. Pro-government media refused to publish the letter and it appeared only in the private newspapers (*Blic,* 26 April, p. 29). SPS spokesman Nikola Šainović said "the SPS will not apologize to Djindjić" (*Blic*, 28 April, p. 3).

Was Red Brigade Member" (*Politika*, 14 May, p. 10) and "Opposition – Biggest Obstacle to Rehabilitation of FRY" (*Politika*, 29 May, p. 10) show to what lengths the then government and media close to it were prepared to go in battling the opposition.[71]

The anti-opposition campaign was spearheaded by President Slobodan Milošević, his wife Mirjana Marković, the JUL leader, Federal Information Minister Goran Matić, Federal Minister of Telecommunications Ivan Marković, both JUL officials, and Serbian Deputy Premier Vojislav Šešelj, the SRS leader.

Some opposition leaders showed no more circumspection in their rhetoric. Thus SPO leader Vuk Drašković called Slobodan Milošević, Mirjana Marković and Vojislav Šešelj "the biggest traitors and national affliction in Serbia's history" (*Blic*, 9 April, p. 5). Nenad Čanak, leader of the League of Social-Democrats of Vojvodina, went so far as to threaten to hang Slobodan Milošević. Speaking at an opposition rally in Belgrade in April, Čanak said: "The thief, liar, killer and notorious war criminal Slobodan Milošević will be judged by the people. We don't need The Hague... We shall drag him out of his Dedinje bunker and hang him right here" (EFE, 15 April).

The former Serbian authorities did not restrict themselves only to rhetoric but resorted also to violence. In January, for the third time in two and a half months, shots were fired at the offices of Civil Resistance in Valjevo (*Danas*, 11 January, p. 18). Dušan Stipanović, a local SPS official in Subotica, threatened his SPO counterpart with death (*Danas*, 25 February, p. 22). Without waiting for the results of the police investigations, the authorities immediately blamed the opposition for a bomb attack on the SPS offices in the Vračar municipality of Belgrade (*Politika*, 13 April, p. 21), and the torching of the JUL offices in Čačak (*Politika*, 16 April, p. 20).

71 In the RTS prime time news program on 10 May, the leader of the SPS youth wing said the opposition was "setting up through the so-called Otpor a fascist phalange of criminals who are participating in undoing the state" (BCHR video documentation).

The judiciary was abused to settle scores with the opposition. The Belgrade public prosecutor indicted New Democracy leader Dušan Mihajlović for saying Slobodan Milošević was to blame for the difficult situation in the country. The charges were later dropped (*Blic*, 26 February, p. 2). In late April, a Belgrade municipal court fined the SPO five million dinars for "injuring the reputation of the Progres Company" whose longstanding director was the then Serbian Premier Mirko Marjanović. The fine was pronounced because of an SPO press release dating from 1994 in which Progres was accused of abusing its monopolistic position in trade in certain commodities (*Blic*, 14 April, p. 8; *Politika*, 22 April, p. 20).

The former government endeavoured to exclude the opposition from parliamentary life and secure stronger positions in the legislatures. Jan Svetlik, a League of Social-Democrats of Vojvodina member of the Zrenjanin City Council, in which the opposition held a slim majority, was kidnapped in early April. At the first session following the abduction, the Socialists took away the seats of another two councilmen and thus ensured a majority for themselves. Svetlik was thereupon released (*NIN*, 13 April, p. 15).

The few opposition deputies who tried to take part in the work of the Serbian Parliament were obstructed in different ways. Thus TV viewers watching live transmissions of parliamentary sessions were almost never able to hear what Marjan Rističević, a deputy of the Vojvodina Coalition, had to say. Of his 24 speeches from the rostrum, 22 were obliterated by voice-overs (*Blic*, 23 April, p. 8).

To prevent protests by students and Otpor activists, the authorities cut short the academic year, ending it on 26 May. The Minister of Higher Education, Jevrem Janjić, stated that no regular or additional classes could be held after that date for whatever reasons. "The presence of students is allowed only at times when exams are scheduled and only of those taking the exams," he said (*Danas*, 26 May, p. 1). He explained that the shortening of the academic year by four days was in the interests of students "who now have four days more to study" (*Blic*, 27 May, p. 6). Janjić also ordered deans to step up

security at night and specified that security guards were bound "immediately to notify deans of any gatherings, writing of slogans and putting up of posters" (*Blic*, 25 May, p. 22).

With the approach of the federal elections, police searched the DOS offices in Čačak and Majdanpek (Beta, 13 and 23 September), and unidentified persons broke into the premises of Democratic Alternative in Belgrade, the Democratic Party in Šabac and the DOS in Bečej (Beta, 10, 11, 13 and 17 August).

Non-governmental organisations were also a target and the authorities did everything possible to hinder their activities, especially during the election campaign. Police banned any election activities by Group 484 on the grounds that it "is a humanitarian organisation and therefore cannot engage in political activities." A ban was also clamped down on the activities of the "It's Time" campaign and, two weeks later, its offices were raided by police who arrested 15 activists, including GSS leader Goran Svilanović (Beta, 30 August and 15 September; *Danas*, 31 August, p. 8). CeSID offices were frequently raided (Beta, 13–16 and 19 September), and the office of the Human Rights Committee in Bor was broken into (Beta, 25 September). Police focused in particular on the Otpor movement, storming into its offices in Novi Sad, Belgrade and Mladenovac and confiscating promotional literature (Beta, 2 September; *Danas*, 3 September, p. 1). The police actions against NGOs and Otpor are dealt with in more detail in the section of the freedom of association.[72]

Rallies organised by opposition parties and candidates, including presidential candidate Vojislav Koštunica, were banned in cities and towns across Serbia – Šid, Valjevo, Aleksandrovac, Bor, Novi Sad, Mladenovac and others (Beta, 4, 13, and 24 September).

At the same time, the ruling Socialists persistently accused opposition members of perpetrating violence in the election campaign. Even in the period from 24 September to 6 October, the regime' s officials and pro-government media labelled the opposition and its

72 See II.2.10.

supporters as traitors. "DOS Made Up of Betrayers of Their Own People and Country", "CeSID Works to NATO's Orders", "DOS Leaders – Candidates of NATO", "CIA Implicated in Faking Opinion Polls" were just a few of the headlines that appeared regularly in the newspapers at the time (Beta, 26, 29 August, 6, 13 September).

This was how Slobodan Milošević described the opposition at his election rally in Berane, Montenegro: "Every age has its large quota of cowards and sycophants who present themselves as wise politicians, as opposed to those whose wish is to make a giant of a small nation. Serbia and Montenegro are harried by hyenas and rats who want to turn a giant into a poodle to amuse its master" (*Vijesti*, 21 September, p. 3).

Federal Information Minister Goran Matić accused the US Administration of planning together with some Serbian opposition parties, the Otpor movement, and G17 Plus the violent overthrow of the government after the closing of polling stations on election day. Chief of General Staff General Nebojša Pavković stated that 24 September would be D-day, and that the armed forces would prevent any attempts "to take power by force in the streets" (*Blic*, 14 and 18 September, pp. 3 and 2).

2.13.3. The right to elect representatives. – Numerous irregularities were registered even during the preparations for the federal elections. The Federal Election Commission (FEC) decided the Serbs and Roma displaced from Kosovo and well as Serbs who remained in Kosovo were to vote in election districts 24 and 26 (Prokuplje and Vranje). Polling stations were opened in all areas in which there were more than 100 voters displaced from Kosovo. The opposition, however, was unable to learn the exact location of the majority of these polling stations until the election returns came in (*Blic*, 2–3 September, p. 2).

On 4 September, Bernard Couchner, the head of the UN civilian administration in Kosovo, announced that the international mission would not support or organise the September elections as they did not

meet any international standards, but that it would try to ensure the safety of all those who turned out to vote (*Blic*, 5 September, p. 3).

The election committees did all they could do hinder opposition representatives in monitoring the balloting. The FEC prevented DOS representatives from checking out the number of signatures for Slobodan Milošević's candidature. "They suggested that I do it alone, even though it is physically impossible for one person to go through that amount of papers by himself in 48 hours," said Nebojša Bakarec, the DOS representative, adding that it was doubtful that there were over 1.5 million signatures as claimed or that they were obtained in a legal manner (Beta, 10 September). The municipal election committee in Novi Pazar refused to verify 12 DOS candidates on the grounds that they were born in Montenegro and despite proof that they were domiciled in Novi Pazar (Beta, 15 September).

When CeSID requested approval to monitor the elections, the FEC on 8 September asserted that the Act on the Election of Deputies to the Chamber of Citizens of the Federal Parliament, Act on the Election of Deputies to the Chamber of Republics of the Federal Parliament and Act on the Election and Expiration of the Term of the President of the Republic had nothing to say about "domestic observers" (BCHR documentation, June 2000).

Numerous violations of election procedure occurred on election day. In what amounted to a covert threat to voters, the FEC ordered that the presidential election ballots be examined: "Before being deposited in the ballot box, the ballot, folded in half, shall be handed to the election committee whose members will examine it by touch to determine whether another ballot is concealed inside it. The secrecy of balloting shall not be infringed during the examination," said a FEC statement. The FEC added that such examinations were necessary "because the foreign factors who are conducting subversive activities against FRY have prepared a special plan to sabotage and compromise the presidential election" (Beta, 24 September).

Opposition members of election committees were prevented from participating in the work of a number of committees in Serbia.

DOS members, for instance, were not allowed to be present at polling station 45 in Prokuplje, while polling station 50 was not even opened (Beta, 24 September). In defiance of the regulations, police took election materials from polling stations in Bačka Topola, Mali Idjoš and Kanjiža (Beta, 27 and 28 September).

In Montenegro, the Yugoslav Army most frequently violated the election rules. The Centre for Democratic Transition (CDT) stated that military police forced its observers to leave 6 polling stations. The owners of five private houses in which polling stations were located did the same, threatening to physically assault observers. A military policeman at a polling station in Berane threatened the entire election committee, saying "There's nothing for you to count here because I'm taking the ballot box to Belgrade myself." The Town Hall in Herceg Novi was sealed off by a special unit of the Yugoslav Army on 23 September on the excuse of "ensuring the safety of the election materials" (Beta, 24 September).

The Yugoslav government not only denied entry visas to OSCE and European Union observers (*Danas*, 23 August, p. 18) but on 23 and 24 September ordered foreign reporters out of the country. A variety of explanations was given for the expulsion of 28 reporters from Finland, Norway, Portugal, Britain, Germany, the Ukraine, Bulgaria, Denmark, France, the Czech Republic, Italy, Belgium and Canada. An Associated Press reporter and photojournalist were arrested in Požarevac on election day itself (*Blic*, 25 September, p. 6).

2.13.4. Epilogue of the federal elections. – In the early morning of 27 September, the FEC came out with the preliminary results of the presidential election according to which Slobodan Milošević had won 2,026,478 votes or 40.25 percent, and Vojislav Koštunica 2,428,714 votes or 48.22 percent. Of the 7,8848,818 registered voters, 5,036,478, or 64.65 percent, had turned out. The FEC's results were very different from those of the opposition, according to which Koštunica had secured 52.51 percent of the vote against Milošević's 35.01 percent (Beta, 27 September).

Opposition representatives stated that they were barred from the work of the Federal Election Commission by government-appointed members, and that they were not given access to the Federal Statistical Bureau's computer centre where the election returns were processed (Beta, 28 September).

The FEC announced the final results the next day. This time it gave the number of registered voters as 7,249,831, or 600,000 less than the official figure as well as the number it had cited when announcing the preliminary results. It explained the discrepancy by saying that "some 600,000 Albanians did not vote and were therefore struck from the rolls." The FEC's new results gave Vojislav Koštunica 2,474,392 votes, or 48.96 percent, and Slobodan Milošević 1,951,761 votes, or 38.62 percent, and it scheduled the second round for 8 October (*Politika*, 28 September, p. 1; *Vreme*, 12 October, pp. 10, 11).

The opposition rejected the results as inaccurate, declared the victory of its presidential candidate and refused to take part in the second round. The DOS also accused the FEC of depriving it of four seats in the Chamber of Citizens and adding two to those won by the leftist coalition since, according to its results, it had secured 59 seats and the leftist coalition 44.

In the second half of October, after the massive protests, the FEC announced the definitive distribution of seats in the Chamber of Citizens – 58 for the DOS, 44 for the leftist coalition, five for the SRS, and one for the Union of Vojvodina Hungarians (*Blic*, 20 October, p. 3).

Opposition representatives pointed up many irregularities in the work of the FEC: the number of returned ballots exceeded the number of registered voters by 95,845; there was a discrepancy of 32,911 in the number of registered voters in the presidential and the parliamentary elections, which were held on the same day; there were 338 voters more in the presidential election than there were ballots; the total number of ballots cast in the presidential election was higher by 3,942 than the total number of votes secured by all five presidential candidates together (Beta, 29 September).

Disregarding all the objections, the Supervisory Committee appointed by the ruling parties assessed that "the elections took place in a peaceful and dignified manner, with the full application of electoral legislation and recognised international standards." The FEC dismissed all the DOS objections as "unfounded" and took no notice of reports that ballots on which the name of Vojislav Koštunica was circled had been found among waste paper in Čačak and Kruševac (*Blic*, 2 October, p. 2).

As of 25 September, the opposition and its supporters began celebrating the election victory in city squares across Serbia. In the first two days after the elections, the leftist tried to follow suit, but without much success (*Danas*, 26 September, p. 1).

The announcement of the final results triggered a series of blockades, protests and strikes against the election fraud. A general strike that began on 29 September at the Kolubara coal mine, which supplies the biggest thermoelectric power plant in the country, proved to be crucial. On 3 October, the Serbian Electric Power Company said it was forced to interrupt services because of the "halt in coal production." It claimed that the DOS was using the workers as a political instrument, and state companies and the country's natural resources harnessed for narrow party interests. The Serbian government issued that same day a decree whereby it practically prohibited strikes and the Belgrade public prosecutor requested an investigation into several people, including two ranking DOS officials – Nebojša Čović and Boris Tadić. On 4 October, police sealed off the Kolubara mine and tried in vain to make the miners, who, in a show of support, had been joined by people from many cities and towns, call off the strike (Beta, 29 September, 3 and 4 October).

Sympathy strikes broke out in industrial plants and public companies, city transport was suspended, and museums, theatres and cinemas, schools and universities closed their doors. The attempts of pro-government electronic media managers and senior editors to inaccurately report the election results brought about a rift with the journalistic staffs, who also struck. Reporters at Radio Velika Plana, Radio

Zaječar, Radio Yugoslavia, and the television stations in Novi Sad, Subotica and Valjevo who endeavoured objectively to report the situation were dismissed. Walkouts were rife in media organisations and, on 5 October, the employees of RTS began a general strike (Beta, 27–29 September, 2–5 October).

The Serbian government threatened on 3 October "to prevent in accordance with the law any subversive activity that threatens the safety of persons and property." Saying all such activities were "criminal," the government added that "media financed from abroad, which are spreading lies and inciting bloodshed" would be included in the measures that would be taken (*Blic*, 4 October, p. 2).

The Yugoslav Ministry of Foreign Affairs on 4 October addressed an aide-mémoire to the UN Security Council, protesting "the flagrant foreign interference in connection with the elections in FR Yugoslavia" (*Politika*, 5 October, p. 1).

On 4 October, the Federal Constitutional Court declared null and void parts of the procedure of the presidential election relating to the voting, counting of returns and announcement of results, and ordered a repeat election with the same candidates (*Politika*, 5 October, p. 1).

2.13.5. Massive demonstrations on 5 October 2000. – Angered by the developments after the 24 September elections, hundreds of thousands gathered in Belgrade in front of the Federal Parliament on 5 October. The first incidents broke out in the morning at roadblocks outside Belgrade, put up by police to prevent more people from pouring into the city.

About 3.30 p.m., police fired tear gas to stop demonstrators from storming into the Federal Parliament. The attempt was unsuccessful and the building was taken around 4.30 p.m. The crowd set several police cars on fire and then smoke began billowing from the Parliament's basement. There are two versions on how the fire started: that the building was set afire from outside, or that the blaze started inside as the result of the burning of evidence of the election fraud. Several

gunshots were heard as police clashed with the demonstrators outside the Parliament.

There were long bursts of shots near the RTS building too, with police firing rubber bullets. Demonstrators nonetheless took the building around 5 p.m. and set it on fire. Dragoljub Milanović, the RTS General Director, Milorad Komrakov, the RTS News Editor-in-Chief, and several news presenters and reporters were physically assaulted by the crowd. Police in the RTS and Federal Parliament, several of whom were injured, laid down their weapons and surrendered to the demonstrators. Studio B TV, the Politika media company and Radio Belgrade were taken without violence (*Vreme*, 12 October, pp. 10 and 11).

A local police station near the Federal Parliament was also occupied. Some 500 firearms were stolen before the building was torched (*Blic*, 27 October, p. 8).

Two people died and 93 were injured in the demonstrations. Jasmina Jovanović (39) fell off a truck and was run over, and Momčilo Stakić (57) suffered a fatal heart attack. Twelve of the injured were seriously hurt, five of whom by gunfire. Sixteen police were injured (*Blic*, 6 and 7 October, pp. 8 and 9). Kiosks were looted and stores demolished, including a perfumery owned by Marko Milošević, Slobodan Milošević's son. Offices of leftist parties were also damaged, among them the seat of the Belgrade organisation of the SPS, which was set on fire (*Blic*, 7 October, p. 8).

2.13.6. The 6 October changes. – The Federal Constitutional Court on 6 October recognised the election victory of Vojislav Koštunica in the first round. Criticising the work of the FEC, the Court said "the elections in all places in Kosovo where polling stations were not opened have been cancelled" and accepted some of the DOS objections to the work of the FEC (Beta, 6 October).

In a statement aired on YU Info TV in the evening of 6 October, Slobodan Milošević conceded victory to Koštunica. "I have just received an official report that Vojislav Koštunica has won the presidential election. The decision was taken by a body, which is empowered by the Constitution to deliver it, and I consider that it must be re-

spected. I thank all those who demonstrated their confidence by giving me their votes in this election. I also wish to thank those who did not vote for me for relieving me of the heavy burden of obligations that I have carried these past 10 years... As I have been relieved of the great responsibilities I have borne for a whole decade, I now plan take a rest and spend more time with my family, in particular my grandson Marko," said Milošević (*Politika*, 7 October, p. 1).

Three days later, the Serbian Parliament accepted the resignation of Vlajko Stojiljković, the Minister of Internal Affairs, and enacted new legislation envisaging a proportional representation system, Serbia as a single election district, and setting five percent of the vote as the minimum required to secure seats in Parliament (*Blic*, 10 October, p. 3).

On 10 October, the FEC announced the definitive results of the presidential election: 2,470,304 votes, or 50.24 percent for Vojislav Koštunica, and 1,826,789 votes, or 37.15 percent, for Slobodan Milošević, and yet again reduced the number of registered voters, this time giving 6,830,464 as the figure (*Sl. list SRJ*, No. 55/00).

Representatives of the DOS, which held two of the 250 seats in the Serbian Parliament, on 16 October reached an agreement with the ruling coalition and the SPO on reshuffling the Serbian government and calling an early parliamentary election. Eight days later, a transitional government was formed in which the SPO and DOS had five ministers each. Collegiate bodies made up of one representative each of the SPS, DOS and SPO were placed at the head of four key ministries – Internal Affairs, Finance, Information and Justice, and the SPS Premier appointed two representatives of the DOS and SPO as Deputy Premiers. On October 25, Serbian President Milan Milutinović dissolved the Parliament, after which its speaker, Dragan Tomić, scheduled the parliamentary election for 23 December (*Politika*, 17 October, p. 1; *Blic*, 25 and 26 October, pp. 3 and 2).

The mandates of all the deputies to the Federal Parliament were finally verified in early November. Of the 138 seats in the Chamber of Citizens, 58 went to the DOS, 44 to the SPS and 28 to the SNP. In

the 40-seat Chamber of Republics, the DOS holds 10, the SPS seven and the SNP 19 seats. The Yugoslav federal government was formed on 4 November by the DOS and the Montenegrin SNP and SNS (Serbian People's Party). A mix of politicians and experts, the government has one deputy Prime Minister and 15 ministers. The DOS named the deputy Prime Minister and nine ministers, while the Prime Minister and six ministers are from the ranks of the SNP and SNS (*Politika*, 4 November, p. 1; *Blic*, 5 November, p. 5).

Since the DOS *de facto* came to power, cases have been registered of pressures on legitimately elected SPS members of local governments. The citizens of Ub, for instance, stormed the Town Hall while the local government was being formed and "insulted, threatened and harassed SPS and JUL councilmen, forcing them to sign resignations. SPS councilmen, who have a majority in the municipal assembly, said they had to vote for opposition candidates to save their lives, while the new authorities maintained that there was no coercion at all." On 23 November, the SPS and JUL councillors requested the Ministry of Local Government to cancel the election of the leading municipal officials and the proceedings were under way at the time of writing. The DOS announced that there were no grounds to dispute the legitimacy of the new local government in Ub as its "complaints with regard to the regularity of the elections in three election districts were dismissed as unfounded." It stated that the opposition had won 9,116 votes in the Ub municipality against 8,210 for the SPS-JUL coalition, and that the leftists had managed to secure a minimal majority by gerrymandering, to which the people had reacted (*Vreme*, 9 November, p. 15; *Politika*, 24 November, p. 14; Tanjug, 1 December).

On 17 November, residents of Bela Palanka staged demonstrations and demanded that SPS and JUL councilmen, who held 36 of the 41 seats in the municipal assembly, step down in favour of DOS councilmen. The demonstrators accused the leftist councilmen of forming the local government "without a quorum, in the SPS offices and under a picture of Slobodan Milošević." Otpor activists occupied the local radio station and broadcast their own program "in support of the

people's wish for changes." Dejan Milenković, a leftist councilman, resigned, saying that a "tidal wave of changes has overwhelmed Serbia and they are inevitable here too" (Beta, 17 and 18 November; *Blic*, 19 November, p. 2). Although it had no seats in the Bosilegrad municipal assembly, the DOS called on the citizens to demonstrate and "fight for the establishment of an interim administration." The local DS organisation said in a press release that this would create "democratic conditions for holding an early local election at which the people would choose honest and able people to represent them in the local government" (Beta, 21 November).

2.13.7. Early parliamentary election in Serbia. – After 5 October, new election legislation was enacted, a transitional government was formed in Serbia, the Serbian Parliament was dissolved and an early election was held on 23 December.

In its preliminary report, the OSCE found that the election was on the whole in accordance with recognised international standards for democratic elections. The new Election Act, which addressed some of the issues that had been pointed to by international observers, was applied in a transparent and impartial manner. The OSCE, however, noted that further improvements were required with regard to the distribution of parliamentary seats and updating of electoral rolls, voting by persons doing military service, and suggested the introduction of absentee voting and mobile ballot boxes for the infirm. Election committees at all levels were multi-party, which "improved transparency, impartiality and the accountability of the election administrators." The Republic Election Commission (RIK) with its decisions made up for numerous shortcomings of the Election Act. Though the Act remained silent on the issue of election observers, the RIK for the first time approved monitoring by a domestic organisation – CeSID, and, also for the first time, mandated marking of the index finger of each voter with invisible spray to prevent one person casting more than one ballot.

The OSCE noted also the improvement in the media coverage as compared to the federal elections. Views throughout the political

spectrum were presented, though RTS and Studio B gave more publicity to the DOS than to other political parties. The 1998 Public Information Act was not applied.

The balloting on 23 December took place in a calm atmosphere and in keeping with the regulations. At almost all polling stations, voters signed the register (99%), identity papers were checked (83%), voters' index fingers were sprayed (95%) and were exposed to ultraviolet light to determine whether or not they had already cast ballots (97%), and very few were allowed to fill in ballots for others (0.6%). An international observers' mission monitored the vote counting at 108 polling stations and registered no instances of intimidation and only one case of tension at a polling station.

There were about 150,000 registered voters in Kosovo, including a number of ethnic Albanians. The preparations for the election in Kosovo were fraught with uncertainty and there were no international observers at polling stations there (OSCE, *Statement of Preliminary Findings and Conclusions*, 24 December).

On 27 December, the RIK confirmed that the DOS had won the election. The turnout on 23 December was 57.72 percent. By decision of the RIK, the election was monitored by domestic and foreign observers. The balloting was judged to have been free, fair and democratic, and its results as expressing the will of the people (Beta, 27 December).

Balloting was repeated on 10 January at 19 polling stations where irregularities had been registered.

Of the total 6,508,856 registered voters, 3.752,170 went to the polls, the RIK announced. The DOS secured 2,404,758 votes (84.08%) and won 176 seats in the Serbian Parliament; the SPS won 516,326 votes (13.76%) and secured 37 seats; the SRS received 322,615 votes (8.5%) and 23 seats; the Serbian Unity Party won 200,052 votes (5.33%) and 14 seats (*Sl. Glasnik RS*, No. 2/2001).

2.13.8. Montenegro. – In 2000, municipal elections were held in the Montenegrin cities of Podgorica and Herceg Novi, whose popu-

lations make up one-third of the republic's electorate. President Milo Djukanović's To Live Better coalition won in Podgorica, securing 28 of the 54 seats in the municipal assembly, whereas the election in Herceg Novi went to the SNP, the party of the then Federal Prime Minister Momir Bulatović, which took 19 of the 35 seats (*Vijesti*, 12 June, p. 1). There were no major irregularities or incidents during the polling (OSCE, Early Municipal Elections – Podgorica and Herceg Novi, June 2000 ‹http://www.osce.org/odihr/election/monoo-1-final.htm›).

The attitude of the former Serbian and Yugoslav authorities were the same with respect to the Montenegrin government and the Serbian opposition and they frequently labelled President Djukanović a "traitor." In articles headlined "Don Milo – NATO's Mouthpiece" (17 March, p. 20) and "Djukanović Flunks Exam in Patriotism" (9 April, p. 17), *Politika* wrote that the Montenegrin president was "in foreign pay" and was bent on "ruining his own country."

The pro-government *Politika* and *Borba* failed to report a major innovation in Montenegrin legislation under which the President, in the event that he "orders illegal use of the armed forces, police, judiciary or government bodies in the election process faces a term of up to five years in prison" (*Danas*, 14 March, p. 1). Nor did they report that judges could no longer serve on election committees in Montenegro "as this politicises the judiciary" (*Blic*, 28 May, p. 6). But they did give publicity to Bulatović's allegations that the Montenegrin authorities had put "the mayor of Podgorica under house arrest" (9 March, p. 19) and that a "man who was a criminal suspect in Serbia became a police officer in Montenegro" (27 March, p. 23).

Safet Sušić, a federal deputy from Herceg Novi, was prevented from entering the Federal Parliament in Belgrade by security. He filed a complaint with the Federal Constitutional Court, charging violation of his constitutionally guaranteed human and civil rights. The Court found the complaint out of order on the grounds that "the physical act by security guards of preventing a federal deputy from entering the

Parliament building does not constitute a violation of the rights cited" (*Blic*, 10 April, p. 3).

Politically motivated physical assaults and fights were registered also in Montenegro.[73]

Tensions between the federal and Montenegrin governments did not cease with the democratic changes of 5 October. Although the new federal and Serbian governments are committed to redefining the relations between the two constituent republics of Yugoslavia, the ruling coalition in Podgorica continues to insist on Montenegro's independence.

2.14. Special Protection of the Family and the Child

For years, the former Serbian government declared that "the family is the fundamental link of society," and that raising the birth-rate was "the highest national priority as the nation is in danger of dying out." One of the ways through which achievement of this goal was sought was an order by the then Minister of Public Health Milovan Bojić that all state medical facilities in which abortions for medical reasons were performed require payment of 2,000 dinars (approximately 60 DEM) for the procedure, with the money going into a newly established Serbian Population Renewal Fund (*Danas*, 31 August, p. 18; *Vreme*, 9 September, p. 25). Promises were constantly made to improve protection of the family and, in particular, a child (Politika, 17 January, p. 14) while, at the same time, the existing legislation in this field was not always complied with. Thus Slavka Pajić of Sremska Mitrovica, mother of three, was made redundant by the Politika company while on maternity leave (*Blic*, 23 April, p. 6), in contravention of Yugoslav law, which prohibits dismissal of employees on sick or maternity leave.

73 For more details, see the section on the right to safety and liberty of the person, II.2.4.1.

The birth rate in central Serbia and Vojvodina declined steadily in the past 10 years, especially after 1995 (*Bela Knjiga 2000*, p. 10). The population growth rate in most rural areas is negative, and people aged over 60 outnumber those up to 20 years of age in the majority of central Serbian municipalities.

In 2000, police resorted to brutal methods in particular against minors who supported the Otpor movement.[74]

Not even the competent Ministry of Labour and Social Affairs has inclusive data on the number of children without parental care and the conditions in which they live. On 25 November, the RTS reported that the competent Minister in the transitional Serbian government, Dr. Gordana Matković, had ordered urgent measures to be taken to improve the conditions in child welfare facilities. The report was accompanied by shocking pictures of a home for disabled children.

Sexual abuse of children, in particular incest, was on the increase, with the age of the victims decreasing. Of all reported cases of sexual abuse of girls, 16.2 percent were under five and 31.3 percent between five and 10 years of age. The public was appalled when a case of incest came to light in the Montenegrin port city of Bar: an unnamed man, who was deported from the USA, 14 times raped his fourteen-year-old daughter who had lived with her grandfather in Montenegro since the age of two (*Večernje Novosti*, 27 January, p. 12).

2.14.1. Right to social security. – Of the 1,600,000 jobless in FR Yugoslavia, the majority are young people. The average wage of those who do have work was 2,500 dinars (approximately 70 DEM), insufficient even for essential food for two.

The already low child benefits were 28 months in arrears in mid-2000 so that the Serbian government in August decided to issue bonds in lieu of payment, with the first instalment becoming redeemable at the beginning of 2001. The benefits, however, were not ad-

74 The treatment of minors by police is dealt with in more detail in the sections on the prohibition of torture and the right to freedom and security of the person (II.2.3. and II.2.4.).

justed to inflation nor was the accumulated interest taken into account so that the bonds were sold or converted to cash for half their face value.[75] Thanks to a donation from the Norwegian government on 24 November, payment of back child benefits was scheduled to begin in January 2001 (*Politika*, 17 November, p. 10).

2.15. Right to Citizenship

Federal Minister of Internal Affairs Zoran Živković announced in late December the adoption of a new Citizenship Act in January 2001. Specifying that the bill envisaged the possibility of dual citizenship for refugees, displaced persons and Yugoslavs living abroad, Živković said that a procedure for acquiring the citizenship would be simplified and the time-period of entry into the Register of Citizens shortened. In addition, all aliens who have lived in FR Yugoslavia territory for at least one year, and aliens married to Yugoslavs would be eligible for citizenship (*Blic*, 22 December, p. 6).

Minister Živković said about 70,000 people were waiting for their citizenship applications to be processed, while another 70,000 applications were destroyed when the Federal Ministry of Internal Affairs was bombed during the NATO intervention. Adding that the previous government had ceased granting citizenship in April 2000, he said he believed the motive was to preclude refugees from exercising rights they would acquire if they became FR Yugoslavia citizens, in particular the right to vote (*Blic*, 21 December, p. 6).

At the end of December, the government launched a publicity campaign in which it called on people who had waited over six months for a response to their citizenship applications to turn to a special Federal Ministry of Internal Affairs office where they would receive

75 The *Pančevac* newspaper on 1 September carried a story on the Nikolić family from Banatsko Novo Selo, who received bonds worth 50,880 dinars (approximately 2,500 DEM) for their eight children, quite a large sum in Yugoslavia. However, they were unable to buy food, clothes, shoes, fuel or other necessities with the bonds.

all possible assistance in realising their rights (*Blic*, 21 December, p. 6).

2.16. Freedom of Movement

Restrictions on the freedom of movement of opposition members and foreign journalists are treated in more detail in the sections on freedom of expression and peaceful assembly.[76]

In 2000, the European Union (EU) came out with a list of 800 Yugoslavs prominent in political and public life and close to Milošević who were barred from the territories of the EU member states. The former Yugoslav government protested against this decision. The list included the names of ranking government and party officials who were in power up to 5 October. On 10 November, the EU Council struck 184 names from the list, including Yugoslav Army Chief of General Staff Nebojša Pavković, head of the Serbian Security Service Radomir Marković, high-ranking SPS officials Gorica Gajević and Milomir Minić, and former Federal Prime Minister Momir Bulatović. "You have to know that the decision was taken in Belgrade and only forwarded to us here in Brussels," said an EU source who wished to remain anonymous (*Blic*, 14, 15, and 16 November, pp. 3, 2, and 3).

Another list contained the names of Yugoslav journalists banned from entering the EU countries. In a May 2000 letter to the Brussels-based International Federation of Journalists, Milorad Komrakov, Chairman of the Serbian Journalists' Association, insisted on freedom of movement for Yugoslav journalists though he did not react when his foreign colleagues were barred from Yugoslavia even though they had been granted visas. In the letter, Komrakov said the existence of the list was "an unprecedented act of discrimination and a threat to the journalistic profession" (*Blic*, 6 May, p. 6).

Up to 6 October, the Yugoslav and Serbian authorities imposed restrictions on the movement of opposition leaders. Stevan Vrbaški,

76 See II.2.8. and II.2.9.

the SPO Mayor of Novi Sad, was without any explanation detained by police at the Yugoslav-Hungarian border (*Blic*, 20 February, p. 5). Two months later, at the same border crossing, police confiscated the passport of Vladan Batić, leader of the Serbian Christian-Democratic Party (*Blic*, 20 April, p. 2).

Western diplomats in Yugoslavia also complained of restrictions on their movement when they visited Preševo. "When we got to Preševo, we were stopped and thoroughly searched. The police disregarded our diplomatic status and the fact that our visited was not banned," one diplomat said (*Blic*, 7 March, p. 9). When he entered Yugoslavia, Duško Tomić, Secretary of the Children's Embassy, an organisation based in B&H, was handed a paper by border police which stated that he had to leave FR Yugoslavia in 24 hours. Again, no explanation was given (*Danas*, 30 May, p. 22).

The free movement of people and goods between Serbia and Montenegro was also obstructed in 2000. At the Belgrade railway station, police searched all passengers on trains to the Montenegrin port city of Bar, and those with Montenegrin papers had their luggage searched (*Vijesti*, 14 February, p. 4).

In early November, the new Yugoslav government fulfilled its election campaign promise and abolished the unconstitutional tax levied on foreign travel (see I. 2.16.).

2.17. Economic and social rights

2.17.1. Social welfare. – The policies pursued by the former government had the most devastating effects in the economic and social spheres. One of the results was that one employed person now supports seven unemployed. Of the 8,383,000 people in FR Yugoslavia, excluding Kosovo, 2,300,000 are employed, 800,000 are job-seekers and a like number have been sent on forced leave by their companies because of lack of work. In addition, the country has 1,400,000 pensioners and some 800,000 refugees and displaced (*Blic*, 18 February, p. 7).

To compound the problem, many of those who do hold jobs are not paid regularly or the wages they receive are insufficient for basic needs. The average wage in October was 3,256 dinars (approximately 108 DEM) while the minimum for a family of four was estimated at 11,203 dinars, or 373 marks (Beta, 5 December; *Politika*, 7 December, p. 11). To buy a colour TV set, the average Yugoslav has to work for 4.3 months while a washing machine requires 5.4 months average wages (*Politika*, 12 October, p. 11).

An estimated 58 percent of families receive assistance from relatives living in the country or abroad, and six percent are recipients of humanitarian aid (*Danas*, 11 January, p. 4). FR Yugoslavia has become the leading recipient of humanitarian assistance in the world. The Yugoslav Red Cross alone distributed aid to 992,000 people in 1999. The World Food Program, part of whose humanitarian relief is distributed through the Yugoslav Red Cross, helped to support 890,000 people, including 160,000 pensioners (*Blic*, 5 April, p. 6).

The Yugoslav Assistant Minister of Labour, Health and Social Affairs estimated about four million people, or 40 percent of the total population, at the subsistence level (*Politika*, 27 October, p. 2). In the November 2000-March 2001 period, the World Food Program (WHO) planned to provide food, mainly flour and tinned meat, for 710,000 people in the lowest income bracket: pensioners, people on welfare and on forced leave, said the head of the WHO Mission in Belgrade. The EU has drawn up a new programme embracing between 680,000 and 1,200,000 people: the poorest pensioners, hospitals, elementary schools and kindergartens, and so-called "borderline" social cases (*Politika*, 27 October, p. 2).

Estimates of the number of poor in Yugoslavia vary widely: from a few percent as maintained by the previous government, to over 50 percent according to independent researchers, and depend in great measure on the criteria used. Thus, if the poverty line and per capita monthly expenses are taken, about 70 percent of the population is below the poverty line; if the criterion is one USD per day per person, then 46 percent of Serbia's population is below the line; if the criterion

is the so-called "consumer basket" containing the basic necessities for a family of four, the incomes of almost 53 percent of households are insufficient. If the mean arithmetical value of these three criteria is taken, virtually 54 percent of the Serbian population is below the poverty line (UNDP, *Early Warning Report* – FRY, June 200, p. 23).

Owing to the dire economic situation, strikes were frequent in 2000. In February, elementary and secondary school teachers struck, demanding higher salaries and their regular payment. The government refused to meet the demands and accused the teachers of violating the rights of children. "Every indifferent and passive teacher is in violation of ethical principles and proves that he or she should not be a teacher... The way in which the teachers are attempting to secure higher salaries is unacceptable when one knows that material problems in other walks of life are far worse because of the long-standing sanctions and NATO bombing" (*Politika*, 7 March, p. 3).[77]

The government did not confine itself to verbal threats. Police entered school yards in Kragujevac and took in teachers for questioning. In Gornji Milanovac, teachers of the Secondary Economics and Technical Schools who had walked out were fired (*Blic*, 6 February and 13 April, p. 6).

After the change of government, strikes with political demands gave way to those with social demands – payment of back wages and/or pay raises. The former government-controlled Teachers' Union turned down the 30 percent raise offered by the Serbian provisional government and demanded 100 percent, although it had been satisfied with far less during the time of the former regime (*Politika*, 18 November, p. 8; Beta, 16 November). The Union called off the strike when it won an 80 percent raise. The Secondary School Forum in Belgrade, which had supported the Serbian opposition before the changes, continued on strike, insisting that the financial problems of

77 On 10 May, the RTS carried in its prime time news programme an SPS statement on the teachers' strike: "Any strike in conditions of the NATO aggression on our country is an unpatriotic act and harmful above all to children and students, and to society in general" (BCHR video documentation).

the teaching profession be dealt with in a systematic manner and demanding the dismissal of SPS appointed school principals (*Politika*, 28–30 November, p. 11; Beta, 28 November).

Serbia's social workers also walked out. Though the Minister of Labour and Social Affairs did not find time to meet with their delegation, he did rebuke them, saying their stoppage was illegal as they were engaged in "humane" work. Saying he understood their problems, the Minister added bluntly that there simply was no money (*Blic*, 24 April, p. 20).

Workers went on hunger strikes to prevent fraudulent schemes by managers of their companies or illegal privatisation. Ten employees of Župski Rekord Komerc in Kruševac, who had not received their wages for the past four years, were on hunger strike for a month, and 15 workers of Budućnost in Crvenka refused to take food for five weeks. Both these strikes failed (*Danas*, 11 January, p. 26; *NIN*, 17 February, p. 28).

Work stoppages were frequent in Montenegro also. Employees of AD Gazing in Nikšić, who had not received their wages from November 1998, walked out on 10 April. Some Montenegrin strikers sought unrealistically high wages for Yugoslav conditions. Employees of the Nikšić Brewery, which was sold to a Belgian company, demanded an average monthly wage of 600 DEM. After a week's negotiations, they accepted 540 marks and a guarantee from the management that none of the strikers would be fired (*Vijesti*, 12 May, p. 5; *Monitor*, No. 510, p. 8).

The government's decision to have one day's wage deducted every month from all personal incomes, including pensions, to finance the reconstruction of facilities destroyed in the NATO bombing constituted a direct violation of economic and social rights. Deduction of this "solidarity per diem" from the already far too low incomes and pensions started in June, before the end of the NATO intervention, and since incomes and pensions are paid with two months' delay, for the month before the bombing. Employees at the Bor Copper Institute protested and forbade the accounting department to deduct the per

diem from their salaries. "The Serbian Constitution and law lay down that no one may dispose with an employee's personal income except the employee himself," they said (*Danas*, 17 March, p. 24). The Serbian transitional government revoked the decision on 16 November (Beta, 17 November).

Pensioners' organisations calculate that the Serbian government withheld payment of 60 pensions over the past 10 years, while retired farmers received no pensions for 23 months (*Blic*, 24 April, p. 6, and 28 April, p. 7). The Serbian Federation of Pensioners estimated that "the average pension has dropped from 720 DEM to 70 DEM, and the average retired couple needed 1.5 pensions to purchase basic food alone in October 1999" (*Večernje Novosti*, 17 January, p. 3).

A survey by the World Food Program brought out that 80 percent of pensioners in Yugoslavia do not have enough money for essential food, and that 29 percent cannot afford any meat or fruit (*Danas*, 19–20 February, p. 6; Blic, 14 February, p. 6). The lack of a proper, balanced diet threatened the health and even the life of the retired population. According to the Pension Fund, 60 percent of pensioners suffer from some chronic disease, and the mortality rate is rising: 40,000 pensioners died in 1996, the number increased by 2,000 the next year, and exceeded 48,000 in 1998.

In the last 10 years, at least one member in every ninth household (11%) left the country for economic reasons. This means that between 260,000 and 300,000 people have emigrated from Vojvodina and central Serbia (UNDP, *Early Warning Report – FRY*, p. 18).

2.17.2. Right to education. – Elementary education in Serbia has been disrupted in the past few years by the numerous strikes of teaching staff, low and irregular salaries, shortening or skipping of classes, as well as the antiquated teaching aids and lack of heating in schools.

The United Nations Children's Fund (UNICEF) estimated over 50 percent of children in one or another social risk category. The drop-out rate is increasing for a variety of reasons: frequent strikes by

teaching staff, inadequate heating of school buildings, children's embarrassment at being without decent clothing, textbooks and school supplies, or lack of funds for transportation. In Loznica, for instance, the monthly transportation costs of a schoolchild exceed the average wage (UNICEF, *Mobile Team Assessment Mission 2000*, p. 18).

2.17.3. Health protection. – Inadequate health protection is, besides poor diets, a reason for the rising mortality rate. Conditions in hospitals have deteriorated over the past several years, the contributing factors being antiquated equipment, poor hygiene, lack of heating and hot water, shortage of drugs and other medical supplies. In summer, room temperatures in hospitals climb to over 40 degrees Celsius, and drop to below 16 degrees in winter (UNICEF, *Mobile Team Assessment Mission 2000*). The UNICEF report cited major medical problems in two rural municipalities in Serbia (Blace and Kuršumlija) where pregnant women, new mothers and babies, elderly and sick people who live far from the local medical centres and hospitals are especially hard hit by the lack of mobile medical teams. In the early 1990s, the former Yugoslavia allocated 200 USD per capita for medical care; the figure in FR Yugoslavia has dropped to less than 50 USD. Children's and maternity hospitals are among the most run-down medical facilities (UNICEF, *Mobile Team Assessment Mission 2000,* p. 11).

In July 2000, a survey conducted on a random sample of 1,488 respondents brought out that one-third of households had one or more members who suffered from chronic diseases. The percentage was even higher – 45 percent – in the poorest families (UNDP, *Early Warning Report – FRY*, June 2000). In the first six months of the year, one or more members of 81 percent of households required medical assistance. The percentage was extremely high due to a raging influenza epidemic in the January-March period. Of those who sought medical assistance, 88 percent did so in public/state facilities, eight percent went to private medical practices and some four percent used both. According to the UNICEF office in Belgrade, those who received medical attention in state facilities in Serbia paid 40 percent of the

costs, in spite of having already paid their social security contributions (*Blic*, 10 July, p. 6).

The mortality rate in Serbia increased significantly in the first half of 2000. In Belgrade, for example, there were 50 percent more deaths in January than in January of 1999, and 25 percent more in March compared to March 1999. The rise in the Stara Pazova and Kraljevo municipalities was between 30 and 50 percent (UNICEF, *Mobile Team Assessment Mission 2000,* p. 11).

UNICEF data showed a rising incidence of lung diseases, asthma, anemia in children, behavioural problems (anxiety, bed-wetting), miscarriages and high-risk pregnancies, underweight new-borns, and abnormalities (Down's syndrome and heart disorders) in the first five months of 2000 (UNICEF, *Mobile Team Assessment Mission 2000,* p. 11). A department head at the Belgrade Health Protection Office stated that the weight of new-borns in recent years decreased by between 200 and 300 grams, length by one centimetre and head circumference by 1.5 centimetres (*NIN*, 4 May, p. 27).

2.17.4. Right to housing. – Housing conditions grew worse in Serbia in the past decade. In mid-2000, the Serbian government announced a program to build 10,000 apartments annually over the next 10 years but did not say how it would be financed. The apartments were earmarked for young couples and member of the armed forces and the police force. The terms were between the market and subsidised rates (some 750 DEM per square metre, 20-year housing loans, five percent monthly interest pegged to the DEM, deposits of at least 30 percent of the total price). Thus purchase of a 60-square-metre apartment required a deposit of around 13,500 marks and payment of a monthly instalment of about 210 marks, considerably above the average monthly salaries of people with university degrees.

Information on the terms of the contracts, kinds of mortgages or the status of apartments whose purchasers for objective reasons could not meet the monthly rates (e.g. death of the family's breadwinner, loss of employment) was not available from banks. When the invitation for applications closed and the signing of contracts started,

it turned out that banks would not accept monthly payments being above one-third of the purchaser's monthly income, a condition which put these apartments out of the reach of the majority of would-by buyers. Furthermore, priority was given to those who were able to pay the whole sum upfront or in three instalments within 60 days. The market prices of these apartments will be higher than the prices at which they are sold since the costs of utilities and land were not factored in and it was not specified who would pay them. Although heralded as one of the most important projects of the decade, contracts for only a few score apartments were concluded up to the 24 September elections and, after the changes of 5 October, it ground to a halt. The new government, however, is willing to continue the project but only after a thorough review, especially with regard to sources of financing and the criteria for applications.

2.17.5. Social security and the rights of vulnerable social groups. – According to a survey of the United Nations Development Program (UNDP), one out of 10 household has an infirm or handicapped member, with the number proportionally higher in poor families. No official estimate has been made of how many disabled persons there are in Serbia, not even after the armed conflicts in the past decade, which almost certainly raised the number of those, unable to care for themselves. Social assistance consisted mostly of occasional cash benefits to the families. Besides the financial problems encountered by the disabled population and their families in the past several years, they face another, perhaps even more difficult: architectural and other barriers in public spaces, offices, and apartment buildings that are insurmountable for those bound to wheelchairs or otherwise handicapped. Measures to correct these deficiencies were in Serbia on the whole sporadic and symbolic. At Belgrade University, for instance, no facilities are adapted to the needs of the disabled, not even those built in the past 15 years. The situation is the same in hospitals, schools, cultural institutions, stores, bus and railway stations, sports facilities, apartment buildings (UNDP, *Early Warning Report – FRY*, June 2000).

Disabled persons are the target group of a number of NGOs in Serbia. The Belgrade-based *Iz Kruga* and Handicap International have programs covering the whole of the republic. According to *Iz Kruga*, Belgrade has over 160,000 disabled but no theatres, museums, and public libraries accessible to them. Only two cinemas have wheelchair ramps and curbs have been lowered on just a few major intersections in the city centre. *Iz Kruga* also pointed out that there were no government officials, even of junior rank, to whom the disabled could turn for help (*Blic*, 5 November, p. 8).

III
HUMAN RIGHTS IN THE LEGAL CONSCIOUSNESS

1. Introductory notes

Research into the legal consciousness of the citizens of FR Yugoslavia, which was conducted in the second half of June and the first half of July of 1998 (in 1999, due to effect of the NATO armed intervention, the research could not be carried out), was repeated in the first half of December 2000.[78] By means of a poll, a total of 2,205 citizens were interviewed, from all parts of Yugoslavia with the exception of Kosovo and Metohija. *The data presented on the following pages, therefore, are representative of the population of Yugoslavia excluding Kosovo and Metohija*.

The poll was conducted using a standardised, mostly closed-type questionnaire, offering a number of options to the pollees. The polling sample was partly stratified for the adult population. The research was conducted in 96 towns and cities on the territory of 58 districts, 12 of which are in Vojvodina, 12 in Belgrade, 23 in Serbia proper and 10 in Montenegro. The population of both Serbia (1,805 pollees) and Montenegro (400 pollees) was represented; the number of pollees from the latter republic, however had to be somewhat

78 The survey was commissioned by the Belgrade Centre for Human Rights, carried out by the Agency "Scan" in Novi Sad.

greater than its real share in the population structure of FR Yugoslavia. The Serbian sample consisted of 805 pollees from Serbia proper, 500 from Vojvodina and 500 from Belgrade. Figure 1. shows the regional structure of the sample.

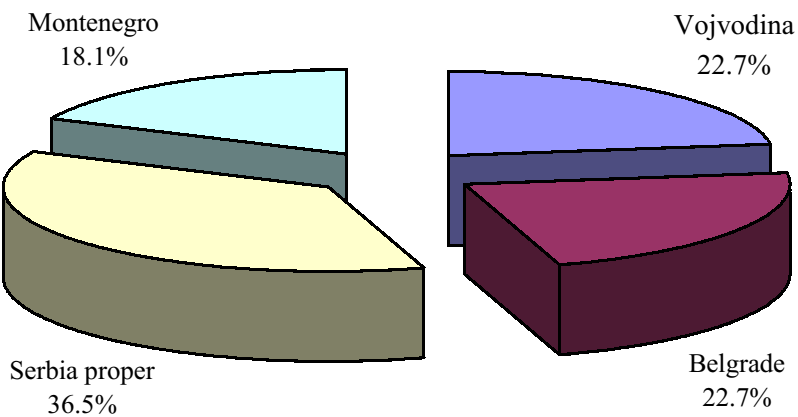
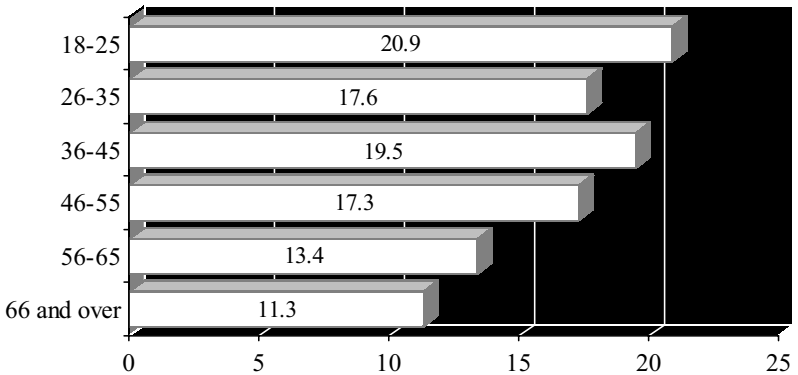
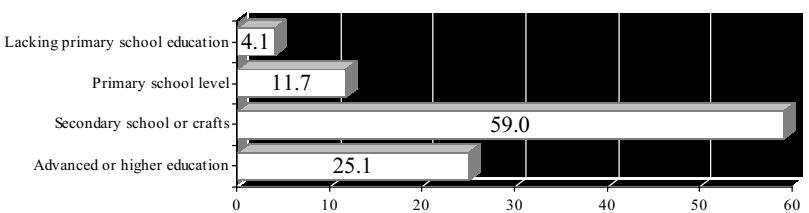


Figure 1. The regional structure of the sample

The sample consisted of 51% male pollees and 49% female pollees. Concerning their ethnic affiliation, the majority of the pollees were Serbs (66.6%), followed by Montenegrins (9.8%), Yugoslavs (7.4%), Moslems (5.6%), Hungarians (2.5%), Slovaks (1.4%), Albanians (1.2%) and Croats (1.1%). As regards their professional structure, there were 31.5% highly qualified and qualified workers, 18.6% pensioners, 16.6% intellectuals and experts, 13.6% pupils and students, 7.4% housewives, 3.2% farmers, 3.0% unemployed, 2.7% unqualified workers and 1.9% entrepreneurs. There follows a graphic representation of the structure of our sample with respect to age-group and educational variables:



Graph 1. The age structure of the polling sample (in %)



Graph 2. The educational structure of the polling sample (in %)

In view of the fact that the research was conducted in the first half of December, it is interesting to compare the structure of political party preferences in the Serbian sample obtained by the poll with the results of the general election for the Republican Assembly of Serbia held on 23 December. In our poll, 72.3% of the pollees said they would vote for the Democratic Opposition of Serbia

(DOS), 5.4% for the Socialist Party of Serbia (SPS), 3.6% for the Serbian Radical Party (SRS), 2.4% for the Serbian Renewal Movement (SPO), while 1.5% opted for all the other parties (the remaining 14.6% of the pollees may be considered abstainees). According to the data published by the Federal Election Committee on 27 December, DOS won 64.1% of the votes, SPS 13.8%, SRS 8.6%, the Party of Serbian Unity (SSJ) 5.3%, SPO 3.8%, the Democratic Socialist Party (DSP) 0.8%, the Serbian Social-Democratic Party (SSDP) 0.8% and the United Yugoslav Left (JUL) 0.4% (the overall voter turnout was 57.1%). Thus we see that that the number of abstainees in our sample was smaller by far than the number of abstainees in the actual election. Also, the number of SPS, SRS and SSJ supporters was smaller while the number of DOS supporters was considerably greater than the number of those who actually voted for the coalition on 23 December. If we look at party preferences at the level of Yugoslavia as a whole, we shall see that our sample comprised a great number of supporters of the Democratic Party of Serbia (DPS, 27%), many more compared to the number of supporters of the Democratic Party (DS, 8.6%), the Montenegrin Democratic Party of Socialists (DPS, 5.3%), SPS (4.2%), the Socialist People's Party (SNP, 3.4%), SRS (3%), etc.

The pollees were offered a questionnaire, which contained 46 questions dealing with their knowledge of human rights. The so-called KOL standard (*Knowledge and Opinion about Law*)[79] was not applied either in the 1998 research or in the present research, as the differentiation of the questions contained in the questionnaire into those pertaining strictly to legal regulations, those pertaining to legal

79 The KOL standard presupposes a differentiation of questions that would enable the pollees to express both their knowledge of legal regulations currently in force (specifically in the domain of human rights) and their opinion of what the current regulations *ought to be like*. The third segment of legal issues which is sometimes studied in KOL research are the pollees' views of the application of legal regulations in practice.

practice and those pertaining to desirable legal regulation would have led to great methodological problems. On account of this, it was decided to conduct the research using as simple a set of questions as possible, one which did not differentiate between those human rights normatively in force, those that are actually applicable and those that are desirable. What was obtained in this way are general and undifferentiated pollees' views of *the reality of human rights in Yugoslavia*.[80]

2. Understanding of human rights

Before presenting the knowledge of specific human rights exhibited by the citizens of Yugoslavia in the course of this research, it is necessary to present the findings pertaining to what their notion of human rights is in the first place. We proceeded from the assumption that human rights can be treated as a category of natural law (human rights are non-posited rights that precede state law, rights enjoyed by every man merely by being a man), a legally determined category (human rights are rights determined by the Constitution and international law), a real-political category (human rights are mere weapons used in fighting for political power), and a world-wide-conspiracy category (human rights are mere weapons used by the high and mighty of this world to blackmail *us and our authorities*). The results obtained are presented in Table 1.

80 For more information pertaining to the methodological side of the problem see: M. Biro and A. Molnar, "Znanje i stavovi studenata prava o ustavnim rešenjima" [The knowledge and views of students of law pertaining to constitutional regulations], *Glasnik advokatske komore Vojvodine*, LXVIII, no. 6/96, pp. 219–225; M. Biro, A. Molnar and D. Popadić, "Stavovi građana Srbije prema pravnoj državi: relacija sa obrazovanjem, autoritarnošću i poznavanjem ljudskih prava" [The views of the citizens of Serbia pertaining to the rule of law: the correlation with level of education, authoritarian tendencies and knowledge of human rights], *Sociologija*, XXXIX, No. 2/97, pp. 207–221.

Table 1. The notions of human rights

"What are human rights?"	%
1. Rights that all people have regardless of the state and laws	46.7
2. A part of international and constitutional law	25.6
3. A piece of paper used by politicians	17.1
4. A means of blackmailing small states (Serbia and Montenegro)	7.7
5. Other	2.1
6. No answer	0.8
Total	100.0

If we compare the present data with the data obtained in 1998,[81] we shall observe something that undoubtedly constitutes an improvement: the percentage of pollees having a positive (natural-law-based or legal-positivist) attitude towards human rights has increased from a little under two-thirds to almost three-quarters. As in 1998, the majority of the pollees were inclined to view human rights as based on natural law, as rights that "everyone had" irrespective of state legal regulations. At the same time, the percentage of pollees opting for this view of human rights has increased the most compared to 1998: by almost eight per cent. What is particularly encouraging is the increased number of pollees inclined to view human rights in legal-positivist terms: at 25.1%, they have now become more numerous than the pollees opting for a real-political view of human rights (which was not the case in 1998). The revolutionary happenings of 5 October, as well as the highly frequent occurrence of human-rights-related topics in

81 *Human Rights in Yugoslavia 1998*, *Human Rights in Yugoslavia 1999*.

almost all the media in Yugoslavia during October and November probably influenced the increase of positive attitudes towards human rights to a high degree. On the other hand, as the period of two months between the revolutionary happenings in October and our research was not sufficient do much, in institutional terms, with a view to the protection of human rights in FR Yugoslavia, the inclination towards a natural-law-based view of human rights increased rather more than the inclination towards a legal-positivist view. As a consequence of this trend, the number of proponents of natural law among the pollees has increased to such an extent that they outnumber the proponents of legal positivism almost by a two-to-one ratio. This trend cannot be evaluated in a positive light because the superiority of the natural-law-based attitude over the legal-positivist one is, very likely, mostly due to the fact that in FR Yugoslavia there exist no institutional possibilities for the protection of human rights, either before the constitutional courts or before the corresponding international institutions. As the citizens cannot fight for their human rights themselves within the framework of legal institutions, it is logical that they should exhibit a pronounced tendency towards a more abstract and informal view of these rights. The revolutionary happenings of 5 October could not change anything whatsoever in this respect, they could only add to the "natural law euphoria".

When it comes to understanding the character of human rights, there is another problem it is very important to bear in mind. Over the last ten years or so, the problem of lack of co-ordination of legal regulations has been an acute one. Following the caving-in of socialism, the break-up of SFR Yugoslavia ensued, as well as a war fought on its territory; in the final years of Milošević's regime of personal power, a great many bad, contradictory or even unconstitutional and/or illegal acts were passed. In view of the fact that such a chaotic state of legal affairs endangers the privileged status of human rights within the framework of the legal system, we wished to check in our research what sort of feeling for the hierarchy of legal acts our pollees had. That is why we asked them what took precedence if legal norms were

uncoordinated. The range of responses obtained is presented in Table 2.

Table 2. Lack of co-ordination of legal acts

"What takes precedence if legal norms are uncoordinated?"	%
1. What the Constitution says	32.4
2. What wise people say	18.9
3. What the law says	18.1
4. What international legal documents say	14.4
5. What those in power say	12.4
6. Other	1.7
7. No reply	1.1
Total	100.0

The situation indicated by the results obtained, although still unsatisfactory, is still immeasurably better than the situation reflected by the 1998 research. Whereas in 1998 the majority of the pollees tended to single out "those in power" or "the wise" as the instance that regulated the problems arising out of lack of co-ordination of legal acts,[82] in the research conducted in December 2000, the percentage of the pollees considering the Constitution as the act taking precedence over all other legal acts increased to almost one-third (32.4%). It is possible that this increase is due to the intensified debate over the

82 In 1998, 22.9% of the pollees opted for "those in power" and "wise people". Cf. *Human Rights in Yugoslavia 1998*, p. 292.

passing of a new federal Constitution (and Serbian as well) in the moths following the revolutionary happenings in Serbia, so that, in the last few months of the year 2000, the pollees could get the impression that the Constitution is the act upon which a political community is based, and evaluate it accordingly. This fact is encouraging, as confidence in the Constitution will be very important in 2001, if work on a new federal Constitution (and later a new Serbian Constitution) does commence during 2001, and especially in the years to come, when the provisions of the new Constitution(s) come to be implemented.

On the other hand, two things may be considered unsatisfactory: a low percentage of the pollees who gave the correct answer to the above-mentioned question (if legal norms are uncoordinated, international legal norms take precedence) – 14.4% (which is less than in 1998, when 15.6% of the pollees gave the correct answer), and a relatively large percentage of the pollees who believe that certain people in FR Yugoslavia resolve the problems arising out of lack of co-ordination of legal acts (almost a third of them). Efforts should be made with a view to eradicating this fallacy in Yugoslavia in the forthcoming period: "those in power" and "wise men" ought to be eliminated from our citizens' notion of the hierarchy of legal acts, and international legal documents ought to assume their real significance in this hierarchy.

3. Special rights

3.1. Prohibition of discrimination

As in 1998, in the research conducted in December 2000 we operationalised the prohibition of discrimination by means of five separately formulated questions. Three questions had to do with the prohibition of sexual discrimination (in the spheres of politics, employment and professional promotion, and marriage), and the remaining

two had to do with the prohibition of ethnic discrimination (in employment) and sexual discrimination (directed against homosexuality).

The inequality of women in the political life of FR Yugoslavia has evidently intensified in the post-Communist period. Based on the election held on 24 September 2000, a new federal Parliament was established; out of 178 MPs, only 8 are women. In the political parties in Serbia and Montenegro alike, all the top positions are held by men, whereas few women hold top party positions; their presence in top positions is, we might say, purely symbolic in character. While back in 1998 49.3% of the pollees recognised the unequal position of women in domestic political life, their percentage rose to 59.4% in 2000. According to the latest research, the percentage of those satisfied with the present situation amounted to 29.6%, whereas only every tenth pollee replied that women were excessively present in politics. As was to be expected, women predominated among the dissatisfied pollees (68.5%), but it is significant that this view was shared by no less than half the male pollees (50.7%).[83] The percentage of pollees who thought that women were underrepresented in political life was somewhat higher in Montenegro (67.5% of the total number of Montenegrins polled) than in Serbia (57.4% of the total number of citizens of Serbia polled).

The discrimination of women in the realm of work and professional promotion has also increased compared to 1998, according to the views of the pollees: nowadays 44.3% of the pollees consider women unequal in the sphere of employment and professional promotion, while the percentage of those who are satisfied with the present situation has dropped to 38.7%.[84] The percentage of those dissatisfied in this case, too, is significantly higher among women (53.3%) than among men (35.6%), and again higher in Montenegro (52.6%) than in Serbia (39.4%).

83 In the 1998 poll, the number of male pollees who expressed dissatisfaction with the participation of women in the political life of FR Yugoslavia barely exceeded one-third. Cf. *Ibid*, p. 293.

84 For the data obtained in the 1998 poll cf. *Human Rights in Yugoslavia 1998*, p. 294.

A different trend may be observed regarding the (in)equality of the sexes in marriage. The percentage of the pollees who believe that the equality of the sexes in marriage does exist has grown from 49.5% to 54% over the last two years, while the percentage of those who believe that male domination still persists has dropped from 41.4% to 37.9%. Still, if we take into consideration the replies given by the female pollees, we shall observe that they are more critical compared to 1998. Whereas women were rather divided on this issue then (49.3% thought that male dominance in marriage did exist and 44.1% thought that members of the fair sex had achieved emancipation), in 2000 a clear majority of the female pollees maintained that there was discrimination in marriage (53.1% of them, as opposed to the 39.2% of those who denied that such discrimination existed). As opposed to this, the percentage of men who denied the existence of any discrimination of women in marriage whatsoever has now risen to 57.5%, thus decisively contributing to the overall trend of growing conviction that there is equality of the sexes in this area. Significant regional differences are manifested again: the percentage of the pollees who believe that male domination in marriage still exists is the lowest in Vojvodina (31.8%) and the highest in Montenegro (53.1%).

From the data presented above, it may be concluded that the citizens of FR Yugoslavia, especially women, have become more sensitive to various forms of discrimination of women over the last two years, and that they are much more ready to deny the existence of emancipation of women in this country. The situation in Montenegro is still rather worse than in Serbia in this respect.

As far as the discrimination of ethnic minorities is concerned, it was investigated in the domain of work and professional promotion. In reply to the question concerning the chances that members of ethnic minorities had of getting employed and promoted, most pollees (55.9%) said “The same as Serbs/Montenegrins”. The remainder of the replies was relatively evenly distributed among those who thought that members of ethnic minorities found it easier to get employed and promoted (13.2%), those who thought that they found it more difficult

(21.3%) and those who were unable to reply to this question (9.6%). The data obtained in 2000 are almost identical with those from the 1998 poll. From a regional perspective, the greatest differences are exhibited by Vojvodina, where the smallest percentage of the pollees think that members of ethnic minorities have problems when it comes to getting employed and promoted (15.2%), and Montenegro, where the percentage of such opinions is the highest (29.1%).

It is interesting to note that the view of lack of discrimination of members of ethnic minorities when it comes to getting employed and promoted is, for the most part, shared by the members of these minorities themselves, the only exception being Moslems and Albanians. Among those pollees who declared themselves as Moslems, 58.7% were of the opinion that discrimination of ethnic minorities did exist in this sphere of social life. This view was shared by 56% of the pollees who belong to the Albanian ethnic group. Compared to the data from the 1998 poll, it is evident that the Moslems' view of the existence of discrimination of members of ethnic minorities exhibits signs of stagnation, whereas a change for the worse of major proportions was manifested among the Albanians, because the number of the proponents of this view has almost doubled. It is evident that Milošević's nationalist policy, the war in Kosovo in 1998–1999, the activities of the ultra-nationalist Kosovo Liberation Army (KLA), as well as the inability of the international forces stationed in the province to restrain the interethnic conflict, have, to a great extent, poisoned the relations between Serbs and Montenegrins on the one hand, and Albanians on the other (not only in Serbia proper but in Montenegro as well),[85] and that the hatred and animosity manifested towards Albanians (and therefore the discrimination of Albanians when it comes to employment and promotion in Serbia proper and Montenegro) will pose a great problem in the forthcoming period. What particularly aggravates the position of Albanians in Serbia proper and Montenegro

85 Almost all the pollees in our poll who declared themselves as Albanians were from the territory of Montenegro, which we should bear in mind when analysing the replies of this category of the pollees.

is the objectively much worse position of the Serbian and Montenegrin ethnic minorities in Kosovo. Although we were not in a position to put the same question to the Serbs and Montenegrins living in Kosovo, it is quite certain that we would have received the same, if not an even greater percentage of answers that confirm the existence of discrimination of non-Albanian population – among other things, when it comes to employment and promotion in this province. Hatred, intolerance and discrimination will persist for a long time here, due to a kind of linked-vessels effect (Kosovo, Serbia proper and Montenegro).[86]

Finally, our poll contained a question about the discrimination of homosexuals. The pollees' replies indicate a slight change of the situation in comparison with 1998. One-third of the pollees (33.1%) think that there exists discrimination against homosexuals, while one-quarter of the pollees believe that they are given an excessively favourable treatment. Discrimination of homosexuals is denied by 18.7% of the pollees, while 23.6% of the pollees profess not to know whether there is social censure and boycott of homosexuals or not. Judging by these data, over the last two years the citizens of FR Yugoslavia have become slightly more willing to recognise that there exists social censure and boycott of homosexuals.[87]

3.2. Right to life

The opinions of the pollees concerning the recognition of the right to life in FR Yugoslavia were tested using examples of two specific forms of this right: freedom from extrajudicial taking of life

86 It is realistic to expect an improvement in the position of the Moslem ethnic minority in Serbia proper and Montenegro in the foreseeable future, bearing in mind the new political direction of the democratic authorities in Belgrade and the prospects of normalisation of the relations between FR Yugoslavia and B&H.

87 Unfortunately, we cannot say how many homosexuals there were among the pollees, since the poll did not include any questions pertaining to their sexual orientation. That is why the data pertaining to this problem cannot be divided into the replies given by the "normal" majority and those given by the "deviant" minority.

and freedom from the death penalty. As regards the former, we put the following question to the pollees: "What is done with people who are known to be dangerous criminals even though it cannot be proved conclusively?" The phrase "known to be dangerous criminals" constituted a trap: it implied that there existed no evidence of the alleged crimes perpetrated by these "dangerous criminals". An unequivocal characteristic of a repressive regime would be the possibility of having these "dangerous criminals" tried secretly (without the usual procedural guarantees) or even having them killed by the State Security Service.

More than two-thirds of the pollees (69.2%) rejected the possibility that secret trials and liquidations were organised in FR Yugoslavia, opting for the reply stating that no action against the suspect was taken unless sufficient evidence was gathered. 6.5% of the pollees were convinced that secret trials were held for these allegedly "dangerous criminals" whose crimes could not be conclusively proved, while 14.1% of the pollees believed that these criminals were liquidated by the State Security Service. The remaining 10.2% did not give any reply to this question. The current results are almost identical with those from 1998.

As regards the matter of the death penalty, right until the end of the year 2000 the situation in FR Yugoslavia was rather peculiar: the federal Constitution forbade the death penalty for criminal offences regulated by the federal law, while the republican Constitutions left the possibility of the inclusion of the death penalty in the republican law, to be used in the case of "the most serious criminal offences". Under these circumstances, the death penalty could not be used against the most serious criminal offences such as war crimes or genocide, but could be used for some forms of murder, whose incrimination was under the jurisdiction of the federal units.[88] Both the Serbian and Montenegrin legislature made use of the constitutional possibility for

88 Cf. V. Dimitrijević, M. Paunović in co-operation with V. Đerić, *Ljudska prava* [*Human Rights*], Belgrade, Belgrade Centre for Human Rights, 1997, p. 230.

including the death penalty in the respective republican criminal codes, so that the death penalty was used on the entire territory of FR Yugoslavia – on the basis of the republican criminal codes. Since this situation could hardly be described as anything else but chaotic, we wanted to find out what our pollees thought of the status of the death penalty in FR Yugoslavia.

The results show that 35.7% of the pollees believe that the death penalty does not exist in FR Yugoslavia at all; 33.5% think that it exists in the federal legislature only, while 16.4% believe that it exists in the republican legislature only. If this last group, comprising those who gave the correct reply, is taken into consideration, we shall see that a minor part of these pollees (6.5%) think that the death penalty not only exists in the republican legislature but is used as well, while a greater part of them (9.9%) express the following reservation: the death penalty does exist but is never used in practice. The percentage of the pollees who could not express their opinion amounted to 14.4%. The greatest difference is manifested between the replies of the pollees from Belgrade and Montenegro: while 23% of the former think that there is no death penalty in FR Yugoslavia, the same opinion is held by 50.5% of the latter. This shows that the dispersion of public opinion on this matter is greater by far in Serbia than in Montenegro. Such a state of the legal consciousness of the citizens of Serbia, already recorded back in 1998,[89] corresponds to the chaotic constitutional and legislative regulation, and may be considered as a direct consequence of it.

All in all, it turned out that the pollees were to a great extent convinced that there were no secret trials of "dangerous criminals" in FR Yugoslavia if their "crimes" could not be conclusively proved. On the other hand, they proved largely ignorant of the possibility of passing the death sentence provided by the Yugoslav (federal and republican) legislation.

89 Cf. *Human Rights in Yugoslavia 1998*, p. 297.

3.3 Prohibition of torture, inhuman or humiliating treatment or punishment

The prohibition of torture was included in the research through two of its forms: the freedom from torture and state reprisals (this freedom being operationalised through a concrete procedural guarantee to the suspect that he will be spared the extortion of confession by force) and the freedom from physical punishment sentences passed by court.

In order to examine their attitude towards freedom from torture and state reprisals, the pollees were asked the following question: "Is it allowed to use force against someone suspected of having committed a serious crime for which capital punishment is envisaged?" 58% of the pollees replied that it was not allowed, 16.1% believed that the use of force was allowed as long as it did not endanger the health of the suspect, 12.5% that it was allowed as long as it did not endanger the life of the suspect, while 13.4% had no answer to that question. Although the results are better than those in 1998,[90] the percentage of those who believe that it is allowed to extort confession by force from persons suspected of having committed a criminal offence for which capital punishment is envisaged is still high (28.6%), especially when taking into account the percentage of the pollees who had no answer to this question, and testifies to the widespread ignorance of the content of freedom from torture and state reprisals.

The attitude of the pollees towards the freedom from physical punishment sentences passed by court leaves the same impression. Asked "Is there physical punishment in the Federal Republic of Yugoslavia?", the right (negative) reply was given by almost an identical percentage of the pollees – 57.2%. The rest were either those who gave a wrong (positive) reply (28%) or those whose reply was "I do not know" (14.8%). These results are again better than in 1998, but the difference is not all so great (some 12% from the group which in 1998

90 In 1998 only 45.8% gave a negative reply. Compare *ibid*, pp. 297–298.

had no answer to the question was transferred to the group which gave a negative reply in 2000). Thus, the opinion, formed in 1998, that there is widespread disbelief in the Federal Republic of Yugoslavia regarding the possibility for a person in a court procedure (both at the stage of investigation and at the stage of the implementation of a court sentence) to preserve his physical integrity and be spared maltreatment, still prevails. Anachronous as it may sound in Europe at the end of 20th century, physical violence as a means of extorting confession and as a court punishment is still far from being eradicated from the legal awareness of the citizens of FR Yugoslavia.

3.4. Right to the freedom and safety of a person and treatment of persons in custody

The awareness of the right to the freedom and safety of a person was examined in our research in the form of the following question: "For how long can a person be held in custody during investigation under our law"? The correct answer (one month, and only in some exceptional cases six months) was given by 45.8% of the pollees, while 6.7% thought that custody could last up to three years, and as much as 28.1% thought that it could last for as long as it was necessary to find evidence (which virtually meant that it could last forever). The remaining 20.2% had no answer to this question. The result is again better than in 1998, although the improvement is not considerable. As it could be expected, the correct reply to this question was given primarily by educated pollees (59.5%) rather than by those without elementary school (23.6%). It is interesting to mention that the right reply was given by more men (52.1%) than women (39.4%).

It is obvious from the above data that the awareness of pollees as to how much the state can affect the freedom and personal safety of individuals has improved, although it is still far from being developed. It is particularly obvious that an insufficient number of the pollees have an idea about the inviolability of physical integrity. That is even logical to an extent: if the court has the "right" to sentence to

physical punishment, it must by no means be deprived of the "right" to hold the suspect in custody for an unlimited period of time during investigation.

3.5. Right to a just trial

It could be concluded already in the two previous chapters that the biggest problem concerning human rights in FR Yugoslavia lies in the domain of independent judiciary. Be it the court trial itself or the implementation of legally valid court decisions, the citizens of FR Yugoslavia face great uncertainty as to whether they will be able to exercise their rights. It is therefore interesting to look at the replies of the pollees to five questions covering the field of the right to a just trial.

The first question which the pollees were asked within the examination of the forms of the right to a just trial, was the following: "Within what period of time must an arrested person appear before the judge"? The largest number of the pollees (37.1%) said that they did not know the answer to that question, one third (32.6%) gave wrong answers, while only the remaining 30.3% gave the right answer (within 24 hours). Therefore, slightly less than one third of the pollees would think that a very important procedural right of theirs was violated if they were arrested and did not appear before a judge within 24 hours.

We have already seen that 6.5% of the pollees believe that secret trials are organised in FR Yugoslavia for "dangerous criminals" for whose "crimes" there is no solid evidence (if, after all, there is "someone" who "knows" that they committed them). Asked if there was a rule in FR Yugoslavia that all court procedures were public, only one fifth (21.5%) of the pollees replied positively. The rest were of the opinion either that the rule was not applied at all (24.6%) or that it was applied, but with a lot of exceptions (40.0%), while 13.9% said that they did not know. In other words, a large majority of the pollees believe that secret trials are organised in FR Yugoslavia, either sporadically or in a regular (sic!) judicial form. It is interesting to mention

that the largest percentage of the pollees who think that there are many exceptions from the public trial rule were found in Montenegro (44.8%), while this number was the smallest in Vojvodina (32.1%).

The pollees also answered the question if there was a rule in FR Yugoslavia that everyone is innocent until found guilty in court. 40.8% of the pollees gave a positive answer, while 6.5% had no answer. The remaining 52.7% either denied the application of the rule of the presumption of innocence (11.6%) or mentioned a great number of exceptions from the rule (41.1%). All in all, every other pollee was more or less sceptical regarding the application of the presumption of innocence rule in FR Yugoslavia.

Unlike the devastating replies to the previous three questions in the field of the right to a just trial, replies to the question "Can everyone freely choose an attorney to represent them"? turned out to be encouraging. The large majority of 76% was of the opinion that the right was respected without exception, 3.3% of the pollees generally denied that this right was respected, while 15.4% mentioned a great number of exceptions from the rule (the remaining 5.3% said that they did not know the answer).

Finally, the pollees were offered the possibility to give their opinion on judges presently active in the territory of FR Yugoslavia. Over one half of the pollees (53.6%) said that judges were generally bad and dependent on politicians. A far smaller percentage (9.6%) thought that judges were generally good and independent, while 19.1% pointed out the efforts of judges to remain honest in the present very bad conditions (7.2% had no opinion). If we compare these data with those from 1998, we shall see that the reputation of judges in FR Yugoslavia kept declining. However, unlike in 1998 (when the dissatisfaction with judges was particularly pronounced in Montenegro), in 2000 there were no significant regional differences in the opinions of pollees on this issue. This means that the opinion on judges has rapidly become worse in Serbia in the last two years. As regards other criteria, it is obvious that age and profession still play a role, if not such an important one as in 1998: the pollees who showed the least tendency

to declare judges bad and dependent on politicians turned out to be those above 65 years of age (41.5%) and housewives (40.1%). However, as it can be seen, even in these, as a rule, the most conservative categories of pollees, prevail those who are dissatisfied with the situation in judiciary.

The above results clearly show that pollees have a realistic perception of the erosion of judiciary in FR Yugoslavia and that they are aware that there is no independent judiciary. Furthermore, they have a very distorted awareness of the possibilities offered by the domestic procedural law, so that most pollees deny to a larger or lesser extent the existence of such procedural guarantees such as the urgent appearing of the arrested before the judge, the public trial and the presumption of innocence (unlike the right to a free choice of an attorney, which the pollees see as implemented to a large extent).

3.6. Right to the protection of private life, family, flat and correspondence

Our research included the right to privacy in two forms: the freedom from the opening of letters and phone tapping and the freedom from a police search of a flat without a warrant.

63.5% of the pollees (i.e. 14.3% more than in 1998) are of the opinion there is an unconditional freedom of communication by letters and telephone in FR Yugoslavia. It is possible that this is one of the direct effects of the toppling of Milošević's regime on 5 October, in view of the fact that one of the first "liberation proclamations" of the DOS leaders was that the police tapping of citizens had been abolished. Presently 32.4% of the pollees are convinced that the police is entitled to open letters and tap telephones without a warrant, for 5.3% it is enough that the police has its reasons having to do with protecting the existing government, while the remaining 27.1% think that the only right reason lies in the security of the country (4.2% did not answer this question). Be that as it may, the percentage of pollees who believe that the police still violates the freedom of correspondence and tele-

phone communication without a warrant has decreased from one half to one third in the last two years.

The pollees were then asked in which cases the police could search a private flat. Since it was possible to offer several answers, the results shown in Table 3 give a score exceeding 100%.

Table 3. Bases for the search of a private flat

"In which cases can the police search a private flat"?	%
1. If there is a court warrant	77.0
2. If there is a police warrant	34.7
3. If there is a warrant issued by the State Security Service	25.4
4. Whenever thought necessary	15.3
5. Whenever security is endangered	14.7
6. I do not know	5.7

The results are similar to those from 1998.[91] Since the pollees had the possibility of offering more than one answer (three at the most), there were mistakes again when they gave their second and third answer. Like in 1998 when 71.7% of the pollees first opted for the "court warrant", now again by far the largest percentage of the pollees (76.9%) immediately encircled the court warrant as a condition for a police search of a flat. Had it been possible to offer only one answer, options 2–6 would have attracted between 2% and 7% of the pollees, while option 1 would have triumphed convincingly. However, 43.6% did not give only this answer, but offered another one (and 29%

91 Although there is some improvement, it is not significant. Compare *ibid*, p. 301.

offered another two answers), which boosted the support to the option according to which the police can search flats both with a police warrant (34.7%) and with a warrant of the State Security Service (25.4%), but also without any warrant – i.e. whenever it assesses that security is endangered (14.7%) or simply that such a measure is necessary (15.3%). This to a large extent relativises the importance of the large percentage of the pollees who in their first answer opted for the court warrant as a basis for a search of a private flat. Namely, it is obvious that for quite a large number of pollees it is completely irrelevant with what kind of warrant the police would enter and search their flat – they would let them in anyway!

3.7. Right to the freedom of thought, conscience and confession

The first form of the right to the freedom of thought, conscience and confession to be considered in this section is the freedom from state ideology in schools. After the collapse of socialism, Marxism was excluded from the curricula in Yugoslavia so that today the entire educational process should be carried out without any traces of state ideology. In view of that, we asked the pollees if that was really so, in other words, if school curricula must be compatible with an official view after all. 39.9% of the pollees answered that there was really no state ideology in schools, while 31.4% said that they did not know. The percentage of those who claimed that even today there was official instruction in schools is twice as high as that from 1998, amounting to 28.7%. The majority could not precisely state what instruction it was and gave very general answers ("as determined by the Ministry of Education", "the views advocated by the ruling party", etc.). Concrete answers were rare: the Orthodox religion was mentioned by 1.9% of the pollees, nationalism by 0.3% and Marxism by 0.2%. Obviously, the percentage of those who are convinced that there is the indoctrination of children in schools is on the rise, although there are few of

those who are capable of precisely defining the instruction with which children are (allegedly) indoctrinated.

The other form of the freedom of thought, conscience and confession which we examined is the freedom of confession and expression of religious beliefs. It is commonly known that the church was in a very unfavourable position under the socialist regime, and therefore it seemed interesting to us to be acquainted with the opinion of the pollees as to how much the situation improved after the collapse of socialism. Asked "To what extent does the freedom of confession and expression of religious beliefs exist today to your mind"?, 46.2% of the pollees answered "To the right extent". There were 19.9% of those who thought that the freedom of confession and expression of religious beliefs in FR Yugoslavia was still quite limited, while 28.6% felt that the whole thing was presently exaggerated because some dangerous sects were tolerated. The above results show that a very small percentage of the pollees (5.3%) refused to answer the question. They also show that the percentage of those satisfied with the freedom of confession and expression of religious beliefs is somewhat higher as compared to that in 1998,[92] but that the percentage of the dissatisfied is of a different structure, so that today there are far more those who are scared by the activities of sects in FR Yugoslavia – 5.4% of the pollees expressed this concern in 1998, while today the number of such pollees is five times greater! All in all, there are still rather polarised opinions on the current situation regarding the freedom of confession and expression of religious beliefs, with the number those who believe that this freedom is exaggerated rising rapidly.

The polarisation over this issue is considerably less expressed with members of ethnic minorities of Catholic faith living in Vojvodina: the answer "To the right extent" was given by 69.1% of Hungarians, 68% of Croats and 61.3% of Slovaks. The situation with Albanians and Moslems is different: only 38.5% of the former and 42.5% of the latter is satisfied with the existing freedom of confession

92 By almost 7%. Cf. *Human Rights in Yugoslavia 1998*, p. 303.

and expression of religious beliefs. Obviously members of the Albanian and Moslem ethnic minorities tend to feel ethnically discriminated in the field of religion too. Serbs, Montenegrins and Yugoslavs are somewhere in the middle between Hungarians, Croats and Slovaks on one side and Albanians and Moslems on the other. It is possible that behind their critical attitude to the existing situation regarding the freedom of confession and expression of religious beliefs, there is, among other things, certain dissatisfaction with the position of the Orthodox Church and the absence of positive discrimination towards Orthodox believers.

3.8. Freedom of expression

The freedom of expression was one of the most denied rights in the former Socialist Federal Republic of Yugoslavia. Critical thought was especially suppressed under the notorious article 133 of the Criminal Code of SFRY,[93] which envisaged the so-called "verbal offence". The Federal Republic of Yugoslavia formally abolished "verbal offence", but it is still questionable if some remnants of this archaic institute survived after all. Therefore we wanted to see if in the opinion of our pollees something has changed in the meantime, i.e. since the notorious "verbal offence" was deleted from the Criminal Code. The pollees were offered three options for the situation in FR Yugoslavia: an absolute freedom of the dissemination of information, the freedom of the dissemination of information within internationally set legal limits (tarnishing the image of another person was taken as an example) and the freedom of the dissemination of information limited by the prohibition to criticise the government. It turned out that 27.7% of the pollees were convinced that there was an absolute freedom of the dissemination of information, 45.5% thought that this freedom was limited under internationally set legal standards, while 19.1% remained

93 Cf. the works in the Collected Papers: *Misao, reč, kazna. Verbalni politički delikt*, Beograd, Institut za kriminološka i sociološka istraživanja, Belgrade, (Institute for Criminological and Sociological Research), 1989.

convinced that the freedom of the dissemination of information was still limited in FR Yugoslavia in all cases in which the government was criticised (7.7% refused to answer this question). It is obvious from the results that in the last two years the percentage of the pollees who see the criticism of the government as a basis for limiting the freedom of the dissemination of information in FR Yugoslavia has decreased from one third[94] to less then one fifth, while the percentage of those who believe that the Federal Republic of Yugoslavia finally achieved a level of the freedom of expression which is in accordance with international standards, rose to almost one half.

The next question related to the freedom of expression was: "Is there the censorship of works of art"? 32.8% of the pollees answered that there was, 18.4% thought that censorship formally did not exist, but was applied informally in state art institutions, while only 28.1% said "No" without reservation. In that connection, 20.7% of the pollees said that they did not know if there was or was not the censorship of works of art in FR Yugoslavia. These results are almost identical to those from 1998, which means that in the legal awareness of citizens persists the view that there is this form or other of the censorship of works of art in FR Yugoslavia.

Answers to the question "Is there the censorship of the press"? are even more devastating. As much as 51.4% of the pollees answered directly "Yes", another 10.9% said that the censorship of the press did not exist formally, but was applied informally in a part of the press. Only 25.2% claimed that there was no censorship of the press in FR Yugoslavia, while 12.5% was not able to give an answer. These results are again almost identical to those from 1998, so that we may well say that in the last two years nothing so significant has happened which would alter this deeply rooted view on the existence of the censorship of the press in the legal awareness of the citizens of FR Yugoslavia. It is also interesting to mention that the pollees from Montenegro emphasise more the existence of censorship (57.7%) than the pollees

94 Cf. *Human Rights in Yugoslavia 1998*, p. 304.

from Serbia (49.9%). It is worth mentioning that this opinion is more widespread among SNP followers (65.3%) than among DPS followers (55.1%).

As regards the censorship of the press, the pollees were asked about the attitude of the government towards the part of the press which it had failed to put under its control. In the opinion of 33.4% of the pollees, the government did a lot to subdue the press independent of it, 18.7% thought that that kind of press was tolerated by the government because it believed that it was of little importance, while 12.2% could not answer the question. The remaining 35.6% said that the government treated the independent press the same way as any other press. In comparison with 1998, the improvement lies in the fact that the percentage of those who believe that the independent press enjoys full equality has doubled. The percentage of the pollees who were of that opinion is higher in Serbia (38.6%) than in Montenegro (22.7%). It is especially low among SNP followers (11.1%), while it is very high among DPS followers (33.9%).

Results were similar when the pollees were asked about the position of independent publishers: 30.3% of the pollees thought that the government did a lot to subdue them, 20.2% thought that the government tolerated them because it considered them to be of little importance, 35.1% shared the view that the government had the same attitude towards them as towards any other publisher, while 18.6% had no answer. Obviously, to the mind of the pollees, the fate of independent publishers is inseparable from the fate of the independent press. Like in the two previous questions, the pollees from Montenegro were again more critical and less inclined to claim that independent publishers enjoyed full equality (23.1%) than the pollees from Serbia (37.9%). The percentage of DPS followers satisfied with the present situation (34.5%) is three times higher than the percentage of SNP followers (10.8%).

Finally, we asked the pollees about the position of independent radio and TV stations. Answers to that question were not much different from those to the two previous questions: 31.3% thought that the

government did a lot to subdue them, 18.5% opted for the government's tolerating them considering them to be of little importance, 38.3% insisted that the government had the same attitude towards them as towards any other radio and TV station (11.9% could only say "I do not know"). Again the pollees from Serbia were more inclined (41.2%) to note the full equality of independent radio and TV stations than the pollees from Montenegro (25.8%). SNP followers are again the most dissatisfied group – 50.7% of them think that the government is doing a lot to subdue independent radio and TV stations (28.4% of DPS followers have the identical opinion).

If we summed up the impressions about the perception of freedom in the mass media formed in the mind of the citizens of FR Yugoslavia, we could underline two crucial points. First, the awareness of the existence of censorship is still deeply rooted, and second, this awareness started to change in Serbia – although slowly. The ousting of the regime of Slobodan Milošević's personal power on 5 October and the changes in programme policies which followed immediately in the numerous Serbian TV, radio and newspaper houses obviously led to the impression of a part of the pollees about the cessation of repression towards the independent media, and even, to an extent, about the promotion of freedom in all the mass media and the weakening (or even disappearance) of any governmental influence on them. Hence most differences in the answers of the pollees from Serbia and Montenegro to the questions about the freedom of the mass media can be likely explained. In any case, the situation is still far from satisfactory and if for the new government in FR Yugoslavia, (which at the time when this research was conducted controlled the Serbian political institutions only partially), the extenuating circumstance is having too little time to initiate any thorough changes, there is no such extenuating circumstance for the government of Montenegro. The negative view on the freedom of the mass media shared by most pollees from Montenegro both in 1998 and 2000 testifies to the fact that the media problem in this republic still exists and that nothing has been done to solve it. That conclusion additionally testifies to the far greater dissatisfaction with the freedom in the mass media existing among SNP

followers (who are the opposition in the republic) than among the followers of the ruling coalition "For a better life" (DPS, SDP and NS).

We also asked the pollees about organisations monitoring the violation of human rights in the territory of FR Yugoslavia and informing the local and international publics accordingly. The percentage of those who said that those were useful organisations contributing to the respect of human rights significantly increased – from 30.1% in 1998 to 48.1%. On the other hand, the percentage of those who have a critical attitude towards these organisations decreased – negligibly in the case of those who believe that they are pointless organisations (from 29.7% to 26.2%), and significantly in the case of those who tend to call them illegal and mercenary organisations whose activities are dangerous for the state (from 25.6% to 13.5%). In this connection, the percentage of those who did not know anything about these organisations remained almost the same (12.2%). As we can see, the prevailing opinion on organisations monitoring the respect of human rights is far better than in 1998. This is mainly the consequence of changes in Serbia, where the percentage of pollees with a positive attitude towards these organisations rose from 27.6% to 48.7%. In Montenegro too the percentage of the pollees who see the mentioned organisations as factors of improving the respect of human rights rose, but not so much – from 40.0% (1998) to 45.4% (2000). The changes in the opinion of the pollees on organisations monitoring human rights violations in FR Yugoslavia are encouraging since the promotion of human rights standards in this country will largely depend on these organisations, as well as on the trust and co-operation of citizens they can count on.

3.9. Freedom of peaceful assembly

The pollees were asked about the conditions under which the assembly of people in public places in order to protest is legal. Peaceful assembly was preferred by 34.7% of the pollees, 50.8% opted for the permission of a competent state authority (not required under any

of the three applicable constitutions in the Federal Republic of Yugoslavia), and 8.9% insisted on the constitutional and legal condition in Serbia[95] that assembly should not disrupt public traffic (while 5.6% said "I do not know"). As we can see, when stating the conditions under which assembly in public places is legal, the pollees opted much more for the restricting condition which is not constitutionally and legally envisaged (the permission of a competent state authority) than for the restricting condition (not disrupting public traffic) which *is* prescribed in Serbia (by the Constitution and the Law on Assembly of Citizens). It is interesting that in these answers one cannot find considerable differences between the pollees of different age, profession, occupation, or even ethnic and regional affiliation. Furthermore, the above results do not essentially differ from those from 1998, so that the impression is that the protest assembly of Serbian citizens in late September and early October, as well as its climax reached when Slobodan Milošević was ousted on 5 October in Belgrade (on whose streets were 700,000 people that day according to some estimates), did not have any great effect on the changes of citizens' opinion on conditions under which assembly of people in public places in order to protest is allowed.

3.10 Freedom of association

In the former SFRY membership in the Communist Party was an important condition for social promotion and informal control, which is why this state was often accused of violating the freedom of association. It is well known that former communists in Serbia and Montenegro only renamed themselves in 1990 and continued to rule as socialists, maintaining the bulk of their old party network and infrastructure. This is why we wanted to learn from our pollees what has changed regarding the freedom of association after the downfall of socialism. They were first asked to mention the cases in which

95 This condition is prescribed in article 43, paragraph 2 of the Constitution of Serbia and further elaborated in the Law on Assembly of Serbian citizens of 1992.

membership in the ruling party was required under the law for someone to be appointed to a particular post. Since it was possible to offer several answers, the total score of the results shown in Table 4 exceeds 100%.

Table 4. Cases in which membership in the ruling party is required

"In which cases is membership in the ruling party required under the law"?	%
1. There are no such cases	45.8
2. When officials and civil servants are appointed to posts in state authorities	25.7
3. When directors of enterprises in social and mixed ownership are appointed	23.4
4. When judges are appointed	18.3
5. I do not know	19.2

The first thing to catch one's eye from Table 4 is that almost one half (45.8%) of the pollees correctly answered that membership in the ruling party is not necessary under the law in any of the mentioned cases. This is great progress as compared to 1998 when the percentage of pollees who claimed the same was almost half as much. The percentage of those who did not know the answer to this question also decreased, although not so drastically – only by one fifth. The group of pollees claiming that membership in the ruling party is a condition for appointment to a particular post has the greatest number of those who think that it is necessary in the case of appointment of officials and civil servants in state authorities (25.7%). A slightly smaller percentage of the pollees (23.4% and 18.3%) think that such member-

ship is required under the law for appointment of directors of enterprises in social and mixed ownership. It is interesting to look at the differences in the answers of the pollees from Serbia and Montenegro. The difference in percentage of the pollees denying that membership in the ruling party is required under the law for appointment to particular posts exists but is not great (in Serbia 46.7% and in Montenegro 41.8%). The difference between the pollees from Serbia and Montenegro is even smaller (although in the other direction) regarding membership in the ruling party as a legal condition for appointment of directors of enterprises in social and mixed ownership (in Serbia 23% and in Montenegro 25.2%) and of judges (in Serbia 17.1% and in Montenegro 23.8%). However, the difference becomes significant when it comes to membership in the ruling party as a legal condition for appointment of officials and civil servants in state authorities: while in Serbia only 24.6% of the pollees think that this membership is necessary, in Montenegro there is 45.9% of such pollees. The positive attitude prevails, as expected, among SNP followers: their percentage (46.7%) is twice as high as the percentage of DPS followers (23.8%) with the identical opinion. As we can see, the opinion that the state is still a party state is much more widespread in Montenegro than in Serbia, this opinion prevailing among the followers of the party which is the opposition in this republic. The most interesting part is that the opinion according to which membership in the ruling party is a legal condition for appointment of officials and civil servants in the state authorities in Montenegro has a rising trend (in the last two years the percentage of pollees adopting the same opinion has increased by 8.5 %), while in Serbia it had a rapid falling trend (in the last two years the percentage of pollees adopting opinion has decreased by 27.4%). The reason why Serbia registered such a rapid fall of the number of pollees who see their state as a party state probably has to do with the political changes initiated of the 5 October (at the time when we conducted this research it was expected that the changes would continue after the republican elections of 23 December.

Trade unions are a specific form of association. In the former SFRY trade unions were integrated in the ruling power structure and

they could not really articulate and represent the interests of their members.[96] We asked our pollees to what extent the newly founded independent trade unions manage to do the same nowadays. The results reached are not encouraging and essentially not different from those reached in 1998:[97] only 17.9 % of the pollees are satisfied with the organisation and activities of independent trade unions in FR Yugoslavia. Critical voices prevail: 22.1% ascribe bad organisation and poor representation of interests of their members to independent trade unions, 21.6% go so far as to claim that these trade unions are still a screen for manipulations of directors and politicians: 19.8% of the pollees claim that trade unions exist only on paper and 18.7% could not say anything about them. It is obvious that the newly founded independent trade unions have a very bad rating in the eyes of the population of FR Yugoslavia and are still far from the position which would enable them at least a relatively equal struggle with employers and the privileged (so-called "state") trade union, which was controlled by the ruling SPS in the last years. It is interesting that there are no major differences over this question between the pollees of different professions (including housewives and the unemployed). Neither are there any great differences between the pollees of different party affiliations.

3.11. Right to peaceful possession of property

Social property was one of the corner stones of SFRYžs legal system. Despite that fact, after downfall of SFRY, social property continued to exist as the prevailing property form in FR Yugoslavia, or rather in Serbia, since it was abolished in Montenegro.[98] Therefore

96 Cf. A. Molnar: "Trade Unionism in Serbia – the Past and the Present", *Dialogue*, No. 1–2/96, pp. 79–83.

97 Cf. *Human Rights in Yugoslavia 1998*, 308.

98 Regarding the links between the "new" government and the "old" social ownership cf. A. Molnar: "The Collapse of Self-Management and the Rise of Führerprinzip in Serbian Enterprises", *Sociology,* ann. 38, No. 4/96, pages 539–559.

our pollees were asked about the relation between social and private property in FR Yugoslavia. The equality between the two forms of property exists in the opinion of 13.4% of the pollees, the predominance of social over private property exists according to 18.0%, while the great majority of the pollees (58.4% believe that social property is only a screen for the illegal acquisition of private property – primarily by directors and politicians (10.2% could not answer this question). It is obvious therefore that the population of FR Yugoslavia predominantly has the awareness of the manipulative character of social property and the discrimination of private property (in Serbia) hidden behind the slogan about the "equality" of both forms. In this connection it is important to note that the youngest and the most educated pollees, and the oldest and the most uneducated ones still have very different opinions on private and social property.

3.12. Rights of minority members

Special rights of members of ethnic minorities were included in our research through the right to publishing trade and schools in their mother tongue. Asked "Do members of ethnic minorities have the right to publish books and attend schools in their mother tongue"? the largest percentage of the pollees (59.8%) answered affirmatively, without envisaging any conditions. 26.5% of the pollees considered approval of a state authority a necessary condition for the enjoyment of this right, while 10.1% opted for its denial to all "disloyal" ethnic minorities (3.6% of the pollees knew nothing about it). As we can see, although most pollees correctly understand the exercise of this right, still over one third tends to think that there is a system of state permits, and even a possibility of denying this right to "disloyal" ethnic minorities. As regards members of ethnic minorities themselves, they mainly share the opinion of Serbs and Montenegrins, only that the percentage of the pollees who think that ethnic minorities enjoy this right unconditionally falls under 50% solely in the case of Albanians (by 3.8%).

3.13. Political rights

FR Yugoslavia was an exception from the model of political development of post-socialist countries in Eastern and Central Europe for a long time. Namely, all until 5 October 2000, former communists had not let go of the reins of power even for a moment. Having renamed themselves as socialists they rather artfully adjusted to the new conditions of party pluralism. In the meantime, on 23 December former Serbian communists (SPS and JUL) lost power in the Republic of Serbia, which opened a new page in the political history of the country. In Montenegro things are much more complicated since the former communists split into two fractions, one of which (DPS) has incessantly ruled in Montenegro (since 1998 within the coalition "For a better life", joined by, until then, the opposition parties SDP and NS), while the other party (SNP) has ruled in FR Yugoslavia, first in the coalition with SPS and since October 2000 in the coalition with DOS. Taking it all into account, and especially the way in which Slobodan Milošević was toppled, it is difficult to say whether there really is a multi-party democratic order in Yugoslavia or not. At the moment when we conducted our research it was still unknown whether in FR Yugoslavia, or in each of its republics, there could be the right to peaceful political opposition, which could actually automatically take power if it won an election.

Bearing all that in mind, we offered the pollees the same question as in 1998: does FR Yugoslavia have a multi-party political system like that existing in Western countries at all. 46.1% of the pollees answered affirmatively, while 39.8% were reserved thinking that one party had sovereign power, while the opposition parties had the right to participate in elections in our country. The rest were those who either did not know the answer (6.6%) or denied the existence of a normal multi-party political system in FR Yugoslavia (7.5%). Here we see that certain changes occurred in the awareness of our citizens. While in 1998 20.1% of pollees denied that in Yugoslavia there was a multi-party political system like in Western countries, this percentage

now fell to 7.5%. The percentage of pollees who now tend to put an equation mark between the Yugoslav multi-party system and that in the West rose by nearly the same figure. Again the most interesting are regional differences in the distribution of answers. Namely, while in Serbia 49.1% of pollees believe that FR Yugoslavia has a multi-party system like in the West, in Montenegro only 33.3% of pollees are of the same opinion. And vice versa, 36.7% of the pollees in Serbia and 53.1% of the pollees in Montenegro had reservations thinking that in the Yugoslav political system one party had sovereign power, while the opposition parties only participated in elections. If we have a look at party affiliations, we shall see that this opinion is advocated by even 60.8% of SNP followers (and 48.3% of DPS followers). The long-lasting and continuous participation of SNP in the Federal Government and especially of DPS in the Montenegrin government has brought about in time a widespread and very deeply rooted opinion among the citizens of Montenegro that the ruling party (originating from the former communist party) allows the opposition parties to participate in elections – but nothing more than that.

We also asked the pollees what happens under our law when an opposition party or coalition wins an election. In other words, the pollees were clearly asked to state their opinion on the legal regulation of the change of government as a result of the will of voters demonstrated at an election. Asked that, the majority of 43.8% of the pollees answered that the opposition party or coalition took power automatically. This is a much better result than that in 1998 when only one fourth (25.0%) was ready to encircle this answer which is the only one correct. However, in the research conducted this year 36.8% gave the wrong answer that the results of an election won by an opposition party or coalition had to be confirmed by the Supreme Court to make them legally valid. Further 11.1% answered that under our law such an election was repeated, while 13.8% of the pollees could not answer this question. In any case, there is visible progress in understanding the normal functioning of a multi-party political system, although a great number of citizens of FR Yugoslavia are convinced that the law

itself contains mechanisms to make it impossible or more difficult for the opposition to take power.

3.14. Special protection of the family and child

The eruption of nationalism in the territory of the former SFRY largely reflected on micro-social groups, such as the family, or marriage. One aspect of this complex problem concerns the possibility of entering mixed marriages. We asked our pollees what in their opinion are the main impediments to entering mixed marriages nowadays. Slightly over one third of the pollees (40.6%) said that there were no impediments to entering mixed marriages in FR Yugoslavia. The rest (59.4%) either could not precisely mention the impediments to mixed marriages (4.6%) or found them in the repressive measures of the state (2.7%), in the people who think that mixing the blood of different nations was bad (24.7%) and in propaganda, which found its way to people's intimate life (27.4%). A large part of the pollees are therefore aware of the impediments of entering mixed marriages, and basically tend to attribute them to the personal motivation of women or men themselves, or to propaganda, which played a decisive role in the hierarchy of criteria for choosing a spouse. In comparison with 1998 the situation has changed insomuch as it is not Serbs and Montenegrins anymore who least tend to claim that there are no impediments to entering ethnically mixed marriages. The research conducted in 2000 shows that the smallest number of Moslems (25.6%) and Albanians (30.8%) tend to claim that there are no impediments to ethnically mixed marriages in FR Yugoslavia.

3.15. Right to citizenship

The disintegration of the former SFRY brought about, among other problems, the problem of citizenship. In the old state people were often born in one republic, attended schools in another, settled and

married in a third, and lived in a fourth republic when the country dissolved in 1991. Such people encountered immense problems in the attempt to regulate their citizenship in the newly founded states in the territory of the former SFRY. Putting aside this problem, which is considered in more detail, at least as far as FR Yugoslavia is concerned, in the first chapter, section 4.15), we shall now dwell on how our pollees see the problems related to the acquisition of Yugoslav citizenship.

Most pollees assess the conditions for obtaining Yugoslav citizenship negatively: 33.8% believe that there is such chaos in this field that no one can deal with it, while 25.6% thinks that it is about the discrimination of people, who all used to live in one state earlier, and now cannot obtain the citizenship of the state in which they live as normal citizens. That the conditions for obtaining Yugoslav citizenship are fair is the opinion of 25.3% of the pollees, while the remaining 15.3% are not able to answer the question. The fact registered in 1998,[99] that Serbs, Montenegrins and Yugoslavs are more dissatisfied with the conditions for obtaining citizenship than members of ethnic minorities, did not repeat in 2000: now it was Croats (40%) and Albanians (38.5%) who complained about discrimination in granting citizenship, rather than Serbs (25.5%), Montenegrins (21.5%) and Yugoslavs (30.9%).

There are different categories of people who cannot obtain citizenship in FR Yugoslavia. Apart from "indigenous people" who cannot exercise the right to citizenship for some formal condition, there are also refugees, migrants from Albania (of ethnic Albanian origin) who have never obtained or applied for Yugoslav citizenship, as well as people who have already obtained a foreign citizenship, but want to have Yugoslav (dual) citizenship as well. In this research we wanted to look at the attitude of the pollees towards these categories of people without citizenship. The results are presented in Table 5 below.

99 Cf. *Human Rights in Yugoslavia 1998*, Page 313.

Table 5. Views of pollees on the attitude of the state toward people seeking citizenship

People seeking citizenship	Attitude of the state		
	Inflexible	Fair	Flexible
1. Refugees seeking citizenship	40.5	38.3	17.7
2. Albanians not having and not seeking Yugoslav citizenship	19.5	29.7	45.0
3. Citizens of Federation B-H who want to have Yugoslav (dual) citizenship as well	32.8	43.1	17.7
4. Citizens of all the states established in the territory of former SFRY who want to have Yugoslav (dual) citizenship as well	31.8	43.4	17.8
5. Citizens of other states who want to have Yugoslav (dual) citizenship as well	21.9	49.4	21.6

The data presented in Table 5 testifies to a generally negative attitude of the pollees towards dual citizenship, i.e. towards those seeking it. While Milošević was in power, the government of FR Yugoslavia seem to have enjoyed significant support of the population (49.4%) in its policy against dual citizenship, while 21.6% consider that policy as still too lenient. It is worth mentioning that in comparison with 1998, the percentage of the pollees believing that the attitude of the former Yugoslav government towards refugees is either fair or lenient, has decreased. However, even this smaller percentage (56%) reached in 2000 is still pretty high and testifies to a more permanent negative attitude of most citizens of FR Yugoslavia towards refugees. The only thing about which the pollees were critical is the attitude of the former Yugoslav government towards Albanians who do not have

Yugoslav citizenship and do not seek it; half of the pollees would take more repressive measures[100] towards this category of people.

In any case, we could repeat the conclusion brought on the basis of the results from 1998: pollees make a great difference when assessing the conditions for obtaining citizenship between "indigenous people" in FR Yugoslavia and refugees and foreign citizens. The pollees consider the former to be discriminated by the state, while on the other hand they generally think that the latter are treated fairly, or in the case of Albanians seeking citizenship, too leniently by the state.

3.16. Freedom of movement

The pollees were also offered the question: "Can every citizen of FR Yugoslavia settle wherever he wants in this state"? 55.2% of the pollees replied "Yes, without any conditions", 30.3% thought that a special permit of a competent state authority was necessary in order to settle in a particular place, 4.8% did not know the answer, while 9.7% of the pollees thought that today a man could settle only where he was welcome in FR Yugoslavia. Most pollees who encircled the last option were Albanians (34.6%), and then Moslems (22.1%).

Asked "Can every citizen of FR Yugoslavia leave the state freely"? 35.9% answered "Yes, without any conditions", 48.3% thought that a permit of a competent state authority was required in order to do that, while 11.3% saw exit fees (fees paid in order to leave the country), which were already abolished at the time of the research, as a discriminatory measure aimed at poorer strata of society (5.9% did not answer this question). As it can be concluded from these data, the pollees notice that in FR Yugoslavia there are much greater restrictions of the freedom of movement when one is leaving the country than when one is changing the place of residence in the country.

100 Nevertheless, it should be noted that this high percentage (45%) is lower than that in 1998 (50.6%).

We also asked the pollees about their view on expulsion, i.e. on whom the state can legally expel from its territory today. The correct answer ("Only a foreigner, and never a citizen of FR Yugoslavia under any conditions") was given only by 35.5% of the pollees. Others opted for the following answers: "Both a foreigner and a citizen of FR Yugoslavia who committed a serious crime" (22%), "Both a foreigner and a disloyal citizen of FR Yugoslavia" (9.7%), "Both a foreigner and a disloyal member of a national minority" (4.7%), "No one can be expelled" (15.8%) and "I do not know" (11.5%).

3.17. Economic and Social Rights

A heterogeneous group of human rights including economic and social rights was encompassed by our research in the form of three rights. The first right is related to the employment of minors. Asked "Is it punishable to employ a minor under 16"? 47.7% of the pollees correctly answered "Yes, without exceptions". Others either did not know the answer (9.4%) or mentioned non-existing exceptions from the rule – when the child is mentally and physically up to the job it should be doing (14.9%) and when he supports himself and his family by his work (28.1%).

The pollees were also supposed to state which documents were required in order to get a job in FR Yugoslavia apart from the employment record booklet and a school diploma. 5.3% of the pollees mentioned the certificate on nationality (which, of course, does not exist, but was invented for that occasion), and 12.2% of the pollees mentioned a membership card of political parties. The majority of the pollees who mentioned the membership card of a political party as a requirement for employment precisely stated that they meant SPS and JUL, although there were many imprecise answers ("the ruling party", the party of which the director in question is a member, etc.). Quite a percentage of the pollees (31.1%) mentioned the certificate on permanent residence in the place of employment. The only correct answer

(no document) was offered by 35.1% of the pollees. Generally speaking, this testifies to a relatively high degree of ignorance of documents required for employment.

The right to use scientific achievements was included in our research in the form of the use of contraceptives. The pollees were asked: "To what extent are contraceptives (for the prevention of unwanted pregnancy) used today in your opinion"? Over one half of the pollees (52.3%) answered "To a very small extent because the state does nothing to promote them and facilitate their acquisition". As it could be expected, in this group prevail the youngest (65.4%), the most educated (60%), those who are at school or university (65.2%): they tend to accuse the state of being passive in promoting and facilitating the acquisition of contraceptives. 15.9% of the pollees were of the opinion that contraceptives were excessively used nowadays, while 35.3% said that contraceptives were used to the right extent (17.1% could not answer the question). As it can bee seen, a very small part of the pollees expressed satisfaction with the existing level of use of contraceptives. In the answers to this question it was impossible to identify any important differences between women and men; furthermore, ethnic and regional origin, as well as party affiliation, did not play an important role.

4. Implementation of human rights

At the end of our questionnaire were two questions by which we tried to find out how satisfied our pollees were with the implementation of their human rights (mentioned above) and what in their opinion was the best way to protect them. There was 20.8% of those fully satisfied with the implementation of their human rights, 33.4% assessed that they managed to implement most of their human rights, 16.2% was of the opinion that the state threatened their human rights to the greatest extent, while most pollees (29.6%) said that the implementation of their human rights was left to chance, because everyone

could threaten them without answering for it. Like in 1998, the pollees were again polarised – there was a group managing to implement all or most of their human rights (54.2%) and a group whose human rights the state either directly threatened or simply left to chance (45.8%). It is worth noticing that it is Albanians who feel threatened by the state in the enjoyment of their human rights (23.1%), and that right behind them are Serbs (17.7%).

Table 6. Solutions for the protection of human rights

"If someone is denied some of the rights mentioned he should best turn to"	%
1. Influential people with connections	31.0
2. Regular court	26.9
3. Influential people in power	18.4
4. People who execute every order for money	9.7
5. International court	7.6
6. All other answers ("God", "Oneself")	5.6
Total	100.0

From the answers to the question what someone whose human right is denied should do today (cf. Table 6) it is obvious that the largest percentage of the pollees (59.1%) favour non-institutional solutions, i.e. turning to people with connections, influence or in power. Confidence in regular courts is small (the same applies to international courts), although somewhat greater than in 1998 (17.5%).

5. Conclusion

If we now summarise the situation of human rights in FR Yugoslavia in the legal awareness of its citizens, it could be above all said that there is some improvement as compared to 1998. The ousting of Slobodan Milošević's regime of personal power on 5 October played a great role in this respect. However, our research was conducted soon after that event, when the political situation in FR Yugoslavia (and especially in Serbia) was very confusing in the expectation of the republican elections of 23 December. Therefore it was unrealistic to expect any greater changes.

The greatest change obvious from the results from 1998 and 2000 is that of factors of the legal awareness of citizens. The most important factors in developing an attitude towards human rights ceased to be age, education and profession, which was the case in 1998. Party orientation remained the most important factor, together with a new factor – republican affiliation. Namely, the research shows that there are an increasing number of differences between the legal awareness of citizens of Serbia and citizens of Montenegro. Those differences are not great, but there is no doubt that in the last two years a core of outstanding issues has been formed, bringing about differences between the citizens of the two republics, which will most probably continue to deepen in the year to come.

The main among those issues is that of Montenegro's state status. The Montenegrin population is very much divided into the advocates of Yugoslavia and the advocates of an independent Montenegrin state,[101] and the tensions caused by this division are becoming

101 The poll results show that the majority of Montenegrins want the federal state to survive: 15.6% of the pollees believe that the federal state should not be changed at all, while another 41% would prefer FR Yugoslavia to remain, based on redefined relations between the two republics. The percentage of those arguing in favour of an independent Montenegro is 37.8, while 5.5% of the pollees remain undecided. It is interesting to note that Montenegrins mainly opt for the survival of the federal state, while ethnic minority members (Albanians in particular) tend to argue in favour of an independent Montenegrin state (cf. Scan agency: *On the December 2000 Poll (Informacija o istraživanju, Decembar 2000).*

more and more intense as the moment of a final decision on the matter nears. Milošević's downfall not only failed to contribute to the pacification of passions in Montenegro, but even prompted President Milo Djukanović and his DPS to start Montenegro's secession from Serbia even more decisively. This has deepened the gap in the Montenegrin population and intensified the dissatisfaction of those disagreeing with the separatist policy. Therein lies probably the strongest factor of the increasingly widespread opinion on some human rights being threatened – especially those concerning a democratic political life – in the legal awareness of Montenegrin citizens.

In a concrete analysis of knowledge of certain human rights and assessment of their respect in FR Yugoslavia, again some progress has been noted, but lack of information is still very present, especially in the field of human rights concerning procedural guarantees before state authorities. On the other hand, in assessing the existing situation of certain human rights, citizens of Serbia, and especially citizens of Montenegro, were undeniably quite critical and realistic.

IV
MAIN ISSUES – 2000

1. Kosovo and Metohija

1.1. Introduction

Under Resolution 1244 of the United Nations Security Council of 10 June 1999,[102] an international civil and military presence has been deployed in Kosovo and, an interim administration, under United Nations auspices, has begun operating. This, in fact, means that Kosovo has been given, so to speak, the status of an international protectorate. The international administration (UNMIK) rests on four pillars. The first pillar represents the UNHCR whose task it is to deal with humanitarian affairs, the second is UNMIK as such whose mandate covers the whole civil administration, the third is the OSCE, which is in charge of the building of democratic institutions and the fourth is the European Union, which has been assigned to address the question of reconstruction and economic development. The UNMIK Mission is headed by the Special Representative of the UN Secretary General who, under the Resolution, has supreme legislative and administrative authority in Kosovo. During the year 2000 Bernard Kouchner[103] oc-

102 UN doc/S/RES/1244.

103 Bernard Kouchner is former Minister of Health of France and co-founder of the non-governmental organization *Doctors without Frontiers*, which was awarded the Nobel Prize for Peace in 1999. In mid December, Danish Defence Minister, Hans Haekkerup was appointed to the office of Special Representative; he is to take over this function on 15 January 2001.

cupied that post. UNMIK has five main Regional Offices, as well as offices in thirty municipalities. UNMIK formed, on 15 December 1999 the Kosovo Interim Administrative Council (IAS/PAVK) and the Joint Interim Administrative Structure – JIAS) which has officially replaced, in February 2000, all the other security and administrative and parallel structures of power which had until then existed in Kosovo.[104] This applies in particular to the institutions of the interim government headed by Hashim Thaqi, leader of the Democratic Party of Kosovo. The Agreement that was signed on 15 December by Hashim Taqi, Ibrahim Rugova, President of the Democratic Alliance of Kosovo and Rexhep Qosja, leader of the United Democratic Movement, provides for the incorporation of all the institutions of the interim government into the administrative structure.

The Administrative Council constitutes the highest advisory body and decides on JIAS policies. The Council proposes new regulations and decisions that are subject to consensus, but the final decision lies with the Special Representative. The Council is made up of eight members – four UNMIK representatives, 3 representatives of Albanians and one representative of Serbs. The Council has been fully operational since 11 April, when the Serb National Council nominated its representative, Ms. Radmila Trajković, in an observer capacity.[105]

104 The establishment of the Interim Council and the Joint Administrative Structure is in line with the UN Security Council Resolution 1244. Among the responsibilities it assigned to UNMIK was "organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement" and "transfering" as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities." (UN doc/S/RES/1244, 10 June 1999).

105 Until then, the representatives of the Serb community in Kosovo had refused to take part in the work of the Council as they were dissatisfied with the status of the Serb minority in Kosovo. The representatives of the Kosovo Serbs withdrew their observer from IAS on 4 June, as a sign of protest against the increasingly frequent attacks on the members of the Serb minority in Kosovo and on account of the ineffective protection provided to them by the international community. The presence of a Serb representative in the IAS was renewed on 29 June by the agreement signed by Bishop Artemije, on behalf of the Serb National Council, and Dr. Bernard Kouchner, on behalf of UNMIK.

At the outset, JIAS had 14 departments, similar to ministries and, towards the end of 2000, the Structure incorporated 20 departments that do not include a police department as the latter remains in the exclusive jurisdiction of UNMIK.

Twenty-four parties took part in the local elections that were held in Kosovo on 28 October 1999. The Kosovo Serbs boycotted the elections. Moreover, they refused to take part in the population census that preceded the elections. The special Representative verified the official election results on 7 November, according to which Ibrahim Rugova's Democratic Alliance of Kosovo (DSK/DLK) won 58% of the votes, or else 504 out of a total of 869 seats in the Kosovo municipalities. Hashim Taqi's Democratic Party of Kosovo won 27.3 per cent of the votes, i.e. 267 municipal seats, while the Alliance for the Future of Kosovo of the former commander of the Kosovo Liberation Movement won 71 seats in the municipalities.[106] The results registered in three municipalities in which Kosovo Serbs constitute the majority (Zvečan, Zubin Potok and Leposavić) were not verified given the feeble turnout. The Special Representative appointed municipal representatives in these municipalities. Dan Everts, Head of the OSCE Mission in Kosovo, stated that on the average 79% of the voters took part in the elections and that election day was one of the calmest since the end of the conflict. Everts pointed out that " these elections, as we have boldly predicted, will probably go into history as the best ever post-conflict elections".[107] On the other hand, Serbs turned out at the Federal and presidential elections of 24 September as well as at the elections for the Serbian parliament of 23 December 2000, while Albanians boycotted those elections.

In keeping with Kouchner's decree of 1999, the laws in application in Kosovo were those that had been in force until 22 March

106 DSK won the majority in all major cities in Kosovo. Hasim Taqi's DPK won the majority in Srbica and Prekaz (region of Drenica), traditional KLA strongholds, while Ramush Haradinaj did not win the majority of the votes anywhere but won a susbtantial number of votes in Peć and Dečani. 8 November 2000 ‹http://www.osce.org/kosovo/elections/parties1›.

107 "Head of Mission reports on successful Kosovo elections", OSCE press release, 9 November 2000.

1989, i.e. before the end of the autonomy of the Province. Besides these laws, the legal acts in force are individual regulations promulgated by the Chief of UNMIK that have annulled Yugoslav regulations (e.g. customs and currency regulations) and regulated individual areas, as well as the mandate of institutions in Kosovo.

In addition, the Head of the Mission established, on 14 December, the Supreme Court in Kosovo and appointed its judges. Rexhep Haxhimusa presides over the Court, which includes 14 Albanian and 2 international judges.

On 14 August the institution of Ombudsman was set up in Kosovo its task is to review citizens' complaints regarding human rights violations on the part of the local authorities or representatives of the international administration. The Ombudsman is Marek Nowicki, the prominent Polish advocate of human rights, while his international deputy is a US citizen, Donna Gomien). Nowicki has two deputies, Nike Lumezi (Albanian) and Ljubinko Todorović (Serb).

1.2. The State of Human Rights in 2000

The situation in terms of security continues to be unfavourable in Kosovo while the freedom of movement of the minority[108] population is limited. While the number of killings was smaller in 2000 than in the previous year, and despite the statements of NATO officials that the situation in Kosovo is becoming more stable, tensions have not ceased even at the close of 2000. Owing to the inadequate police force and the inefficiency of the judicial bodies, it is not possible to guarantee security. Even in the course of 2000 the size of the international police force was inferior to the planned 6,000. In the first half of the year, the number of policemen amounted to 3,900. One of the reasons why there has been a drop in the number of killings as compared to

108 Here the notion of "minority" refers to an ethnic group that, given its numerical strength, constitutes a minority on the territory of Kosovo (*de facto* status), and not a status attributed to it on the basis of some legal provision (*de jure)*. In other words, we are referring to the non-Albanian population in Kosovo.

the period following the arrival of the international forces lies in the obvious fact that today in Kosovo Serbs as well as other non-Albanians mainly live in mono-ethnic enclaves under strong KFOR protection.

Although the disarmament of the Kosovo Liberation Army is regarded as one of the more successfully accomplished tasks of the international forces,[109] KFOR have been all the same discovering illegally-held weapons virtually on a daily basis, while armed incidents and bomb attacks were also, even in 2000, a commonplace in Kosovo. Suspecting that the former KLA soldiers failed to surrender all their weapons, KFOR launched in mid-June the *Leatherman* operation with the aim of finding clandestine weapons stores in the area of Mališevo and Srbica, powerful pre-war KLA strongholds. In one bunker alone over 65 tons of explosives and ammunition were discovered.[110]

1.2.1. Inter-Ethnic Violence. – This year has featured numerous assaults on minority groups. In view of the unfavourable security situation and of protests because UNMIK and KFOR action has not been sufficient to protect the minorities in Kosovo, the international organisation "Doctors Without Frontiers" withdrew its teams from three Serb enclaves in the North of Kosovo.[111]

An exhaustive report of the OSCE on the status of minorities in Kosovo reveals that the security status of members of the non-Albanian population – Serbs, Turks, Roma,

Ashkali, Torbesha, Bosniacs and Gorani – continues to be unsatisfactory. Furthermore, the report underlines that the minorities have been deprived of the right of freedom of movement while more tangible results of the work of the Housing and Property Directorate and Claims Commission are only expected in the year 2001.[112] Given

109 International Crisis Group (ICG), *Kosovo Report Card*, August 2000.

110 *Ibid*.

111 Interview of James Obrinsky. President of the International Committee of *Doctors Without Frontiers* to the London daily *Independent,* 17 August 2000

112 *Assessment of the Situation of Ethnic Minorities in Kosovo* (period covering June through September 2000), OSCE/UNHCR.

the unfavourable security situation, only a negligible number of displaced non-Albanians have returned to Kosovo.

The greatest number of incidents and attacks against members of the minorities was registered in mid-June, a period of time coinciding with the anniversary of the establishment of the international mission in Kosovo and the entry of NATO forces on 12 June. The victims of frequent armed and bomb attacks were mainly persons belonging to minority groups – 11 persons were killed and about ten wounded in that period. One of the more serious incidents of this nature was the murder of a Serb, Petar Topoljski (25), a translator employed by UNMIK. His lifeless body was found on 15 May, in the village of Rimanište near Priština, a week after he had been reported missing. Prior to his disappearance, an article had been published in the daily "Dita" appearing in the Albanian language and close to Hashim Taqi's party, in which Topoljski was accused of war crimes and where information given as to his whereabouts. In early June, the international police closed down the daily *Dita* for having violated the Regulation of the UN Administrator in Kosovo on the prohibition of inciting inter-ethnic hatred.[113] In addition, in June, Bernard Kouchner passed a regulation on the rules governing the conduct of the print media in Kosovo, according to which the Provisional Commission for the Media can punish media that violate the code of conduct. The highest fine amounts to 100,000 DEM, and media that do not comply with the rules of conduct may be suspended or prohibited. Otherwise, this regulation has been sharply criticised by the international non-governmental organisations for the freedom of media because, in their view, this jeopardised the freedom of expression.[114] In Priština on 20 June unknown attackers seriously wounded Valentina Čukić, a jour-

113 UNMIK/REG/2000/4, *On the Prohibition Against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance*, 1 February 2000.

114 UNMIK/REG/2000/37 *On the conduct of print media in Kosovo*, 17 June 2000. The daily "Dita" has been punished several times for having violated that regulation. *Article 19* sharply criticized the regulation because it restricted that right, 30 June 2000 (*UN Setting a Dangerous Precedent With Kosovo Media Regulation, Article 19*).

nalist of the multi-ethnic Radio Contact, and her friend. This occurred despite the fact that Ms. Čukić wore visibly her KFOR journalist card. On 12 July, someone fired, with automatic weapons, at a car, which carried Dragan Kojić, a priest of the Serbian Orthodox Church, and two other clergymen. The passengers were seriously injured.

Moreover, children of Serb nationality were twice the targets of serious assaults.

A hand grenade was hurled from a moving automobile on 18 August, hitting a group of children playing basketball in the village of Crkvena Vodica. Ten children were injured. On 27 August, in the same village, a car moving at full speed hit a group of children. The driver who killed one child and wounded three during the onslaught ran away. On the very same day, an eighty-year old Serb was shot down.

In April, a Czech citizen, Metodije Halauska (86), was found dead in Priština. The assailants first kidnapped Halauska from his home, beat him up and then shot him from behind. In mid-April, fifteen unknown Albanians beat up a seventy-year old Bosniac in Peć. She had to be taken to hospital as a result of her injuries.

On 8 November in the village of Doševac, south-west of Priština, four Ashkali (Albanian speaking Romas), among whom there was a sixteen-year old boy, were killed only two days after returning to their native village from Kosovo Polje where they had been living as displaced persons. The UNHCR had organised their return and this group of Ashkali was to have been the advance guard within the framework of a broader programme of repatriation. In response to the murder of the Roma returnees, the Head of UNMIK decided on 29 November to set up a Joint Committee on Returns for the Ashkalia/Roma People, with the task of previously investigating the security conditions for the return of displaced Roma.[115]

Four unknown assailants attacked Ahmet Sijariq, employed with the Department of Civil Security and Emergency Preparedness of the Kosovo Protection Corps in charge of recruiting non-Albanian KPC

115 UNMIK press release, 29 November 2000.

members. Sijariq was beaten up on 10 October in Klina, on his way from Priština to Peć where he was to have interviewed non-Albanian candidates for admission to the KPC.

A bomb was thrown on 22 November at the building in which lived Stanimir Vukićević, Head of the Yugoslav Government Committee for relations with UNMIK; Vukićević's driver, Goran Jeftić, was killed in the explosion and three people were injured.

In Priština on 18 August, a planted bomb exploded in the building housing the headquarters of the smaller Albanian parties and the parties of the Kosovo Turks as well as the offices of the Yugoslav Government Committee for co-operation with UNMIK.

The KFOR spokesman voiced concern about the fact that a large number of civilians in Kosovo were still illegally in possession of firearms. The statement came as a result of two separate incidents occurring on the same day, i.e. when a seventeen-year old Albanian shot his fourteen-year old compatriot in Suva Reka, and when, on 11 December, an Albanian killed his Albanian neighbour in Prizren. On the same day four Albanians arrested for illegal possession of weapons and armed robbery escaped from the Dubrava prison near Istok, which was under the control of international forces.[116]

In the year 2000 Kosovska Mitrovica was once again a source of tension, unrest and violence in Kosovo. Kosovska Mitrovica has been divided into the northern Serbian part and the southern Albanian part. From all accounts, the most turbulent month in this divided town was February when, following series of assaults on Serbs in the surroundings of Mitrovica, 13 persons were killed and 50 wounded.[117] On the other hand, the whole year round, Mitrovica proved to be a flashpoint of sporadic incidents and clashes between Albanians and Serbs or KFOR troops and Serbs, which resulted in casualties. In most cases, it was KFOR attempts to arrest Serbs who were suspected of

116 Beta, 11 December 2000.

117 FRY (Kosovo): *Setting a Standard? UNMIK and KFOR response to the violence in Mitrovica*, Amnesty International, March 2000.

having committed some criminal offence that sparked the incidents, or else the search for illegal weapons, or demonstrations staged by the Albanians in protest against Serbs from the northern part of the town, who were preventing their compatriots from reaching their property in that part of the town. When on 18 December the police arrested a Kosovo Serb from Leposavić for speeding and misconduct, some 200 citizens rallied around the prison in Mitrovica demanding the release of their compatriot. As a result, there was a clash with the KFOR members and the UNMIK police in which one Serb was killed and another died of a heart attack. One Albanian was shot down in his apartment in the northern part of the town. Several vehicles belonging to the international forces were set ablaze as well as the police station in Mitrovica. The local Serbs kidnapped seven Belgian soldiers belonging to KFOR and took them hostage. The soldiers were released after talks between KFOR representatives and political leaders of the Kosovo Serbs from Mitrovica.[118]

1.2.2. Political Violence. – The year was also marked by frequent instances of political violence between members of different Albanian political options. The targets of most of the attack were the supporters of Ibrahim Rugova's Democratic Party of Kosovo, a moderate party of ethnic Albanians. Before the elections, they complained about pressures and threats on the part of secret militant groups accusing them of treason.[119] Although on the very day of the elections the atmosphere had been calm and free of incidents, clashes between political opponents were numerous. The Kosovo media tended to describe inter-Albanian violence as instances of settling crime – related scores. However, many such killings had a clear political dimension. On 15 June, in the village of Streoce, unknown assailants wearing former KLA insignia killed Alil Dreshaj, a prominent DPK politician. On 6 August, in a remote village, the burned body of Shaban Manaj, a DPK official was discovered. He had been kidnapped ten days previously. On 1 August in Podujevo, a DPK activist was killed and

118 UNMIK press release, 18 December.
119 ICG Report, August 2000.

on the following day in Srbica the head of the DPK branch of the municipality was shot and wounded. On 9 August, a bomb was hurled at the home of a DPK member in Dragaš. His wife was killed in the explosion. It is assumed that the murders of Shefki Popova, editor in the daily *Rilindija* and of the architect, Rexhep Luci, Director of the Department for Construction and Town-Planning, which took place on two consecutive days in September in Priština had been also politically motivated. Namely, both Popova and Luci, although not formally members of the DPK, were known to have good links and relations with that party. On 16 December in Maleševo, unknown persons shot and seriously wounded Fetah Rudi, a member of the DPK presidency. The murder of Ekrem Rexha, the politically moderate KLA commander from Prizren, nicknamed Commander Drini, in May was also believed to have been on political grounds. Rexha was known to have defended on several occasions members of the non-Albanian population in Prizren from harassment by extremist Albanians. An attack was also staged in July against Ramush Haradinaj, one of the leading commanders of the former KLA and President of the League for the Future of Kosovo. Only five days later, on 12 July, one of his close associates was killed.

1.3. Crime

The international community has expressed, in addition to its concern about ethnic and political violence in Kosovo, its worries because of high crime rates there. From January to August 2000, over 14,000 criminal offences were recorded in Kosovo, including 172 murders, 160 attempted murders, 116 kidnappings and over 200 serious assaults, not to mention burglaries, theft, rapes and the like. In the same interval, almost 4000 persons were arrested.[120] Within the first week of December, the police were notified of over 400 criminal acts, while 87 persons were detained; seven of them on the grounds of

120 Official statistics of the UNMIK Police. *Ibid.*

having committed serious criminal offences.[121] Organised prostitution and trafficking in persons are found to be a particular problem. With a view to curbing prostitution and crime, the police in Kosovo launched in mid-November a mass campaign designed to expose the sources of crime and prostitution. During a police raid in Kosovo Polje, 12 women – citizens of Moldavia who were forced to engage in prostitution, were released from a nightclub.[122]

Besides the problem of the lack of policemen, a normalisation of the situation in Kosovo and the establishment of a rule of law are further aggravated by the poor functioning of the judiciary. Most of those guilty of offences and crimes remain undiscovered, and many cases never reach the courts.[123]

In response to numerous observations made by Albanian judges and prosecutors regarding the respect of procedure and the right to a fair trial, the UN administration in Kosovo appointed international judges to the District Court in Mitrovica, which proceeds against the largest number of Serbs accused of ethnically motivated crimes. The idea is to have two international judges and one international prosecutor appointed to each of the five district courts in Kosovo. The most serious objections related to unlawful custody and intimidation of witnesses. UNMIK Spokeswoman Susan Manuel explained the appointment of the international judges in the following words: "There are Albanian judiciary officials who are very objective, but there have been enough cases where it wasn't happening that we had to introduce the idea of international judges."[124] In order to overcome the problem of partiality in the case of politically sensitive trials, such as those involving ethnically motivated killings, a proposal was made to form

121 "Casual, extreme violence still accepted by Kosovar society: UN Police", UNMIK, press release, 11 December.

122 "UN launches major operation against organized crime in Kosovo", UNMIK press release, 17 November.

123 "Word for Word/ Kosovo Police Blotter", *The New York Times,* Donald G. McNeil Jr., 29 October 2000.

124 "Kosovo Justice System Tries Patience of Serbs, Albanians", *The Los Angeles Times,* Paul Watson, 23 August 2000.

a special court to hear such cases. The Kosovo War and Ethnic Crimes Court – KWECC should include a total of 17 judges of whom nine are to be foreigners.

In the prison in Mitrovica detainees accused of genocide and war crimes against civilians have been awaiting trial for more than a year. Among them was Vladimir Vučetić, a mentally ill minor who was held in custody in a cell with three adult men for a period of eleven months.

Until the beginning of September, only three trials had started in Mitrovica. Fifteen Serb prisoners escaped from the Mitrovica prison on 3 September. The total number of prisoners that escaped from the prison in Mitrovica was twenty-two. Two of them were soon captured. Four fugitives were accused of war crimes, three of genocide, four of mass killings and one of murder and another of armed robbery.

The investigators of the International Criminal Court for the Former Yugoslavia in the Hague have continued to investigate the mass graves in Kosovo, as well as war crimes committed by Serb forces and the KLA. The number of victims of war crimes during the NATO intervention has still not been established. In a report of the American Bar Association Central and Eastern European Initiative and the American Association for the Advancement of Science appearing in early December, about 10,500 Albanian civilians are purported to have been killed during the NATO air strikes.[125]

The issue of Albanian political prisoners in Serbia, as well as the unresolved fate of more than 3000 people from Kosovo, continues to be a factor causing political and ethnic tension in Kosovo. Until the end of 2,000, about 700 out of over 1,000 Albanians who were transferred to Serbia during the withdrawal of Yugoslav troops from Kosovo are in prisons in Serbia. Most of them have been convicted of terrorism or association with the purpose of hostile activity. Nearly 3,000 Albanians, mainly from Đakovica and its surroundings, were

125 "Political Killings in Kosova/Kosovo, March–June, 1999" at ‹http://hrdata.aaas.or/kosovo/pk›.

estimated to be missing during the NATO intervention. Since the KFOR entered Kosovo, about 400 Serbs and some 300 Roma have disappeared.[126] According to Ranko Đinović, President of the Association of Kidnapped and Missing Persons in Kosovo and Metohija, 1,230 persons of non-Albanian nationality were missing and/or kidnapped in Kosovo since the outbreak of armed conflicts.[127]

The Special Representative formed the Joint Commission for Prisoners and Detained Persons which operates under the auspices of the UN High Commissioner for Human Rights (UNHCR); the Commission held its first working meeting on 21 September in Priština. The Commission is composed of experts in the field of human rights, representatives of non-governmental organisations and families of imprisoned persons and is chaired by Special UN Envoy, High Commissioner, Mary Robinson. In addition, a special commission for missing persons has also been set up.

2. International Criminal Tribunal for the Former Yugoslavia (The Hague Tribunal)[128]

2.1. Personnel Changes in 2000

Since October of this year, the Tribunal has reached a total employment figure of 1,200 persons who come from 75 different countries. This number includes 14 judges from France, Zambia, Australia, the United Kingdom, Portugal, Malaysia, Egypt, Guyana, Columbia, Morocco, Jamaica, the USA, Italy and China. On the proposal of Judge Claude Jorda, the UN Security Council appointed, on November 30, 27 new *ad hoc* judges who will be invited when the need

126 Human Rights Watch, *Annual Report–Kosovo* at ‹www.hrw.org›.

127 Beta, 10 November.

128 For basic data on the Tribunal and the chronology of events, see previous annual reports of the Belgrade Centre for Human Rights, *Human Rights in Yugoslavia 1998* and *Human Rights in Yugoslavia 1999*.

arises. With their assistance and if all the accused promptly find themselves in The Hague and provided additional procedural reforms are initiated, the Tribunal could complete its mandate by the year 2007 instead of 2,016 as initially expected.[129]

In early February, Fausto Pocar, professor of international law at the University in Milan and long-standing member of the UB Human Rights Committee took over from the retired Italian judge, Antonio Cassese, as judge of the Hague Tribunal.

2.2. Investigations

According to Chief Prosecutor, Carla del Ponte, since June 1999, the Tribunal investigators have dug up about 4,000 bodies from the mass graves in Kosovo.[130] She believes that it will be never possible to establish the exact number of victims because of intentional incineration or other ways of destroying corpses. Moreover, del Ponte demanded of the UN Security Council to amend the Statute of the Tribunal so that the jurisdiction of the Tribunal could also include an investigation of ethnic cleansing of the remaining Serb and Roma population in Kosovo in the period following the armed conflict and the establishment of KFOR.[131] The spokesman of Chief Prosecutor, Paul Risley, stated that investigations were underway to ascertain claims of crimes perpetrated against Serbs in Kosovo and investigate possible connections with persons in positions of superior authority within the chain of command of the former KLA.[132]

Investigations regarding war crimes on the Dubrovnik theatre of operations have been completed in Croatia. They have started in

129 21 November 2000, President of the Tribunal's address to the UN Security Council.
130 24 November 2000, address to the UN Security Council.
131 Much like in the case of the Statute of the Rwanda Tribunal, it would be necessary to forego the demand for the existence of an *armed conflict* for there to be the jurisdiction of the Tribunal for crimes against humanity.
132 *Blic,* 18 June, p. 9.

Montenegro since the end of November.[133] As stated by investigator Clint Williamson, investigations will be two-phased. The first phase will focus on military accountability, and the second on the command responsibility of politicians. In keeping with the Prosecution's practice not to publish details of investigations, the public has not been officially informed of who the suspects are.

Investigations in relations to the Croatian army operations "Flash" and "Storm" are still in progress. An official investigation in Gospić regarding crimes against the local Serb population during the conflict in Croatia in 1991 and 1992 has started in April.[134] Del Ponte has repeated on several occasions that the absence of co-operation with the FRY authorities, in other words, the impossibility to access witnesses on the territory of Serbia tended to hold back the work of the investigators as well as the investigation of members of the KLA in Kosovo.[135]

In a report published in June 2000, a Committee of Experts of the Prosecution recommended to the Chief Prosecutor that there were no grounds for starting an investigation in connection with the NATO intervention against Yugoslavia, neither generally nor in respect of individual incidents that have proved to be the most problematic.[136] In addressing the UN Security Council, del Ponte stated that although NATO had committed some errors in its intervention against the FRY in 1999, she was glad that there had not been any intentional targeting of civilians nor strikes against illegitimate military targets during the bombing campaign."[137]

The report of the Committee concluded by stating that the NATO officials has not prepared to give accurate and concrete answers to the questions of the prosecution, although they did admit to errors and wrong assessments. The report further stressed that in all cases,

133 *Monitor,* 8 December, "Trag za Hag" (Clue for The Hague), p. 10.
134 *Blic,* 12 April, p. 8.
135 *Danas,* 27 January.
136 The report is accessible also in the Serbia (Croatian and Bosnian) languages at ‹www.un.org/icty/pressrel/nato›.
137 *Tribunal Update* 178, 29 May – 3 June 2000.

either the law as such was not precise enough or that investigations would not have been likely to produce adequate evidence susceptible of substantiating accusations of particularly serious crimes.[138]

Amnesty International published a report that contradicts the findings of the prosecution committee.[139] In that report it is stated that NATO bears responsibility for breaches of international humanitarian law in relation to several incidents having taken place during the armed intervention against Yugoslavia, such as the attack on Serbian Television during which 16 persons had been killed, it which is an evident example of an intentional assault on a civilian building and as such constitutes a war crime.

Responding to the criticism voiced by *Amnesty International,* del Ponte stated that the Prosecution has available a large number of experts of international humanitarian law whose experience is far greater than that of the non-governmental organization, that they were in possession of evidence otherwise inaccessible to non-governmental organizations and that, furthermore, they had to bear in mind the standards of the evidence if the indictment was to stand the tests of proving beyond reasonable doubt that the Tribunal requires.[140]

In keeping with the Statute of the Tribunal,[141] the Chief Prosecutor has the discretionary power to decide whether there are sufficient grounds for initiating an investigation – a fact that has been stressed in the introductory part of the report. The Prosecution of the Tribunal had never before published a report of this kind – a document explaining the reasons for not undertaking or undertaking an investigation.

2.3. Indictments

Since the Tribunal has been established, a total of 96 indictments have been made public of which 18 have been withdrawn, eight indictees have died, four have been transferred to Norway, Finland and

138 See para. 90.
139 See ‹http://www.amnesty.org/news/2000/47002500.htm›.
140 *Tribunal Update* 180, 12–18 June, 2000.
141 See Art. 18.

Germany to serve their sentences, and one has been acquitted of charges against him. With the initiation of new investigations, the total number of indictees is expected to reach the figure of 200.

Proceedings have been instituted against 38 accused persons, while 27 are still at large. All 27 have been publicly indicted, meaning their names are not only known to the officials of states to which arrest warrants for them have been issued but also to the broader public.[142]

Nineteen out of the total number of detainees have been arrested by SFOR, six by state police (of Austria, B-H and Croatia), and nine have surrendered voluntarily. This year, SFOR arrested five Bosnian Serbs,[143] Croatia extradited the Bosnian Croat, Mladen Naletilić-Tuta, and no one has surrendered voluntarily.

In January 2000, Željko Ražnatović – Arkan was assassinated in Belgrade. He had been indicted by the Tribunal in 1997 for crimes committed during the war in Bosnia and Croatia. The indictment was published in part in 1999, merely disclosing that Ražnatović was on the list of indictees. Learning of his murder, del Ponte stated that she was still not prepared to disclose specifically the places and circumstances of the crimes Ražnatović had been charged with, the reason being that this might jeopardize the collection of evidence against his associates.[144] On the other hand, she mentioned that the Tribunal had conducted detailed investigations about his activities in eastern Slavonia and eastern and southwestern Bosnia between 1991 and 1995.

Although it had been hinted at, the indictment against former FRY President, Slobodan Milošević, and four of his associates has not been enlarged to include accusations of genocide. This may happen next year, once this year's exhumations in Kosovo have been completed.[145] In relation to the change of government in the FRY, Carla

142 See ‹www.unorg/icty/bhs/glance/procfact-b.htm›.

143 Along with an abortive attempt when the indictee, Janko Janjić who blew himself to pieces with a hand grenade, *Tribunal Update* 194, 9–14 October.

144 *Danas,* 18 January, p. 1.

145 According to a statement of Deputy Chief Prosecutor Graham Blewitt, *Danas,* 6 July, p. 1.

del Ponte has stated that Milošević's trial before the Tribunal in the Hague had "no alternative", in other words, the fact that he is no longer President or that he could be tried in the country for election fraud or some similar charge cannot exonerate him of the charges contained in the indictment of the Hague Tribunal.[146] Tribunal Spokesman, Mr. Risley, pointed out that the other persons accused still occupy important posts in the FRY (at the end of the year, it was clear that Milan Milutinović intended to continue presiding over Serbia) and that the European Union and its Member States should, in view of that, review their decision to establish diplomatic relations with the FRY.[147]

This year, the investigators of the Hague Tribunal in Cyprus investigated President Milošević's business dealings,[148] and an order was issued to investigate his accounts in Vienna.[149] Del Ponte announced the continuation of investigations and the freezing of financial resources that should be used to indemnify the victims of the accused.[150]

Former FRY Defence Minister, Dragoljub Ojdanić, who was indicted by the Tribunal along with Milošević, visited Moscow in an official capacity in May 2000. Although an international arrest warrant had been issued making it incumbent on all UN members to act, he was not arrested. Following energetic protests against Russia by the EU, the OSCE and NATO, the Tribunal accepted the official explanation by Russian officials that the failure to arrest Ojdanić was the result of an internal "dysfunction", while the Russian ambassador to the Netherlands reaffirmed Russia's resolve to cooperate with the Tribunal.[151]

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146 *Tribunal Update 193, 194, 199;* address to the UN Security Council, 24 November and 20 December.

147 *Tribunal Update 193,* 2–7 October.

148 Statement of the Finance Minister of Cyprus, *Danas,* 27 July, p. 2.

149 The Vienna weekly *Format* informed that the Austrian Minister of Finance had issued an order to the special unit of the Austrian police in charge of combating organized crime to examine all accounts of Milosevic and of his associates in the Austrian banks and to freeze them, *Politika,* 9 October, p. 2.

150 Del Ponte's address to the UN Security Council, 20 December.

151 *Tribunal Update,* 177, 22–27 May, 2000.

Pavle Bulatović, the then FRY Minister of Defence, was killed in February in Belgrade. Deputy Chief Prosecutor Blewitt confirmed that Bulatović had been under investigation by the Prosecution and that in the second round of indictments regarding Kosovo he could figure as an accomplice, as Tudjman in "Storm".[152]

On the occasion of the arrest of Mitar Vasijević, a Bosnian Serb from Višegrad, the seal was lifted from a part of the indictment of 1998 referring to crimes against the Muslims committed by paramilitary units, the local police and local Serbs. According to charges contained in the indictment, Vasiljević had been a member of the *Beli Orlovi* (White Eagles) paramilitary unit.[153] After the JNA had taken control of Višegrad, that unit had killed, beaten up, robbed the local Muslim population and destroyed their private property. In the course of his initial appearance before the judges of the Tribunal in January, Vasiljević pleaded not guilty to 14 counts in the indictment, charging him with crimes against humanity and breaches of the laws governing the conduct of war. In October, Mrs. del Ponte declared that the Višegrad indictment also included Milan and Sredoje Lukić, who, along with Vasiljević, have been charged of the mass killing of 135 Višegrad Muslims, women and children.

SFOR arrested Momčilo Krajišnik, who had been President of the Parliament of Republika Srpska from 1991 to 1995. The indictment that was submitted in February 2000 and sealed until the time of arrest states that Krajišnik, together with Radovan Karadžić and others, had been charged with genocide, crimes against humanity, violations of the law or customs of war and grave breaches of the Geneva Convention, that were committed in B&H from 1 July to 31 December, 1992. When Momčilo Krajišnik was arrested, Prosecutor Carla del Ponte particularly stressed that this indictment (too) deals with individual criminal responsibility and not that of the Bosnian Serbs as a group. She went

152 *Tribunal Update,* 163.

153 Formerly, Vojislav Šešelj, leader of the Serb Radical party, in Serbia had been associated with that unit.

on to point out that she was particularly keen on placing Radovan Karadžić under arrest and trying him jointly with Mr. Krajišnik.[154]

On the occasion of his initial appearance before the judges, Krajišnik pleaded not guilty to any of the charges in the indictment. His counsel argued that the indictment was without any grounds, that the charges were rigged and politically motivated. He went on to claim that his client had been merely a consultant of the Bosnian Serb leadership and, as such, could have, in no way, been responsible for military operations. Conversely, the Prosecution argued that during the time stipulated in the indictment, in his capacity of one of the founders of the Serb Democratic Party (SDS), as a member of the Party's Central Committee, President of the Republika Srpska Parliament, as a member of the RS National Defence Committee, Krajišnik had been present at every meeting where decision were made regarding the expulsion, unlawful arrests, ethnic cleansing and killing of thousand of people.[155]

Proceedings against Momčilo Krajišnik have been fixed for late May 2000 and are expected to last longer than any other trial since the presentation of evidence by the Prosecution is expected to last more than a year.[156]

2.4. Convictions and Trials

In the course of this year, two verdicts in the first instance have been delivered in the *Kupreškić and others case* (the Ahmići case) and in that of the Tihomir Blaškić, General of the HVO (Croatian Council of Defence). In addition, the Tribunal passed a final verdict on the

154 Prosecutor's statement upon the arrest of Momčilo Krajišnik, 3 April 2000, see ‹www.un.org/icty›.

155 Statements by the Tribunal Spokesman about Krajišnik's arrest, *Tribunal Update* 171, 3–9 April 2000.

156 *Tribunal Update,* 185, 17–22 July 2000; to date, the longest trial before the Tribunal, only counting the Chamber trial, lasted 223 (working) days in the case of Tihomir Blaškić (from 24 June, 1997 to 30 July 1999).

sentencing of Duško Tadić and on the matter of contempt of court involving lawyers Vujin and Avramović, as well verdicts on appeal in the case of Ante Furundžija and Zlatko Aleksovski. The end of December saw the close of the trial against Bosnian Croats Darijo Kordić and Marijo Čerkez and a verdict is pending for crimes committed in the Lašva Valley in central Bosnia.

Five Bosnian Croats, Zoran, Mirjan and Vlatko Kupreškić, Vladimir Šantić and Drago Josipović have been sentenced to between six and twenty five years of imprisonment on account of their involvement in attacks against the population of the Ahmići village in the Lašva River valley.[157] Dragan Papić, the sixth co-defendant, was acquitted since the Prosecution was not able to prove that he had taken part in the crime. Šantić was sentenced to the longest prison sentence. He was involved in the massacre as commander of a special military unit of the HVO called *Džokeri* (Jokers). The verdict stipulates that the assault on the village of Ahmići had not been an ordinary military operation but rather a well-prepared and organised killing of civilians, member of an ethnic group with the intention of ethnically cleansing the territory. Thus, the five in question have been accused of the crime of persecution (ethnic cleansing), as a crime against humanity, which is a step lower than genocide. To establish responsibility for genocide it is necessary to prove the intent to exterminate and physically destroy members of a group (nation), i.e. the group itself, and the Prosecution along with the judges considered that in that particular case there was no such intent. The conclusion was that the greatest responsibility lay with the political and military leaders of the Bosnian Croats, Tihomir Blaškić, Dario Kordić and Vladimir Čerkez, a fact that influenced sentencing. Proceedings before the Chamber of Appeals are in progress.

General Tihomir Blaškić was convicted on 3 March to 45 years of prison for crimes perpetrated by the soldiers of the HVO under his command, as well as of individual responsibility because it was estab-

157 *Tribunal Update,* 159, 10–14 January 2000.

lished that he had ordered, planned, instigated or otherwise aided and abetted the planning, preparation or perpetration of crimes against Muslims in central Bosnia between 1992 and 1994.[158] The Trial Chamber established that the referred crime was of an international character, in other words, that there was direct involvement of the Croatian Army (HV) and an overall control of Croatia over the forces and authorities of the Bosnian Croats. On the basis of that finding, victims are regarded as protected persons in accordance with the 1949 Geneva Conventions and that therefore there was responsibility for grave breaches of those Conventions. Judge Jorda, as Presiding judge, when delivering his verdict, stated that General Blaškić's crimes were " exceptionally serious, committed out of hatred towards others and ruthless according to international humanitarian law. General Blaškić's defence has appealed against the verdict.

In the case of Ante Furundžija, local commander of the special military police unit of the HVO, called *Džokeri*, the Appeals Chamber confirmed the ten years sentence on the grounds of criminal responsibility for violation of the laws and customs of war (beating up of a Croatian soldier and the rape of a Muslim woman during which he had been present but did not prevent nor punish such acts. Furundžija has been transferred to Finland where he is to serve his sentence.

In determining the case of Zlatko Aleksovski, the former warden of the HVO detention centre In Kaonik and of the HVO district prison Heliodrom in Mostar who was sentenced to two and a half years of imprisonment. The Tribunal decided to increase his prison sentence to seven years pointing out that an "obvious" error had been made in respect of the initial sentencing.[159] According to the allegations contained in the verdict, the seriousness in the behaviour of the appellant had been wrongly assessed and his capacity of commander had not been judged an aggravating circumstance. In pronouncing the modified sentence, the Appeals Chamber took, as a mitigating circumstance, that

158 *Tribunal Update* 166.

159 Tribunal Press Statement, 24 March 2000, see ‹www.un.org/icty›.

the appellant had had to appear twice to hear his sentence and that he had been placed into custody for a second time after having been released for nine months which had evidently resulted in causing him additional mental suffering. Otherwise, the sentence would have been even longer.

On 26 January, the Appeals Chamber reduced Dušan Tadić's sentence initially set for 25 years to a maximum of 20 and a minimum of 10 years in jail.[160] The sentence covers the period since 14 July 1997, when the accused was convicted, until 14 July 2007, at the earliest. The Appeals Chamber concluded that the previous sentence of 25 years did not take due consideration of the small role played by the accused within the broader framework of the conflict in the territory of the former Yugoslavia. Tadić has been sent to Germany to serve his sentence. This verdict is interesting in that it is at odds with the view of the Appeals Chamber in the case of Erdemović in 1997. The Chamber held that a crime qualified as a crime against humanity is a more serious offence than a war crime and hence deserves heavier sentencing. The judges of the Appeals Chamber that passed the final verdict in the Tadić's case, maintained that international law did not recognise the principle calling for a differentiation between the seriousness of these two crimes.[161]

Belgrade attorney and until recently President of the Bar Association of Serbia, Milan Vujin, was forbidden to appear before the Tribunal in future since the Appeals Chamber convicted him of contempt of court in March for having acted contrary to the interests of his former client Duško Tadić.[162] As opposed to Vujin, Milan Simić, accused of crimes against Muslims and Croats in Bosanski Šamac and his attorney Branislav Avramović, were acquitted of the charge of contempt of court because the prosecutor was unable to prove that

160 *Tribunal Update* 161, 24–29 January.

161 Judge Cassese, who presided over the Chamber in 1997 and took part in the work of the Chamber that pronounced the final verdict in the Tadić case, was the only judge among the five who did not agree with the determination.

162 Vujin was fined 15,000 NGL, *Tribunal Update* 168, 27 March – 1 April.

Simić and Avramović had bribed, intimidated and abetted a witness named Agnes[163] to commit perjury.

Next year will see the continuation of trials of Radislav Krstić, General of the Republika Srpska Army (VRS), for genocide against Muslims in Srebrenica in 1995, of that of five Bosnian Serbs accused of killing and torturing Bosnian Muslims and Bosnian Croats in the Omarska, Keraterm and Trnopolje camps in the surroundings of Prijedor in 1992 and of the case of VRS soldiers Kunarac, Kovač and Vuković for killing and torturing Muslims and the rape of Muslim women in Foča in 1992. In October, proceedings were instituted against Milorad Krnojelac, former commander of the penitentiary in Foča accused of crimes against civilians, Muslims and other non-Serbs detained in that institution.

General Radislav Krstić, former Commander of the Drina corps of the VRS has been on trial before the Tribunal since March 13 based on an indictment charging him with genocide of the Muslim civilian population in Srebrenica.[164] Some 7.5 thousand men, the youngest of whom were only 14 years old, disappeared following the VRS take-over of Srebrenica in July 1995. At the time, Srebrenica enjoyed the status of a so-called UN safety, protected zone. The Prosecution holds that the VRS soldiers, having occupied Srebrenica collected thousands of Muslim refugees from Srebrenica and herded them into the Potočar military base, which had been abandoned by UN peacekeepers. About 25–30 thousand women and children were separated from the men and deported to Bosnian territory, while about seven thousand of the male population of Srebrenica had been killed. Although the Prosecution argued that the VRS had dug over the mass graves and destroyed the bodies, so far the remains of 1,866 victims have been found.

As Commander of the Drina Corps, Krstić has been accused of genocide on eight counts, crimes against humanity and violations of

163 *Tribunal Update* 170, 13–18 March.

164 Prior to this trial there had been only one case tried in relation to crimes in Srebrenica. Dražen Erdemović who admitted to having taken part in the massacre was convicted in 1997 to five years of imprisonment.

the laws and customs governing the conduct of war, of crimes that had been perpetrated under his command. The indictment against Krstić was confirmed on 2 November, 1998 and published in less than a month since then, i.e. at the time he was captured in the American sector of KFOR in eastern Bosnia.

General Krstić has been charged with running operations during the attack on Srebrenica and with all that subsequent events following its occupation. Krstić's defence mainly revolves around the claim that after having taking over positions around Srebrenica, the Drina Corps under his command, had moved on to Žepa. In the meantime, the Command in Srebrenica was taken over by General Ratko Mladić, Commander of the RVS General Staff which, together with the "Knin clan" of former JNA officers, had been responsible for all the events that unfolded in Srebrenica, Bratunac, Zvornik, Milići and Vlasenici between 11–20 July 1995.[165]

During the proceedings, the Prosecutor also ran an audio tape of talks between General Krstić and his officer in the course of which the general allegedly ordered that "all those who had survived should be killed..." Krstić stated that he did not recognise any of the voices of those taking part in the taped conversation.[166]

The trial of the accused based on the *Foča indictment* has been in progress since March and a verdict is expected at the beginning of the following year. The indictment contains charges against VRS soldiers, Dragoljub Kunarac, Radomir Kovač and Zoran Vuković for the systematic rape of Muslim women from Foča among whom there were girls aged 12. In this case, rape has been described for the first time as a crime against humanity. All reporters from the Tribunal are inclined to agree that, given the nature of this crime, the coverage of the trial has been one of the toughest professional assignments yet.

Stevan Todorović, the former Chief of Police in Bosanski Šamac, who has been accused of the ethnic cleansing of Muslims and

165 *Tribunal Update* 195, 16–21 October.
166 *Tribunal Update,* 196, 23–30 October.

Croats ever since his arrest in September 1998 in The Hague, has been repeatedly claiming that he had been kidnapped on Zlatibor and subsequently taken across the Drina River and sold to SFOR for 50.000 German marks. Since then, proceedings have been underway to review whether he had been detained in accordance with the law. The defence demanded that Todorović be immediately released and returned to the country in which he had been kidnapped on the ground of illegal arrest. The defence also demanded that SFOR make accessible the papers referring to Todorović's[167] arrest, but SFOR refused to hand over the papers requested "for reasons of security". The Tribunal found that the obligation to co-operate with this institution was not only valid for States but also for international organisations, and ordered the American General, attached to SFOR, to appear and testify to the circumstances of Todorović's arrest. The Prosecution sharply criticised the court's decision, maintaining that the documents in question had nothing to do with the indictment and that it was pointless to insist on something that cannot meet the demand of defence – release from custody without reviewing the charges contained in the indictment. Certain countries whose troops belong to SFOR contested that decision, arguing that it may have highly unfavourable effects on future arrests by the international forces. In early November, the Appeals Chamber suspended the ruling of the Trial Chamber by which SFOR had been ordered to hand over all the documents referring to Stevan Todorović's arrest.[168]

Finally, on 13 December, a hearing took place formalising the arrangement between the Prosecution and Todorović according to which Todorović would withdraw all accusations referring to SFOR, plead guilty on count 1 of the indictment, prosecution on political, racial and religious grounds, whereas the Prosecution would formally demand the withdrawal of counts 2–27 of the indictment and ask for a sentence which would not be less than 5 and more than 12 years of imprisonment.[169]

167 *Tribunal Update* 195, 16–21 October.
168 *Tribunal Update* 198, 6–12 November.
169 Press Statement, 13 December at ‹www.un.org/icty›.

In deciding on the Prosecution's motion, the judges of the Tribunal concluded that the victims of crimes that fall within the jurisdiction of the Tribunal are entitled to demand compensation for damages incurred. The President of the Tribunal addressed a report to the Security Council and the UN Secretary General in which the judges have proposed modalities for the procedure of compensation. He further suggested that the UN bodies seriously consider appropriate methods of indemnifying the victims of crimes in the former Yugoslavia.[170]

2.5. Reaction of the Authorities in the Federal Republic of Yugoslavia

The arrests between January and June of the Bosnian Serbs in B&H, and especially, the apprehension of the former President of the Republika Srpska Parliament, Momčilo Krajišnik, triggered violent protests among the authorities, the ruling parties as well as among a part of the opposition. The regime media had full coverage of these events. In addition to the Federal government,[171] the University Board in Belgrade strongly condemned Krajišnik's arrest, insisting that the Hague Tribunal be abolished because it represented a political court called upon to arrest, threaten and kidnap people whose sole guilt was the fact they were."[172] Federal Minister of Justice, Petar Jojić, maintained that the Hague Tribunal "was not a court but a Medieval-like inquisition", "hunting down Serb heads", and that, therefore, "the indictment against Momčilo Krajišnik contained not a shred of evidence but instead merely diffused hatred against the Serb nation."[173]

170 Press statement, 13 September at ‹www.un.org/icty›.

171 "Sharp protest by the Federal government to the Security Council because of the criminal arrest of Momčilo Krajišnik" (invitation to abolish the Tribunal as institution void of any legal basis), "NATO arrests like a villain", *Politika*, 5 April, p. 2.

172 *Politika,* 13 April, p. 18.

173 *Politika,* 15 April, p. 18.

Tanjug also transmitted the comments of the President of the then opposition Democratic Party of Serbia, Vojislav Koštunica, where he speaks of the gangsterlike apprehension of Krajišnik, labelling the Tribunal as "a NATO, or more precisely, an American, means of exerting pressure and arranging the world to suit its momentary interests..."[174] The Serbia Renewal Movement pointed out that "The Hague was punishing Serb leaders, while granting amnesty to Muslim and Croat leaders... Krajišnik's arrest based on a sealed indictment is contrary to the principles of law, democracy and freedom."[175]

The then Dean of the Law Faculty of the Belgrade University, Oliver Antić, explained on a television show on State television (RTS), that "the so-called Hague Tribunal was a disgrace to law and justice", that "the establishment of the Tribunal by the Security Council was a *legal disaster*... a political court not to be taken seriously. It is enough to refer to its founding acts, stating that the purpose of the Tribunal was to contribute to the cessation of conflicts in the former Yugoslavia, which is a political rather than a legal issue."[176] Djordje Ignjatović, professor at the Faculty of Law in Belgrade and Deputy President of the Yugoslav War Crimes Committee, in the same TV show, expressed the view that the method of work of the Tribunal was " two-faced and hypocritical, stressing that "the Prosecution was the main body and not the court, and that it had decided that the Muslims were the victims, the Croats the party to be blackmailed and the Serbs the obvious culprits..."

The official policy of the previous government also consisted in promoting incorrect information about the Tribunal. Thus, the former Information Minister in the government of the Republic of Serbia, Aleksandar Vučić, informed the public that "the spokesman of the Hague Tribunal, Paul Risley, had openly stated that they had liquidated Pavle Bulatović and Željko Ražnjatović Arkan and that the same would happen to many others in Serbia unless they accepted the occupation

174 *Politika*, 4 April, p. 2.
175 *Politika,* 5 April, p. 18.
176 *Politika,* 30 January, (transcript of TV show).

and the occupiers."[177] Former Federal Minister of Information, Goran Matić, explained the "truth" about the events in Srebrenica: "The massacre of about 1200 people in Srebrenica, for which the Serbs have been unjustly accused, was carried out, according to the testimony of the Pauk (Spider) spy and terrorist group, by a group of Croat, Slovene, Muslim and Serb mercenaries in collaboration with French and Muslim intelligence services, for two million marks, which were paid by the Muslim government in Sarajevo."[178] In the text entitled "Hague Tribunal Ransom Hunters" – dress rehearsal for special units in charge of apprehending Serbs already completed..." *Politika* reported about developments in The Hague: "General Krstić was subjected to the questioning techniques of the American investigators: he was questioned for 30 hours, stabbed in the arms and head and some kind of liquid was poured on his wounds.[179]

The culmination of official attack on the Tribunal which the Tribunal interpreted as a "sign of Belgrade's paranoia"[180] was the official letter that Petar Jojić, former Federal Minister of Justice, had addressed to the Tribunal's Chief Prosecutor, Carla del Ponte, with the heading "To the Whore del Ponte".[181] The insulting letter was a reply to Mrs. del Ponte's letter to the FRY government, in which she appealed for co-operation and the extradition of persons accused of war crimes.

"The dungeon you are running and sold yourself to the Americans for as the worst prostitute ever, who has even resorted to murder, and into which you have been dragging innocent Serbs by force, the

177 "The Hague Tribunal and NATO are behind the murders of Pavle Bulatović and Arkan", *Politika,* 16 April. What the spokesman of the Prosecution had actually said was that Ražnatović would have been safer had he been in The Hague. See, *Danas,* 19 April, p. 3.

178 "A Tear in the Spider Web", *Borba,* 14 March, p. 5.

179 *Politika,* 18 March, p. 3.

180 *Vijesti,* 26 May, p. 2.

181 None of the newspapers printed the letter in its integral version. See *Danas*, 26 May, p. 9. The *Belgrade Centre for Human Rights* has in its possession the a copy of the letter which it circulated to the journalists present at Minister Jojić's press conference on 24 May.

so-called Tribunal, is an illegal institution founded contrary to the provisions of the United Nations Charter and international law as a whole."

Some of the opposition parties, particularly the Democratic Party of Serbia (DSS), otherwise very critical of the Tribunal, sharply criticised the Federal Minister of Justice : "Jojić's vocabulary is below any level of communication – the Minister has substantially devalued serious discussion about the legal grounds and method of work of the Hague Tribunal and has caused tremendous damage to all those who judge that institution in a critical, well-argued manner."[182]

Apart from impassioned attacks on the Tribunal, a large part of the opposition have become very critical of sealed indictments, maintaining that it is a practice "unknown to any legal system in the world.[183] Virtually no one has mentioned that unannounced arrests were common in all countries, and, in the case of the Tribunal, indictments had already been submitted.[184] The problem is that there are, so to speak, no impartial commentators at home who are familiar with the rules of the Tribunal and capable of explaining them calmly to the public. Only the independent press regularly report on events related to the Tribunal and publish press statements of major domestic political parties. In May, the Centre for Democracy and Human Rights (CEDEM) from Podgorica organised a conference entitled "The Tribunal and Models of Co-operation. At that Conference, lawyers, journalists and politicians from Montenegro were able to discuss matters with Tribunal representatives.

The reopening, in early 2001, of the Office of the Prosecution in Belgrade will certainly enable the Tribunal to impact more actively on the public opinion in the FRY, and particularly in Serbia. The

182 Beta, 25 May.

183 Legal experts of the Federal Ministry for Foreign Affairs, professors Rodoljub Etinski and Ivan Čukalović are merely some of those who share that view, see *Politika*, 22 January, p. 17; With regard to protests of the opposition parties, the Democratic Party, the Movement for a Democratic Serbia, the Serbian Renewal Movement, see *Blic*, 4 April, p. 8.

184 TV show produced by ANEM, Studio B TV, March and May, 2000.

Office will make it possible for investigators to access witnesses in Serbia, and, finally, speed up investigations against those who committed crimes against the Serb population in Croatia and Kosovo. To date, The Prosecution has had access to witnesses on the territory of Montenegro thanks to excellent co-operation with the authorities there. Although the FRY authorities have refused to grant her a visa because she was "an administrative employee of NATO"[185], del Ponte met in June with President Djukanović in Montenegro, near the border with Croatia. The Montenegrin government has repeatedly expressed its readiness to co-operate with the Tribunal and to extradite all those accused of war crimes whose arrest would not "entail the risk of internal conflict in Montenegro and numerous and mass victims."[186] Since investigators have been intensively investigating crimes committed in the Dubrovnik theatre of operations, the Montenegrin media have been predicting who from the political and military leadership could find himself on the list of accused persons.[187]

Following 5 October and the changes in the Federal authorities, the differences between the formed regime and the independent media have disappeared overnight. Since then, practically all of them report on the Tribunal without any comments.

The new Federal authorities look upon co-operation with the Tribunal as a necessity, an obligation accepted by former President Milošević in signing the Dayton Accords.[188] For quite some time already, it is no secret that the newly elected President of the FRY, Vojislav Koštunica, is not enthusiastic about the Tribunal,[189] a feeling

185 Announcement of the Yugoslav Ministry for Foreign Affairs, *Vijesti,* 20 June, p. 2.

186 Montenegro's Prime Minister, Filip Vujanović, in a discussion with del Ponte in The Hague, *Vijesti*, 5 February, p. 3.

187 *Monitor*, "Clue for The Hague", 8 December, p. 10.

188 See Vojislav Koštunica's interview to the weekly *Vreme*, 14 December, p. 18

189 "The DOS candidate for FRY President, Vojislav Koštunica, declared that, if elected, he would not allow Slobodan Milošević to be brought before the Hague Tribunal which is, according to Koštunica, a rather political than a legal institution, and more an American than an international court. The submission of an indictment against Slobodan Milošević is senseless in much the same way that last year's bombing of the FRY had been senseless." *Vijesti,* 6 September, p. 2.

also shared by a substantial part of the public opinion (which will be discussed in the following section). The fact that Chief Prosecutor, Carla del Ponte decided there were no grounds for even starting an investigation about some key incidents of the NATO intervention against the FRY, contributed to forming the view, even in the post-Milošević era, that the Tribunal was not an impartial nor independent court.

The opening of the office of the Tribunal in Belgrade in the wake of del Ponte's visit to Belgrade in the beginning of 2001[190] is not disputable, whereas "all the rest" will, according to President Koštunica, "be considered in the light of our regulations and the Constitution that has a problem with extradition."[191] It remains to be seen how the question of extraditing accused persons to The Hague will be resolved in the coming year, also given del Ponte's categorical view on this issue.

The need to put war criminals on trial does indeed exist but the prevailing opinion during the latter part of the year was that the trials should be held in the country. President Koštunica announced that "President Milošević would be answerable to the Serb people for his acts".[192] It is still not clear whether he will be also tried for criminal offences for which he has been charged on the basis of the Hague indictment or only for abuse of power, electoral fraud, corruption and the like.[193]

190 Tribunal Spokeswoman, Florence Hartman – the Office will probable be opened after the election in Serbia, *Blic*, 26 November, p. 7.

191 *Vreme*, 14 December, p. 18. The Constitution of the FRY prohibits the extradition of FRY citizens to *other States*, but does not prevent their extradition to an international institution such as the Hague Tribunal. See Article 17, para. 3 of the FRY Constitution.

192 *Blic,* 6 November, p. 9.

193 According to a public opinion poll, the greatest percentage of the respondents chose the second option (48%), 14% are of the opinion that he should not be tried, 8.5% that he should be surrendered to the Hague Tribunal, 11% that he should be tried for war crimes, 5% are in favour of him being tried by the Tribunal in the FRY, and merely 13% are undecided. See *Vreme* 16 November, p. 17.

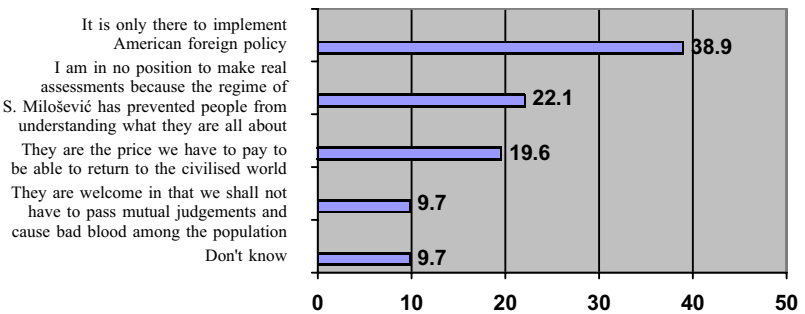
2.6. Reaction of the citizens of the FRY

In polling the legal awareness of the citizens of the FRY (the findings of which have been explained in Chapter 3), five questions, *inter alia*, had to do with the Hague Tribunal. The aim was to obtain a realistic insight into how citizens see the activities of the Tribunal and the possibility of Yugoslav citizens being brought for trial there.

The first question put to the respondents was " What is your view on the activities of the Hague Tribunal in the territory of the former SFRY?" The replies we received can be seen in Graph 1. As was to be expected, the majority of the respondents believed that the Hague Tribunal was not a genuine court but merely an instrument in the hands of American foreign policies (38.9%). Still, this should not obliterate the fact that our public opinion is *sharply divided* on that issue. Indeed, as opposed to the group of respondents holding a negative view of the Hague Tribunal, there exists a somewhat smaller group (29.3%) whose attitude is a positive one – either in that it considers that the activity of the Hague Tribunal is the FRY's "ticket" to entering the civilised world (19.6%) or in that it views such activities as a means of avoiding the policy of revenge and of "creating bad blood within the nation" (9.7%). The third group includes all those who have no attitude in respect of the Hague Tribunal (31.8%). In this context, it is worthwhile noting that a substantial portion of the respondents belonging to this group (22.1%) was not content with giving a simple "I do not know" answer but insisted on the fact that their ignorance was due to a poor system of information under the Milošević regime which has deprived of them of much relevant data. By the very nature of things, most of these respondents were citizens of Serbia,[194] inferring that every fourth citizen in Serbia feels the need for additional information thus enabling him to pass judgement about the activities of the Hague Tribunal. The same conclusion applies to citizens who have stated they were Serbs by nationality (here, the need for supple-

194 Only 8.9% of the respondents from the territory of Montenegro encircled that reply.

mentary information regarding the Hague Tribunal is slightly more pronounced among Croats and Hungarians).



Graph 1: Views regarding the activities of the Hague Tribunal in the territory of the former SFRY

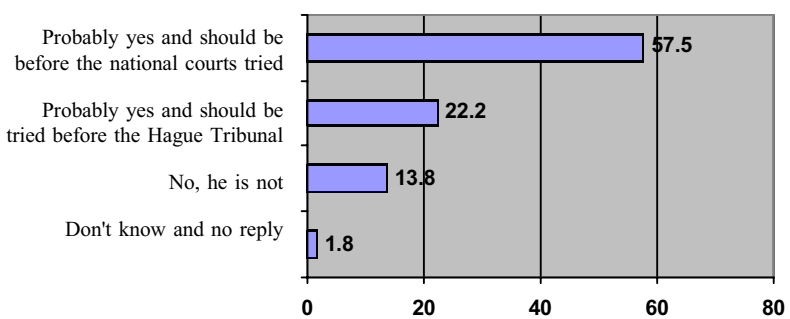
The respondents were also asked if they felt that views regarding the Hague Tribunal would undergo a substantive change if people were able to seek information from the mass media. Divided opinion about the Hague Tribunal is clearly reflected in the reply to this question. The majority was of the opinion that it is "very likely" that a change would take place (25.7%), and next come those who doubt that views would change (24.4%). Almost the same percentage of the respondents was categorical in saying "no" (18.6%) and in replying "of course" (18.2%). 13.1% were undecided. The main factor determining the replies was the respondent's education: the better educated the respondent, the greater was his propensity to regard adequate information as a decisive element in bringing about a change of attitude among the citizens to the Hague Tribunal.

The following two questions put to the respondents referred specifically to the competence of the Hague Tribunal to institute proceedings against citizens of the Federal Republic of Yugoslavia for war crimes. The first important thing to note in relation to this question

has to do with the widespread belief among the respondents that citizens of the FRY had indeed committed war crimes during the wars in the territory of the former SFRY. This is significant as the propaganda activity of Milošević's regime kept assuring the citizens that the "Serbs had been only defending themselves" that they had exclusively been " the victims of a perfidious enemy" and that they had waged "a just war". As we shall see from the answers of the respondents, that propaganda had not been successful and that there exists in the FRY a widespread awareness of war crimes perpetrated by the so-called "Serb side." However, the difficulty that remains is to establish the competent court that would try the FRY citizens for the commission of war crimes. In response to the question of what they think of the citizens of Serbia and Montenegro who have been accused of war crimes before the Hague Tribunal, the interviewees readily stated their preference for trials before the national courts (46.6%). On the other hand, this reply was much less frequent among respondents from Montenegro (36.4%) compared to those of Serbia (49%). Conversely, in Montenegro there was a far greater number of respondents who favoured the surrender of war crimes suspects to the Hague Tribunal (26.5%) than in Serbia (14.7%). The percentage of respondents who believe that war crimes suspects were the victims of an anti-Serb conspiracy is not negligible (16.7%) nor is the percentage of respondents who insist on trying such persons in the former republic of the SFRY in which they have been suspected of having perpetrated war crimes (9.9%). As was to be expected, among those who feel that the Yugoslav citizens have been victims of an anti-Serb conspiracy, the majority support the SRS (47.7%) and the SPS (46.3%). In response to the above question, 9.8% of the respondents were unable to provide any answer whatsoever.

An even higher percent of the respondents think that Slobodan Milošević should be tried before national courts (57.7%). Unlike respondents from Montenegro (40.6%), respondents from Serbia were by far more inclined to see Milošević accused before a national court (61.5%). On the other hand, on this issue too, a far greater number if

respondents from Montenegro (32.1%) were in favour of co-operation between the Federal Republic of Yugoslavia and the Hague Tribunal compared to the 19.8 % from Serbia. In other words, on every one respondent supporting the extradition of Slobodan Milošević to the Hague Tribunal there are three who believe he should be tried before national courts in the FRY. In the group of 13.8 % of respondents who contest Milošević's responsibility for war crimes and object to any form of proceedings against him, the bulk (i.e. as much as a third) are supporters of the SPS. The majority of SPS supporters share that view (75.3%), whereas a further 10.3% are willing to concede that Milošević is probably responsible for war crimes but that he ought not be put on trial on that count. Moreover, a large portion of SRS supporters would be willing to see Milošević exculpated of any guilt of war crimes (45.3%) or believe that he should be, at least, spared of a trial (10.9%). Interestingly, only a very small percent of the respondents was unable to answer that question (1.8%).



Graph 2: Views as to whether Slobodan Milošević is responsible for war crimes

We reworded and presented in another form the question of Milošević's responsibility for war crimes and his extradition to the Hague Tribunal. In the last question of our questionnaire we stated the

fact that Milošević, as President of Serbia, did sign the Dayton Accords in 1995 making it incumbent on Yugoslavia to co-operate with the Hague Tribunal. Subsequently, the respondents were asked whether they thought that this obligation had to be complied with. Thus, the respondents were placed in a much more difficult situation: they had to state their opinion about an international commitment that Milošević himself had accepted. In so doing, Milošević appeared before the respondents as a politician who himself created the possibility of being accused for war crimes and handed over to the Hague Tribunal.

As was expected, the reworded question yielded a substantially lower percent of respondents who were prepared to question the jurisdiction of the Hague Tribunal. Taken by and large, while a third of the respondents felt that the commitments under the Dayton Accords should not be complied with – either because " we were respected then" (22.8%), or because "at the time, a regime that did not take account of the interests of the people had been in place and had been toppled in the meantime (10.5%) – one half of the respondents still believed that Milošević ought to be surrendered to the Hague Tribunal. The number supporting the view that Milošević's responsibility at the international tribunal should extend to all war crimes, including those committed in Kosovo in 1998–1999, (34.7%) exceeds by far, however, the number of respondents who considered he should be held responsible for war crimes committed only in the period preceding the signing of the Dayton Accords (i.e. war crimes committed in the wars in Slovenia, Croatia and B&H (14.1%). Interestingly enough, the respondents in Montenegro were much less inclined to emphasise this qualification: 9.6% thought he should be tried by the Hague Tribunal only for war crimes perpetrated until 1995, while 48.3% rejected that qualification. We have the opposite situation in Serbia. One out of two respondents who considered that Milošević had to answer for all war crimes ruled out the possibility that former FRY President should be held accountable for the commission of war crimes in Kosovo in the years 1998 and 1999. A little less than a fifth of the respondents (17.9%) was unable to answer that question.

All this goes to show that the public opinion in the Federal Republic of Yugoslavia had little information about and was divided in its views regarding the Hague Tribunal. As our research findings have shown, a third of the citizens of the FRY firmly believed that there should be no co-operation with the Hague Tribunal, that citizens of the FRY should not be extradited to the Tribunal and that the Tribunal was merely an instrument of American foreign policy. On the other hand, a fifth of the citizens unreservedly advocate co-operation with the Hague Tribunal. The rest who account for some 50% of the population tend to waver in their views and, in the majority, recognise the need for more information about the activities of the Hague Tribunal so as to be able to form their own opinion in a qualified manner. As far as they are concerned, the establishment of the office of the Hague Tribunal in Belgrade and the possibility of learning about its activities "on the ground" will be very useful. However, it is highly likely that another factor will play an even greater role in shaping the opinion of that segment of the public about the Hague Tribunal. Although misinformed about the activities of the Hague Tribunal and hesitant in its attitude towards it, that portion is largely supportive of DOS and will therefore be inclined to support, to a certain extent, the foreign policy moves that the new authorities in the FRY (or rather Serbia) plan to make. Naturally, support of the voters is closely linked with the fulfilment of election promises. A more flexible attitude of the Yugoslav and Serb authorities in respect of the Hague Tribunal, especially in the light of the closer relations between the FRY and the international community, especially the European Union, that are now being forged, could find support among that portion of the population and eventually lead to a dissemination and strengthening of a positive attitude towards the Tribunal. The inverse is also true. If the new authorities reform policies should fail and the existing crises intensify, the result could well be that those persons turn to xenophobia and to withhold their support of any form of co-operation with the international community – and with the otherwise controversial Hague Tribunal in particular.

3. Truth and Reconciliation

3.1. Proposals for setting up a Commission for Truth and Reconciliation

Upon taking office, the Federal Minister for Foreign Affairs, Goran Svilanović, launched the idea of establishing a Truth Commission. The latter would be composed of intellectuals whom the citizens trust and its mandate would be to collect evidence on crimes and to disclose to the public what had actually been done in the name of the "Serb national interest", but also what crimes were committed against the citizens of this country in the past decade. According to Svilanović,

> If the Commission were to inform the public of such events, if what is said is based on well-founded and detailed facts, the public will be able to grasp the full horror of such events and to understand how individual developments and crimes have been a tragedy for all concerned... I am confident that, if the greatest possible number of persons are sensitised to all of this, there will be a growing interest in the issue of specific responsibility, i.e. in finding out the names and surnames of those who have perpetrated crimes. The culprits will naturally have to be punished.[195]

Minister Svilanović's conviction that citizens lacked information about the overall circumstances leading up to the outbreak of wars in the territory of the former SFRY has received further confirmation in public opinion polls. While Montenegrin State media provided regular reports on the work of the Hague tribunal in its evening news programmes, as well as showing a documentary on the crimes in Srebrenica, this remained something quite inconceivable for citizens in Serbia even in the year 2000.

In March 2000, an international conference organised by independent Radio B2–92 and the Open Society Fund, entitled " Truth,

195 Interview of Goran Svilanović to the weekly *Vreme*, 16 November, p. 9.

Responsibility and Reconciliation," was held in Ulcinj. It rallied prominent human rights advocates from the country and members of truth commissions from Chile, Argentina and the South African Republic. In April, a similar conference took place in Belgrade, organised by ANEM (Association of Independent Electronic Media) and AAOM (Alternative Academic Educational Network); a third conference is scheduled to take place on the same topic and will be the first to have full media coverage and thus reach the public at large.

Until the end of the year, the establishment of a Truth and Reconciliation Commission was not formally discussed by the authorities at the republic and federal levels though it is something that has given rise to extensive public debate.[196] According to Minister Svilanović, there is a possibility that the Commission will be formed either by a decision of the government or else the initiative will come from the non-governmental sector.[197] There are several ideas as to the composition of the Commission, ranging from the view that it should assume a regional character and be composed of prominent and impartial persons that have a degree of credibility with all the conflicting parties,[198] to the opinion that the Parliament should choose among its members, or the view that the members should be persons from the media and non-governmental organisations[199] etc.

Unlike Commissions for truth and reconciliation in some other countries, testimonies before the commission in this area would not rule out criminal accountability of the perpetrators.[200]

Many are aware that it will not be easy to ensure the success of the Commission. It will be extremely difficult to gain wide acceptance

196 See *Vreme,* 23 November, p. 22.

197 Goran Svilanović, *Vreme,* 23 November, p. 22.

198 Vojin Dimitrijević, *Vreme,* 23 November, p. 22; Momčilo Perišić, President of the Movement for a Democratic Serbia and a former Chief of Staff of the Army of Yugoslavia believes that "it is unlikely that any commission can provide the testimonies of all sides."

199 Biljana Kovačević-Vučo, *Vreme,* 23 November, p. 22.

200 *Id.* Svilanović and Dimitrijević; Gradimir Nalić feels that it will be impossible to punish all the culprits and that, therefore, one should not go on a "witch hunt".

for the idea that members of the Serb nation are also guilty of the gravest crimes. To illustrate this point, there is the example of Nataša Kandić, Director of Humanitarian Law Center, who while being interviewed by Novi Sad Television, received a bomb threat. Moreover, while the show was going on and on the following morning, numerous viewers called TV Novi Sad, expressing their fury at seeing her as a guest in the programme.[201] For the citizens of Croatia, B&H, Montenegro, and especially Serbia, the idea of "the right to truth" has not gone further than the embryonic stage, unlike with the populations of Latin America and the citizens of Germany who have been accustomed to the idea for quite some time.

The downfall of Milošević's regime of personal power and the beginning of political reforms in the Federal Republic of Yugoslavia have raised the question of reconciliation among people and nations on the territory of the former SFRY. The ten-year period, during which the spread of nationalist hatred, war propaganda and war itself alternated and supplemented one another, has seemingly come to an end. The new government in Belgrade emerged victorious thanks to a programme calling for the FRY's reintegration in Europe and the East European region. To materialise that programme, a painstaking process of reconciliation among members of different nations will have to be initiated. Over the last ten years, these nations had, either via the controlled mass media or from their own personal experience, (and even involvement in mutual armed clashes) learned to regard one another in the worst light possible.

3.2. Results of Opinion Surveys

The first prerequisite for reconciliation is the readiness to acknowledge one's own guilt for acts committed and to appraise in a sober manner all the circumstances surrounding the events that took

201 See *Vreme* "Abstention Crisis", 16 November, p. 25.

place. For this reason, the first question we asked our respondents was whom they considered the most to blame for the break-up of the SFRY. In response to that question almost two-thirds (63.2%) of the respondents believed that it was the leaderships of the former SFRY republics. From that percentage 51.5% were inclined to hold them all equally to blame (the remaining 11.7% singled out one of the leaderships as the most to be blamed). A negligible 2.4% of the respondents put the blame on Ante Marković's Federal government. 14.3% of those interviewed blamed external factors, of whom 11.4 % did not want to differentiate between individual actors involved in the process of disintegration of the Yugoslav State, simply identifying the culprit as the "international community".

A very small percentage (only 5.3%) of the respondents replied to that question by stating that responsibility for the break-up of Yugoslavia lay with the nations inhabiting on the territory of the SFRY. This is, in itself, an encouraging sign, as it speaks against a collectivist matrix in ascribing blame for the country's break-up and the ensuing war atrocities. However, we wanted to see how the respondents would react if they were offered the option of appraising each nation's individual responsibility for the country's break-up (i.e. that of the Serbs, Croats, Montenegrins, Albanians, Slovenes, Muslims, Macedonians, Yugoslavs and Hungarians). The scale ranged from "very", "partially", "to some extent" and to "no responsibility". In replying to the question, the respondents rarely chose to claim that a particular nation held "no responsibility" (with the exception of the Hungarians and Yugoslavs: in the case of the former, as many as far as 50.2% of those interviewed considered that they were not "at all" responsible for the break-up of the SFRY while, in the case of the latter, 48.6% provided the same answer. "Much" of the blame the respondents tended to attribute to the Croats (51.8%), then to the Albanians (46.8%), to the Muslims (37.7%) and to the Slovenes (35.3%). 23.5% of the respondents feel that the Serbs are "much" to blame, and 10.5% that the Montenegrins are "partially to blame." However, if we aggregate the respondents who consider Serbs and Montenegrins "very" and

"partially" responsible, then it can be inferred that 66.4% of the respondents are prepared to ascribe to the Serbs some sort of responsibility for the break-up of the SFRY, and 46% to the Montenegrins. Interestingly enough, 54.1% of the respondents of Serb nationality feel that some sort of responsibility for the break-up of the SFRY lies with the Serbs, while 45.5% of the Montenegrin respondents feel the same way about the Montenegrins. It appears that while there is a prevailing tendency to consider other nations more culpable for the break-up of the SFRY that one's own nation, there is nevertheless, both among the Serbs and Montenegrins, a certain amount of self-criticism and a readiness to come to terms with some sort of responsibility.

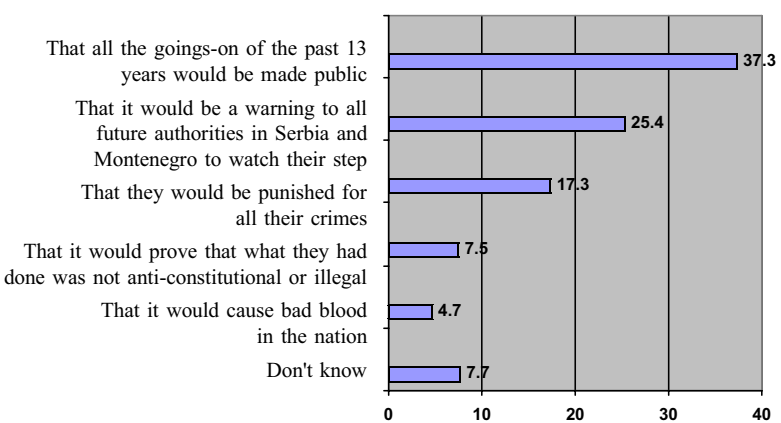
In response to the question of whether they feel that should be a reconciliation among the nations formerly belonging to the SFRY, 64% answered "Unconditionally, yes". 15.4% of the respondents believe that there should be a reconciliation provided certain conditions are met; 16.1% of the respondents chose to answer "No, not while the generations that have survived the wars of the nineties are still alive" and "No, never." 4.5% were undecided. The readiness for unconditional reconciliation is somewhat less pronounced but nevertheless fairly strong among respondents who declared themselves as Serbs (60.2%). On the other hand, this willingness was is still more manifest among the respondents declaring themselves as Montenegrins (as much as 73%). As regards readiness for unconditional reconciliation, Albanians are not far behind the Serbs (57.7%), whereas the Muslims are even ahead of them (66.1%). All the same, the highest degree of readiness for reconciliation exists among the Croats – 88% of the respondents who stated they belonged to that nation felt that there should be a reconciliation among the nations that composed the former SFRY.

From these responses we can reconstruct a dominant pattern according to which the greatest responsibility for the break-up of the former SFRY lies with the leaderships of the republics. Now that they have virtually disappeared from the political scene, a reconciliation

among the (unnecessarily bickering) nations can take place.. While there is a prevalent tendency to consider that other nations are more to blame for the disintegration of the common state than one's own, among the Serbs and Montenegrins, as the key nations of the FRY, (in Serbia and Montenegro), there exists a negligible readiness to assume a part of the responsibility.

We wished to find out from the respondents whether they thought a public apology from public figures addressed to entire nations would help the process of reconciliation. An example of this was the apology of the Montenegrin President, Milo Djukanović, addressed to the Croat nation for the crimes committed by Montenegrin soldiers within the Yugoslav Peoples Army (JNA) on Croatian territory. Most of the respondents (30%) were inclined to support that move because it contributed to the reconciliation among nations. Yet, there still remained a large number of respondents who chose other answers. 23% of the respondents felt that "it was a subtle act that cost nothing",21.7% consider it a "disgrace marring the Montenegrin image" while 18.5% of the respondents stated that this was "silly because there was no reason to apologise". The remaining 6.8% of the respondents were not able to reply to the question. It is interesting to note that many more Montenegrins (57.3%) than Serbs (20.5%) were prepared to state that Djukanović's act was useful because it contributed to the reconciliation of the two nations. Taken by and large, Djukanović's gesture was far more widely interpreted in that light in Montenegro (48.1%) than in Serbia (25.7%). Clearly, apologies by public figures do not seem overly popular in the Federal Republic of Yugoslavia, particularly in Serbia (and among Serbs), notwithstanding that one is beginning to correlate such acts with the realistic need for reconciliation among nations. It is possible that with the passage of time, as nationalist feelings become more subdued and concrete forms of co-operation among the nations of the former SFRY take shape, apologies by public figures will gain in popularity and become a significant instrument of reconciliation among these nations.

Finally, we tried to see whether the respondents had learned any lessons from the experience they had with their own leadership at the time of the break-up of Yugoslavia and the beginning of wars on the territory of the former republics. We therefore asked them what they believed would be the greatest effect of (the long-announced) proceedings against Slobodan Milošević and his associates. The answers received are shown on Graph 1. The exposure of all the backstage activities and games is – as concerns the effect – the view shared by the majority of the respondents (37.3%) – though more so (40%) in Serbia than in Montenegro (26.2%). A somewhat smaller percentage of the respondents were inclined to see in that a warning for the future and for future authorities in Serbia and Montenegro (25.4%). A comparatively small number of respondents believed that the most important consequence of trials against Milošević and his associates was punishment alone 17.3%. These findings inspire hope that a trial against Milošević could truly serve as a catharsis to all those who spent years believing in his propaganda, those who were involved, either by coercion or out of their own free will, in the wars he inspired and those who had suffered in misery and poverty.



Graph 1: Views on the main effect of bringing Slobodan Milošević and his associates to justice

All in all, the results of the survey show that there exist fairly sound preconditions among the Yugoslav population for launching a process of reconciliation among the nations that live on the remaining territory of the former SFRY. The new authorities in the Federal Republic of Yugoslavia and Serbia (and also in Montenegro) could make use of these preconditions and begin pursuing policies designed to truly bring reconciliation among the nations in the area and their surroundings and to make them a part of the European integrative trends.

4. The Roma in FR Yugoslavia

4.1. The share of Roma in the overall population

According to the census of 1991, a total of 143 519 Roma were registered on the territory of Serbia and Montenegro, which represented 1.38% of the overall population of these two republics. Of the number quoted above, 140,237 Roma were registered on the territory of the Republic of Serbia, which represented 1.43% of its overall population.

The official data on the number of Roma, however, are not considered to be dependable. According to the estimates of Matica Romska (a Roma cultural society), between 600.000 and 700.000 Roma live in Serbia and Montenegro today, which would mean that the Roma are the third largest ethnic group in Serbia, the first two being the Serbs and Albanians.[202]

Trifun Dimić, the president of Matica Romska of Yugoslavia, thinks that the discrepancy between the official statistical data and the actual number of the Roma in Yugoslavia is due to the fact that the Roma often resort to national, even confessional mimicry, tending to

202 See *Manjine u Srbiji*, The Helsinki Committee for Human Rights in Serbia, Belgrade, 2000.

declare themselves as members of the majority nation in the hope of attaining a better social position in this way.[203]

4.2. The legal status

It is not possible to ascertain the legal status of the Roma in Yugoslavia by means of a linguistic/legal analysis of the constitutional and legal regulations currently in force; this is, first of all, due to the fact that nowhere in the constitutions (the federal and the republican ones) or any legal acts is there any specific mention of the Roma as an ethnic community. In addition to this, the constitutions of the Federal Republic of Yugoslavia (FRY), the Republic of Serbia (RS) and the Republic of Montenegro (RM) do not define the notion of "nation" or "national minority", nor do they enumerate the ethnic groups that are recognised as such. Thus, not even the former constitutive nations within the framework of the Socialist Federal Republic of Yugoslavia (SFRY), as, for example, the Croats or Macedonians used to be, are not expressly recognised as national minorities in FRY today. The legal status of the Roma is even more difficult to define, in view of the fact that they were not expressly recognised in any specific way in the former SFRY.[204]

Regardless of the discrepancies mentioned above, the majority of domestic experts are of the opinion that the Roma in Serbia and Montenegro fulfil most of the generally accepted conditions for being recognised as a national minority,[205] and that, in legal-technical terms, this status cannot be denied them even now, things being what they are in real life. This view is entirely in accordance with the attitude of the Parliamentary Assembly of the Council of Europe, which, as early

203 *Naša borba*, 5 August 1997.

204 The Roma in Serbia, Centre for Anti-War Activities and Institute for Criminological and Sociological Research, Belgrade, 1998.

205 These conditions normally include specific ethnic, linguistic and cultural character, awareness of this specific character, numerousness, the existence of a "home" nation, historical discrimination. *Ibid.*

as 1993, called this ethnic group a "real European minority" for the first time in its Directive 1203 about the Roma in Europe.

The Roma themselves, however, have been campaigning for years, demanding that they should be expressly granted the status of a national minority. The representatives of the Roma have, on a number of occasions, appealed to the federal as well as the republican authorities. Dragoljub Acković, the president of the Roma Congress Party, has justified this demand thus:

"Nothing has been done for the Roma over the last ten years... Today, we still have the status of an ethnic group, and one of our basic objectives is to be recognised as a national minority. We lack collective rights, the right to receive information and education in our native tongue, and many other rights as well. The government maintains that the Roma have the rights which are in accordance with the highest European standards, but this is ridiculous."[206]

4.3. The actual position

Although the legal status of the Roma is not favourable, their actual position in most of the countries that they inhabit, and thus in Serbia and Montenegro as well, is even worse. They are the objects of contempt, suspicion, violence, stereotypes and discrimination on a daily basis and in many forms, and their living conditions are the worst by far.

4.3.1. Police repression. – Apart from what is, unfortunately, the "usual", "minor" harassment that the Roma suffer at the hands of the police, the attention of the public has been particularly drawn to a case of police repression of massive proportions in the Roma settlement "Antena", situated in Surčin.

According to the report of the Humanitarian Law Center (HLC) of 13 June 2000, the "Antena" settlement was pulled down on 7 June

206 *Blic*, 27 March 2000.

2000, in the course of a brutal police intervention. At the time, 109 persons were living in the settlement, 77 of them children. At least half of them were displaced children from Kosovo.

The report goes on to say that on 12 June 2000, that is, one day before the incident, the local assembly of the New Belgrade district, where the majority of seats were held by the representatives of the Socialist Party of Serbia at the time, passed a decision ordering the pulling down of any illegally built objects on the territory of the district, and ordered the local Roma to move out at once. The district organs in charge then rejected, summarily and in oral form, the plea of the local Roma to be granted a few more days for moving out. Such a behaviour on their part convinced the displaced Roma from Kosovo that the local authorities intended to send them back to Kosovo, where their lives would be endangered again, against their will.

The HLC states that, in the course of pulling down houses and other objects in the "Antena" settlement, members of the police force maltreated all the Roma present, insulting them at the same time on a national/ethnic basis in a most vulgar manner. In addition to this, many of the Roma got slapped in the face, kicked and beaten with fists. Thus a twelve-year-old boy sustained injuries in the renal area due to the beating he received, while another, slightly older boy was first maltreated by the policemen inside the settlement itself, and later at the police station, where he was taken and detained for several hours without any justification whatsoever.

As a result of the conduct of the police in the "Antena" settlement, apart from the real estate owned by the Roma, all their personal possessions, household objects and a number of cars were destroyed or heavily damaged.

4.3.2. Acts of violence committed by private persons. – Apart from police violence directed against the Roma, a disturbing number of cases have been recorded this year wherein the Roma feature as the victims of attacks committed by private persons. Sometimes the so-called "skinheads" appear in the role of bullies, other times the so-called "ordinary citizens".

In the report of 13 May 2000, the HLC directs the attention of the public to an event of three days before, May 10th 2000, to what had happened to a thirteen-year-old Roma girl, enrolled at the "Milan Rakić" primary school, in the Bežanijska kosa settlement in Belgrade.

The HLC states that in the course of the afternoon of 10 May 2000, while going home from school, the girl was attacked by a group of young men. There were "skinheads" among them, but also some pupils attending the "Milan Rakić" primary school.

The assailants pulled the girl down to the ground, caused her multiple injuries with a knife, sadistically smearing the blood all over her body. They also threatened to drug her, showing her a syringe. Subsequent medical examination revealed that the girl had sustained a total of 17 cuts and other injuries to her chest and legs.

A few hours before this attack, the same group of young men had threatened the minor G. J. that they would rape her and cut her to pieces. The girl immediately reported these threats to her mathematics teacher, who replied that it was of no interest to him.

According to the HLC report, even before 10 May the above-mentioned group of young men had manifested racial hatred towards other Roma pupils from the "Milan Rakić" primary school. They had insulted many of them and threatened many as well. The Roma pupils in question had appealed to the principal for help, to no avail.

On account of this incident, the HLC has lodged criminal charges with the public prosecutor's office in charge.

Another extreme case of violence committed against the Roma by private individuals occurred in Niš on 8 April 2000. On that day, D. A., a fifteen-year old Roma boy, was attacked, without any reason whatsoever, by a group of local "skinheads" oh his way to the shop where his father had sent him to buy him cigarettes. First they stopped the boy, then asked him whether he was a "Gypsy". They took off his jacket and sweatshirt, hit him on the head with their fists, cursing his "Gypsy mother". After he had fallen down to the ground, the "skinheads" continued to maltreat him. In the meantime, a friend of D. A.'s

managed to inform his parents of what was happening, so that they soon arrived at the scene to help their son. This is how D. A.'s father described what happened afterwards:

> "When I saw my son half-naked and bloody, surrounded by fifteen or so skinheads, I only thought of how to save my child. The skinheads went at me and my wife, throwing beer bottles and stones at us. The people around just watched, nobody wanted to call the police."[207]

After the incident, criminal charges were brought against only two of the fifteen skinheads who participated in the attack. At the same time, a request was lodged to bring criminal charges against D. A.'s father, even though he had, without any doubt whatsoever, only tried to protect his juvenile son against the brutal attack of a large group of violent hooligans. Immediately after the incident, D. A.'s father was brought to the local police station, where he was held for four hours without any justification being offered.[208]

4.3.3. Discrimination. – In the course of the year 2000, the discrimination of the Roma when it came to access to public places became the object of interest of the general public for the first time in Yugoslav society.

According to a report of the HLC of 12 July 2000, the Roma of the town of Šabac were forbidden access to the local swimming pool at the *Krsmanovača* sports centre. It was reported that the owner of the above-mentioned sports centre was Čedomir Vasiljević – the president of the local branch of the Serbian Radical Party and a former minister in the government of Serbia.

The HLC explains that, due to the increasingly frequent complaints of the Šabac Roma to the effect that they were being prevented from using the above-mentioned swimming pool, it conducted a "test" on the premises on 8 July 2000 and established beyond any doubt that "extreme racial discrimination" was indeed in question. On the day

207 *Danas*, 17 April 2000.
208 *Ibid*.

mentioned above, under the supervision of the HLC, three Roma and three non-Roma attempted to purchase tickets and enter the swimming pool. The three Roma were refused entry by the staff, who maintained that "the regulations of the *Krsmanovača* sports centre" forbade selling tickets to them. The three non-Roma also demanded an explanation, but they received the same reply – that the Roma were forbidden entrance there.

4.3.4. Ethnic distance. – In February 2000, three domestic non-governmental organisations, the Good Action Society, the Yugoslav Association for Scientific Study of Religion and Komren Sociological Meetings, conducted research into the ethnic distance separating the Roma and the non-Roma population of Niš. The research was carried out on a sample group of 200 residents of Niš. The team co-ordinator, Dr. Dragoljub Djordjević, summed up the results of the research in the following way:

> "Half the respondents believe, partly or entirely, that it is better for the Roma to live in settlements of their own... than to mix with others. This boils down to the view that the Roma should live in a ghetto, which represents... territorial segregation."[209]

In addition to this, Dr. Djordjević points out that the attitude of residents of Niš towards mixed marriages with the Roma gives rise for concern. According to the results of the research, almost 80% of the non-Roma questioned are against such marriages, whereas less than one fifth of them would agree to marry a member of the Roma ethnic community or would "allow a close relative to do so".[210]

However, more than three quarters of the respondents condemn the racist violence of the "skinheads" directed against the Roma. Of these, 67% believe that the state ought to protect the Roma from racist-motivated violence, while 8.5% are of the opinion that the Roma have the right to organise self-protection if need be. Only a little over 4% of the respondents believe that the "skinheads were right".[211]

209 *Danas*, 15 February 2000.
210 *Ibid.*
211 *Ibid.*

Also, two thirds of the respondents are against the idea that the Roma "should be moved to another town or another country", while almost three-quarters of the respondents declared themselves against burying the Roma in separate cemeteries or in separate sections of local cemeteries.[212]

Finally, more than 40% of the respondents believe that Roma children should learn the Romany language at school apart from the Serbian language. Only one fifth of the respondents were against this.[213]

4.3.5. Education. – According to the results of the census in the former SFRY in 1981, 47.3% of the Roma over 15 years of age were uneducated or had completed one to three years of primary school. Only 27.4% had completed four to seven years, and only 17.2% the entire eight-year primary school. Only 4.6% of the Roma population had secondary-school qualifications, whereas only 0.2% had advanced or high-level (university) education. In the period between 1965 and 1985, there was not a single Roma attending postgraduate studies. Only one Roma PhD was recorded in the same period. Although there has been no more recent systematic research of this kind, not at the level of the entire country either, one can expect that the situation has not changed significantly.[214]

The disproportional participation of the Roma in special education schools (for retarded children) is a particularly serious problem.

For the most part, the Roma live in the most backward communities in economic terms, driven to the edges of towns and villages, having very little true contact with the rest of the population. Roma children often reach the school-attending age without adequate knowledge of the Serbian language. This state of affairs is confirmed by the results of research indicating that only 7% of Roma children attend pre-school institutions. At the same time, as many as 37% of Roma

212 *Ibid*.
213 *Ibid*.
214 See *supra* note.

children do not speak Serbian at all before they reach the school-attending age, and 46% claim they know "a little" Serbian.[215]

On account of all this, a large number of Roma children, otherwise psychologically and mentally sane, score badly in placement tests and end up in special education classes or schools for retarded children. Children who find themselves in such circumstances face dramatically reduced opportunities for further education or specialisation.

Apart from living conditions and inability to understand the language in which teaching is conducted, the reason for such treatment of many Roma children, experts say, is a methodological mistake made right at the start: Roma children are categorised based on standards established for non-Roma children. According to Dr Svenka Savić, Professor at the Faculty of Philosophy in Novi Sad, this results in "Roma children being classified as not good enough in relation to other children and not [merely] different".[216] Professor Savić concludes that "research shows that the culture of the Roma is based on a philosophy of life different... from the standards of... the non-Roma population, so that the educational process should take account of the differences that are reflected in the linguistic and cultural behaviour of Roma children at school".[217]

4.3.6. Political organisation. – The Roma living on the territory of Serbia and Montenegro have never actively, let alone on an equal footing, participated in the political life of these communities. As a rule, they have been treated as a never-ending source of votes that can be manipulated, through blackmail or bribe. In the course of the year 2000, we have, yet again, encountered examples of "buying Roma votes" by means of cooking oil, flour and other articles. In an interview published by the daily Blic on 10 April 2000, Dušan Grujić, a member

215 D. Simić, *Studija o socijalnoj integraciji Roma*, Roma Association of the Republic of Serbia, Niš, January 1993.

216 Paper presented at the symposium on the social status and culture of the Roma in Vojvodina, Novi Sad, *Matica srpska*, 25 January 1990.

217 *Ibid*.

of the Education Commission with the Association of the Roma Societies of Serbia, points out that on the eve of every election the Socialist Party of Serbia attempts to organise the distribution of cooking oil or flour among the Roma with a view to manipulating them into voting for its candidates.

There exist a number of Roma political parties at the moment, but the quality of the participation of the Roma in political life has not changed significantly. Authentic Roma parties, like the Roma Congress Party, still remain outside the Parliament, driven to the margin of political life. Roma votes, all too often, still become the prey of other, bigger political parties regardless of the fact that, as a rule, these parties do not offer solutions to the problems that are of the utmost importance for the Roma population.

Over the last several years, a Roma, Jovan Damjanović, a high-ranking official of the Serbian Radical Party, has been a minister without portfolio in the government of Serbia. His activities have been characterised by patriotic rhetoric rather than dealing with the daily problems of the Roma population. To illustrate this, we quote the titles of two articles from the pro-government media commenting favourably on the public statements of minister Damjanović. Thus, on 5 April 2000, the daily Politika published an article entitled "The Roma have patriotically defended our country against the aggressor", whereas the April 21st issue of the same paper carried an equally eye-catching title – "The Roma have always been patriotically inclined".

4.4. The position of the Roma in Kosovo following the NATO intervention

The European Roma Rights Centre (ERRC) has maintained that what the Roma went through in the course of 1999 in Kosovo is "the greatest catastrophe to befall the Roma community after the Holocaust in the course of World War Two".[218]

218 Kosovo Roma Today: Violence, Insecurity, Enclaves and Displacement, *Roma Rights*, 1/2000.

In its report on the position of Roma in Kosovo in 1999, the ERRC mentions numerous murders, abductions, disappearances, cases of illegal detention, rape, eviction, torture and destruction of Roma property. According to the report, the perpetrators of these crimes were mostly Albanian civilians and renegade members of the KLA. Based on these findings, as well as the conduct of the representatives of the international community in Kosovo, the ERRC concludes:

> "The Roma of Kosovo are in immediate danger of physical attacks and pogroms by ethnic Albanians. The maltreatment of the Roma in Kosovo occurs with alarming frequency at the moment. [It takes place] ... within the framework of a de facto international protectorate... and therefore cannot be treated as undesirable war-time occurrences that cannot be helped [but rather]... as the failure of the legitimate authorities to provide adequate protection [for the Roma]... The measures taken by KFOR have proved inadequate so far..."[219]

The Humanitarian Law Fund reached a similar conclusion:

> "All the Roma who talked to HLC researchers said that their experience with KFOR had been very bad. When cases of violence had been reported to them, KFOR officers reportedly answered that they did not know what to do. Some Roma maintained that KFOR members did nothing even when they found themselves in front of a burning house."[220]

There have been fewer incidents in the year 2000 than in 1999, but the ERRC[221] and UNHCR/OSCE[222] have convincingly documented numerous violations of Roma human rights this year: murders, maltreatment, torture, destruction and looting of Roma property. The perpetrators of these crimes, as a rule, remain unknown, and the crimes

219 ERRC in Kosovo, *Roma Rights*, 2/99.
220 Zloupotreba i nasilje nad kosovskim Romima, HLC, 1999.
221 Continuing Violence against Roma in Kosovo: an Update, *Roma Rights*, 1/2000.
222 UNHCR/OSCE: Assessment of the Situation of Ethnic Minorities in Kosovo, February 2000.

themselves remain unsolved. Part of the explanation for this situation certainly lies in the fact that "there exists no rule of law in Kosovo".[223]

On account of all this, according to the estimates of UNHCR and OSCE of February 2000, a total of 30 000 Roma have remained in Kosovo;[224] according to some other estimates, about 100 000 members of the Roma community have left Kosovo.[225]

In view of all this, ERRC concludes that there exist strong indications that the violence against the Roma is being committed with the aim of forcing them to leave their homes and the province.

4.5. The position of displaced Roma from Kosovo

According to the estimates of UNHCR, in March 2000 there were between 40.000 and 50.000 displaced Roma from Kosovo in Serbia. The Roma Students' Union from Belgrade, however, maintains that the overall number of displaced Roma from Kosovo on the territory of Serbia and Montenegro at this time was around 80 000; some 60 000 of these were not accommodated collectively but with relatives and friends, or in suburban settlements, without being registered. In December 1999, UNHCR registered a total of 5596 Roma and 907 Egyptians in Montenegro, while in March 2000 the local non-governmental organisations estimated the number of displaced Roma at 8000.[226]

The Serbian Academy of Sciences and Arts Committee for the Study of the Life and Customs of the Roma has warned that the position of Roma in FRY, particularly those displaced from Kosovo, is getting more and more dramatic daily, and has appealed to state

223 Stated by Dennis McNamara, Deputy Special Envoy of UN Secretary General for Humanitarian Issues in Kosovo, at a conference on Kosovo held in London on 29 January 2000. (See Kosovo Roma Today, p. 73)

224 UNHCR/OSCE: *Assessment of the Situation of Ethnic Minorities in Kosovo*, February 2000.

225 Kosovo Roma Today, see *supra* note 17.

226 *Ibid*.

organs, humanitarian organisations and scientific institutions to do more to help and protect "the most endangered ethnic and social group in Serbia". Aleksandra Mitrović points out that one of the key problems is the fact that most displaced Roma are "invisible" because many of them have not registered with the local authorities; as a result, little in the way of humanitarian aid reaches them. According to her, most Kosovo Roma have found accommodation with friends who are destitute themselves. The displaced Roma are mostly out of work,[227] lack health insurance, and many of them cannot even afford food or clothes.[228]

Verislava Jovanović, epidemiologist at the outpatients' clinic in Kuršumlija, says this about the living conditions at the local collective accommodation centres: "The situation is alarming and unless something is urgently done [to provide] at least minimum living conditions, there may be outbreaks of contagious diseases, not only among the Roma but also among the inhabitants of Kuršumlija." Several hundred displaced Roma from Kosovo "have been living lacking minimum hygienic requirements, electricity and water for ten months already..." Most displaced Roma have been put up inside the unfinished Culture Hall in the Rasadnik settlement, in the immediate vicinity of improvised rubbish dumps, and those residing under the bridge at the entrance to the town are in an even worse position.[229]

227 Concerning the level of employment among the Roma, researchers generally agree that "not only are Roma mostly unemployed... but the jobs they manage to get are, as a rule, those least paid, held in the lowest esteem and stigmatising (street cleaners, unskilled factory workers, cemetery and mortuary staff, and the like)". (See *Roma in Serbia*, *surpa* note 206).

228 *Danas*, 22 February 2000.

229 *Danas*, 25 April 2000.

V
HUMAN RIGHTS IN SFRY AND FRY 1983–2000

In the report on the human rights situation in FR Yugoslavia in 1998, a comparison concerning the observance of human rights in the former Socialist Federal Republic of Yugoslavia (SFRY) and the current Federal Republic of Yugoslavia (FRY) was made for the first time ever.[230] The results of this year's survey carried out by the Centre, presented in Chapters 1–3, make a new comparison possible. However, it must be pointed out that this year's comparison differs from the one made in 1998 in two important respects. Firstly, from 1999 onwards, civil and military administration on the territory of Kosovo and Metohija is under control of the United Nations Mission for Kosovo (UNMIK), so that protection and observance of human rights in the province are no longer under the jurisdiction of Serbian, that is, Yugoslav authorities. That is the reason why the human rights situation in Kosovo and Metohija will not be considered here. Secondly, in FR Yugoslavia, that is, Serbia, Slobodan Milošević's regime of personal power was completely overthrown as of 23 December 2000; consequently, the human rights situation towards the end of the year very much differs from the situation at the beginning of the year 2000. To forestall any possible dilemmas arising out of this, it was decided that the comparison in this report

230 *Human Rights in Yugoslavia 1999*, pp. 395–406.

should be based *solely* on the human rights situation in Yugoslavia as of 31December 2000.

Before proceeding to a comparison between the human rights situation in FR Yugoslavia in the year 2000 and the human rights situation in previous years, some words are in place about the methodology to be employed. The reports published by Charles Humana, based on research into observance of human rights throughout the world in 1983, 1986 and 1991, contain information pertaining to SFRY. A special feature of this research was quantitative data processing,[231] which made it possible to establish very exactly the human rights situation in each country and to compare it with the situation in other countries, as well as the global situation. Our surveys of 1998 and 2000 produced data to which Humana's methodology could be applied (we may note that in both cases the research sample was incomparably more varied, systematised and dependable than in 1983, 1986 and 1991).

Table 1: Basic rights and their specific forms

Basic right	Specific form of the right*
1. Prohibition of discrimination	a) Right of women to political equality and equality before the law (21) b) Right of women to social and economic equality (22) c) Right of women to equality in marriage and divorce (37) d) Right of persons belonging to minorities to social and economic equality (23) e) Right of homosexuals to equality (40)
2. Right to life	a) Freedom from extrajudicial execution and "disappearance" (8) 6) Freedom from the death penalty (11)

231 Charles Humana, *World Human Rights Guide. First Edition*, London, Hutchinson & Co Ltd, 1983, pp. 7–12; Charles Humana, *World Human Rights Guide. Second Edition*, London, Economist Publications, 1986, pp. 1–7; Charles Humana, *World Human Rights Guide. Third Edition*, New York and Oxford, Oxford University Press, 1992, pp. 3–10.

3. Prohibition of torture	a) Freedom from torture and state reprisals (9) b) Freedom from judicially sanctioned corporal punishment (12)
4. Right to freedom and safety of the individual	a) Right to limited detention period (until charges are brought against the detainee) (13)
5. Right to a fair trial	a) Independence of courts (27) b) Presumption of innocence and possibility of defence (30) c) Right to legal aid and counsel of one's own choice (31) d) Right to public judicial proceedings (32) e) *Habeas corpus* (33)
6. Right to privacy	a) Freedom from having one's mail opened and having one's phone tapped (18) b) Freedom from police search of premises without a warrant (34)
7. Right to freedom of thought, conscience and religion	a) Freedom from state ideology in school (15) b) Right to practise one's religion (38)
8. Freedom of expression	a) Right to disseminate information (4) b) Freedom of monitoring basic human rights (5) c) Freedom of artistic creation (16) d) Freedom from censorship (17) e) Freedom of the press (24) f) Freedom of publishing (25) g) Freedom of radio and TV broadcasting (26)
9. Freedom of peaceful gathering	a) Freedom of peaceful gathering (3)
10. Freedom of association	a) Freedom from enforced state organisations (14) b) Right to independent trade unions (28)
11. Right to peaceful possession of property	a) Freedom of private property (35)
12. Rights of minority members	a) Right to publishing and education in minority languages (6)
13. Political rights	a) Right to peaceful political opposition (19) b) Right to vote (20)
14. Special protection of the family and children	a) Freedom of contracting mixed marriages (36)

15. Right to citizenship	a) Right to citizenship (29)
16. Freedom of movement	a) Freedom of movement in one's own country (1) b) Freedom of leaving one's own country (2)
17. Social, economic and cultural rights	a) Right to equality in employment (10) b) Freedom from slavery, enforced or child labour (7) c) Right to use of contraceptives (39)

* – Numbers in brackets refer to numbers of specific rights in Tables 2 and 3.

The essence of Humana's method of research into observance of human rights is as follows. To begin with, from the body of internationally quaranteed human rights, 17 most important ones were singled out and then operationalised through 40 specific forms (Table 1). Following this, from among these 40 rights, 7 rights whose violation is connected with inflicting physical pain were singled out (rights 7–13 in Tables 2 and 3),[232] in order to be weighted by a factor of 3.0. Based on the data obtained for every country under survey, the observance of each right was marked using a four-mark scale:

0 – indicates a constant pattern of violations of the human right in question;

1 – indicates frequent violations of the human right in question;

2 – qualifies otherwise satisfactory answers on the grounds of occasional violations of the right in question;

3 – indicates the category of unqualified observance of the right in question.

Based on this marking method, the maximum number of points that a country can obtain amounts to 162 ($33 \times 3 = 99$) + ($7 \times 3 \times 3 = 63$), that is, 100%. Generally speaking then, if a country obtains a score of 75% and above, it may be said that it protects basic human rights in a satisfactory manner. A country obtaining a score between 41% and 75% exhibits a poor level of protection of basic human rights, whereas a country obtaining a score of 40% and below more or less systematically violates basic human rights.

232 The only exception being the right to equality in employment (No. 10), whose violation need not be connected with inflicting pain.

In order to be able to apply Humana's methodology to the results of our survey, it was necessary to calculate the number of points for each right in each of the three areas surveyed (legislation, legal practice and legal consciousness). Following this, the average values for all forty rights were calculated and then added up and presented in absolute terms and in %. (cf. Table 2).

Points were awarded following a discussion of the results of the survey wherein the entire research team participated. The greatest problem, as it transpired, was to evaluate citizens' awareness of human rights: depending on how the questions were formulated, the team evaluated the citizens' knowledge of how a given right was regulated or their view of how that particular right was realised in FR Yugoslavia. For example, freedom from judicially imposed corporal punishment was evaluated based on the data on how well (or poorly) the pollees were acquainted with the relevant legal norms, while the points pertaining to the right to an independent judge were calculated based on the pollees' views on what, realistically speaking, judges in FR Yugoslavia were like. The reasons for this methodological inconsistency were explained in Chapter 3, so that they will not be dealt with here. Regional discrepancies were also a great problem, particularly the trend of increasingly critical attitude towards the situation of some (mainly political) human rights exhibited by the citizens of Montenegro – whereas precisely the opposite proved to be the case in Serbia (this was also discussed in more detail in Chapter 3). These are certainly important factors and the reader must constantly bear them in mind, but they are not so pronounced as to jeopardise the possibility of a synthetic presentation of the human rights situation in FR Yugoslavia.

Table 2: Human rights situation in FRY in 2000

Human rights	Legis.	Pract.	Cons.	Aver.
1. Freedom of movement in one's own country	3.0	2.0	2.0	2.3
2. Freedom of leaving one's own country	3.0	2.0	1.0	2.0
3. Freedom of peaceful gathering	2.0	3.0	1.0	2.0
4. Right to spread information	1.0	2.0	1.0	1.3

5. Freedom to monitor basic human rights	1.0	2.0	2.0	1.7
6. Right to publishing and education in minority languages	2.0	2.0	2.0	2.0
7. Freedom from slavery, enforced or child labour°	6.0	3.0	6.0	5.0
8. Freedom from extrajudicial execution and "disappearance"°	6.0	0.0	6.0	4.0
9. Freedom from torture and state reprisals°	6.0	2.0	6.0	4.3
10. Right to equality in employment°	9.0	6.0	3.0	6.0
11. Freedom from the death penalty°	6.0	6.0	0.0	4.0
12. Freedom from judicially imposed corporal punishment°	9.0	9.0	6.0	8.0
13. Right to a limited detention period°	9.0	6.0	3.0	6.0
14. Freedom from enforced state organisations	3.0	2.0	2.0	2.3
15. Freedom from state ideology at school	3.0	2.0	1.0	2.0
16. Freedom of artistic creation	3.0	3.0	2.0	2.7
17. Freedom from censorship	2.0	2.0	2.0	2.0
18. Freedom from having one's mail opened and phone tapped	3.0	1.0	2.0	2.0
19. Right to peaceful political opposition	3.0	3.0	2.0	2.7
20. Right to vote	2.0	2.0	2.0	2.0
21. Right of women to political equality and equality before the law	3.0	2.0	2.0	2.3
22. Right of women to social and economic equality	2.0	1.0	2.0	1.7
23. Right of persons belonging to minorities to social and economic equality	2.0	2.0	2.0	2.0
24. Freedom of the press	2.0	2.0	2.0	2.0
25. Freedom of publishing	3.0	2.0	2.0	2.3
26. Freedom of radio and TV broadcasting	1.0	2.0	2.0	1.7
27. Right to an independent judge	1.0	1.0	3.0	1.7
28. Right to an independent trade union	1.0	1.0	2.0	1.3

29. Right to citizenship	2.0	2.0	2.0	2.0
30. Presumption of innocence and the possibility of defence	2.0	2.0	1.0	1.7
31. Right to legal aid and counsel of own choice	2.0	2.0	3.0	2.0
32. Right to public judicial proceedings	2.0	2.0	0.0	1.3
33. *Habeas corpus*	2.0	1.0	0.0	1.0
34. Freedom from police search without a warrant	3.0	2.0	1.0	2.0
35. Freedom of private property	2.0	2.0	3.0	2.3
36. Freedom of contracting mixed marriages	3.0	2.0	1.0	2.0
37. Right of women to equality in marriage and divorce	3.0	2.0	2.0	2.3
38. Right to practise one's religion	3.0	2.0	1.0	2.0
39. Right to the use of contraceptives	3.0	3.0	1.0	2.3
40. Right of homosexuals to equality	3.0	2.0	1.0	2.0
Total (in absolute terms)	127.0	97.0	85.0	102.2
Total (in %)	78.4	59.9	52.5	63.1

º – Basic rights 7–13 are weighted by a factor of 3.0.

Table 3: Human rights situation in SFRY and FRY in the 1983–2000 period

Human rights	1983	1986	1991	1998	2000
1. Freedom of movement in one's own country	3.0	3.0	3.0	2.3	2.3
2. Freedom of leaving one's own country	2.0	3.0	2.0	1.0	2.0
3. Freedom of peaceful gathering	1.0	0.0	1.0	1.3	2.0
4. Right to spread information	0.0	1.0	2.0^{+}	0.3	1.3
5. Freedom to monitor basic human rights	2.0*	1.0	2.0	1.0	1.7
6. Right to publishing and education in minority languages	3.0	2.0	1.0^{+}	1.7	2.0
7. Freedom from slavery, enforced or child labourº	9.0	9.0	9.0	4.0	5.0

8. Freedom from extrajudicial execution and "disappearance"º	0.0*	6.0	0.0	6.0	4.0
9. Freedom from torture and state reprisalsº	6.0	3.0	0.0+	4.0	4.3
10. Right to equality in employmentº	3.0	3.0	3.0	5.0	6.0
11. Freedom from the death penaltyº	0.0	0.0	0.0	4.0	4.0
12. Freedom from judicially sanctioned corporal punishmentº	9.0	9.0	9.0	7.0	8.0
13. Right to a limited detention periodº	3.0	3.0	3.0+	4.0	6.0
14. Freedom from enforced state organisations	2.0*	2.0	3.0	1.7	2.3
15. Freedom from state ideology at school	0.0	0.0	1.0+	1.7	2.0
16. Freedom of artistic creation	3.0	3.0	2.0+	2.3	2.7
17. Freedom from censorship	1.0	1.0	2.0	1.0	2.0
18. Freedom from having one's mail opened and phone tapped	1.0	1.0	1.0+	1.0	2.0
19. Right to peaceful political opposition	1.0	0.0	1.0	1.3	2.7
20. Right to vote	0.0*	0.0	1.0+	1.3	2.0
21. Right of women to political equality and equality before the law	3.0	2.0	2.0	2.0	2.3
22. Right of women to social and economic equality	3.0*	2.0	2.0	1.3	1.7
23. Right of persons belonging to minorities to social and economic equality	2.0*	2.0	2.0+	1.7	2.0
24. Freedom of the press	1.0*	1.0	1.0+	1.0	2.0
25. Freedom of publishing	2.0	2.0	2.0+	2.0	2.3
26. Freedom of radio and TV broadcasting	0.0	0.0	2.0+	0.7	1.7
27. Right to an independent judge	0.0	0.0	1.0	1.3	1.7
28. Right to an independent trade union	1.0	1.0	2.0+	1.3	1.3
29. Right to citizenship	3.0	2.0	3.0	1.7	2.0
30. Presumption of innocence and the possibility of defence	2.0	2.0	2.0+	1.3	1.7

31. Right to legal aid and counsel of own choice	3.0*	2.0	2.0	2.0	2.0
32. Right to public judicial proceedings	0.0	0.0	2.0	1.3	1.3
33. *Habeas corpus*	2.0	2.0	2.0	1.0	1.0
34. Freedom from police search without a warrant	1.0	0.0	2.0^{+}	1.7	2.0
35. Freedom of private property	0.0*	0.0	2.0	2.0	2.3
36. Freedom of contracting mixed marriages	3.0	3.0	3.0	2.0	2.0
37. Right of women to equality in marriage and divorce	3.0	3.0	3.0	2.0	2.3
38. Right to practise one's religion	3.0	2.0	3.0	1.7	2.0
39. Right to the use of contraceptives	3.0	3.0	3.0	2.3	2.3
40. Right of homosexuals to equality	2.0	1.0	2.0^{+}		1.7
Total (in absolute terms)	86.0	80.0	89.0	84.0	102.2
Total (in %)	53.1	49.4	54.9	51.9	63.1

º – Rights 7–13 are weighted by a factor of 3.0 (also for 1983, when they were not weighted).

* – The points refer not to the basic rights mentioned but to the data on police and crime-fighting policy.

\+ – Basic rights for whose violation the responsibility of the Republic of Serbia was particularly emphasised.

\# – The 1991 survey used the broader formulation “violation of privacy”.

Concerning the comparability of the data obtained in our two surveys (1998 and 2000) and the data obtained by Charles Humana in his three surveys (1983, 1986 and 1991), certain reservations must be pointed out. First of all, even though on all five occasions the same rights were researched (with the exception of the 1983 survey, wherein nine questions were dedicated to the problems of the police and crime-fighting policy), there exist great differences in the sources and the scope of the data that the conclusions were based on. Humana's survey dealt with almost all the countries in the world, using, above

all, the available data of international organisations rather than the data obtained through organised gathering of empirical material on the territory of each country (as was the case in our survey). Also, he did not take into consideration the qualitative difference between the data on legislation and legal practice (while he could not at all consider legal consciousness); on account of this, he was unable to arrive at more differentiated and complex judgements concerning the reality of human rights (including, among other places, Yugoslavia). However, irrespective of these reservations, the data make it possible for us to compare the human rights situations in SFRY (1983, 1986 and 1991) and in FRY (1998 and 2000), and to make certain conclusions about the fate of these rights in the process of post-socialist transition in these parts.

If we look at the data presented in Table 3, we shall see that in the 1983–1998 period there are no significant changes in the human rights situation on the territory of SFRY/FRY. Changes occurred only towards the end of 2000, when the regime of personal power of Slobodan Milošević was overthrown (first on the federal and local level and afterwards in the Republic of Serbia as well). Out of the 40 rights under consideration, 8 remained at the level of 1998, whereas only in one case did the situation become worse: freedom from extra-judicial execution and "disappearance". In both Yugoslav republics, over the last two years assassinations and disappearances of prominent figures from the political, economic and cultural scene have become increasingly frequent, so that the only possible conclusion is that the situation concerning this particular human right has, indeed, worsened. However, improvements in the sphere of human rights are incomparably more significant: out of 32 rights where the situation was improved towards the end of 2000, in as many as 11 cases significant improvements were recorded – ranging from 1 to 2 points. As could be expected, the greatest improvement over 1998 was recorded in the area of human rights in practice (27 points, that is, 16.7%). The improvement in the sphere of legal consciousness was somewhat less pronounced (19 points, that is, 14.2%), while the least improvement was recorded in the area of legislation (11 points, that is, 8.8%). If one

bears in mind the fact that during Milošević's rule the area of human rights was the least problematic one (which enabled the regime propaganda to insist continuously that the level of human rights in our country was of a "world standard" if not even higher), and that the new administration in FR Yugoslavia and Serbia have not had much time to effectuate radical changes in this domain, then the modest level of improvement in this area is quite understandable. Conversely, as Milošević's regime of personal power was characterised by a sharp discrepancy between legal norms and legal reality, the overthrow of this regime had the greatest positive effect in the area of practical implementation of human rights. Finally, legal consciousness is, in the nature of things, most resistant to changes, which is why it changed most slowly and exhibited the greatest deficiency in the domain of human rights throughout the last decade of the twentieth century. Still, the revolutionary happenings towards the end of 2000 affected legal consciousness, which is why this area of human rights manifested a promising improvement.

The human rights situation in FR Yugoslavia towards the end of the twentieth century, therefore, does point to the prospects of a relatively fast "transition" in accordance with international standards. The new wave of democratisation, sweeping across the world, and particularly across Eastern Europe, in the 1990's, cannot be viewed separately from the increasing importance that human rights have in the world of today. Although there have been no recent world surveys of human rights, it is realistic to expect that the ascending trend of 1991 has continued (cf. Table 4) and that it has led to increased observance of human rights on the average. The average value has certainly not reached the level of 75% – the minimum level of satisfactory protection of human rights according to Charles Humana – but is not very far below it. Viewed from this perspective, FR Yugoslavia, with its 63.1% score as of the end of 2000, still lagged behind the world level, having reached the level of observance of human rights that was the world average of 10–20 years ago. Still, it is important that the stagnation trend, established in our survey of 1998 in relation to the former common state (SFRY), was brought to a close, enabling

FR Yugoslavia to catch up with the remaining countries of Eastern Europe and begin to take part in European integrating processes in the sphere of human rights as well.

Table 4: Basic human rights situation in SFRY and FRY in the 1983–2000 period

Year	SFRY/ FRY	World average	Yugoslavia's world ranking
1983	53.1%	64%	47th place (out of 76 countries surveyed)
1986	49.4%	60%	56th place (out of 90 countries surveyed)
1991	54.9%	62%	66th place (out of 104 countries surveyed)
1998	51.9%	–	–
2000	63.1%	–	–

Appendix 1

The Most Important Human Rights Treaties Binding the Federal Republic of Yugoslavia

- Convention against Discrimination in Education, Sl. list SFRJ (Dodatak) 4/64.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Medjunarodni ugovori)*, 9/91.
- Convention for the Suppression on the Traffic in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, 2/51.
- Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, *Sl. list FNRJ (Dodatak)*, 3/61.
- Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ*, 8/58.
- Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ*, 11/58.
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatak)*, 13/64.
- Convention on Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, 7/60.
- Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ*, 11/81.
- Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, 7/58.

- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, *Sl. list SFRJ (Medjunarodni ugovori)*, 50/70.
- Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, 7/54.
- Convention on the Prevention and Punishment of the Crime of the Genocide, *Sl. vesnik Prezidijuma Narodne skupštine FNRJ*, 2/50.
- Convention on the Rights of the Child, *Sl. list SFRJ (Medjunarodni ugovori)*, 15/90; *Sl. list SRJ (Medjunarodni ugovori)*, 4/96; *Sl. list SRJ*, 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*, 9/59, *Sl. list SFRJ (Dodatak)*, 2/64, *Sl. list FNRJ (Dodatak)*, 7/60.
- International Convention on the Elimination of All Forms of Racial Discrimination, *Sl. list SFRJ (Medjunarodni ugovori)*, 6/67.
- International Convention on the Suppression and Punishment of the Crime of Apartheid, *Sl. list SRFJ,* 14/75.
- International Covenant on Civil and Political Rights, *Sl. list SFRJ*, 7/71.
- International Covenant on Economic, Social and Cultural Rights, *Sl. list SFRJ*, 7/71.
- Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Dodatak)*, 6/55.
- Protocol on Relating to the Status of Refugees, *Sl. list SFRJ (Dodatak)*, 15/67.
- Slavery Convention, *Sl. novine Kraljevine Jugoslavije,* 234/1929.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak),* 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, 29/2000.
- The Constitution of the Republic of Montenegro, *Sl. list RCG,* No. 48/92.
- The Constitution of the Republic of Serbia, *Sl. glasnik RS*, No. 1/90.

Federal Legislation

- The Act on the Association of Citizens into Associations, Social Organisations and Political Organisations Established for the Territory of the SFRY, *Sl. list SFRJ*, No. 42/90.
- The Act on Bases of the Retirement and Disabled Persons Insurance, *Sl. list SRJ*, No. 30/96.
- The Act on Election of Federal Deputies in the House of Citizens of the Federal Assembly, *Sl. list SRJ*, No. 57/93, 32/2000, 36/2000.
- The Act on Election of Federal Deputies in the House of Republics of the Federal Assembly, *Sl. list SRJ*, No. 32/2000.
- The Act on Election and Mandate Termination of the President of the Republic, *Sl. list SRJ*, No. 32/2000.
- The Act on Electoral Units for Election of Federal Deputies in the House of Citizens of the Federal Assembly, *Sl. list SRJ*, No. 32/2000, 33/2000.
- The Army of Yugoslavia Act, *Sl. list SRJ*, No. 67/93, 43/94.

- The Bases of Labour Relations Act, *Sl. list SRJ*, No. 29/96.
- The Bases of Ownership Relations Act, *Sl. list SFRJ,* No. 6/80, 36/90, *Sl. list SRJ*, No. 29/96.
- The Bases of the System of Public Information Act, *Sl. list SFRJ*, No. 84/90.
- The Bonds Act, *Sl. list SFRJ*, No. 29/78.
- The Citizenship Act, *Sl. list SRJ*, No. 33/96.
- The Communication Systems Act, *Sl. list SFRJ*, No. 41/88.
- The Criminal Procedure Act, *Sl. list SFRJ*, No. 4/77, 36/77, 14/85, 26/86, 74/87, 57/89, 3/90, *Sl. list SRJ*, No. 27/92, 24/94.
- The Decision on Expiration of the Decision on the Payment of Special Tax When Leaving the Federal Republic of Yugoslavia, *Sl. list SRJ*, No. 61/2000.
- The Enterprises Act, *Sl. list SRJ*, No. 29/96.
- The Federal Budget Act, *Sl. list SRJ*, No. 24/94.
- The General Administrative Procedure Act, *Sl. list SRJ.* No. 33/97.
- The Introduction of the Register Numbers of the Citizens Act, *Sl. list SFRJ*, No. 58/76.
- The Movement and Sojourn of Foreigners Act, *Sl. list SFRJ*, No. 56/80, 53/85, 30/89, 26/90, 53/91, *Sl. list SRJ*, No. 42/94, 28/96.
- The Penal Code, *Sl. list SFRJ*, No. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90, 54/90, *Sl. list SRJ*, No. 35/92, 37/93, 24/94.
- The Procedure for the Registration in the Court Register Act, *Sl. list SRJ*, No. 80/94.
- The Protection of Data on Persons Act, *Sl. list*, No. 24/98.
- The Regulation on the Change of Personal Names, *Sl. list SFRJ*, No. 6/83.

– The Regulation on the Data and Documentation to be Submitted With the Request for the License for a Radio Station, *Sl. list SFRJ*, No. 44/76, 22/91, *Sl. list SRJ*, No. 46/96.
– The Strikes Act, *Sl. list SRJ*, No. 29/96.
– The Travel Documents of Yugoslav Citizens Act, *Sl. list SRJ*, No. 33/96, 46/96.

Republic of Serbia

– Decision Determining Areas for the Assemblies of Citizens of Belgrade, *Sl. list Grada Beograda*, No. 17/92.
– Penal Code, *Sl. glasnik SRS*, No. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90; *Sl. glasnik RS*, No. 16/90, 49/92, 23/93, 67/93, 47/94, 17/95.
– Regulation on the Conditions and Way of Use of Means of Coercion, *Sl. glasnik RS*, No. 40/95.
– Regulation on the Registration of Trade Union Organisations in the Register, *Sl. glasnik RS*, No. 6/97, 33/97.
– The Act on Employment and on the Rights of Unemployed Persons, *Sl. glasnik RS*, No. 22/92, 73/93, 82/92.
– The Act on Social Care of Children, *Sl. glasnik RS*, No. 49/92, 23/93, 53/93, 67/93, 28/94, 47/94, 25/96.
– The Act on Social Organisations and Citizens Associations, *Sl. glasnik SRS*, No. 24/82.
– The Act on Social Welfare Protection and on the Provision for Social Security of Citizens, *Sl. glasnik RS*, No. 36/91.
– The Act on the Official Use of Languages and Alphabets, *Sl. glasnik RS*, No. 45/91.
– The Building Lots Act, *Sl. glasnik RS*, No. 44/95, 16/97.
– The Communication Systems Act, *Sl. glasnik RS*, No. 38/91.
– The Courts Act, *Sl. glasnik RS*, No. 46/91, 60/91, 18/92, 71/92.

- The Decree on Special Measures in the Situation of Threats to our Country of NATO Armed Attacks, *Sl. glasnik RS,* No. 35/98.
- The Election of the Members of Parliament Act, *Sl. glasnik RS*, No. 79/92, 83/92, 53/93, 67/93, 90/93, 107/93, 48/94, 32/97.
- The Election of Deputies Act, *Sl. glasnik RS*, No. 35/2000.
- The Elections of the President of the Republic Act, *Sl. glasnik RS*, No. 1/90, 79/92.
- The Enforcement of Penal Sanctions Act, *Sl. glasnik RS*, No. 16/97.
- The Expropriation Act, *Sl. glasnik SRS*, No. 40/84, 53/87, 22/89, 15/90, *Sl. glasnik RS*, No. 6/90, 53/95.
- The Financing of Political Organisations Act, *Sl. glasnik RS*, No. 32/97.
- The Inheritance Act, *Sl. glasnik RS*, No. 46/95.
- The Internal Affairs Act, *Sl. glasnik RS*, No. 44/91, 79/91, 54/96.
- The Labour Relations Act, *Sl. glasnik RS*, No. 55/96.
- The Labour Relations in Special Situations Act, *Sl. glasnik RS*, No. 40/90.
- The Labour Relations in State Agencies Act, *Sl. glasnik RS*, No. 48/91.
- The Legal Status of Religious Communities Act, *Sl. glasnik SRS*, No. 44/77.
- The Marriage and Family Relations Act, *Sl. glasnik SRS*, No. 22/80, *Sl. glasnik RS,* No. 22/93, 25/93, 35/94.
- The Pardon Act, *Sl. glasnik RS*, No. 49/95, 50/95.
- The Political Organisations Act, *Sl. glasnik RS*, No. 37/90, 30/92, 53/93, 67/93, 48/94.
- The Primary Schools Act, *Sl. glasnik RS*, No. 50/92.

- The Procedure for the Interruption of Pregnancy in Medical Institutions Act, *Sl. glasnik RS*, No. 16/95.
- The Protection at Work Act, *Sl. glasnik RS*, No. 42/91, 53/93, 67/93.
- The Public Assemblies of Citizens Act, *Sl. glasnik RS*, No. 51/92.
- The Public Information Act, *Sl. glasnik RS*, No. 19/91, 36/98.
- The Public Prosecutors Office Act, *Sl. glasnik RS*, No. 43/91, 71/92.
- The Radio and Television Act, *Sl. glasnik RS*, No. 48/91.
- The Refugees Act, *Sl. glasnik RS*, No. 18/92.
- The Retirement and Disabled Persons Insurance Act, *Sl. glasnik RS*, No. 52/96.
- The Special Conditions of Sales of Immovable Property Act, *Sl. glasnik SRS*, No. 30/89, 42/89, *Sl. glasnik RS,* No. 55/90, 22/91, 53/93, 67/93, 48/94.
- The State Administration Act, *Sl. glasnik RS*, No. 20/92, 48/93, 48/94.
- The State of Emergency Act, *Sl. glasnik RS*, No. 19/91.
- The Territorial Organisation and Local Self-Government Act, *Sl. glasnik RS*, No. 4/91, 79/92, 82/92, 47/94.
- The Unique Registration Numbers of Citizens Act, *Sl. glasnik RS*, No. 48/94.
- The University Act, *Sl. glasnik RS*, No. 20/98.

Republic of Montenegro

- Decision on the Competencies and Composition of the Republic Council for the Protection of the Rights of the Members of the National and Ethnic Groups, *Sl. list RCG,* No.32/93.
- Decree on the Care for Displaced Persons, *Sl. list RCG,* No. 37/92.

- Decree on the Register of Political Organisations, *Sl. list RCG,* No.25/90, 46/90.
- Decree on the Registration of Trade Union Organisations, *Sl. list RCG,* No. 20/91.
- Penal Code, *Sl. list RCG,* No. 42/93, 14/94, 27/94.
- The Act on the Election of the Members of Parliament and of Committee Members, *Sl. list RCG,* No.4/98.
- The Citizens Associations Act, *Sl. list RCG,* No. 23/90, 26/90, 13/91, 48/91, 17/92, 21/93, 27/94.
- The Communication Systems Act, *Sl. list SRCG,* No. 28/77.
- The Conditions and Procedures for Interruption of Pregnancy Act, *Sl. list RCG,* No. 29/79.
- The Constitutional Court Act, *Sl. list RCG,* No. 44/95.
- The Election of the President of the Republic Act, *Sl. list RCG,* No.49/92.
- The Electoral Lists Act, *Sl. list RCG,* No.4/98.
- The Employment Act, *Sl. list RCG,* No. 29/90.
- The Enforcement of Penal Sanctions Act, *Sl. list RCG,* No. 25/94, 29/94.
- The Family Law, *Sl. list SRCG,* No.7/89.
- The Internal Affairs Act, *Sl. list RCG,* No. 24/94.
- The Labour Relations Act, *Sl. list RCG,* No. 29/90, 42/92, 28/9.
- The Pardon Act, *Sl. list RCG,* No. 16/95.
- The Personal Names Act, *Sl. list RCG,* No. 20–83
- The Primary Schools Act, *Sl. list RCG,* No.50/92
- The Public Information Act, *Sl. list RCG,* No. 4/98.
- The Public Meetings Act, *Sl. list RCG,* No. 57/92.

- The Retirement and Disabled Persons Insurance Act, *Sl. list RCG,* No. 23/85, 3/86, 14/89.
- The Secondary Schools Act, *Sl. list RCG,* No. 50/92.
- The Unique Registration Numbers of Citizens Act, *Sl. list RCG,* No. 45/93.

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