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HUMAN RIGHTS IN YUGOSLAVIA 2001

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

Belgrade Centre for Human Rights

Belgrade, 2002

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HUMAN RIGHTS IN YUGOSLAVIA 2001
LEGAL PROVISIONS, PRACTICE AND LEGAL CONSCIOUSNESS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA COMPARED TO INTERNATIONAL HUMAN RIGHTS STANDARDS

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Contents

Abbreviations

AEPS – Act of Enforcement of Penal Sanctions

AI – Amnesty International

ANEM – Association of the Independent Electronic Media

BCHR – Belgrade Centre for Human Rights

B&H – Bosnia and Hercegovina

CAA – Center for Antiwar Action

CAT – Committee against Torture

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

CeSID – Center for Free Elections and Democracy

CC – Criminal Code

CoE – Council of Europe

CPC – Criminal Procedure Code

CSCE – Conference for Securuty and Cooperation in Europe

DOS – Democratic Oposition of Serbia

DPS – Democratic Party of Socialists

DS – Democratic Party

DSS – Democratic Party of Serbia

ECHR – European Convention on Human Rights and Fundamental Freedoms of 4 November 1950

EU – Europian Union

FEC – Federal Electoral Commission

FPRY – Federal People's Republic of Yugoslavia

FRY – Federal Republic of Yugoslavia

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

GSS – Civic Alliance of Serbia

GŠ VJ – Yugoslav Army's General Staff

HC – Helsinki Committee for Human Rights in Serbia

HLC – Humanitarian Law Center

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

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

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

HRW – Human Rights Watch

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

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

ICG – International Crisis Group

ICRC – International Committee of Red Cross

ICTY – International Criminal Tribunal for the Former Yugoslavia

ILO – International Labour Organisation

IWPR – Institute for War and Peace Reporting

JCK – Yugoslav Red Cross

JUL – Yugoslav United Left

"KLA" – "Kosovo Liberation Army"

KFOR – Kosovo Forces

"LAPBM" – "Liberation Army of Preševo, Bujanovac and Medvedja"

LCEMP – Elections of Members of Parliament Act

LMFR – Marriage and Family Relations Act

LGAP – General Administrative Procedure Act

LS – Liberal Alliance

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

Montenegro – Republic of Montenegro

MUP – Ministry of Internal Affairs

NATO – North Atlantic Treaty Organisation

NS – People's Party

ODIHR – Office for Democratic Institutions and Human Rights

OSCE – Organisation for Security and Co-operation in Europe

OCHA – Office for Coordination of Humanitarian Activities

PDS – Movement for a Democratic Serbia

PSEA – Penal Sanctions Enforcement Act

REC – Republic Electoral Commission

RTS – Radio Television of Serbia

SANU – Serbian Academy of Sciences and Arts'

SDB – State Security Service

SDP – Social Democratic Party

SDU – Social Democratic Union

Serbia – Republic of Serbia

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

SFRY – Socialist Federal Republic of Yugoslavia

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

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

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

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

SNP – Socialist People's Party

SNS – Serb People's Party

SPC – Serbian Orthodox Church

SPO – Serbian Renewal Movement

SPS – Socialist Party of Serbia

SR CG – Socialist Republic of Montenegro

SRS – Serbian Radical Party

UN – United Nations

UN doc. – United Nations document

UNESCO – United Nations Educational, Scientific and Cultural Organisation

UNHCHR – United Nations High Commissioner for Human Rights

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations Children's Fund

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

WFP – World Food Programme

YCRC – Yugoslav Child Rights Centre

YUCOM – Yugoslav Lawyers Committee for Human Rights

Preface

The Report on the Human Rights Situation in 2001 in the Federal Republic of Yugoslavia was drafted by the Belgrade Centre for Human Rights in order to offer to the Yugoslav and foreign public a survey of the actual exercise and enjoyment of the internationally-guaranteed human rights in the FRY. The Centre's aim was to look into as many forms as possible of the exercise, enjoyment, legal regulation, limitation and violation of human rights and the most important factors influencing them.

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

The report is divided into four sections.

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

Section two deals with the practical exercise of human rights in the FRY. Providing a fully accurate view meant that the Centre did not rely only on its own research, but also systematically covered the Yugoslav media and collected all available reports issued by relevant human rights organisations in and outside the country, government-run or NGOs. The abundance of data, often conflicting, did not always allow the Centre to assume definite conclusions, but all reports and their sources have been conveyed in full, giving readers a basis for reaching their own conclusions.

Late in 2001, the Centre followed up on its 1998 and 2000 reports and conducted its third survey of legal consciousness in the FRY on a large sample of respondents; the findings are given in section three.

A comprehensive and thorough annual report on the human rights situation in the FRY cannot be drafted without pointing to the broader issues affecting human rights. Section four therefore includes overviews of the problems seen as the most important in this regard: the sutuation in Kosovo, the work of the International Criminal Tribunal for the Former Yugoslavia, the status of refugees and efforts to establish truth and reconciliation in the FRY and the entire former Yugoslavia region.

Work on the Report began on 1 January 2001 and ended on 20 January 2002.

The Centre would like to express its gratitude to all those who collaborated on the drafting of this Report for their hard work and their devotion, especially our outside contributors. They include renowned photographer Milan Aleksić, who has for the fourth time running allowed the Centre to use his images free of charge.

Introduction

The Federal Republic of Yugoslavia (FRY) was created officially on 27 April 1992. The biggest turnabout and most important event in Serbia since the Second World War for the causes of human rights and democracy occurred in September and October 2000, after the federal presidential and parliamentary elections.[1] The most important electoral adversary to the then president Slobodan Milošević and the parties which supported him was a coalition of 18 Serbian political parties calling itself the Democratic Opposition of Serbia (DOS), whose presidential candidate was Vojislav Koštunica, head of the Democratic Party of Serbia (DSS). The elections were boycotted by the leading parties in Montenegro (the "Da živimo bolje"[2] coalition); the boycott was advocated by the Montenegrin authorities, who backed their call by claiming that the latest changes in the Yugoslav Constitution had been enacted without the participation and approval of the legitimate representatives of Montenegro.

DOS's candidate beat Milošević in the presidential vote. But the low turnout in Montenegro caused a situation in which the great majority of deputies representing that republic in the federal parliament belong to the theretofore pro-Milošević Socialist National Party (SNP) and affiliated smaller parties.

The attempt by the regime not to recognise the results of the vote only poured fuel on the fires of dissatisfaction in Serbia, which turned into a general strike and mass protests, peaking on 5 October 2000. Police and army initially intervened, but then withdrew and Milošević was forced to concede defeat, marking not just the end of his regime but also that of half a century of communist rule in Serbia.

Koštunica became the incontestable head of state, but in the federal parliament the DOS was compelled to compromise with the SNP, to which it gave a number of portfolios, including the prime ministerial post.

Given the division of authority between the federation and the republics, the DOS's victory and reconstruction of the entire political system could not have been complete without changes in Serbia. They began by a provisional deal made by the old and the new forces in October 2000, embodied in a transitional government made up of the DOS, the Socialist Party of Serbia (SPS) and the Serbian Renewal Movement (SPO), an opposition party which had decided against joining the DOS and suffered a crushing electoral defeat. Such a government could not have been expected to achieve much and real changes could only be expected after elections for the National Assembly of Serbia, which were held on 23 December 2000 and resulted in a large majority for the DOS (176 of the total of 250 seats). A series of election complaints by the Serbian Radical Party (SRS), a member of the defeated coalition, prevented the formation of a new parliament until January 2001, when a new government headed by Prime Minister Zoran Djindjić was elected.

The convincing majority held by the DOS in the Serbian legislature has allowed the Serbian Government to act in a more determined manner than the Federal Government, which is dependent on the heterogeneous parliament. But the pace of reforms in Serbia was slowed down by the growing differences within the DOS itself, where two loosely

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[1] Earlier periods are covered by introductory sections of The Centre's *Human Rights in Yugoslavia 1998, 1999* and *2000*.

[2] "For a Better Life".

defined factions appeared in 2001, one around Koštunica and his DSS and the other headed by Djindjić and his Democratic Party (DS), which enjoys the support of most of the smaller DOS members. The split is not completely clear-cut or permanent, but the overall impression is that the former group is more conservative and reluctant to make changes, and the latter more inclined towards radical reforms and a quicker return into the fold of the world economy. The rivalry between the groups, neither of which can count on a parliamentary majority without (often unprincipled) concessions to smaller parties in the DOS, provoked some serious, though not fatal, political crises. But in 2001 these impasses slowed down the expected democratic and economic reforms and legislative progress in the area of human rights. One example is the adoption, after a long delay, of not one but several laws dealing with the judiciary, the consequence being that Serbia is entering 2002 without a serious reform of the judicial sector and mainly with judges appointed by the former regime. Some of the extant repressive laws, like those on the university and public information, are not being enforced in practice but have nevertheless not been replaced with new ones.

In 2001, the Government of Montenegro continued to ignore the federal authorities elected in 2000. The movement favouring full independence for Montenegro was still strong, and was headed by parties in the ruling Montenegrin coalition, including President Milo Djukanović's Democratic Party of Socialists (DPS). Their desired referendum on independence has not been scheduled so far; instead the mood of the public was tested in parliamentary elections held in April 2001. The pro-independence "Pobjeda je Crne Gore"[3] coalition won 36 seats in the Montenegrin parliament, and their opposition "Zajedno za Jugoslaviju"[4] coalition took 33. The majority did not appear convincing enough, and the rest of the year passed in the sign of negotiations on a reform of the Yugoslav federation. The new Montenegrin Government formed by Prime Minister Filip Vujanović stuck rigidly to its position that Serbia and Montenegro must be fully independent states with separate seats in the UN and all international organisations, and a possibility of forming some sort of confederal union. Late in 2001 international organisations, notably the EU, stepped up efforts to influence the solution of the problem. Agreement, or a referendum in Montenegro, are expected to happen in 2002.

The uncertain constitutional order of the FRY and doubts in the continued existence of the Yugoslav state burdened the foreign policy activity of the Federal Government; one of the reasons for a slowdown in the FRY's admission to the Council of Europe lay in these factors. Not only have no preparatory activities for drafting a new federal constitution begun, but neither has there been any work on a badly-needed constitutional reform in Serbia, where several unofficial proposals have been made public, including one drafted by an independent group of experts at the Belgrade Centre for Human Rights.[5] It was simply not known whether it was to be a constitution for a federal entity or an independent state.

The fact that the Montenegrin parties represented in the federal parliament are the opposition in Montenegro and politically closer to the opposition in Serbia (i.e., the former ruling parties defeated in 2000), found its most dramatic expression in the crisis

[3] "A Victory for Montenegro".
[4] "Together for Yugoslavia".
[5] *Constitutional Reform in Serbia and Yugoslavia*, Belgrade, Belgrade Centre for Human Rights, 2001.

surrounding the handover of Slobodan Milošević to the ICTY.[6] Yugoslav Prime Minister Zoran Žižić (SNP) resigned from the post late in June after the Serbian Government surrendered Milošević, but the SNP did not leave the parliament and government and retained the prime ministerial office when Dragiša Pešić became the new PM. Pešić remained in office until the end of 2001, but neither his government nor the federal parliament could do anything to regulate cooperation with the ICTY, although international pressure in that respect kept growing. Legislative activity in connection with laws falling under federal jurisdiction was also at a slowdown. A modern Criminal Procedure Code was adopted, but sensitive issues like telecommunications remained unregulated. This meant that state-controlled electronic media and those granted a privileged status under the old regime kept their advantageous positions.

In 2000 the FRY had abandoned its unproductive insistence on international continuity with the former SFRY, and had been admitted into the UN and some of its specialised agencies. It also returned to the Organisation for Security and Cooperation in Europe (OSCE). The country's application for admission to the Council of Europe was under serious consideration in 2001, and Yugoslav parliamentarians regained permanent guest status in the OSCE Parliamentary Assembly.[7]

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

The FRY remains an ethnically diverse country. According to the results of the latest census (1991), the population of the FRY was 10,394,026, which included 7,023,814 Serbs and Montenegrins (67.5%), the rest being ethnic Albanians, ethnic Hungarians, Moslems (Bosniaks), Romanies, ethnic Slovaks and members of other ethnic groups. The attitude of the authorities to national and religious minorities improved. The Federal Government has a new ministry for national and ethnic communities – one of its most ambitious efforts is drafting a law on the protection of national minorities, in its final stages at the end of 2001.

Under UN Security Council Resolution 1244,[8] which ended the NATO intervention against the FRY in 1999, Kosovo remains a part of Serbia and the FRY, although it is internationally administered – the Yugoslav authorities' actual control in the region does not exist.[9] The federal and Serbian authorities, together with DOS leaders, urged the remaining Serb population in Kosovo to vote at the elections organised there. Although there was not a full response to the call, a coalition of Serb parties did win 22 seats in the Kosovo assembly at the vote in November. Using negotiation and other peaceful methods, the new authorities ended a rebellion by local Albanians in south-eastern Serbia, and in March 2001 Yugoslav armed forces, with the consent of the international organisations, began returning into the land security zone alongside the Kosovo boundary, from which they had been excluded on the basis of agreement with the NATO.

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[6] See IV.2.
[7] See <http://press.coe.int/cp/2001/41a(2001)htm>.
[8] UN doc. S/RES/1244.
[9] See IV.1.

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 the civil and political rights guaranteed by international treaties to which FRY is a party, in particular the International Covenant on Civil and Political Rights (ICCPR) as the main instrument in this field. The standards established by other international treaties that deal in more detail with specific human rights, such as the UN Convention against Torture and the Convention on the Rights of the Child, are considered too. A comparative analysis is also made of Yugoslav law and the European Convention on Human Rights and Fundamental Freedoms (ECHR) since it is the hope of the Belgrade Centre for Human Rights that the FRY will in the near future became a member of the Council of Europe (CoE) and ratify this Convention.[10]

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

– whether a particular right is guaranteed;

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

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

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

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

Since this report was prepared in 2001, it considers only legislation that was in effect up to 31 December 2001.

1.2. Constitutional Provisions on Human Rights

The Federal Constitution of 27 April 1992 defines the Federal Republic of Yugoslavia as a federal state founded on the equality of citizens and the equality of its constituent republics – Serbia and Montenegro (Art. 1, Federal Constitution). Both the

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

Federal Constitution and the constitutions of the republics devote separate chapters to human rights and fundamental freedoms (Chapter II, Federal Constitution; Chapter II, Serbian Constitution; Section II, Montenegrin Constitution). In addition to civil and political rights, they also guarantee economic, social and cultural rights, including to work, social security, health care, and education. The Federal Constitution furthermore states that Yugoslavia "shall recognize and guarantee the rights and freedoms of man and the citizen recognized under international law." This is an ambiguous provision since it fails clearly to designate the source of the rights and freedoms thus guaranteed, although it may be assumed that international customary law is meant.

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

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

1.3. International Human Rights and FR Yugoslavia

International human rights treaties ratified by the former Yugoslavia are binding on the FRY. In its Preamble, the Federal Constitution speaks of the "unbroken continuity of Yugoslavia," and the federal authorities undertook to abide by all the international commitments of the former Yugoslavia.[11] On 8 March 2001, the FRY made a declaration that it considered itself a successor to certain treaties to which the former Yugoslavia was a party, and acceded to the Genocide Convention.[12] According to the interpretation of the Committee on Human Rights, all the states that emerged from the former Yugoslavia would in any case be bound by the ICCPR since, once the Covenant is ratified, the rights enshrined in it belong to people living in the territory of the state party irrespective of whether it broke up into more than one state.[13]

Under the Federal Constitution, ratified international treaties are an integral part of the national legal system and, as such, a part of federal law. International treaties are in

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

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

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

the legislative hierarchy higher than both federal and republican statutes. The Federal Constitution designates the Federal Constitutional Court as the court which rules on the conformity of *laws*, other regulations and general enactments *with the Constitution... and with ratified and promulgated international treaties* (emphasis added; Art. 124 (1.4)). It follows that all laws, including federal, must conform with international treaties.[14] Hence only the provisions of the Federal Constitution have greater legal force than ratified international treaties. In addition to such treaties, international customary law is also a constituent part of national law (Art. 16). In practice, however, government agencies and the courts paid scant attention to international human rights instruments.

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

It also made a declaration recognizing the competence of the Committee against Torture to receive and consider individual communications and communications by states parties under Articles 22 and 21, respectively, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. And, on 22 June 2001, the FRY ratified both the Optional Protocol to the International Covenant on Civil and Political Rights – thereby making it possible for its citizens to seek redress from the UN Committee on Human Rights – and the Second Optional Protocol to the Convention, the goal of which is the abolition of the death penalty.[15]

On the basis of Art. 14 (1), the Federal Government on 7 June 2001 made a declaration whereby it recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual and collective complaints against violation of the rights guaranteed by the Convention on the Elimination of All Forms of Racial Discrimination.[16] Pursuant to Art. 14 (2), the Federal Government designated the Federal Constitutional Court as the court competent to receive and consider submissions by individuals or groups in the jurisdiction of the FRY who allege to be victims of violation of the rights guaranteed by this Convention, after all other legal remedies provided by national law have been exhausted.

1.4. Amnesty and Pardon for Criminal Offenses in Connection with the Wars in Former Yugoslavia

The federal Amnesty Act applies to persons who up to 7 December 2000 avoided participating in the wars in the territory of former Yugoslavia (*Sl. list SRJ*, No. 9/01), or, more precisely, men who committed the criminal offenses of refusing to bear and use

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

[15] *Sl. list SRJ* (*Medjunarodni ugovori*), No. 4/01.

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

arms (Art. 202, Federal Criminal Code),[17] failed to respond to call up, avoided military service (Art. 214), avoided military service through self-infliction of injury or deceit (Art. 215), went absent without official leave or deserted from the armed forces (Art. 217), avoided recruitment registration and medical examinations (Art. 218), and failed to fulfill material obligations (Art. 219). The Act also grants amnesty to persons who in the period from 27 April 1992 to 7 October 2000 committed or were suspected of having committed criminal offenses such as hindering the struggle against the enemy (Art. 118), armed rebellion (Art. 124), calling for a forcible overthrow of the constitutional order (Art. 133), seditious conspiracy (Art. 136) and defaming the reputation of FR Yugoslavia (Art. 157). Criminal proceedings against these persons were dropped, or they were released if already serving sentence and their convictions were deleted from the records. The Act does not apply to persons accused or convicted of the criminal offense of terrorism (Art. 125).

S erbia adopted its own Amnesty Act (*Sl. glasnik RS*, No. 10/01) commuting the sentences of those convicted under the Serbian Criminal Code. The Act does not apply to those found guilty of rape or unnatural sexual intercourse with a mentally or physically disabled person (Art. 105, Serbian Criminal Code)[18] or a person under the age of 14 (Art. 106), or to persons who already have three criminal convictions.

For more details on the application of the amnesty laws, see sections II.2.5.3. and II.2.5.4. of this Report.

2. Right to Effective Remedy for Human Rights Violations

> Article 2 (3), ICCPR:
>
> Each State Party to the present Covenant undertakes:
>
> a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> b) To ensure that any persons claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> c) To ensure that the competent authorities shall enforce such remedies when granted.

2.1. Ordinary Legal Remedies

The Federal Constitution prescribes that "the rights and freedoms recognised by the present Constitution shall enjoy the protection of the courts" (Art. 67 (4)). The relevant provisions of the Serbian Constitution are similar (Art. 12 (4)). In its Art. 17, the

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

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

Montenegrin Constitution guarantees protection of these rights in a "procedure established by law," indicating that judicial protection is not necessarily ensured in all circumstances. However, provided that some other requirements are met, judicial protection is ultimately obtained in this republic through the possibility of constitutional appeal.

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

Though criminal proceedings may in some cases be initiated by private citizens, most require action by the public prosecutor. Only if the prosecutor finds no grounds for prosecution and dismisses the case can the injured party assume the capacity of private prosecutor and proceed with his case (Art. 60, Criminal Procedure Code – CPC). In order to preclude action by the victims, public prosecutors in the past frequently failed to institute criminal proceedings for human rights violations committed by government agencies and persons acting in an official capacity. This was particularly evident during the regime of Slobodan Milošević when prosecutors did not take action on such serious abuses as, for instance, torture or degrading treatment by police. Public prosecutors also often failed to notify victims of the dismissal of their complaints within the legally required time-period of eight days (Art. 60 (1), CPC). The victims thereby lost any possibility of pursuing their cases since, under the law, they must act within three months of the day the prosecutor dismisses their complaint or decides to discontinue prosecution (Art. 60 (4), CPC).

In 2000, numerous criminal proceedings were instituted against persons who held top positions in the previous government and, finally, against police officers who violated human rights. A great many perpetrators, however, remain uncovered and the number of cases in which court orders are not unexecuted is still high.

2.2. Constitutional Appeal

Constitutional appeal is a specific legal remedy introduced by the 1992 Federal Constitution and also provided for by the Montenegrin Constitution. These appeals are lodged with the Federal and Montenegrin Constitutional Courts respectively, when "a ruling or action violates the rights and freedoms of man and the citizen enshrined in the present Constitution" (Art. 124 (1.6)), Federal Constitution; Art. 113, (1.4)), Montenegrin Constitution). Constitutional appeals cannot be filed when human rights are violated by laws, ordinances and the like, even if the existence of these constitutes a violation of the constitutionally guaranteed rights. The only possibility available in this case is to lodge a motion with the Constitutional Court challenging the constitutionality of such acts, which the Court is not obliged to consider (Art. 127, Federal Constitution).[19]

The human rights "enshrined" in the Federal Constitution for which constitutional appeal is allowed are enumerated in Articles 19–66. They include the human rights guaranteed by international treaties ratified by the FRY or which, under Art. 10, it

[19] The Federal Constitutional Court became more active in 2001 in examining the constitutionality of laws, as did also its Serbian counterpart. The Serbian Constitutional Court, however, ceased functioning in April because it did not have the required number of justices on the bench. This has an adverse effect on the protection of human rights.

"recognises and guarantees" under international law. Article 16 states that the generally accepted rules of international law are a constituent part of the internal legal order. Constitutional appeals are accepted by the Montenegrin Constitutional Court only when the matter is not in the jurisdiction of the Federal Constitutional Court (Art. 113 (1.4)), Montenegrin Constitution). The Court has not clarified this provision, and it has not proven thus far to be a barrier to lodging constitutional appeals in Montenegro.

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

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

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

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

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

exceptions in which the Constitutional Court ensured legal protection for an individual whose human rights had been violated.

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

Neither the Federal nor the Montenegrin Constitutional Court has ever considered whether a form of legal protection is effective or not. All they held to be necessary was the existence of some kind statutory protection, if only on paper. Thus, in one case relating to approval of a real estate contract, the Federal Constitutional Court dismissed a constitutional appeal against the inaction of state agencies in the first instance and upon the subsequent complaint (see I.4.11.3). The Court found that legal remedy was available and that an appeal had in fact been filed with a higher body. What it disregarded was that the appeal was actuated precisely by the inaction of that higher body (see Decision Už. No. 21/95, *Decisions of the Federal Constitutional Court*, 1995, p. 265).

3. Restrictions and Derogation

Art. 4, ICCPR:

> 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
>
> 2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
>
> 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A future communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

3.1. General and Optional Restrictions

3.1.1. General Restrictions

Under the Yugoslav constitutions, the general grounds for imposing restrictions on human rights are to ensure the human rights of others (Art. 9 (4)), Federal Constitution; Art. 11, Serbian Constitution; Art. 16 (2)), Montenegrin Constitution) and the prohibition of the abuse of these rights (Art. 67 (3)), Federal Constitution; Art. 13 (3)), Serbian

Constitution; Art. 16 (3)), Montenegrin Constitution. None of the constitutions elaborate these two bases.

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

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

3.1.2. Optional Restrictions

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

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

3.2. Derogation in a "Time of Public Emergency"

3.2.1. General

The Federal and Serbian Constitutions envisage derogation from certain guaranteed human rights during a state of war. Instead of derogation, both somewhat awkwardly use the term "restriction," which could result in confusion. For its part, the Montenegrin

Constitution does not provide for any derogation from the human rights its guarantees even in emergencies.

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

3.2.2. Derogation During a State of War[20]

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

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

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

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

These provisions in the two constitutions requiring parliamentary approval for derogation are in accordance with the OSCE standards in this field (*Document of the Moscow Meeting of CSCE on the Human Dimension*, 1991, para. 28.2).[21]

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

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

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

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

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

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

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

3.2.3. State of Emergency

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

on the freedom of assembly, political, trade union and other activities (Art. 6 (1)), State of Emergency Act).

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

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

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

4. INDIVIDUAL RIGHTS

4.1. Prohibition of Discrimination

Art. 2 (1), ICCPR:

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

Art. 26, ICCPR:

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

4.1.1. General

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

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

> Citizens shall be equal irrespective of their nationality, race, sex, language, faith, political or other beliefs, education, social origin, property or other personal characteristics.
>
> Everyone shall be equal before the law.
>
> Each person shall be duty bound to respect the rights and freedoms of others and shall be held responsible for it.

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

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

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

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

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

> All shall be equal before the law.

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

Article 13 of the Serbian Constitution states:

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

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

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

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

This definition of discrimination as a criminal offence fulfills the obligation undertaken by all states parties under Art. 2 (1.b.) of the Convention on the Elimination of All Forms of Racial Discrimination to prohibit racial discrimination practised by persons or organisations. Furthermore, and in accordance with Art. 4 of the Convention, the Federal Criminal Code prohibits incitement of racial hated and intolerance (Art. 24, Federal CC; see I.4.9.6).

On the basis of Art. 14 (1), in 2001 the Federal Government made a declaration whereby it recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual and collective complaints against violation of the rights guaranteed by the Convention on the Elimination of All Forms of Racial Discrimination.[22] Furthermore, the Federal Government designated the Federal Constitutional Court as the court competent to receive and consider submissions by individuals or groups in the jurisdiction of Yugoslavia who allege to be victims of

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

violation of the rights guaranteed by this Convention, after all other legal remedies provided by national law have been exhausted (Art. 14 (2)).

4.1.2. Examples of discrimination in Yugoslav legislation

4.1.2.1. *Real property* – The Law on Special Conditions for Real Property Transactions (*Sl. glasnik SRS*, No. 42/89), which came under strong criticism as soon as it was enacted because of the restrictions it placed on the right to peaceful enjoyment of property, was repealed on 15 April 2001.[23] Its main purpose allegedly was to preserve the ethnic composition of the population in certain parts of Serbia and prevent persons belonging to minority groups from selling their property and moving out under pressure. The discriminatory nature of this piece of legislation was highlighted by the fact that it was not applied in Vojvodina (Art. 1), a region in which many ethnic minorities live. The law was in fact aimed at stemming the migration of Serbs from Kosovo, not preserving the ethnic makeup of that region. It required the approval of the Ministry of Finance on a case-to-case basis for all real estate purchase/sale contracts, and envisaged penalties for infractions. However, only buyers, who in practice were mainly ethnic Albanians, were liable to punishment, and not sellers, mainly ethnic Serbs. Application of the law in the territory of Kosovo and Metohija ended with the promulgation of the UNMIK Regulation No. 10 on 13 October 1999.[24]

4.1.2.2. *Some criminal offences against dignity and morals* – Under the present criminal law, an act of rape exists only when the victim is a female who is not married to the perpetrator (Art. 103, Serbian CC; Art. 86, Montenegrin CC). The law remains silent on the rape of women by their husbands, as well as compelling a woman to submit to sexual intercourse by threats or other means, and rape of infirm persons (Art. 104 and 105 Serbian CC; Art. 87 (1) and 88 (1) Montenegrin CC). Hence some women are discriminated against on the grounds of their marital status.

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

Yugoslav legislation does not incriminate consensual intercourse between persons of age and of the same sex. The Serbian and Montenegrin Criminal Codes define as a

[23] See *Human Rights in Yugoslavia 1999*.
[24] See I.4.12.

crime sexual intercourse with a person under the age of 14 even with the consent of the minor (Art. 106, Serbian CC; Art. 89, Montenegrin CC). The lawmakers have thus set 14 as the age of consent. But sexual intercourse between consenting males, one of whom is a minor over the age of 14, is defined as a crime (Art. 110 (4), Serbian CC; Art. 91 (4), Montenegrin CC). These provisions are discriminatory as they envisage different ages of consent to homosexual intercourse (18) and heterosexual and lesbian intercourse (14).

4.1.2.3. *Refugees and citizenship* – The status and rights of refugees in Yugoslavia are regulated by the relevant international instruments, primarily the 1951 Convention relating to the Status of Refugees and the 1967 Protocol on the Status of Refugees. Both Serbia and Montenegro have passed their own legislation in this field: the Serbian Refugee Act (*Sl. glasnik RS*, No. 18/92), and the Montenegrin Displaced Persons Relief Act. Both have been severely criticised for unjustifiably narrowing down the definition of a refugee and the rights of refugees.

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

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

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

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

4.2. Right to Life

Art. 6, ICCPR:

> 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
>
> 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law

in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

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

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

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

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

4.2.1. General

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

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

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

On 22 June 2001, the Federal Parliament ratified the Second Optional Protocol to the ICCPR (*Sl. list SRJ (Medjunarodni ugovori)*, No. 4/01), which abolishes the death penalty. Since the Protocol now has greater legal force than both federal and republican statutes, imposition of the sentence after entry its entry into force ought not be permitted. However, the act whereby the Protocol was ratified fails to deal with the issue of death penalties pronounced earlier but not carried out, that is, it has no retroactive effect. Such sentences should not be carried out since, under Art. 1 of the Protocol, no one in the jurisdiction of the states parties may be executed.

T he republican constitutions have not yet been brought into conformity with the obligations assumed when the Second Optional Protocol was ratified. However, the Federal Parliament on 5 November 2001 passed an amendment to the Federal Criminal Code (*Sl. list SRJ*, No. 61/01). Article 95 (1.1) of the Code: “death sentence or a term of imprisonment of 20 years,” now reads: “term of imprisonment of 40 years” and, in effect, abolishes the death penalty. Pursuant to the principle of analogy, imposed death sentences should be commuted to 40 years in prison and there is a need for a law to

regulate this issue accordingly. Republican Criminal Codes in 2001 allowed capital punishment.

Abolition of the death sentence has a bearing on whether or not Yugoslavia will become a member of the Council of Europe.[25] One of the requirements for admission is the signing of Protocol 6 to the ECHR, which abolishes the death penalty.[26] The continuing existence of capital punishment could also represent an obstacle to cooperation with other countries where legal aid on criminal matters is concerned.

The Yugoslav constitutions also contain guarantees of a fair trial for criminal offences, amongst which the principle of *nulla poena sine lege* (Art. 27, Federal Constitution; Art. 23, Serbian Constitution; Art. 25, 26, Montenegrin Constitution, see: I.4.6). This is in accordance with Art. 6 (2) of the ICCPR under which a death sentence may be imposed only in accordance with the law in force at the time the crime was committed and after the competent court has rendered its final judgement.

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

With respect to the right to life, states also have an obligation to take active measures to prevent malnutrition, promote medical care and other social welfare activities aimed at reducing the mortality rate and extending life expectancy (see General Comment No. 6/19, Committee on Human Rights, 27 July 1982). Thus the Yugoslav constitutions state that everyone is entitled to health care, adding that children, expectant mothers and the elderly have the right to publicly financed health care if they are not covered by another insurance program, while other persons receive such care in accordance with the law (Art. 60, Federal Constitution; Art. 30, Serbian Constitution; Art. 57, Montenegrin Constitution).

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

Under Art. 13 of the Yugoslav Environment Protection Act (*Sl. list SRJ*, No. 24/98), the competent government agencies must provide the public with accurate and timely information on the state of the environment and any pollution that represents a

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[25] *Call on Serbian Authorities to Abolish Death Penalty*, 9 April 2001, <http://press.coe.int7cp720017261a(2001).htm>.

[26] When Russia was admitted to the CoE, it assumed an obligation to declare immediately a moratorium on the execution of death sentences and to ratify the Protocol and abolish the penalty within three years. Ranking Russian officials announced the possibility of lifting the moratorium, saying nothing about the abolition of the death sentence. The CoE Parliamentary Assembly reacted by issuing a declaration (31 May 2001) in which it said that such a decision and non-ratification of the Protocol could have an adverse effect on Russia's continuing membership.

threat to human life and health or to the environment. The corresponding articles in the republican statutes are very similar (Art. 8, Serbian Environment Protection Act, *Sl. glasnik RS*, Nos. 66/91, 83/92, 53/93, 67/93, 48/94, 44/95 and 53/95; Art. 7 (12), Montenegrin Environment Act, *Sl. list RCG*, Nos. 12/96, 55/00).

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

4.2.2. Criminal Law

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

Republican statutes also define offences against life (Art. 47, Serbian CC; Art. 30, Montenegrin CC). Criminal homicide carries a minimum penalty of five years in prison while aggravated forms of the crime are punishable with at least 10 years in prison or death. The death sentence will have to be replaced with life imprisonment as it is no longer envisaged by federal criminal law (prescribing sanctions is in the purview of the federal state).

The Serbian Criminal Code (Art. 51 (1)), and its Montenegrin counterpart (Art. 34 (1)) define as punishable incitement to suicide and assisting a person to commit suicide. This means that Yugoslav law does not allow euthanasia and does not recognise it as a mitigating circumstance in cases of assisted suicide.[27]

4.2.3. Abortion

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

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

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

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

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

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

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

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

4.2.4. Capital Punishment

Under the Criminal Procedure Code (CPC, *Sl. list SFRJ*, Nos. 4/77, 36/77, 14/85, 26/86, 74/87, 57/89 and 3/90, *Sl. list SRJ*, Nos. 27/92, 24/94), defendants charged with crimes carrying a death sentence must have defence counsel.[28] Once a death sentence has been handed down, the defendant is entitled to counsel in the subsequent appeal procedure pursuant to extraordinary remedy (Art. 70 (2 and 4)). This is in accordance with the ICCPR since the Committee on Human Rights considers that a defendant should be acquitted if paragraphs 1 and 2 of Art. 3 of the ICCPR have been violated, or when the defendant has not had the benefit of counsel or some other effective defence during the trial (see *Robinson vs. Jamaica* and *Pinto vs. Trinidad and Tobago*).

The CPC also prescribes that a person who has been sentenced to death may not waive the right of appeal or withdraw an appeal (Art. 361 (4)). When a death sentence has been pronounced or upheld by a higher court, the law envisages the possibility of appeal to a court of third instance, that is, the Supreme Courts of the republics or the Federal Supreme Court (Art. 391 (1), CPC).

Both republican statutes treating pardon prescribe that a petition for pardon must be filed *ex officio* if the person convicted fails to do so himself (Art. 4 (3)), Serbian Pardons Act, *Sl. glasnik RS*, No. 49/95 and 50/95; Montenegrin Pardons Act, *Sl. list RCG*, Nos. 16/95, 12/98 and 21/99), thereby meeting the requirements under Art. 6 (4) of the ICCPR.

In line with the ICCPR's Art. 6 (5), the Criminal Codes of Serbia and Montenegro prescribe when the death sentence may not be imposed. Thus Art. 3 (a) of the Montenegrin Act on Amendments to the Criminal Code (*Sl. list RCG*, No. 27/94) states:

> The death sentence may not be prescribed as the sole principal punishment for a specific criminal offence.
>
> A sentence of death may not be pronounced on a person who had not attained the age of 18 at the time of the commission of the crime, nor on a pregnant woman.

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[28] New Criminal Procedure Code (CPC) was enacted on 26 December 2001 (*Sl. list SRJ*, No. 70/01) and enters into effect in late March 2002. Since the death sentence was abolished on federal level new CPC does not provide guarantee that the defendants charged with crimes carrying a death sentence must have a defence counsel. Therefore if Serbia and Montenegro do not abolish the death sentence before entering into effect of new CPC those charged with crimes carrying a death sentence would not need to have a defence counsel.

The Montenegrin Act on the Enforcement of Criminal Sanctions (*Sl. list RCG*, Nos. 25/94 and 29/94) further elaborates this provision:

> A sentence of death may not carried out against a person who is severely mentally or physically ill, for the duration of the illness, or against a woman during pregnancy and until her child attains the age of three (Art. 9 (2)).

This is in accordance with the interpretation of the ICCPR under which the death sentence may not be carried out against a pregnant women and after the birth of the child since that would constitute a violation of the fundamental principles of humanity. The Serbian Criminal Code contains a similar provision but with one serious defect – nowhere does it lay down that a minor may not be executed (Art. 7 (1)).

The Montenegrin law, indeed, goes further than the ICCPR, envisaging that a person suffering from a severe mental or physical illness may not be executed. A proposal to this effect was tabled in the UN General Assembly during the formulating of Art. 6 of the ICCPR but was not accepted.

4.2.5. Use of Force by Government Agencies

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

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

The Serbian Internal Affairs Act (*Sl. glasnik RS*, Nos. 44/91, 79/91, 54/96, 30/00 and 8/01) and its Montenegrin counterpart (*Sl. list RCG*, No. 24/94) regulate the use of force by law enforcement officers, and the matter is elaborated in detail in ancillary legislation. Under the Serbian Act, police may use firearms only when other means do not suffice to protect assets and property (Art. 23 (1.1–6.)) and to "repel an attack on a facility (line 6). Deprivation of life in this case does not come under any of the three exceptions provided for by the ECHR (Art. 2 (2)), nor does it meet the test of "strict proportionality" (see *Stewart vs. United Kingdom*, App. No. 1004/82 (1982); *McCann and Others vs. UK* (1995), *Publications of the European Court of Human Rights*, Series

A, Vol. 324; *Kelly and Others vs. UK*, App. No. 30054/ 96 (2001); *Gul vs. Turkey*, App. No. 22676/93 (2001)). The provisions of the Montenegrin Internal Affairs Act are similar (Art. 17 and 18), and oblige a law enforcement officer to give warning before using a firearm (Art. 19 (2)).

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

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

Art. 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 Art. 7 of the ICCPR on the prohibition of torture, the FRY is bound also by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention"). When it ratified this Convention, the FRY also recognised the competence of the Committee against Torture to receive and consider communications by state parties and by or on behalf of individuals (Art. 21 (1)) and 22 (1)) of the Convention).[29]

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

> The inviolability of the physical and psychological integrity of the individual, his privacy and personal rights shall be guaranteed.
>
> The personal dignity and security of man shall be guaranteed (Art. 22).
>
> Respect for the human personality and dignity in criminal and all other proceedings, in the event of detention or other restriction of freedom, as well as during the serving of a prison sentence, shall be guaranteed.
>
> The use of force against a suspect who has been detained or whose freedom has been restricted, as well as any forcible extraction of confessions or statements, shall be prohibited and punishable.
>
> No one may be subjected to torture, or to degrading treatment or punishment.

[29] In May 2001, the Committee against Torture handed down its first decision on a communication submitted by an individual against Yugoslavia (*Ristić vs. Yugoslavia*) in which it found Yugoslavia in violation of its obligations under the Torture Convention. For more details see II.2.3.

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

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

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

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

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

4.3.2. Criminal law

Under the Torture Convention, states must ensure that all acts of torture are offenses under their criminal law and take into account their grave nature when prescribing penalties (Art. 4). Several provisions of national law treating abuse of official position prohibit torture, with federal officials being liable under federal statute (Chapter XIX, Federal CC). The most important criminal offence treated therein is civil injury (Art. 191):

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

Though the term "torture" is not explicitly used, the offence encompasses the infliction of severe physical or psychological suffering, as well as the enforcement of

criminal sanctions, and thus corresponds to the definition used in the Torture Convention.[30] An important point is that, in contrast to the Convention (Art. 1), *intent* is not required. Use of force, even when severe physical or psychological injury is not a consequence, as well as ill-treatment and violation of human dignity, i.e. actions that come under inhuman or degrading treatment, are also prohibited.

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

In 1998, the Committee against Torture criticised the FRY for the failure of its criminal law to prohibit torture in itself, in accordance with Art. 1 of the Torture Convention, and recommended introduction of the criminal offence in national legislation as it is defined in the Convention.[31] This, however, has not been done to this day.[32]

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

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

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

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

> An official who in the performance of duty abuses another, insults him or generally treats him in a manner that violates his human dignity, shall be

[30] The European Court of Human Rights has in several judgments drawn a distinction between torture and inhuman and degrading treatment; see: *Ireland vs. UK* App. No. 5310/71 (1978) and *Tyrer vs. UK*, App. No. 5856/72 (1978).

[31] See *Remarks and Comments on FRY Report*, UN doc. Committee Against Torture, UN CAT/C/YUGO of 16 November 1998, pp. 10, 17.

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

punished with a term of imprisonment of three months to three years (Art. 66, Serbian CC, wording of Art. 48, Montenegrin CC, is similar).

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

4.3.3. Criminal Proceedings and Execution of Criminal Sanctions

Under the Federal Criminal Procedure Code, detention could up to the end of 2000 be ordered by both the investigating judge and the police (Art. 196, see 4.5.1.1.). A person could be held in police custody for up to 72 hours, and it was in this period that the most serious violations of the prohibition of torture and similar treatment occurred. The Federal Constitutional Court ruled Art. 196 unconstitutional and did away with the possibility of police custody (*Sl. list SRJ*, No. 71/00). This paragraph of Yugoslav legislation was criticised also by the Committee against Torture, which recommended that the period of police custody be limited to 48 hours at the most, and that the detained person be allowed access to legal counsel immediately upon being taken into custody.[33] New Criminal Procedure Code lays down as a rule that only the competent court may order a person to be taken into custody.[34] A person arrested without a court order will be brought promptly before an investigating judge (Art. 5).[35]

The Federal CPC prohibits injury to the personality and dignity of detained persons (Art. 201), and extraction of confessions or other statements from a detained person or another party to the proceedings. A detained person may request to be seen by a medical doctor, under the supervision of the investigating judge (Art. 201 (1)). Where interrogation is concerned, the law states that it must be conducted in a way that "fully respects the personality of the accused" (Art. 218 (7)), and bans the use of force, threats or similar means to obtain a statement or confession. Medical interventions or other means that could affect the will of an accused person when making a statement are explicitly prohibited (Art. 259 (3)).

When it speak of the rights of a detained person, the CPC refers primarily to the rights of an "accused," that is, a person who has been ordered to be detained by the investigating judge (Art. 192). A correct interpretation, however, would include persons who have been taken into custody by the police but have not yet been brought before an investigating judge.

The status of convicts is defined and more closely regulated by the Serbian Act on the Enforcement of Criminal Sanctions (*Sl. glasnik RS*, No. 16/17), which emphasises their right to humane treatment. Article 56 of the Act stipulates respect for the dignity of

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[33] See *supra* note 31, pp. 12, 17.

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

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

a person serving a prison sentence and prohibits any threats to his physical or psychological well-being. Articles 57 through 103 lay down the treatment of convicts. The Act contains a provision on the status of persons against whom sanctions are being enforced (Art. 5) and, though it does not explicitly prohibit torture, it envisages that the rights of convicts may be restricted only to the extent necessary to enforce the sanctions, and in accordance with the law.

4.3.4. Use of Force by Police

Under the Serbian Internal Affairs Act (*Sl. glasnik RS*, No. 44/91), law enforcement officers are obligated to use force in a manner that will "produce the least harmful consequences" (Art. 3). The subject matter is more closely regulated by the Regulations on the Use of Force (*Sl. glasnik RS*, Nos. 40/95, 48/95 and 1/97), Art. 2 of which states that a law enforcement agent "shall use force in the performance of his duty in such a manner as to produce the least harmful consequences for the person against whom the force is being used, and only for as long as the reasons... for the use of force exist."

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

4.4. Prohibition of Slavery and Modern Forms of Slavery

Art. 8, ICCPR:

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

2. No one shall be held in servitude.

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

4.4.1. General

Where the prohibition of slavery is concerned, Yugoslavia is bound not only by the ICCPR but also the Slavery Convention (*Sl. novine Kraljevine Jugoslavije*, br. 234/29), the Convention on the Suppression and Elimination of Trafficking in Human Beings and Exploitation of Others (*Sl. list FNRJ*, br. 2/51), the Protocol to the Convention on the Suppression of Trafficking in Women and Children, the Convention on the Suppression of Trafficking in Adult Women (*Sl. list FNRJ*, br. 41/50), the 1953 Protocol amending the 1926 Convention on Slavery (*Sl. list FNRJ* (*Dodatak*), br. 6/55), the Supplementary Convention on the Elimination of Slavery, the Slave-Trade and Institutions and Practices Similar to Slavery (*Sl. list FNRJ*, (*Dodatak*), br. 7/58), and the UN Convention Against Transnational Organized Crime and its additional Protocols (*Sl. list SRJ*, No. 6/01). When

it ratified these international instruments, Yugoslavia undertook to protect human rights and to combat and punish all forms of slavery, trafficking in persons and forced labor.

4.4.2. Modern forms of slavery

It was believed for a long time that slavery had been relegated to the past. Today, however, it has again come to the forefront owing to the massive trafficking in persons and their illegal transportation over state frontiers.

In Art. 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention Against Transnational Organized Crime, the UN General Assembly defined trafficking in persons as:

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

Article 3 (a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, also a supplement to the UN Convention Against Transnational Organized Crime, states that:

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

A distinction must be made between the terms trafficking and smuggling if the problems relating to the prohibition of slavery are to be precisely defined. The two terms clearly imply illegal activities. However, in the case of trafficking, the victim is an unwilling subject, which automatically places the act in the category of serious crimes. Both smuggling and trafficking constitute grave violations of the prohibition of slavery and servitude, a persons' right to freedom and security and to life in dignity, as well as the prohibition of torture, inhuman or degrading treatment, and the rights of the child.

Neither the federal nor the two republican constitutions explicitly prohibit slavery. Only the Federal Criminal Code (Art. 155), in the section treating crimes against humanity and international law, contains the following provisions:

> 1. Whoever violates international law by placing or holding another in slavery or a similar state, buys, sells, delivers to another or mediates in the buying, selling or delivery of a human being, or incites another to sell his freedom or the freedom of his dependent or a person in his care, shall be punished with a term of imprisonment of one to ten years.
>
> 2. Whoever transports persons who are held in slavery or a similar state from one country to another shall be punished with a term of imprisonment of six months to five years.

3. Whoever commits the acts referred to in paragraphs 1 and 2 of the present Article against a minor shall be punished with a minimum term of imprisonment of five years.

4.4.3. Defects in National Legislation

Although the three constitutions lay down the right of every individual to personal freedom (Art. 23 (1)), Federal Constitution; Art. 22 (1)), Montenegrin Constitution), that no one may be deprived of his liberty except in cases and according to the procedure prescribed by federal statute (Art. 23 (2)), Federal Constitution; Art. 15 (2)), Serbian Constitution), and that illegal detention is a punishable offense (Art. 23 (6)), Federal Constitution; Art. 22 (6)), Montenegrin Constitution), they do not specifically prohibit slavery or any of its modern forms.

However, other criminal offenses defined by the Federal Criminal Code make possible the prosecution of persons involved in smuggling or trafficking in human beings: criminal conspiracy (Art. 26), unlawful deprivation of liberty (Art. 189), illegal crossing of frontiers (Art. 249), abuse of power (Art. 147), and solicitation for prostitution (Art. 251). A serious flaw is that the lawmakers envisaged only females as victims of solicitation to prostitution.

The Serbian and Montenegrin Criminal Codes criminalize abduction (Art. 64, Serbian CC; Art. 46, Montenegrin CC), coercion (Art. 62, Serbian CC; Art. 44 Montenegrin CC), rape (art. 103, Serbian CC; Art. 86, Montenegrin CC), compelling a persons to engage in sexual intercourse or unnatural sexual intercourse (Art. 104, Serbian CC; Art. 87, Montenegrin CC), rape of and unnatural sexual intercourse with a person below the age of 14 (Art. 106, Serbian CC; Art. 89, Montenegrin CC), unnatural sexual intercourse (Art. 110, Serbian CC; Art. 91, Montenegrin CC), pandering (Art. 111, Serbian CC; Art. 93, Montenegrin CC), and abduction of a minor (Art. 116, Serbian CC; Art. 98, Montenegrin CC).

The punishment they prescribe for the majority of these offenses, however, is not much of a deterrent, especially since judges have considerable leeway in imposing sentence and all too often opt for the mildest envisaged by law.

Yugoslavia ratified the Convention against Transnational Organized Crime and its supplementary Protocols in June 2001. A national team to combat trafficking in persons was established somewhat earlier, in April, and is active at four levels: prevention, assistance and support to victims, amending legislation, and research, with the emphasis being on making the law more effective in this field. In paragraphs 12 and 30 of its General Comment No. 28, the UN Committee on Human Rights recommended to states to take measures at both national and international level to protect women and children, including nationals of other countries, from trafficking, coercion to engage in prostitution, and other forms of slavery and forced labor, which are now increasingly taking place under the guise of personal services.

4.5. Liberty and Security of the Person; Treatment of Prisoners

The right to the liberty and security of the person was among those whose protection by law and the prevailing practice was the most controversial in the Yugoslav legal system up to 2001. Almost the entire body of legislation regulating this field, in

particular the federal CPC and the Serbian and Montenegrin Acts on Internal Affairs, required extensive revision or even the adoption of new laws. Though the Federal Constitutional Court in late 2000 and during 2001 did away with a number of unconstitutional provisions, this was not sufficient to establish a legal system that could effectively combat crime and, at the same time, provide strong procedural guarantees of human rights. The new CPC was enacted on 26 December 2001 (*Sl. list SRJ*, No. 70/01) and, being a systemic law, enters into effect after a *vacatio legis* of three months, that is, in late March 2002.[36] All references starting with section 4.5.1. are to the previous CPC.

4.5.1. Right to Liberty and Security of Person

Art. 9, ICCPR

> 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
>
> 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
>
> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any

[36] Since the present Report is primarily on human rights in law and practice in 2001, only the basic points of the new CPC will be referred to here.
The new CPC provides far better guarantees to suspects and defendants in criminal proceedings. Thus "a person who has been taken into custody shall immediately be informed, in his own language or a language he understands, of the reasons for his detention, of his rights to remain silent, to a defense counsel of his choice, and to have his next of kin informed of his arrest. A person who has been taken into custody without a court warrant shall immediately be taken before the investigating judge" (Art. 5). If for unavoidable reasons, the taking in of a person lasted more than eight hours, the police are bound to inform the investigating judge (Art. 227 (3)).
With respect to the right to defense counsel, the investigating judge must immediately inform a detained person who has been brought before him that he may retain counsel, and enable him, in his presence, to communicate directly or indirectly with counsel by telephone, telegraph or other electronic means. If necessary, the investigating judge will assist the detained persons to find a defense counsel (Articles 228 and 229).
The CPC lays down as a rule that only the competent court may order a person to be taken into custody, and only in the cases it specifies, and only "if the same purpose cannot be achieved through other measures" (Art. 141 and 142). The duration of detention remains the same as in the previous CPC (see 4.5.1.3), except when a person is remanded to custody after being indicted and handing down of the first-instance ruling. The previous CPC left this area unregulated. Under the new CPC, "The period of detention following indictment shall not exceed two years. If a first-instance decision is not pronounced within that period, the defendant shall be released" (Art. 146 (3)). Detention following a first-instance decision may last one year at the most. If a second-instance ruling setting aside the first-instance decision follow within one year, detention may not exceed one year from the date of the second-instance rulings (Art. 146 (4)).
A person who has been wrongfully detained has the right to rehabilitation and compensation from the state, and other rights laid down by statute (Art. 14).

other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

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

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

4.5.1.1. Prohibition of arbitrary arrest and detention – The intent of the ICCPR's Art. 9 is to provide procedural guarantees against arbitrary arrest and detention. The states parties have an obligation to define precisely when arrest is lawful, and to provide for judicial review to determine whether or not this is the case. Furthermore, the Committee on Human Rights has interpreted the article as also guaranteeing the right to personal safety, under which states are obliged to take "reasonable and appropriate" measures to protect every individual from injury by others (see *Delgado Paéz vs. Columbia*, No. 195/1985, para. 5.5).

The Yugoslav constitutions guarantee the right of personal freedom (Art. 23, Federal Constitution; Art. 22, Montenegrin Constitution; Art. 15, Serbian Constitution). Thus the Federal Constitution lays down that "Every individual shall have the right of personal freedom" (Art. 23), and adds to this the inviolability of the physical and psychological integrity of the individual (Art. 20 (2)). The Montenegrin Constitution contains an identical provision (Art. 20 (2)), whereas the Serbian does not.

The ICCPR's requirement that arrest and detention be lawful and its prohibition of arbitrariness is not only with respect to criminal proceedings, and includes all cases in which a person's freedom is restricted, e.g. due to mental illness, vagrancy, alcohol or drug addiction, and the like. The Yugoslav constitutions use two terms: "detention" and "custody," with the latter always relating to criminal cases[37] and the former to all other forms of detention. There is, however, no clear distinction between the two and Art. 23 of the Federal Constitution prescribes the right of a "detained person to choose his own defense counsel" (para. 5), and that he must "be informed of his right to remain silent" (para. 4). This indicates that the term "detention" may also relate to criminal cases. A similar defect is found in Art. 22 of the Montenegrin Constitution, while the Serbian does not envisage these guarantees.

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

There is a discrepancy between the Serbian and Federal Constitutions where grounds for custody are concerned. The Federal Constitution states in its Art. 24 that only

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

a "person suspected of having committed a criminal offence" may be taken into custody" if this "is necessary for the conduct of criminal proceedings." On the other hand, the Serbian Constitution envisages in Art. 16 the possibility of an individual being taken into custody if "necessary to ensure public safety." A similar provision is retained in the new CPC (Art. 191).

The Federal Constitutional Court, however, ruled unconstitutional lines 3 and 4 of paragraph 2, Art. 191, (*Sl. list SRJ*, No. 71/00). The Court found that ordering a person to be taken into custody for reasons such as preventing the public being disturbed by the manner in which a crime was committed, or the consequences and other circumstances of the crime, and averting a threat to public safety were not among the grounds for custody laid down by Art. 24 of the Federal Constitution.

The Federal Constitution states that only the competent court may order an individual to be taken into custody (Art. 24 (1)) and not also another "competent body" as was allowed by the 1974 Constitution. Article 196 of the old CPC, which envisaged the possibility of police detention, was ruled unconstitutional by the Federal Constitutional Court in late 2000 (*Sl. list SRJ*, No. 71/00).

Up to the beginning of 2001, detention was in part regulated by Art. 11 of the Serbian Internal Affairs Act under which police could detain persons if necessary to ensure public order, prevent a threat to public safety, or to the security and defense of the republic (para. 1), or to establish the identity of a person if this could not be achieved on the basis of his identity card or by other means (para. 2). On 17 January 2001, the Federal Constitutional Court found these provisions of the Serbian Act in contravention of the Federal Constitution, which states that the subject matter may be regulated only by federal statute (*Sl. list SRJ*, No. 5/01).

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

In this part, too, the CPC clashes with the Federal Constitution since it does not oblige the police to inform a person promptly of the reasons for his arrest. Under Art. 195 (1), for instance, the police must bring an arrested person before the competent investigating judge "without delay." But paragraph 2 of the article envisages the possibility of "unavoidable" circumstances preventing this from being done even within 24 hours, which considerably prolongs the time in which the arrested person will be told

the reasons for his arrest. By contrast, the Internal Affairs Acts of both republics prescribe that, in the cases of arrest they envisage,[38] the police "must immediately inform the arrested person of the reason for his arrest (Art. 15 (4), Montenegrin Act; Art. 11 (4), Serbian Act). This article of the Serbian Act was, however, set aside by the Federal Constitutional Court since the matter may be regulated only by federal statute (*Sl. list SRJ*, No. 5/01).

With regard to the right of an arrested person to be informed promptly of the charges against him, the provisions of the CPC are in accordance with international standards as they prescribe that the investigating judge must inform an arrested person of the charges and evidence against him before proceeding to question him for the first time (Art. 218 (2)).

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

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

The time periods envisaged by the CPC are in accordance with international standards since a suspect caught red handed, who may be arrested by anyone, must be taken immediately to the investigating judge (Art. 191 (4)), and a person taken into custody by the police on any of the grounds laid down in the CPC must be "brought before the competent investigating judge without delay" (Art. 195 (1)).

A person ordered to be held in custody is entitled to be tried within a reasonable time or to be released. Yugoslav law limits the duration of custody only in the pre-trial period and not during the trial itself, when the necessity of continuing custody is reviewed only periodically.

In accordance with international standards and pursuant to the constitutional provisions requiring that "the length of detention must be of the shortest possible duration" (Art. 24 (3), Federal Constitution; Art. 23 (3), Montenegrin Constitution; and

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

"shortest period necessary" in Art. 16 (2), Serbian Constitution), the CPC not only reiterates the guarantee but also requires "all authorities involved in the criminal proceedings and those providing them with legal assistance to be especially expedient if the suspect is in custody" (Art. 190 (2)). Moreover, custody is to be terminated as soon as "the reasons on the basis of which custody was ordered cease to exist" (para. 3). The law does not make termination of custody conditional on motions to this effect by either party to the proceedings but nor does it rule out the possibility. The Serbian Supreme Court, however, was of the opinion that "the suspect and his counsel are not authorised to propose termination of custody during the investigative proceedings; hence motions by defence counsel for terminating custody of suspects are not to be considered" (Kž. II 403/81).

All three constitutions prescribe that the period of custody ordered by a first-instance court may not exceed three months, and that it may be extended by a further three months by a higher court. The period starts running on the day of arrest and, "if by the end of this period [three plus three months] charges have not been brought, the suspect shall be released (Art. 24 (4), Federal Constitution; Art. 16 (3), Serbian Constitution; Art. 23 (4), Montenegrin Constitution). The length of custody in regular proceedings is regulated in much the same way, only in more detail, by the CPC (Art. 197), while the period of custody pending indictment in summary proceedings is limited to eight days without the possibility of extension (Art. 433 (2)), and in proceedings involving juveniles to three months (Art. 474 (2)).

There is no time limit on the length of custody after an indictment has been filed and it may last as long as the proceedings. The court, however, is obliged to determine after two months whether or not the reasons why custody was ordered still exist and either extend or terminate it (Art. 199 (2)), CPC). Where summary proceedings are concerned, this is done once a month (Art. 433 (3), CPC).

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

The Serbian and Montenegrin Civil Procedure Codes (*Sl. glasnik RS*, Nos. 25/82 and 48/88; *Sl. list SRCG*, Nos. 34/86 and 5/87), prescribe that a person may be confined in a psychiatric institution if the nature of his illness requires that his movement and

contacts with others be restricted (Art. 45 (1), Serbian Code; Art. 48 (1), Montenegrin Code). These provisions, however, are unconstitutional as the Federal Constitution states that no one may be deprived of his liberty except in cases and according to the procedure laid down by federal law (Art. 23 (2)), Federal Constitution).

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

The CPC envisages compensation for both unlawful deprivation of liberty and for unfounded deprivation of liberty. Unlawful deprivation of liberty is when it is not on any of the grounds prescribed by law, when it exceeds the legally prescribed period, or when the period a criminal defendant has spent in custody awaiting trial is not deducted from his final sentence.

The compensation procedure consists of two stages: administrative and judicial (civil law). A person who has been deprived of his liberty first submits a request to the administrative body concerned seeking "an agreement on the existence of damages and the kind and level of compensation" (Art. 542 in conjunction with Art. 545 (4)). If the request is dismissed or the administrative body fails to decide on it within three months of the date of its submission, the injured party may file a law suit for compensation. If agreement is reached on only a part of the request, the injured party may file a law suit for the remainder of the damages he considers he is entitled to (Art. 543 (1)).

4.5.2. Treatment of Persons Deprived of Their Liberty

Art. 10, ICCPR:

> 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
>
> 2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
>
> b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
>
> 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

4.5.2.1. Humane treatment and respect for dignity – All restrictions which are not inherent in the very nature of the deprivation of liberty and of life in a restricted

environment are prohibited. Thus Article 10 of the ICCPR complements Art. 7, which in general prohibits torture, cruel or inhuman or degrading treatment or punishment (see I.4.3).

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

The Federal Criminal Code prescribes that a person convicted of a criminal offence may be deprived of some rights or have those rights restricted while serving his sentence, but only to the extent required by the nature of the sentence and in a manner that ensures respect for his personality and his human dignity (Art. 6, Federal CC; see *mutatis mutandis* Art. 6 (2)), Serbian CC). The law also prohibits "degradating the personality and dignity of the defendant" (Art. 201 (1)), CPC).

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

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

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

Pursuant to the Serbian AEPS, supervision of inmates of penal institutions is by the Office of Penal Sanctions (Art. 9 (1) and 346 (1)) and the Ministry of Public Health monitors the standards of care provided in hospitals, psychiatric institutions and other medical services in penal institutions (Art. 353). The first-instance court which committed a defendant to a psychiatric institution supervises the legality of the pronounced measure of obligatory psychiatric treatment and confinement (Art. 195 (1)). Application of the measure of detention is supervised by the "President of the District Court in whose territorial jurisdiction the institution in which the measure is executed is located" (Art. 320; Art. 205 regulates in detail how this supervision is conducted and at

what intervals). The Serbian AEPS makes it possible for a convicted person to complain to officials supervising a penal institution without the presence of its staff members and authorities (Art. 103 (1)). In Montenegro, penal institutions, juvenile institutions and confinement in psychiatric institutions are supervised by the Ministry of Justice (Art. 21, 69 and 82, Montenegrin AEPS). Supervision of correctional measures is by the social welfare agency, while the court which pronounced the measure supervises the legality of its execution (Art. 113).

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

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

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

4.5.2.3. Correctional/penitentiary system – The basic aim of the treatment of prisoners is, under the ICCPR, their reformation and social rehabilitation. The Federal

Criminal Code states that the purpose of penal sanctions is to preclude an offender from committing new crimes, his re-socialisation, deterring others from crime, strengthening morals and developing social responsibility and civic discipline. The Montenegrin AEPS states that the purpose of a prison sentence is the "re-socialisation" of the convicted person, while the Serbian AEPS does not specify the aim of penal sanctions.

4.6. Right to a Fair Trial

As the new Criminal Procedure Code (CPC) was enacted on 26 December 2001 (*Sl. list SRJ*, No. 70/01) and enters into effect in late March 2002, reference in this section will be only to the CPC in force during 2001.[39]

Although most of the acts contained in the legislative package regulating the functioning of courts that was adopted in 2001 have not yet entered into force, the

[39] Only some provisions of the new Criminal Procedure Code (CPC) will be discussed here. The new CPC regulates the status of suspects and accused persons, prohibiting the use of force, threats, deception, coercion, promises or similar means to obtain self-incriminating statements or confessions (Art. 89 (8)), and laying down that courts may not base their decisions on evidence obtained through such means. Article 12 prohibits and makes punishable any use of force against a person who has been detained or whose freedom is otherwise restricted, and the extraction of confessions or other statements from an accused person or other party to the proceedings. It furthermore stipulates that court decisions may not be based on evidence obtained in contravention of the CPC, other legislation, the Constitution, or *international law* (Art. 18 (2)).
A suspect may make a statement to the police only in the presence of counsel; counsel must also be present when he declares that he wishes to make such a statement. The police must notify the competent state prosecutor of the interrogation of a suspect, and the prosecutor may be present at the interrogation. The report on the interrogation is not excluded from the record of the case and is admissible evidence in criminal proceedings (Art. 226 (9)).
The provision of the old CPC under which the public could be excluded from a trial in order to "protect other special interest of the society" has been dropped from the new CPC, thereby reducing the possibilities of departing from the principle of public trial to those embodied in international instruments.
The relatively short time-periods for defense counsel to prepare the defense (eight days in regular and three days in summary proceedings) has been retained.
Substantial alterations were introduced with regard to contact between a suspect/accused and his counsel, and the right of defense counsel to access to the material evidence and records of the case. An accused who has been ordered to be detained must have counsel from the moment the order is issued (art. 171 (2)). If the suspect has been questioned in accordance with the rules, counsel has access to the material evidence and records immediately upon the decision to institute an investigation or immediately after the indictment in brought, or before that (Art. 74 (1)).
Under the CPC, defense counsel is entitled to read the charges preferred and the request for institution of an investigation prior to the first interrogation of the suspect (Art. 74 (2)). The new Code regulates in considerably more detail contacts between counsel and suspect/accused, in particular with respect to supervision of their conversations. Defense counsel may confer in private with a suspect who has been taken into custody before his first interrogation, and with an accused who is in detention. These conferences, as well as those during the investigation, may be *only in the sight of and not in the hearing of* others (Art. 75 (1)). Upon conclusion of the investigation, or if an indictment has been brought without an investigation having been conducted, the accused is entitled to correspond and confer with his counsel freely and without supervision (Art. 75 (5)). When an accused person so requests, he is entitled to read the charges and request for an investigation before his first interrogation (Art. 89 (3)).
Provisions relating to statements made in the course of proceedings have also been revised. When an accused admits to having committed the charged offense, the bodies conducting the proceedings have an obligation to continue collecting evidence *only* if the confession is obviously false, incomplete, contradictory or uncorroborated by other evidence (Art. 94).

Belgrade Centre has decided to include them in the present Report since the legal community has had enough time to review and evaluate them, and one took effect in 2001 (see below).

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 or the guardianship of children.

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

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

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

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

c) To be tried without undue delay;

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

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

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

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

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

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

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

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

4.6.1. Independence and Impartiality of Courts

The Serbian and Montenegrin Constitutions in their respective Articles 96 (1) and 100 lay down that courts of law are independent and bound only by the Constitution, law and other general enactments. The Federal Constitution is silent on this point. The principle of the separation of legislative, executive and judicial powers is embodied in all three (Art. 12, Federal Constitution; Art. 9, Serbian Constitution; Art. 5, Montenegrin Constitution). The independence of courts, however, depends not so much on constitutional provisions as it does on practice, and it is generally held in Yugoslavia that they are not fully independent. Allegations about bias and political influence on courts have been proved correct in a number of cases, e.g. the cancellation of the results of the Serbian local elections in November 1996 in which courts, including the Serbian Supreme Court, played a major role, and the attempt of the Federal Constitutional Court to falsify the results of the 2000 presidential election (see I.4.14).

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

The independence of courts is far better regulated and protected by this new legislation. For example, the Serbian Ministry of Justice and the Serbian Supreme Court share responsibility for overseeing the administrative divisions of courts. The rules of procedure, the basic legal act of the judiciary, is now adopted by the Minister but *in agreement with the President of the Supreme Court*. Any act passed by a court administration that infringes the independence of courts or judges is automatically deemed null and void, and declared as such by the Grand Chamber[40] at the proposal of the president of the competent court (Art. 67, Act on Organisational Structure of Courts, *Sl. glasnik RS*, No 63/01).

Judges have tenure of office (Art. 101 (1) and 126 (2), Serbian Constitution; Art. 2 (1), Serbian Act on Judges; Art. 103 (1), Montenegrin Constitution), and only justices of the Federal Court and Federal Constitutional Court (Art. 109 (2) and 125 (2), Federal Constitution) and of the Montenegrin Constitutional Court (Art. 111 (2), Montenegrin

[40] For the Grand Chamber see below.

Constitution) are appointed for nine-year terms. Except in the case of military courts, judges may not be transferred without their consent (Art. 101 (5), Serbian Constitution; Art. 2 (2) and 16, Serbian Act on Judges); (Art. 103 (4), Montenegrin Constitution; Art. 27, Montenegrin Act on Courts). The new Serbian Act on Judges retains the possibility of transferring or reassigning judges to another court but improves their position in these situations. Decisions on reassignment are taken by the Supreme Court President, and those on transfer by the High Judicial Council (Art. 18 and 17 (3), Serbian Act on Judges). The improvement is in that a decision to this effect may be taken only when the judge concerned has consented in writing (Art. 16 (1, 3)). Judges may not hold other public office or engage in other professional activity, and their right to political organising is restricted (Art. 42 (4), 109 (6), 125 (4), Federal Constitution; Art. 100 and 126 (4), Serbian Constitution; Art. 5 (2), Serbian Act on Courts; Art. 106 and 111 (5), Montenegrin Constitution; Art. 28 (1.d), Montenegrin Act on Courts).

The most significant innovation with respect to mechanisms for the protection of judges is the establishment of the Grand Chamber (Art. 36, Serbian Act on Judges), which is made up of nine justices of the Serbian Supreme Court excluding the Court President (Art. 39 (1)). Under the new law, judges may also lodge complaints when they consider that their rights have been infringed and when no other remedy is available. These complaints are considered by the Grand Chamber, which must decide on them within eight days and notify the president of the respective court, the president of the court immediately superior, and the President of the Serbian Supreme Court of its decisions (Art. 26, Serbian Act on Judges).

Appointment of judges is also according to a completely new procedure. The High Judicial Council nominates candidates for court presidents, judges, public prosecutors, deputy public prosecutors and lay judges, and their election is by Parliament (Art. 1, Serbian Act on High Judicial Council, *Sl. glasnik RS*, No. 63/01). The High Judicial Council has five permanent and eight non-permanent members (Art. 2). Three of the permanent members – President of the Supreme Court of Serbia, Republican Public Prosecutor and the Minister of Justice – are members *ex officio*. Other two are elected, one by Serbian Bar Association and another by the Serbian Parliament (Art. 3). Non-permanent members are six judges, elected by the Supreme Court of Serbia and two public prosecutors, elected by Republican Public Prosecutor (Art. 4). Hence, the only representative of the executive branch is the Minister of Justice.

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

The provisions regulating the independence of military courts remain, however, questionable in many respects (Art. 138 (2), Federal Constitution; Art. 2, Act on Military Courts, *Sl. list SRJ*, No. 11/95). In contrast to civil courts, judges and lay judges of military courts are appointed, not elected (Art. 26 (1), Act on Military Courts) and their presidents and judges are subject to the same regulations "governing relations in the service and the rights, duties and responsibilities of military personnel" (Art. 41 and 42). Furthermore, judges of military courts may be dismissed if the competent authority decides to downsize a particular tribunal (Art. 37 (1)), which jeopardises the principle of tenure that is embodied also in the Act on Military Courts (Art. 28 (1–3)). Also, the competent body of the Ministry of Defence decides on the personnel structure in military

courts, which in effect means that it prescribes how many officers of a certain rank are assigned to a particular court. And this, in turn, means that if a judge wishes to be promoted in rank and there is no position of appropriate seniority under the prescribed structure, his only option is to resign and seek some other position in the military. Furthermore and in contrast to judges of civil courts, the consent of a military judge is not required for his temporary reassignment to another court (Art. 40).

4.6.2. Fair and Public Trial

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

Under the CPC, the proceedings are ordinarily oral and, in keeping with this, the written documents (indictment, expert findings and the like) are read out. When a court of second instance rules in chambers without conducting hearings, its decision must, as a rule, rest on the records of the case. The principle of directness requires judicial decisions to be based on the facts determined by the court itself (e.g. by examining witnesses) and not on reading of the record. The obligation of the court to base its judgement only on evidence presented at the trial derives from this principle (Art. 347 (1), CPC).

One of the most important requirements for a fair trial is that the court must hear both opposing parties. This ensures their equality of arms and contributes to establishing the facts of a case. Under the CPC, the defendant has the right to respond to all the facts and evidence against him, and to present evidence and facts in his favour (Art. 4 (22)). The principle is further elaborated in a series of provisions – the defendant is entitled to examine the records and evidence (Art. 131 (5)), to be present during certain investigative procedures and to take active part in them, and the investigating judge is bound to inform the defendant and his counsel of the time and place of such investigative procedures "except when delay would pose a danger" (Art. 168). The defendant and his counsel may be excluded from such procedures "if so required by the interests of national security and defence" (Art. 168 (5)) in conjunction with Art. 73 (2)). These rights may be temporarily denied but only until the indictment is brought. The indictment must be served promptly to the defendant, or within 24 hours if he is in custody (Art. 266 (1)). The intent of Art. 369 of the CPC prescribing that copies of interlocutory appeals must be delivered to the opposing party is the same. Failure to comply with any of these provisions is a serious violation of due process.

The adversary system is most easily and fully secured at the trial itself. The opposing sides' equality of arms in criminal trials is, however, put into question by Art. 370 (3) of the CPC under which the public prosecutor is always notified about sessions in chambers of second-instance courts, and the defendant and his counsel only if they make

a request to this effect (Art. 371 (1)). A failure to notify a defence counsel of such sessions when he has made the request is also a grave violation of due process.

The CPC prescribes that judicial decisions may not be based on certain reports, statements and information such as, for instance, information obtained by the police in a manner not connected to the criminal matter in question (Art. 151 (3)), and statements made by the accused without the presence of counsel or under coercion (Art. 281 (10)), see also Art. 228 and 244 (1)). Such reports and information must as a rule be excluded from the record but may be admitted in some cases and then only at the request of the defendant (Art. 84 (1)). In exceptional cases, when the trial is for offences carrying a prison sentence of 20 years or the death penalty, the court may admit statements made by the defendant without the presence of counsel or information gathered by the police even when the defendant has not requested this, but only if the facts cannot otherwise be established and if the court considers that presentation of those statements would help to clarify the circumstances of the case (Art. 84 (2)). Though the law states that "a conviction may not be based exclusively" on such statements, reports and information (Art. 86), the provision makes it possible for the court to use evidence that is otherwise inadmissible, and this in cases when the defendant faces the severest penalties and when the guarantees of a fair trial should be at their highest. The CPC thus tips the balance in favour of the prosecutor and jeopardises the equality of arms of the opposing parties.

Instead of binding the prosecutor to disclose to the defence all the evidence he has gathered, both against and in favour of the defendant, the CPC lays down in its Art. 15 that "the court and government agencies involved in the criminal proceeding shall determine accurately and fully all the facts of import for arriving at a legal decision" (para. 1) and "shall with equal attention consider and determine the evidence inculpating and exculpating the defendant " (para. 2). The CPC envisages the possibility of the defence examining and having copies made of documents in the possession of the prosecutor, but only with the prosecutor's permission (Art. 131 (2)). Since it does not stipulate the unconditional obligation of the prosecution to make available to the defence all the evidence it has, the provision is in contravention of the ECHR (see European Court of Human Rights judgement in *Edwards vs. United Kingdom*, A 247 B, 1992, p. 36).

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

The general rule with respect to both criminal and civil proceedings is that trials and hearings are held in open court and may be attended by adult members of the public (Art. 287, CPC; Art. 306, Civil Procedure Act, *Sl. list SFRJ*, No. 4/77). Barring the public from a trial or hearing in circumstances not envisaged by law is in contravention of

criminal and civil procedure and constitutes grounds for appealing the judgement (Art. 364 (1), CPC; Art. 345 (2.12), Civil Procedure Act).

Under the CPC, the public is always excluded from proceedings involving juveniles (Art. 482). The law also envisages the possibility of excluding the public "*ex officio* or at the request of the parties but only after their being heard" when necessary to protect classified information, public order, public morals, the interests of a minor, or other specific interests of society." Generally speaking, these grounds are in accordance with the ICCPR, with the exception of the last which would appear to be too broadly worded.

The provisions of the Civil Procedure Act are similar and envisage that the public may be excluded from "the entire or part of the proceedings if so required by the interests of protecting official, business or personal secrets, or the interests of public order or public morals" (Art. 307 (1)). The Act also allows clearing of the courtroom if order cannot otherwise be maintained (Art. 307 (2)).

Sentencing must be public in both criminal and civil cases, irrespective of whether the public was excluded from the particular proceedings or not (Art. 352 (2), CPC; Art. 336 (3), Civil Procedure Act). However, making public the reasons why a particular sentence was pronounced depends on whether the public was excluded and, if so, "the panel shall decide if the public shall be excluded when it sets out the reasons why it imposed the sentence" (Art. 352 (4), CPC; Art. 336 (3), Civil Procedure Act). In line with the provision under which the public is barred from proceedings involving juveniles, the CPC prescribes also that the trial record and the sentence may be made public only with the permission of the court (Art. 461 (1)). However, naming of the juvenile or release of any information that could help to identify him is strictly prohibited (Art. 461 (2)).

4.6.3.Guarantees to Defendants in Criminal Cases

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

Like the constitutions, the CPC also guarantees the presumption of innocence (Art. 3), and further develops the principle by prescribing the obligation of the court to acquit a defendant when his guilt has not been proved beyond a reasonable doubt, e.g. because of lack of evidence (Art. 350 (1.3)). That the burden of proof is exclusively on the prosecutor is evident from the fact he must always cite in the indictment the evidence on which he bases the charges (Art. 158 (3) and 262 (1.5), CPC).

4.6.3.2. Prompt notification of charges, in a language understood by defendant – A defendant must be informed of the criminal offence he is charged with and of the

evidence substantiating the charge. This is a basic principle of the CPC (Art. 4 (1)), and is reiterated in its provisions regulating the interrogation of defendants, who must be informed prior to their first questioning of the charges against them and the grounds for those charges (Art. 218 (2)). The provision is applied also to criminal suspects (Art. 156 (3), CPC), and/or "a person into whom an investigation has been requested" (Art. 159 (2 and 4)), and/or in the case of direct filing of charges (Art. 160 (2)), that is, before criminal proceedings have been instituted. A defendant at liberty is served with the indictment immediately or, if he is in custody, within 24 hours (Art. 266 (1)).

4.6.3.3. Adequate time and facilities for preparation of defence; right to communicate with counsel – Affording a defendant sufficient time to prepare his defence is among the basic principles of the CPC (Art. 11 (3)). However, the minimum time periods it envisages are too short – eight days in regular (Art. 281 (3)) and three days in summary proceedings (Art. 439 (3)). Furthermore, in the event of the prosecution orally amending the indictment during the trial itself, the CPC provides only for the possibility of adjournment to enable the defence to prepare and does not lay this down as an obligation. It should also be noted that the adequate-time provision is not applied to a defendant when he is questioned during the pre-trial proceedings, where no interval is envisaged between the time he is informed of the charges and evidence against him and his interrogation. Namely, at his first questioning, the defendant is given 24 hours to retain counsel but is not informed of the charges or evidence against him prior to that.

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

The right of an accused to respond to the facts and evidence against him and to present facts and evidence in his favour (Art. 4 (2), CPC) is a prerequisite without which the defendant would not be able to prepare his defence, and is a principle of the CPC. It is elaborated in several provisions entitling the defendant to examine records and evidence (Art. 131 (5)), to be present during certain investigatory procedures and to take active part in them (Art. 168). These rights may be temporarily denied "in pre-trial proceedings up to the time the indictment is filed ... when required by the interests of national defence and security" (Art. 73 (2)).

Written and oral communication between a defendant in custody and his counsel is not allowed before the defendant's first interrogation (Art. 74 (1)), which is in contravention of the right to defence counsel guaranteed by the Federal and Montenegrin Constitutions (Art. 23 (5), and Art. 22 (5) respectively). The Serbian Constitution does not contain this guarantee. Furthermore, a defendant who is in custody may correspond and communicate with his counsel freely and without supervision only after the investigation has been concluded or before the filing of direct charges (Art. 74 (2 and 3), CPC). This in effect means that he does not have the benefit of counsel before that time even though he has formally retained an attorney. This too is in contravention of the Federal Constitution, which guarantees the right to counsel (Art. 29 (1)).

4.6.3.4. Right to trial without undue delay – Article 14 of the CPC obligates courts to conduct proceedings without undue delay and to prevent any abuse of the rights belonging to persons who are parties to the proceedings. This principle is developed in a series of CPC provisions (e.g. Art. 175, 181, 279 (2), 292, 356 (1)), with Art. 462, 479 and 484 requiring courts to be especially expedient in cases involving juveniles. The Serbian Act on Judges prescribes that trial judges must inform the president of their court of the progress of their cases with regard to time. Judges must also report to their court presidents why a first-instance proceeding has not been concluded within six months of receipt of the case and continue to do so thereafter at regular monthly intervals. (Art. 25, Serbian Act on Judges).

4.6.3.5. Prohibition of trial in absentia; *right to defence* – The Federal and Serbian Constitutions prohibit trying a person in his absence "if he is accessible to the court or other body authorised to conduct proceedings," while the Montenegrin does not contain a provision to this effect (Art. 29 (2), Federal Constitution; Art. 24 (2), Serbian Constitution). Trials *in absentia* are allowed only as an exception in cases when the defendant is absent through his own fault, e.g. is a fugitive or otherwise inaccessible to government agencies, and there are compelling reasons for trying him in his absence (Art. 300 (3 and 4), regarding summary proceedings see Art. 442 (3)). Furthermore, a defendant being tried *in absentia* must have defence counsel from the moment the decision is taken to try him (Art. 70 (3)). The law absolutely prohibits *in absentia* trials of juveniles (Art. 454 (1), and a person who has been convicted *in absentia* or his counsel may seek a new trial (Art. 410). These provisions of Yugoslav law conform with international standards.

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

> Every person shall be guaranteed the right to defend himself and the right to engage a defence counsel before the court or other body authorised to conduct proceedings.
>
> No one being tried before a court or other body authorised to conduct proceedings may be punished without being granted a hearing and allowed to defend himself, in accordance with federal law.
>
> Every person shall be entitled to have a defence counsel of his choice present at his hearing.
>
> The cases when a suspect must be given legal assistance shall be specified by federal law.

A defendant may undertake his own defence only in cases when the law does not make defence counsel mandatory (Art. 11 (1 and 2), CPC). In any event, the court must inform a defendant of his right to counsel (Art. 13, 67 (2), 183 (3) and 193 (1)). Counsel is appointed by the court in two cases: when having counsel is mandatory and the defendant has not retained his own attorney, and when the defendant pleads indigence. The law stipulates cases in which defence counsel is mandatory: when the defendant is deaf, mute or both, incapable of defending himself, or is being tried for a criminal offence carrying the death penalty or a prison term exceeding 10 years, or if he is being tried in his absence (Art. 70). A defendant may always replace a court-appointed attorney

with counsel of his own choice (Art. 72 (1)), and may request the president of the court to dismiss a defence counsel who is remiss in his duties. The president may also dismiss such counsel at his own initiative but conditional on the defendant's approval (Art. 72 (4)). The intent of the constitutionally guaranteed right to defence is to provide defendants with appropriate legal assistance during the entire trial. In this context, the Federal Constitutional Court on 14 March 2001 ruled unconstitutional Art. 123 (4) of the CPC stating that the time period for entering a petition for remedy starts from the day the defendant, not his counsel, is served with the judgement. Where indigent defendants are concerned, the CPC states that that persons who are unable to meet the costs of their defence may have counsel appointed for them by the court when they are on trial for offences carrying a prison sentence exceeding three year (Art. 71), but does not make this obligatory.

4.6.3.6. Right to call and examine witnesses – A defendant may during the entire proceeding make motions to call new witnesses and expert witness, and to present new evidence (Art. 282, 322 (4), 335 and 336). The consequences of the failure of a witness or expert witness to appear when summoned by the court or of refusing to testify are the same, regardless of whether they are witnesses for the prosecution or the defence. The defendant may himself examine witnesses and expert witnesses, subject to the approval of the presiding judge (Art. 327).

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

Under the CPC, the opposing parties, witnesses and all others involved in the proceeding have the right to use their own language, to which end the services of an interpreter are secured (Art. 7). Failure to provide interpretation at a trial when requested by the defendant or his counsel constitutes a violation of due process (Art. 364 (1.3)).

4.6.3.8. Prohibition of self-incrimination – Suspects have the right to remain silent, with the law requiring that a person must be informed prior to his first interrogation that he need not defend himself or respond to questions (Art. 218 (2)). He must be cautioned, however, that he may thereby impede the gathering of evidence that could exculpate him (Art. 218 (3)). A defendant also has the right not to enter a plea of guilty or not guilty, and not to present a defence (Art. 316 (5)).

The CPC prohibits the “use of force, threats or similar means in order to extract statements or confessions” (Art. 218 (8)), and courts may not base their decisions on evidence obtained in contravention of this prohibition (Art. 218 (10)). Even when a suspect has confessed, the police must continue gathering other evidence (Art. 223), and the court has an obligation to present other evidence when a defendant confesses during the trial (Art. 323).

4.6.3.9. Special treatment of juveniles – Article 14 of the ICCPR prescribes that the procedure in the case of juveniles must take into account their age and the desirability of

promoting their rehabilitation. There are no criminal statutes in Yugoslavia specifically treating juveniles; this is done instead in separate chapters of laws applicable to adult offenders. Thus the CPC's Chapter XXVII regulates procedure with regard to juveniles. Its provisions are applied when persons who committed criminal offences when they were minors have not attained the age of 21 at the time proceedings against them are instituted (Art. 452 (1)), and some provisions are applied also to youthful offenders (Art. 452 (2)).

Pre-trial proceedings are conducted by a juvenile court judge and the trial itself is held before a bench of the juvenile court. Lay judges on these benches are required to have special qualifications. Though the public is as a rule excluded, this need not always be the case since the law allows the presence in the courtroom of a limited number of professionals (Art. 482). A juvenile may never be tried *in absentia* (Art. 454) and, finally, the juvenile court plays an important role in the supervision of the measures it has pronounced and further decisions in that regard (Art. 491 and 492).

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

The two-instance principle is an absolute rule. An appeal against a decision of a lower court is always allowed, and in some cases may be pursued to the third instance (Art. 391 (1.3), CPC). Here a problem arises: when a district court is the court of original jurisdiction, the Supreme Court is the appellate court as there is no higher court in the republic. Hence a bench of the Supreme Court considers the appeal, albeit with a different judges sitting on it, for, under Art. 39 (1.5) of the CPC, a judge who was on the panel that handed down the first-instance ruling is excluded. The situation is the same where military courts are concerned, with the Supreme Military Court appearing as the court of second– and third-instance, again with other judges on the bench (Art. 20, Act on Military Courts).

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

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

4.6.3.12. Ne bis in idem – Under international standards (Art. 14 (7), ICCPR; Art. 4 (1), Protocol No. 7 to the ECHR), no one may be tried or punished again for an offence for which he has already been finally convicted or acquitted. Unlike the ICCPR, the ECHR allows departure from this rule by stating that a case may be reopened "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 (2),

Protocol No. 7). The principle is not dealt with appropriately by the Federal Constitution since its Art. 28 only prohibits trying and/or convicting a person for the same offence and not, as is the intent of *ne bis in idem*, also the instituting of proceedings against a person who has already been tried for the same offence and the case finally disposed of. The Montenegrin Constitution features a far better solution by stating in its Art. 27 that "no one may be twice held responsible for the same punishable offence." The Serbian Constitution has no provisions treating this important rule of procedure.

The CPC does not specifically define the *ne bis in idem* principle though there is no doubt that it is recognised to a certain extent and violations constitute grounds for inadmissibility. However, departures are possible in certain cases and a trial may be repeated to the detriment of the defendant (Art. 403 and 404, CPC).

4.7. Protection of Privacy, Family, Home and Correspondence

Art. 17, ICCPR

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

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

4.7.1. Privacy

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

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

> Protection of the secrecy of personal data shall be guaranteed.
>
> The use of personal data for purposes other than those for which they were compiled shall be prohibited.
>
> Everyone shall have the right of access to personal data concerning himself as well as the right of court protection in the event of their abuse.
>
> The collection, processing, utilisation and protection of personal data shall be regulated by federal statute.

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

The Personal Data Protection Act (*Sl. list SRJ*, Nos. 24/98, 26/98) states that personal data may be collected, processed and used only for the purposes specified by the Act, and for other purposes only with the consent in writing of the individual concerned (Art. 13). It also prescribes that individuals may request data about themselves, or may request to see such data, the deletion from records of data that is not in accordance with the law, and prohibition of the use of erroneous data (Art. 12). These rights, however, do not apply to data collected in accordance with the regulations on criminal and national security records (Art. 13). The grounds upon which access to personal data may be denied are very broadly defined and, consequently, give government agencies too much latitude to withhold information it.

On 5 October 2001 the Humanitarian Law Centre filed before the Federal Constitutional Court a petition for the assessment of the constitutionality of Article 13 of the Law on the Protection of Personal Data.

The files kept on Serbian citizens by the State Security Service were declassified pursuant to a Serbian government decree (*Sl. glasnik RS*, No. 30/01). They thus ceased being secret and individuals had the right to read their files and convey what they learned from them to others. Immediately afterwards, however, the government amended the decree (*Sl. glasnik RS*, No. 31/01), changing the wording of the first article to permit individuals only to see their files. Since the decree entered into force before the amendments were made, national security files were no longer a state secret and the Ministry of Internal Affairs acted wrongly when it cautioned persons reading their files not to disclose the contents to others. If the intent is to again classify the files, it is not sufficient to change the title of the decree and rescind only the article under which they were declassified; a new decree to that effect should be passed.[41]

Though the government decree was certainly a step in the direction of democratisation, it contains several flaws. First, opening of the files to the public encroaches on the right of others to their privacy and should therefore be regulated by law and not decree. Second, the State Security Service retains physical control over the files. This important issue should be dealt with differently, e.g. by establishing a commission to oversee the secret police with regard to their control of the files, and to lay down the procedure for access to them.

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

4.7.1.3. Protection of privacy by criminal law – The federal and republican criminal codes envisage punishment for the invasion of privacy. Thus unauthorised photographing (Art. 195 (a), Federal CC; Art. 71, Serbian CC; Art. 55, Montenegrin CC), publication of another's personal papers, as well as of portraits, photographs, film or

[41] Ivan Janković, *Tajna večera kod Dva ribara*, *Danas*, 2 August 2001. Another problem emerged with regard to the opening of the secret files. In many cases, individuals noticed that their files contained information only up to the early 1990s, and doubted that their surveillance by the State Security Service had really ceased at that time. It is possible that subsequent files were differently classified and are still inaccessible. The government decree pertains only to files on "domestic enemies, i.e. domestic extremists and terrorists," and others remain classified as confidential.

audio recordings of a personal nature (Art. 71 (a), Serbian CC; Art. 56, Montenegrin CC), unauthorised wiretapping and audio recording (Art. 195 and 195 (a), Federal CC; Art. 70, Serbian CC; Art. 54, Montenegrin CC), violation of the privacy of correspondence (Art. 72, Serbian CC; Art. 54, Montenegrin CC), and disclosure of privileged information (Art. 73, Serbian CC; Art. 53, Montenegrin CC), are criminal offences.

Electronic surveillance and recording of another's conversations or statements without the consent of the individual involved is also punishable (Art. 195 and 195 (a)), Federal CC; Art. 70, Serbian CC; Art. 54, Montenegrin CC), and aggravated forms of the offences are when they are committed by a person acting in an official capacity.

In defining unauthorised photographing, the law (Art. 195 (a)), Federal CC, Art. 71, Serbian CC; Art. 55, Montenegrin CC) states that it includes photographing, filming or making other video recordings without the consent of the individual involved and which constitute an invasion of his privacy, or handing or showing such photographs, films or recordings to a third person. Here, again, commission of any of these acts by a person acting in an official capacity is considered an aggravated form of the offence.

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

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

4.7.2. The home

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

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

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

Searches of homes and persons are more closely regulated by the Federal Criminal Procedure Code (Art. 206–210).[42] It allows police only exceptionally to conduct searches without warrants (Art. 210 (1)) and without witnesses if these cannot be found and when postponing entry carries a clear danger, or it is obvious that evidence cannot be obtained by other means (Art. 210 (3)). In such cases, the police must immediately notify the

[42] A new Criminal Procedure Code was enacted in late 2001 and will enter into effect in late March 2002 (*Sl. list SRJ*, No. 70/01).

investigating judge or, if an investigation has not been instituted, the public prosecutor (Art. 210 (5)).

Considering Art. 210 (1)) of the CPC, which reads "if it is obvious that evidence cannot be obtained by other means...," the Federal Constitutional Court found it in conflict with the Constitution and an impermissible departure from the principle of the inviolability of the home (*Sl. list SRJ*, No. 71/00).

Another part of this CPC article also clashes with the Federal Constitution since it envisages additional grounds for searches. Thus the possibility it provides for police to conduct a search in order to secure evidence or take into custody a person who has committed a misdemeanour such as a traffic violation is clearly unconstitutional.

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

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

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

4.7.3. Correspondence

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

The Criminal Procedure Code goes into more detail with regard to restrictions on the privacy of correspondence. Thus an investigating judge may order the post, telegraph, telephone or other company to submit to him letters, telegrams or other matter sent to or by a suspect (Art. 214 (1)). A receipt is issued for the matter received and it is opened in the presence of two witnesses by the investigating judge, who takes care to preserve the seals and retains the addressed envelope or wrapping. A report on the procedure must be written up (Art. 214 (3)).

When a suspect is already in custody and has been questioned, counsel may correspond or confer with him (Art. 74 (1)). The investigating judge may, however, order that the correspondence between the suspect and his counsel be forwarded only after

being examined by him, or that the suspect and his counsel may confer only in his presence (Art. 74 (2)). This is obviously a serious restriction on free communication between a suspect and his counsel since it jeopardises the right to prepare a defence and thus constitutes a gross violation of the right to a fair trial.

The Act on the Bases of the State Security System (*Sl. list SFRJ*, Nos. 15/84, 42/90; *Sl. list SRJ*, No. 15/00), which dates back to the former Yugoslavia, remains in force and makes possible major departures from the guaranteed privacy of correspondence:

> The official in charge of an agency concerned with state security affairs may ... order certain measures to be taken against persons and organisations that depart from the principle of the privacy of the mail and other correspondence (Art. 24).

Considering a petition to examine the constitutionality of the article, the Federal Constitutional Court found it in conformity with the constitution of the ex-Yugoslavia but not with Art. 32 of the Federal Constitution (*Sl. list SRJ*, No. 15/00).

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

The Serbian Internal Affairs Act (*Sl. glasnik RS*, No. 44/91) envisages a procedure whereby the police may inspect letters and other correspondence (Art. 13). At the request of the republican Public Prosecutor or Minister of Internal Affairs, the Serbian Supreme Court may authorise opening of correspondence and electronic surveillance if required for the conduct of criminal proceedings or for the security and defence of Serbia. The request is decided upon by the President of the Supreme Court or a justice designated by him, after which the Minister may order the taking of "measures departing from the principle of the privacy of correspondence with respect to certain individuals or organisations ..." (Art. 13 (3)). The statute clearly is not in line with the Serbian or the Federal Constitutions, neither of which envisages the interests of "security" as grounds for opening and reading another's correspondence.

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

4.7.4. Honour and Reputation

In conformity with Art. 17 of the ICCPR, the criminal codes criminalize slander, libel and defamation (Art. 92 and 93, Serbian CC; Art. 76 and 77, Montenegrin CC). Disclosing the personal or domestic circumstances of an individual that could injure his honour or reputation is also a crime (Art. 94, Serbian CC; Art. 78, Montenegrin CC).

4.7.5. Family and Domestic Relations

Yugoslav legislation is on the whole in accordance with the requirements to protect the family and domestic relations. Thus, Art. 61 (2) of the Federal Constitution lays down the equality of legitimate, illegitimate and adopted children, as do also the constitutions of the republics; though the husband of a woman is considered to be the father of their

child, the law does provide for the possibility of civil action to determine a child's paternity; common law marriages produce certain consequences under family law, and the like.

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

The three constitutions mainly regulate the family from the aspect of the society as a whole. Under Art. 6 (1) of the Federal Constitution, "the family, mothers and children enjoy special protection," and the provisions of the republican constitutions are very similar (for more details see section on special protection of the family and the child).

Nor is the regulation of family life by the Marriage and Family Relations Act any better. Indeed, the Act does not even contain a definition of the terms family and family life and speaks only of relations "between parents and children," implying that the quality of family life has to do merely with relations between parents and children, or adopted children and their adoptive parents (Art. 151, Marriage and Family Relations Act). Only the interests of the child and the society are protected. Thus Art. 7 (1) of the law prescribes that "parents exercise their rights and duties in the upbringing of their children in accordance with the needs and interests of the child and the interests of the society," and makes no mention of the interests of the parents. The inadequate regulation of family relations is evident also where the role of the child welfare agency is concerned. In proceedings involving parent-child relations, the agency represents the child on behalf of the state (Art. 11, Marriage and Family Relations Act) and no special procedural protection of the interest of parents to be with their children is envisaged. The interests of parents are not a factor the court is bound to consider in deciding to whom custody of a child will be awarded (Art. 125 (2) of the Act).

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

4.8. Freedom of Thought, Conscience and Religion

Article 18, ICCPR

> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

> 3. Freedom to manifest one's religion or beliefs may be subject only to such restrictions as are prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
>
> 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

The Federal Constitution and both republican constitutions guarantee freedom of thought and conscience (Art. 35, Federal Constitution; Art. 45, Serbian Constitution; Art. 34 (1 and 2), Montenegrin Constitution). Furthermore, freedom of belief is explicitly guaranteed by the Federal and Montenegrin Constitutions. Along with freedom of religion, these are absolute freedoms may not be derogated from even during a state of war. Among the grounds on which discrimination is prohibited, the Federal Constitution cites religion, political or other beliefs (Art. 20).

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

> Freedom of religion, public or private profession of religion and performance of religious rites shall be guaranteed.
>
> No one shall be obliged to reveal his religious beliefs.

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

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

Under (Art. 18 (4)) of the ICCPR, the states parties undertake "to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions." None of the Yugoslav constitutions guarantees this right. Interpreted in conjunction with Art. 13 (3 and 4) of the International Covenant on Economic, Social and Cultural Rights (ICESCR),[43] the provision means that parents have the right to establish private schools

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[43] Art. 13 (3 and 4), International Covenant on Economic, Social and Cultural Rights: 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

for the education of their children in conformity with their convictions. In Yugoslavia, however, elementary schools may be founded only by the state and not private citizens too (Art. 9, Serbian Act on Elementary Schools, *Sl. glasnik RS*, Nos. 50/92, 53/93, 67/93, 48/94 and 66/94; Art. 17, Montenegrin Elementary School Act, *Sl. list RCG*, Nos. 34/91, 48/91, 17/92, 56/92, 30/93, 32/93, 27/94, 2/95 and 20/95). Consequently, FR Yugoslavia is in noncompliance with its obligations under both Art. 18 (4) of the ICCPR and Art. 13 (3 and 4) of the International Covenant on Economic, Social and Cultural Rights.

In late July 2001, the Serbian government passed a Decree introducing religious instruction and an alternative subject in elementary and secondary schools (*Sl. glasnik RS*, No. 46/01). The alternative subject was not designated until the beginning of the school year. The name finally chosen – Civic Education, i.e. learning about oneself and others – created an impression in the public of a contradiction between religion and human rights.

Under the decree, religious education in schools is organised for the traditional churches and religious communities: the Serbian Orthodox Church, Islamic Community, Roman Catholic Church, Slovak Evangelical Church, Jewish Community, Reformed Christian Church, and Evangelical Christian Church.

Neither federal nor republican legislation has anything to say about which churches and religious communities are considered traditional, and they are listed for the first time in the decree. It remains unclear why some of those cited are defined as traditional and what criteria were applied to do so.

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

Both subjects introduced by the decree are elective. Whether or not elementary school children will attend the courses is decided by their parents or legal guardians. Secondary school students make their own decisions and their parents or guardians are notified of it. The choice is between attending courses in one, both or neither of the subjects. But once a choice has been made, students have an obligation to attend classes regularly and to complete the course. Decree does not provide an answer is once made choice obligatory until the end of regulary education or until the end of the school year in which it was made. Besides raising doubts as to whether the subjects are in fact elective, this is in contravention of Art. 18 (2) of the ICCPR, which states that no one may be subjected to coercion that would impair his freedom to have or to adopt a religion or belief of his choice. By stipulating that a chosen course of religious instruction must be completed, the decree could be in contravention of an individual's right to freely choose his religion since this, in accordance with General Comment 22 (48) of the Human Rights Committee (1993), includes the right to change one's religion or adopt atheist beliefs.

The widest difference between the Yugoslav constitutional provisions and the international standards of religious freedom is with regard to the freedom of adopting a new religion or belief. General Comment 22 (48) of the Human Rights Committee (1993) is explicit that an individual's freedom “to have or adopt a religion or belief of his choice”

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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.

(Art. 18 (1), ICCPR) is to be interpreted as the right to change one's religion. This right is also protected by Art. 18 of the Universal Declaration of Human Rights. None of the three Yugoslav constitutions, however, mention the right to change one's religion or beliefs.

The Yugoslav Lawyers Committee Human Rights and the Novi Sad-based non-governmental organisation *Forum iuris* submitted early in October a petition for an assessment of the constitutionality of the Decree, which the Serbian Constitutional Court has taken under review.[44] The court had issued no ruling by the end of 2001.

The Federal Constitution lays down the right of conscientious objection (Art. 137 (2)), which is in line with the new tendency to recognise it as part of the freedom of conscience and religion.[45]

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

This right is more closely regulated by the Yugoslav Army Act under which recruits who invoke conscientious objector status serve 24 months, twice as long as other recruits. The law prescribes that a recruit who wishes to perform civilian service must make a written request to this effect within 15 days of receiving the order to report for military service. The state, however, has no obligation to inform the recruit of the existence of this option, and no request can be made after the expiration of the time-period set. The decision on the request is made by the competent Recruitment Committee within 60 days and may be appealed. Administrative litigation to challenge a final decision is not allowed.

If conscientious objection is recognised as part of the freedom of conscience and religion, the same principle holds for the right of an individual to adopt a different religion or belief. The Yugoslav Army Act (Yugoslav Army Act, *Sl. list SRJ*, Nos. 43/94, 28/96, 44/99 and 74/99), however, does not make it possible for men who have done their military service to plead conscientious objection when they are later called up for reserve duties. Although conscientious objection is guaranteed by Art. 137 (2) of the Federal Constitution, the Federal Constitutional Court dismissed a petition challenging the constitutionality of the relevant provisions of the Yugoslav Army Act (Decision IU No. 51/94 of 25 May 1994, *Decisions of the Federal Constitutional Court*, pp. 28–29) on the grounds that the Constitution itself prescribes that this right is exercised "in accordance with federal law." In this case, this is the Yugoslav Army Act, under which conscientious objector status make be invoked only at the time of recruitment and not later (Art. 298 of the Act). The Court, it would appear, held that exercise of the right of conscientious objection is regulated exclusively by the Act and that the lawmakers were under no obligation to consider the possibility of an individual adopting a new belief. Paradoxically, the Act allows a reverse situation: if a recruit invokes this status when doing his military service and subsequently changes his beliefs, he may serve under arms when called up for reserve duties (Art. 297 (2), Yugoslav Army Act).

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[44] Tanjug, 10 October.

[45] See UN Human Rights Committee resolution 1989/59, and recommendation of the CoE Committee of Ministers, No. R (87) 8 of 9 April 1987; see also: Human Rights Committee *obiter dictum* in *J.P. vs Canada* (No. 446/1991, para. 4.2) which states for the first time that "conscientious objection... is in any case" protected by Art. 18.

Amendments to the Yugoslav Army Act under which military service would last nine instead of the present 12 months were expected to be passed by the Federal Parliament on 20 December. Also envisaged was a shorter period of civilian service, which is at present fixed at 24 months. The Parliament's two Chambers, however, voted for different periods – the Chamber of Citizens for 13 months and the Chamber of Republics for 18 months. In cases when a bill for a federal statute is not passed in both Chambers in its identical text, a commission of deputies from both Chambers is established to harmonise the text (Art. 91, Federal Constitution). The commission did not meet by the end of 2001.[46]

4.9. Freedom of Expression

> Art. 19, ICCPR:
>
> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> a) For respect of the rights or reputations of others;
>
> b) For the protection of national security or of public order (*ordre public*), or of public health and morals.

4.9.1. General

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

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

Freedom of the press and other mass media is regulated by separate provisions in all three constitutions. Thus the Federal Constitution, which devotes three articles to the press (Art. 36, 37 and 38), besides freedom of the press ("Freedom of the press and other forms of public information shall be guaranteed" – Art. 36 (1)), also recognizes the right

[46] At the beggining of 2002, the Federal Parlament adopted amandments to the Yugoslav Army Act (*Sl. list SRJ*, br. 3/02) under which military service will last 9 months. These amedmens aslo provide a shorter period of civilian service – 13 months.

of citizens to participate in the work of media in order to express their opinions, and their right freely to establish printed and other public media, with the exception of broadcasting media, the founding of which is regulated by statute. The right of reply, publication of corrections and to damages for false information is also envisaged (Art. 37, Federal Constitution). Although it prohibits censorship, the Federal Constitution stipulates when restrictions may be imposed on the distribution of the press or dissemination of other information (Art. 38):

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

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

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

Hence restrictions are possible not only in the case of incitement, as provided for by the Federal and Montenegrin Constitutions, but also when the press "encourages" intolerance and hatred. Since the latter term is broader, it ensues that the Serbian Constitution provides more leeway for imposing restrictions. It also contains a provision binding publicly funded media to provide the public with "timely and impartial information" (Art. 46 (7)).

The Yugoslav constitutional provisions dealing with freedom of expression are generally in line with international standards. However, they fail to adhere to those standards with regard to the freedom to "seek" and "receive" information regardless of frontiers and the kind of media.[47] Even granting that "receiving" of information is more or less well regulated through the guarantee of media freedom, the freedom to seek information from government agencies is not envisaged either by the constitutions or by any statute.

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

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

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

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

In mid-September 2001, a draft law regulating this subject matter was presented to the public. The text was the result of efforts invested by the civil sector and combines the Model Law on Public Information drawn up in 1998 by a group of experts of the Belgrade Center for Human Rights, and the Law on Freedom of Public Information drafted by a working group of the Media Center. The draft was positively assessed by the Council of Europe experts, some of whose remarks and observations were incorporated in the text. However, it was not endorsed by the government and sent to the Parliament for adoption by the end of 2001.

4.9.3. Establishment and Operation of Electronic Media

The biggest problems with respect to the freedom of information in Serbia and Yugoslavia lie in the area of the electronic media. Regulations governing the establishment of these media and their operation are still scattered in numerous federal and republican statutes and ancillary legislation, frequently conflict with each other, and create a situation in which it is practically impossible to found and operate a private radio and/or television station legally. The legal obstacles faced by private broadcasters are primarily in connection with regulations in the field of telecommunications law, with the new government adding to the confusion by taking measures such as the moratorium on the issuance of permits pending the adoption of new legislation. This in effect protects the rights of stations to which frequencies and/or channels were allocated on the strength of their closeness to the Milošević regime. The regulations still on the books that govern the work of electronic media in Yugoslavia and, in particular, Serbia, give the state broadcasting organization virtually a free hand where use of the air waves is concerned.

Montenegrin legislation in this field is far more in line with international standards. Experts from the CoE and OSCE participated in drafting the 1998 Montenegrin Public Information Act (*Sl. list RCG*, No. 4/98). However, since broadcasting activities in Montenegro are not legally regulated in accordance with European standards and recommendations, drafting of a republican broadcasting law started in 2001. Two drafts existed at the time of the writing of this report, one by the Montenegrin Information Secretariat and the other drawn up by the Association of Independent Electronic Media (ANEM). Indications are that these two drafts will be merged into one by the end of the year, pursuant to a decision taken at an ANEM-organized regional conference on broadcasting in early October 2001.

Aware of the lack of conformity of federal and republican statutes on the allocation of frequencies and channels, the new Yugoslav government on 16 November 2000 tasked the Federal Ministry of Telecommunications with preparing a set of measures to be

applied pending systematic regulation of the entire field.[48] Since Montenegro had arrogated to itself the issuance of permits for the use of frequencies/channels back in 1998, the question arose of whether a federal statute was necessary to deal with the chaotic media situation in Serbia. The Media Center's working group therefore began drafting a Serbian broadcasting law in late 2000, and in February of the following year, the Federal Ministry of Telecommunications joined in the effort. The Ministry's group of experts improved the Media Center text and, finally, the two groups merged and with the assistance of the CoE, OSCE and US experts, produced the seventh version of the draft in August 2001. This version was put up for public debate in early October. If adopted as it stands, it will introduce numerous innovations, not the least of which is the establishment of an independent regulatory body (in keeping with Recommendation 23 of the CoE's Committee of Ministers of December 2000), and transform the state broadcasting organisation into a public service.

The Belgrade Center for Human Rights is hopeful that the draft laws on public information and broadcasting organizations will be submitted to Parliament for adoption and enacted by early next year, since they are among the requirements for Yugoslavia's accession to the CoE.[49]

4.9.4. Other Draft Legislation Affecting Freedom of Expression

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

4.9.5. Criminal law

The nature of the restrictions on the right to expression and information is best illustrated by the Serbian Criminal Code, whose provisions depart from international standards and gave the previous authorities legal grounds on which to prosecute and intimidate journalists and the press. It should be noted, however, that some of the provisions contain exculpatory clauses applicable when the offense is committed in the framework of the journalistic profession. Under the law, courts must take into consideration the manner in which a press article is written. This is in keeping with the opinion of the European Court of Human Rights, which considers the seriousness of press articles an important element when deciding whether a restriction is “necessary in a democratic society” (*Jersild vs. Denmark*, A 298, 1994, p. 34). Thus, for instance, the Federal Criminal Code (Art. 157 (2)), wording of Art. 98 (2)), Serbian CC identical) envisages that a person who has defamed the highest bodies or representatives of these bodies will not liable if:

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[48] The Federal Government Press Release, 16 November 2001. For more details, see *Human Rights in Yugoslavia 1999*.

[49] See CoE, *Report on the Conformity of the FRY Legal Order with Council of Europe Standards*, Strasbourg, 7 November 2001; <http://press.coe.int./cp/2001/815a(2001). htm>.

> ... the defamatory remarks are made in a scientific, literary or artistic work, in a serious critique, in the performance of official duties, *in the pursuit of the journalistic profession*, political or other social activities, in the defense of a right or protection of justified interests, and *if it is evident from the manner of expression or other circumstances that the defamation was not intended to be derogatory*, or if he proves the veracity of his allegations, or if he proves that he had cause to believe in the veracity of the matter he set forth or reproduced (emphasis added).

Other provisions, however, do not conform with international standards, in particular where the criminal offense of dissemination of false reports is concerned (Art. 218 (1), Serbian CC):[50]

> Whoever sets forth or disseminates false reports or *allegations* with the intent of causing anxiety or *disturbing the public* or endangering public law and peace, or with the intent *of obstructing the implementation of decisions and measures of government agencies and institutions, or diminishing the confidence of the public in such decisions and measures*, shall be punished with a term of imprisonment of up to three years (emphasis added).

The wording "... with the intent of causing anxiety or disturbing the public..." is far too broad and can hardly pertain to the restrictions envisaged in Art. 20 of the ICCPR and Art. 10 of the ECHR; and, yet again, the principle of proportionality is ignored. This is the case also with "the intent of obstructing the implementation of decisions and measures of government agencies ... or to diminish the confidence of the public in such decisions and measures...". The provision unjustifiably curtails the constitutionally guaranteed freedom of expression, is in contravention of international standards, and makes it possible for the authorities to persecute political opponents. Dissemination of false reports (Art. 218 (1), 219 (2) in conjunction with Art. 219 (1), Serbian CC), may be prescribed as an offense but its criminalization should be in accordance with Yugoslavia's international obligations.

Note should also be made of the criminal offense of unauthorized possession and use of a radio station envisaged by the Serbian Criminal Code (Art. 219):

> Whoever in violation of the regulations on the communications system *possesses* a radio station or uses a radio station without a permit shall be punished with a term of imprisonment of up to one year.
>
> Whoever commits the offense referred to in paragraph 1 of this Article and sets forth or disseminates false reports or allegations that resulted in or *could have resulted* in disturbing the public or endangering public order and

[50] It is noteworthy that the Serbian Constitutional Court in 1991 ruled several provisions of this Article unconstitutional, which did not prevent judges from applying them to persecute journalists. This was the case with Nebojša Ristić, editor of *TV Soko* in Soko Banja, who spent a year in prison after being found guilty under the Article. The Constitutional Court's decision that the provisions in the parts reading "anxiety or..." and "to diminish the confidence of the public in such decisions and measures..." were not in conformity with the Constitution (*Sl. glasnik RS*, No. 75/91). In accordance with Art. 130 of the Serbian Constitution, these provisions went out of force on the date of publication of the decision in the Serbian official gazette.

peace shall be punished with a term of imprisonment of three months to three years.

If the commission of the criminal offense contains the characteristics of the offense referred to in Article 218 of this Act, or results in disturbing the public or endangering public order and peace in a wider area, the offender shall be punished with a term of imprisonment of one year to eight years (emphasis added).

Reporters and editors of media that were not under the control of the government were in practice most often prosecuted for these two offenses (both printed and electronic media under Art. 218, Serbian CC, and only electronic media under Art. 219). Interestingly, when returning verdicts against the defendants, courts invoked the provisions of Art. 218 that had been ruled unconstitutional by the Serbian Constitutional Court back in 1991.

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

Art. 20, ICCPR:

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

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

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

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

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

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

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

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

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

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

> Whoever incites or encourages national, racial or religious hatred, discord or intolerance among the nations and national minorities living in the Federal Republic of Yugoslavia shall be punished with a term of imprisonment of one to five years.
>
> If the offense referred to in paragraph 1 of this Article is committed under coercion or ill-treatment, or endangering of safety, by defamation of national, ethnic or religious symbols, damage to the property of others, desecration of monuments, memorials or graves, the perpetrator shall be punished with a term of imprisonment of one to eight years.
>
> Whoever commits the offense referred to in paragraphs 1 and 2 of this Article through abuse of official position or authority, or if the act results in disorder, violence or other serious consequences on the life together of the nations and national minorities living in the Federal Republic of Yugoslavia shall be punished for an act referred to in paragraph 1 of this Article with a term of imprisonment of one to eight years, and for an act referred to in paragraph 2 of this Article with a term of imprisonment of one to ten years.

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

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

4.10. Freedom of Peaceful Assembly

Art. 21, ICCPR:

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

4.10.1. General

All three Yugoslav constitutions guarantee the freedom of peaceful assembly while republican statutes regulate the subject matter more closely (Serbian Act on Assembly of Citizens, *Sl. glasnik RS*, No. 51/92; Montenegrin Act on Public Assembly, *Sl. list RCG*, Nos. 57/92 and 27/94). The Federal Constitution (Art. 40) lays down that:

> Citizens shall be guaranteed the freedom of assembly and other peaceful gatherings, without the requirement of a permit, subject to prior notification of the authorities.
>
> Freedom of assembly and other peaceful gatherings of citizens may be provisionally restricted by a decision of the competent authorities, in order to obviate a threat to public health or morals or for the protection of the safety of human life and property.

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

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

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

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

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

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

As it originally stood, the Serbian Act on Assembly of Citizens envisaged that an alien could convene a gathering subject to a prior permit from the police; such a permit was necessary also for an alien to address the gathering (Art. 7). The Federal Constitutional Court, however, found these provisions unconstitutional since regulation of the rights of aliens is in the purview of the federal, not the republican authorities.[51] The

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

ruling left a legal void in the Serbian Act, which could in practice result in denying aliens the right to peaceful assembly simply because the manner of exercising the right is not regulated. From the legal viewpoint, this would be a wrong construction since the right of aliens to freedom of assembly is guaranteed by the ICCPR, which became an integral part of the national legal order when Yugoslavia ratified the Convention. The fact that the exercise of the right is not regulated by law does not mean that it does not exist. Analogously, it may be inferred that aliens must comply with the same obligations foreseen by the Serbian Act for citizens when organising public gatherings.

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

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

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

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

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

> Legally confining the assembly of strikers to their [company] premises does not constitute a restriction on the personal and political freedoms of citizens, which are manifested in the freedom of all citizens to movement, thought, speech and assembly (Decision IU No. 132/96 of 9 October 1996, Decisions of the Federal Constitutional Court, pp. 33–34).

In handing down this decision, the Court apparently proceeded from the opinion that workers were not included in the term "all" citizens and, hence, restriction of their freedom of assembly did not constitute a restriction of their human rights and liberties. This reasoning is unacceptable. Freedom of assembly is guaranteed to all citizens and they may exercise it as individuals, as employees, or as members of any other grouping. Furthermore, imposing restrictions on the rights of one group, in this case employees,

solely on the basis of their status and without determining the interests necessary in a democratic society that would justify such a distinction is in contravention of the international instruments prohibiting discrimination.

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

4.10.2. Prohibition of public assembly

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

The police authorities may provisionally prohibit a public assembly if it is aimed at a forcible overthrow of the constitutional order, violation of the territorial integrity of Serbia, violation of human rights, or incitement of racial, religious or ethnic intolerance and hate (Art. 9 (1)), and must notify the organisers of the ban at least 12 hours before the gathering is due to start. The difference between such a provisional ban and the permanent ban envisaged by Art. 11 is that the former can be pronounced permanent only by a court decision. If the police authorities seek to impose a permanent ban, they must file a request to that effect with the competent district court within 12 hours, and the court has 24 hours from the receipt of the request to hand down its decision. The organiser may appeal to the Serbian Supreme Court within 24 hours of receiving the court's decision, and the Supreme Court must rule within 24 hours of receiving the appeal (Art. 10).

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

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

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

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

4.11. Freedom of Association

Art. 22, ICCPR:

> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protections of his interests.
>
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
>
> 3. Nothing in this Article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

4.11.1. General

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

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

Neither the Yugoslav constitutions nor the statutes of the two republics mention the right of individuals not to associate with others. The European Court of Human Rights

has in its jurisprudence ruled that the state must guarantee this right also (*Sigurour A. Sigujonsson vs. Iceland*, 30 June 1993, A–264).

Political and trade union organisations whose activities cover the entire territory of Yugoslavia are established pursuant to the Federal Act on Association of Citizens in Societies, Social Organisations and Political Organisations (further on "Federal Act on Association", *Sl. list SFRJ*, No. 42/90, *Sl. list SRJ*, Nos. 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 73/00), while the status of organisations whose activities are limited to the territory of a republic are regulated by the relevant republican statutes. Montenegro has one law in this field: the Act on Non-governmental Organisations (*Sl. list RCG*, No. 27/99), entry into force of which repealed some provisions of the Act Citizens' Association (*Sl. list SRCG*, Nos. 23/90, 26/90 and 13/91; *Sl. list RCG*, Nos. 48/91, 17/92, 21/93, 27/94 and 27/99) and the Act on Endowments, Foundations and Funds (*Sl. list SRCG*, No. 24/85). Serbia has two laws: the Act on Social Organisations and Citizens' Associations (*Sl. glasnik* SRS, No. 24/82, 39/83, 17/84, 50/84, 45/85 and 12/89, *Sl. glasnik RS*, Nos. 53/93, 67/93 and 48/94), and the Act on Political Organisations (*Sl. glasnik RS*, No. 37/90, 30/92, 53/93, 67/93 and 48/94). There are two laws in Serbia because the Act on Social Organisations and Citizens' Associations was adopted back in 1982 during the one-party system.

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

4.11.2. Registration and Termination of Associations

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

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

The socialist-era Act, however, lays down the purposes for which an association may be founded: "developing personal affinities and creativity in social, humanitarian,

economic, technical, scientific, cultural, sports, educational and other activities." This clearly does not conform with the Federal and Serbian Constitutions, neither of which envisages any restrictions as to the purposes of an organisation. The two constitutions only prohibit organisations whose activities are aimed at a forcible overthrow of the constitutional order, violation of the human rights and freedoms of others, or incitement of hate and intolerance (see I.4.11.4.1). In practice, this unconstitutional provision gives the Ministry of Internal Affairs broad discretionary powers and is frequently abused to deny registration. A typical example was the Ministry's refusal to register the Serbian Association of Judges and, regrettably, its decision was upheld by the Serbian Supreme Court when it considered the Association's appeal in 1999.[52] The Court reasoned, unconvincingly, that the Serbian Act on Social Organisations and Citizens' Associations was a regulation of substantive law on the basis of which applications for entry into the registered were decided upon and, although it was not in conformity with the Constitution, there was no need to apply the Constitution in this case. The Court did not find it necessary to explain why, in a case of a statute conflicting with the Constitution, it considered that the statute should take precedence.

The Serbian Ministry of Justice and Local Self-government came out in the course of the year with several proposals of a law on non-governmental organisations, the last of which became the official draft of the future Act on Associations. The Ministry's working group charged with drawing up this piece of legislation included representatives of non-governmental organisations, who were critical of some of the proposed provisions. At the working group's last meeting, the Ministry said it was willing to alter these disputed provisions, some of which are discussed below.

Article 2 of the draft states that associations are established for the purpose of "realising and promoting certain common or public cultural, humanitarian, informational, ecological, professional, social, scientific or other goals and interests." Like the similar provision of the Act on Social Organisations and Citizens' Associations, this one too is contrary to the Federal and Serbian Constitutions, which envisage no restrictions as to an organisation's objectives.

The draft provides for the possibility of associations becoming public-interest organisations (Art. 6). Articles 19 through 21 prescribe when and how public-interest status may be acquired but it remains unclear what privileges ensue from it. This possibility exists in other countries but making distinctions between organisations in a society without democratic traditions such as the Yugoslav could result in the "nationalisation" of non-government organisations (NGOs)whereby they would lose their reason for being.

The Act on Non-governmental Organisations passed in Montenegro in 1999 deals with non-governmental associations, foundations and foreign non-governmental organisation (*Sl. list RCG*, No. 27/99), and repealed the 1990 Act on Citizens' Associations (*Sl. list SRCG*, Nos. 23/90, 26/90 and 13/91; *Sl. list RCG, Nos*. 48/91, 17/92, 21/93, 27/94 and 27/99) provisions on association of citizens in social organisations and associations). This is a concise (35 articles) and liberal piece of

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

legislation but for this very reason does not regulate all matters of importance for the activities of NGOs and creates room for widely differing interpretations. In order to bring the activities of NGOs into conformity with the Act, its Article 22 prescribes that registered social organisations and citizens' associations must within six months of entry into effect of the Act re-register as NGOs. Owing to the short period allowed for re-registration, the number of NGOs in Montenegro marked a sharp decline (only 200 NGOs, or 15 percent of the previous number, were able to re-register within the time-period set).

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

The Serbian draft in Art. 46 envisages seven reasons for the termination of an association. To the four prescribed by previous legislation, its add three new ones: a) expiration of the time-period for which the association was established; b) if the association merges with another or splits into factions; and, c) in the event of its bankruptcy. The draft prescribes liquidation of an association except in cases of its merging with another, splitting or bankruptcy. The wording of several provisions is virtually identical with those of the Act on Enterprises, which shows that NGOs are viewed as business companies and yet again indicates the misconception of the nature of their activities.

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

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

Article 4 of ILO Convention No. 87 on trade union freedoms and rights stipulates that administrative agencies may not disband or suspend trade union organisations. In Serbia, however, a union may be banned by the competent municipal police department, and, in the case of those registered at federal level, by the Federal Ministry of Justice (Art. 20, Federal Act on Association; Art. 67, Serbian Act on Social Organisations and Citizens' Associations). Furthermore, the Serbian Act, in contrast to the Federal Act on Association, does not even require any explanation to be given for the decision. Both laws contain, in addition, a provision under which a banned organisation must cease its activities on the day of receipt of the decision, not the day when it become final. The

Federal Act on Association provides the possibility of appeal to the Federal Court whereas the Serbian Act on Social Organisations and Citizens' Associations does not envisage any form of judicial protection.

Decisions on banning political organisations are in Serbia taken by the Supreme Court, at the proposal of the Public Prosecutor (Art. 12 (5), Serbian Act on Political Organisations), and the possibility of appeal is provided for (Art. 13 (4)). In Montenegro, political organisations and citizens' organisations may be banned by the Constitutional Court, at the proposal of the Public Prosecutor or the administrative agency that keeps the relevant register (Act on the Constitutional Court of Montenegro, *Sl. list RCG*, No. 21/93).

4.11.3. Association of Aliens

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

The right of aliens to association is not, however, completely denied by statute. The Montenegrin Act on Association of Citizens and the Serbian Act on Social Organisations and Citizens' Associations allow such associations on condition that their aims are not political, trade union or similar. Aliens' associations are subject to a regimen laid down by the Federal Act on Movement and Residence of Aliens (*Sl. list SFRJ*, Nos. 56/80, 53/85, 30/89, 26/90 and 53/91, *Sl. list SRJ*, Nos. 16/93, 31/93, 41/93, 53/93, 24/94 and 28/96), which in Art. 68 (1) states that "associations of aliens are established on the basis of permits issued by the competent authorities." In the case of associations covering all of Yugoslavia, this is the Federal Ministry of Internal Affairs, and for those active only in one of the republics, the republican ministries, that is, the police.

Under the Montenegrin Act on Non-governmental Organisations, the only requirement for a foreign NGO to commence its activities is its entry into the register at the Ministry of Justice (Art. 19; *Sl. list RCG*, No. 27/99).

Besides being subject to a very restrictive system of permits, the right of aliens to association is further hampered by the absence of judicial protection. Both the Serbian and Montenegrin Acts envisage the possibility of appeal to the respective governments if the police refuse to issue a permit, or to enter an alien's association in the register, or ban it. But judicial review of the government's decision is not possible (Art. 32, Montenegrin Act on Association; Art. 70, Serbian Act on Social Organisations and Citizens' Associations). The Montenegrin Act on Non-governmental Organisations does allow administrative litigation (Art. 18).

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

of the Legal Personality of International Non-Governmental Organisations of 24 April 1986. According to information obtained by the Belgrade Centre, this draft is still debated within the Federal Government at the time this Report goes to press.

4.11.4. Restrictions

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

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

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

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

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

The statutes furthermore allow political parties to receive funding from other sources (Art. 2 and 8, Federal Act; Art. 2 and 8, Montenegrin Act; Art. 2, Serbian Act;

Serbian Act on Political Organisations (Art. 12 (3)). Only the federal and Serbian laws expressly prohibit financing by foreign states and nationals, publicly financed government agencies and institutions, public companies, and anonymous donations exceeding five percent of the amount of the federal budget directed at financing political parties (Art. 3, Federal Act; Art. 2 and 5, Serbian Act).

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

Opinion on these restrictions, which aim to preclude undue foreign influence on parties and political life in this country, is divided. Since it is a question whether a foreign donation always entails undue influence, the purpose would probably be better served by introducing stringent controls of spending of these funds, or prohibiting parties from taking funds from foreign governments and their agencies.

For more on financing of political parties, see in the part on political rights 4.14.2.

4.11.4.3. Other restrictions – Under the Montenegrin Act on Association of Citizens and the Serbian Act on Political Organisations, persons who have been convicted of certain criminal offences may not establish political and trade union organisations (in Serbia only political organisations) for a period of five years after serving their sentence, or serving of sentence has become time-barred, or having been pardoned (Art. 5, Montenegrin Act; Art. 5 (2), Serbian Act). The criminal offences cited are in the category of "criminal offences against the social order and security." To this the Montenegrin Act adds offences against the Yugoslav armed forces, against humanity and international law, against human and civil rights, and incitement of national, racial or religious hate or intolerance.

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

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

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

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

Because it excludes a significant proportion of the population from political affairs, the prohibition of belonging to political parties to police officers is debatable and constitutes a serious restriction on the freedoms of association and expression. In its report on human rights in Yugoslavia in 1998, the Belgrade Centre was of the opinion that the broad general prohibition was not in accordance with the ICCPR and the ECHR.[53] In *Rekvény vs. Hungary* (App. No. 25390/94 (1999)), however, the European Court of Human Rights ruled in 1999 that prohibiting police officers from belonging to political parties and taking part in political activities was not in contravention of Art. 10 (freedom of expression) and Art. 11 (freedom of association) of the ECHR. In view of this judgement, it may be said that the relevant Yugoslav constitutional provisions in principle impose permissible restrictions. However, neither the Yugoslav armed forces or police have proved themselves to be politically neutral. On the contrary, they over a long period identified with the ruling parties and, up to October 2000, were the mainstay of their power.

In its 2000 Report, the Belgrade Centre took the position that a complete prohibition of trade union activity by members of the armed forces and police constituted an impermissible restriction on the freedoms of association and expression since it prevents them from protecting their professional interests and can hardly be considered necessary in a democratic society. For its part, the European Committee on Human Rights has found that prohibiting members of the armed forces, police and state administration from organising in trade unions is in accordance with the ECHR (*Council of Civil Service Unions vs. UK*, 1987, App. No. 1160/85). The Committee considered that states should have a large measure of freedom in judging what measures are required to defend their national security (see *Leander vs. Sweden*, A–116, 1985).

The Yugoslav constitutions envisage some personal restrictions on freedom of association that are not provided for by international instruments and should therefore be

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

considered from the aspect of the generally allowed restrictions. Under Art. 43 (3) of the Federal Constitution "Justices of the Federal Constitutional Court and the Federal Court, the Federal Public Prosecutor... may not belong to political parties.[54] The Serbian Constitution does not contain a similar prohibition but Art. 7 of the Serbian Act on the Public Prosecutor's Office (*Sl. glasnik RS*, No. 43/91) lays down that public prosecutors, deputy public prosecutors and judges "may not hold political office."

The aim of these restriction of the right of judges and prosecutors to belong to political organisations is legitimate – to ensure an impartial and independent judiciary and, furthermore, to protect the public order. Hence, and like the prohibition of political organising of members of the armed forces and police, it may be considered necessary in a democratic society. Judges and prosecutors in Yugoslavia did not prove to be politically neutral and were, to the contrary, strongly influenced by the ruling parties. But the total ban the Federal Constitution places on political organising by judges and prosecutors would appear to be too harsh a measure, especially since the restrictions envisaged by republican statutes are less severe. The Serbian Act on the Public Prosecutor's Office and Judges, for instance, does not deny judges and prosecutors the right to membership in political organisations and only prohibits them from holding political office. Even more precise is the Montenegrin Constitution's Art. 4 (3) which states that "judges, justices of the Constitutional Court and state prosecutors may not be members of *organs* of political parties (emphasis added).

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

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

4.11.6. The Right to Strike

The right to strike is guaranteed by Art. 8 (1.d) of the ICESCR, Art. 6 (4) of the European Social Charter, but not explicitly by the ICCPR or the ECHR.[55]

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

[55] Unlike the Human Rights Committee which decided, in a controversial opinion, that the right to strike was not included in the right to freedom of association guaranteed by the ICCPR (*Alberta Union vs. Canada*, No. 18/1982*),* the European Court of Human Rights recognised the importance of the right to

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

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

Under Art. 57 (2) of the Federal Constitution, "the right of industrial action may be restricted by federal statute if so required by the nature of the activities concerned or the public interest." The Strike Act (*Sl. list SRJ*, No. 29/96) lays down a regimen for industrial action "in public services or other services where work stoppages could, due to the nature of the service, endanger public health or life, or cause major damage" (Art. 9 (1)). These include services of importance for the defence and security of the country and compliance with its international obligations (Art. 10 (3)), whose employees may strike on condition that "a minimum of the work process is maintained to ensure the safety of life and property, or the service is indispensable for the life and work of citizens or another enterprise (Art. 10 (1)), or of importance for the defence of FR Yugoslavia or the international obligations of the FRY." The minimum is determined by the chief executive officer of the company or, in the case of public services and companies, the founder, in a manner stipulated by the company's general enactment and in accordance with the collective contract (Art. 10 (3)).

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

Federal Constitution lays down that "civil servants and professional members of the armed forces and the police force shall not have the right to strike" (Art. 57 (3)). An identical provision is to be found also in the Montenegrin Constitution (Art. 54 (2)). Since the Serbian Constitution does not contain a provision of this kind, the only correct interpretation is that government employees and members of the republican police force

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strike for the promotion of the freedom of trade union association, but its scope and importance remain to be elaborated in the jurisprudence of the Court (*Schmidt and Dahlstrom vs. Sweden*, A 21, 1976). The ILO Committee on Freedom of Association also took the view that the right to strike, which is not explicitly mentioned in ILO Convention No. 87, constituted a legitimate and indispensable means for unions to protect the interests of employees. (No. 118/1982, para. 2.3).

have the right to strike. Article 8 (2) of the ICESCR allows countries to restrict by law the right to strike of members of the armed forces, the police or of the state administration. But, as in the case of the right to political and union organising, the Federal Constitution prohibits rather than restricts the right of these categories of employees where industrial action is concerned. The consequence of this repressive solution is evident in the Strike Act under which an government employee, member of the armed forces or the police may be dismissed if it is established that he organised or took part in a strike (Art. 18).

4.12. Peaceful Enjoyment of Property

> Art. 1, Protocol No. 1 to the ECHR for the Protection of Fundamental Human Rights and Freedoms:
>
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.

4.12.1. General

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

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

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

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

4.12.2. Expropriation

When and how an individual in Serbia may be deprived of real property or his rights in respect of such property restricted, both of which constitute serious interference with the right to peaceful enjoyment of property, is regulated by the republic's

Expropriation Act (*Sl. glasnik SRS*, Nos. 40/84, 53/87 and 22/89, *Sl. glasnik RS*, Nos. 6/90, 15/90, 53/95 and 23/01).

Under the Act, the beneficiary of an expropriation may take possession before a decision on compensation for the property becomes final, i.e. before a contract on compensation is concluded, if the Ministry of Finance considers this necessary because of the urgency of the matter or construction work (Art. 35 (1)). The language of this provision is too broad and imprecise to meet European standards. Under the ECHR, the law must be accessible, predictable (sufficiently precise in the given circumstances) and must provide protection against arbitrariness on the part of state agencies.

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

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

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

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

4.12.3. Real Property Transactions

The Act on Special Conditions for Real Property Transactions (*Sl. glasnik SRS*, Nos. 30/89 and 42/89, *Sl. glasnik RS*, Nos. 55/90, 22/91, 53/93, 67/93 and 48/94) was passed on 14 April 1991 and was envisaged to stay in effect for ten years. This period

expired on 15 April 2001 and the law is no longer applied.[56] The Act required 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.[57] Approval was granted if such sales/purchases did not contribute to altering the ethnic composition of the population, to the migration of members of a certain ethnic group, or caused anxiety or a feeling of uncertainty or inequality among persons belonging to another ethnic group (Art. 3).

Because it failed to set clear criteria for granting the required approval, the law gave the Ministry of Finance broad discretion and thereby placed potential sellers in a situation of complete uncertainty.[58]

4.12.4. Inheritance

The Inheritance Act of Serbia (*Sl. glasnik RS*, No. 46/95) prescribes that a man of military age who leaves the country to avoid taking part in its defense and does not return until the death of the testator, is considered unfit to inherit the assets willed to him (Art. 4 (5)). Since Yugoslavia insisted from the time the conflicts in former Yugoslavia first broke out that it was not a belligerent, it remains unclear if this provision is envisaged for the future or if it applies only to those who refused to take part in the ex-Yugoslavia wars. It is quite clear, however, that the article constitutes a drastic violation of both the right of a testator to dispose of his property as he sees fit, and an unlawful restriction on the right of inheritance, which can in no way represent a threat to the "defense of the country".[59]

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

4.12.5. Transformation of forms of ownership in favor of state ownership

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

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

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[56] The Act was repealed in the territory of Kosovo by UNMIK Regulation No. 10 of 13 October 1999.

[57] Though there has been no enactment confirming that approval is no longer necessary, courts do not require it when certifying real property sale/purchase contracts.

[58] For more details on the Act see *Human Rights in Yugoslavia 2000*.

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

The former authorities also changed the form of ownership by decree. A glaring example was that of the Borba media company, a socially owned enterprise which by a Federal Government decree became a state-owned company (Federal Government Decree on the Borba Federal Public Company, *Sl. list SRJ*, Nos. 15/97, 56/98, 10/00, 17/00, 34/00, 7/01 and 12/01).

The defective Ownership Transformation Act (*Sl. glasnik RS*, No. 32/97) was amended in 2001 (*Sl. glasnik RS*, No. 10/01) by the imposition of a moratorium on the application of Art. 6 ((1.1) and (1.2)) and Section II, which regulated autonomous transformation, until passage within six months of a new law treating the transformation of ownership. The Privatization Act was duly passed in 2001 (*Sl. glasnik RS*, No. 38/01), and comprehensively regulates the principles and procedure for changing the form of ownership of socially owned, i.e. state assets. This Act repealed the previously existing law in its entirety.

In 2001, the Federal Constitutional Court ruled Art. 26 (5) of the Building Land Act unconstitutional and in violation of the principle of equal protection of all forms of property because it exempted state agencies and organizations from paying tax on state-owned building land. The Court further found that the article placed citizens in an inequitable position since persons whose land had been nationalized had only use of the land but were obliged to tax on it (*Sl. glasnik RS*, No. 23/01).

4.12.6. Restitution of unlawfully taken property and indemnification of former owners

Although denationalization and indemnification of former owners is an important component of transition, the issue has not yet been dealt with comprehensively in Yugoslavia. Three laws regulating the terms and procedure for the privatization of socially and state-owned assets of legal persons based in Serbian territory were adopted in 2001 (Privatization Act, Privatization Agency Act, Act on Shares Fund, *Sl. glasnik RS*, No. 38/01).

With regard to the privatisation of previously nationalised property, Art. 61 (2) of the Privatisation Act does not envisage making this property a separate estate in the privatisation process but does prescribe that five percent of revenue from its sale plus other budget funds will go to recompense the former owners. The efficacy of this provision is not clear since a law that will more closely regulate the restitution of nationalised property and compensation of its former owners still remains to be adopted.

The Federal Parliament revoked a decree by which the Karadjordjević royal family were stripped of their Yugoslav citizenship and their property confiscated (*Sl. list SRJ*, No. 9/01), thereby invalidating the legal basis on which this property was confiscated. Under Art. 2 of the new law, the terms for the restitution of the property will be prescribed in a separate act.

Acquisition of property under Yugoslav law requires both a legal basis and a *modus*. The new law has in principle created the legal basis (by revoking the decree under which the property was confiscated) but did not establish the *modus,* leaving this to be done by a future law. However, on 12 July 2001 (E.P. No. 132), the Federal Government placed the property at the disposal of Prince Alexander Karadjordjević and other members of the royal family, but without giving them outright ownership. This created a legally ambiguous situation: it is not known who has title to the property as

there is no longer any legal basis for it to be state property, nor is there a *modus* for it to belong to the Karadjordjevićs.

I n addition to being an untoward legal solution whose lack of clarity constitutes a threat to property rights in general, the government's decision also raises the issue of discrimination against other owners of nationalised property. The reason why it should be in the public interest to afford special treatment to the Karadjordjević family is not clear. It would appear that the decision was prompted by the needs of day-to-day policy. It sets a bad precedent in that it makes it possible for the authorities to use their discretion when deciding on the restitution of confiscated property, in violation of the equality of citizens and the prohibition of discrimination, and to avoid passing a law that would deal comprehensively with this serious and complex problem.

4.13. Minority Rights

Art. 27, ICCPR:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The Yugoslav constitutions guarantee certain minority rights. A comparison of the three constitutions, however, brings out essential differences and diverse approaches, in consequence of which these rights and the degree to which they are protected are differently regulated. In contrast to the Federal Constitution, the Serbian Constitution contains no separate provision that in general guarantees minority rights and their protection. The Montenegrin Constitution is far more precise and comprehensive in this regard.

There is also a major difference between the Yugoslav constitutions and the internationally recognised standards in the area of minority rights. Thus Art. 10 of the Federal Constitution states that FR Yugoslavia recognises and guarantees the human rights and freedoms recognised under international law. This may be interpreted as equating of the legal force of minority rights guaranteed by international instruments and those proclaimed by the Federal Constitution. FR Yugoslavia acceded to the Council of Europe Framework Convention for the Protection of National Minorities,[60] and is now in the process of acceding to the European Charter for Regional or Minority Languages. In contrast to this solution, Art. 3 of the Serbian Constitution states that minority rights are guaranteed and recognised (only) by the Constitution. This disharmony in the constitutional provisions can result not only in the enjoyment of different rights but also makes it possible for minority rights to be differently protected.

Disparity in the protection of minority rights at federal level and in Serbia may ensue also from the different legal regulation of the subject matter. Both constitutions

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[60] On 3 December 1998, the Federal Parliament confirmed by law the Framework Convention for the Protection of National Minorities, and it was duly published in the *Sl. list SRJ (Medjunarodni ugovori)*, No. 6/98. The instruments of ratification, however, were not deposited with the CoE, on the grounds that the FRY was not a member of the CoE nor had been invited by the CoE to accede to the Framework Convention. Hence, the FRY had no international obligations under the Framework Convention. Following the democratic changes, the FRY was invited to accede and the instruments of ratification were deposited.

contain provisions under which ways of exercising rights and freedoms, including the minority rights they guarantee, may be more closely prescribed by law. The Federal Constitution without doubt has greater legal force than the constitutions of the republics, just as federal laws have greater legal force than the laws of the republics. There is, however, no federal statute that specifically elaborates the Federal Constitution's provisions on minority rights, owing to which the ways in which these rights are exercised are on the whole prescribed by Serbian legislation. (The procedure for enacting a federal law on protection of national minorities was instituted at the time of writing. Some of the provisions contained in the draft will be presented in this report).

Art. 11 of the Federal Constitution guarantees the right of minorities to preserve their identity:

> The Federal Republic of Yugoslav shall recognise and guarantee the rights of national minorities to preserve, foster and express their ethnic, cultural, linguistic and other peculiarities, as well as to use their national symbols, in accordance with international law.

A similar provision is found in the Montenegrin Constitution, which, in Art. 67 (1), guarantees the protection of national, ethnic, cultural, linguistic and religious identity. Though the Serbian Constitution does not explicitly cite preservation of minority identity, the obligation may be indirectly inferred from its Art. 3 (2), which guarantees "personal, political, *national*, economic, social, cultural and other rights of the man and citizen" (emphasis added). There can be no doubt that this provision is too terse and incomplete to adequately regulate minority rights in a multiethnic state such as the Republic of Serbia.

Preservation of national identity is elaborated further in Art. 46 of the Federal Constitution, which guarantees the freedom to express national sentiments and states that no one is obliged to disclose his/her nationality. To this the draft federal law on the protection of national minorities adds that no one may be subject to harm because of his affiliation, or because they disclosed or did not disclose their nationality.

In addition to the general provisions on minority rights, the Yugoslav constitutions also contain articles treating specific rights. In many cases, however, the elaboration of these rights by statute is uneven.

The Federal Constitution guarantees the free use of minority languages. The draft federal law on the protection of national minorities goes further by defining this as the right of minorities to freely use their languages and scripts in public and personal communication, and reflects the intention to comply with Art. 7 of the European Charter for Regional or Minority Languages to which FR Yugoslavia is to accede shortly.

All three Yugoslav constitutions guarantee the right to the official use of minority languages and scripts. Thus, under Art. 15 (2) of the Federal Constitution:

In regions of the Federal Republic of Yugoslavia *inhabited by national minorities*, the languages and scripts of these minorities shall also be in official use in the manner prescribed by *law* (emphasis added).

The Serbian Constitution contains an identical provision (Art. 8 (2)), whereas the Montenegrin Constitution is more restrictive, envisaging the official use of minority languages only in municipalities in which the *majority or a significant proportion of inhabitants* are members of national or ethnic groups (emphasis added). In Serbia, the official use of languages and scripts is regulated by the Act on Official Use of Languages and Scripts (*Sl. glasnik RS*, Nos. 45/91, 53/93, 67/93 and 48/94). Under the Act, whether

or not a minority language will be in official use is decided upon by the municipality in which a particular minority lives. Since the statute fails to enumerate the criteria upon which such a decision is to be made, different municipalities have adopted different solutions.[61] The draft federal law on protection of national minorities envisages the official use of minority languages and scripts in units of local self-government in which, according to census figures, members of minority groups account for over 20 percent of the population. It also makes possible the use of minority languages and scripts in units where the minority population is over 5 percent.

The Serbian Act on Official Use of Languages and Scripts states in its Art. 19:

> In areas in which minority languages are in official use, place names and other geographic names, the names of streets and squares, the names of organs and organisations, traffic signs, public information and warnings and other public signs shall be inscribed in the languages of the minorities.

Article 7 of the statute does not allow the geographic and personal names on public signs to be replaced by others, stating only that they are inscribed in the languages of minorities in accordance with the standard usage of the particular language. A closer look at this provision brings out that official geographic and personal names inscribed on public signs in the Serbian language may not be replaced with the names traditionally used by minorities, and that only their transliteration is allowed. Hence the traditional minority names cannot be in public use even when they are in fact translations of the Serbian geographic and personal names. That this is the correct interpretation has been confirmed by the Serbian Constitutional Court. In three decisions rendered on 25 January 2001, the Court ruled that "the cited provision of the Act does not permit the replacement of geographic names with minority language names," and that the legal formulation that such names are "inscribed in the minority language in accordance with the standard usage of the language excludes the possibility of the translation of geographic names." (*Sl. glasnik RS*, br. 10/01).

The Courts' decision makes the use of minority languages where geographic names are concerned inconsequential, reducing it merely to the use of minority-language spelling. There is no doubt that this interpretation not only deepens the discrepancy between Articles 7 and 19 of the statute, but also creates a legal basis for finding any use of place names in minority languages an impermissible replacement or change (for instance, Szenta is allowed for Senta but Zenta is not). Minority communities are irked by the decision, in particular because traditional names were freely used earlier. For its part, the draft federal law on protection of national minorities envisages bilingual inscription of place names.

All three Yugoslav constitutions guarantee the right to education in minority languages (Art. 46 (1), Federal Constitution; Art. 32 (4), Serbian Constitution; Art. 68, Montenegrin Constitution). There are, however, differences in how republican statutes regulate the exercise of this right.

Under the Montenegrin Elementary School Act (*Sl. list RCG*, No. 34/91), classroom instruction in the Albanian language is provided in schools located "in areas in which *larger numbers of members of the Albanian nationality* live" (emphasis added).

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[61] Milan Samardžić, *Položaj manjina u Vojvodina*, Belgrade, 1998.

The corresponding Serbian law is more precise: instruction in minority languages is provided if more than 15 pupils enroll in the class (Act on Elementary Schools, *Sl. glasnik RS*, No. 50/92). The possibility is also envisaged of minority-language instruction for classes with less than 15 pupils, subject to the approval of the Minister of Education. Instruction may be in only a minority language or in two languages. In the former case, Serbian language classes are compulsory.

The draft federal law on protection of national minorities envisages the right of children to receive an education in their own language at preschool, elementary and secondary public schools. Again, this may be conditional on a certain number of pupils per class, but the number would not be higher than the minimum prescribed by law for such education. Through their national councils, representatives of national minorities would take part in drawing up the programs and curriculums.

Article 46 (2) of the Federal Constitution and Art. 68 of the Montenegrin Constitution guarantee to national minorities the right to public information in their languages. The Serbian Constitution does not guarantee this right.

Under the draft federal law on protection of national minorities, the state would ensure news and current affairs, cultural and educational programs in minority languages on public service broadcasting systems. It also provides for the possibility of establishing radio and television stations whose entire programs would be in minority languages. The participation of minority representatives in the management of such media would be regulated by separate republican legislation as, under the Federal Constitution, the matter falls within the competence of the republics.

The Federal Constitution guarantees to national minorities the right to establish, in conformity with the law, educational and cultural organisations or associations financed on the principle of voluntary contributions, *and may also receive assistance from the state* (emphasis added; Art. 47, Federal Constitution). The corresponding provision in the Montenegrin Constitution is somewhat different since it guarantees to minorities the right to establish education, cultural and religious associations *with the material assistance of the state* (Art. 70, Montenegrin Constitution; emphasised clause indicates the obligation of Montenegro to assist minority associations financially). The Serbian Constitution contains only a generalised guarantee of the freedom to express national cultural identity.

Under the draft law on protection of national minorities, state-founded museums, archives and institutions charged with the preservation of national monuments would have an obligation to preserve and promote the cultural and historical legacy of national minorities within their territory. Minority representatives would participate in decision-making on the ways of promoting their cultural and historical legacy.

The Federal Constitution guarantees to national minorities the right to use their national symbols *in accordance with international law* (emphasis added, Art. 11, Federal Constitution). The Montenegrin Constitution sets no conditions for using and displaying national symbols and makes no reference to international law (Art. 69, Montenegrin Constitution). The Serbian Constitution is silent on this point.

The draft law on protection of national minorities envisages the right of displaying national symbols on the buildings and on the premises of public organs and organisations in areas where a minority language is in official use.

Under both the Federal and Montenegrin Constitutions, national minorities have the right to establish and foster unhindered relations with their co-nationals in other

countries. This is more than provided for by Art. 27 of the International Covenant on Civil and Political Rights, and in accordance with Art. 17 of the Framework Convention for the Protection of National Minorities. The Federal Constitution also lays down the right of minorities to take part in international non-governmental organisations. Both constitutions contain the proviso that such relations may not be detrimental to the federal state or its constituent republics. There is no similar provision in the Serbian Constitution.

In contrast to the Federal and Serbian Constitutions, the Montenegrin explicitly guarantees to minorities and ethnic groups the right to proportional representation in public services, government agencies and bodies, and in local self-government. The lack of such constitutional provisions in Serbia resulted in the adoption of the Election Act under which the whole of Serbia become a single electoral district. The Act also prescribes a minimum of 5 percent of the vote to secure a seat in the Serbian Parliament (*Sl. glasnik RS*, No. 35/00). Consequently, unless they form coalitions, the political parties of smaller minorities are for all practical purposes excluded from parliamentary life.

A n entire chapter of the draft federal law on protection of national minorities treats the effective participation of minorities in decision-making on matters of particular interest to a minority, and in government and administration. It envisages the right of minorities to appropriate representation in public services and state and local bodies, and goes a step further by prescribing that public services in their employment policy must take into account the ethnic composition of the population and knowledge of the language used in the territory they cover.

If the draft is enacted as it now stands, effective participation in different spheres of life of interest to national majorities will be ensured through national councils, which are conceived of as bodies with certain public law powers in the fields of education, information and culture.

A set of measures contained in the draft is also designed to promote the participation of national minorities in societal affairs. Namely, the federal authorities would be able to make regulations, pass enactments and take temporary measures to improve the position of minorities whose members were discriminated against or denied developmental opportunities, which was in particular the case with the Roma community. If the draft is adopted, the Yugoslav legal system will be brought into conformity with Art. 4 (2) of the Framework Convention for the Protection of National Minorities.

General provisions on the protection of minorities from persecution and hate are to be found in the Federal and Montenegrin Constitutions. Both stipulate that any incitement or encouragement of national, racial, religious or other inequality, hatred and intolerance are unconstitutional and punishable (Art. 50, Federal Constitution; Art. 43, Montenegrin Constitution). The Serbian Constitution, regrettably, has no general provision under which ethnically-motivated persecution, hatred or intolerance is unconstitutional and punishable.

All three constitutions envisage the possibility of restrictions on freedom of the press and of association if they are directed “to incitement of national, racial or religious hatred or intolerance (see I.4.9.6).

Political mechanisms for the protection of minority rights are provided for only by the Montenegrin Constitution, pursuant to which the Council for Protection of the Rights

of Members of National and Ethnic Groups was established. Tasked with preserving and protecting minority identities and rights, the Council is chaired by the Montenegrin President, and its composition and powers are determined by the republic's Parliament (Art. 76). The draft federal law, whose passage is expected shortly, also envisages a political mechanism for the protection of minority rights – the Federal Council on National Minorities. Made up of high-ranking federal officials and minority representatives, the Council would deal with all issues affecting the position of minorities.

There are no legal means in the Yugoslav or republican legal systems specifically designed to protect the minority rights guaranteed by the three constitutions. However, since the majority of these rights are embodied in the Federal Constitution, redress can be sought by lodging a constitutional appeal. Under the Federal Constitutional Court Act, the federal body charged with human and minority rights *may* file such a complaint on behalf of an individual who alleges violation of his/her constitutional rights (emphasis added; Art. 37 (3), *Sl. list SRJ*, No. 36/92). The wording suggests that lodging of a complaint by this body is of a discretional nature, and there have thus far been no such cases. To rectify this, the draft federal law on protection of national minorities envisages that the body would file a constitutional appeal whenever addressed by a person belonging to a minority who alleges that his/her constitutional rights have been violated. The draft also envisages the setting up of an Ombuds office for minority rights. The Ombudsperson would have the authority to lodge constitutional appeals, as well as to institute proceedings before regular courts for the protection of minority rights. All government agencies and public officials would be obliged to cooperate with the Ombudsperson, and provide the requested information and documentation. In addition to these mechanisms, the draft provides also for the protection of the rights and freedoms of national minorities in criminal law.

4.14. Political Rights

Art. 25, ICCPR:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
>
> a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
>
> b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
>
> c) To have access, on general terms of equality, to public service in his country.

4.14.1. General

The Federal Constitution lays down that power is vested in the citizens, who exercise it directly and through their freely elected representatives (Art. 8). A Yugoslav citizen who has attained the age of 18 has the right to vote and to be elected to public office (Art. 34). The constitutions of the two republics also proclaim the sovereignty of

the people, and that suffrage is universal and equal (Art. 2 and 42, Serbian Constitution; Art. 2, 3 and 32, Montenegrin Constitution).

Establishment of political parties and their activities are free (see I.4.10.). Up until 1997, coalitions dominated by parties that emerged from the former Communist Party were in power in both Serbia and Montenegro. The reform-oriented wing of the Democratic Party of Socialists was voted into office in Montenegro in 1998 in an election that was positively assessed by domestic and foreign observers. The Serbian parliamentary election in December 2000 was the first fair and free election to be held in Serbia since World War II. Indeed, until the introduction of parliamentary democracy in 1990, genuine elections were not possible owing to the constitutionally declared one-party system and, after that, because of a series of legal and *de facto* obstacles set up by the regime.[62] Thus the Serbian parties then in opposition held that none of the elections held after 1990, including the presidential, parliamentary and local elections in September 2000, in which they were voted into power, were truly free and fair.[63]

4.14.2. Financing

The financing of political parties is regulated by federal and republican statutes (Federal Act on Financing of Political Parties, *Sl. list SRJ*, No. 73/00; Montenegrin Act on Financing of Political Parties, *Sl. list RCG*, No. 44/97; Serbian Act on Financing of Political Parties, *Sl. glasnik RS*, No. 32/97). All three envisage annual allocation of a proportion of the respective budgets to parties, and additional financing of their campaigns in years when election years (Art. 4 and 5, Federal Act; Art. 3, 4 and 6, Montenegrin Act; Art. 2, 3 and 4, Serbian Act). More on prohibition of financing of political parties by foreign states and nationals see in the part on freedom of association I.4.11.4.2.

All the statutes set certain restrictions on campaign spending in order to prevent disadvantage to parties with smaller funds at their disposal. Under the federal statute, for instance, the total amount a party secures for campaign spending may not be in excess of double the highest sum received by a political party from the federal budget (Art. 8). The Montenegrin law regulates this point by stating that campaign spending may not exceed the sum of 250 average monthly wages in the republic (Art. 9). Under Art. 10 of the Montenegrin Act, parties are obliged to conclude compacts to limit campaign spending when elections are called.

The Federal Act also regulates the use of the assets of the former League of Communists of Yugoslavia, Socialist Alliance of Working People, and Alliance of Socialist Youth of Yugoslavia. These assets passed to the federal state but the law envisages that political parties represented in parliaments must be allowed use of at least half of the real property of the three former organisations (Art. 13, Federal Act).

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[62] See *Human Rights in Yugoslavia 1998*, *1999* and *2000*.

[63] Strong criticism of the organization of elections and procedure may be found in the reports of the OSCE observers. See: *Parliamentary Elections September 21, 1997 and Presidential Elections September 21 and October 5, 1997*, and *Assessment of Election Legislation in the Federal Republic of Yugoslavia, 2000*, OSCE Office for Democratic Institutions and Human Rights ("OSCE Report 1997").

4.14.3. The Right to Vote and To Be Voted For

The right to vote in parliamentary and local elections in the two republics belongs to: 1) Yugoslav citizens residing in the republic in which the election is being held; 2) persons who have attained the age of 18 and have business competence (Art. 10, Act on Election of Parliamentary Deputies, *Sl. glasnik RS*, No. 35/00; Art. 122, Act on Local Self-Government, Sl. glasnik RS, Nos. 4/91, 79/92, 82/92, 47/94, 48/99, 49/99 and 27/01; Art. 11, Act on Election of Deputies and Councilors, *Sl. list RCG*, Nos. 16/00 and 9/01). The right to be elected to public office is treated differently in Yugoslav legislation, depending on the office involved. Thus a candidate for federal president must be a citizen with at least ten years' residence in Yugoslavia prior to the date of his nomination (Art. 3 (1), Act on Election and Term of Office of President of the Republic, *Sl. list SRJ*, No. 32/00). Candidates for Serbian president must be citizens of Serbia with at least one year's residence in the republic prior to the date of the election, while the Montenegrin law does not require candidates to be citizens of the republic. All the relevant acts lay down that the candidates for these offices must posses the right to vote.

Whether or not a person may vote and be elected to public office depends on whether he or she is entered in the electoral rolls. Regular updating of the rolls is a basic prerequisite for individuals to exercise their right to vote and for the regularity of elections in general. Previous elections brought out numerous irregularities and the rolls proved to have been improperly kept. The Montenegrin Act on Electoral Rolls (*Sl. list RCG*, Nos. 14/00 and 30/01) envisages a set of measures to keep the rolls updated, specifies the authority charged with doing so, and prescribes sanctions for infringements (Art. 16). Transparency is ensured, with political parties fielding candidates for election having the right to receive a copy of the entire roll on computer diskettes within 48 hours of requesting it. Parties may lodge complaints and observations, and are also allowed to examine documents relating to individual voters and even act on their behalf without informing the individual concerned, which constitutes a grave breach of privacy rights.

In its report on the April 2001 parliamentary election in Montenegro,[64] the OSCE expressed concern with regard to the distribution of seats. Under the law, one half of the seats won by a party are distributed to the first candidates on the list and the remainder are assigned by the sponsor of the list. This clashes with the recognised standards of transparency and may confuse voters. Furthermore, the law also lays down that the term of an elected deputy is terminated when he ceases to be a member of the party on whose list he was elected, which makes deputies accountable primarily to their own parties rather than to the voters who elected them.

The use of a single roll in the 24 September 2000 federal and local elections denied individuals the right to decide in which election they would cast their ballots since, when voting in the presidential election for example, the voter was marked down on the roll as having voted also in the local election even though he might have wished to abstain.

The new Serbian law provides that persons who have “temporarily moved from their domiciles ('refugees')” are entered in the electoral roll in the municipality in which they are registered as refugees (Art. 13). Why the lawmakers used the world “refugees” instead of “displaced persons” whom they obviously had in mind is unclear. Refugees do

[64] OSCE/ODIHR, *Report on Parliamentary Election in the Republic of Montenegro, FRY*, Warsaw, 22 April 2001; <http:// www.osce.org/odihr/documents/reports/election_reports/yu/fry_mont_fin2001pe.pdf>

not have the right to vote while displaced persons, who are Yugoslav citizens displaced from Kosovo and Metohija, do.

Neither the federal nor the Serbian statute envisages sanctions for improperly kept electoral rolls.[65] In contrast to the Montenegrin Act, they do not make it possible for sponsors of election lists to obtain copies of the entire electoral roll and check its accuracy. Access to this roll is of exceptional importance for monitoring the regularity of elections since rolls are kept by municipal authorities and it is possible for an individual to be entered in more than one municipal roll. The provision of the Serbian law enabling individuals to check rolls and request changes is not a sufficient safeguard for they cannot be expected to check each and every municipal roll.

The Serbian law introduced for the first time control of voting in the form of a special spray on the index fingers of persons casting ballots and signing of rolls (Art. 68 (3 and 4)).

4.14.4. Electoral Procedure

4.14.4.1. Electoral commissions – In addition to the electoral statutes, rules governing the election procedure are to be found also in the decisions of the federal and republican electoral commissions. These commissions supervise the legality of the election process and the uniform application of the electoral statutes, appointment of the permanent members of the electoral commissions in the election districts (in Montenegro: municipal electoral commissions), and hand down instructions for the work of the electoral commissions and polling committees.[66] Finally, the federal and republican commissions are empowered to consider complaints in the second instance (under Art. 96 (2)) of the Serbian Act on Election of Parliamentary Deputies, the republican Electoral Commission considers complaints in the first instance).

The federal and republican commissions are appointed by the respective parliaments (Art. 33 (1), Act on Election of Federal Deputies; Art. 38 (1), Serbian Act on Election of Parliamentary Deputies; Art. 29, Montenegrin Act on Election of Parliamentary Deputies). They are made up of six permanent members and the permanent chairperson,[67] and representatives of the sponsors of election lists, (political parties, coalitions or groups of citizens), who are non-permanent members. The permanent members of the commission, who as a rule are drawn from the judiciary, are expected to be politically neutral. However, in view of the dependence of the judiciary on the executive branch, they may in practice advocate the interests of the parties in power, which was the case up to the 2000 Serbian parliamentary election. The non-permanent members who, besides representatives of the parliamentary majority, include

[65] The Serbian statute prescribes criminal responsibility for a person who, with the *intent* of preventing another from exercising his right to vote, fails to enter him in the electoral roll or deletes his name from the roll (Art. 105, Serbian Act on Election of Deputies).

[66] Just prior to the 24 September 2000 elections, the Federal Electoral Commission handed down an instruction requiring voters in the presidential election to show their ballots to a member of the polling committee. The rule constituted a violation of the secrecy of balloting and was aimed at intimidating voters.

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

representatives of other political parties, become involved in the work of the commissions only after the election lists have been made public in the electoral districts.

The legal provisions under which the bodies charged with conduct of elections are answerable to the body that appointed them (Art. 24 (2), Act on Election of Federal Deputies; Art. 28 (2), Serbian Act on Election of Parliamentary Deputies; Art. 17 (2), Montenegrin Act on Election of Parliamentary Deputies) are disputable. Since municipal election commission members are appointed by the municipal assemblies, the inclusion of representatives of political parties in some municipal commissions was seen as membership on the basis of the political balance in the respective municipality, and resulted in those commissions taking decisions along political lines.[68]

4.14.4.2. Control of ballot printing and safekeeping of electoral documentation – Pursuant to the federal and republican statutes, the central electoral commissions decide on the manner, place and control of ballot printing. However, they have failed to regulate the process in detail or to envisage appropriate control mechanisms (OSCE Report 1997, p. 11) since they do not stipulate the obligation to safeguard election materials before they are delivered to the local commissions, or the procedure whereby this is done (e.g. sealing the premises and the like). In order to preclude counterfeiting of ballots for the federal election in 2000, the ballots were printed in one designated facility and on watermarked paper (Art. 63 (4) Act on Election of Deputies to the Chamber of Citizens of the Federal Assembly, *Sl. list SRJ*, No. 32/00).

I n its report on the early election in Montenegro, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) noted the absence of provisions regulating mutilation of ballots by voters.

4.14.4.3. Grounds for annulment – The Serbian Act on Election of Parliamentary Deputies lays down two different grounds for the annulment of voting at a polling station. If there is reason to conclude that the elections at a particular polling station were null and void, the polling committee must be dissolved, a new one appointed and the balloting repeated. (Art. 90 (9)). On the other hand, when the irregularities are less serious, in considering complaints the electoral commission may decide whether or not the voting will be cancelled (see Art. 72, Montenegrin Act on Election of Parliamentary Deputies). Federal statutes specifically and in great detail set out the grounds for finding voting null and void. As a result, voting is on occasion cancelled on mere technicalities that could not have affected the results, e.g. if a member of the polling committee failed to explain the manner of voting to a voter upon request (Art. 71), or if symbols of political parties were posted within a diameter of 50 meters around the polling station (Art. 58, Act on Election of Federal Deputies to the Chamber of Citizens).

4.14.4.4. Legal remedies – Under the electoral statutes, the main remedy for election irregularities is the lodging of a complaint with the respective electoral commission by any voter or other participant in the elections. None, however, lay down the rules according to which electoral commissions are to deal with complaints. This results in a lack of uniformity with regard to establishing the facts, use of evidence and, in particular, observance of the adversarial principle. Only the new Montenegrin law

[68] See *supra* note 63.

(Art. 111) envisages the subsidiary application of the Administrative Procedure Act. This Act itself prescribes that its provisions are applicable in all administrative matters while specific procedures requiring departures are conducted pursuant to the general principles of the Act (Art. 1 and 3).

Under the Montenegrin law, decisions on complaints are delivered in keeping with the Administrative Procedure Act (*Sl. list SRJ*, No. 55/99), meaning that all interested parties are notified of them. The federal and Serbian electoral statutes contain no similar provision, owing to which interested parties were not notified of decisions and were not able to participate in the complaints procedure.

The absence of any legal obligation to apply the Administrative Procedure Act results in arbitrary decisions in both the electoral procedure and in evidence evaluation. Namely, the Act prescribes that all the relevant facts must be established correctly and in full, and be supported by the evidence (Art. 8 and 149). In practice, however, decisions were taken on the basis of unsubstantiated allegations by interested parties.[69] The electoral statutes provide for the possibility of appeal against the decisions of the competent electoral commissions: to municipal courts in the case of local elections (Art. 156, Act on Local Self-government), to the Serbian Supreme Court in the case of republican parliamentary and presidential elections (Art. 97, Serbian Act on Election of Parliamentary Deputies), to the Montenegrin Constitutional Court with respect to elections at all levels (Art. 110, Montenegrin Act on Election of Deputies and Councilors), and to the Federal Constitutional Court with respect to federal elections (Art. 105, Act on the Election of Deputies to the Chamber of Citizens of the Federal Assembly).

4.14.5. Montenegrin Referendum Act

Relations between Yugoslavia's two constituent republics reached a critical juncture in 2001. Montenegro passed a new Referendum Act (*Sl. list RCG*, Nos. 9/01 and 17/01) under which, in accordance with the republic's Constitution, a referendum must be called on the following issues: alteration of the status of the republic, change of form of government, and alteration of borders. Article 8 of the Act, which stipulates that only persons on the republican electoral roll may vote in a referendum, gave rise to a heated debate since it denies this right to Montenegrin citizens who reside outside the republic. In its report[70] on the Act, however, the ODIHR deemed the provision acceptable since persons who are not domiciled in Montenegro do not have the right to vote in elections for the republic's parliament either; allowing them to vote in a referendum could result in the republican parliament, in which they do not have representatives, confirming a referendum decision. Furthermore, Montenegrin citizens domiciled in Serbia have the right to vote in Serbian elections and referendums. If they had the same right in Montenegro, the effect would be one man-two votes.[71] Noting in its report that some of

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[69] See Report of the Committee of Experts, Serbian Association of Jurists, for an analysis of judicial proceedings regarding the November 1996 local elections in Serbia.

[70] OSCE/ODIHR *Assessment of the Referendum Law on the Republic of Montenegro, FRY*, Warsaw, 6 July 2001.

[71] The Montenegrin Party of Hard Currency Savings Depositors challenged the constitutionality of Art. 8. The Federal Constitutional Court ruled the part of the provision reading ”in accordance with election regulations...” unconstitutional as “citizens may directly express their will in various ways: in plebiscites,

its earlier recommendations and comments had been incorporated in the Act, the ODIHR nonetheless pointed up several major defects (e.g. the failure to envisage a qualified majority for referendum decisions, lack of transparency with regard to vote-counting and publication of the results, the vaguely defined authority of observers).

The Speaker of the Montenegrin Parliament requested the ODIHR's comments on the draft act on the referendum on Montenegro's status, which has only 17 articles and is in effect a *lex specialis* with respect to the Referendum Act passed in February. The ODIHR responded with a report[72] in which it expressed concern over the failure of the draft to reflect the recommendations it made in a previous report.[73]

4.15. Special Protection of the Family and the Child

> Article 23, ICCPR:
>
> 1. The family is the natural and fundamental grouping of society and is entitled to protection by society and the State.
>
> 2. The right of men and women of marriageable age to marry and to found a family shall be recognised.
>
> 3. No marriage shall be entered into without the free and full consent of the intending spouses.
>
> 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.
>
> Article 24, ICCPR:
>
> 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
>
> 2. Every child shall be registered immediately after birth and shall have a name.
>
> 3. Every child has the right to acquire a nationality.

4.15.1. Protection of the family

Under the Federal Constitution, the family, mothers and children enjoy special protection (Art. 61 (1)). Very similar provisions are to be found also in the Serbian (Art. 28 (1)) and Montenegrin (Art. 59 (1) and Art. 60 (1)) Constitutions. The protection

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referendums, civil initiatives, civil veto and similar... Each of the cited ways of direct expression of the will of citizens implies different manners of their exercise... Equating the right to decided by referendum with the right to vote for representatives in state and local bodies may constitute unfounded expansion and unfounded restriction of this right, in dependence on the referendum question." (*Sl. list SRJ*, 17/01).

[72] See *supra* note 70.

[73] OSCE/ODIHR *Comments on the Draft Referendum Law on the Status of the Republic of Montenegro, FRY*, Warsaw, 5 November 2001.

provided for by the constitutions is more closely regulated by the statutes of the two republics – the Serbian Marriage and Family Relations Act (*Sl. glasnik SRS*, Nos. 22/80, 24/84 and 11/88, *Sl. glasnik RS,* Nos. 22/93, 25/93, 35/94, 46/95 and 29/01) and the Montenegrin Family Act (*Sl. list RCG*, No. 7/89).

Under the Serbian statute, the society through its developmental policies and special measures in the fields of education, culture, social welfare and medical care ensures conditions for the founding of families and for harmony in matrimonial and family life (Art. 19). These principles are further elaborated in a series of provisions. Legal procedures relating to marriage and family relations, common law marriages, and property relations in a family are also regulated.

The relevant national legislation contains no legal definition of the term family. Most family law provisions, however, treat the nuclear family (parents and children), while a smaller number dealing with matters such as alimony, child support, and kinship as an obstacle to marriage, regulate relations among a somewhat wide circle of relatives.

Under Yugoslav law, family members have an obligation to support each other. This is both a right and a duty of family members and other relatives, and an expression of their family solidarity (Art. 10, Serbian Act; Art. 9, Montenegrin Act). Noncompliance is sanctioned by the Criminal Codes of the republics, which also envisage penalties for failure to fulfill family obligations, e.g. desertion and neglect of family members unable to care for themselves (Art. 120, Serbian CC; Art. 101, Montenegrin CC).

4.15.2. Marriage

The Federal Constitution speaks of marriage only in the context of the equality of legitimate and illegitimate children (Art. 62 (1)). Under the Serbian Constitution, marriage and family relations are regulated by statute (Art. 29 (2)), while the Montenegrin Constitution states that marriage may be entered into only with the free consent of the man and woman (Art. 59). The republican laws mentioned above go into more detail.

In the eyes of Yugoslav law, spouses are equal. The obstacles to marriage are listed in the relevant laws, some of which ensure that marriage is entered into with the free consent of the intending spouses (a marriage is considered null in the case of coercion, deceit, or incompetence), and others prohibit marriage between persons connected by ties of consanguinity (to the fourth degree) or affinity (to the second degree). Finally, only men and women of marriageable age may marry, which is in accordance with the ICCPR (Art. 23 (2)). As a rule, persons over the age of 18 may enter into marriage though persons over the age of 16 may be permitted to do so with a court dispensation. When a person over the age of 16 marries, he or she attains full business competence and does not loose it if even if the marriage is divorced before majority is attained.

Divorce is allowed and may be by mutual consent of the spouses or by one party suing on the grounds of irretrievable breakdown of the marriage, irreconcilable differences or other grounds such as desertion, mental illness and the like (Art. 83, Serbian Act; Art. 55, Montenegrin Act). However, the law allows only divorce by consent during the pregnancy of the woman and until the child becomes a year old (Art. 84 (2), Serbian Act; Art. 57, Montenegrin Act). The court may deny a divorce petition if it finds this in the interests of the well-being of the couple's minor children (Art. 84, Serbian Act; Art. 56, Montenegrin Act).

Assets acquired during a marriage are communal property and are managed and administered jointly by the spouses (Art. 324, Serbian Act; Art. 284, Montenegrin Act). Property owned by the spouses before they married remains their personal property (Art. 70, Serbian Act; Art. 279 Montenegrin Act).

4.15.3. Special protection of the child

4.15.3.1. General – Yugoslavia is a party to the Convention on the Rights of the Child, which it ratified in 1990 (*Sl. list SFRJ* (Medjunarodni ugovori), No. 15/90).[74]

There is no definition of the child as such in Yugoslav law. The Federal Constitution and the constitutions of the two republics link the attainment of majority with attainment of the right to vote. Article 15 (1) of the Serbian Act states that majority is attained at the age of 18, while the Montenegrin Act says nothing on the subject. Under Art. 82 of the Federal CC, the statutory age of responsibility for the purposes of criminal law is 14. These few examples show that the minimum age for attaining certain rights and obligations is dealt with differently.

4.15.3.2. Measures of protection ... required by the status of minors – Under Art. 24 (1) of the ICCPR, "every child shall have without any discrimination ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." Though the ICCPR contains a general prohibition of discrimination (Art. 2 and 26; see I.4.1), this provision reinforces the obligation of the state to ensure no inadmissible discrimination where protection of the child is concerned. Accordingly, the Federal Constitution (Art. 20), besides prohibiting discrimination in general, stipulates that illegitimate children have the same rights and duties as legitimate children (Art. 61 (22). Very similar provisions are to be found also in the republican constitutions (Art. 13 and 29 (4), Serbian Constitution; Art. 15, 17 (1) and 60 (2), Montenegrin Constitution), and are further elaborated in the family law of the republics (Art. 5, Montenegrin Act; Art. 7, Serbian Act).

Parents have the right and duty to take care of their children, support them in keeping with their financial and material ability, and provide guidance in the adoption of family and other values (Art. 113–117, Serbian Act; Art. 58–61, Montenegrin Act).

As a general rule, parents exercise their parental rights jointly and in agreement. This does not imply, however, that all the rights and duties must be exercised jointly, and parents are allowed to decide which will be exercised by one or the other spouse. In the event of their disagreement, the final decision rests with the child welfare agency. Where issues of major importance for the development of the child are concerned, decisions are made by both parents, even when they are separated or divorced (Art. 123 and 124, Serbian Act; Art. 66–74, Montenegrin Act).

In matrimonial disputes, the court *ex officio* decides on the custody and upbringing of minors, and need not take into consideration agreements reached by the parents. Personal contacts between children and parents may be limited or temporarily suspended

[74] Complying with the obligation it undertook when ratifying the Convention, the Yugoslav government in 1994 submitted a report on the application of the Convention in Yugoslavia in the 1990–1993 period. The Committee on the Rights of the Child requested replies to 32 additional queries, to which the government responded in writing instead of orally as customary. The next report was due in 1998 but had not been submitted up to the time of the writing of this report.

only if necessary to ensure the best interests of minors (Art. 125–131, Serbian Act; Art. 66–74, Montenegrin Act).

The basic forms of protection of children without parental care are adoption and placement with a foster family (Art. 148 and 149, Serbian Act). Adoption is allowed when required for the well-being of the child (Art. 152, Serbian Act), and children are placed only with foster families with a proven ability to provide proper parental care (Art. 202, Serbian Act; Art. 217, Montenegrin Act).

A child may own assets acquired through inheritance, gifts, or similar. Though the assumption is that a child under 15 years of age does not acquire property through work, the possibility is not ruled out.

4.15.3.3. Protection of minors in criminal law and procedure – The Federal Criminal Code contains a separate chapter prescribing special rules that are applied to juvenile delinquents in conjunction with the relevant republican Criminal Codes. Other provisions of the criminal codes are applicable only if they are not in conflict with the special rules (Art. 71, Federal CC).

Criminal law penalties may not be pronounced against a child who was under the age of 14 at the time the criminal offence was committed. Children older than 14 but younger than 16 (younger juveniles) are subject only to correctional measures, as is the case also with offenders between the ages of 16 and 18 (older juveniles) who, however, may as an exception be sentenced to terms of imprisonment in the case of extremely serious crimes. The purpose of these measures is to protect and aid juvenile delinquents and ensure their development and upbringing (Art. 72–75, Federal CC).

Criminal procedure in the case of juveniles is regulated by a separate chapter of the Criminal Procedure Code (Art. 452–492), and other provisions of the CPC are applicable only if they are not in conflict with those set out in this chapter.

Since Yugoslav law does not allow imposition of criminal penalties against a child below the age of 14, the CPC envisages termination of criminal proceedings against a child who was not 14 at the time the crime was committed, of which the child welfare agency must be notified (Art. 435, CPC). The CPC stipulates that a child may not be tried *in absentia*. Agencies that are parties to proceedings have an obligation to consider the mental development, sensitivity and personal characteristics of the child in the event of his presence at hearings and, in particular, during his questioning, so as to avert possible ill effects on his well-being (Art. 454, CPC). If the proceedings are for a crime carrying a prison sentence of over five years, the child must have a defence attorney from the very beginning and, in other cases, if the judge deems it necessary (Art. 456, CPC).

The public prosecutor is duty bound to notify the child welfare agency whenever proceedings are instituted against a child (Art. 459, CPC). Information on such proceedings may not be disclosed to the public without the permission of the judge and, when permission is granted, the name of the child and other information that could be used to identify him may not be disclosed (Art. 461, CPC). Proceedings against a child are always conducted *in camera* (Art. 482, CPC).

Proceedings against children are conducted by judges or panels of juvenile courts. The law makes it possible for one court to be designated to hear in the first instance criminal cases involving children from several judicial districts. The lay judges on panels

hearing juvenile cases are selected from among educators, teachers and others who have experience in work with children (Art. 482 CPC).

4.15.3.4. Birth and name of the child – To ensure that every child is registered immediately after birth, the law prescribes oral or written notification of the Registry Office in the place of the child's birth. If a child is born on a vehicle or vessel, the birth is reported to the Registry Office of the district in which the mother's journey ended. The medical facility in which a child is born is also bound to report the birth. When a child is not born in a medical facility, the father or another member of the household, the mother when she is able, the person in whose house or apartment the birth took place, or persons assisting the delivery (physician, midwife) must report the birth. If all of these are prevented from doing so, any person who has knowledge of the birth will report it. The birth of a child must be reported within 15 days and a stillbirth within 24 hours. If the parents are unknown, the birth is recorded by the Registry Office of the district in which the child was found and on the basis of a decision of the competent child welfare agency (Art. 17 and 25 Serbian Public Registries Act; Art. 5, 7 and 9, Montenegrin Public Registries Act).

Having a name (first and last names) is the right of every individual. The name of a child is chosen by both parents and is entered into the Register of Births within two months of birth. In the event that the parents do not agree on a name within the set time period, the child is named by the child welfare agency. A child receives the last name of one or both parents. In Serbia, children of the same parents may not bear different last names. If one of the parents is deceased, unknown or unable to exercise his or her parental rights, the child is named by the other parent. If both parents are deceased, unknown or unable to exercise their parental rights, the child is named by the child welfare agency (Art. 393– 396, Serbian Act; Art. 1–6, Montenegrin Act on Personal Names). Article 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.

4.16. Right to Citizenship

Article 15 of the Universal Declaration of Human Rights:

Everyone has the right to a nationality.

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

Article 24 (3), ICCPR:

Every child has the right to acquire a nationality.

4.16.1. General

The Universal Declaration of Human Rights states the right of every individual to have a nationality and prohibits arbitrarily depriving a person of nationality or of the right to change it (Art. 15). Though the ICCPR does not refer specifically to this right, its Art. 24, which treats the status of children (see I.4.15), guarantees in paragraph 3 the

right of every child to acquire a nationality. The goal is clearly to keep down the number of stateless persons. The provision only obliges states to enable new-born children to acquire a nationality, not necessarily to grant their citizenship to every child. How and what conditions must be met to acquire nationality is regulated by national legislation, which, however, must not discriminate against new-born children on whatever grounds.

Under the Federal Constitution, acquisition and termination of Yugoslav citizenship is regulated by federal statute. Yugoslav nationals in fact have dual citizenship, that of the federal state and of one of its constituent republics. Yugoslav citizens may not be deprived of citizenship, expelled from the country, or extradited to another country (Art. 17, Federal Constitution). The constitutions of Serbia (Art. 47) and Montenegro (Art. 10) contain basically the same solutions as the Federal Constitution, and are in accordance with Art. 15 of the Universal Declaration.

Unlike its Federal and Montenegrin counterparts, the Serbian Constitution states that citizens of Serbia who also have the citizenship of another state may be may be deprived of their Serbian citizenship "only if they refuse to fulfill the constitutional duties of citizens" (Art. 47 (4)). On the other hand, the Federal Constitution states that every Yugoslav citizen is at the same time a citizen of a constituent republic, and gives the federal authorities the competence to regulate issues relating to Yugoslav citizenship (Art. 17 (1 and 2)). The possibility envisaged by the Serbian Constitution of depriving a person of Serbian citizenship could result in that person being a citizen of Yugoslavia but not of Serbia, which would be in contravention of the Federal Constitution.

The Socialist Federal Republic of Yugoslavia (SFRY), the breakup of which caused citizenship problems for great numbers of its people, had during its existence four federal statutes regulating citizenship: the Citizenship Act of the Democratic Federal Yugoslavia (1945), the Citizenship Act of the Federal People's Republic of Yugoslavia (1946), the Yugoslav Citizenship Act (1964) and the SFRY Citizenship Act of 1976 (*Sl. list SFRJ*, No. 58/76). The 1976 law was in effect when the country broke up. All the states that subsequently emerged in the territory of the former Yugoslavia have adopted their own citizenship legislation.

Less than five years after its enactment, the Yugoslav Citizenship Act (*Sl. list SRJ*, No. 33/96) was amended in March 2001 (*Sl. list SRJ*, No. 9/01). Also in March, another piece of legislation with a bearing on citizenship, but possibly even more significant for the development of a system based on legal security and human rights, came into effect. This was a law (*Sl. list SRJ*, No. 9/01) repealing a decree passed almost five decades earlier by the Presidium of the FPRY National Assembly under which the Karadjordjević royal family were stripped of their citizenship and all their assets confiscated (*Sl. list FRNJ*, No. 64/47). The new law envisages restoring Yugoslav citizenship to persons divested of it by a political rather than a legal act, while the restitution of their assets will be the subject matter of a separate law (Art. 2).

4.16.2. Acquisition of Yugoslav Citizenship

Yugoslav citizenship is acquired by origin, birth, naturalisation (acceptance) and international treaty (Art. 2).

Children of Yugoslav citizens irrespective of where they are born, and children with one Yugoslav parent who are born in Yugoslav territory acquire citizenship by

origin, i.e. *ex lege,* as do also children born abroad, one of whose parents is Yugoslav and the other unknown or a stateless person (Art. 7).

A child born abroad, one of whose parents is Yugoslav and the other a foreign national, acquires Yugoslav citizenship if one of the following requirements is met (Art. 8):

1) if, before the child attains the age of 18, the Yugoslav parent registers it as a Yugoslav citizen with a Yugoslav diplomatic mission (the child's consent is required if it is over 14; a child between the ages of 18 and 23 may apply itself);

2) if the child would be stateless unless granted Yugoslav citizenship.

Besides this basic criterion of origin, citizenship can also be acquired by birth. Thus children born or found in the territory of Yugoslavia acquire citizenship if their parents are either unknown or stateless persons.

The amendments adopted this year also changed one of the conditions for naturalisation (Art. 12). The earlier provision – that "it may be concluded from his behaviour that he will be a loyal citizen of Yugoslavia" – has been rephrased and now reads: "that it may be concluded from his behaviour that he will respect the legal order of Yugoslavia" (Art. 12, 1.5). Although the competent body still has discretionary rights with regard to naturalisation, they have been narrowed down by this more specific instruction. This removes the possibility of politically motivated decisions through arbitrary interpretation of the term "loyal citizen of Yugoslavia."

4.16.3. Dealing With Citizenship Problems Following the Breakup of Former Yugoslavia

The position of refugees, already hard hit by the wars and the economic crisis in FR Yugoslavia, was further aggravated by the discriminatory provisions of the 1996 Yugoslav Citizenship Act. Articles 47 and 48 of the law envisaged different grounds upon which people from the former Yugoslav republics (except Serbia and Montenegro) could acquire Yugoslav citizenship, in dependence on whether they took up residence in FR Yugoslavia before or after the promulgation of the new constitution on 27 April 1992.[75] Subsequent amendment of this law made it easier for refugees to resolve various problems in which citizenship played a part.[76]

Under the 1996 law, citizens of the former Yugoslavia who also had the citizenship of Serbia or Montenegro on 27 April 1992 were considered citizens of FR Yugoslavia, as were also their children born after this date (Art. 46).

Acquiring citizenship was made easier for two more categories:

> 1. Citizens of the former Yugoslavia who also had the citizenship of another republic (with the exception of Serbia and Montenegro), and *citizens of other states that emerged in the territory of the Socialist Federal Republic of Yugoslavia* (emphasis added), on condition that they were domiciled in the territory of FR Yugoslavia on 27 April 1992. The provision also covers children born to these persons after the promulgation of the Federal Constitution (Art. 47 (1)), Citizenship Act);

[75] See *Human Rights in Yugoslavia 2000,* I.4.1.2.3.

[76] See *supra* note 49.

2. Citizens of the former Yugoslavia who were citizens of a former republic other than Serbia and Montenegro and who accepted transfer to the Yugoslav armed forces as professional officers and non-commissioned officers or as civilians in the employ of the Yugoslav Army, and their spouses and descendants (Art. 47 (1)).

The first category has been expanded by the new legislation and now includes, besides citizens of the former Yugoslav republics, citizens of the states subsequently created in the territory of former Yugoslavia. These persons may have dual citizenship and the law no longer makes FR Yugoslavia citizenship conditional on their either declaring that they have no other citizenship or, if they have, on renouncing it (Art. 47 (4)).

Amendment of the Act also did away with the time-period within which FR Yugoslavia citizenship could be applied for. This was usually one year from the date of entry into force of the 1996 Act, but could be extended to three years for justifiable reasons. Upon becoming Yugoslav citizens, refugees lost their refugee status and many rights essential for their survival. Now, however, they can put off seeking citizenship until such a time as they are better off financially.[77]

A provision of the Act on "acceptance into Yugoslav citizenship" was also amended. This form of naturalisation was envisaged for citizens of the former Yugoslavia who, because of their ethnicity, religious or political affiliation, or advocacy of human rights and liberties, were forced to flee to the territory of FR Yugoslavia (Art. 48 (1)).

This category is differently defined in the amended Act. It now includes:

1. SFRY citizens who had the citizenship of another former Yugoslav republic, or *are citizens of another state that emerged in the territory of the former Yugoslavia* (emphasis added) and are in this country as refugees or displaced persons or have fled to foreign countries (Art. 48 (1));

2. SFRY citizens residing in Yugoslavia or abroad who do not have the citizenship of another state that emerged in the territory of former Yugoslavia (Art. 48 (2)), which in effect means stateless persons or persons who have in the meantime acquired the citizenship of a foreign country. The option of dual citizenship is also open to individuals who meet the cited requirements, and they are no longer required to declare that they have no foreign citizenship or to renounce it.

In keeping with the new definition of the category referred to in Art. 48 (1)), individuals applying for Yugoslav citizenship are now released from the obligation of providing proof that they were forced to flee their homes because of persecution. Such substantiation is objectively no longer necessary as the status of refugee, expellee or displaced person may be acquired under the Serbian Refugee Act (*Sl. glasnik RS*, No. 18/92) and the Expelled Persons Relief Decree (*Sl. glasnik RS*, No. 47/95), and the Montenegrin Displaced Persons Decree (*Sl. list RCG*, No. 37/92).[78]

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[77] See *Pravi odgovor*, No. 2, March 2001, p. 5.

[78] Montenegrin law designates refugees and expelled persons as "displaced persons." The term was borrowed in the amendments to the Yugoslav Citizenship Act, and therefore does not include internally displaced persons from Kosovo, the majority of whom are in any case Yugoslav citizens.

Whether or not the requirements for acquiring Yugoslav citizenship are met is by law determined by the federal and republican Ministries of Internal Affairs. Though the amendments have done away with their right to evaluate the reasons set out in the application, they retain their discretionary powers in making the decision, "taking in account the interests of the security, defence and international position of Yugoslavia" (Art. 48 (3)).

The watershed date remains unchanged. Citizens of the former Yugoslav republics, excluding Serbia and Montenegro, and now citizens of other states created in the territory of the former Yugoslavia, will acquire citizenship or be naturalised depending on whether their residence in FR Yugoslavia was registered before or after 27 April 1992. Those who arrived after this date are still in a somewhat less favourable position as their applications go to a body that retains discretionary powers, albeit reduced. While persons who were residents in Yugoslavia before 27 April 1992 acquire citizenship almost automatically, pursuant to the law prescribing the required conditions, the second category is accepted into Yugoslav citizenship on the basis of a decision of an administrative agency (Art. 48 (7)).

The possibility of dual citizenship was provided for as far back as 1996. Namely, Article 18 (2) of the Citizenship Act envisages the granting of dual citizenship on the basis of international agreements and on a reciprocal basis. Moreover, some provisions of the law directly make it possible: for instance when foreign citizens are accepted into Yugoslav citizenship for services rendered to this country and despite not having been released from their first citizenship (Art. 14).[79]

As the number of persons holding dual citizenship increases, the issue will inevitably arise of their legal status in the other countries of which they are citizens. Since it may be safely assumed that the majority will be from Croatia and Bosnia-Herzegovina, it should be noted that the Croatian Citizenship Act permits dual citizenship (Art. 2). Its Bosnian counterpart, however, makes dual citizenship conditional on the prior conclusion of bilateral agreements. Though FR Yugoslavia and Bosnia-Herzegovina have made such a bilateral agreement, it has not yet passed the necessary constitutional and legal procedure in Bosnia-Herzegovina and is therefore still without legal force.[80]

4.17. Freedom of Movement

Article 12, ICCPR:

> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. The above-mentioned rights shall not be subject to any restrictions except those 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.

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[79] See Vida Čok, *Pravo na državljanstvo*, BCHR, Belgrade, 1999, p. 102.
[80] See *supra* note 77 on new draft of agreement see more IV.3.2.1.

4. No one shall be arbitrarily deprived of the right to enter his own country.

4.17.1. General

All three Yugoslav constitutions guarantee freedom of movement and are in line with the approach taken in international human rights instruments. Article 30 of the Federal Constitution lays down:

> Citizens shall be guaranteed freedom of movement and residence and the right to leave and return to the Federal Republic of Yugoslavia.
>
> The freedom of movement and residence and the right to leave the Federal Republic of Yugoslavia may be restricted by federal statute, if so required for criminal proceedings, to prevent the spread of contagious diseases, or for the defence of the Federal Republic of Yugoslavia.

Freedom of movement is treated in a similar manner in Article 17 of the Serbian Constitution, while the Montenegrin Constitution is less precise: though its Art. 28 (1) guarantees freedom of movement and of residence, it fails to mention the freedom freely to leave or return to Montenegro.

4.17.2. Restrictions

The way possible restrictions on freedom of movement are formulated by the three constitutions is in accordance with international standards. They prescribe that restrictions may be imposed only by law and if necessary to attain a legitimate goal. The constitutions list few reasons for derogation from this right, and use more narrow formulations than is the case with the ICCPR.

On 7 November 2000, shortly after taking office, the new Federal Government revoked a 1993 Decision on the payment of a special tax on foreign travel (*Sl. list SRJ*, No. 61/00), thereby doing away with a non-legislative act that directly circumscribed the constitutional rights of Yugoslav citizens.

The Federal Constitutional Court (*Sl. list SRJ*, No. 5/01) found that Articles 11, 14 and 15 of the Serbian Act on Internal Affairs, which regulated arrest and detention and freedom of movement, were not in conformity with the Federal Constitution since the subject matter is exclusively within federal jurisdiction.

On 29 March 2001, the Federal Constitutional Court ruled (*Sl. list SRJ*, No. 15/00) unconstitutional an article of the Act on Yugoslav Citizens' Travel Documents (*Sl. list SRJ*, Nos. 33/96, 49/96, 12/98, 44/99, 15/00, 7/01 and 71/01). Under this disputed provision, the agency to which an application for a passport or visa was submitted could, at the request of the competent authority, refuse to issue it if it was determined that the applicant was intending to leave the country in order to evade paying tax or customs duty (Art. 46 (1.4)). In the opinion of the Court, this restriction could not be subsumed within the constitutionally allowed restrictions on freedom of movement, i.e. “if so required for criminal proceedings, to prevent the spread of contagious diseases, or for the defence of the Federal Republic of Yugoslavia” (Art. 30 (2)), Federal Constitution), “since the disputed article of the federal statute prescribes a restriction on the right of a citizen to leave FR Yugoslavia also in cases when no criminal proceedings or legally prescribed actions for the conduct of criminal proceedings have been taken against him.”

On the same grounds, the Federal Constitutional Court in January 2001 ruled unconstitutional article (*Sl. list SRJ*, No. 7/01) an article of the federal statute on Travel Documents of Yugoslav Citizens. Under this provision, the authority issuing passports or visas was bound, at the request of an interested party, the legal guardian of the party, or the child welfare authority, to deny applications if it was established that the applicant was intending to leave the country in order to avoid payment of alimony, child maintenance or an obligation ensuing from marital or parental relations (Art. 46 (1.3)).

Under the same statute, the Ministry of Internal Affairs may, at the request of the competent military authority, refuse to issue a passport to an applicant if it is established that his intent is to avoid military or other service in the armed forces. When applying for passports, men of military age are required to present also the competent military authority's approval in writing for them to travel abroad (Art. 43 (1)). This reason to restrict freedom of movement may be subsumed within one of those listed in the Constitution: defence of the Federal Republic of Yugoslavia. The statute, however, literally cites this constitutional ground as a separate reason to deny issuance of a passport or visa (Art. 46 (1.7)). The reason for the concurrent existence of two different grounds for restricting freedom of movement, one of which may be subsumed within the other, remains unclear.

Furthermore, Art. 46 (1.5) grants broad discretionary powers to an administrative body in determining whether the intention of an applicant requesting a passport or visa is to avoid military service or if he has some other, "permissible," reason for leaving the country. These provisions could result in unconstitutional restrictions or even suspension of the right of everyone to leave his own country.

4.18. Economic, Social and Cultural Rights

The constitutions of the federal state and its two constituent republics lay down the principles of the social rights of citizens and of specific groups (children, women, mothers, the elderly), and these are more closely regulated by the statutes and ancillary legislation of the republics. Organisations in which social rights are realised are in the category of public-service institutions.

The 1991 Public Services Act paved the way for private initiative in the spheres of social and cultural rights but did not make it possible for the private sector to apply for financing from public funds and the state budgets (Art. 10), reserving this exclusively for state public-service institutions. Hence, even though it has been almost 10 years since the law was passed, private institutions are not integrated in the sub-systems of medical care, social welfare, child care, education and others, either in terms of organisation or of financing. State public-service institutions retain a monopoly, particularly with respect to the use of funds raised through taxes and contributions, mainly those levied on personal incomes. The result is an non-transparent and legally undefined cohabitation of the private and state sectors in which personal connections and political and economic power groups hold sway.[81]

[81] An audit of the books of a leading Belgrade hospital, St. Sava's, following the dismissal of its director in October 2000 brought out that a part of the hospital had been leased to a private medical practice owned by the son of a nurse at the hospital (who as advisor to the director received a salary eight times higher than that of a full professor at Belgrade University). The director had sold two ultrasonographic devices and an

4.18.1. Right to Work

The right to work is explicitly guaranteed by the constitutions of Serbia (Art. 35) and Montenegro (Art. 52) but not by the Federal Constitution. All three constitutions guarantee the free choice of occupation and employment, and prohibit forced labour (Art. 54, Federal Constitution). Only the Serbian Constitution prescribes that employment and public office are equally accessible to all (Art. 54 (1)).

The Federal and Serbian Constitutions guarantee to an extent the safety of jobs by laying down that an employee's contract may be terminated against his will only under the conditions and in the manner stipulated by law and collective contracts (Art. 54 (2), Federal Constitution; Art. 2, Serbian Constitution). Decisions to terminate, which must include the grounds for dismissal, are taken by the chief executive officer and are final (Art. 65, Act on Bases of Labour Relations, *Sl. list SRJ*, Nos. 29/96 and 51/99). Termination as a disciplinary measure is possible only in cases of dereliction of duty specified by the relevant statute or collective contract. Here, again, the decision is taken by the chief executive officer and when the company or institution involved has a board of directors, the dismissed employee may appeal to it as the second instance (Art. 56 (2) of the Act).

The termination decision must be delivered to the employee in writing and citing the remedy available. The employee may institute proceedings before the competent court within 15 days of receiving the decision. The new Labour Act (*Sl. glasnik SR*, Nos. 70/01 and 73/01) specifies that proceedings in the first instance must be concluded within six months of their institution (Art. 122 (3)). Failure to execute a court decision on the reinstatement of a dismissed employee is punishable by fining and fines may be pronounced three times. When a termination is in violation of the law, the employer may be fined from 100,000 to 200,000 dinars (Art. 164 (1.4)), and the failure to execute a court decision to reinstate a dismissed employee is defined as a criminal offence (Art. 91, Serbian CC; Art. 75, Montenegrin CC).

Notice of termination is obligatory and may not be shorter than one month or longer than three months, or six months in Montenegro (Art. 55, Montenegrin Labour Relations Act, *Sl. list SRCG*, Nos. 29/90, 42/90 and 28/91, *Sl. list RCG*, Nos. 48/91, 17/92, 27/94, 16/95, 21/96 and 5/00 *Sl. list RCG*, Nos. 29/90 and 28/91). An employee may stop working before the notice period expires, in Serbia with the consent of his employer and in Montenegro by a decision of his employer, but is entitled to his wages until the end of the period.

The rights of employees made redundant by technological, economic or organisational innovations are also regulated by law. Under the Serbian Labour Act, the contracts of these employees may be terminated only if the employer is able to provide them with other work or retraining for other jobs (Art. 101 (1.8)). This provision, however, does not apply to companies and organisations with less than 50 full-time employees. When an employee has been made redundant, the employer may not hire another person for the same job for a period of three months and, should the need arise for such an employee within that period, the employee who was dismissed takes

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ECG to the private practice at bargain prices, and leased to it a state-of-the-art color Doppler device worth 250,000 deutsche marks, which was donated to the hospital by the Federal Customs Administration (*Blic*, 25 October 2000, p. 6)

precedence (Art. 101 (5 and 6)). Employees made redundant are entitled to severance pay based on the length of time they were employed (Art. 117).

The right to work includes the right to free assistance in seeking employment. Both republics have Labour Offices charged with implementing employment programs and balancing supply and demand with respect to the labour force. The Labour Offices assist persons seeking employment by providing information on the jobs available, professional orientation, retraining and refresher courses, and mediate between employers and job-seekers.

4.18.2. Right to Fair and Favourable Conditions of Work

The Yugoslav constitutions guarantee remuneration in accordance to work performed (Art. 55, Federal Constitution; Art. 36, Serbian Constitution; Art. 53 (1), Montenegrin Constitution).

The Act on Bases of Labour Relations lays down the right of employees to be paid for their work in accordance with the law and collective contracts. Earnings are paid at least once a month (Art. 48), and employees receive payment also for days when they do not actually work: annual vacations, paid leave, when on military reserve duties, public holidays and in other cases laid down by law and collective contracts. The law guarantees increased earnings when an employee works on a public holiday and for overtime and night work (Art. 49). Employees are also entitled to vacation bonuses, allowances for meals and transport to and from work, and the like (Art. 51).

To ensure the material and social security of the employed, the law envisages a minimum wage, which is fixed jointly by the government and unions and employer's representatives and in accordance with statute (Art. 84, Serbian Labour Act). If the three parties fail to reach an agreement on the minimum wage within 10 days, it is fixed by the government (Art. 84 (3)).

The right of employees to limited work hours, paid annual vacations and other leave is regulated by the constitutions in a general manner. The constitutions also prescribe the right to daily and weekly rest periods but without going into specifics (Art. 56 (1), Federal Constitution; Art. 38 (1), Serbian Constitution; Art. 53 (2), Montenegrin Constitution).

Full-time work is fixed at 40 hours per week. Under the law, employers are obliged to introduce shorter hours for persons working at particularly hard or hazardous jobs, in proportion to the potential ill effects on the employees' health or capacity. In Serbia working hours can be shortened maximum for 10 hours a week, and in Montenegro working hours of these persons cannot be less than 36 hours a week in Montenegro (Art. 17, Montenegrin Labour Relations Act; Art. 36 (1), Serbian Labour Act). An employee may work longer hours but no more than 10 hours per week except in cases specified by law, e.g. natural disaster, fire, explosion and the like (Art. 20, Act on the Bases of Labour Relations).

Where rest periods are concerned, employees are entitled to a 30-minute break each day, to 12 consecutive hours between two work days (with the exception of seasonal work when this period is 10 hours), to at least 24 consecutive hours between two work weeks, and to a minimum annual vacation of 18 work days. An employee may not be deprived of any of the rest periods envisaged by the statute, and is entitled also to paid

and unpaid leave in cases specified by law and collective contracts (Art. 26–31, Act on the Bases of Labour Relations).

Without going into details, the constitutions guarantee safety at work and prescribe special protection for women, young people and disabled persons (Art. 56 (2 and 3), Federal Constitution; Art. 38 (2 and 3), Serbian Constitution; Art. 53 (3 and 4), Montenegrin Constitution).

The Act on the Bases of Labour Relations makes it compulsory for employers to ensure the safety at work of their employees. A company may go into operation only after the competent inspector has established that all the required safety conditions have been met (Art. 18, Act on Enterprises, *Sl. list SRJ*, Nos. 29/96, 33/96, 29/97, 58/98, 74/99 and 9/01). The employer is obliged to inform employees of the hazards to their health or work ability, and of their rights and duties with respect to safety and work conditions. An employee may refuse to work if the prescribed safety measures have not been taken, but only if there is an objective threat to his life or health (Art. 33–34 of the Act).

To be assigned to a job which carries an increased risk of injury or occupational or other diseases, an employee must fulfill certain required standards with regard to physical and mental health and age. A potential employee must undergo a medical examination before assignment to a high-risk job, and after that at prescribed periods (Art. 30–35, Safety at Work Act, *Sl. glasnik RS*, Nos. 42/91, 53/93, 67/93, 48/94 and 42/98). To safeguard the health of the work force, the law also establishes shorter hours for persons working at hazardous jobs.

More detailed provisions relating to safety at work are contained in the Serbian Safety at Work Act and the Montenegrin Labour Relations Act. The two statutes and their ancillary legislation specify the obligations of employers with respect to the measures and means required to ensure safety at work. Compliance with the statutes, related legislation and collective contracts is supervised by the Labour Inspectorate, and violations can result in the closing down of a company (Art. 100 (1.1) of the Act on Enterprises) and, in some cases, in criminal prosecution (Art. 90, Serbian CC; Art. 74, Montenegrin CC).

The right of working women to 365 days of maternity leave is retained in the new Labour Act. An innovation is the right of the father to paid leave to care for the child in the period from when it completes its third month to its first birthday. The Act also retains some rights regarding the possibility of leave to care for a child with special needs and, for the first time, prescribes that a person who abuses sick leave may be dismissed (Art. 101 (1.7)). It also postpones the retirement age by five years so that men now retire at 65 and women at 60 years of age.

4.18.3. Right to Social Security

Social security is comprised of the rights to social insurance and to social welfare. Under the Yugoslav constitutions, social insurance is realised through compulsory insurance schemes for all employed and self-employed persons and farmers (Art. 58, Federal Constitution; Art. 55, Montenegrin Constitution; Art. 40, Serbian Constitution) and includes pension, disability and medical insurance. The Serbian Constitution is more specific.

It states that, through compulsory insurance and according to law, employed persons ensure for themselves medical care and other rights in the event of illness,

pregnancy, birth, reduction or loss of ability to work, unemployment, old age, and for their family members the right to medical care, family pensions and other rights deriving from social security (Art. 40). All these rights are more closely regulated by a number of statutes.

In 2001 the Pension Insurance Act was amended both on federal level (Act on Bases of Pension and Disability Insurance, *Sl. list SRJ*, Nos. 30/96, 58/98, 70/01 and 3/02) in Serbia (Act on Pension and Disability Insurance, *Sl. glasnik RS*, Nos. 52/96, 48/98 and 29/01). The Act on Social Protection and Provision of Social Welfare was amended as well (*Sl. glasnik RS*, No. 29/01).

The possibility exists under the law of voluntary insurance for persons who are not covered by the compulsory insurance schemes (Art. 16, Act on Bases of Pension and Disability Insurance, *Sl. list SRJ*, No. 70/01).

An insured person is eligible for an old age pension if he meets two requirements prescribed by the Act: a certain age and length of employment (Art. 22 of the Act). These are 63 years of age for men (58 for women) and at least 20 years of employment, or 65 years of age for men (60 for women) and at least 15 years of employment, or 40 years of employment for men (35 for women) and at least 53 years of age (Art. 22). Under the previous Act, the age of retirement was 60 for men and 55 for women. Two elements are used to calculate the amount of pensions: the pension base and length of employment. The pension base is the insured person's average monthly wage in any of 10 consecutive years of his employment that are the most favourable for him. The law sets a ceiling on the pension base of 3.8 average net wages in Serbia in the preceding year (Art. 10, Act on Pension and Disability Insurance, *Sl. glasnik RS*, Nos. 52/96, 48/98 and 29/01). The concrete amount of the pension is determined at a certain percentage of the pension base, in dependence on the length of employment. Again, the law limits this percentage so that an insured person has the right to a maximum of 85 percent of the tax base (Art. 35 (3), Act on Pension and Disability Insurance).

A disabled person has the right to a disability pension and other rights on the basis of his remaining ability to work, the right to retraining or acquiring additional qualifications, the right to be assigned to an appropriate full-time job, and the right to monetary benefits. The cause of the disability has no significance in the determination of the disability itself but does have an effect on eligibility for certain rights and their scope.

An employed person whose health has deteriorated to an extent that prevents him from working and cannot be improved by treatment or rehabilitation, is eligible for a disability pension on condition that his age (50 for men and 45 for women) precludes him from retraining or acquiring additional qualifications (Art. 45 (1), Act on Pension and Disability Insurance). If the disability was caused by a work-related accident or occupational disease, the person has the right to a pension regardless of the length of his employment and to the amount of 85 percent of the pension base. When the disability is due to an injury or illness not related to work, eligibility for a pension depends on the length of employment and its amount is determined on the basis of the insured person's sex, age at the time the disability occurred, and length of employment (Art. 48 and 49, Act on Pension and Disability Insurance).

In order to provide at least minimum means of living for those who have only a few years of employment and/or received very low wages when they worked, the law prescribes the lowest old age and disability pensions. The base for this pension is not the

average monthly wage over a ten-year period but the average net monthly wage in Serbia in the preceding year, and its lowest level is determined as a percentage of this base. The law also envisages the right to monetary benefits in cases of physical disability but only if work-related or caused by an occupational disease.

When a person covered by the compulsory insurance scheme or recipient of an old age or disability pension dies, his family acquires the right to a family pension, in dependence on which family members are involved (Art. 64–73, Act on Pension and Disability Insurance).

Pension and disability insurance affairs are administered by the republican Pension and Disability Insurance Funds.

Unemployment insurance is regulated by republican statutes: the Serbian Act on Employment and Rights of Unemployed Persons and the Montenegrin Employment Act. The three Yugoslav constitutions guarantee the right of temporarily unemployed persons to receive unemployment benefits (Art. 55 (2), Federal Constitution; Art. 36 (2), Serbian Constitution; Art. 53 (1), Montenegrin Constitution).

When a person loses his job, he becomes eligible for a monetary benefit on condition that he was insured for at least nine consecutive months or 12 non-consecutive months over the 18 months preceding the loss of his job (Art. 13, Serbian Act on Employment and Rights of Unemployed Persons, *Sl. glasnik RS*, Nos. 22/92, 73/93, 82/92, 56/93, 67/93, 34/94, 52/96, 46/98 and 29/01; Art. 28, Montenegrin Employment Act, *Sl. list SRCG*, Nos. 29/90, 27/91 and 28/91, *Sl. list RCG*, Nos. 48/91, 8/92, 17/92, 3/94, 27/94, 16/95 and 22/95). However, not every loss of job means that a person is entitled to an unemployment benefit, and the matter is differently regulated by the republican Acts, with the Serbian (Art. 12) prescribing when a person is eligible and the Montenegrin (Art. 31) when he is not. Generally speaking, a person who loses his job through his own fault or resigns, is not entitled to an unemployment benefit. These benefits are paid for a fixed time period, which depends on the length of the person's employment and ranges from three to 24 months (Art. 13, Serbian Act; Art. 33, Montenegrin Act), though the period may be longer in certain cases (Art. 15, Serbian Act; Art. 34, Montenegrin Act). The base for unemployment benefits is the average net wage the unemployed person received in the three months preceding his loss of job. The benefit is paid on a monthly basis although one-off payments are envisaged in certain cases. Unemployed persons receiving benefits also have medical and pension and disability coverage (Art. 27, Montenegrin Employment Act; Art. 8 (6), Serbian Medical Insurance Act). Matters relating to the rights of unemployed persons are administered by the competent Labour Offices.

In contrast to social insurance, funds for which come from the contributions employed persons pay from their incomes, financing of social welfare is from taxes.

The Federal and Montenegrin Constitutions lay down that the state provides social welfare for people unable to work and/or without means of living, while the Serbian guarantees social welfare only those who are unable to work and have no means of living (Art. 55, Montenegrin Constitution; Art. 58, Federal Constitution; Art. 39 (2), Serbian Constitution). The area of social welfare is regulated in Serbia by the Act on Social Security and Provision of Social Welfare and in Montenegro by the Act of Social and Child Protection. In 2001 Serbian Act on Social Security and Provision of Social Welfare was amended (*Sl. glasnik RS*, No. 29/01).

The basic right in this area is to welfare benefits, which in Serbia belongs to individuals or families whose income is below the subsistence minimum. The amount paid is determined in a percentage depending on the size of the family, and the base, which for social welfare is the average net wage in the municipalities or towns in the preceding quarter (Art. 11, Serbian Act on Social Security and Provision of Social Welfare, *Sl. glasnik RS*, Nos. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96 and 29/01). In its Art. 12, the Act envisages some additional conditions for social welfare. Welfare benefits are monthly and at the level of the difference between the average income of the individual or family concerned in the preceding quarter and the subsistence minimum (Art. 20, Serbian Act on Social Security and Provision of Social Welfare), and are index-linked to the average wage in Serbia. The subject matter is similarly regulated by the corresponding Montenegrin Act on Social and Child Protection (*Sl. list RCG*, Nos. 45/93, 27/94,16/95 and 44/01).

Other rights in the system of social security and welfare envisaged by the statutes of both republics include the rights to the care and nursing of a third person, assistance in job-training, and placement in a social welfare institution or foster family (Art. 37, Montenegrin Act; Art. 27, Serbian Act). The decisions on all these rights are taken by the competent social welfare agencies.

4.18.4. Protection of the Family

Under the Federal Constitution, the family, mothers and children enjoy special protection of the state, and illegitimate children have the same rights and duties as legitimate children. The republican constitutions also guarantee protection of the family, mothers and children, and comprehensively regulate this area. Both prescribe that parents have an obligation to care for their children, ensure their upbringing and education, and the obligation of children to care for parents who are in need and require assistance (Art. 61, Federal Constitution; Art. 27 and 29, Serbian Constitution; Art. 58 and 59, Montenegrin Constitution).

Employed women enjoy special protection under the labour relations statutes, on the grounds of their physical and psychological characteristics as well as pregnancy and motherhood. All the Yugoslav constitutions guarantee special protection of working women, young people and disabled persons (Art. 56 (3), Federal Constitution; Art. 27 and 29, Serbian Constitution; Art. 58 and 59, Montenegrin Constitution). The majority of these rights are regulated by the Federal Act on Bases of Labour Relations. Identical provisions are contained in the corresponding Serbian Act, which adds some further regulations, while the Montenegrin Act has very little to say with respect to the special protection of women and young people.

Under the Act on Bases of Labour Relations, women cannot hold jobs involving extremely hard physical labour, or work underground or underwater, or jobs that could have a harmful effect on their health or constitute a risk to their life (Art. 35 (1)). Furthermore, a pregnant woman cannot work at a job that could threaten her pregnancy or the development of her unborn child (Art. 35 (2)), and there are restrictions on her working overtime or at night. Pregnant women and women with children below the age of three may not work overtime or at night. Exceptionally, a woman with a child over the age of two may work at night but only if she specifically requests this in writing. Single parents with a child up to the age of seven or a severely handicapped child may work

overtime or at night only if they make a written request to this effect (Art. 36 Act on Bases of Labour Relations, Art. 68 (3), Serbian Labour Act), and women holding jobs in industrial or construction enterprises may work at night only as an exception (Art. 40, Act on Bases of Labour Relations).

Maternity leave is a basic right of working women. A pregnant woman may start her leave 45 days before her due date or at the latest 28 days before the due date (Art. 37 (3), Act on Bases of Labour Relations). The duration of maternity leave is until the child's first birthday (Art. 37). In its Art. 69, the Serbian Labour Act stipulates that maternity leave for a third child lasts until 365 day from the due day. If the child is stillborn or dies before the mother's maternity leave expires, she has the right to extend the leave until she recovers from the loss of the child. The minimum period stipulated by law is 45 days, during which time the woman enjoys all the rights accorded to women on maternity leave (Art. 30, Act on Bases of Labour Relations).

A woman on maternity leave receives a benefit equaling the income she would earn at her job, on condition that she was employed for at least six months. If she does not meet this requirement, she receives a percentage of the base (Art. 13, Serbian Act on Child Welfare, *Sl. glasnik RS*, No. 49/92, 29/93, 53/93, 67/93, 28/94, 47/94, 48/94, 25/96 and 29/01; Art. 73, Montenegrin Act on Social and Child Protection). Besides the maternity benefit, the Montenegrin statute also envisages a benefit of 50 percent of the lowest wage in the republic for unemployed new mothers who are registered as job-seekers with the Labour Office or are full-time university students. This benefit is paid for a period of 270 days following the birth of the child (Art. 81 and 82).

If the condition of a child requires special care or if it suffers from a severe disability, the mother has the right to additional leave (Art. 37 (1), Act on Bases of Labour Relations). In Serbia, on of the parents can choose between leave and working only half-time, for 5 years maximum, in which case she/he is paid for the time she works and receives compensation for the rest in accordance with social insurance regulations. The Montenegrin Labour Relations Act envisages that a working woman with a physically or mentally disabled child may work half-time up to the child's third year (Art. 40). Under republican statutes, one parent (only the mother in the case of Montenegro) may take leave from work until the child's third birthday, with their labour rights and duties remaining dormant during this period. Only Montenegrin law envisages continuing medical and pension insurance for mothers who take this kind of leave (Art. 75, Serbian Labour Act; Art. 42, Montenegrin Labour Relations Act).

The law to an extent guarantees a woman's job during pregnancy, maternity leave and additional leave, during which periods she may not be made redundant but may be dismissed on other grounds (Art. 38 (3), Act on Bases of Labour Relations).

The above rights are guaranteed primarily to women but, in the event of a woman's death, if she is otherwise prevented from exercising them, or if she abandons the child, they devolve to the father if he is employed (Art. 38 (1)), Act on Bases of Labour Relations.

Other rights, most importantly child benefits, are provided for by the statutes of the republics. In Serbia, a family's first three children receive benefits, with the sum depending on the financial circumstances of the family, and with the third child being eligible for a benefit regardless of the financial circumstances of the family. These benefits are paid until the child attains the age of 19, on condition that it is acquiring an

education (Art. 21–29, Child Welfare Act). The legal provisions in Montenegro are very similar except that child benefits do not depend on the family's financial circumstances. The amount of the benefit depends on the child's age, what school it is attending and psychological and physical condition (Art. 42–50, Montenegrin Act on Social and Child Protection).

All the Yugoslav constitutions guarantee special protection for children, including at work. The Montenegrin in addition prohibits abuse of children, and their working at jobs that could impair their health and development (Art. 61). Labour legislation sets the lowest age for admission to employment at 15 (Art. 7, Act on Bases of Labour Relations), and employees under the age of 18 enjoy special protection. Like women, minors may not hold jobs involving hard physical labour, work underground and underwater, and other jobs that could imperil or adversely affect their health, nor may they work at night. Shorter hours may be envisaged for minors by either collective contracts or company rules. Minors employed by construction, industrial and transport companies may not work at night (Art. 41).

4.18.5. Right to Health Care

The Yugoslav constitutions guarantee to everyone the right to health care and stipulate that children, pregnant women and the elderly who are not covered by insurance schemes are entitled to free medical care (Art. 60, Federal Constitution; Art. 30, Serbian Constitution; Art. 57, Montenegrin Constitution). Besides these constitutional rights to health care, employed persons and their families are also entitled to health care under the compulsory insurance scheme.

Health care is in the purview of the republics, whose relevant statutes are very much alike. In Serbia, the area is regulated by the Medical Insurance and Health Protection Acts, and in Montenegro by the Act on Health Protection and Medical Insurance.

Insurance is compulsory under republican laws, which also envisage the possibility of voluntary insurance for those who want broader medical coverage or those not covered by the compulsory scheme. The law designates which categories are to be covered by the compulsory insurance scheme and whose contributions for this purpose are deducted from their wages. The scheme also covers their family members.

Health care for uninsured persons without means of living is paid for from the republican budgets. The matter is somewhat differently regulated by the statutes of the two republics. In Serbia, these are children up to 15, or up to the end of their regular education, which may be up to the age of 26 at the most, pregnant women and mothers, persons over the age of 65, handicapped and disabled persons, persons on social welfare, and persons suffering from specified serious illnesses (Art. 7 and 8, Serbian Health Protection Act, *Sl. glasnik RS*, No. 17/92, 26/92, 50/92, 52/93, 53/93, 67/93, 48/94 and 25/96). Funds for the prevention and combating of epidemics, and preventing and eliminating the consequences to public health of natural disasters and similar also come from the Serbian state budget.

Instead of specifying categories, the Montenegrin Act on Health Protection and Medical Insurance envisages forms of obligatory health protection for all citizens of the republic, including those who are unable to work, have no means of living and are not covered by another insurance scheme. These include the prevention, diagnostication, and

treatment of specified serious illnesses, medical care for women who are pregnant and during childbirth, and persons over the age of 65 (Art. 32 and 22, Montenegrin Act on Health Protection and Medical Insurance, *Sl. list RCG*, Nos. 39/90, 21/91, 48/91, 17/92, 30/92, 58/92, 6/94, 27/94, 30/94, 16/95, 20/95, 22/95 and 23/96).

The basic rights under the compulsory insurance scheme are to medical care, compensation of earnings while a person is unable to work, travel expenses related to medical care, and reimbursement of funeral costs.

Health care includes preventive and control measures, treatment, medicines, rehabilitation and the like, and is more closely regulated by the regulations of the Medical Insurance Office, which covers the costs specified in its regulations while other costs are borne by the insured. The law also provides for the possibility of insured persons participating in the costs, which means that they in fact pay extra. Participation in the costs of obligatory forms of health care is ruled out in Montenegro (Art. 1, Montenegrin Act on Health Protection and Medical Insurance) and is restricted in Serbia by the law stating that it may not be as high as to deter persons from seeking medical care (Art. 29, Serbian Act on Medical Insurance, *Sl. glasnik RS*, Nos. 18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 46/98, 54/99 and 29/01).

The right to medical treatment abroad is very limited. In Serbia it is guaranteed only to children below the age of 15 who suffer from an illness or condition that cannot be treated in Yugoslavia. Montenegrin law sets no age limit for treatment abroad (Art. 31, Montenegrin Act on Health Protection and Medical Insurance; Art. 27, Medical Insurance Act).

The right to compensation of earnings belongs only to insured persons and does not extend to their family members. Compensation is paid if a person is temporarily unable to work because of an illness or injury, if they are nursing a sick family member, or are accompanying a family member who has been referred to a medical institution in another place, and only for those days the insured would be paid pursuant to labour relations regulations. The base for determining the amount of compensation is the net wage of the insured person in the preceding month and may not be below 70 percent or above 85 percent of the base. If the illness or injury is work-related, the compensation is 100 percent of the base. This is also the case when an insured person donates tissue or organs, and when a woman is maintaining her pregnancy but on condition that she has the required length of employment. If not, the compensation she receives is lower but not less than 80 percent of the base. The law also stipulates that the lowest compensation may not be below the net guaranteed wage.

As a rule, the rights ensuing from insurance are decided upon by the Medical Insurance Office and its local offices. Decisions may be appealed, with the second-instance decision being final. Administrative litigation against a final decision is not allowed but remedy may be sought before the competent court (Art. 68, Serbian Medical Insurance Act).

Article 3 of the Act states that the republican Medical Insurance Offices may introduce voluntary insurance schemes for persons not covered by the compulsory scheme or those who want broader coverage. Private insurance companies have appeared over the past few years (e.g. Belgrade's Anlave Clinic) but it is not known how many people are insured through them, who in fact owns these companies, or what guarantees they provide for the functioning and reliability their systems.

A voucher system for payment of medical services in the private sector by persons covered by the compulsory scheme has not yet been introduced. These persons can realise their rights only in the public sector and pay the full costs of treatment in private hospitals and clinics.

The Serbian government's Planned Network of Medical Institutions Decree (*Sl. glasnik RS*, No. 13/97) determines the type, number, structure and location of state medical institutions and the number of hospital beds. The basic criterion for establishing medical centres, clinics, pharmacies, medical stations and similar is the size of the population of a district. The law does not envisage mobile medical teams to make care more accessible to people in distant villages and sparsely populated areas. To the contrary, the whole concept is centred on cities and tailored to the needs of densely populated areas.

In 2001, a group of experts of the Centre for Policy Studies came out with a study entitled "Guidelines for Reform of the Health Care System in the Republic of Serbia." The study identifies the key areas of reform, suggests possible solutions and defines the process of the implementation and evaluation of reform decisions. The main goals of reform would be to ensure fairness in the use and financing of the health care system, its overall effectiveness and financial and institutional sustainability, and continual upgrading of its work and the services it provides. Some of the principles on which the reform would be based are:

– Privatisation based on an evaluation of the state's and society's interests and which areas of the system could be given over to the private sector;

– An active approach to private medical practice and its inclusion in the health care system and its financing;

– Continued development of the compulsory medical insurance scheme; decentralisation of the existing Medical Insurance Fund and more autonomy for its regional offices; introduction of other forms of insurance, including voluntary and private;

– Increasing the participation costs of insured persons to between 10 and 15 percent of the total cost of medical care;

– Increasing the number of hospital beds to five per 1,000 inhabitants;

– Organising primary health care in medical centres (municipal level), with people having the right to choose their doctors; integration of private medical practice in the system of primary health care and contracting of medical care for individuals/families on the same terms as in the public sector; allowing private practices to rent space in municipal medical centres and to use their laboratories, X-ray facilities, administrative and clerical personnel, etc.;

– That the Medical Insurance Fund continue financing only primary dental care and emergencies, while other dental services would be given over to the private sector.

4.18.6. Housing

There is no mention of the right to housing in either the Federal Constitution or the constitutions of the republics.

The housing situation in Montenegro and Serbia is specific and requires explanation. Namely, in the 1991–1993 period, occupants of socially owned housing were able to purchase their apartments at very low prices, with the average price per

square meter being less than 100 deutsche marks. Due to the hyperinflation in 1992 and 1993, the price fell dramatically so that whole apartments were bought for under 100 marks. Before that, socially and state-owned apartments made up 24 percent of all housing in Serbia and Montenegro, and were located mainly in major cities (over half of Belgrade's housing, for example, was socially or state-owned), whereas close to 99 percent of all housing is at present privately owned.

A distinction should be made between socially owned apartments in the former Yugoslavia and the subsidised public housing provided in west European countries for needy members of society. In Yugoslavia, socially or state-owned apartments were allocated to people from all social groups though state and party officials, business executives, ranking military officers, and experts had better chances of being allocated an apartment and more say with regard to its quality, location and size. As inflation eroded the value of the national currency, they purchased their apartments at giveaway prices. This policy eliminated the most important source of financing for public housing and incentives for construction (subsidised loans, mortgages and the like) even though these possibilities are envisaged by the 1992 Housing Act.

The Housing Act (*Sl. glasnik RS*, Nos. 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98 and 26/01) regulates: 1) purchase of the remaining socially owned apartments; 2) renting of socially owned apartments; 3) the status of legal occupants of housing which is the private property of others. In all other areas, the market has taken over and housing is merely a commodity. Only in Art. 2 of the Act does it say that the "state takes measures to create favourable conditions for housing construction and ensures conditions for meeting the housing needs of underprivileged persons, in accordance with law." All the others elements designed to protect and assist vulnerable social groups and which exist in different forms in all European countries, are no longer a matter of interest or concern for state agencies in Serbia and Montenegro. The problem is further exacerbated by the fact that "underprivileged persons" in fact means people on welfare, that is, those below the line of absolute poverty. Hence the number of people who can hope for state assistance with respect to their housing needs is indeed negligible.

The state did, however, retain some of its rights under the previous Housing Act and certain elements of the housing policy of former Yugoslavia: allocation of new occupancy rights over apartments which were shortly afterwards purchased at low prices, and selective granting of easy-terms bank loans to high officials, which confirms the extent to which the *nomenklatura* was privileged and the law violated.[82]

The maintenance of the existing and construction of new housing is an acute problem. These matters are regulated by the Housing Act and its amendments (*Sl. glasnik RS*, No. 33/93). The Housing Maintenance Act (*Sl. glasnik RS*, No. 44/95) and its amendments (*Sl. glasnik RS*, No. 46/98) specifies in detail which work must be undertaken to maintain apartments and buildings, and obliges apartment owners to participate in the costs of capital repairs and maintenance in proportion to the size of their

[82] Documents that come to light after the political changes in October 2000 brought out the extent to which the Housing Act had been violated by government agencies and the parties making up the then ruling coalition. Although the 1992 Act did away with the system of allocation of housing (except in the case of persons on welfare), senior government, party and other officials were allocated large and luxurious apartment, which they then purchases at prices far below the market rate.

apartments. Noncompliance with the law and the absence of legal provisions making it obligatory for those whose neglect of their own apartments causes damage to other apartments in the building to pay compensate their neighbours have contributed to the poorer quality of housing and to the reduction in the value of real property.

Minimum housing standards are not fixed in either Serbia or Montenegro. Thus housing can be anything from shacks without running water, toilets and sometimes not even electricity, to luxuriously appointed mansions with swimming pools and tennis courts. This create insurmountable problems in statistically determining the number of substandard dwellings.[83]

Retired persons are the only vulnerable category of the population for which Special Regulations on Housing Requirements have been adopted (*Sl. glasnik RS*, No. 38/97). These matters are administered by the Serbian Pension and Disability Insurance Fund.

Municipal funds for building housing for indigent families are scant. No systematic record exists of the number of such apartments or their quality, nor are there fixed criteria for their allocation and use. In a recent ruling, the Constitutional Court designated the City Assembly as the body empowered to lay down uniform criteria for the allocation of these "solidarity" apartments, and companies, through their by-laws, to set the criteria under which the apartments are rented (*Sl. glasnik RS*, No. 1/01).

4.18.7. Physically and Mentally Disabled Persons

The Serbian Constitution guarantees to disabled persons training for jobs they are capable of performing and ensures conditions for their employment. Persons who are unable to work and have no means of living receive social welfare (Art. 40). For more details on social welfare for disabled persons, see I.4.18.3.

4.18.8. Nutrition

No constitutions or laws in Yugoslavia treat the right to proper nutrition. As a result, there are no food subsidies designed to improve the diets of the poorest and most vulnerable groups. The prices of some basic foods are "protected" to keep them at a relatively low level. Relief aid in food from foreign and domestic humanitarian organisations was distributed to refuges, the poor, the unemployed and other vulnerable groups through the Red Cross, and by churches and other humanitarian organisations.

4.18.9. Poverty

There is no fixed poverty line or an official estimate of the number of poor in Yugoslavia. A variety of international definitions are used in professional literature: one or two US dollars per day per person; below the regional or national average, complex indices of incomes required to meet basic needs, and the like. The category of "underprivileged persons and families" includes families with several members whose

[83] The Housing Act defines a dwelling as "A dwelling within the meaning of the present Act is one of more rooms *intended and suitable for habitation* which, as a rule, makes up a single unit with a separate entrance" (Art. 3). The definition in official statistics is: "a built unit consisting of one or more rooms with ancillary rooms (kitchen, pantry, entranceway, bathroom and similar, or *without ancillary rooms* and with one or more entrances" (emphasis added).

monthly income is considerably below the line of absolute poverty – one US dollar per day.

4.18.10. Education

The Federal Constitution stipulates that education is accessible to all under equal conditions. Elementary education, which lasts eight years, is compulsory and free (Art. 62). The relevant provision of the Montenegrin Constitution is identical (Art. 62), while Art. 32 of the Serbian Constitution states that tuition is not paid for regular education financed from public funds.

Though private schools are envisaged in the International Convention on Economic, Social and Economic Rights, Yugoslav law does not allow natural persons to establish elementary schools, reserving this only for the state (Art. 9, Serbian Elementary School Act, *Sl. glasnik RS*, No. 50/92; Art. 17, Montenegrin Elementary School Act, *Sl. list RCG*, No. 34/91).

The law expressly prohibits "political organisation and activity in schools and the use of school facilities for such purposes" (Art. 7, Serbian Elementary School Act).[84]

The Serbian government determines the number and location of schools in the republic and 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 for teachers and other staff, operating funds) is centralised through the Ministry of Education. The municipalities "provide funding for: professional training of teaching staff, transportation children who reside more than four kilometers from their school, transportation 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 transportation, parents may participate in the costs and their share is determined by the school. The law does not envisage the organising of bussing specifically for schoolchildren, even in sparsely populated areas where villages are dispersed. In such areas and when the number of children who have reached the age of enrollment in elementary schools is small, the law provides for the establishment of extension schools with combined grades. In the first four years of elementary school, combined grades may include two different grades, in which case the number of students is up to 20, or three or four grades when the number of students may be up to 15. The poor quality of instruction provided in such combined grades, and the decrepit schoolhouses they have at their disposal, often without running water, toilets, 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 the conditions for education that it lays down. It does, however, provide for the punishment of parents. Thus parents who fail to enroll a child in school or their child plays truant may be punished with a fine of 1,000 to 20,000 dinars or a jail term of up to 30 days (Art. 141).

Drafting of amendments to the Elementary Education Act is in the final stage. They relate mainly to the status, organizing and curriculum of religious instruction in schools,

[84] The law was grossly violated by the ruling coalition during the campaign for the 24 September 2000 elections when it organized a variety of events in schools at which its officials distributed to students gifts bearing their party logos. The events were extensively covered by the media controlled by these parties.

managerial supervision, and the prerogatives of school boards and parents' councils. Religious instruction and an alternative subject named Civic Education were introduced in Serbian elementary and secondary schools in the 2001/ 2002 year. Even though less than 50 percent of schoolchildren opted for either of these elective subjects, the Serbian government has apparently decided to make religious instruction, and probably Civic Education too, a permanent feature of the curriculum. The decision to introduce religious instruction has been strongly criticized by a significant segment of the professional and cultural communities on the grounds that it violates the principle of separation of church and state embodied in the Serbian Constitution.[85]

The draft amendments have nothing to say on the problems of children in rural areas where there either are no elementary schools or they are distant from their homes. The municipalities would continue to provide subsidized transportation for schoolchildren and, in addition, for handicapped children too. How poor municipalities will deal with these problems remains an open question. Although transportation for schoolchildren is already stipulated by law, municipalities in poor rural areas where the problem is most pronounced, have been unable to provide it.

The Ministry of Education is also preparing a sweeping reform of education in Serbia, and its project will probably have its public presentation in the first half of 2002.

5. Conclusions

1. Although Yugoslav law may be said to meet international standards in many areas, the structural defects of the legal system as a whole and it's non-compliance with important international instruments bring out the inadequacy of the human rights guarantees it provides. The rule of law has not been established in Yugoslavia, primarily because of the existence of numerous contradictory regulations, the fact that a series of laws are still on the books which impose restrictions on guaranteed human rights that are not envisaged by the Federal Constitution, and due to the absence of an independent judiciary.

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

3. A new Criminal Procedure Code was enacted in late 2001 and is to enter into effect in March 2002. Until then, application of the old CPC continues although it violates the Federal Constitution and denies rights Federal Constitution guarantees. Thus, for instance, police need not inform an arrested person immediately of the reasons for his arrest, although such an obligation is laid down by the Federal Constitution. Some defects were eliminated by the decisions the Federal Constitutional Court handed down

[85] For more details on religious instruction see I.4.8.

in 2000 and 2001. The new CPC provides better guarantees for suspects and defendants in criminal proceedings.

4. The legal system does not yet furnish effective legal remedies for human rights abuses, mainly because of the long-standing absence of an independent judiciary. Legislation regulating the structure and status of courts and judges underwent major amendments in the course of 2001, enhancing and protecting the principle of the independence of courts. Thus, for instance, supervision of the judicial administration and court budgets is now shared by the Ministry of Justice and the courts themselves, or more precisely, the Serbian Supreme Court.[86] All these laws with the exception of one enter into force in January 2002, and the effects of their application in practice remain to be seen. Consequently courts in 2001 had no supervision over their administrations or any influence with regard to the forming of their budgets, which adversely affected in particular the application of Art. 14 of the ICCPR stating that everyone is entitled to a fair and public hearing by an "independent and impartial tribunal."

5. Although the Federal and Montenegrin Constitutions prescribe for victims of human rights violations a specific remedy – lodging of constitutional complaints with the Federal and Montenegrin Constitutional Courts, respectively – this is interpreted in practice in such a way as to render it only a theoretical remedy.

6. The principle of proportionality with respect to restrictions on human rights is not recognised by either Yugoslav legislation or courts, which creates a potential for imposing restrictions that are not in accordance with the legitimate interests laid down by law. As far as derogation from human rights in a time of public emergency are concerned, Yugoslav law does not envisage that such measures must be to "the extent strictly required by the exigencies of the situation." The Serbian Constitution fails to stipulate which rights may not be derogated from even during a state of war, and the Federal Constitution does not cite the right to life as a right from which no derogation is permitted.

7. The guarantee of a fair trial in criminal cases was not adequately provided for in 2001 as the prosecution had no obligation to make all the evidence, both for and against the defendant, available to the defence, leaving the matter to the discretion of the public prosecutor. The new CPC prescribes this obligation.

8. Yugoslav legislation does not specifically guarantee the right of parents to ensure the religious and moral education of their children in conformity with their own convictions. Enjoyment of this right is very limited in practice as the establishment of private elementary schools is not possible in Yugoslavia. In 2001, the Serbian government passed a decree introducing religious instruction as an elective subject in elementary and secondary schools. Once chosen, however, the course has to be completed. Decree does not provide an answer is once made choice obligatory until the end of mandatory education (throughout elementary and secondary schools) or until the end of the school year in which it was made. This puts into question whether it is in fact elective, and places restrictions on religious freedom since this includes the right of individuals to adopt a new belief. Furthermore, only Churches designated as "traditional" are included in the program although there are no legal grounds in Serbia upon which a religion could be characterised as traditional.

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[86] Art. 67, Act on Organisational Structure of Courts, *Sl. glasnik RS*, No. 63/01.

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

10. Several provisions of criminal law make possible violation of the freedom of expression and the persecution of the press. This is particularly the case with "dissemination of false reports," a criminal offence whose extremely broad and vague definition in the Serbian Criminal Code may be exploited to persecute political opponents and restrict the freedom of the press.

11. Regulations governing the freedom of association allow an organisation to be banned on grounds that are not envisaged by international instruments. Also, individuals who have been convicted of criminal offences may not found political or trade union organisations, and employees of state agencies, professional soldiers and police are not allowed to strike.

12. The Serbian Constitution provides for a lower level of minority rights than the Federal Constitution. Since the provisions of the Serbian constitution are those applied in practice, ethnic minorities in the republic enjoy less protection than envisaged by the Federal Constitution. It should also be noted that no special legal remedies exist for the protection of the minority rights guaranteed by the Yugoslav constitutions, which makes them only declarations on paper.

II
HUMAN RIGHTS IN PRACTICE

1. Introduction

1.1. Sources – There were three main groups of sources for the present report: a) domestic press reports; b) reports of domestic non-governmental human rights organisations; and c) reports of international governmental and non-governmental organisations. These materials are referenced with the respective newspaper's/magazine's name or organisation's acronym followed by the date of publication.

1.2. National Press as a Source of Information – A total of 14 daily newspapers are published in Yugoslavia – ten in Serbia and four in Montenegro. Seven of them can be considered as politically relevant, and are on sale throughout the federation. Six weeklies in the FRY are politically relevant, five in Serbia and one in Montenegro.

For the purposes of this annual report, Belgrade Centre for Human Rights collaborators monitored five dailies (*Politika*, *Danas*, *Večernje novosti* and *Blic*, all published in Belgrade, and Podgorica – based *Vijesti*), and three weeklies (*NIN* and *Vreme,* published in Belgrade, and *Monitor,* based in Podgorica) – all three privately-owned.

The texts used came from the above publications, but some were also from the state news agency (Tanjug), the country's biggest privately-owned news agency (Beta), and some foreign news agencies.

According to media reports, there were considerably fewer human rights violations in Yugoslavia in 2001 than in the preceding year. In 2000, we found a total of 17,928 texts covering human rights issues, compared to 11,215 in 2001.

There were noticeable variations in the number of texts covering various subjects. Articles devoted to the International Criminal Tribunal for the former Yugoslavia (ICTY), based in the Hague, made up one-fifth of all texts surveyed in 2001, an increase of almost 100% over the preceding year.

Texts on the position of non-Albanians in the province of Kosovo and violations of their human rights made up 19% of the total, about one-third less than in 2000. This was because the media shifted their focus towards the ongoing changes in Yugoslavia. Also evident is a certain level of fatigue in the public in regard to issues concerning Kosovo, as well as the total dissappearance from the pro-government newspapers of texts strongly defending the earlier policies of the Serbian authorities on Kosovo and blaming the Kosovo Albanians, NATO and other foreign actors for all its problems.

There was a big increase in the number of articles devoted to the status of national minorities in Serbia; they made up 17.5 % of all the texts, the reason being the problems in southern Serbia, which were apparently resolved in principle in May 2001. The increase was also due to the work of the new authorities on the draft law on the status of national minorities, attended by a parallel pro-tolerance campaign, as well as attempts by the authorities to make right some of the individual injustices done to members of minority communities in the preceding period.

In contrast to 2000, when about 60% of all texts focused on political rights, peaceful assembly and freedom of speech, in 2001 these topics made up just one-fifth (about 20%) of the texts analysed.

The shares of texts on political rights (15%), the right to life (4.4%), the right to a fair trial (6.3%) and social and economic rights (4.8%) were determined by the specific situation in which the FRY was. The large share of texts on political rights was affected by the early general elections in Montenegro in April and the ongoing dispute between the Serbian and Montenegrin leaderships around the future of the federation. The right to life did not feature in so many texts due to any increase in the incidence of threats against the lives of political adversaries, as had been the case during the Slobodan Milošević period, but as a result of the authorities' efforts to find those responsible for a number of homicides committed in the preceding period and the discovery of several mass graves in Serbia believed to contain the bodies of ethnic Albanians killed during the conflict with NATO. The share of texts on the right to a fair trial grew as a result of the release of Kosovo Albanians from prisons in Serbia (on the basis of a federal Amnesty Act and a pardon granted by the Yugoslav president), and endeavours by the new authorities to correct earlier acts of injustice and to prosecute some former high officials suspected of unlawful activities. The number of texts on social and economic rights rose sharply after March, when the first negative albeit unavoidable consequences of the transition began to manifest themselves – mass layoffs, for example. Pressures by the private sector and company managers on trade unions, aimed at curbing the legitimate struggle for elementary workers' trade union rights, were also responsible for boosting the number of texts on these subjects.

Two other subjects seen to be more present in 2001 were discrimination and prohibition of torture, the reason being thorough media coverage of every case of discrimination or torture, rather than any actual increase in their incidence.

Table 1: The Number of Texts on Human Rights
in Yugoslav Newspapers in 2001.

PAPER	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Politika	278	281	272	197	220	202	180	203	135	109	149	139	2,365
Blic	320	319	247	186	215	205	166	205	171	148	155	153	2,490
Danas	251	331	227	157	220	188	193	218	164	142	143	174	2,408
Ve~ernje Novosti	214	257	235	215	212	144	164	163	141	123	139	159	2,166
Vijesti	148	114	112	85	116	80	83	94	81	91	92	124	1,220
NIN	13	20	20	13	15	15	15	21	22	18	20	12	204
Vreme	15	19	22	21	13	12	16	11	9	13	20	12	183
Monitor	16	14	18	22	10	14	10	15	11	12	21	14	177
TOTAL	1,255	1,355	1,153	896	1,021	860	827	930	734	656	739	787	11,213

1.3. Reports of domestic non-governmental organisations – List of reports, Press Releases and other published material used in this report:

a) Written Comments of the Humanitarian Law Center concerning the FR Yugoslavia for Consideration by the United Nations Committee against Torture, Humanitarian Law Center (HLC), October 2001;

b) Abductions and Disappearances of non-Albanians in Kosovo, 2001;

c) Monthly reports, Centre for Anti-War Action (CAA), 2001;

d) Monthly reports, Yugoslav Lawyers Committee for Human Rights (YUCOM), 2001;

e) *Agenda for Future*, Yugoslav Child Rights Centre (YCRC), 2001;

f) Centre for Free Elections and Democracy (CeSID) reports and Press Releases, 2001;

g) HLC Press Releases, 2001;

h) Helsinki Committee for Human Rights in Serbia Press Releases, 2001;

i) YUCOM Press Releases, 2001;

j) YCRC Press Releases, 2001;

k) Helsinki Committee for Human Rights in Sandjak, Press Releases, 2001;

l) Civic Parlament of Serbia and G17 PLUS Čačak, Press Releases, 2001;

m) Group 484, Press Releases, 2001.

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), UN Development Fund (UNDP) and Office for the Coordination of Humanitarian Affairs (OCHA), 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 Montenegro, Council of Europe (CoE) Report on the conformity of the legal order of the FRY with the CoE standards and CoE/OSCE Report on Assessment Visit to Serbian Prisons and Press Releases of the International Committee of Red Cross (ICRC) and its Book of Missing Persons in Relation to the Events from Kosovo 1998. 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), Institute for War and Peace Reporting (IWPR) and International Crisis Group (ICG).

2. Individual Rights

2.1. Prohibition of Discrimination

2.1.1. Discrimination on Ethnic Grounds – Discrimination, especially ethnically motivated, was among the most frequent human rights violations in the FRY in the past decade. Discrimination has not vanished after the changes, which took place on 5 October 2000. Reports by the media and non-governmental organisations monitored by collaborators of the Belgrade Centre for Human Rights, show that in 2001 the state did not practice discrimination, but in a number of cases tolerated it, i.e., did not prosecute those responsible for it. It is of serious concern that in some cases it was policemen who maltreated members of national minorities, especially Roma, including juveniles. The Yugoslav media looked into the phenomenon quite thoroughly.

An ultra-nationalist movement named *Obraz* (Honour), which openly advocates racism, anti-Semitism and intolerance, stepped up its activities in 2001; this is obviously one of the reasons for the increase in anti-Semitic incidents.

For the first time ever in the FRY, in 2001 a court ruled that an attack on the members of minority groups represented a criminal offense of inciting ethnic, racial and religious hatred, as prescribed by Article 134 of the Federal Criminal Code (CC).

In May 2001, Oliver Mirković (20) and Nataša Marković (20) were found guilty of inciting ethnic, racial and religious hatred and each sentenced to terms of imprisonment of six months, with two years suspended. The District Court in Niš said hatred against Roma was the reason for their assault on a 15-year-old Roma boy (D. A) and his father in Niš in April 2000.[87] (Humanitarian Law Center), Press Release, 17 May; *Danas*, 17 May, p. 24).

2.1.1.1. Violence Against Roma – In 2001 most discrimination cases which featured violence concerned Roma. Most of the perpetrators were policemen, and there was little reaction from the judicial branch.

In several recorded cases, policemen roughed up Roma in an effort to extort confessions that they had committed a criminal offence. NGOs which represented victims of discrimination and maltreatment filed criminal complaints with the competent prosecutors, who did not react to them.

According to a statement of the Human Rights Committee in Leskovac and the office of the Yugoslav Lawyers Committee for Human Rights (YUCOM), on 28 and 29 January 2001 eight Roma from the nearby village of Vinarce were savagely brutalised in the police station in Leskovac. Trajče Bakić, Miroslav Ajdarević, Daka Zekić, Srdjan Kurtić, Miodrag Bakterović, Dragiša Zekić, Sava Remić and Sadrija Kurtić were arrested after policemen went through their flats looking for illegal firearms without a search warrant (YUCOM Report, February; HLC, Press Release, 23 February). The eight were in detention for two days, during which time policemen beat them, withheld food and water and hurled racial abuse at them. Daka Zenić (76) said a policeman had constantly beaten him during the two days spent in detention and told him he was "Worse than Hitler for Gypsies and Jews" (HLC, Press Release, 23 February; YUCOM Report, February). Leskovac police said it had found on the group four-hand grenades, a handgun and 87 bullets (*Danas*, 23 and 26 February, and 1 March, p. 13). But this certainly cannot justify the illegal searches, arrests and attempts to extort confessions, and the racial abuse.

Attorneys for the above organisations lodged criminal complaints against Leskovac police officers and inspectors on the basis of reasonable suspicion that the following criminal offences had been committed: attempting to extort a confession (Art. 65 of the Serbian Criminal Code (CC)), maltreatment in the line of duty (Art. 66 Serbian CC), illegal arrest (Art. 63 Serbian CC) and the illegal search of a dwelling (Art. 69 Serbian CC) (HLC, Press Release, 23 February; YUCOM Report, February).

Two similar cases were recorded in Belgrade. In the first, four unidentified Belgrade policemen (Zvezdara local police station) on 5 March beat up 18-year-old Roma man Miroslav Milić to extort from him a confession that he had committed a robbery, in the process abusing him racially. The HLC filed a criminal complaint against

[87] See *Human Rights in Yugoslavia 2000*, IV.4.

them (HLC, Press Release, 9 March; *Danas*, 14 March, p. 22). In the second case, on 21 June Belgrade police took into custody an eleven-year-old Roma boy on suspicion of breaking into a car with some friends. The HLC said that dissatisfied with his response, the inspector who questioned the boy began to slap him and hit the palms of his hands and his back with a baton. The boy was released after being held for two hours in the police station. He lives in one of the Roma slums in Belgrade and belongs to a group of people who are "officially" non-existent, as he has no documents (HLC, Press Release, 30 July). Fearing revenge, the boy's family did not file a complaint. A few days after the HLC had issued its statement, the office of the Serbian Interior Minister sent a letter accusing the HLC of making "untrue and unverified claims" and asserting that the said event was not known to them and that the said child "had not been taken in by the Department for the Supression of Juvenile Delinquency, which is in charge of working with children" (HLC, Written Comments of the concerning FR Yugoslavia For Consideration by the United Nations Committee against Torture, November 2001).

On 7 May 2001, in the Bačka Topola police station, inspector Josip Fontanji and two unidentified policemen beat up Roma Stevan Brančić (38) and Saša Gojkov (28) in an effort to extract confessions that they had committed theft. Gojkov was abused on a racial basis by one of the two policemen. After Brančić and Gojkov did not confess, they were released (HLC, Press Release, 14 May). A medical examination conducted in Bački Petrovac found the two to have sustained light injuries (Group 484, Press Release, 14 May). The HLC filed a criminal complaint against the said police officers with the municipal prosecutor in Bačka Topola for suspected extortion of a confession and the infliction of light injuries (HLC, Press Release, 14 May). There were until the end of the year no media reports that an inquiry had been initiated into this case.

Other cases of violence against Roma were recorded in which there was no reaction from the authorities. The Fourth Municipal Public Prosecutor's Office in Belgrade rejected on 25 May a criminal complaint the Humanitarian Law Center had filed in August 2000 against unidentified police officers for the infliction of light injuries (Art. 54 Serbian CC) and maltreatment in the line of duty (Art. 66 Serbian CC); the officers were alleged to have beaten Roma, men, women and children, during the demolition of a slum popularly called *Antena* in the suburb of Surčin, in June 2000. On 7 June 2000 *Antena*, then home to a total of 126 people, mainly Roma refugees from Kosovo, was demolished with the help of bulldozers and a brutal police intervention (HLC, Press Release, 26 May).[88] According to the HLC, the complaint was rejected solely on the basis of a report from the Novi Beograd municipal police, which stated that policemen had only been assisting workers sent by the municipal authorities to demolish the slum. The public prosecutor did nothing to identify those responsible for the said criminal offence, but instead ruled solely on the basis of a police submission that reasonable suspicion that a criminal offence had been committed did not exist, although the complaint listed names of eyewitnesses and medical records about the injuries sustained by the victims of the police intervention (HLC, Press Release, 26 May; *Politika*, 26 May, p. 14).

Police violence against Roma in 2001 was reported in Novi Sad (12 June and 22 September), Raška (26 March), Užice, Požarevac and Belgrade (HLC, Written Comments concerning FR Yugoslavia For Consideration by the United Nations

[88] See *supra* note 87.

Committee against Torture, November; *Danas*, 23 April, p. 10; HLC Press Release, 27 September). There had been no information by the end of 2001 that any inquiries into these cases had been started.

The judicial authorities reacted more frequently to physical violence perpetrated by police against the majority population.[89] On 16 March, the Municipal Court in Kragujevac sentenced policeman Radomir Veličković to three months in prison and suspended him from service for a year for maltreatment in the line of duty. In February 1998, Veličković had brutally beaten Branko Kostić, a Roma, in the municipal open-air market in that central Serbian town (HLC, Press Release, 21 March; *Politika*, 18 March, p. 9).

In 2001, there were also acts of intolerance and aggressiveness towards Roma among the general population, notably by skinheads. On 11 March, a group of about 15 of them attacked a group of Roma in the Banjica suburb. The skinheads threw rocks on a tram in which a group of about 30 Roma men, women and children were travelling. The Roma exited and a fistfight broke out in which five Roma were slightly injured. Two medical technicians from the ambulance sent to the scene conducted themselves improperly towards the injured Roma (HLC, Press Release, 14 March; *Danas*, 14 March, p. 22). There had been no information by the end of 2001 in the media that any inquiries into this case had been started.

During the night between 2 and 3 February, a number of persons attacked Cuci Nikolić (28) a Roma from Kovin (near Pančevo). Marko Marković, Vladimir Krstin, Dejan Lukša, a man called Žika – Ubica ("Killer"), and lawyer Zoran Koščal inflicted serious injuries on Nikolić in an effort to "punish" him for dating Koščal's daughter. There are indications that police inspector Zoran Despenić had known about the intent of the attackers, as he had told Nikolić before he was taken away by the men that they only wanted to talk to him. Despenić also did nothing to prevent the assault. Pančevo police arrested Koščal and the four others and said in a statement issued thereafter that the motive for the criminal offence "had not been racism, but the problematic past of Cuci Nikolić, which had bothered lawyer Koščal" (*Danas*, 9, 12 and 14 February, pp. 12, 4 and 22). What particularly provokes concern in this case is the fact that the assault had been organised by an attorney-at-law from Kovin (Belgrade Centre for Human Rights, Press Release, 11 February).

In the first half of August, a hand grenade blew up in a store owned by Kosta Nikolić, President of the Roma Association in Požarevac. No one was hurt in the blast. Nikolić said at the time that the attack was linked with "threats against members of the Roma community" (*Politika*, 14 August, p. 12). Similar incidents took place in Belgrade on 3 and 4 October. (HLC, Press Release, 17 October).

In Montenegro, the director of a primary school in the Željezara suburb in the town of Nikšić refused to enrol ten Roma children in the first grade, explaning that "the school has to take in another 15 children from the majority population". He also said the Roma children were aged eight or nine and had exceeded the age limit for enrollment in the first grade. The children, all refugees from Kosovo, lost time because they had attended preparatory classes in order to learn the Serbian language, which is in use in the school. Activists of the *SOS Telephone for Children and Women Victims of Violence* in Nikšić

[89] See more II.2.3.

described the case as "racism and discrimination". Following pressure by the public and an intervention by the republican authorities, the ten children were enrolled (*Vijesti,* 6 and 29 September, pp. 9 and 11, and *Monitor*, 14 September, p. 32).

There was also discrimination against Roma in the distribution of humanitarian aid. The Roma humanitarian association *Novi put,* based in Kragujevac, said that the *Stara Srbija* humanitarian association had refused to help Roma refugees from Kosovo. Representatives of *Stara Srbija* advised the Roma to "seek help from Roma" (Beta, 13 February).

2.1.1.2. Violence against Other Ethnic Groups – The incidence of nationalistic and anti-Semitic incidents rose in 2001.[90] Several anti-Semitic publications went on sale in general distribution. This subject will be covered in depth in the section on the hate speech in the chapter on freedom of speech (II.2.9.3). Cases of discrimination against ethnic Albanians, Goranci[91] and Bosniaks[92] were also recorded.

In February 2001, anti-Semitic graffiti appeared on the Synagogue in the suburb of Zemun, and in Belgrade on the Cinema *Rex* (during an exhibition about Roma), the Jewish Commune and the Jewish Cemetery. Racist messages were sprayed onto the walls of the Centre for Cultural Decontamination before a performance by a Roma theatrical group (HLC, Press Release, 15 February). In March, racist slogans appeared at several spots in Belgrade – "Death to Gypsies", "Serbia for the Serbs" and "Roma Out!" (*Večernje novosti*, 8 March, p. 15). Late in July, anti-Semitic and anti-Moslem graffiti appeared in Pančevo (*Politika*, 26 July, p. 14). Graffiti reading "Death to the Jews", "Democracy will not Save You from Serbian Revenge" and swastikas appeared on walls in Sombor, as did "Albanians Out!" and "Hungarians Out!" (*Danas*, 19 February, p. 10). On 6 July in Surdulica, southern Serbia (the date of the Brass Bands Ball)[93], swastikas and graffiti threatening and insulting Roma appeared on walls. Although the local authorities reacted at once and painted over the offending messages on the local Cultural Centre, the Hotel Srbija and the festival stage, they nevertheless greatly disturbed the local population, in which Roma make up one-third (HLC, Press Release, 6 July).

Early in March, unidentified vandals damaged a memorial plaque dedicated to Jewish victims of the war in Zrenjanin, and leaflets with anti-Semitic messages signed "Alliance of Serbian Nationalists" appeared in the town (*Blic*, 7 March, p. 8). Anti-Semitic slogans appeared at the Belgrade University Philosophy Faculty late in March. Their author is reportedly an association of students of the history department called *Sveti Justin Filozof*,[94] founded on 1 March, 2001 (*Politika*, 24 March, p. 12), which says its main objective is a "struggle against the enemies of the Serb people waged with all

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[90] The Alliance of Jewish Communes estimates that only 3,000 Jews live in Yugoslavia (*Danas*, 4 July, p. 4).

[91] Goranci (sing. Goranac), who inhabit the southernmost part of Kosovo, are of Slavic origin and Moslem faith. Their family names end in the same suffixes as Albanian surnames.

[92] The term *Bosniak* is used for the ethnic group in former Yugoslavia of Moslem faith living mainly in Bosnia-Herzegovina. This term is used in their inter-communication. The Draft Act on the Protection of National Minorities, prepared by a group of experts of the Federal Ministry for National and Ethnic Communities, uses the term *Bosniak* to describe citizens of Moslem faith.

[93] The Brass Bands Ball traditionally opens a three-day cultural festival called *Vlasinsko leto*, the most important annual cultural event in Surdulica.

[94] Saint Justin The Philosopher.

available means". According to an HLC statement, the association is a front for the ultra-nationalistic *Obraz* movement, which openly advocates racism, anti-Semitism, xenophobia and intolerance (HLC, Press Release, 1 March).[95]

President of the Alliance of Jewish Communes Aca Singer has said that the number of anti-Semitic incidents in Yugoslavia had grown (HLC, Press Release, 19 April). According to Singer, the origin of most of the incidents were *Obraz* and Žarko Gavrilović, a former Serbian Orthodox Church priest. *Obraz* has denied any involvement in efforts to intimidate Jews (IWPR Balkan Crisis Report, No. 288, 6 August).

Local head of the youth division of the League of Social Democrats of Vojvodina in Kikinda Raša Nedeljkov has said that in April threatening letters were received by some Jewish families in that town and swastikas painted on the facades of their homes (HLC, Press Release, 19 April). Leaflets with chauvinistic and racist content also appeared in Apatin (HLC, Press Release, 22 March).

Lawyer Mira Poljaković, Vice-President of the Jewish Commune and a member of the World Organisation of Jewish Women, was attacked on two occasions in Subotica, (*Blic*, 8 May, p. 9).

The Civic Parliament of Serbia, the Čačak branch of G17 PLUS, the Helsinki Committee for Human Rights and the local branch of the Social Democratic Union organised in Čačak on 31 July a debate on anti-Semitism in Serbia. The Civic Parliament and G17 PLUS said in a statement issued on 3 August that the gathering had been prevented by organised ultra-nationalist groups. There had been no reaction from the municipal authorities to the anti-Semitic messages which had remained posted for several days on the notice board of the Čačak municipality building, the venue of the debate (Civic Parliament of Serbia and G17 PLUS, Press Release, 3 August).

The Yugoslav and Serbian authorities and most political parties condemned the anti-Semitic outbursts. Yugoslav President Vojislav Koštunica extended his "most profound apology" to the Jews and Roma (*Politika*, 15 February, p. 8).

Ethnic Albanians and Goranci were also the target of discrimination in 2001. Nexhat Haliti, an ethnic Albanian from Beočin, was beaten up in March, and the assailants wrecked his store. Two policemen stood by and watched without reaction (*Danas*, 21 March, p. 22). Supporters of former Yugoslav President Slobodan Milošević demanding his release outside the Central Prison in Belgrade physically assaulted, abused and insulted a group of ethnic Albanian women who had come to visit ethnic Albanian prisoners (Beta, 23 June).

On 16 May 2001, Zoran "Lodja" Jurišić and six friends allegedly beat up in Sremska Mitrovica Asan Dauti (53) the owner of a bakery, and his son Bekim (24) solely on ethnic grounds. They also ordered the Dautis to move out of Sremska Mitrovica. Police did not inspect the site of the incident. The Dautis ended up in hospital – on their return to their home that evening, Jurišić telephoned them and threatened to kill Bekim if he singled him out as one of the attackers (HLC, Press Release, 25 June). It remained unknown at the end of 2001 if any inquiry into the incident had been carried out.

Shtjefën Kaqinari, a goldsmith and the only ethnic Albanian who still has a store in Leskovac, was early in July served with a court order to move out of the property. Kaqinari, a leaseholder for 16 years, was ordered to leave the store on account of delayed

[95] See more on *Obraz*, II.2.9.3.

payment of rent during the NATO bombing campaign in 1999. Although the order is legally valid, local sources say it is discriminatory because Kaqinari was the only one of about 100 Leskovac tradesmen who were all in a similar position to receive an eviction notice. Local journalists covering the case received anonymous threats (Beta, 20, 26 and 27 July).

On 26 October unidentified police officers beat up and ethnically insulted three ethnic Albanians in Preševo – Ekrem Sylejmani, Bejtulla Musahu and Avni Musahu. The Bujanovac-based human rights committee informed the Co-ordinating Body for Southern Serbia about the incident, after which police questioned the victims of the maltreatment and launched an investigation (HLC, Press Release, 12 November). It was not known by the end of the year if indictments had been filed against any of the assailants.

K. N. (17) a Goranac refugee from Kosovo, was beaten up in Vranje on 27 February by school-mates unhappy about his surname, which ends with a suffix commonly used for Albanian family names (*Danas*, 19 March, p. 10).

Late in August, police officer Dragoslav Krsmanović beat up a teenage Goranac R. I. in a central Belgrade green market, in the process hurling threats and abuse at the Goranci people. A similar incident had taken place in Vranje a few months earlier, in March 2001 (*Danas*, 25 August, p 15; HLC, Press Release, 11 September; *Danas*, 19 March, p. 10). There were no reports in the media of any investigations in connection with these cases.

In Cetinje, Montenegro, about twenty youths attacked schoolchildren, members of the Bosniak national minority from Bijelo Polje on a school trip (*Večernje novosti*, 11 June, p. 3).

Salih Papić, the owner of a sales booth in Belgrade, was brutally beaten allegedly for no reason whatsoever by a policeman (badge number 102291). The HLC issued a demand for an investigation into the case. Although the identity of the suspected perpetrator is known, there had been no information in the media by the end of 2001 of any criminal or disciplinary proceedings against him (HLC Press Release, 14 December).

Serbs also came in for discrimination along ethnic lines in 2001. Four Bosniak youths in Novi Pazar threw rocks late in May at a bus with schoolchildren from Kragujevac who were showing the Serb three-fingered sign as their bus was passing through Novi Pazar. Four pupils were slightly injured in the incident, and a criminal complaint was lodged against two of the four assailants for "inciting ethnic, religious and racial hatred, divisions and intolerance, with the use of violence," Novi Pazar local police said in a statement. After the parents of the Bosniaks sent a cable with apologies to the parents of the Kragujevac pupils, and monks in the *Djurdjevi Stupovi* monastery appealed for the boys not to be prosecuted, they were released from detention (*Danas*, 29 May, p.12 and *Blic*, 30 May, p. 9).

A second similar incident took place near Rožaj, Montenegro, where local ethnic Albanians pelted with rocks buses carrying Orthodox clergymen returning from visits to churches in Kosovo. The KFOR troops escorting the convoy did not react to the attack (*Danas*, 19 March, p. 22).

2.1.2. Discrimination on Political Grounds – This form of discrimination was not as widespread in 2001 as it was during the Milošević era, but there were nevertheless some cases in Montenegro.

The political struggle between the champions of full independence for Montenegro (the *Pobjeda je Crne Gore*[96] coalition*)* and those supporting its union with Serbia (the *Zajedno za Jugoslaviju*[97] coalition) resulted in a number of incidents. On the eve of the early parliamentary elections held on 20 April in Budva, where the pro-independence coalition controls the local authorities, the head of the local municipal inspectorate was sacked, allegedly because he supports the rival coalition (*Večernje novosti*, 26 April, p. 4).

Late in May, members of the Kuč tribe (local community) barred writer Sreten Petrović from holding a lecture on Marko Miljanov, one of Montenegrin most famous writers, because he is allegedly a supporter of the pro-independence coalition (*Monitor*, 11 May, p. 27).

In 2001, courts in Serbia began to redress the injustices made by the enforcement of the repressive Law on the University during the Milošević period, when over 50 Belgrade University professors and lecturers were sacked on the basis of the said law.[98] In 2001, some of them got back their jobs (*Blic*, 2 August, p. 6).

2.1.3. Discrimination on Religious Grounds – Besides the above-mentioned cases of discrimination against Bosniaks, Goranci and Jews, where ethnic and religious grounds are intermingled, in 2001 there were cases of religious discrimination, involving adherents of the Serbian Orthodox Church (SPC) and those of the Montenegrin Orthodox Church.

Three students of the SPC's seminary in Cetinje were attacked in February, as were two primary school pupils in March, allegedly because "their relatives are connected with the SPC" (*Danas*, 19 February and 24 March, pp. 24, 22).

2.1.4. Discrimination on Other Grounds – Other social groups – women and homosexuals – were also exposed to discrimination in 2001. The issue of the discrimination practice against women and their participation in political life in the Yugoslav society sparked off a number of debates. Women's organisations in Montenegro said just 5.1% of the deputies in the republican parliament were women, as were just 4% of the leadership of the ruling Democratic Party of Socialists (DPS), and an even smaller percentage (3.8%) in the leadership of the rival People's Party (NS). Just 3% of all directors in Montenegro are women (*Monitor*, 9 February, p. 30 and *Vijesti*, 14 May, p. 5).

Women make up no less than 60% of all unemployed in Serbia and fully 75% of all the university-educated jobless in Belgrade (*Danas*, 27–28 October, p. VIII).

Belgrade gays organised on 30 June, 2001, a public gathering to mark International Lesbian and Gay Pride Day. Extremists broke up the parade by force, while the police reaction was inappropriate in the circumstances (HLC, Press Release, 1 July).[99]

A group of young members of the Social Democratic Union (SDU), *Queeria LezBiGaz*, which promotes gay and bisexual rights, urged the authorities to legalise homosexual marriage, citing the full equality of all people guaranteed by the Constitution

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[96] "Victory for Montenegro".
[97] "Together for Yugoslavia".
[98] See more *Human Rights in Yugoslavia 1998*, IV.4.3.
[99] See II.2.10.

and international instruments for the protection of human rights (Tanjug, 30 January). The appeal is believed to have been the motive for an attack on SDU offices in Belgrade on 9 March when a groups of skinheads smashed up furnishings and beat party activists (HLC, Press Release, 9 March). Three days later, police took into custody six persons suspected of carrying out the attack and filed criminal complaints against them (HLC, Press Release, 12 March). It was not known at the end of 2001 whether any charges had been brought in connection with the incident.

In mid-September, a number of pupils of the "Milorad Musa Burzan" primary school in Podgorica boycotted classes after the school decided to place in their class an HIV-positive boy who had been individually tutored for four years for the said reason. Regardless of the medical certificate stating that the 11-year-old did not pose a threat to those around him, the childen and their parents stuck to their demand (*Vijesti*, 19 September, p. 4 and *Monitor*, 28 September, p. 22). The boy now goes to class with just two other boys – all others still refuse to be in his company (*Blic*, 20 December, p. 15).

2.2. Right to Life

Fewer violations of the right to life were recorded in 2001 than in the years which preceded it. Most breaches took place in the southern Serbian municipalities of Preševo, Bujanovac and Medvedja, and in Kosovo. Inquiries were begun during the year into murders and disappearances, which took place during the Milošević period. However, many of them have still not yielded any results, and it is still not possible to say that the judicial system in the FRY can guarantee fully efficient protection of the right to life.

Eminent lawyers of the Council of Europe have said that a key precondition for the establishment of a secure environment and an efficient protection of the right to life was finding and prosecuting those responsible for war crimes, crimes against humanity, and other crimes committed in the past. Their view is that co-operation between the Yugoslav authorities and the International Tribunal for War Crimes in the Former Yugoslavia (ICTY) is of paramount importance.[100]

2.2.1. Violations of the Right to Life in Armed Conflicts – In the first five months of 2001, a large number of low-intensity armed incidents were recorded in the southern-Serbian municipalities of Preševo, Bujanovac and Medvedja, parts of which are in the five-kilometre-wide ground security zone bordering Kosovo set up after the NATO bombings.[101]

Since the end of 1999, local ethnic Albanian terrorist groups rallied in the so-called "Liberation Army of Preševo, Bujanovac and Medvedja" ("LAPBM") carried out attacks on policemen, soldiers and civilians of Serb nationality. Late in 2000, the Yugoslav and Serbian governments set up a Co-ordinating Body for the South of Serbia in an effort to resolve the crisis in the area by political means (*Blic*, 5 June, p. 4).[102]

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[100] CoE Report on the conformity of the legal order of the FRY with the CoE standards, see *supra* note 49. See more about the Yugoslav authorities' co-operation with the ICTY in IV.2.

[101] The Zone was established by the military and technical agreement of the Yugoslav Army and NATO, on the basis of UN Security Council Resolution 1244.

[102] See *Human Rights in Yugoslavia 2000*, II.2.12.1, p. 240. Early in 2001, the Yugoslav and Serbian authorities drafted a Plan for Resolving the Crisis in Southern Serbia. The plan called for demilitarising the municipalities of Veliki Trnovac and Lučani and the ground safety zone from Kosovo under the supervision of representatives of the international community, integrating representatives of the ethnic

In the March-May 2001 period, on the basis of an agreement with NATO, the Yugoslav Army (VJ) and Serbian police returned to the security zone, while "LAPBM" members either handed over their weapons of fled to Kosovo (CAA Reports, February – May).[103]

According to information published in the media monitored by the Belgrade centre for Human Rights, in the three municipalities a total of 33 persons were killed in 2001. The Serbian Interior Ministry has said that the "LAPBM" carried out a total of 724 armed attacks, resulting in the deaths of six civilians, seven policemen and six VJ servicemen. A total of 45 persons were wounded – 18 soldiers, 13 policemen, 12 "LAPBM" combatants and two civilians – while 28 were abducted, all of them being released after several days in captivity (*Politika*, 18 December, p. 6).

Apart from the situation in southern Serbia, also relevant for an overview of the situation as regards the right to life in the armed conflicts in 2001 are the completed legal procedures in suits against the Republic of Serbia for the deaths of refugees who had been illegally forcibly mobilised during the conflicts in Croatia and Bosnia.[104]

2.2.1.1. Violations of the Right to Life by the VJ and Police – VJ soldiers and Serbian police have in the past years often threatened the lives of civilians, particularly those of ethnic Albanians in Kosovo. In 2001, the media monitored by the Centre reported just a few such incidents, mainly the result of exceeding authority. Their perpetrators were criminally prosecuted. Police officers Miroslav Matić and Zlatan Vuković, both from Belgrade, were arrested early in May under suspicion of killing Milisav Aleksić, a professional soldier in the VJ in a fight in Loznica on 1 May. Aleksić died of head and chest wounds allegedly inflicted by Matić and Vuković, who were off duty at the time (*Blic*, 3 May, p. 9).

On 2 June an unidentified VJ serviceman wounded Milan Lacković (23) near Šabac. The incident took place while soldiers were searching a car allegedly carrying contraband to the Republika Srpska (Bosnian Serb Republic). According to eyewitness accounts, the soldier kicked the door of Lacković's car, deforming it and blocking the lock, so that the driver could not get out, as he had been ordered to do. The soldier then shot Lacković with an automatic rifle and wounded him. In a protest over the incident, locals blocked roads in the area the following day (*Blic*, 4 June, p. 8).

A military court in Podgorica sentenced soldiers Igor Drakulić and Dragan Čupić to eight and ten years' imprisonment, respectively, for the murder of civilian Maksut Rashiti from Bar. (*Vijesti*, 6 March, p. 9).

After a break lasting three years, the trial continued in March of three Belgrade policemen who in 1995 beat to death Dušan Lukić (41) from Velika Moštanica. Lukić was arrested by the policemen and accused of stealing a car. They then beat him on the head and body for three days. Seriously injured, Lukić was taken to hospital, where he died (*Glas javnosti*, 9 March, pp. 12 and 13). There have been no reports that the trial had been completed by the end of 2001.

Albanian community in Serbian state and social systems and investing in the infrastructure and economy of the region, with the help of the international community (CAA Report, February).

[103] The agreements were signed in Merdare, on the Kosovo administrative border, on 12 March, 20 May and 15 August.

[104] See IV.3.

2.2.1.2. Investigations in Connection with Crimes by VJ Servicemen and Police in Kosovo – According to a report by the *Human Rights Watch* (HRW), about 2,000 ethnic Albanians were killed by Serbian police or the VJ in Kosovo between February 1998 and March 1999. At least another 4,000 ethnic Albanians were killed during the NATO air raids, between March and June 1999. According to data of the International Committee of the Red Cross (ICRC), a total of about 3,500 persons were reported missing in the said conflicts. In that period, Yugoslav forces expelled about 850,000 ethnic Albanians from Kosovo (HRW, Press Release, 26 April).

In April and May 2001, the VJ and Serbian Interior Ministry informed the public about investigations, indictments and procedures against policemen and soldiers in connection with crimes committed in Kosovo between 1 March 1998 and 26 June 1999.

Lt-Gen. Sreten Lukić,[105] head of the public security department in the Serbian Interior Ministry, said that inquiries were under way against 66 police officers suspected of having committed various criminal offences in Kosovo during the NATO bombing (*Danas*, 25 May, p. 2). The VJ Information Service has said that proceedings against 254 army personnel had been initiated and that a total of 183 indictments had been filed. The army said the said persons were "charged with criminal offences which resulted in the deaths or threatened the lives of people, personal dignity and ethics and property" (HLC, Press Release, 25 April). Early in December, the VJ Chief-of-Staff, Col.-General Nebojša Pavković, said that in 26 cases the actions involved were qualified as war crimes (*NIN*, 6 December, p. 14).

Urging the Yugoslav authorities to make more clear the nature of the proceedings and the content of the indictments, the HRW stressed that the focus should be on the authorities' obligation to co-operate in the surrender of indicted former senior state officials to the ICTY, while the said trials, regardless of how fair they were, could not be an alternative to co-operation with the Tribunal (HRW, Press Release, 26 April).

The HRW underscored that it could not be seen from the VJ statement how the courts intended to hear the testimony of those ethnic Albanians who were the key eyewitnesses of the alleged crimes and are now living in Kosovo, and whether the proceedings would be open to the public. But the VJ statement was also understood to be an indirect admission of the true scale and gravity of the crimes committed against Kosovo Albanians (HRW, Press Release, 26 April).

Colonel Vukadin Milojević, the President of the Military Court in Niš, said that during the state of war which existed in 1999 the court had handled investigations against 1,803 VJ servicemen, and that a total of 1,419 had been indicted.[106] He said a VJ officer and two soldiers mobilised from the army reserve had been sentenced for the murder of an Albanian couple,[107] and that another 169 VJ servicemen had been condemned for crimes committed against ethnic Albanian civilians and their property (Beta, 13 May).

Early in November, the Supreme Military Prosecutor, Colonel Nikola Petković, said that before the Military Court in Niš had recently brought charges against 13 VJ servicemen for crimes committed in Kosovo. A first-instance judgement had been issued

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[105] See more on General Lukić at p. 239.

[106] In June 2000, the District Court in Valjevo rejected all counts of an indictment filed by the military prosecutor in Niš against Stevan Jekić. Jekić had been accused of war crimes against civilians in Kosovo, and was freed due to a lack of evidence (*Blic*, 9 August, p. 9).

[107] See *Human Rights in Yugoslavia 2000*, II.2.2.2.

in one of the cases. Some of the accused are officers and others soldiers in the army reserve (*Politika*, 5 November, p. 13).

After the appointment of Gen. Lukić as head of the Interior Ministry's public security department, the HRW raised the question whether the new authorities were genuinely interested in changes. In 1998 and 1999, Lukić was in command of a police unit in Kosovo which allegedly committed "numerous crimes and violations of human rights, including torture, unselective assaults, forcible evictions and executions without a trial". Although the new Serbian authorities sacked Assistant Minister of the Interior Col.-General Vlastimir Djordjević and Lt.-General Obrad Stevanović, both close to the regime of Slobodan Milošević, in the view of the HRW Lukić's appointment raises the question of how interested the new authorities in Serbia are in real changes (HRW, Press Release, 2 February).[108]

The first trial before a court in Serbia for war crimes against the civilian population in Kosovo in 1999 began before the District Court in Prokuplje in July 2001. Saša Cvijetan from Novi Sad and another unnamed defendant who is at large are charged with taking part in the murders of 19 ethnic Albanians in Podujevo in March 1999. A criminal complaint, a request for an investigation and a request for the suspects to be held in detention were filed two years ago, but the court in Prokuplje decided to suspend the proceedings on account of a lack of evidence and to release the suspects.

In mid-November, the same court began a process against Ivan Nikolić, charged with murdering two ethnic Albanian civilians in the village of Penduh on 24 May 1999 (*Danas*, 15 November, p. 5). The same court sentenced Miloš Lukić to eighteen months' imprisonment for the murder of Hamdi Maloku from Podujevo, and acquitted Radoje Ivanjac, whom the military prosecutor in Niš had accused of murdering on 30 April 1999 an ethnic Albanian from the village of Livadica, near Podujevo (*Blic*, 7 August, p. 8). Both sets of charges were for ordinary homicide rather than war crimes.

In 2001, a number of mass graves were discovered believed to contain the bodies of Kosovo Albanians killed during the NATO intervention (March-June 1999). The bodies of 77 persons were found in two separate graves in Petrovo Selo, near Kladovo on the River Danube. Very close to a Serbian police training range in the Belgrade suburb of Batajnica, the remains of 305 people were dug up in two graves, and 48 bodies were found at a site near Lake Perućac. Most of the 430 bodies bodies showed evidence of injuries caused by firearms, some also showing signs of attempted incineration (Spanish news agency EFE, 29 October; *Vreme*, 1 November, p. 24 and *Blic*, 24 November, p. 9). No criminal complaint had been filed against the unidentified perpetrators or an investigation into the case launched by the end of 2001; all that was done were some preliminary investigative activities, throwing into doubt the will of the authorities to find those responsible for the crimes.

2.2.1.3. Missing Persons – Between the deployment of international forces in Kosovo (KFOR) 12 June, 1999 and 31 December, 2000, at least 932 non-Albanians vanished under unexplained circumstances or were abducted. Accord to an HLC report, during the clashes between Serb forces and the "Kosovo Liberation Army" which took place during the NATO raids, over 1,500 ethnic Albanians disappeared, most of them after men were separated from refugee columns, as did several dozen VJ soldiers and

[108] See several HRW reports, *Under Orders,* on <htpp://www.hrw.org/reports/2001/ kosovo>.

policemen. According to the ICRC, a total of 3,525 people disappeared in Kosovo between January 1998 and March 2001 (ICRC, Press Release, 12 July).[109] The fates of the missing persons remain unknown.

2.2.2. Violations of the Right to Life on Political Grounds – Several incidents were reported in 2001 which could be described as endangering the right to life for political reasons. The perpetrators of several armed attacks on senior officials of Serbian and Montenegrin government had not been found by the end of 2001. Inquiries that were begun into the politically motivated threats against life in 1999 and 2000 have not progressed very far.

Those responsible for the April 1999 assassination of journalist Slavko Ćuruvija, owner and editor of the independent daily *Dnevni telegraf*, have still not been found. The murder is believed to have been politically motivated.[110] The kidnappers of former Serbian Presidency President Ivan Stambolić, who disappeared in August 2000, remain unknown. This abduction is also believed to have been politically motivated. Serbian police offered in September a reward of DEM 300,000 for evidence helping to shed light on 22 unsolved murders, including the Ćuruvija and Stambolić cases (*Večernje novosti*, 12 October, p. 11). Police released early in November a photo-robot of one of Ćuruvija's assassins, but so far this has not led to any arrests (*Blic*, 7 November, p. 9).

In a letter to Serbian Prime Minister Zoran Djindjić in April, three Belgrade lawyers asked for "an immediate disbanding of a combat unit of the Serbian State Security Service (SDB) which had liquidated political opponents for the needs of the former regime, operating according to a death squad model". The lawyers claimed that men from the unit had been involved in the Ćuruvija murder and Stambolić abduction. The Serbian authorities denied the existence of any such unit (*Danas*, 17 April, p. 7).

Late in January, the then newly appointed head of the SDB was attacked in central Belgrade, and his driver was wounded (*Danas*, 29 January, p. 1). A fortnight later, also in central Belgrade, Serbian Interior Minister Dušan Mihajlović was the target of an assassination attempt (*Politika*, 16 February, p. 1). There are, however, indications that Mihajlović was on the scene of a gangland shootout quite by accident (*Vreme*, 22 February, p. 22)

Early in June, previously unknown organisation calling itself *Beli orlovi* (White Eagles) threatened to assassinate Nebojša Čović, Serbian Deputy Prime Minister and the head of the Co-ordinating Body for the South of Serbia. The organisation said they were angry over Čović's "deference," accused him of being an "American-Albanian mercenary" and advocated a get-tough policy of resolving the problems in southern Serbia (*Večernje novosti*, 21 June, p. 4).

On 3 August 2001 former Serbian SDB officer Momir Gavrilović was shot dead outside his home in Belgrade in what some believed was a politically-motivated assassination. The daily *Blic* claimed the murder had taken place a few hours after Gavrilović had met aides to Yugoslav President Vojislav Koštunica. According to *Blic*, Gavrilović was in possession of evidence about links between "certain highly-placed figures in the new Serbian authorities and organised crime bosses in Serbia". Koštunica confirmed Gavrilović had been in his office and that the subject of the meeting had been

[109] ICRC, *Book of Missing Persons in Relation to the Events in Kosovo from January 1998*.
[110] See more in *Human Rights in Yugoslavia 2000*, II.2.2.3.

the growth of crime in society and corruption. The Belgrade district prosecutor asked to see the minutes of the meeting and later said the document did not contain any grounds for initiating criminal procedures. The prosecutor's office said in a statement that "during the conversation with the president's aides, there was no mention of a single name of anyone in the Serbian Government or other state agency linked with organised crime figures" (*Blic*, 4 August, p. 9 and 8 August, p. 8; *Danas*, 10 and 14 August, p. 1, *Večernje novosti*, 4 September, p. 11). Gavrilović's murder was the cause of one of the biggest political conflicts in the leadership of the ruling DOS coalition seen until that date.

Darko Raspopović, high-ranking officer in the Montenegrin SDB, was murdered in central Podgorica early in January. The perpetrator of what is also thought to have been a poitically-motivated murder had not been found by the end of 2001 (*Monitor*, 12 January, p. 18).

2.2.3. Imperilment of General Security – The Supreme Court of Serbia overturned a decision of the District Court in Belgrade, which had ruled that there existed no grounds for initiating criminal proceedings against Rajko Unčanin, the general manager of the Belgrade firm *Grmeč*, and four other company executives, in connection with the 23 June 1995 explosion in a rocket-fuel production plant.[111] Eleven people died and nine others were seriously injured in the blast (HLC, Press Release, 3 March). The Supreme Court ruled that the District Court had not established the true cause of the explosion and had precipitately concluded that the factory's management was not to blame for it. The case was thereby returned to the first-instance court (HLC, Press Release, 3 March). No media reports had appeared by the end of 2001 that a fresh investigation of the incident had been launched.

Former Serbian Radio-Television (*RTS*) head Dragoljub Milanović was arrested in February 2001 on suspicion of having committed a criminal offense against general security.[112] Milanović, who is being held responsible for the deaths of 16 *RTS* employees killed in a NATO bombing raid of the *RTS* building in central Belgrade in the night between 23 and 24 April 1999 has denied any responsibility. Numerous witnesses had been questioned by the end of the 2001, but a verdict had still not been issued. Milanović was released from detention on 26 October (*Danas*, 24 April, p. 1; *Blic* 26 April, p. 6 and Beta, 9 and 26 October).[113]

The parents of some of the *RTS* employees killed have filed an appliation before the European Court for Human Rights (*Banković et al. vs. Belgium et al.*, app. No. 52207 (1999)) against 17 NATO member-countries who are also parties to the European Convention on Human Rights. The applicants are the parents of Ksenija Banković, Nebojša Stojanović and Darko Stoimenovski, all killed in the raid, the wife of Milan Joksimović, who also died, and Dragan Šuković, who was wounded. The Belgrade Centre for Human Rights collected materials for the application and its collaborators, together with a legal team from the United Kingdom, the United States and the Netherlands, represented the families before the European court, which declared aplication inadmissible on 19 December. The plaintiffs had demanded compensation in

[111] See *Human Rights in Yugoslavia 2000*, II.2.2.4.
[112] Milanović is also charged with abuse of office.
[113] See more on *Banković et al. vs. Belgium et al.,* on the website of the Belgrade Centre for Human Rights <http://www.bgcentar.org.yu>.

connection with a breach of the European Convention on Human Rights; they claimed that the countries against which they had filed the application had violated the right to life of the five victims guaranteed by the European Convention on Human Rights. They also claimed that treating the RTS building as a military target was contrary to international law and the European Convention.

2.2.4. Violations of the Right to Life on Other Grounds – Complaints against health professionals suspected of causing patients' deaths through negligence were quite frequent in 2001.

Legal procedures are under way against physicians in Belgrade, Subotica and Pljevlja (*Danas*, 22 May, p. 4; *Politika*, 17 July, p. 12; *Vijesti*, 13 June, p. 9).

Local authorities in some towns in Serbia showed negligence in regard to the disposal of environmentally harmful materials, provoking public outcry. Early in March, residents of Šabac warned that just half a kilometre away from a nursery school there was a dump containing over a thousand tonnes of pyrite, a carcinogenic substance containing arsenic (*Politika*, 7 March, p. 10). Residents of Bor staged protests in June over land contaminated with pyralen oil, which is also carcinogenic. The soil, contaminated during the NATO bombing, is believed by the people of Bor to have poisoned about 300 of them. The RTB mining and smelting complex, owner of the bomb-damaged transformer, which leaked the oil, cannot afford to decontaminate the land. Funds for the clean up are expected to come from foreign donors, but none had arrived by the end of 2001 (*Danas*, 11 June, p. 14).

2.2.5. Capital Punishment – The Yugoslav Parliament adopted alterations and amendments to the Federal Criminal Code (CC) abolishing the death penalty and replacing it with a 40-year term of imprisonment (*Blic*, 7 November, p. 6).[114] The Council of Europe, which Yugoslavia is keen to join as soon as possible, has warned that capital punishment is contrary to the Sixth Protocol of the European Convention on Human Rights.[115]

Late in January, the Federal Constitutional Court took under consideration a motion for establishing the constitutionality of those provisions of the Serbian CC under which certain criminal offences are punishable by the death penalty. At the time of writing of this report, Serbian and Montenegrin criminal codes still included capital punishment for certain crimes. There are currently in Serbia 20 persons on death row; no one has been executed since February 1992 (Beta, 31 January, *Blic*, 19 November, p. 6 and *Večernje novosti*, 24 November, p. 5). A total of five death sentences were handed down in Montenegro in the past six years, but none has been carried out. The last execution in Montenegro took place in 1980. (*Vijesti*, 15 October, p. 5). A court in Podgorica handed down a death sentence on 12 October (B92 Radio News, 12 October).[116]

The draft of new Serbian CC, now in parliamentary procedure, replaces capital punishment with 40 years in prison (*Blic*, 19 November, p. 8). If the bill is adopted, the

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[114] See I.4.2.1.

[115] *Call on Serbian Authorities to Abolish Death Penalty*, 9 April 2001, <http://press.coe.int7cp720017261a(2001).htm>.

[116] B 92 website at <http://www.b92.net>.

existing legally-binding death sentences would not be automatically replaced with jail terms; only the President of the Republic would be able to do this.[117]

2.3. Prohibition of Torture

Since the October 2000 democratic changes in Yugoslavia, the media have featured more reports of police maltreatment of citizens, and most cases have in fact reached the ears of the public – this means that their overall number has most likely not increased, but that more is known about them than would have been the case in the past.

There are reasons to believe that there is severe maltreatment in police detention in order to extort information in criminal investigation.[118] The practice of police brutality continued in 2001, even against juveniles. Cases have been recorded of the brutal and degrading treatment of Roma children by policemen bent on extorting confessions.[119]

In some cases the authorities were seen not to have carried out proper inquiries into suspected instances of torture, inhuman and degrading treatment and punishment. This is certainly a violation of the prohibition og torture, because the state not only has a duty to protect the physical and mental integrity of individuals, but also investigate all violations (*Assenov et al. vs. Bulgaria*, App. No. 24760/94 (1998)).

Courts granted damages to activists of the *Otpor* movement in cases where they found that they had been illegally arrested and/or maltreated by police in 2000.

On 11 May 2001 the first-ever ruling was issued by an international body in charge of the protection of human rights in connection with a petition filed against the FRY. The UN Committee against Torture (CAT) ruled positively on a petition the HLC submitted on behalf of Radivoje Ristić, the father of deceased Milan Ristić. The CAT ruled that the FRY had breached its obligations under the Convention against Torture (HLC, Press Release, 13 June).[120] Ristić died in Šabac on 13 February, 1995. Suspecting that police were responsible for their son's death, his parents sought an inquiry into the case. Police tried to suppress the case by claiming that Ristić had committed suicide.[121] Proceedings against the police ended in a ruling issued by the Supreme Court of Serbia on 18 March 1997 but it had not been established who was responsible for Ristić's death (HLC, Press Release, 13 June). The CAT ruled that Yugoslavia had violated Articles 12 and 13 of the Convention against Torture, and ordered the FRY to grant the petitioners the right to a legal remedy, to carry out an efficient investigation and to inform the CAT about all the steps taken within 90 days.[122] By the end of 2001, the Republican Public Prosecutor, the competent state agency in the case, had not acted on the instructions of the CAT (HLC, Press Release, 25 December).

Late in December 2001, the HLC submitted a petition to the CAT on behalf of Dragan Dimitrijević (24) a Roma living in Kragujevac. Dimitrijević was brutally beaten

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[117] See I.4.2.1.
[118] See *supra* note 49.
[119] See II.2.2.1.
[120] The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SRJ*, No. 9/91.
[121] See *Human Rights in Yugoslavia 1998,* 3.3.2.2.
[122] Communication No. 113/1998: *Radivoje Ristić vs. Yugoslavia* at <htpp://www. unhchr.ch/TBS/doc.nsf/385c2add1632f4a8c12565a9004dc311/bee2d63824cbaa59c1 256a$FILE/G0143626.pdf>.

by unidentified police officers and insulted on a racial basis in the Kragujevac police station on 27 October 1999. By the end of December 2001, the Municipal Public Prosecutor in Kragujevac had not responded to the criminal complaint submitted by the petitioner on 31 January 2000. The view of the HLC is that in this case the FRY breached its obligations based on the Convention against Torture. At the time of writing, the HLC had filed a total of six submissions with the CAT.

2.3.1. Torture, Inhuman and Degrading Treatment – The media reported a number of suspected cases of torture, inhuman and degrading conduct – in Bar (Beta, 9 April), Belgrade (*Danas*, 19 April, p. 22; *Politika*, 20 April, p. 15), Srbobran (HLC, Press Release, 26 June), Leskovac (*Danas*, 2 June, p. 4), Novi Pazar and Sjenica (Beta, 2 June), Podgorica (Beta, 9 August; *Monitor*, 14 September, p. 35; Tanjug, 18 October), Zrenjanin (*Danas*, 11 October, p. 18), Preševo (*Danas*, 13 November, p. 2), Subotica (*Blic*, 9 March, p. 8), Kragujevac (*Blic*, 19 May, p. 8) and Požarevac (*Blic*, 12 May, p. 9).

2.3.2. Legal Proceedings in Connection with Past Cases of Maltreatment – Proceedings against police officers suspected of maltreatment in the previous few years were conducted in Niš (*Politika*, 29 January, p. 12; *Blic*, 29 January, p. 8 and *Politika*, 12 February, p. 13; CAA Report, January) in Zaječar (*Večernje novosti*, 3 March, p. 11), Vladičin Han (*Danas*, 10 September, p. 3), Leskovac (HLC, Press Release, 22 October) and Belgrade (HLC, Press Release, 21 November).

NGO activists are dismayed over the low efficiency of the proceedings. The Municipal Court in Vladičin Han, for example, in August sentenced three policemen who had brutally beaten seven *Otpor* activists in the town in 2000 to terms of imprisonment of two, four and five months, respectively (Written Statement of the HLC concerning the FRY for Consideration by the UN CAT, November 2001). Police tried to smother the case and prevent the prosecution of the perpetrators. Early in September, *Otpor* said that the disciplinary action against the three policemen had been suspended. Police announced the procedure had expired by statute of limitation. After being suspended early in the year, a second-instance decision of the republican Interior Ministry returned them to work (*Danas*, 10 September, p. 3).[123]

2.3.3. Indemnification for Violations of Physical and Mental Integrity – In 2001, courts awarded restitution to several persons whose right to physical and mental integrity had been violated.

The Municipal Court in Vršac on 27 August issued a ruling ordering the Republic of Serbia to pay to Georg Tani (20) compensation of 15,000 dinars for mental hardship suffered after being physically and verbally abused in the Plandište police station on 23 November 2000 (HLC, Press Release, 27 August).

The First Municipal Court in Belgrade issued on 25 December a ruling ordering the Republic of Serbia to pay Jovan Modić, 18, from Bodjani, the sum of 100,000 dinars (DEM 3,333 at the official rate) as restitution for mental suffering. In 1996, when Modić was just 12, he watched as policemen Miloš Čoranov and Branislav Djukić brutally beat his close relative Nenad Pilipović, who died of his injuries. Čoranov and Djukić were

[123] More on this case see *Human Rights in Yugoslavia 2000*.

sentenced to six and five years' imprisonment by the District Court in Novi Sad (HLC, Press Release, 25 December).

2.3.4. Prisons in Serbia – On 24 May 2001 there were a total of 5,560 persons in prisons in Serbia – 4,400 convicted persons and 1,160 still on trial. The total included 110 women, 180 juveniles and 220 persons in correctional institutions, together making up almost 10% of the overall prison population.

Experts of the CoE and the OSCE visited some prisons in May and June 2001.[124] Given that the Serbian Act on the Execution of Criminal Penalties does not provide for a possibility of visits to prisons by representatives of NGOs, the report drafted by the foreign experts is a valuable source of information about the situation in the prisons.[125]

Their overall assessment was that prisons were generally in poor condition, requring reconstruction and renewal. They said some had insufficient heating in the winter and little opportunity for outdoor activity. The inmates' living conditions, accomodation and hygiene were mainly satisfactory, in line with European standards, although they could best be described as "Spartan".[126]

The consequences of last year's riots were also visible.[127] Prisoners said that in spite of promises there had been no improvement in the situation in most jails after the riots. The prison in Požarevac is the only institution where there were visible efforts to improve the situation.[128]

In some prisons there were evident serious tensions between inmates and prison staff; one of the main recommendations was therefore providing training for prison staff in human rights and interpersonal relations. Another relso recommendation is to change the existing legislation to include the procedure for submitting prisoners' complaints and the mechanism of inspecting prisons.[129]

2.4. Prohibition of Slavery and Servitude

Slavery is on the increase in the FRY and it is attracting more public attention. Police have carried out a number of actions aimed at curbing the trade in human beings.

The federal minister of internal affairs said in December that the trade in human beings mainly took place across Yugoslavia's southern and eastern borders and that in 2001 about 300 persons, mostly women, had been its victims (Tanjug, 18 December). Regional police head in the Pčinje District (southern Serbia) Novica Zdravković said that in 2001 "police broke up eight illegal channels of trade in women, mainly from Moldova, the Ukraine, Romania and Belarus, and filed 19 criminal complaints against foreigners and another 19 against Yugoslav citizens" (*Danas*, 12 December, p. 5).

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[124] Per Colliander (OSCE/ODIHR) and Derek Aram (CoE) visited the District Prison in Belgrade, the Prison Hospital in Belgrade, the prisons in Niš and Požarevac, the women's correctional institution in Požarevac, the prisons in Sremska Mitrovica and Padinska Skela and the juvenile correctional institution in Kruševac.

[125] CoE and OSCE/ODIHR, *Report on Assessment Visit to Serbian Prisons*, 5 July 2001, at <http://www.osce.org/news/generate.php3?news_id=2025>.

[126] *Id*.

[127] More on prison riots in *Human Rights in Yugoslavia 2000*, II.2.4.2.

[128] *Report on Assessment of Visit to Serbian Prisons*, CoE and OSCE/ODIHR, 5 July 2001. at <http://www.osce.org/news/generate.php3?news_id=2025>.

[129] *Id*.

Residents of Belgrade, Vranje and Žabari were arrested on suspicion of involvement in the white slave traffic (*Blic*, 24 January, p. 8; *Večernje novosti*, 29 June, p. 11; *Danas*, 20 November, p. 22).

Montenegrin police also took serious steps to stop trafficking in human beings – in 2001, a total of 51 criminal complaints were filed in Montenegro in connection thereto. Two procedures have ended, one in a conviction and a six-month jail term, and the other in the acquittal of 19 persons due to insufficient evidence. The *Women's Safehouse* in Podgorica is currently home to two victims of white slavery who have brought charges against the people who had exploited them. A total of 735 persons, mainly women from Moldova, Romania and Bulgaria, had their residence status revoked in Montenegro in 2000 (*Monitor*, 13 July, p. 16).

2.5. Right to Liberty and Security of Person and Treatment of Persons in Custody

There were a number of instances in 2001 of illegal arrest and failure to respect the rights guaranteed to detainees. Courts awarded activists of *Otpor* and other NGOs compensation in cases where it was ruled they had been unlawfully arrested in 2001. A number of condemned persons were released on the basis of Amnesty Acts adopted by the new authorities during the year.

2.5.1. Situation in Preševo, Bujanovac and Medvedja Municipalities – Most abductions registered in 2001 were carried out in the Preševo, Bujanovac and Medvedja municipalities by the self-styled "Liberation Army of Preševo, Bujanovac and Medvedja" ("LAPBM").

Early in January, "LAPBM" combatants kidnapped six Serbs, releasing them after 48 hours (*Večernje novosti*, 3 January, p. 4). Early in March, four Serbs were kidnapped (*Danas*, 8 March, p. 22 and *Danas*, 2 April, p. 2). "LAPBM" combatants on March 23 abducted two VJ soldiers, demanding a ransom of DEM 200,000 for their release. The soldiers were set free after one month and bore traces of inhuman treatment; one of them, Milija Bjeloica, could not even walk (*Večernje novosti*, 23 March, p. 4; *Večernje novosti*, 7 April, p. 13 and *Danas*, 18 April, p. 1).

2.5.2. Other Cases – Late in May, the HLC expressed its concern over the fact that Serbian police continued the practice of summoning people for questioning solely on the basis of their political activities or activity in NGOs. On 29 May police summoned for questioning Miloš Čvorović, a university student and activist of Beogradski Krug. During the three-hour session, SDB inspector Lekić and a colleague questioned Čvorović about his contacts with Kosovo Albanians and the leaders of their political parties. They also asked about "the Helsinki Committee for Human Rights, the Women in Black organisation, the Social Democratic Union, the *Balkan Peace Team* and their contacts with Kosovo Albanians". They then told Čvorović he must not tell anyone about the conversation (HLC, Press Release, 29 May).

In July, police took in for questioning Slavoljub Mihajlović, 52, from the village of Mala Kruševica near Varvarin, on suspicion of slander. Mihajlović, an activist of *Otpor*, was heard to say after the extradition of Slobodan Milošević to the ICTY that "some mini-Slobos will be taken to task soon" and to list various unlawful activities committed

by the former local leadership. Police said the questioning was organised on the basis of a complaint by the former mayor of Varvarin, Socialist party member Dragan Žabričić, who had brought charges against Mihajlović for slander (Beta, 18 July). In June, police in Bač took into custody three *Otpor* activists who had been painting the organisation's symbol (Beta, 13 June).

2.5.3. Federal Amnesty Act.[130] – Early in 2001, a federal Amnesty Act relating to criminal offences in connection with avoidance of military service in the wars in the territory of the former Yugoslavia and a number of other criminal offences defined by the Federal Criminal Code was adopted. Under the law, several hundred ethnic Albanians indicted or tried in political processes during the Milošević era were granted amnesty. But the law does not cover persons charged with or convicted of the criminal offence of terrorism as defined by Article 125 of the Federal Criminal Code, and 86 ethnic Albanians convicted of that crime remain in Serbian prisons (*Reporter*, 19 December, p. 24).[131]

At the beginning of 2001, there were about 650 ethnic Albanians inmates in Serbian prisons who could be considered as political prisoners (*Politika*, 13 January, p. 14). Most were indicted or condemned for the criminal offences of conspiring to carry out hostile activities and terrorism. On the basis of the republican and federal Amnesty Acts, by 10 April a total of 229 convicts had been released from Serbian prisons – 16 of them had been sentenced for general crimes and the others for conspiracy to carry out hostile activities (Art. 136 of the Federal CC) or armed rebellion (Art. 124 of the Federal Code) (HLC, Press Release, 17 April).[132]

According to the latest data released by Gradimir Nalić, Human Rights Advisor to the Yugoslav President, there are now 163 ethnic Albanian convicts in Serbian prisons. This includes 76 serving time for general crimes and the rest for terrorism (*Reporter*, 19 December, p. 24).

Asked about the exclusion of terrorism from the crimes covered by the amnesty, the then federal Minister of Justice Momčilo Grubač said the nature of terrorism made it impossible to include it in the Law "although there had been great pressures to do so" (*Večernje novosti*, 12 January, p. 6). NGOs and the professional public had been warning that the convictions for terrorism were problematic. "Terrorism is certainly a very serious crime, but only if it has been committed and proved before a competent court following a full legal procedure. That is not the case with the ethnic Albanians in question, absolutely all of whom have been convicted of terrorism. But they were convicted in classical stage-managed and political trials", attorney Dragoljub Todorović was quoted as saying (*Danas*, 15 and 19 January, pp. 6 and 11; *Danas*, 5–6 February, p. 6).

Apart from the ethnic Albanians, who were during the Milošević epoch mainly convicted in political processes of conspiracy to carry out hostile activities, the federal Amnesty Act also encompassed 28,000 persons who had evaded the draft between 27 April 1992 and 5 October 2000 (*Politika*, 27 February, p. 9). Most of the people covered by the amnesty were being prosecuted for the following criminal offences: avoiding the

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[130] See more I.1.4.

[131] *Id*.

[132] According to the HLC, there were in April 413 ethnic Albanians in prison in Serbia – 123 sentenced for general crimes, 11 for illegal arms possession, two for espionage and 227 for terrorism.

draft, avoiding national military service, absence without leave from military service and conspiracy to carry out hostile activities (HLC, Press Release, 2 March). The president of the Military Court in Niš, Col. Vujadin Milojević, says there are in his court 4,278 cases of the said crimes (HLC, Press Release, 2 March).

On 5 March, more than 5,000 inmates were released from prisons in Serbia and the prosecutions suspended against some 24,000 persons who had avoided the draft or deserted from their units during the NATO intervention (HLC, Press Release, 6 March). Montenegrin military law expert Goran Rodić criticised the law and said it "does not feature a so-called grace period, during which the said persons can return, approach the authorities and regulate their status" (*Vijesti*, 19 March, p. 4).

A group of Belgrade NGOs demanded a pardon for Dejan Tomić, from Pirot, who was a VJ soldier when he was sentenced to four years' imprisonment in April 1999 for disobeying an order. NGOs stressed that all those who had avoided the draft or deserted from their units had been amnestied, while Tomić "is facing a long prison sentence for showing solidarity with the soldiers in his unit" (*Večernje novosti*, 28 March, p. 4).[133]

In one instance the authorities failed to abide by their own law – Montenegrin TV sports announcer Branko Vujisić was arrested at Belgrade Airport on 4 September for avoiding the draft during the NATO attack on the FRY. Vujisić was released after spending several hours in the army command (*Vijesti*, 5 September, p. 5).

2.5.4. The Amnesty Act of the Republic of Serbia[134] – Serbian Amnesty Act provides reduction in sentences handed down for all criminal offences defined in the Serbian Criminal Code, with some exceptions.

The slow implementation of the law resulted in rebellions and hunger strikes in February and March in three prisons in Serbia – Niš, Požarevac and Sremska Mitrovica (Beta, 31 January; *Blic*, 9 February, p. 9; *Danas*, 14 March, p. 22 and *Blic*, 17 March, p. 8). Serbian Minister of Justice Vladan Batić has said that the amnesty's cut of prison terms by one-quarter would result in the release of between 600 and 700 of the total of 6,000 prisoners in Serbia (*Danas*, 7 March, p. 4). The cut did not encompass the most serious homicide crimes. NGOs which are involved in the protection of women's rights protested because the amnesty included those jailed for violence against women and children (*Politika*, 10 February, p. 9).

2.5.5. Indemnification for Illegal Arrest – A number of activists of *Otpor* and other NGOs were awarded in 2001 compensation for illegal arrests in 2000. *Otpor* activists were represented by HLC lawyers, who filed a total of 62 complaints on behalf of 88 persons for unlawful police actions in the January – September 2000 period. In mid-February, the court in Kikinda awarded five *Otpor* activists damages amounting to 250,000 dinars for their illegal arrests and maltreatment by police (*Politika*, 12 February, p. 13). For the same reason early in April, Vladan Slavković, an *Otpor* activist, was awarded 80,000 dinars (*Politika*, 2 April, p. 13). The Municipal Court Babušnica awarded Milan Čolić, an activist of the Centre for Free Elections and Democracy (CeSID) the sum of 15,000 dinars in damages for illegal arrest.

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[133] See *Human Rights in Yugoslavia 1999,* II.2.5.3.
[134] See I.4.1.

The Municipal Court in Čačak ordered the state of Serbia on 3 July to pay *Otpor* activist Jelena Radovanović damages of 60,000 dinars for the injuries to her reputation, dignity, personal freedoms and rights inflicted by police acting unlawfully in 2000 (HLC, Press Release, 3 July). The Municipal Court in Pančevo on 12 July ordered Serbia to pay *Otpor* activist Branislav Vukosavljević damages of 50,000 dinars for illegal police conduct in July 2000 (HLC, Press Release, 12 July). The Municipal Court in Bečej early in November ordered Serbia to pay 300,000 dinars in damages to *Otpor* activist Boris Negeli. The court said it had ruled positively on all counts, as Negeli "was arrested, detained, maltreated, interrogated, photographed and fingerprinted solely on account of his free expression of his political opinion" (HLC, Press Release, 8 November; *Blic*, 9 November, p. 9).

In the second half of October, HLC lawyers filed a lawsuit against the Republic of Serbia, seeking damages for the "baseless arrests of four Kosovo Albanians", who were taken into custody in Kosovo on 17 April 1999. They were held in prisons in Serbia until 10 February 2000 when charges against them for conspiring to carry out hostile activities were dropped. Damages of 120,000 dinars are being claimed for each of them. (Beta, 22 October; HLC Press Release, 22 October).

2.6. Right to Fair Trial

One of the characteristics of the former regime were rigged trials of Kosovo Albanians and political opponents. This practice ended with the arrival of the new authorities, and some proceedings begun earlier were ended in acquittals. The adoption of the federal amnesty law[135] was aimed at redressing injustices suffered by the protagonists of the stage-managed trials. In several cases, the Supreme Court of Serbia overturned the verdicts or reduced the penalties handed down in the original trials.

When the law came into force, several hundred ethnic Albanians mainly convicted of conspiracy to carry out hostile activities were released from Serbian prisons. But the law does not apply to the crime of terrorism, and many ethnic Albanians remain in prison.[136]

Investigations and proceedings were also begun in 2001 against some high officials in the former regime who are mainly suspected of or charged with the criminal offences of abuse of office, divulging state secrets and misappropriation of funds, but also attempted murder and illegal wiretapping and surveillance.

Some media were noticed to be unprofessional in their coverage of the proceedings, which is without a doubt one of the sources of pressure on the impartiality of the courts.

2.6.1. Trials of Kosovo Albanians – The Military Court in Niš set on 6 February a date for the trial of three Kosovo Albanians, Bekim Susuri, Shefqet Maksani and Xhemajl Berisha, charged with conspiring to carry out hostile activities and terrorism, without first having eliminated the irregularities pointed out by the Supreme Military Court. On 5 December, the Supreme Military Court overturned a verdict according to which the defendants were sentenced to lengthy terms of imprisonment, ruling that the first-instance court had not respected the right of the indictees to defence and preparation of their defence in their own language. In spite of the decision, the Military Court in Niš

[135] *Id*.
[136] See II.2.5.3.

set a date for the trial without providing indictees with materials of the first and second-instance courts translated into Albanian. During a hearing, the court ruled positively on a defence objection, but ordered only the Supreme Court's decision overturning the first-instance judgement to be translated, explaining that the Supreme Military Court had overturned the first-instance verdict which is therefore "non-existent" and does not therefore need to be translated (HLC, Press Release, 8 February).

Late in April, members of the so-called "Djakovica group" were released from detention. In proceedings concluded in May 2000, 143 ethnic Albanians were sentened to terms of imprisonment totalling 1,632 years for the crime of terrorism. An appeal against the judgement was lodged for "grave breaches of provisions of the criminal procedure, inaccurately and incompletely established facts and the defective application of material law" (HLC, Press Release, 17 April; Amnesty International (AI) Press Release, FRY – AI Demands Fair Trail, 24 April).[137] The Supreme Court of Serbia at a session held on 23 April overturned the verdicts (HLC, Press Release, 24 April; Beta, 24 April, *Blic*, 26 April, p. 9). The Supreme Court of Serbia returned the case to the first-instance court for re-trial (HLC, Press Release, 24 April; Beta, 2 April).

The trials of Kosovo Albanians Luan and his brother Bekim Mazreku, from Mališevo, who were charged with terrorism, torturing and murdering civilians in Kosovo, ended before the District Court in Niš on 18 April 2001 with the brothers being given 20 years' imprisonment each.[138] The two had denied the charges and claimed they were "rigged by the SDB".

A number of breaches of the rules of criminal procedure were recorded during the trial.[139] The fact that the panel of judges was made up of displaced persons from Kosovo indicates a possibility that they could have been biased in connection with the object of the trial. The verdict was based on the extorted confessions the brothers had made before RTS cameras on the day of their arrest. A medical examination of the indictees which presiding judge Milomir Lukić finally allowed on 21 February established that the brothers had sustained light physical injuries in the pre-trial procedure from police treatment (HLC, Press Releases, 3 and 7 March). Also violated was Article 83 of the Law on Criminal Procedure, under which all records made and information collected in the pre-trial procedure must remain sealed and separate from the case files before the charges are filed, so that verdicts cannot be founded on them. The court did not take this into account. Attorney Čedomir Nikolić said the trial had not been fair because the court "refused to admit some important items of evidence offered by the defence" (Beta, 23 January; *Danas*, 24 February, p. 2; *Blic*, 17 March, p. 9 and *Blic*, 19 April, p. 9). Nothing further about the Mazreku case had been reported in the media by the end of 2001.

On 19 May, the Supreme Court of Serbia reduced the sentence handed down to Petrit Berisha from seven to three years in prison. Petrit Berisha, Driton Berisha, Driton Meqa, Shkodran Dërguti and Isam Abdullahu, all ethnic Albanian former students of Belgrade University, had on 10 July 2000 been sentenced by the District Court in Belgrade to terms of imprisonment ranging from six to twelve years. They were found guilty of the criminal offence of conspiring to carry out hostile activities, and Petrit

[137] More about the trial of the "Djakovica Group" in *Human Rights in Yugoslavia 2000*, II.2.5.1.
[138] See II.2.5.1.
[139] See more in HLC – *Pravna analizu suđenja braći Mazreku (Legal Analysis of the Mazreku Brothers Trial).*

Berisha also of terrorism.[140] (HLC, Press Release, 19 May). On 8 January 2001, counsel for the defence lodged an appeal with the Supreme Court of Serbia challenging the verdict in its entirety because of serious breaches of the provisions of criminal procedure and of the Criminal Code, inaccurate and incomplete establishment of facts and the sentences handed down.[141] Acting upon Petrit Berisha's appeal, the Supreme Court of Serbia admitted Berisha's extorted confession as evidence and thereby violated provisions of the Criminal Procedure Code. On the other hand, as the HLC said in a statement, the new reduced three-year term of imprisonment is an unusually lenient penalty for a crime as serious as terrorism (HLC, Press Release, 19 May). Berisha's attorney has lodged with the Federal Court a request for extraordinary review of the legally-binding judgement of the Supreme Court of Serbia.

Driton Berisha, Driton Meqa, Shkodran Dërguti and Isam Abdullahu were pardoned on the basis of the federal amnesty law. On 13 September almost four months after the Supreme Court of Serbia had issued its ruling, Petrit Berisha received a pardon from the Yugoslav President, and was finally released on 20 September.

The release procedure following a pardon usually lasts a day or two. The Office of the FRY President sends the decision to the Yugoslav Ministry of Justice, which dispatches a written communication to the prison holding the person who has been pardoned. It has been noticed that when the pardons relate to ethnic Albanians some officials of the Federal Ministry of Justice are guilty of professional misconduct – they seek to pospone the release of the persons concerned by staying away from work or petty obstructionism delaying the dispatch of the pardon documents to the prison concerned. That happened in the case of Petrit Berisha, who spent several days in prison without legal grounds. Berisha's defence attorney has therefore filed a claim for damages and a demand for disciplinary action against one or more unidentified officials of the Federal Justice Ministry (Interview with lawyer Ivan Janković, 7 December 2001, Archives of the Belgrade Centre for Human Rights).

On 7 September 2001 the court delivered verdicts in writing to four ethnic Albanians: Sylejman Bytyqi, Besim Zymberi, Skender Ferizi and Agim Reçica, who make up the so-called "Uroševac Group".[142] The verdict, finding the four guilty of terrorism, was issued in February 1999. By failing to deliver the written verdict for more than two-and-a-half years after it was issued, the court violated their right to a defence, as an appeal can only be lodged against a written verdict (HLC, Press Release, 7 September). Under the Criminal Procedure Code, decisions in writing must be rendered and delivered to the parties in the proceedings within eight days, or within a maximum of 15 days in extraordinarily complex cases. A panel of judges of the District Court in Priština headed by Dragoljub Zdravković issued its verdict on the basis of confessions extracted by torture. The four ethnic Albanians have been in unlawful detention since June 1998 (HLC, Press Release, 7 September).

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[140] See more in *Human Rights in Yugoslavia 2000*, II.2.5.1.

[141] *Id*.

[142] Twenty six ethnic Albanians of the so-called "Uroševac Group" were on 5 February, 1999, sentenced to terms of imprisonment ranging from two to 15 years for the crimes of conspiring to carry out hostile activities (Art. 136 of the Federal CC) and terrorism (Art. 125 of the Federal CC). Seventeen were tried *in absentia*, some died in the NATO bombing of Dubrava prison in Kosovo. One was released on the basis of the amnesty law, and four others convicted of terrorism remain in the Niš and Sremska Mitrovica prisons.

Albin Kurti, a former ethnic Albanian student protest leader, president of the Union of Kosovo Albanian Students and spokesman for the head of the political wing of the "KLA," Adem Demaqi, was in 2000 sentenced to 15 years' imprisonment for the criminal offences of threatening the territorial integrity of the FRY and conspiring to carry out hostile activities in connection with the criminal offence of terrorism (HLC, Press Release, 17 April).[143] Kurti was released on 7 December and handed over to the ICRC (Beta, 7 December). The Yugoslav President pardoned Kurti "On the occasion of the International Human Rights Day, at the recommendation of the YUCOM, President Koštunica issued a decision to pardon Kurti..." said a statement by the presidential office (Beta, 10 December). President Koštunica's statement was made public three days after Kurti's release, until which time there was a lot of speculation in the local media about the origin of the release.

On behalf of the ethnic Albanians charged with or condemned of terrorism and therefore not subject to the amnesty, HLC lawyers submitted 43 appeals for pardons to the Yugoslav President, to which there was no response, and 17 requests for conditional release, to which the Serbian Ministry of Justice did not reply. They also filed six requests for extraordinary diminution of penalties, and only in the case of seriously wounded Bedri Kukolaj did the Supreme Military Court reduce the term of imprisonment from ten to eight years. Requests for remission for nine prisoners who were wounded in the bombing of Dubrava prison in Kosovo in May 1999 also went unanswered by the Serbian Ministry of Justice (HLC, Press Release, 17 april).

2.6.2. Arrests and Trials of Officials of the Former Regime – On the night between 31 March and 1 April former Yugoslav President Slobodan Milošević was arrested for failing to respond to a court summons. Milošević is charged with abuse of office and misappropriation of funds amounting to DEM 250 million. During the arrest police clashed with Milošević's private security, and later found in his residence a large quantity of firearms and even a combat vehicle of the Yugoslav Army (*Blic*, 1 April, p. 9). Milošević's health deteriorated about ten days after the arrest and he was taken to the Military Medical Academy (VMA) in Belgrade. After his return to prison, the opposition SPS, JUL and SRS demanded that Milošević should receive medical treatment outside the prison because it is "inhumane to keep a seriously ill man in a prison cell, which could kill him" (*Politika*, 12 April, p. 1 and *Politika*, 9 June, p. 13). Milošević's own SPS offered to pay 250 million DEM in bail, but the court did not take up the offer.

The Yugoslav Parliament did not adopt a law on co-operation with the Tribunal at The Hague providing for the hand over of indictees, while a Decree to that effect issued by the Yugoslav Government was suspended pending the final decision by the Federal Constitutional Court on 28 June.[144] The same day, citing Article 153 of the Serbian Constitution providing that if the vital interests of the republic are threatened Serbia can assume competencies of the federal authorities, the Serbian Government handed Milošević over to the ICTY (*Večernje novosti*, 23 June, p. 5 and *Politika*, 29 June, p.

[143] See *Human Rights in Yugoslavia 2000*, II.2.5.1.
[144] See more IV.2.

1),[145] which had on 27 May, 1999, indicted the former Yugoslav president for crimes against humanity and violations of the laws and customs of war.[146]

During the first half of 2001, 236 officials in the Milošević regime were taken into custody (*Vreme*, 5 July, p. 25). The total number arrested in 2001 is believed to have been over 300, and the number of those who are the subjects of criminal complaints more than 500. "In the abuse of office proceedings which have been initiated so far, we are proceeding from the facts that the overall illegal gains amount to about DEM 2,5 billion", said Dragomir Nedić, acting Serbian Public Prosecutor (*Politika*, 5 November, p. 1). Most of the former high officials have been charged with one or more of the following criminal offences: attempted murder, illegal wiretapping and surveillance, abuse of office, divulgence of state secrets and misappropriation of funds. They include Radomir Marković, former head of the Serbian SDB, Dragoljub Milanović, former director general of *RTS*, Mihalj Kertes, former director of the Federal Customs Administration, Nikola Šainović and Jovan Zebić, former deputy prime ministers in the Federal Government, Uroš Šuvaković, a senior official of the SPS, Miodrag Djurić, former Belgrade local police head and others (*Politika*, 25 February, p. 1; *Blic*, 27 March, p. 10; *Danas*, 24 April, p. 11; *Blic*, 26 April, p. 6 and *Politika*, 2 June, p. 1).

The former ruling parties, now in the opposition, have said the above arrests are the overture to rigged political processes (*Danas*, 24 April, p. 5).

Early in August, former SDB head Radomir Marković was sentenced to a year in prison for divulging a state secret (*Danas*, 7 August, p. 1). The trial was closed to the public; one of Marković's attorneys said the verdict of the District Court in Belgrade was rendered solely on the basis of assertions by a witness who had changed his testomony several times (*Vreme*, 17 January, 2002, p. 20). Both the defence and the prosecution have filed appeals against the verdict. Early in September, Marković went on trial again, for attempted murder and abuse of office; the charges concern the attempted murder of Vuk Drašković, leader of the opposition SPO, in October 1999.[147] Marković said at the trial he had been offered a withdrawal of the charges in return for giving evidence at the trial of Slobodan Milošević (*Danas*, 10 September, p. 12).

During the autumn of 2001, about a dozen former senior officials were charged with abuse of office and misappropriation of funds. They include former Serbian Minister of Culture Željko Simić, who is accused of stealing a number of items in a friend's flat. Police released video footage of the alleged theft to the Belgrade media before the trial had begun. All Belgrade TV stations except *B92* broadcast the tape (*Vreme*, 20 September, p. 10, *Blic*, 30 September, p. 3). This is probably the most glaring example of the media interfering in judicial matters and violating the principle of avoiding influence on the courts.

In mid-November, the Municipal Public Prosecutor in Požarevac filed charges against Slobodan Milošević's son Marko and six others who had threatened to kill and maltreated a local *Otpor* activist, Zoran Milovanović (*Danas*, 16 November, p. 22). A

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[145] *Id*, and the International Crisis Group (ICG) Balkans Briefing Paper, *Milosevic in The Hague: What it Means for Yugoslavia and the Region*, 6 July 2001.

[146] See *Human Rights in Yugoslavia 1999*, IV.4.2. For the full text of the indictment see <http://www.un.org/icty/milosevic/tce 37.htm>.

[147] See *Human Rights in Yugoslavia 1999*, II.2.2.2.

hitherto unknown organisation calling itself Srpski oslobodilački front[148] directed threats at Otpor and Požarevac local officials in reaction to the indictment. Several days previously, threats to that effect were issued by Marko Milošević himself against Požarevac Mayor Slavoljub Matić (*Danas*, 10 December, p. 18).

2.6.3. Other Trials – Criminal proceedings against Vladimir Nikolić, who was sentenced to a term of imprisonment in 2000 for divulging a state secret, were suspended after the Belgrade District Prosecutor dropped the charges. Nikolić's lawyer has said that the former head of the SDB's local centre in Belgrade had spent 400 days in illegal detention and that his attorneys would sue for damages (Tanjug, 25 July). The Supreme Court of Serbia on 5 November upheld the request for judge Pavle Vukašinović to be relieved of duty for "the unprofessional and unconscienscious performance of his judicial function" in the Vladimir Nikolić case. The Supreme Court said in a statement that Vukašinović had acted in the case as the president of the panel of judges of the District Court in Belgrade (*Blic*, 7 November, p. 6).[149] On 17 December the Serbian Parliament relieved Vukašinović of his judicial post (Tanjug, 17 December).

In September, the Supreme Court of Serbia overturned a judgement according to which 14 statesmen of the NATO member-countries were in September 2000 each given 20 years in prison for actions during the bombing of the FRY: war crimes against the civilian population (Art. 142 of the Federal CC), violation of territorial integrity (Art. 135 of the Federal CC), the use of banned weapons (Art. 148 of the Federal CC), the attempted murder of representatives of the highest state authorities (Art. 122 of the Federal CC) and incitement to a war of aggression (Art. 152 of the Federal CC). The court said the procedural preconditions had not been fulfilled – among other things, this case was processed by a regular court although the said criminal offences are within the exclusive jurisdiction of military courts (*Danas,* 13 September, p. 11 and *Politika,* 20 September, p. 7). Several days later, the District Public Prosecutor in Belgrade suspended the charges against the fourteen political figures (*Politika*, 18 September, p. 13).[150] The case was turned over to the military prosecutor, and it is not known at the moment whether that institution intends to prosecute it.

It is important to note that under Yugoslav law most of the condemned foreign statesmen enjoyed immunity from prosecution before Yugoslav courts (as long as their own states did not strip them of their immunity). Article 145 of the Federal CC states that the rules of international law will be applied in cases where there is criminal prosecution of persons who have immunity from prosecution. International law guarantees full immunity to heads of states and government – they can therefore not be criminally prosecuted before the courts of foreign states both for actions which derive from the exercise of their public function or other actions. Other senior state officials enjoy immunity from prosecution for actions which derive from the exercise of their public responsibilities.[151] All this leads to a conclusion that one addition procedural precondition which had not been fulfilled in the trials of the 14 NATO leaders.

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[148] "The Serb Liberation Front".

[149] See *Human Rights in Yugoslavia 2000*, II.2.5.3.

[150] See *Human Rights in Yugoslavia 2000*, II.2.5.2.

[151] See Watts, *The Legal Position in International Law of Heads of States, Heads of Government and Foreign Ministers* in Damrosch, Henkin, Pugh, Schachter, Smit*, International Law*, West Group, 2001.

In December 2001, the court once again postponed the trial of Nenad Ranisavljević, one of the suspects in the abduction of 19 train travellers, mainly Bosniaks, at the small station of Štrpci on the Belgrade – Bar line on 27 February 1993. Hearings were scheduled, begun and postponed until further notice several times since the trial began in May 1998 before the Higher Court in Bijelo Polje. Proceedings were re-started and evidence heard anew, as provided by Article 305, para. 3 of the Law on the Criminal Procedure in cases where postponements of hearings last more than one month. This shows that the domestic judiciary is incapable and unwilling to shed light on this crime and prosecute those responsible (conversation with Šefko Alomerović, President of the Helsinki Human Rights Committee in Sandžak, Archives of the Belgrade Centre for Human Rights, January 2002).

2.6.4. Pressure on Courts – The Association on Judges of Serbia has voiced concern over the pressure the public, some political figures and journalists are exerting on courts. "Conveyance of tactless statements containing plans for arrests, details from proceedings which are closed to the public, assessments of testimony as selected by interested parties, the issuance of verdicts, slander and insults directed at judges exceed the bounds of free speech, expression and public information", the Association said in a statement (*Politika*, 3 June, p. 2).

The Association's local branch in Niš protested over the conduct of police in the investigative procedure. "When Niš police releases information about criminal offences, it makes public the names of the perpetrators in a manner which can lead to the conclusion that they hold those persons responsible for the crimes. This manner of releasing information to the public is in contravention of Art. 23, Para. 3 of the Serbian Constitution, which states that no one can be held responsible for a criminal offence until that is established by a legally-binding judicial ruling" the Association's branch in Niš said in a statement (*Blic*, 11 December, p. 8).

In November the Serbian Ministry of Justice made public a list of 69 judges, some of them magistrate judges[152] and some of them judges of ordinary courts, to be relieved of their posts (*Politika*, 16 November, p. 11). Procedures to dismiss judges who executed their functions illegaly and unconscientiously must be initiated, but in the procedure prescribed by law. However, this action violated dismissal procedure for judges of ordinary courts prescribed by law.[153]

Dismissal procedure of judges of ordinary courts should be initiated by the President of the Supreme Court of Serbia. National Assembly decides on that initiative only if it passes plenary session of the Supreme Court. However, Minister Batić made public the list of the judges whose removal was being demanded before the dismissal procedure was completed. Making public the names of judges only recommended for dismissal obstructs the work of the courts and exerts influence on judges. On top of everything, the data on which the list was compiled had not been checked – Batić's move is therefore apparently much more of a bid to gain political capital than a start to a

[152] On magistrate judges dismissal see below II.2.9.2.

[153] Different procedures are prescribed for dismissal of magistrate judges and those from ordinary courts. The Minister of Justice should initiate dismissal procedure for magistrate judges and the Government decides on their dismissal.

comprehensive campaign to come to terms with the unlawul and unconscienscious performance of judicial duties in the Serbian legal system in the past decade.

Jelisaveta Vasilić, an expert in commercial law who had been relieved of duty in the past for championing an independent judiciary, failed to win enough votes to be elected President of the Higher Commercial Court in September. The Democratic Party (DS) publicly urged its deputies in the Serbian Parliament to abstain from voting for her. Judges of the Economic Court said this was a reflection of Vasilić's "reluctance to serve the needs of day-to-day politics " (*Blic*, 29 September, p. 6)

2.6.5. Judicial Errors – Vojkan Radulović (34) from Zaječar, was sentenced by a criminal court early in 2000 to 14 months' imprisonment for a theft he had not committed. After the real thief was caught, Radulović was sentenced to six months in prison for concealment of the criminal offence. He was awarded damages of 40,000 dinars for the eight months he spent in prison, but has not been paid the money (*Danas*, 14 February, p. 18).

Milan Tripković, the former director general of the Montenegrin hotel and holiday firm *Boka*, spent four years in investigative detention. In May 2001, the Supreme Court of Montenegro released him from detention, and the charges against him for abuse of office remain unproven. Tripković claims that the charges were rigged, that witnesses were not questioned and company books inspected, as possible material evidence (*Monitor*, 18 May, p. 22).

2.7. Right to the Protection of Privacy, Family, Home and Correspondence

The media and NGOs whose statements were monitored by the Belgrade Centre for Human Rights did not record any major violations of the right to privacy in 2001.

Serbian courts issued in 2001 a number of rulings awarding compensation to activists of *Otpor* and NGOs for illegal searches of dwellings which had taken place in 2000, during the Milošević era.

In August 2001, Serbian Renewal Movement (SPO) President Vuk Drašković took the Republic of Serbia to court, demanding the removal of audio surveillance equipment concealed in his home. The SDB agreed, but did not permit Drašković or representatives of his party to attend the removal of the bugs, saying only authorised personnel could be present. Drašković refused the offer, saying the "opportunity could be used to install new and even more sophisticated bugs". SDB head Goran Petrović said that under the rules of the service only authorised personnel could be present during the emplacement or removal of surveillance equipment (*Danas*, 9 August, p. 4).

In June, on the basis of the Decree on the Removal of Classified Status from Files Kept on Serbian Citizens in the State Security Service, issued by the Serbian Government that month, Serbian police unsealed files the SDB had kept on persons suspected of being "public enemies, extremists and terrorists". The dossiers were thus stripped of the status of state secret, and those to whom they refer were entitled to inspect them and even to communicate their findings to others. But immediately after the decree was issued, the Government adopted another, with alterations under which only inspection of the files is allowed. This created some confusion both among the police and the public, as the first decree came into force before the decree on its alterations, so that the dossiers were no longer state secrets. The conduct of police, who cautioned those who wanted to see their

records that they may not divulge their contents to others, is thus seen as improper.[154] This long-expected action by the Serbian authorities therefore provoked much disappointment and criticism, as well as suspicion about the will of the ruling DOS to break ties with the repressive past (IWPR Balkan Crisis Report, *Serbian Police Dossiers Opened*, No. 257, 21 June).

The public was allowed to inspect their dossiers on police premises, but were barred from taking down any notes about their content. Although the Interior Ministry promised a list of those who had dossiers would be made public, (Art. 2 of the Decree), neither has the list been published nor have those who are the subjects been informed about them in writing. The public were only offered telephone numbers in SDB bureaus they could contact for information. Suspicion has also been voiced that some of the dossiers were altered or destroyed after 5 October 2000 (CAA Report, June 2001).

The Center for Antiwar Action (CAA) has urged the Serbian Government to also raise as soon as possible the question of dossiers kept by the military and other intelligence services, although this is not within its jurisdiction (CAA Report, 9 August).

"Of the total of 7,529 people in Serbia who approached our territorial bureaus and asked if they had dossiers, just 397, or 5.3%, received a positive response. Of this number 336 came to our premises and read the dossiers," Miloš Teodorović, acting assistant head of the SDB, was quoted as saying (*Danas*, 12 December, p. 5).

In February, police handed over to the *Otpor* movement a total of 1,554 dossiers. *Otpor* activists have said they believe numerous documents had been removed from the files before they were handed over (*Danas*, 12 February, p. 13 and *Večernje novosti*, 17 June, p. 11).

This belief was indirectly confirmed by the Yugoslav Interior Minister, Zoran Živković, who said a number of SDB officers had destroyed personal dossiers in (his hometown) Niš after October 5 (*Danas*, 21 July, p. 1).

Late in September, Montenegrin police unsealed dossiers kept on "public enemies" and "domestic extremists". The public have a right to inspect their dossiers "opened between 1945 and the date of the adoption of the decree, 29 September" (*Vijesti*, 15 September, p. 4 and Beta, 9 October). By 11 October, some 42 persons had asked to see their records and ten of them had dossiers, Montenegrin Minister of the Interior Andrija Jovičević said (*Vijesti*, 12 October, p. 2).

2.8. Right to Freedom of Thought, Conscience and Religion

Early in 2001, one of the most important topics in the media relating to the freedom of thought, conscience and profession of religion were plans to introduce religious instruction in Serbian educational system. Also of concern were the frequent attacks on religious facilities, testifying to the intolerance shown by those professing the majority faith towards others. Alternative religious communities, which are generally pejoratively named sects, were in 2001 the target of verbal attacks both by the Serbian Orthodox Church (SPC), the state authorities and individuals.

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[154] See I.4.7.

According to a report on religious freedoms issued by the U.S. Government's Bureau for Democracy, Human Rights and Labor, since the downfall of Milošević, religious freedoms have improved in Yugoslavia.[155]

Experts of the Council of Europe and the OSCE have called for chaplains in prisons to enable inmates who are religious believers to profess their faiths more fully.[156] This did not happen in 2001, during which year, however, clergymen made more frequent visits to prisons in Serbia. Military chaplains, but only of the Orthodox faith, have been experimentally introduced in some Yugoslav Army garrisons.

2.8.1. Religious Instruction – In July 2001, the Serbian Government issued the Decree on Religious Instruction which introduces it to primary and secondary schools as an optional subject.[157]

Religious instruction in schools was a hot subject in 2001. Early in January, a kindergarten in Užice introduced it as part of its annual plan without the approval of the competent ministry, the local authorities or parents, but with "the blessing of representatives of the Serbian Orthodox Church". Early in February, the municipal authorities banned religious instruction in the said institution (*NIN*, 22 February, p. 33).

The first official initiative for religious instruction in schools came from the Serbian Parliament's Education Committee; religious communities followed. Yugoslav President Vojislav Koštunica, Serbian Prime Minister Zoran Djindjić, the federal and Serbian ministers for religion and the heads of all religious communities backed the initiative. Yugoslav Minister for Religions Bogoljub Šijaković was quoted a saying that "religious instruction is an elementary human right and has been defined as such in numerous international legal documents" (*Politika*, 23 February, p. 14). The Belgrade Mufti, Hamdija Jusufspahić, said: "Not only is the return of religious instruction to schools necessary, but the religious communities should also be represented in parliament" (*Politika*, 7 February, p. 12).

On the other hand, almost all non-governmental organisations in the FRY protested against religious education in schools (Beta, 19 April).

The Belgrade Centre for Human Rights voiced concern because the rights to the freedom of conscience and the profession of religion were being incorrectly interpreted in the debates on religious instruction in schools. The freedom of conscience and the profession of religion contains the right of individuals to profess the faiths they choose, but also the right not to profess any faith. It is fallacious to claim that the freedom of conscience and the profession of religion implies an obligation by the state to organise religious instruction in public schools, whether compulsory or optional, the Belgrade Centre said adding that all the state has to do is to make possible free religious instruction and do nothing to obstruct it. The Centre cautioned against rash choices made without the benefit of a thorough debate. "In a multi-cultural and religiously diverse society like Serbia, matters like this one must be approached with extreme caution" (Belgrade Centre for Human Rights, Press Release, 17 July).[158]

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[155] *International Religious Freedom Report* released by the Bureau for Democracy, Human Rights and Labor, October 2001.

[156] See *supra* note 128.

[157] For the content of the Decree I.4.7.

[158] More on the website of the Belgrade Centre for Human Rights at <http://www. bgcentar.org.yu>.

The subject has also provoked extensive discord between the Ministry of Education and Sport and the Ministry of Religions – from the questions of curricula, programmes and textbooks, to that of whether religious instruction should be compulsory or not. The Ministry of Religions and the SPC wanted a compulsory subject while the Ministry of Education was in favour of making it optional, and there was also heated public debate on this issue. In a statement issued on 6 July, the Holy Synod of the SPC said religious instruction would be a compulsory school subject for all pupils except those who opt for an alternative subject (Beta, 6 July). The Serbian Government pointed out that the law also had to be respected – making religious instruction a compulsory subject would call for changing the total number of classes, which would require alterations of the laws on primary and secondary educations (Serbian Government, Press Release, 27 August).

Religious communities – the Serbian Orthodox, Islamic, Catholic, Slovak Evangelistic, Jewish, Christian Reformist and Christian Evangelistic communities – defined in the Decree as traditional, i.e., those that would organise religious classes, protested over this interpretation of religious instruction. The Secretariat for Legislation once again interpreted the controversial provision and concluded that "the said subjects can only be introduced into the education system in an optional form, which undoubtedly offers parents and children the right to choose one, or both, or neither (attending neither of the two subjects on offer)" (*Danas*, 3 September, p. 5).

The SPC Synod late in September accused the Serbian minister of education of obstructing the introduction of religious instruction. "We are amazed and disgusted with the extremely unfair, inviolably anti-democratic and unlawful stance of the minister of education and a group of his aides. An organised campaign is being waged against religious instruction and spiritual violence inflicted on those children and parents who want such classes", the SPC said in a statement (*Večernje novosti*, 29 September, p. 5). Similar objections were voiced by the Bishops' Conference of the FRY. The ministry of education rejected the claims: "From the very beginning of the drive we have refrained from making any judgement. We did not react even when TV aired a pro-religious instruction advertisement, signed in our name without our knowledge, which made no mention of an alternative option", the ministry said in a statement (*Večernje novosti*, 29 September, p. 5).[159]

The parents of primary-school children and secondary school pupils were in September asked about their preferences. According to data released by the Ministry of Education and Sport, 30% of all primary school pupils did not want either subject, 30% favoured religious instruction, 20% opted for civics and 10% would like to attend both. In secondary schools, where the pupils themselves were polled, fully 67% came out against both subjects, while 15% want religious instruction, 10% civics and 3% both (*NIN*, 15 November, p. 28).

In the second half of August, just two weeks before the start of the school year, the ministry of education had still not been given the textbooks for the two subjects for its approval (Serbian Ministry of Education and Sport, Press Release, 17 August).

Although plans called for classes in the two subjects to begin in parallel with all others, they only started two months after the beginning of the school year.

[159] The ad, paid by the Serbian Ministry of Religion, champions religious instruction and religion as such.

2.8.2. Freedom of Religion in the VJ and Prisons – The Yugoslav Army (VJ) early in June decided to introduce military chaplains in eleven VJ garrisons as an experiment. The army said the process would be gradual; to begin with, only Orthodox chaplains were appointed. VJ soldiers of the Catholic, Islamic, Protestant and Jewish faith are entitled to home leave during their major religious holidays (*Blic*, 6 May, p. 7).

The CoE and the OSCE called for allowing priests to Serbian prisons.[160] In 2001 there were numerous visits to prisons by clergymen. Priests gave Communion and heard confessions from about 100 inmates in the Central Prison in Belgrade during the Easter holidays (*Politika*, 19 April, p. 13).

2.8.3. Alternative Religious Communities – Distrust continued to grow in 2001 of alternative religious communities, mainly pejoratively called sects. The champions in this were the SPC and pro-SPC journalists and writers. One of them, Aleksandar Senić, went so far as to say that "sects are perfidiously infiltrating (society) in the shape of various non-governmental organisations" (*Vreme*, 26 April, p. 32). Police Captain Zoran Luković, author of the book *Religious Sects, Manuel for Self-defence*, says there are around 120 to 150 sects in Serbia with between 200,000 and 250,000 registered members. "The activity of sects is not prohibited either by the criminal or misdemeanour codes, but it is socially harmful and often has serious consequences for people's lives and property, so that the police monitor sects", Luković says[161] (*Blic*, 16 March, p. 24; Beta, 15 March; *Blic*, 24 April, p. 8; HLC, Press Release, 25 April).

Early in April, the federal ministry of internal affairs banned an import of Jehovah's Witnesses literature, saying it was harmful to children and young people. But the ministry failed to specify the content which allegedly harms children and young people. It said that the 120 publications for which import and distribution licences were being sought included many whose content indicated that their primary purpose was "promoting the Jehovah's Witnesses Christian religious community rather than fulfilling religious needs". The decision, signed by minister Zoran Živković, also mentions what it says are suspiciously large circulations of the publications, "many times larger than the true membership of the community". But, as the HLC has said, the importing of literature cannot be prohibited on the grounds of circulation, but only of content (HLC, Press Release, 22 May; *Politika*, 23 May, p. 13).

2.8.4. Attacks on Religious Facilities – Religious facilities were attacked in 2001 in Zrenjanin, Borča, Novi Sad, Belgrade, Subotica, Vrbas, Bačka Topola, Čačak, Borča (Beta, 7, 19 April, 9 July and *Danas*, 23 June, p. 8; Beta, 3 September, 23 October; *Danas*, 14 December, p. 13 and *Blic*, 23 June, p. 8).

Most of the attacks were aimed against Protestant churches and other non-Orthodox religious facilities.

Serbian Ministry of Religions condemned some of the attacks (*Blic*, 23 June, p. 8).

In Montenegro, clergymen of the Montenegrin and Serbian Orthodox Churches traded accusations for incidents which took place during services – one notable example

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[160] See *supra* note 128.

[161] Luković said there were many more sect members if those who attend yoga courses are included, but, he added, "not every yoga is necessarily also a sect".

was an attempt to block the holding of a service in a church in Ćipur (*Vijesti*, 2–3 March, p. 7).

2.9. Freedom of Expression

Freedom of speech in the FRY was threatened much less in 2001 than in the preceding years, but the position of the media did not improve to any major extent, in spite of promises by the new authorities. Early in 2001, most provisions of the Public Information Act except those covering registration of information media were revoked. The infamous law was enacted in the Milošević period, but a new one had not been adopted by the end of 2001. New broadcasting law has not been adopted as well. The authorities suspended the issue of radio and TV broadcasting licences until the new regulations are enacted. In this way some media retained the privileged status they gained in the 1990s, while the others still lack broadcasting licences.

The new authorities failed to fulfil another of their promises – transforming the Serbian state television (*RTS*) into a public service. It is still generally believed that the most important precondition for appointment to key posts in the *RTS* is the support of one of the ruling political parties.

For their part, the media frequently interfered in the judicial procedure.[162]

The past year was marked by the hate speech. Books inciting racial, religious and ethnic hatred, divisions and intolerance went into general circulation. The hate speech was also employed by representatives of the currently biggest opposition parties – once the ruling SPS and SRS – and by some nationalist groups. Public prosecutors did not react to the hate speech. A number of incidents were recorded which show that the new authorities and various interest groups are very reluctant to accept professional and objective reporting, which often hurts their vital interests.

The most serious took place in Jagodina early in June, when Milan Pantić (47) the local correspondent of *Večernje novosti,* was shot dead outside his flat. Pantić had been threatened a number of times for reporting about the activities of local crime groups (*Danas*, 13 June, p. 26). During the visit in January of the ICTY's chief prosecutor, Carla del Ponte, a policeman of the Federal Interior Ministry hit a reporter of *Radio B92* in the Federal Ministry of Foreign Affairs. Interior Minister Zoran Živković apologised to the press and suspended the officer (*Danas*, 26 January, p. 7).

2.9.1. Pressures on Journalists – In August, Serbian police took in for questioning reporters of *Blic*, demanding that they reveal their sources of information used in an article on the assassination of Momir Gavrilović, a former officer of the SDB. *Blic* wrote several days after the August 3 murder that it had taken place a few hours after Gavrilović had met aides to Yugoslav President Vojislav Koštunica, and that Gavrilović was in possession of evidence about links between "certain highly-placed figures in the new Serbian authorities and organised crime bosses in Serbia".[163] The reporters refused to name their sources, and journalists' associations condemned the action of the police and public prosecutor (*Blic*, 16 August, p. 6).

Serbian police questioned on 23 November two journalists of the weekly *Reporter* and one from *Blic,* demanding that they disclose who had given them a list allegedly

[162] See more II.2.6.4.
[163] See more II.2.2.2.

obtained from the ICTY with the names of 362 officers of the Serbian police (*Danas*, 24–25 November, pp. 1 and 3). *Reporter* had published the list on 21 November, claiming that it contained the "names of persons subject to collection of evidence in connection with possible Serbian police crimes" and "a list of police officers, witnesses or suspects, reliably known to have taken part in actions in Kosovo" (*Reporter*, 21 November, p. 17).

The ICTY's prosecutors denied the existence of such a list, describing it as a "manipulation and another attempt to intimidate the Serbian public and police" (Beta, 23 November). But Serbian Prime Minister Zoran Djindjić indirectly confirmed at a news conference on 14 November that some sort of list did exist. Djindjić said that during ICTY Chief Prosecutor Carla del Ponte's last visit the Government had received a "list of more than 200 names in Serbia on which the Tribunal was seeking information" (Spanish news agency EFE, 13 November). Serbian Interior Minister Dušan Mihajlović said a "list does not exist and there is not a single name of any officer of the Serbian police on the public and sealed indictments of the Hague Tribunal" (Beta, 22 November).

The Third Municipal Prosecutor's Bureau in Belgrade launched an inquiry, based on "reasonable suspicion about the perpetration of a criminal offence of disseminating false information as defined by Article 218 of the Serbian Criminal Code " (*Danas*, 24–25 November, pp. 1 and 3). *Reporter's* journalists refused to reveal their source of information.

Asked about the publication of the list, *Blic's* editor Veselin Simonović said he had simply carried the *Reporter* text. "Journalists in Serbia must fight to have the matter of the confidentiality of sources of information legally regulated", he said after the questioning (*Danas*, 24–25 November, pp. 1, 3).

Thirteen police officers from Niš whose names appear on the list have filed a private lawsuit against the editor of *Blic* for the criminal offence of libel (*Blic*, 15 December, p. 9). High-ranking police officers have publicly offered legal assistance to all policemen who want to sue *Blic* and *Reporter* (Spanish news agency EFE, 10 December).

Predrag Radojević, the Valjevo correspondent of *Blic*, was summoned for questioning by police in mid-July and threatened with arrest, without any reason being given. Most of the questions related to his work in *Blic*. "I was warned that I must not speak or write about this, or discuss it in town", Radojević said (*Blic*, 13 July, p. 6).

The Information Service of the Yugoslav Army's General Staff also joined in the attacks on the media with a reaction to a text by journalist Stipe Sikavica about the Army Chief of Staff, General Nebojša Pavković.[164] Alluding to the author's nationality, the Information Service said: "Sikavica is a descendant of the Vlachs of Split who trumpets his views in the middle of Belgrade and loathes all that is Serbian and soldierly in the FRY" (*Danas*, 22 January, p. 6 and *Danas*, 23 January, p. 5).

Late in May, Serbian Radical Party members physically assaulted reporters of *Beta* and *Glas javnosti* outside the Fourth Municipal Court in Belgrade. The party's attitude to the media and freedom of speech is best summarised in a statement SRS deputy Tomislav

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[164] General Pavković was appointed VJ chief of staff in 2000 by the then FRY President Slobodan Milošević. During the NATO bombing in 1999, he was the commander of the VJ's Third Army, based in Kosovo. After the democratic changes, Gen. Pavković retained his post. President Vojislav Koštunica refused to replace him although the DOS parties had agreed on this, leading to a dispute in the coalition. See more in ICG Balkans Report No. 117, *Serbian Transition: Reforms Under Siege*, 21 September 2001, at <http://www.intl-crisis-group.org/projects/shwreport.cfm?reportid=417>.

Nikolić made before the Serbian Parliament in connection with the murder of journalist Slavko Ćuruvija: "I do not feel an ounce of sorrow for Ćuruvija, who as a NATO mercenary fully deserved what he got". Ćuruvija was shot dead outside his flat on 11 April, 1999, while the SRS was in the ruling coalition (*Blic*, 16 February, p. 6).[165]

Late in March, leading DOS figures in Zaječar made several attacks on the local papers *Timok* and *Borske novine,* which had criticised their conduct. They also filed three criminal complaints against journalists for libel. The Zaječar correspondent of *Radio Belgrade* was physically assaulted by Boško Ničić, the local head of the Nova Demokratija party (*Politika*, 8 March, p. 8).

Early in May, Milorad Djoković was sacked from the post of editor-in-chief of the newspaper *Kolubara.* Djoković says he was fired for criticising the conduct of some senior executives of the Kolubara mines who are DOS members (*Danas*, 11 May, p. 6). Later that month, editor in chief of *RTV Ćuprija* Vesna Stojković was replaced. The independent trade unions in Ćuprija have said Stojković was replaced because she had "failed to show enough support for the authorities and as a member of the Democratic Party had not afforded prominence to their work" (Beta, 4 June).

On 19 July, two men physically assaulted Dragan Jocić, a journalist of Bela Palanka-based *Radio Otpor*. Jocić said that he had recognised the attackers and that they were "supporers of the SPS" (Beta, 20 July). Officials in the former regime continued to threaten and attack journalists in 2001. Jagodina journalist Nenad Nedeljković received death threats from Blagoja Milošević, a local official of the SPS (*Blic*, 19 June, p. 6). *Radio Belgrade* and *Danas* correspondent in Bor Brana Filipović was severely beaten "because he supports Vlachs" (*Danas*, 5 March, p. 22). Novi Sad-based *TV UrbaNS* journalist Marina Fratucan received death threats after a broadcast on ethnic cleansing of Croats in the Srem region in 1992. (*Politika*, 29 May, p.13).

On 25 December, unknown men brutally beat *Radio Beograd 202* journalist Vojin Vojnović outside his home in Belgrade. The attackers accused him of being a member of JUL and told him that "those like you will never again work in *RTS*". The editor in chief of *Radio Beograd 202* also received a telegram with threats to Vojnović (Beta, 25 December).

2.9.2. Attitude towards the Media – The new Serbian authorities early in February revoked most of the provisions of the Law on Information, in force since October 20, 1998. Courts had handed down on the basis of the information law a total of 70 fines all told worth 31,423,000 dinars (DEM 2,536,642 or USD 1,342,786 at the realistic daily exchange rates).[166] Part of the money (11,400,000 dinars) was returned to the punished media in June 2001. The Government promised to pay back the rest as soon as possible (*Blic*, 19 June, p. 6). On 15 November, the Government sacked a total of 21 magistrates from Belgrade, Leskovac, Niš, Vranje and Prokuplje for passing rulings based on the information law according to which media were ordered to pay huge fines since 1998. The Serbian Ministry of Justice went public with a list of total of 69 magistrates to be relieved of their posts, but some of them, as Minister Vladan Batić has said, "have been given a second chance as they have revealed that they had been under enormous pressure by their superiors and also the justice ministry" (*Politika*, 16 November, p. 11).

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[165] See *Human Rights in Yugoslavia 1999* and *2000*. See more II.2.2.2.

[166] See *Human Rights in Yugoslavia 2000,* II.2.8.2.

The expected new broadcasting law was not adopted in 2001, and the issue of new operating licences is still suspended. This situation was exploited several times by the state authorities to exert pressure on the media, whose representatives have said that over 90% of all electronic media still operate without proper licences because the former regime had sought to block the work of all those who criticised it. The media have also accused the current authorities of exploting the chaotic situation to exert political pressure on media at local level.

The Federal Telecommunications Inspectorate in early October took off the air Niš-based *TV Nišava,* the only Roma-language electronic medium. "Over 95% of all electronic media in Yugoslavia are working without a permit because of the non-existence of a telecommunications law. It is our impression that *TV Nišava* was closed down because it is the only such medium in Roma in the FRY, and we believe the affair to be a clear violation of human rights", Boban Nikolić, Secretary of the Roma association *Bahtalodrom,* which ran the TV, has been quoted sa saying (*Danas*, 6 October, str 4).

Independent *TV Pirot* was also taken off the air, the explanation being that "its signal interferes with that of Channel Three of the state television". *TV Pirot* employees have said its closure was a result of efforts by the state TV to stifle competition at local level. After negotiations lasting a week, *TV Pirot* re-started broadcasts, but on new frequencies (*Danas,* 7 October, p. 5 and Beta, 14 October).

The Serbian authorities decided in July that daily and weekly newspapers should also pay sales tax on unsold copies. After publishers protested, the decree was revoked in August (*Vreme*, 26 July, p. 9). Early in June, the Serbian Parliament barred reporters' freedom of movement in the parliament building, saying that "journalists disturb deputies". After reporters protested, a day later the decision was revoked (*Politika*, 12 June, p. 9).

2.9.3. Hate Speech – Publications inciting racial, religious and ethnic hatred and intolerance were in print and general circulation in 2001. They include *The Protocols of the Wise Men of Zion*, a book seeking to prove that the Jews are conspiring against the rest of humankind (Beta, 14 February). The Alliance of Jewish Communes in Yugoslavia filed a criminal complaint against the publisher, Djordje Katić, for inciting racial, religious and ethnic hatred and intolerance (Art. 134 of the Federal CC), which the District Prosecutor's Bureau in Belgrade rejected in July. Deputy District Prosecutor Milija Milovanović said this had been done because the book did not contain any elements of the said criminal offence (Helsinki Committee for Human Rights in Serbia, Press Release, 25 July). Milovanović added that the recent repeal of the Law on Information had "stripped the prosecutor of the possibility of reacting in this particular case" (Beta, 26 July; *Blic*, 13 September, p. 8; IWPR Balkan Crisis Report, No. 288, 6 August). "The decision legalises the right to express anti-Semitic views and publish literature of this kind" the Alliance of Jewish Communes said in a statement (*Danas*, 17 August, p. 6).

The Helsinki Committee for Human Rights in Serbia (HC) said in its statement that "the increasingly aggressive anti-Semitism is being generated in the highest echelons of power" (HC, Press Release, 25 July). But Aca Singer, the President of the Alliance of Jewish Communes, came out against this view. "Neither Koštunica nor Djindjić are

responsible for the growth of anti-Semitism," Singer said, adding: "Koštunica is the first-ever president who has condemned anti-Semitic incidents" (*Večernje novosti*, 28 July, p. 5).

Other books published besides the said *Protocol* included *The Holy Scripture – Reflection on the Jews*, where the Jews are described in a derogatory manner, and *Mein Kampf,* published by Zrenjanin Ekopress, as well as the works of Dr. Ratibor Djurdjević *Contribution to the Characterology of Jews*, and *Judeans-Enemies of Mankind* (ANEM, Press Release, 11 June; Beta, 11 June; *Blic* 29 June, p. 8).

Investigations were begun in mid-September against Živorad Savić, author of the book *Holy Scripture – Reflection on the Jews*, and Ratibor Djurdjević, who wrote its preface. The two are suspected of "inciting racial, religious and ethnic hatred and intolerance through the book *Holy Scripture – Reflection on the Jews* (*Večernje novosti,* 13 September, p. 11; Kuća tolerancije, Barometar, March – July 2001). Among other things the book claims that "there is something sadistic in the character of Jews" and that they are "greedy for power, cunning, grasping, terrorists, covetous of others' property, brutal towards their enemy ... and organisers of genocide " (*Blic*, 29 June, p. 8). The investigation was completed early in November. Charges against Savić and Djurdjević were filed by the Belgrade District Prosecutor in November.

Jewish associations and NGOs issued numerous protests against the free circulation of anti-Semitic publications (ANEM, Press Release, 11 June). The authorities have not reacted to the demands for a ban on their sale.

The hate speech was also employed by some opposition parties (SPS and SRS), and some nationalist associations.

The ultra-nationalist *Obraz* movement, which openly advocates racism, anti-Semitism, xenophobia and intolerance, stepped up its activities in 2001.[167]

The Humanitarian Law Center expressed concern over the lack of public reaction to the hate speech used by *Obraz* leaders. The HLC also demanded that the authorities apply the law against the organisation (HLC, Press Release, 30 April).

The Website of *Obraz*, which contains the text "Proclamation to Enemies – Serb enemies", is according to the HLC full of threats, insults and belittling aimed at minority groups. Among the groups lambasted by *Obraz* are "Zionists (Jewish racists), Croats, converts to Islam, ethnic Albanians, sect members" and others. On its site *Obraz* openly propagates racism, xenophobia, anti-Semitism and intolerance (*Danas*, 28 April, p. 8; HLC, Press Release, 30 April).[168]

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[167] See article *Obrazluk i teodulija* in *Vreme*, 29 March, p. 28.

[168] The site also contains the following: (to Croats) "Your centuries-old pathological hatred of all that is Serb and Orthodox is the poisonous fruit of your state-building impotence and cultural barrenness. Well aware of your spiritual misery and insignificance, you stole from us Serbs everything that you lack, from language and history to great minds like Rudjer Bošković and Nikola Tesla. In this process you managed, in the past two hundred years alone, to massacre, expel and forcibly croatise over three million Serbs." (to Bosniaks) "Spiritually you are even more insignificant than Croats, you even stole the name of you fake 'nation' (Bosniaks) and fake 'language' (Bosniak) from your real ancestors, trying without success to ignore the janissary complex which will burden you as long as you fail to return to Serbhood and Orthodoxy." (to ethnic Albanians) "You, who are the ethnic disgrace of Europe, claim that the ancient Serbia – Kosovo and Metohija – is yours?! Once the time to settle accounts comes, ask yourselves how you will come to terms with the justified wrath of the Serb people, who, rest assured, will come to get their own. You yourselves will be to blame for the fates of your descendants."

On 1 March, a group of students of the history department at Belgrade University's Faculty of Philosophy founded an association calling itself Sveti Justin Filozof (Saint Justin Philosopher), which is believed to be a front for *Obraz* (HLC, Press Release, 1 March).[169]

High officials of the Socialist Party of Serbia organised protests and called for national and religious intolerance, and assaulted political opponents and journalists. At SPS rallies, party activists chanted: "We will kill both Djindjić and Koštunica" (Spanish news agency EFE, 2 July).

On 5 July, 2001, the Humanitarian Law Center filed a criminal complaint with the District Public Prosecutor in Belgrade against the SPS Vice-President, Ivica Dačić, for inciting ethnic hatred and intolerance. At a rally of the SPS and SRS held outside the Federal Parliament on 2 July, Dačić said "Serbia must conduct a Serbian policy and not allow any Jozef Kasza or Rasim Ljajić to conduct it",[170] urging "Partisans and Chetniks, republicans and monarchists, Partizan and Red Star fans" to take up arms. Dačić told *Večernje novosti* on 4 July 2001 that "it is not logical that Jozef Kasza and Rasim Ljajić should decide on the extradition of Serbs", adding that "all they now need is Thaqi"[171] (HLC, Press Release, 5 July). In a reaction to the statements, the Alliance of Vojvodina Hungarians said that by uttering the above words Dačić had sent a message that minority politicians, hence also other non-Serb citizens, did not possess the values needed to take part in Serbian social and political life (*Danas*, 5 July, p. 5). On 1 August, the HLC withdrew its criminal complaint, saying that this was done after Dačić had subsequently to his initial statements said in public that he had not intended to insult political opponents on ethnic grounds, whereby, according to the HLC, "...he expressed a desire for efficient political conduct which does not threaten the standards of freedom of speech" (HLC, Press Release, 1 August).

The HLC also withdrew a complaint for the criminal offence of slander it had filed against Goran Matić, the former Federal Minister of Information, after Matić had told *TV Politika* on 25 October, 1999, that the independent media could "approach Nataša Kandić of the Open Society Institute[172] and say they want to realise a democratic project, whereupon she would give them DEM 300,000." The HLC said it had done this because "...in the altered political environment, there must exist a more tolerant attitude towards political opponents and their right to free expression" (HLC, Press Release, 1 August).

The HLC has pointed at the conduct of the Mayor of Čačak, Velimir Ilić, who in 2001 frequently spoke about Roma and ethnic Albanians in an abusive manner and threatened journalists reporting on his political and commercial activities (HLC Press Release, 19 December).

2.9.4. Freedom of Expression in Montenegro – Freedom of speech was breached in Montenegro in 2001 in the form of political and other pressures on the media.

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[169] See more II.2.1.1.2.

[170] Jozef Kasza – an ethnic Hungarian, Serbian Deputy Prime Minister; Rasim Ljajić – a Bosniak, Federal Minister for National and Ethnic Communities.

[171] Hashim Thaqi leader of the Democratic Party of Kosovo and head of the former "KLA".

[172] Matić probably meant Humanitarian Law Center, which director Nataša Kandić is.

The most prominent was the trial of Vladislav Ašanin, editor in chief of the Podgorica daily Dan.[173] On 3 September, Ašanin was sentenced to five months' imprisonment, two years suspended, on the basis of a private complaint filed by Stanko "Cane" Subotić for libel; Dan carried articles of the Croatian weekly Nacional in which Subotić and Montenegrin President Milo Djukanović were claimed to be the heads of the Balkan cigarette trafficking mafia, and Subotić was also accused of being behind several murders. "The said articles claimed that the private plaintiff had committed several murders and criminal offences subject to automatic prosecution. The accused did not seek to prove the veracity of the said claims or prove that he had a well-founded reason to believe in the veracity of the texts carried. It is the opinion of this court that the editor in chief had a duty to assess the circumstances and not to take the texts carried at face value", judge Milić Medjedović was quoted as saying. Ašanin said he had been tried at a political process, adding that "providing evidence is not the responsibility of journalists, but of the state authorities, who are paid for that job". (*Večernje novosti*, 4 September, p. 11 and *Monitor*, 31 August, p. 24).

Early in December, Ašanin was sentenced to a further three months' imprisonment on the basis of a private complaint filed by President Djukanović for "libel in an extended duration". The ruling said Ašanin had committed a total of 21 criminal offences of libel. Ašanin said he had been condemned at a political trial and that besides the texts dealing with the tobacco mafia from *Nacional, Dan* had also carried a total of 52 other articles on the same subject from other foreign media "in connection with which no one was sued" (*Vijesti*, 7 December, p. 7 and *Blic,* 10 December, p. 8).

The Montenegrin media made no protests against the ruling after the first judgement. "The impression is gained that in their search for exclusives some Montenegrin media are more inclined to wear somebody else's feathers, often suspect in origin, instead of their own", the Montenegrin weekly *Monitor* commented. On the other hand, however, the Belgrade daily *Danas* wrote: "In this case the political orientation of *Dan* and its editor are not important, and neither are the names listed by *Nacional,* or even the accusations it makes. What is important is the intention to use the judgement in order to reincanate journalistic self-censorship dating from the darkest period of this country's history, not just in writing, but also in quoting someone or something" (*Monitor,* 31 August, p. 26 and *Danas,* 6 September, p. 7).

But things changed after the second ruling, passed in a private suit filed by President Djukanović, which was assessed as political by the presidents of both Montenegrin media associations (*Vijesti*, 7 December, p. 7 and *Blic* 10 December, p. 8).

The Helsinki Human Rights Committee in Montenegro in May asked the Government to revoke some segments of the Montenegrin Criminal Code relating to slander. "These provisions contravene international standards and can be used for preventing the media from informing freely, as well as suppressing legitimate criticism directed at officials and institutions", the organisation said in a statement (*Monitor*, 18 May, p. 8).

In March, the Montenegrin Ministry of Information withdrew the broadcasting licence of Podgorica-based *Elmag* television, reportedly on political grounds (Tanjug, 12 March). The ministry has demanded on several occasions that T*V YU Info* stop

[173] The daily is seen as being close to former Montenegrin President Momir Bulatović.

broadcasting, accusing the station of promoting "Greater-Serbian nationalism" (*Vijesti*, 21 March, p. 4).

The conflict between the ruling coalition in Montenegro and opposition parties has led to the dismissals of local media figures in Berane, where the local authorities, controlled by the republican opposition, replaced the editors of the local radio and newspaper, members of president Djukanović's party. The sacked editor in chief of *Radio Berane* said the replacements had taken place after the media had criticised the work of the local authorities (Beta, 28 May and *Vijesti*, 30 May, p. 7).

The Metropolis of Montenegro and the Littoral of the Serbian Orthodox Church is in a quarrel with the state authorities of Montenegro after they registered the Montenegrin Orthodox Church as a religious community, although it is not a canonically recognised church. According to the Metropolis, the dispute has led to the withdrawal of the operating licence of the SPC's Radio *Svetigora* (*Vijesti*, 15 May, p. 9). The Metropolis has barred the Montenegrin state media from reporting from its activities (*Vijesti*, 8 January, p. 3). In June, supporters of the SPC physically assaulted a photographer of *Vijesti* near the church in Podgorica (*Vijesti*, 2 June, p. 18).

2.10. Freedom of Peaceful Assembly

On 30 June, homosexuals and lesbians attempted to mark International Gay and Lesbian Pride Day with a public assembly. However, members of *Obraz*,[174] fans of the Red Star Belgrade and Rad football clubs, and members of the St. Sava Youth physically assaulted the participants, journalists and innocent bystanders, breaking up the first-ever organised street assembly of people with different sexual orinetation in Serbia (HLC, Press Release, 1 July). The organisers said over 40 persons were hurt in the incident (*Labris* and *Gayten–GLTB*, Press Release, 1 July).

The organisers, *Labris* – Group for Lesbian and Human Rights and *Gayten-GLTB* – Centre for the Promotion and Development of the Rights of Sexual Minorities, had duly registered their assembly with the police. They also notified police about the threats they had received from extremist groups, which means police had been informed in advance about a danger of incidents (*Labris* and *Gayten–GLTB*, Press Release, 1 July).

Although police had issued guarantees for the security of the participants, requisite preventive measures were not taken. The organisers said in their statement that police had reacted only when they themselves had felt threatened. There was an insufficient number of policemen on the scene, in view of the circumstances surrounding the gathering from the very start. Policemen ignored appeals from the public for help, and some of them even made openly homophobic and discriminatory statements full of intolerance (*Labris* and *Gayten–GLTB*, Press Release, 1 July).

The Belgrade Centre for Human Rights condemned in the strongest possible terms the attack on persons of different sexual orientation, expressing grave concern over the extremely violent and intolerant attitude by a part of the Yugoslav society towards the sexual minorities, as well as the fact that police had not adequately met its obligation to provide protection for groups exercising their right to peaceful assembly (see *Plattform Ärzte für das Leben vs. Austria*, A–139, (1998)).

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[174] See more II.2.9.3.

During the incident, six members of the public sustained light injuries, as did six policemen, while two policemen were more seriously hurt. A total of 31 persons were arrested on the spot for breaching the peace and obstructing a public gathering, while another 17 were identified and arrested later. Requests for misdemeanour proceedings were filed with the Municipal magistrate against 38 adult and ten juvenile persons; five were sent to prison for between 10 and 22 days, four were fined, proceedings against a further 17 had not been completed by the end of the year, while the other 22 were not charged. Criminal complaints were filed against three persons on the basis of reasonable suspicion that they had committed the criminal offence of obstructing an official in the performance of security affairs and the preservation or law and order (Art. 23 of the Act on Public Law and Order) (Letter by head of the Belgrade municipal police head, Major-General Boško Buha, to the organisers of the parade, 11 September).

In a reply to Gen. Buha's letter, the organisers said that sexual minorities were marginalised and insufficiently protected. They said perhaps the best proof of the overall situation in the police in regard to the respect for human rights, especially the right to be different, was the disriminatory and insulting statement made by the head of the Belgrade police to the media after the incident – "Our society as a whole is not ready for the expression of perversity in this shape" (*Labris* and *Gayten–GLTB*, Press Release, 5 July).

Rallies of SPS supporters outside the home of the former Yugoslav president and their protest marches through Belgrade were not hampered by police. During their gatherings, some SPS supporters assaulted onlookers and destroyed property; at a rally in Belgrade in mid-July, they attacked a bypasser and several reporters. Two attackers were later fined by the magistrate (*Danas*, 16 July, p. 15). Late in September in Novi Sad, bodyguards at an SPS rally beat up two reporters and damaged several cars. SPS supporters also maltreated onlookers expressing opposition to their party's programme (*Blic*, 30 September, p. 5). Novi Sad police filed misdemeanour complaints against five SPS members (*Večernje novosti,* 2 October, p. 3).

In view of the growing tension between SPC and CPC adherents, late in January Montenegrin police ordered an SPC rally moved from the centre to the outskirts of the capital Podgorica (*Danas*, 26 January, p. 4). The aim of the police was to meet its obligation to make possible the unhindered expression of opinions at a public rally, by preventing possible incidents between the two groups (*Plattform Ärzte für das Leben vs. Austria*, A–139, 1998). But this case can also be viewed as favouritism towards one gathering against another. Those taking part in a rally moved out to the suburbs have less chance of attracting the attention of the public by the expression of their opinions, which is the very purpose of every public gathering.

2.11. Freedom of Association

Since the democratic changes in the FRY there have been almost no violations of the right to association; in this the attitude of the new authorities differed enormously from that of the regime they replaced.

An Independent Police Trade Union (NSP) was registered in January. The former regime had refused to register the union for ten years, citing the law, which prohibits trade union organisation in the police and armed forces. NSP President Milisav Vasić said the union was formed to fight for the trade union rights of policemen and to help

depoliticalise the police (*Danas*, 20 January, p. 1; *Politika*, 7 February, p. 9 and *Danas*, 27 March, p. 4).

After NSP members protested in Belgrade on 2 July, the federal interior ministry suspended Vasić and several other union members from work. Yugoslav Interior Minister Zoran Živković said Articles 42 and 57 of the Yugoslav Constitution explicitly prohibited police and army personnel from forming trade unions and going on strike. The NSP replied that it had been registered by the Serbian Ministry of Labour, but Živković repeated that it was in contravention of the federal constitution. "I don't think that abolishing the right to trade union organisation is a good solution, but it exists in the federal constitution and as such must be respected", Živković said (*Danas*, 6 July, p. 4 and *Blic*, 7 July, p. 9). According to the practice of the European Court for Human Rights, states are allowed to bar public officials from organising themselves in unions, especially members of services protecting public and national security (*Council of Civil Service Unions vs. United Kingdom*, App. No. 11603/85, (1987)). Under European standards, barring police and army personnel from forming unions is therefore permissible, although such a position does prevent them from protecting fully their vital labour interests.

Early in March, an Independent Trade Union was formed in the Yugoslav Ministry of Defence's Civic Defence sector (*Danas*, 6 March, p. 5).

In contrast to the former regime, which viewed non-governmental organisation as enemies working against the interests of the state, the new authorities sought to work together with them in the legislative and social reform processes. Experts from a number of NGOs were invited to participate in numerous law-making groups. New laws on NGOs at federal and Serbian levels currently being prepared should facilitate their establishment and work. Some proposed bills were assessed as excessively restrictive, provoking reactions by NGOs. The Ministry of Justice has promised to take their observations into consideration.[175]

Some NGOs received threats in 2001. The Center for Antiwar Action (CAA) in Čačak received an anonymous threat on 19 July according to which its Director, Dr Svetlana Erić, and Damir Kučuk would be killed and premises of the CAA and the Civic Alliance of Serbia (GSS) bombed. This is just one in a series of threats of this kind which accompany every public appearance by CAA representatives in Čačak (CAA, Press Release, 19 July). The GSS said in its statement that the "first threat was recorded in February and duly reported to the police, which has not reacted so far" (Beta, 20 July). Early in June, unknown burglars broke into the *Otpor* movement's offices in Novi Sad and stole a computer hard disk containing data on "misappropriation of funds and abuse of office" (Beta, 4 July).

2.12. The Right to the Peaceful Enjoyment of Property

No major violations of this right were recorded in 2001, but the new authorities came face to face with the need to annul the illegal decisions which violated in the previous period the right to the peaceful enjoyment of property. The process of denationalising property which the communist authorities confiscated after World War

[175] See more I.4.11.2.

Two again did not start in 2001, and neither was a comprehensive privatisation process initiated.

The Yugoslav authorities announced in mid-March that they would return some ten million D-marks illegally seized by the customs authorities at border crossings in the period between November 1995 and the end of 1997, in connection with which a total of 1,741 persons submitted claims. It was established that this included 784 Yugoslavs and 957 foreign nationals, to whom the federal state is to return a total of DEM 10,573,567 (*Politika*, 15 March, p. 1). The media has not reported if any funds had been actually paid back.

2.12.1. Nationalised Property – The Serbian Constitutional Court received early in January restitution claims relating to about 800 owners of enterprises which were nationalised in 1948 (*Večernje novosti*, 20 January, p. 13). No ruling had been issued by the end of 2001.

The Serbian Orthodox Church wants the state to return to it 70,000 hectares of arable and forestland and 1,181 buildings, including three palaces and 50 buildings with at least 200 flats in Belgrade alone (*Večernje novosti*, 13 February , p. 6).

Early in March, the Municipal court in Topola returned property in Oplenac to the Karadjordjević family. In 1947, the communist authorities had nationalised the Endowment of King Petar I Karadjordjević. The court ordered that the immovable property, including the villas of King Aleksandar and Queen Marija, the wine cellar, 52 hectares of vineyards and orchards and 83 hectares of parks and meadows, be returned to the Endowment, which was confiscated in 1947 on the basis of testimony by witnesses whose veracity has now been challenged (*Večernje novosti*, 13 March, p. 13).

On 12 July, the Federal Government issued a decision granting Prince Aleksandar II Karadjordjević, the head of the royal family, and to its other members the right to use the White Palace and Old Palace in Belgrade, together with ancillary buildings. Under the decision, the royal family may not give away any of the valuables in the compound, and is to cover the cost of the upkeep of the palaces. An inventory of the property in the palaces was completed after the Karadjordjević family had moved into them. President of the Commission for Establishing the Condition of Representative Buildings in the FRY Ivan Ivić resigned from the post in protest over the decision. "The commission did not participate in the adoption of the decision, which is an improvisation inspired by day-to-day political motives", Ivić was quoted as saying (*Blic*, 15 July, p. 9; *Večernje novosti*, 16 August, p. 10 and *Danas*, 21 September, p. 5). The decision opens up the question of the unequal treatment enjoyed by the Karadjordjević family and other citizens whose property had been nationalised.[176]

2.12.2. Privatisation – Many state-owned firms were privatised in the period immediately following the fall of the Milošević regime. Between the end of October 2000 and mid-January 2001, while Serbia was ruled by a joint transitional government formed by DOS, the SPO and the SPS and in an effective legal and political blockade in the anticipation of the results of the early general elections, a total of 217 firms entered into the privatisation process. They include giants like *Simpo*, *Hemofarm*, *Toza Marković*, *Bambi*, *Jabuka*, *Trudbenik*, *The Port of Belgrade*, *Fidelinka*, *Vital*, and *Hotel*

[176] See more I.4.12.6.

Metropol. The value of the capital of the firms, whose CEOs were mainly high officials of the SPS and JUL, was reduced and a large number of shares distributed to the workers free of charge (*Večernje novosti*, 12 January, p. 7 and *Večernje novosti*, 17 January, p. 7).

The privatisation process in Montenegro was attended by numerous protests staged by the former owners of nationalised property. Miroslav Jovanović, President of the Alliance of Associations for the Return and Protection of Private Property, said the list of hotels offered for sale to foreigners included the hotels *Budva*, *Beograd*, *Mogren, Balkan* and *Avala* in Budva, and several in Kotor. Jovanović added that all those hotels had former owners and should be returned to them (*Monitor*, 27 April, p. 30 and *Vijesti*, 12 March, p. 5).

Veselin Uskoković, President of the Association for the Protection and Return of Private Property in Montenegro, claimed that Montenegrin Minister of Tourism Vladimir Mitrović had threatened to have him arrested in May and had him ejected from an international conference on investment in the holiday trade. Uskoković said this was because he had tried to inform the participants in writing that they would face a risk by investing in Montenegrin tourism because a denationalisation law had not been adopted and ownership relations cleared up (*Vijesti*, 18 May, p. 4).

2.12.3. Other Violations of the Right to Peaceful Enjoyment of Property – Since March 2001, Serbian police have allegedly been illegally using business premises owned by the Belgrade firm *Inex*. The Serbian Interior Ministry is not paying rent or showing any intention of vacating the premises. The minister of internal affairs has been informed about the case, and *Inex* staff organised a number of public protests (*Večernje novosti*, 15 June, p. 15). There have been no reports if any lawsuit has been filed hereto.

The dispute over the ownership of Yugoslavia's biggest pharmaceuticals firm *ICN Galenika* continued in 2001. The shareholdings of the Republic of Serbia and the U.S. firm ICN Pharmaceuticals are under arbitration before the International Chamber of Commerce in Paris. Serbia assumed ownership of the firm in 1999,[177] and on 20 July 2001 the Serbian State Health Fund took it over. *ICN* Vice-President Nebojša Pešić said that during the Milošević period, the Fund owed *Galenika* USD 180,000,000 and had amassed another DEM 14,000,000 in debt after his downfall. The *ICN* management said "all members of the new board of directors are either in the Democratic Party or close to it. The Government of Prime Minister Djindjić obviously intends to continue looting the biggest pharmaceutical firm in the country on the basis of the illegal decisions of the Milošević regime". The Serbian Government reiterated that "the Republic of Serbia is the owner of the majority stake in *Galenika*, is ready to co-operate with *ICN* representatives, and will abide by the decision of the International Arbitration on the ownership of *Galenika*, which the government itself initiated" (*Blic*, 25 April, p. 6; *Danas*, 19 July, p. 5 and Beta, 20 July).

Soldiers of the Novi Sad garrison of the Yugoslav Army (VJ) evicted from her flat Ksenija Šević, the former wife or a VJ officer, early in October, at which time proceedings were under way before the Municipal Court in Novi Sad in connection with the disputed tenancy rights. According to Ksenija Šević, soldiers, some of them armed, forced their way into the flat and moved her belongings out into the street while she was at work. The army has denied that it had carried out a forcible eviction and added that the

[177] See *Human Rights in Yugoslavia 1999*, II.2.11.2.

flat in question is VJ property and had only been issued to Ksenija Šević's husband for temporary use. Ruling on a trespassing suit filed by Ms. Šević, the court issued on 19 October a temporary injunction ordering the VJ to return to Ms. Šević the keys to the disputed flat, but this had not been done at the time of writing (*Večernje novosti*, 9 October, p. 17; *Blic*, 10 October, p. 9 and *Danas*, 31 October, p. 5; HLC Press Release, October 30).

Residents of villages surrounding Nikšić, Montenegro, late in March set up roadblocks around the local bauxite mine and demanded that they be paid compensation for damage suffered from bauxite exploitation (*Vijesti*, 29 May, p. 9).

2.13. Minority Rights

The new authorities are making visible efforts to regulate the status of minorities in a new way. Under the auspices of the Federal Ministry for National and Ethnic Communities, expert teams began in 2001 drafting a new law on national minorities.[178] The ministry has opened an office in Bujanovac, southern Serbia, and launched a pro-tolerance media campaign.

Yugoslavia signed in May 2001 the Framework Convention for the Protection of National Minorities. The FRY is also expected to sign soon the Charter on Regional and Minority Languages, which is a condition for membership in the Council of Europe (*Blic*, 12 May, p. 9).

Still there were frequent physical and verbal attacks in 2001 on minority groups and organisations fighting for their protection in Serbia (HLC Press Release, 22 March).[179]

2.13.1. Ethnic Albanians in Southern Serbia and Montenegro – Some 70,000 ethnic Albanians live in and are the majority population of the southern Serbian municipalities of Preševo, Bujanovac and Medvedja, which border on Kosovo. Since the end of 1999, local Albanian terrorist groups rallied in the self-styled "Liberation Army of Preševo, Bujanovac and Medvedja" ("LAPBM") have clashed with Serbian and Yugoslav security forces in the region. Under an agreement signed by Serbia and the NATO, in the period between March and May VJ and Serbian police units were re-deployed in the security zone along the administrative boundary of Kosovo.[180]

Late in January 2001, the Humanitarian Law Center sent a letter of protest to the Serbian Interior Minister, Dušan Mihajlović, in which it pointed to the behaviour of police at the checkpoint set up in Ribarnica, southern Serbia, where police took in people for questioning without a valid reason, and threatened and intimidated ethnic Albanian women and elderly persons travelling to visit relatives incarcerated in Serbian prisons (HLC Press Release, 29 January).

Shaip Kamberi, President of the Bujanovac-based Human Rights Committee, which comprises only ethnic Albanians, informed the public on several occasions about the violations of human rights of the local Albanians by the army and police. At the very beginning of the year, Kamberi said, army soldiers beat up an old man from Veliki Trnovac (Beta, January 3). The Committee also protested over police actions in the

[178] See more I.4.13.
[179] See more II.2.1.1.2.
[180] See more II.2.2.1.

villages of Turija and Oslave in which several ethnic citizens were maltreated (HLC Press Release, 2. March).

Late in April, police smashed up the homes of ethnic Albanians in the village of Lučane. The officers responsible have been suspended. According to Serbian Deputy Prime Minister Nebojša Čović, about 250 members of the Joint Security Force have been punished for their behaviour towards the local population (*Politika*, 28 April, p. 1 and *Blic*, 7 May, p. 9).[181] They include two policemen who late in April slapped an elderly Albanian from the village of Sijarina, in the Medvedja area (*Blic*, 30 April, p. 2). Early in May, two policemen were arrested after promising to return to the Nuhiu family in Preševo their abducted father Nebia and taking DEM 160,000 for their service (*Politika*, 11 May, p. 7 and *Blic*, 11 May, p. 9). The VJ early in May returned to Džafer Mifratović, from Novo Selo near Bujanovac, the sum of DEM 83,615 which had been taken during a search of his brother's house which took place at the time of the NATO raids (*Blic*, 12 May, p. 9)

The plan for resolving the crisis in southern Serbia drafted by the Yugoslav and Serbian authorities early in the year besides a halt to terrorist actions and an improvement of the economic living conditions in the region, also calls for the re-integration of the ethnic Albanian population into the state and social systems of Serbia (CAA report, February). Training programmes for four groups of multi-ethnic police were implemented by the OSCE mission and with the participation of foreign instructors (*B92* news, 7 Avgust).[182]

Some 7% of the population or Montenegro, or 44,500 people, are ethnic Albanians. The electoral district of Malesija covers the area where most of them live and provides five of the 73 deputies in the Montenegrin Parliament. The five seats are more than the territory would be entitled to in view of its total population, but the mandates are not reserved for ethnic Albanian parties and are contested by all parties active in Malesija. In the parliamentary elections in April, three ethnic Albanian parties won just two of the five seats (Spanish news agency EFE, 22 April).

Ferhat Dinosha, an ethnic Albanian leader in Montenegro, called early in February for the establishment of a Chamber of Minority Peoples in the Montenegrin Parliament. Dinosha said the “attitude of the Montenegrin authorities to the Albanians is far better than that of the Serbian authorities, but we do need instruments of institutionalised protection of the collective rights of ethnic Albanians” (Beta, 15 February and Spanish news agency EFE, 19 February). Dinosha offered concrete data. “In Ulcinj, where 85% of the population are ethnic Albanians, the local police head and the president of the Municipal Court are not Albanians. The share of ethnic Albanians in Montenegrin state agencies and public services is 0.03%” (*NIN*, 29 March, p.25). Article 73 of the Montenegrin Constitution guarantees to the national minority proportional representation in the organs of authority and public services.

2.13.2. Roma in Serbia and Montenegro – According to the results of the 1991 census, there are some 143,000 registered Roma living in the FRY, or 1.38% of the

[181] The Joint Security Force is made up of units of the army and Serbian police and was formed early last year to counter ethnic Albanian extremists' actions in southern Serbia, protect the civilian population and maintain law and order.

[182] See B 92 website at <http://www.b92.net>.

overall population. But the official data are not seen as reliable – the Roma Cultural Society (Matica romska) says there are between 600,000 and 700,000 Roma in Yugoslavia. Numerous cases of discrimination against Roma were recorded in 2001.[183] The first-ever Roma demonstration took place in Novi Sad in March. About 200 Roma protested over their low social status. "We don't want our children to grow up like us – second-rate citizens", protesters said (Beta, 21 March).

Yugoslav Roma have been seeking national minority status for some time. The draft law on national minorities will explicitly list Roma as a national minority.[184]

Representatives of Roma organisations have complained about discrimination against Roma. "The Committee has records of some 700 cases of serious violations of the human rights of Roma, including rape, murder, police maltreatment, bans on burying their dead at Serb cemeteries, and even the burning down of entire Roma settlements", the President of the Committee for the Protection of the Roma Human Rights Jovanović has said (*Danas*, 6 July, p. 15).

There are no regular Roma-language classes for Roma children in Serbian schools. No educational programmes for this exist in primary or secondary schools, and a very small number of teachers are trained to conduct classes in Roma. Classes in Roma and elements of the national culture do exist, in optional form, only in a few schools, mainly in Vojvodina. Attending these twice-weekly classes helps the integration of children of Roma nationality in the educational system (HLC Press Release, 16 April).

During the 1999/2000 schools year and with the financial support of the Serbian Ministry of Education, the "Jovan Jovanović Zmaj" primary school in Obrenovac introduced optional Roma-language classes for all age levels. They were attended by a total of 126 children, including 23 first-graders. Classes in Roma, which included elements of the national culture, were conducted in a specially-outfitted classroom according to a project by the Roma Cultural Society (HLC Press Release, 16 April). But the new school administration, appointed after the 5 October 2000 events, abolished the Roma classes. At the initiative of the Humanitarian Law Center and the Obrenovac-based *Rom* society, and with the full co-operation of the Serbian Ministry of Education, classes in Roma began again after the Easter holidays (HLC Press Release, 16 April).

The first Roma kindergarten was opened in Belgrade in April; some 70 children are enrolled. "Children in this kindergarten are taught Serbian because a great majority of Roma children are transferred to special classes in the later stages of primary school because they don't speak Serbian well enough to be able to attend classes normally", kindergarten assistant Danijela Antonijević, a Roma herself, said (*Vreme*, 19 April, p. 56).

An initiative for the opening of a kindergarten for Roma in the eastern Serbian town of Bor provoked mixed reactions. "Almost all (of the 7,000) Roma children in Bor attend a special school – 'Vidovdan'. They live in ghettoes, the children don't speak Serbian and are thus marginalised. In this kindergarten they will learn Serbian more easily and prepare for school", president of the local human rights committee Dragan Stršić has said. Employees of the *Bambi* kindergarten in Bor have described the initiative as a political move by NGOs helped by foreign funding. "We would like to point out that

[183] See more II.2.1.1.1.
[184] See more I.4.13.

establishing a special kindergarten for Roma children would be a breach of the law", they said in a statement, adding that "Roma children have always been attending our kindergarten and receiving the same treatment as all other children" (*Danas*, 6 September, p. 15).

In July 2001, the Belgrade municipality of Savski Venac ordered Roma living in the compound of the hospital in Zvečanska Street to vacate the area immediately. There are over 300 Roma in the compound, including many children. But a few days later representatives of the Belgrade local assembly met with those of the Humanitarian Law Center and the municipality of Savski Venac and promised that a site would be chosen soon for the construction of a settlement to which the community would be moved. The construction will be funded by donors from Spain (HLC Press Release, 1 July). The municipal authorities declined to provide land free of charge for the construction of the facility, after which the Spanish donor withdrew. The same was done by the local authorities in Požarevac and the Belgrade municipality of Čukarica, who refused to provide land for the construction of housing for Roma after funds from foreign donors had already arrived (HLC Press Release, 12 December).

There was more information in Roma in 2001. *Radio Belgrade One* began on October 1 daily half-hour broadcasts in Roma entitled *Romano Them – Svet Roma (The World of Roma)*. The broadcasts will be repeated in Serbian, to allow other listeners in the FRY to learn more about the position of Roma in Yugoslavia (Beta, 1 October).

About 20,000 Roma live in Montenegro; about 2,000 are believed to have no personal documents. About 80% of them are thought to be illiterate. Over 60% of all Roma children in Montenegro have never attended school. There are currently just three Roma puplis in secondary school in Montenegro and only two Roma persons have university degrees (*Vijesti*, 10 April and 1 October, pp. 7 and 10 and Beta, 6 May).

2.13.3. Bosniaks – According to the 1991 census, there were about 345,000 Bosniaks in the FRY, concentrated mainly in the Sandžak region. Bosniak leaders in Montenegro have said that an estimated 15,000 Bosniaks emigrated from the republic in the past decade, owing to "poverty, pressures and the spread of hatred by the media" (Beta, 16 March).

Although not satisfied with their status, some Bosniak parties are sharing power in the Yugoslav and republican governments. More radical Sandžak Bosniak parties are calling for the region to become one of five proposed federal entities (*Blic*, 27 March, p. 2).

In January, the Serbian Constitutional Court revoked the statute of the Municipality of Tutin, in which Bosniaks were declared the majority population and were said to be using the Bosniak language (*Večernje novosti*, 12 January, p. 5).

A number of serious violations of the human rights of Sandžak Bosniaks remain unsolved and unpunished – they include the abduction and dissapearance of 19 men from a train in Štrpci nine years ago and violence in villages in the Priboj area.

2.13.4. Vojvodina Hungarians – The 345,000 ethnic Hungarians who live in Vojvodina are its biggest minority. According to ethnic Hungarian sources, some 50,000

of them have migrated away from Vojvodina since the break-up of the SFRY (Beta, 18 January). Their biggest political party[185] is participating in the government of Serbia.

Some representatives of the authorities and the opposition have shown a high level of intolerance towards the Hungarian national minority.[186] Deputy Speaker in the Vojvodina assembly Miroljub Lješnjak (DSS) walked out of a session of the body after an ethnic Hungarian deputy addressed it in his own language (*Beta*, 18 January).

Serbian Constitutional Court, which is incomplete and is made up of judges loyal to the former regime, ruled in January that the Statute of the City of Subotica contravened the Constitution and the law. Under the 1993 statute, Subotica is also named Szabadka (the Hungarian title), and three languages – Serbian, Hungarian and Croatian – are in official use in the city.[187] Early in April, the municipal assembly refused to implement the decision of the Constitutional Court and upheld the old statute (*Večernje novosti*, 26 January, p. 15, *Politika*, 30 January, p. 13 and *Politika*, 5 April, p. 14).

The Protocol on Co-Operation of Eight Municipalities in Northern Vojvodina was made public late in April. "Its significance does not lie in ethnic linkage, but in the fulfilment of economic and municipal needs", said Ištvan Pastor (*Istvan Pasztor*), one of the Alliance of Vojvodina Hungarians leaders and the author of the document. The ruling parties in Vojvodina have said this represented national parochialism and "threatens the autonomy of Vojvodina as a multi-national environment" (*Blic*, 21 April, p. 2; *Politika*, 26 April, p. 17 and *Večernje novosti*, 3 May, p. 4).

The Serbian Academy of Sciences and Arts' (SANU) Language Standardisation Board and some deputies in the Vojvodina Assembly came out against a proposal for the Latin alphabet to be introduced into official use. The board said the proposal was a "violation of the constitutional framework of the status of the Serbian language" (*Večernje novosti*, 26 January, p. 4; Beta*,* 1 February; *Politika*, 21 February, p. 9 and *Politika*, 1 March, p. 8).

Novi Sad University has again made available entrance examinations in Hungarian; last time this was possible ten years ago. But the public has not been informed about this in an adequate manner. It is believed that from next year other minorities in Vojvodina will also be able to take entrance examinations in their own languages (Kuća tolerancije, Barometar, March-June 2001).

On 18 April, Imre Borbely, the regional president for the Carpathian region of the World Alliance of Hungarians, was barred from entering Yugoslavia because he was carrying 20 copies of a periodical printed in Cluj, Romania called *The Hungarian Minority* and ten copies of the Budapest magazine *The Gate*. Borbely and two aides were allowed in only after they had left the offending periodicals on the Hungarian side (HLC Press Release, 19 April).

2.13.5. Vojvodina Croats – The Vojvodina Croats got in February a television broadcast in their language. Croatian-language radio has existed in Subotica since 1999 (Tanjug, 12 February). The Croats of Vojvodina asked in January that they be given the status of national minority. "We want Croatian to become an official language in all administrative business at municipal, provincial and republican levels. We also want

[185] The Alliance of Vojvodina Hungarians.
[186] See more II.2.9.3.
[187] See more I.4.13.

Croatian schools, from nursery schools through primary schools to higher education, as well as Croatian-language media", Bela Tonković, President of the Democratic Alliance of Vojvodina Croats, has said (*Blic*, 20 January, p. 3).

Vojvodina Croats are insisting that the people living in the north of the Bačka region who call themselves Bunjevci should be included among the Croats. Some of them have refused, saying their ethnic origin is different (*Danas*, 25 January, p. 13). "The Bunjevci will not and cannot allow their name to be used for political and national manipulations", said Nikola Vizin, Vice-President of the Bunjevci-Šokci Party, in reaction to the demand that the Bunjevci people declare themselves as Croats at population censuses. Vizin said that in 1996 legislation was enacted granting the Bunjevci the right to use their own national name (*Politika*, 4 July, p. 9).

2.13.6. Vojvodina Ethnic Germans – Descendants of the Vojvodina ethnic Germans whom the communist authorities expelled and seized their property after World War Two "for collaborating with the Fascist occupier", are also fighting for their rights. The German National Alliance has asked for the discriminatory decisions to be revoked. "Before the War there had been 400,000 ethnic Germans in Vojvodina, and according to the 1991 census there were just 3,873", the organisation said in a statement (*Večernje novosti*, 27 January, p. 6). The Alliance wants a national minority status for the ethnic Germans and a return of their confiscated property, estimated at about 25 billion DEM (*Beta*, 10 March and *Danas*, 12 March, p. 22).

2.13.7. Vlachs – The Vlach Democratic Union has rejected treatment of the Vlachs as a Romanian national minority and demanded that Vlachs be registered in the census planned for 2002 under that name. "Between 300,000 and 500,000 Vlachs live in the region bordered by the Danube, Morava and Timok rivers, where they are an indigenous population", party president Slobodan Djordjević has said (*Danas*, 28 September, p. 15).

The title Vlachs is also being used by a group of people in eastern Serbia who speak a dialect of the Roma language, but have so far not declared themselves as part of the Roma nation.

2.14. Political Rights

Important events in the area of political rights in the FRY in 2001 included parliamentary elections in Montenegro, extraordinary local elections in municipalities in Serbia where emergency administrations had been imposed, and physical attacks on political opponents and party premises.

Also important was the adoption of a federal Law on the Funding of Political Parties. Under the law, the property of the League of Communists of Yugoslavia (LCY), the former SFRY's ruling party, as well as that of organisations it controlled, becomes state property and will be granted for the use of political parties represented in the Yugoslav Parliament. The property of the LCY's Central Committee has been estimated at DEM 300,000,000 (*Politika*, 15 January, p. 9).[188] The said property was controlled after the dissolution of the LCY by the SPS and JUL, parties claiming to be its legal successors.

[188] See more I.4.14.2.

2.14.1. Elections in Montenegro – Early general elections were held in Montenegro on 22 April, 2001, the reason being the withdrawal of the National Party (NS) from the ruling parliamentary coalition in protest over the adoption of the Platform on Redefining Relations with Serbia by its partners – the Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP). The Platform calls for redefining relations leading to the formation of a community of two independent and internationally recognised states.[189]

Relations with Serbia was also the key election campaign issue, which has polarised the political scene in Montenegro and divided it into two blocs – the pro-Yugoslav one, (represented by the *Zajedno za Jugoslaviju* ("Together for Yugoslavia") coalition, made up of the NS, the Scialist People's Party (SNP) and the Serb People's Party (SNS), and the pro-independence bloc (The *Pobjeda je Crne Gore* ("Victory for Montenegro") coalition – the DPS and the SDP). Other individual parties running in the elections were also sharply divided on the same issue. A total of 16 parties and coalitions took part. They included parties and coalitions representing national minority interests, but there were also minority representatives in the major parties, in particular the DPS.[190]

Pobjeda je Crne Gore won 36 seats (42.36%) of the total of 73 in the parliament, while *Zajedno za Jugoslaviju* took 33 seats (41.83%). The Liberal Alliance (LS) took another six (8.09%) and the remaining two (6.72%) went to ethnic Albanian parties (*Sl. list RCG*, No. 23/01). The parties championing an independent Montenegro therefore took just over 58% of the parliamentary seats.

The elections in Montenegro were implemented mainly in keeping with OSCE principles and Council of Europe standards, according to the OSCE/ODIHR. This is supported by the fact that the turnout was no less than 82%, also indicating the confidence of the electorate in the election process. What particularly affected the overall positive rating of the vote was the fact that voter registers had been considerably upgraded. The OSCE Mission monitoring the vote received over 60 complaints in connection with the registers. Most had been lodged by the *Zajedno za Jugoslaviju* coalition; the Mission assessed them and found that only a few were founded. In a few cases voters who had acquired the right to vote since the 2000 elections had not been registered. Those without proper personal identification documents were also refused the right to vote.[191] The opposition claimed that the voter registers in Bar included over 300 deceased persons, while those in an area near Nikšić contained the names of several dozen people living in Croatia for 30 years (*Politika*, 29 March, p. 8 and *Politika*, 9 April, p. 7). The NS claimed that no fewer than 50 adult persons had been registered at a single address in Danilovgrad (*Večernje novosti*, 17 April, p. 2).

Tension was also boosted by the order of the Montenegrin police early in April for the printing of 50,000 personal ID forms and 10,000 passport and driver's licence forms. Only these three documents are accepted as voter IDs. The opposition accused the Montenegrin authorities of trying to falsify the election results in this manner. The authorities denied this and made the serial numbers of the forms available to the OSCE (*Vijesti*, 6 April, p. 2 and 9 April, p. 4).

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[189] OSCE/ODIHR, *Election Observation Mission Report on the Republic of Montenegro*, *FRY*, 22 April 2001.
[190] *Id*.
[191] *Id*.

Although the campaign was generally peaceful, the ongoing trading of accusations between the two main coalitions peaked on the eve of the vote. The ruling coalition claimed that the Yugoslav authorities would use the Army to support the campaign of the *Zajedno za Jugoslaviju* coalition. "After they suffer defeat at the elections, that coalition's leaders plan to incite the people, provoke disturbances and exploit the Yugoslav Army", Montenegrin President Milo Djukanović said in Kolašin (*Blic*, 12 April, p. 2). "The VJ will not interfere in Montenegro-Serbia relations", Yugoslav Army Chief of Staff Gen. Nebojša Pavković said (*Vijesti*, 19 March, p. 2 *Politika*, 14 April, p. 8 and *Večernje novosti*, 17 April, p. 2).

On the eve of the vote, there were some physical assaults on party activists. The ethnic issue was also raised during the campaign, and liked with the question of the future status of Montenegro. Opposition representatives said that if the independence concept gained support this could lead to an ethnic fragmentation and Albanian separatism.[192]

The OSCE/ODIHR Mission monitoring the elections also received claims that political pressure had been exerted on employees of the state administration, particularly the police, to confirm their loyalty to the ruling party. It was claimed that police were engaged in pre-election activities on the side of the ruling coalition. There were even claims that members of special forces were involved in acts of violence against opposition supporters. DPS election campaign posters were displayed at police stations.[193]

Mixing governmental and political functions also took place when the ruling parties used government premises for their party political needs – the line between the function of political party and that of the state administration was not distinct. Montenegrin Minister for Sport Miodrag Stijepović allegedly ordered all school directors in Podgorica in February to "list all those in favour of the DPS, and those against it" (*Politika*, 14 February, p. 6).

All parties which had nominated candidates received funds from the republican budget for financing their campaigns, and could also receive funds from other sources, in keeping with the law. But the payment of the budget funds was delayed until ten or so days before the vote, placing smaller parties in unfavourable position.[194]

All parties enjoyed a declared right to timely and objective media reporting of their campaigns. However, according to the OSCE/ ODIHR report, in practice the state media fulfilled their obligation only partially, while most privately-owned media openly showed their support for certain parties. The NGOs which monitored the elections assessed that the Montenegrin media had not respected the campaigning blackout on the eve of the vote and implemented a campaign of "advocating national and religious hatred", said Slobodan Franović, President of the Helsinki Human Rights Committee in Montenegro (*Vijesti*, 13 April, p. 4).

CeSID's research showed that the Montenegrin media mainly openly supported one of the political options on offer. The daily *Dan*, close to former Yugoslav Prime Minister Momir Bulatović, verged on a hate speech by describing political opponents in these and similar terms: "The Duklja fanatics and petty fascist minds", and their messages as

[192] *Id*.
[193] *Id*.
[194] *Id*.

"genocidal messages written in the Latin alphabet". The Pro-government daily *Pobjeda* waged a propaganda campaign favouring the ruling coalition by over inflated coverage of the activities of the state authorities. The focus of *TV CG* (state television) was similar to that of *Pobjeda*, together with an expanded output of reports from Serbia with a negative connotation. The daily *Vijesti* was seen as relatively objective, while the privately-owned *TV Montena* was rated best (*Vijesti*, 18 April, p. 4).

On election day, *Pobjeda* ran on its front page an article entitled "*Budućnost* Number 13" devoted to the 13th national title won by the *Budućnost* ("Future") women's handball club. But the *Pobjeda je Crne Gore* coalition was listed as No. 13 on the ballot. On Saturday, 21 April, *Vijesti* (which has no Sunday issue) reported that Koštunica and Djindjić had told British Foreign Secretary Robin Cook that "Montenegrin independence is a *fait accompli*". This was denied both by Belgrade and London. The daily *Dan* published a number of articles on foreign support for the preservation of the FRY. The daily *Glas Crnogorca,* organ of the opposition coalition, published the picture of an excavator – the symbol of the people's wrath and protest in Serbia on October 5. The photograph can be interpreted as a warning and signal of possible protests against President Djukanovićs coalition (*Vijesti*, 20 April, p. 3; *Vijesti*, 21 April, p. 2; *Vijesti*, 23 April, p. 2, *Danas*, 23 April, p. 3 and *Monitor*, 4 May, p. 20).

According to the OSCE/ODIHR report, there were only four cases of "undue influence" on voters at the polling stations by administrative officials or police, and another 66 cases where party activists were responsible. At a small number of polling stations where there were irregularities, they concerned situations where voters had not identified themselves before casting their ballots or had not entered their names in the voter records, or had refused to have indelible ink sprayed onto their fingers. In some cases the secrecy of the voting was violated and group voting was permitted (10.5% of the cases). The counting of the votes was mainly assessed positively.

The main political parties signed an agreement on increasing the share of women in the next parliament under which women would first make up 30% of the election list names and then 30% of the parliament deputies. But it became evident when the lists were published that all parties, except the Liberal Alliance of Montenegro had not met their obligations under this agreement.[195]

2.14.2. The Political Rights Situation in Serbia – After the parliamentary elections in Serbia in December 2000, there were incidents in several towns ruled by the SPS–JUL coalition, where local residents demanded the replacement of the local authorities and new elections. Locals blocked approaches to Kladovo and took over the municipal building (*Večernje novosti*, 17 February, p. 15 and *Večernje novosti*, 2 March, p. 4). Similar incidents took place in Žagubica (Beta, 27 March) and Požarevac, where locals drove the council members out of the municipal building (Beta, 14 March). Scuffles broke out in Lebane and Vlasotince, where police had to separate the two sides. Raška residents ejected local council left-wing coalition members from the municipal building (Beta, 22 February). In Lebane, JUL activists were the first to attack local citizens (*Vreme*, 22 March, p. 23; *Večernje novosti*, 11 April, p. 13 and *Večernje novosti*, 15 May, p. 4). Tense stand-offs between the local authorities and residents were also reported in

[195] *Id*.

Alibunar, Bačka Palanka, Beočin, Ub, Babušnica, Bor, Leskovac, Veliko Gradište, Golubac and Sečanj (*Blic*, 5 March, p. 3 and Beta, 13 April).

In a period between early March and the end of May, emergency administrations were imposed by the Serbian Government in 18 municipalities – Bosilegrad, Batočina, Bela Palanka, Lajkovac, Irig, Žitište, Titel, Kladovo, Lebane, Knjaževac, Negotin, Aleksinac, Majdanpek, Ćićevac, Petrovac na Mlavi, Kuršumlija, Dimitrovgrad and Crna Trava.

Extraordinary local elections were held in the above 18 municipalities on 4 November. The turnout was 50.52 % of the electorate (*Blic*, 6 November, p. 2). According to data provided by CeSID, the DSS won 22.68 % of the vote, the SPS 21.98 %, the DOS 20.81 %, the SPO 6.77 % and the SRS 5.99%. Based on this, the SPS took 140 local council seats, the DSS 138 and the DOS 122.[196]

There were a number of physical assaults on political opponents or party premises in Serbia in 2001.

The Directorate of the Yugoslav United Left (JUL) said that two unidentified assailants had on 15 January beaten up Bratislava Morina, a JUL deputy in the Yugoslav Parliament. "We send out the strongest possible protest against this paid political lynching, which has besides the media and physical lynching been implemented against JUL members for some time", the party said in a statement, which gave no concrete data about other attacks (*Blic*, 1617 January, p. 8). There had been no reports if any inquiry into the case had been carried out by the end of 2001.

Late in February, Serbian Minister of Justice and Local Self-Administration Vladan Batić cautioned the public and local council members to refrain from using force. "We will not allow take-overs by force and a legalisation of anarchy. Administrations cannot be taken over by force if they function normally and there is no firm evidence of law-breaking", Batić said (*Blic*, 26 February, p. 3).

Late in January, the local offices of the Party of Serbian Unity (SSJ) in Čačak were smashed up, and an activist of the Civic Alliance of Serbia (GSS) attacked late in February (Tanjug, 29 January; Beta, 26 February).

Early in March, an explosion set on fire a local branch of the SPS in Niš (*Politika*, 5 March, p. 16). Several days later, a group of masked assailants broke into the offices of the Social Democratic Union (SDU) in Belgrade and beat up five activists (*Večernje novosti*, 10 March, p. 3 and *Danas*, 13 March, p. 4).

Office equipment was smashed up and some was stolen by unidentified assailants in the JUL offices in Požarevac in March, during which month SPS offices in Belgrade were attacked with rocks (*Politika*, 13 March, p. 11 and *Politika*, 20 March, p. 19).

In April, hitherto unknown organisations calling themselves *Leptiri* ("Butterfilies") and *Srpski sokolovi* ("Serb Falcons") threatened to assassinate republican and federal parliamentary deputies. "We shall kill and then mutilate the following – Zoran Djindjić, Vladan Batić, Dušan Mihajlović and Čedomir Jovanović", *Leptiri* said in a letter. *Srpski sokolovi* said harm would come to all senior officials and their families in case a single Serb was handed over to the Hague Tribunal (*Večernje novosti*, 28 April, p. 12).

In May, SRS premises in Bačka Palanka, offices of the SPS in Kraljevo and those of Nova Srbija in Belgrade were smashed up and property taken (Tanjug, 1 May;

[196] See CeSID website at <http://www.cesid.org.yu>.

Večernje novosti, 11 May, p. 4 and *Večernje novosti*, 18 May, p. 15). The same month unidentified persons issued death threats to a GSS activist in Veliko Gradište, and Yugoslav Secretary for Information Slobodan Orilć was physically attacked in Prokuplje (Beta, 9 May and *Večernje novosti*, 29 May, p. 5).

SRS deputies staged a number of incidents in the Serbian Parliament by ignoring the Rules of Procedure and continuing to speak although ruled out of order. In June, parliamentary security were forced to carry SRS deputies out of the chamber after they had caused an incident and even damaged voting and deputy ID card equipment. Two SRS deputies sustained slight injuries (*Blic*, 19 June, p. 3).

In July, about a hundred Otpor activists stormed into the SPS premises in Šabac and demanded that they be given to other parties for their use. Local police said property rights would be violated and the Otpor activists left without incident (*Danas*, 13 July, p. 4).

Early in September, unknown assailants set on fire the car of Slobodan Vuksanović, Vice-President of the Movement for a Democratic Serbia (PDS). Vuksanović claimed the incident took place following a series of anonymous threats in connection with his political activity (*Večernje novosti*, 8 September, p. 10).

In October, burglars stole computers and all documents from the DSS offices in Pančevo (Tanjug, 15 oktobar). Later that month, SPO activists claimed police had broken up a meeting of the SPO municipal committee in Kragujevac (*Danas*, 26 October, p. 22). A day later, the home of Ljiljana Milošević, the president of the municipal board of the DHSS in Ćuprija, came under hand grenade attack (Blic, 27 October, p. 8).

In November, the offices of the local board of the PDS in Leskovac were burgled and a computer, other equipment and all documents taken (Beta, 29 November).

2.15. Specific Protection of Family and Child

One of he biggest problems which Serbia's and Yugoslavia's new authorities are facing is the serious position of children, the elderly and disabled persons and people with health problems.

During 2001, the Yugoslav Child Rights Centre (YCRC) and UNICEF conducted a study of children's rights in the FRY entitled *The Children or Today for the Children of Tomorrow*. The study was based on one conducted by UNICEF in 1999, which showed that the children living in the FRY are among the most serious risk groups in Europe. The risk factors studied were: exposure to armed conflicts, the incidence of the HIV virus, malnutrition, incidence of completed primary school education, and mortality rates among children under five (YCRC Report, *Agenda for the Future*, 2001).

According to the YCRC – UNICEF report, 18% of the population of the FRY are under 18. The number of children without parental care is somewhere between 5,000 and 9,000, and there are according to Social Work Centres about 10,000 persons with developmental problems in the FRY. The results of the study indicate that both children in care and those in poor families are threatened in many ways. They also indicate that about 30% of all children under 18 show signs of malnutrition, four times as many as had been registered in 1996, and that 30% of all children under five and 27% of all women are anaemic, with haemoglobin deficiencies. One-quarter of all children under 15 are regular smokers, a fifth of all primary and secondary school children have tried narcotics, two-thirds of all 15-year olds consume alcohol, 65% of all boys and 30% of all girls have

had sexual relations before the age of sixteen (YCRC Report, *Agenda for the Future*, 2001; *Politika*, 19 May and 13 June, p. 12).

The Yugoslav authorities have for years been proclaiming the protection of the family and children "national priority number one", but concrete indicators show that it was nothing but political rhetoric. "About 850,000 youngsters live at subsistence level, while 130,000, not including the refugee population, live in extremely poor familes", Boris Stajkovac, advisor to the Serbian minister of social affairs, has said (*Blic*, 5 September, p. 6).

2.15.1. Violence in the Family and Child Abuse – The media monitored by the Belgrade Centre for Human Rights in 2001 had more coverage of violence and crimes in the family. In November, the YCRC and *Save the Children* organised a gathering entitled 'Violence is a Crime against Childhood'. Serbian Minister of Social Affairs Gordana Matković pledged support from her ministry for all promising projects by NGOs aimed at suppressing child abuse.

According to Belgrade's *Incest Trauma Centre,* one out of three girls and one out of seven boys are the victims of sexual abuse. In 76% of all cases, such abuse goes on for years, and 80% of the perpetrators are men; one-third of them are the fathers of the children concerned (*Vreme*, 28 June, p. 32).

According to the Family Violence Counseling Centre in Belgrade, one out of five women are the victims of violence in the family. "The Centre has in five years had 15,000 registered cases of child abuse, and about 3,000 women seek help every year", Centre director Vesna Stanojević has said. "In one out of three cases the cause of the violence is alcoholism, and religion, ethnic origin and regional location make little difference to its incidence", she added (*Vreme*, 19 September, p. 1).

According to the Belgrade SOS Telephone for Women with Disabilities, some 88% of the 600 women who contacted the institution had been physically abused and isolated, 8% had been sexually abused, and 3% had been raped. "The victims of abuse include both women and men, but the abuse is difficult to prove due to the fear of the victim and also lenient legal penalties – there are no fewer than 250,000 disabled persons in Belgrade, yet just 600 have sought our help in four years", SOS Telephone spokesperson Lepojka Mitanovski has said (*Danas*, 4 May, p. 13).

Sigurna Ženska kuća ("Women's Safe House"), based in Podgorica, in the past two years sheltered 200 women and 150 children who were victims of violence. "They include many young women with children born out of wedlock and victims of incest from all of Montenegro", Safe House Director Ljiljana Raičević has said. She added that the institution offered shelter in 2001 to "ten women from Moldova and the Ukraine who had been sold to the owners od bars in Podgorica" (*Vijesti*, 6 September, p. 15).

The media reported on a number of cases of murder and physical and sexual abuse of children. Late in April, priest Dragoslav Jocić (51) was arrested in Zaječar on suspicion of committing lewd acts with several girls aged under 14 in a local hotel (*Danas*, 21 April, p. 22). Yugoslav Army Lt.-Col. Stanko Milikić (64) was charged in June with committing sodomy with a girl aged eight (*Blic*, 12 June, p. 9). There had been no more media reports about the case by the end of 2001.

Late in July, the inquiry was completed into sexual abuse charges against the prior of the Orthodox monastery Hopovo, Jovan Mišić. The investigating judge said Mišić,

suspected of sexually abusing children aged as little as six, could spend up to three years in prison if convicted. Mišić has denied the accusations (*B92* News, 16 July; *Danas*, 23 July, p. 15 and *Blic*, 25 July, p. 8). The case had not been concluded by the end of 2001.

A. M., a seven-year old girl from Belgrade and the victim of sexual abuse lasting a whole year, was returned to the care of her mother and the stepfather who had abused her on the basis of a decision of the local Social Work Centre and with the help of the police (*Blic*, 11 March, p. 8).

G. N., a boy from Mladenovac, was early in February taken to hospital, where he died of what doctors said were serious injuries, skull fractures and circular haematomas. On 5 August 2000, G. N. had been transferred from a child-care institution to a foster family (*Blic*, 8 February, p. 8).

2.16. Right to Citizenship

In February 2001, the Yugoslav Parliament adopted the Law on the Alterations and Amendments to the Law on Citizenship under which citizens of the former SFRY republics resident in Yugoslavia on the date of adoption of the current Yugoslav Constitution (27 April 1992), as well as refugees on the FRY territory are entitled to apply for Yugoslav citizenship, without having to renounce their existing citizenship at the same time. This statute has considearbly improved the status of refugees.[197]

"Since the democratic changes in 2000, some 125,000 persons have acquired Yugoslav citizenship, and 80,000 have dual citizenships", Secretary at the Federal Interior Ministry Dragan Radulović said at an international gathering on citizenship legislation held in Belgrade in October (Beta, 22 October).

In March 2001, the Karadjordjević dynasty had their Yugoslav citizenship status restored – after 56 years, their names were once again entered into the Register of Yugoslav Citizens, from which they had been erased on the basis of a decision by the then communist authorities in 1944 (*Večernje novosti*, 13 March, p. 10).

2.17. Freedom of Movement

The media and NGOs monitored by the Belgrade Centre for Human Rights recorded just a few cases of violations of the freedom of movement.

On the Kelebija border crossing between Yugoslavia and Hungary, Serbian police on 15 April 2001 prevented Mićo Klisić, a sailor from Bar, from leaving Yugoslavia with an Australian passport (HLC Press Release, 18 April). When Klisić said he had entered Yugoslavia through Montenegro, the policemen, who made political comments and insults directed at Montenegrin President Milo Djukanović, told him he needed a Yugoslav passport and should not have been allowed into Montenegro without a visa. Klisić returned to Bar and then took a direct flight from Podgorica to Frankfurt (HLC Press Release, 18 April).

Montenegro is applying a different visa regime from the one *de jure* in force in the FRY, so that there have been cases of foreign nationals entering Yugoslavia (through Montenegro) without an entry visa, although it may be required by regulations.

In the second half od December, Yugoslav border police barred without any explanation a crew from *TV Tuzla* (Bosnia) from entering the FRY. The crew was on its

[197] See more I.4.16.

way to Novi Sad to shoot a feature on refugees. “The delegations of the Tuzla Canton and Municipality with whom we were travelling crossed over without any problem, while we turned back after having waited from 9 a.m. until 6 p.m., during which time the police never told us why we were not allowed across” said Radenko Popić, Vice-President of the Vojvodina regional board for helping refugees (Beta, 22 December).

2.18. Economic and Social Rights

There was visible improvement in 2001 in regard to the payment of welfare and retirement benefits; debts were made up for and living conditions in social care institutions (institutions for children without parental care, institutions for mentally disabled children, old folks' homes, shelters for the homeless etc.) considerably improved. This all took place thanks to foreign donors (international organisations, states, NGOs), but also better organised and co-ordinated and more efficient performance of the domestic authorities, especially the Serbian Ministry of Social Affairs.

2.18.1. Social Security – The economic and social sutuation in 2001 was extremely difficult. The average wage in October was 6.642 dinars (just over DEM 220), while the average consumer basket of goods cost 11,864 dinars (DEM 395), or 1.88 average monthly wages (*Večernje novosti*, 6 November, p. 7). Between August 2000 and August 2001, the prices of basic foodstuffs grew by between 50% and 300% (*Večernje novosti*, 28 September, p. 7). Yugoslav economists say no less than 74% of the population could count on less than USD 2 a day, while 20% lived on less than a dollar a day (*Danas*, 13 April, p. 5 and *Politika*, 14 May, p. 1).

In a study of invisible poverty conducted by the *Catholic Relief Services,* respondents listed as their most serious personal problems: poverty, bad health, unemployment, poor living conditions, loneliness and an uncertain future. Almost 70% of those surveyed were afraid about their future and saw no chance or alternatives for themselves. More than one-half said material poverty was the fundamental form of poverty, but over one-fifth of those polled said social exclusion of some categories of the population was a widespread and serious form of poverty. No fewer than 70% of the respondents ever go out to a theatre, cinema or exhibitions.

Children recognise poverty as one of the sources of discrimination: one-third of the children polled think the low material status of a family considerably limits education opportunities (choice of school, purchase of textbooks, travel costs), while one-fourth said the material status of parents was a source of discriminatory conduct by teachers towards children (YCRC Report, *Agenda for the Future*, 2001).

Some 300,000 of the roughly 420,000 refugees living in Serbia do not have sufficient food, while four-fifths of all the poor live in urban areas. Three-fifths of the poor are in families with two or more children (*Večernje novosti*, 9 June, p. 6). According to the Red Cross of Serbia, international relief aid is necessary for 350,000 refugees from the former Yugoslavia, 185,000 temporarily displaced persons from Kosovo and at least 450,000 Serbian citizens living in extreme poverty. “Aid donated by international humanitarian organisations is currently reaching 146,000 citizens of Serbia, 167,586 refugees and 80,000 internally displaced persons”, the Serbian Red Cross said (*Politika*, 28 September, p. 12).

Unemployment is seen as the biggest problem – the July figure in Serbia was 28%, or over 770,000 jobless (Tanjug, 25 July). Analysts say the FRY figure by the end of the year will be 23% (Beta, 12 December), and that another 800,000 people are only formally employed (*Večernje novosti*, 26 January, p. 6 and *Blic*, 28 March, p. 6). "Those employed in the grey economy are a special problem – they have no protection whatsoever and we estimate their number to be around 730,000", said Nebojša Miletić, Serbian Deputy Minister of Labour (*Blic*, 28 March, p. 6).

Serbia's roughly 1,267,000 pensioners are also in a grave position. The average monthly pension in the first half of the year was around DEM 100, just barely enough to survive. About 700,000 pensioners, or 60% of the total figure, received benefits in the second half of the year below the monthly average (*Politika,* 11 August, p. 9). Pension payment delays going back several months have been reduced to two months thanks to foreign donations, which totalled DEM 18,000,000 in 2001 (*Vreme*, 18 January 2002).[198]

No fewer than 415,000 of Serbia's 1.5 million pensioners receive disability benefits. The widespread corruption in the state and the public services, including the buying of medical certificates of disability, makes it difficult to estimate the extent to which such a high share of disability pensions is a result of the poor health of the nation and to what extent a result of bribery.[199]

The number of recipients of welfare grew considerably in the first half of 2001 – between March and April alone, the number of applications for children's allowances rose from 520,000 to 700,000 (*Večernje novosti*, 14 May, p. 7).

In 2001 the FRY was the scene of a wave of strikes, motivated by unpaid and/or low wages, poor working conditions, high utility bills, low state purchase prices of agricultural produce, high taxes, poor economic management and problems involving privatisation.

In February there were strikes in *Telekom* (*Večernje novosti*, 23 February, p. 6), the *Milićevci* mine near Čačak (*Danas*, 19 February, p. 5), Belgrade's health sector (*Danas*, 28 February, p. 4), and even a hunger strike in *Inkol,* Leskovac (*Danas*, 28 February, p. 13). There were public protests in a number of towns over the high rate of punitive interest attached to unpaid electricity bills (*Večernje novosti*, 1 February, p. 7).

In March there was a hunger strike in *Filip Kljajić,* Kragujevac (*Danas*, 6 March, p. 10) and in the Belgrade-based meat packing plant *Slavija* (*Politika*, 13 March, p. 12). There was also a general strike in 1,200 schools in Serbia which ended in a 15% pay increase (*Blic*, 11 March, p. 3 and *Danas*, 15 March, p. 5).

In April there was a strike in the *Zastava* car factory in Kragujevac (*Večernje novosti*, 20 April, p. 6) and a hunger strike at the *Šumadija* mines near Čačak (*Danas*, 11 April, p. 24). Belgrade-based *Partizan* (*Večernje novosti*, 10 May, p. 15) and *Viskoza* in Loznica went on strike in May (Beta, 24 and 25 May, *Večernje novosti*, 25 May, p. 10).

In June strikes were staged in *14. Oktobar,* Kruševac (*Blic*, 20 June, p. 6), by disabled war veterans in Belgrade (*Večernje novosti*, 8 June, p. 6) and the staff of the Emergency Medical Centre in Belgrade (*Večernje novosti*, 20 June, p. 15). In June farmers in the Zrenjanin area and raspberry growers near Užice erected roadblocks in

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[198] See more II.2.18.5.

[199] Gordana Matković and Borka Vujinović, *Survey of pensioner household for nutrition and living conditions*, UN World Food Programme 2000.

protest over the low purchase price of their produce (*Danas*, 11 June, p. 13; *Blic*, 11 June, p. 6).

Late in June lorry drivers blocked border crossings with Hungary in protest over what they say are excessive parking charges for their vehicles at the terminals alongside the border (*Politika*, 23 June, p. 18).

In July, farmers in the Banat region, Vojvodina, blocked roads in protest over the low purchase price of wheat (*Danas*, 4 July, p. 5). Fifteen workers of Belgrade-based *Lola* went on a hunger strike demanding back pay (*Večernje novosti*, 10 July, p. 15), as did 12 in *Angropromet* over alleged unlawful sackings (Beta, 30 July).

Unpaid wages were the reason for strikes in August in the *RTB Bor* mines, *TV S* in Užice and the army's agricultural complex *Karadjordjevo*, (*Večernje novosti*, 8 August, p. 6; *Danas*, 18 August, p. 4; *Politika*, 31 August, p. 9). The owners of private buses complementing Belgrade's municipal public transport enterprise went on strike over the uneconomically low fixed fares (*Večernje novosti*, 22 August, p. 17), as did the workers of the Obrenovac firm *Posavina* on account of the sacking of 174 of their colleagues, most of whom had taken part in earlier strikes (*Večenje novosti*, 23 August, p. 14).

In September, Vojvodina farmers blocked roads over the low purchase price of sunflower seed, (*Večernje novosti*, 21 September, p. 5) and *Telekom* went on strike again with a pay demand (*Blic*, 30 September, p. 4). Around 5,000,000 trade union members protested on 4 September and demanded that the Serbian Government improve their status (*Blic*, 5 September, p. 7).

The *Kolubara* open-cast mines and all other coal mines in Serbia went on strike in October over back pay and the grave position of the branch, as did the *RTB Bor* copper mining and smelting complex. After several days of negotiation with the government, the strikes ended in a small pay rise and the payment of delayed wages (*Politika*, 4 October, p. 9; *Blic*, 11 October, p. 7).

RTB Bor went on strike again in December over delayed wages (*Danas*, 13 December, p. 1). Employees of four large state-owned banks took to the streets in Belgrade in protest over the planned financial rehabilitation of the banks and major staff cuts. Health workers' trade unions also went on strike over low wages (*Danas*, 13 December, p. 1).

On some occasions employers resorted to violence, threats, suspension or sacking of trade union activists. The strike leader in the *Edisan Inex* pastry shop in Belgrade was beaten up in February (*Večernje novosti*, 7 February, p. 15), while ten union activists in Subotica firms were laid off (*Danas*, 14 February, p. 4). In the same month a trade union activist was beaten up in Belgrade and another had a Molotov cocktail thrown at his car (*Blic*, 28 February, p. 6).

The director of the Sports Centre in Bor pulled out a gun and cocked the trigger in front of workers demanding his resignation (*Danas*, 15 May, p. 24), while Mijajlo Bogdanović, trade union head in the construction firm *Rad* in Belgrade, received a beating while he was looking for proof for irregularities that had led the firm into bankruptcy. Bogdanović was taken to hospital with light injuries (*Večernje novosti*, 28 May, p. 6).

The *Nezavisnost* trade union organisation late in May condemned the attacks and harassment of its members and demanded that the republican authorities put a stop to them (*Danas*, 30 May, p. 22).

Stanislav Glumac, the director of the Belgrade firm *Ikarbus*, on July 11 barred two representatives of international trade union organisations from entering the plant and holding a previously scheduled meeting with the *Nezavisnost* trade union (*Danas*, 12 July, p. 17).

In mid-October, two leaders of the Independent Trade Union in *Autosaobraćaj* Kragujevac were sacked for criticising the firm's director just 45 minutes after protesting publicly over irregularities in the allocation of a flat to the manager (*Večernje novosti*, 14 October, p. 5).

The Serbian authorities launched a consolidation of the economy, beginning with *Zastava* Kragujevac, for years a loss-making automotive manufacturer employing over 30,000. The government has drafted a programme for the surplus labour (one-half of the total workforce: they will either receive one-time severance payments or attend paid re-training for a different job. Serbian government ministers who tried to present the plan to the workers in mid-July had to be saved by police from being lynched. Police filed complaints against seven participants in the incident, and the local magistrate sent four workers to jail from 12 to 25 days (*Danas*, 14 December, p. 16). During almost two months of work on the consolidation programme, *Zastava* workers staged numerous protests and strikes. Their demands ranged from demands for resources to finance uneconomic production of cars, an increase in the number of those who would retain their jobs, wages and severance payments, all the way to demands for the government to take over the marketing and sale of *Zastava* products. Finally, in a vote on the consolidation plan, completed in early August, 98.95% of the workers supported the plan (*Blic*, 20 July and 3 August, p. 7; *Večernje novosti*, 22 July p. 5 and 25 July, p. 6 and *Danas*, 29 August, p. 4).

The new Serbian government had warned on numerous occasions that the economic transition would be painful and involve mass lay-offs. The authorities promised social programmes going some way towards easing the burden to those who lose their jobs, and asked for a halt to strikes, saying that social unrest in the country would stop an inflow of fresh foreign funds which would facilitate the resolution of problems (*Danas*, 21 February, p. 4).

2.18.2. The Right to an Education – The joint study conducted by the Yugoslav Child Rights Centre (YCRC) and UNICEF assessed Yugoslavia's educational system as constricted and highly centralised, with a well-qualified teaching staff, but based on an outdated (passive) system of conveying knowledge. Schoolchildren have pointed to five basic problems in their education: inappropriate content and quality of educational subject matter, poor outfitting of schools, poor-quality organisation of extracurricular activities, insufficient respect for the right to equal educational opportunities, and poor prospects for a more active involvement by the students in the educational process. Some 90% of the children polled said teachers treated them differently without a proper reason, both in their conduct towards their classes and in the grading of their work.

The European Commission has provided extensive funding for a school reconstruction and modernisation programme within the *Schools for Democracy* programme. The Commission launched the trial phase of the programme in July 2000 in 34 municipalities ruled by the opposition. The programme, which has achieved tangible results, was after the October 2000 democratic changes extended to all 160 municipalities

in Serbia outside Kosovo. The European Commission has expanded its activity with a basic infrastructure renewal programme: *Towns for Democracy*. Merged into one, the two make up the *Towns and Schools for Democracy* programme, with a budget of about EUR 25,000,000. In some municipalities only schools are being worked on and in others the local infrastructure; in others both. The municipalities themselves picked which projects were the most urgent among the 738 on offer; this includes 629 schools and 119 municipal projects (*Towns and Schools for Democracy Programme*, 2000–2001, European Agency for Reconstruction and International Management Group).

Investment in primary education received about DEM 4.000.000 and secondary education some DEM 1,450,000 in funds from the Serbian budget in 2001. Another DEM 6,900,000 came from municipal budgets for investments, investment maintenance and outfitting primary and secondary schools while another DEM 2,200,000 came from domestic and foreign donors (report by Ministry of Education and Sport, *Review of Investment and Investment Maintenance Funding*, 2001).

In the 1990s, an estimated 4% to 8% of all children coming of school age were not enrolled in primary school, while 20% of all children left school before completing it (YCRC Report, *Agenda for the Future*, 2001). Schools are additionally burdened by having to take on several tens of thousands of primary-school pupils who are refugees from Croatia (since the Croatian Army's "Oluja" offensive in 1995), as well as children displaced from Kosovo after the deployment of international forces there. The refugee children include many Roma, who besides their customarily high enrolment and attendance absenteeism also have the problem of language, as many speak only Roma and Albanian, and Serbian poorly, if at all.

The problem of preparing, enrolling and keeping Roma children in primary school has existed for decades, but has become much more visible in the past years, thanks primarily to the activity of NGOs on informing the public. A large number of Roma children are sent to special primary schools for children with minor disabilities. Experts have warned for years that the placement criteria are social, economic and cultural, rather than the objective mental disability of the child. Roma children make up the bulk of those who leave primary school without completing it. In 2001, several specialised NGOs organised preparatory activities for Roma children for enrolment in primary school. Duga, an organisation based in Ada (Vojvodina), helped 123 Roma children prepare for the 2001/2002 primary school year within the *Jednake šanse* (“Equal Chance”) programme. In Belgrade, the Society for the Advancement of Roma Settlements, with the aid of the European Commission, prepared 32 Roma children to start primary school.

Under existing legislation, transport subsidies for primary school children are within the competencies of municipalities, the more prosperous of which can afford such funds and offer children cheaper bus fares. The Belgrade local government has set aside 343,000,000 dinars (more than DEM 1,000,000) for subsidising the transport of children who live more than four kilometres from their primary schools. The city will also finance fuel for the transport of children suffering from cerebral palsy to the "Miodrag Matić" primary school. But children in the poorer municipalities do not enjoy this privilege. Children from Mramorak (near Kovin) who go to school in Pančevo (25 km away) must buy a monthly bus pass costing about DEM 70 for a customarily very poor and erratic service, while a pass for those from Dolovo, some 18 km from Pančevo, costs about DEM 30 (*Blic*, 6 November, p. 9).

2.18.3. Health Care – Systematised data about the health status of the population and the realisation of primary health care programmes either do not exist or are not available to the public. What is available is incomplete and obtained mainly through polls or other research instruments, within several research projects.

Outdated equipment in the medical institutions is one of the biggest problems of the health care system in Serbia. Over a fifth of all equipment was manufactured before 1976, and less than a quarter is relatively modern. There are also difficulties in co-ordinating and redirecting donations in the form of equipment, so that some medical institutions now have high-tech equipment but no staff with the training needed for their use (Conversation with employees of the Serbian Health Care Institute, Archives of the Belgrade Centre for Human Rights).

Medical education and prevention programmes are also poorly developed. According to a poll conducted by the Health Care Institute, only four out of ten women in Serbia (including refugees and displaced persons living in individual accommodation) examine their own breasts once every six months, while the figure among women refugees and displaced persons living in collective centres is just two out of ten. According to statistics, breast cancer was the single biggest cause of death among women in Serbia in 2001.

The contagious disease prevention programme was implemented fully in 2001.

2.18.4. Right to Housing – The only two existing subsidised housing programmes, launched by the previous government – flats for young scientists in Belgrade and 10,000 flats a year in the next ten years – are at a standstill. Both had been primarily promotional in nature for the then government and were forced onto local authorities as a major financial burden.[200]

The flats for young scientists, organised by the Serbian Ministry of Science, anticipated the construction of 1,000 flats in the Novi Beograd district of Belgrade. The building of several hundred flats began and the main construction activities have been completed, but work was then stopped for the lack of funding.

The 10,000 flats in ten years programme began to lose speed in early September 2000, after banks failed to offer support for the planned long-term loans. The flats, intended for young police or army couples, were to be subsidised.[201]

After cadre changes were implemented in the Directorate for the Reconstruction of the Country, which organised and administered the programme, major irregularities surfaced. Many building sites were set up without the necessary permits and even without complete building plans. Just one of the 121 sites involved had a building permit. Flats in the Blok 29 area in Novi Beograd were sold in advance although the construction plans had not even been completed.

By the end of October 2001, a total of 518 flats had been completed; some are unusable as they lack building permits or have not even been connected to the utilities. The subsidised price will be retained only for flats already paid in full, as a contractual obligation. The other flats will be sold off at market prices (on the average about DEM 1,400 per square metre of floor area in Belgrade; the subsidised prices had been DEM 750 per sq. metre) *(Svedok*, 2 October, pp. 22–23).

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[200] See *Human Rights in Yugoslavia 2000*, II.2.17.4.
[201] *Id*.

No new subsidised housing programmes have begun in 2001. It is still unknown which sector/ministry is in charge of housing. The alterations and amendments to the Law on Construction adopted in June 2000 introduced tougher penalties for investors and contractors working without town planning and building permits, but did not in any way simplify the procedures for obtaining those permits or create other facilities for making housing construction cheaper and quicker.

Banks lack the necessary funds for granting long-term housing construction loans with favourable interest rates. Foreign banks which have opened branches in Serbia have announced that they intend to grant such loans. The biggest problem are the poorly kept and unreliable land registers as an obstruction to mortgage loans. There is still no talk about any public or state fund for subsidised housing credits.

There is only one *Shelter for Homeless and Deserted Persons* in Belgrade – The Centre for Sheltering Adults. In 2001 the Centre was refurbished and the number of beds increased from 60 to 105; it now also has hot running water.

According to the findings of a study conducted by the Institute for Health Care entitled *The Health Situation, Medical Requirements and Utilisation of Health Care by the Population of Serbia*, about 90% of the refugee and displaced persons' families housed in collective centres have a single room at their disposal as their entire living space. Almost one-half of them (49%) have no bathrooms. More than a third of all displaced persons and refugees outside collective centres (36%) live in rented accommodation, 16% have no bathrooms in their rented flats, while a slightly lower percentage even have no electricity.

2.18.5. Social Security and the Rights of Vulnerable Social Groups – As the economic and social crises in Serbia grew worse in the late 1990s, the declared and legally-prescribed rights of the vulnerable and weakest social groups were seen to have been especially neglected. The payment of benefits for certain welfare categories had been delayed by a year or even two, and their size was but a fraction of the legally-defined sums.

According to data provided by the Ministry of Social Affairs, there are some 970,000 registered beneficiaries of welfare – this is about 12% of the population of Serbia (without Kosovo). The bulk (about 650,000) is made up of children in impoverished families entitled to children's allowances. Of the total of 1,270,000 pensioners in Serbia, almost all of those who receive their pensions from the Agricultural Fund (about 220,000) are classified as poor, as their pensions cannot cover the basic consumer basket, let alone accommodation, medicaments, clothing or cultural costs. Independent analysts estimate that between 50% and 70% of the Serbian population can be classified as poor.

The following are data about all welfare payments as they stood at the start of 2001, when the new republican government was sworn in, and the end of the year:

1) Family benefits: delay of 26 months – outstanding debt covered in full;

2) Allowance for special care and help by another person: delay of 32 months – covered in full;

3) Collective Accommodation: 5.5 months' delay – covered in full;

4) Foster families: 2.5 months' delay – covered in full;

5) The right to job training: 30 months' delay; covered in full;

6) Children's allowances: 27 months' delay – two special child allowance bond coupons paid out in advance;

7) Mothers' allowances: 23 months' delay – two bond coupons paid out in advance;

8) Birth grants: 6 months' delay – covered in full;

9) Childbirth wage compensation: 4 months' delay – covered in full;

10) Disability benefits: 7.5 months' delay – covered in full;

11) Pensions: 2 months' average delay – mainly covered; and

12) Farmers' pensions: delay of no less than 23.5 months – 7.5 pensions paid out.

Also inherited was a debt to pensioners worth about DEM 700,000,000 dating from 1994 and 1995, as well as a debt to those living in other countries, whose pensions had not been paid since 1992 (report by the Ministry of Social Affairs, *200 Days of Work*, 2001).

The new method of work in this field is encouraging: funding good-quality programmes and a public evaluation of results, co-operation with NGOs, reduced bureaucracy and improved efficiency. For the first time in decades, the Ministry's work is open to public scrutiny and it communicates constantly with beneficiaries, trade unions and the media, it has organised working groups involving prominent experts, representatives of foreign and domestic NGOs, representatives of beneficiaries, foreign consultants and others. All donations received from international organisations have been reviewed and insight made possible into the funds collected from local sources and their expenditure. This has secured a high level of credibility for the Ministry of Social Affairs, which is of exceptional importance for future activities in this certainly most difficult area of life in Serbia today.

With the support or participation of the Ministry of Social Affairs, numerous and diverse types of humanitarian activities were organised in 2001 to try and help the most vulnerable social groups. Over DEM 400,000 was collected from local donors and sources by way of media campaigns and other activities. Another DEM 400,000 came from the republican budget for repair work on facilities in about 20 towns. Some of the donated funds were directed at repairing, reconstructing or building new facilities (homes for children with mental disabilities, old folks' homes, nursery schools), in which nothing at all had been invested in years.

The Ministry is in charge of three types of institutions for children's and young people's care in Serbia. They are institutions for children and young people without parental care, institutions for children with developmental difficulties, and correctional institutions, for children with behavioural problems and children who have run afoul of the law. Until October 2000, very little had been known in the public about these institutions, their number and locations, their populations and living conditions. The Yugoslav Child Rights Centre (YCRC) had been monitoring the situation in these institutions for a number of years, but had had little opportunity of making public its findings. Only in 2001 was the YCRC able, with the Ministry's support, to draft and make public a detailed review of all institutions (YCRC Report, *The Position of Children in Social Care Institutions*, 2001).

The total number of children in child-care institutions outside Belgrade is 1,343 (including 337 (25%) children who are slightly mentally disturbed), and in Belgrade there are 572 (including 76 (13%) who are slightly mentally disturbed). The biggest problem faced by institutions for children without parental care are run-down buildings,

equipment and utility installations, as well as congestion (YCRC Report, *The Position of Children in the Social Care Institutions*, 2001).

The situation inherited in all in-patient social welfare institutions was very bad, especially in institutions for mentally incapacitated children. In 2001 funds were made available for refurbishing and reconstructing institutions in Aleksinac, Pančevo, Subotica and Ćuprija, as well as pre-school institutions in Kula, Trstenik and Bela Palanka. The reconstruction and building of new institutions in Kulina, Stamnica, Pančevo, Belgrade, Novi Sad, Sombor, Sremčica, Čarug and Mataruška Banja was begun with donor funds in 2001 (about DEM 10,000,000) (report by Ministry of Social Affairs, *200 Days of Work*, 2001).

People with physical but no mental disabilities are a vulnerable social group to whom the enjoyment of many human rights is denied owing to spatial obstacles and very poor prospects for reaching, accessing and moving through educational, medical, cultural and other public institutions. There exists a purely symbolic number of primary and secondary schools, including those built in the past two decades, which have ramps for wheelchair-bound persons, while the Philosophy Faculty of Belgrade University is its only institution fully adapted for their movement. Few sidewalks in urban areas, except for some towns in Vojvodina and a modest number in central zones, feature access ramps for wheelchairs. The Association of Handicapped Students, formed in 2001 and so far with offices in Belgrade, Niš and Podgorica, says that just 2% of all disabled persons ever get as far as university education (*Politika*, 5 November, p. 9). Yugoslavia has just one institution for physically but not mentally disabled persons, which is part of the Gerontology Centre in a suburb of Belgrade (*Blic*, 7 November, p. 15).

2.18.6. Social and Economic Welfare in Montenegro – A wave of strikes has also engulfed Montenegro. Local analysts say the main reason are delayed wages going back from two to as many as 50 months, as well as unlawful pay cuts (*Vijesti*, 27 January, p. 7).

Montenegrin trade unions say there are 114,000 employed persons in the republic, some 24,000 of whom have not been getting any wages for months (*Vijesti*, 11 December, p. 8).

These studies also show that over one-third of all Montenegrin households have insufficient funds for food and personal hygiene needs, over one-half for health care, and over 70% for clothing and footwear. In mid–2001, the average monthly wage in Montenegro was DEM 206 (*Vijesti*, 13 February, p. 7).

In January, workers of the Nikšić-based firm *Grazing*, on strike for no less than 10 months, blocked the NikšićPodgorica road (*Vijesti*, 18 January, p. 9). In the same period 50 bus drivers and conductors of *Prevoz* Pljevalja went on hunger strike (*Vijesti*, 8 March, p. 6).

After a strike lasting three weeks in the *Nikšićka pivara* brewery, where the Belgian firm *Interbrew* holds a majority stake, agreement was reached on a one-third pay raise (*Vijesti*, 23 February, p. 3 and 10 March, p. 5).

A one-month general strike at *Obod* Cetinje ended late in March. The workers were paid out one monthly food supplement and promised all back pay once the firm re-started production (*Vijesti*, 30 March, p. 7). Two months later, *Obod* workers blocked the main road between Podgorica and Budva in a protest over unpaid wages. They threatened

reporters and took a film from the camera of a photographer working for the daily *Dan* (*Vijesti*, 24 May, p. 5).

Workers of the Andrijevica co-operative went on strike for a whole month in May, including two weeks of hunger strike. Once their patience had run out, they carried off a safe which allegedly contained funds to pay out 25 monthly wages from 1995, 1996 and 1997 (*Vijesti*, 24 May, p. 5). After they had returned the safe a few days later, their back pay was reimbursed (*Vijesti*, 29 May, p. 7). Workers of the firm *Stadion* in Berane went on strike early in May demanding 24 months in back pay, the funds for which had been set aside by the Montenegrin Government (*Vijesti*, 4 May, p. 8). The local bakery in Pljevlja also went on strike in May (*Vijesti*, 17 May, p. 7) as did Montenegrin sailors on an Italian-owned tanker in the *Bijela* yard, over unpaid wages (*Vijesti*, 29 May, p. 9).

Workers of the urban utilities in Cetinje went on strike in June (*Vijesti*, 12 June, p. 7), and workers of *Eksportbilje* Risan blocked the Adriatic Highway (*Vijesti*, 16 June, p. 6). Employees of the Podgorica firm *Božurveleeksport,* who had been on strike for two years, were sacked in June. They began the strike after the newly-privatised firm had not paid them any wages since 1997 (*Vijesti*, 21 June, p. 5).

In July, workers of the radiator factory in Danilovgrad blocked roads over unpaid wages (*Vijesti*, 19 July, p. 4), and in August the electrode plant in Plužine went on strike for the same reason (*Vijesti*, 9 August, p. 5).

In September, the Cetinje construction firm *Lovćen* ended a three-year strike begun over unpaid wages. The firm concluded a contract on the building of a housing and commercial building and the customs administration centre in Ulcinj, and used the money to pay some of the wages owed (*Vijesti*, 22 September, p. 14).

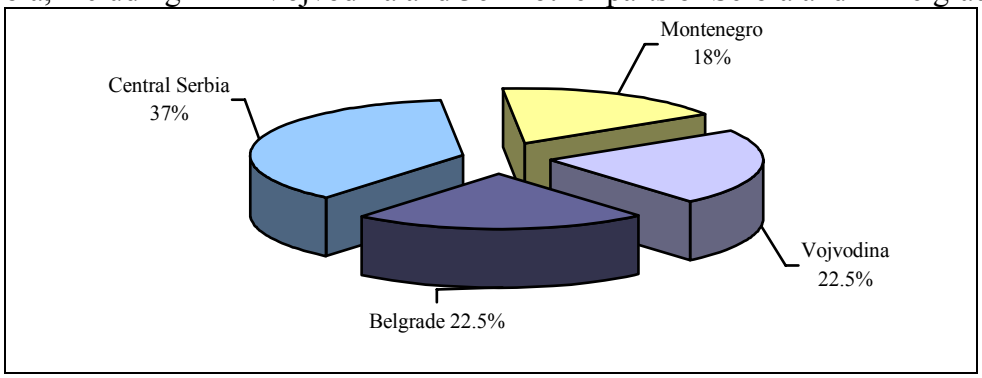
The workers of the Kolašin textile firm *Konkol* went on strike in December, blocking the trunk highway for several days. The blockade was suspended when the Montenegrin Ministry of the Economy promised to pay the 18 wages owed (*Vijesti*, 20 December, p. 11).

III
HUMAN RIGHTS IN THE LEGAL CONSCIOUSNESS

1. Introductory notes

The Belgrade Centre for Human Rights commissioned the *Scan* agency, based in Novi Sad, to conduct in late November and early December 2001 a survey of the legal consciousness of the citizens of Yugoslavia. This is the third such poll, creating the possibility of a temporal study of legal conscience trends in the region, all the more so as the first was conducted in mid–1998, two years before the democratic shift, and the second after the September 2000 elections and immmediately after the October 2000 events and the then change in the federal, provincial and local authorities, but before the general elections in Serbia in December that year.[202] The latest survey, conducted a year after the elections in Serbia, makes possible a comparative analysis of changes in the legal consciousness of the people of Yugoslavia in the process of the creation of a new social and institutional environment and represents an important basis for future studies.

The survey encompassed a sample of 2,220 respondents in all parts of Yugoslavia living in 96 communities in a total of 58 municipalities.[203] The multi-stage sample is also regionally representative, as 1,820 respondents live in Serbia (820 in Serbia outside Belgrade and Vojvodina, 500 in Belgrade and 500 in Vojvodina) and 400 in Montenegro. The share of respondents in Montenegro was deliberately made higher than their true share in the adult population of Yugoslavia in order to increase the validity of conclusions at republican level, but also of the level of social strata. Territorial disposition was even. Ten of the municipalities encompassed are in Montenegro and 48 in Serbia, including 12 in Vojvodina and 36 in other parts of Serbia and in Belgrade.



Picture 1: Regional structure of the sample

The sample is a combination of a random and partly stratified quota sample, which means that it is representative and encompasses all social and demographic groups of the overall electorate, or adult population of Yugoslavia.

The share of women in the sample was 50% and men 50%.

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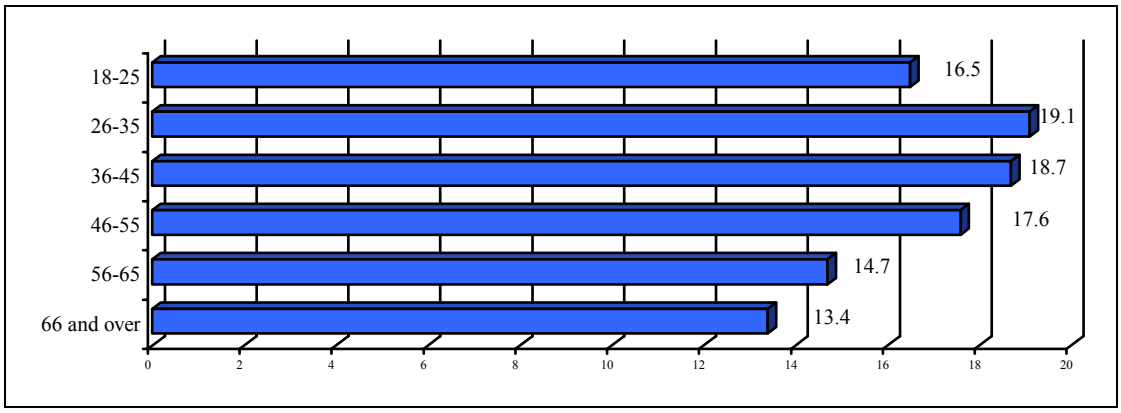
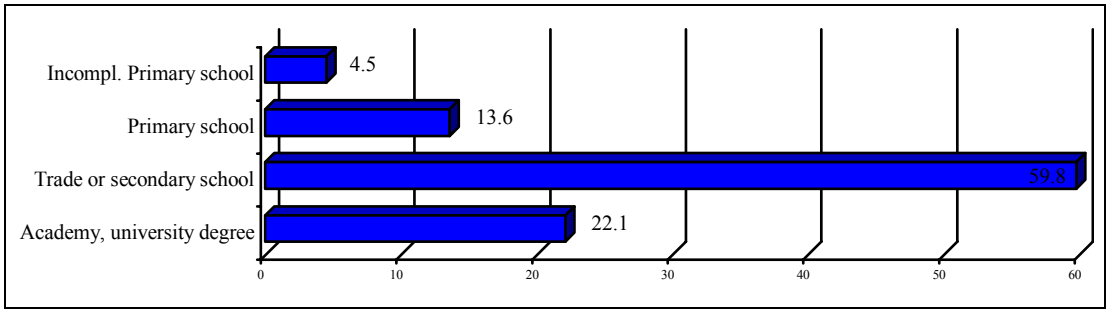
[202] A survey planned for 1999 did not take place due to difficulties caused by the NATO intervention.
[203] Like the previous surveys, this last one also encompassed all parts of the FRY except Kosovo.

Viewed by ethnic background, 67% were Serbs, 9% Montenegrins, 8% members of a group declaring themselves as Yugoslavs, 4% Moslems, 3% ethnic Hungarians, 2% ethnic Slovaks, 1% ethnic Albanians, 1% ethnic Croats and 5% others or those who declined to declare nationality. Some 46% of the 400 respondents in Montenegro were Montenegrins, 29% Serbs, 4% Yugoslavs, 6% ethnic Albanians, 11% Moslems, 2% Croats and 2% others or ethnically undeclared.

In the professional structure 27% were skilled and highly-skilled workers and technicians, 21% pensioners, 13% intellectuals and professionals, 12% secondary-school and university students, 7% housewives, 4% farmers, 8% unemployed persons, 3% unskilled labour, 4% entrepreneurs and 1% other professions. The age and educational structures are shown in Pictures 2 and 3:



Picture 2: Structure of sample by age



Picture 3: Educational structure of sample

Viewed by political preferences, a shift has been recorded since the previous survey in 2000, when supporters of the Democratic Party of Serbia (DSS) made up 27% of the sample; they remain the biggest group, but their share is down to 21%. In 2000, the second-biggest group (8.6%) were those backing the Democratic Party (DS), but now their share has grown to 16.4%. Some 4% supported the Socialist Party of Serbia in 2000; in 2001 there were more (6%)[204]. In Montenegro, little change has been recorded:

[204] In all public opinion surveys since 1990, there was a tendency for supporters of parties, which had lost the preceding elections to avoid declaring their political preferences. After the September 2000 elections, the share of SPS and Radical Party (SRS) supporters in our sample was smaller than those parties' actual electoral support.

supporters of the ruling DPS lead (25.7%), followed by the Socialist National Party (SNP, with 22.2%) and the Liberal Alliance of Montenegro (LSCG, with 6.8%)[205].

The questionnaire included 46 questions linked with knowledge about human rights. Following our practice in 1998 and 2000, we did not apply the KOL-standard (Knowledge and Opinion about Law), as separating questions into groups dealing strictly with legal regulations, legal practice and desired regulations would have resulted in major methodological problems. For that reason we resorted to the simplest possible groups of queries which do not differentiate between legally-prescribed human rights standards, those applied and those which are desirable. Another reason for retaining the same method was ensuring statistical and longitudinal comparativeness in monitoring legal awareness. Changing instruments would have made this impossible.

2. Understanding of Human Rights

The first step in a survey of the understanding of human rights was asking respondents what the term meant. The first question in this group was "What in your opinion are human rights?" In posing this question we proceeded from an assumption that human rights can be treated as a jus naturalis category (human rights are non-positive rights which take precedence over laws enacted by government and are enjoyed by every human being by the very fact of being that), a positive law category (human rights are rights enshrined in constitutions and international law), a realpolitik category (human rights are bare tools in the fight for political power) and a world conspiracy category (human rights are simply tools used by the mighty to blackmail us and our government).

The findings indicate that a majority of the respondents (67%) have a positive (jus naturale or positive law) attutude towards human rights. Like the preceding surveys, the jus naturale view prevailed; most respondents said human rights were "innate", regardless of their regulation in law. The second-biggest group holds a positive law approach (27.7%), treating human rights as being regulated by international documents, constitution and law. But the number of those inclined to view human rights as a real politik issue is also quite considerable – 18.7%; they see human rights as an "ordinary piece of paper used by politicians". It was concluded in the 2000 survey that there was a considerable increase in the incidence of holders of the jus naturale view compared with the 1998 survey, in fact bigger than the increase in the number of those inclined towards legal or political views. The tendency is attributed to the fact that the survey was carried out just two months after the elections and explained by the fact that there is in the FRY no institutional opportunity to protect human rights before either constitutional courts or relevant international agencies. Hence the inclination towards more abstract and informal perception of human rights. The government had been changed after 5 October but republican-level elections not yet held, placing Serbia in a still incompletely defined situation. A logical consequence of government institutionalised in such a manner was a "jus naturale euphoria". General elections were held in Serbia immediately after the completion of the survey, and elections in Montenegro a few months later. Table 1 shows the changes in attitudes to human rights recorded a "year after Milošević".

[205] Very small changes were recorded in Montenegro by the *Scan* agency (from 1% to 1.5%) from December 2000 until poll conducted late in January and early in February 2001; the percentages then recorded were confirmed at the republican elections in April. There has been minimal change since then.

Table 1: Cognisance of human rights

	What are human rights?	July 1998	December 2000	December 2001
1.	Part of the complex of rights regulated by international documents and the Constitution	22.3	25.6	27.7
2.	A lever used by the world powers to blackmail small countries like the FRY	11.1	7.7	10.9
3.	Rights inherent to all, regardless of their state's constitution and laws	38.8	46.7	38.7
4.	Ordinary piece of paper used by politicians as they see fit	24.9	17.1	18.7
5.	Something else	2.9	2.1	1.6
6.	Does not know or undecided	-	0.8	2.3
	T o t a l	100	100	100

If we compare the data produced by all three surveys, we can see changes which might be seen as having the character of tendencies. The presumption after the December 2000 survey of the then "jus naturale euphoria" (the choice of 38.8% of those polled in July 1998, and 46.7% after the September 2000 elections) was a consequence of the lack of institutionalised protection of human rights and the distrust that had been built up of the former legal order, but also the post-electoral events which had created hopes of change and the establishment of legal institutions. The December 2000 survey points to a conclusion that the then research assumptions were well-founded, but also to the fact that establishment of trust in institutions, which would boost the presence of positive law approaches to the interpretation of human rights, will take a lot of time. A year later the pro-jus naturale numbers returned to their 1998 level (the euphoria has faded away), while the positive law approach is growing gradually (1998: 22.3%, 2000: 25.6% and 2001: 27.7%). The changes recorded do indicate a tendency and are thus encouraging, but they also show that the build-up of confidence in legal institutions will be a very slow process. A fall in the incidence of adherents of the jus naturale approach a year after has been attended by a rise in the number of those viewing human rights in the light of global conspiracy theories. Their incidence dropped after the 5 October 2000 events, but has now returned to the level recorded in 1998 – one out of ten people in Yugoslavia. The result could also be a consequence of vociferous demands made by international institutions between the two surveys for enhanced cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY).

Besides a lack of confidence in legal institutions, a problem which still exists in the perception of human rights in the FRY is the lack of conformity between various statutes which was a result of a number of hastily adopted bad, controversial or even

unconstitutional and/or unlawful statutes.[206] This legal chaos jeopardises the privileged status of human rights in the legal system; although the chaotic situation was inherited, the procedure of upgrading the legal system is taking time. If we add to this the fact that the constitutional courts have not been funcioning in the post-electoral period, then it becomes clear why many of the old legal illogicalities are still in force. That was the reason why we continued monitoring the way people perceive the hierarchy of legal documents, which is why we posed the question what would have primacy in cases where there exists legal unconformity.

Most respondents granted precedence to constitutional standards, the same result recorded at the end of 2000. But in spite of the encouraging nature of this finding, we stress that this was the opinion of just one out of three respondents. One out of five thought laws should take precedence and 19% opted for international standards. The numbers of those favouring domestic and foreign law were about equal in this survey, perhaps a consequence of debates and dilemmas around the adoption of a law on cooperation with the ICTY and the advantages of international law over domestic law and vice versa. Changes in views about the precedence of legal documents since 1998 are interesting. They are shown in Table 2.

Table 2: Unconformity of legal documents

	"If legal documents are not in conformity, what has precedence?"	July 1998	Dec. 2000	Dec. 2001
1.	The contents of international documents	15.6	14.4	19.0
2.	The Constitution	21.5	32.4	33.6
3.	Laws	14.6	18.1	20.6
4.	The opinions of people in government	22.9	13.4	10.0
5.	The opinions of wise people	22.9	18.9	12.8
6.	Something else	2.5	1.7	0.9
7.	Does not know, or no response	-	1.0	3.0
	T o t a l	100	100	100

Viewed against the findings of the 1998 poll, significant changes were recorded in the responses to the question on precedence where there exists unconfomity of laws. They are positive and it is especially important to note a constant decline in the number of those granting precedence to prominent individuals, in government or outside it. In the 1998 survey they outranked those who gave primacy to laws, the Constitution or international treaties. Compared with the 1998 findings, the percentage of those favouring the opinions of individuals was halved, from 45.8% to 22.8%, and is showing a tendency to decline further. Although the trend is positive, there still remain far too many people who trust individuals in cases where there is legal unconformity. Parallel rises

[206] Examples are laws which in contravention of the constitution stripped Vojvodina of a number of its powers, the existence of capital punishment in republican law but not in federal law etc.

were recorded in the number of those placing their trust in legal documents – Constitution, laws and international documents – with the biggest increase being those who favour the third category (a rise of 5% since December 2000). This is a consequence of the aforementioned events and debates in 2001. But although their rating has improved more than those of others, international documents still lag behind domestic legislation, the Constitution and laws. But it is nevertheless positive that the process has been initiated and that it is far more dynamic compared with others recorded in public opinion surveys.

3. Individual rights

3.1. Prohibition of discrimination

Prohibition of discrimination was like in the two preceding polls studied by gauging the results of five questions dealing with five areas. Three concerned prohibition of sexual discrimination (in politics, employment and promotion in service, and marriage), one ethnic discrimination (in employment) and one sexual orientation (homosexuality).

The inequality suffered by women has clearly been growing worse in the entire post-communist period in the FRY and can be recognised in many areas. Surveys conducted by *Scan* in 2001 of the social and economic status of women in Yugoslavia show that the inequality of women is seen particularly in election to political and managerial posts, the economy and elsewhere. Inequality is a also a feature of marriage. Interestingly, for a number of years public opinion polls on social and political relations have not yielded results showing significant differences depending on gender. But there are growing differences between the sexes in views about equality of women. Asked whether women could exercise all the same rights enjoyed by men, 64% of the women surveyed said "No", while 60% of the men said they could. Asked to list the areas in which inedquality was most pronounced, most respondents chose political appointments, followed by appointment to managerial posts, and relations in the family.[207] Women made up two-thirds majorities in the structure of all three responses.

Inequality of women in the political life of the FRY has been evident for many years. A report by the Council of Europe published before the 2000 elections ranked Yugoslavia third-lowest as regards representation of women in the federal legislature with only 5% (at one point just 3.5%). Only Liechtenstein and Moldova were even worse. In spite of a campaign conducted by NGOs dealing with human rights and women's rights and the women's political network championing a 30% representation by women in parliaments, their share in legislatures did not improve much after the 2000 elections. Just nine of the 178 deputies in the Yugoslav Parliament are women (one in the Chamber of Republics and eight in the Chamber of Citizens). The situation is not much better in the republican parliaments, where women's representation has risen slightly to around 11%. Interestingly, by coincidence both republican parliaments are now for the first time ever chaired by women. The situation in municipal assemblies is even worse than those at federal and republican levels. Numerous local assemblies have no women at

[207] Milka Puzigaća and others, *Socijalni i ekonomski položaj žena Jugoslavije* (Social and Economic Status of the Women of Yugoslavia), *Scan*; January-November 2001.

all or just one, while the average representation of women in local administrations is just 6%.

Interestingly, before the elections and immediately after them, there were more men who recognised the inequality of women in political life than a year later. Among this group, the number of those who think there should be many more or at least more women in politics than now has also dropped.

This was also shown by this survey. Compared with the December 2000 poll, the incidence of men who think women are represented in political life sufficiently went up by 14 points (from 15% to 29%). If we add up this group and those who think there are too many women in politics with those who have no opinion on the subject, we can see that women hoping their status in politics will improve have an absolute majority of the male population against them (57%).

All this points to a dire need to adopt anti-discrimination regulations and quotas, as recommended by the Peking Declaration on the position of women in society, or a statutory regulation of sexual parity in political representation.

The population is still generally aware that women are discriminated against in the areas of employment possibilities and service promotion. Compared with the December 2000 survey, some shifts have taken place, in that the number of respondents who think women are unequal has dropped. In 2000 this was the answer given by 44.3% of those polled, compared with 30% in 2001. There was a large jump in the incidence of men who believe women enjoy equal employment opportunities (35.6% in 2000, and 61% in the current survey). Interestingly, more men now think that women enjoy a better chance of finding a job (11% a year ago and 16% now). Other studies have shown that asked about jobs open to women, people regularly list boutiques, restaurants and cafes. But the objective situation is completely different. Women do find more employment in trade and catering establishments, but on jobs usually lacking social and health benefits ("grey economy") and usually limited in duration. The private sector is far more open to men than women – this is particularly important in view of the ongoing privatisation process. These processes and trends can serve to further boost unemployment among women, who already have a far higher share on the job market. All this points to the following conclusions in our survey: the incidence of those who think women have poorer employment and service promotion opportunities is higher among women than men. About 41% of the women held this view. The group of women who think there is sexual parity in employment opportunities includes a larger share of women over 65 – in contrast, this age group had the lowest representation among women who think their sex is subject to job discrimination.

In Montenegro, we found that 37% of those polled perceived an unfavourable status of women in regard to employment possibilities, compared to 29% in Serbia.

A different trend was recorded in regard to sexual (in)equality in the family. The incidence of those who think there exists full equality between partners in marriage grew in the past four years from 49.5% in 1998 to 54% in 2000 and 62.5% in the December 2001 survey, while the percentage of those who see continued male domination declined, from 41.4% in 1998 to 37.9% in 2000 and 33.4% in 2001. Viewed by respondent gender, the results differ widely. Almost 71% of all men now believe women have achieved marital emancipation, contributing to the overall trend of growing belief in sexual equality in the family – this is a major increase from the 57.5% recorded in 2000. Only

one out of five men think women are not equal partners in marriage. In contrast, twice as many women (43%) think their sex is not equal – this is less than last year (53.1%) or in 1998 (49.3%). Viewed regionally, marital inequality was perceived by 46% of those polled in Montenegro, compared with just 25% in Vojvodina.

The conclusion that can be drawn from the data is that trends recorded earlier persist, and that the people of Yugoslavia, especially women, have become more sensitive to various forms of discrimination against women and are increasingly willing to challenge beliefs in the existence of emancipation. Research has shown that there is a far higher level of readiness for activism among the women of the FRY (between 25% and 33%),[208] than the corresponding figures in the Western European countries (from 12% to 15%). This form of activism did expereince a slight decline in 2001, albeit to an equal degree among the two sexes.[209] The situation in regard to discimination against women is bad throughout the country, and somewhat worse in Montenegro than in Serbia: all this points to a need to draft a national action plan and to enforce national mechanisms for ensuring sexual equality, of the type already in place in most European countries.

Our survey of discrimination against ethnic minorities focused on views about employment and service promotion. Asked about the opportunities enjoyed by ethnic minorities for finding a job or advancement on it, a large majority (67.1%) replied: "the same as Serbs/Montenegrins". This is an 11-point increase from the 2000 survey, and a 14-point jump from that in 1998. There was a drop in the number of those who believe ethnic minorities enjoy better job opportunities than Serbs and Montenegrins, and a sharp drop in the incidence of those who think their opportunities are worse. Viewed territorially, the results vary from those recorded in December 2000, when just 15.2% of our respondents in Vojvodina believed ethnic minorities were subjected to job discrimination, compared with a corresponding figure, the highest regionally, of 29.1% in Montenegro.[210] The latest survey resulted in different and even totally opposite relations: the figure for Vojvodina remained steady at 15.9%, but in Montenegro it dropped sharply to just 7.6%. Belgrade and central Serbia remain positioned between these two extremes, but now it is the people Vojvodina who believe ethnic minorities suffer job discrimination, and those of Montenegro who are the least inclined towards this view.[211] At the same time, fully 73% of the people polled in Montenegro do not believe there is any ethnically-motivated job discrimination, while the corresponding figure in Serbia (the lowest by region) is 61.4%. Table 3 shows the results of the three surveys about employment and job promotion opportunities.

Table 3: Employment and service promotion opportunities for ethnic minorities

	"What are the chances national minorities	July 1998	Dec. 2000	November

[208] *Id*.

[209] Research has shown that readiness for activism, especially political, usually happens after elections.

[210] *Human Rights in Yugoslavia 2000*, p. 282.

[211] The difference between the figures recorded in Montenegro in December 2000 and a year later might be interpreted by the tensions, which arose there after the elections – the fears of ethnic strife and the outbreak of a civil war. But the differences could also be a result of other factors this study has not been able to discover.

	have of finding a job and advancing in service?"			2001
1.	Better than Serbs/Montenegrins	13.1	13.2	10.3
2.	The same as Serbs/Montenegrins	53.1	55.7	67.1
3.	Worse than Serbs/Montenegrins	20.5	21.3	11.7
4.	Doesn't know	13.3	9.7	10.9
	T o t a l	100	100	100

The alteration in attitudes towards employment discrimination against national minorities in Montenegro came mainly as a result of a change in the views of Bosniaks and ethnic Albanians.[212] In the preceding survey they held the highest share among those who said there was employment discrimination against national minorities; this time their views mirror the average. In the current survey it was ethnic Hungarians who prevailed in pointing to job discrimination (57.6%)[213] – it is therefore an absolute majority among ethnic Hungarians who believe there is discrimination against national minorities in the field of employment and promotion in service. They are far above the rest in this respect: ethnic Croats are second with a 27.3% rating, followed by "others" and the ethnically-undeclared (19.8%) and Yugoslavs (16.4%). Percentages among all other ethnic groups are lower and about similar.

The survey also included a question about discrimination against homosexuals. The responses point to trends more in a negative than positive direction from the preceding study. The incidence of those who think homosexuals are censured and socially shunned dropped by a point (from 33% to 32%), as did that of those who believe little such condemnation exists (from 23.6% in 1998 down to 18.7% in 2000 and 12.1% in 2001). But there has been a jump in the incidence of respondents who think homosexuals are overprotected (from 23.9% in 1998 to 24.6% in 2000 and 33.3% in 2001). One out of three people think society protects homosexuals too much, but this view is contradicted by the events in Belgrade in the summer of 2001, when homosexuals on their first-ever public march were attacked and brutally beaten. If we had concluded in our previous study on the basis of the survey's results that the people of the FRY were a little more inclined to admit the existence of an anti-gay social bias, this year's findings show that they have become more inclined (or may be exhibiting their actual views more openly) towards challenging gay rights (which they in fact lack).

3.2. Right to Life

Views about the respect of the right to life were surveyed through examples of two forms of this right: freedom from extra-judicial killing and freedom from capital punishment. The question posed in connection with the first was: "What is done with

[212] Almost all of those who declared themselves in our survey as ethnic Albanians live in Montenegro, while the number of Bosniaks polled in that republic was 11%.

[213] *Multikulturalnosti u Vojvodini* (Multiculturalisms in Vojvodina), a study *Scan* conducted in Vojvodina in March 2000 (authors Milka Puzigaća, Miloš Marijanović and Milica Andevski), also resulted in widespread views about the existence of job discrimination against national minorities.

people who are known to be dangerous criminals, although no proof exists of this?" Like the previous surveys, a trap was laid for the respondents by the rhetorical remark "known to be dangerous criminals" leading to the conclusion that there exists no reliable proof for the crimes allegedly committed by these "dangerous criminals". Besides the traditional choices, two more inherent to repressive regimes were offered – that such "dangerous criminals" should be prosecuted secretly (without the exercise of the customary proceduring guarantees) or that they should even be simply liquidated by the State Security Service (SDB).

The findings were similar to those of the preceding surveys. More than two-thirds (67.9%) rejected secret trials or liquidations by the state and opted for prosecution on the basis of sufficient evidence. The percentage is two points higher than that in 1998 and a point lower than the 2000 survey, but this could be statistically insignificant. Belief that the said "dangerous criminals" are being tried summarily in the FRY was expressed by 6.3% of the respondents, virtually identical with the percentages recorded in 2000 and 1998. The biggest changes were recorded in respect of the possibility of liquidation by the SDB – in 1998, 18.5% of the respondents believed in such an option, in 2000 there were 14.1% and in 2001 just 11.3%. The number of those who were uncertain rose from 10% to 14%.

At the end of 2001, when the survey was conducted, there was no capital punishment in the Yugoslav Constitution for crimes regulated by federal laws, while it existed in the republican legislations for the "most serious forms of criminal offences" regulated by republican law. No constitutional changes happened between the two surveys and the death penalty could not be handed down for offences like war crimes and genocide, but could for various homicide crimes regulated by republican legisalation.[214] Both the Serbian and Montenegrin legislatures utilised the constitutionally-prescribed possibility of providing for capital punishment, which is now applicable in the entire FRY on the basis of the republican criminal codes. The confusing situation made it imperative to study general views on the issue.

The findings show that because of the chaotic legislation many respondents believe that capital punishment does not exist in the FRY – no fewer than 48.9% in the current study, up from 35.7% in 2000 and 26.6% in 1998. Consequently, there was a drop in the incidence of those believing the death penalty does exist, but only in federal legislation (10 points less than the 33.5% recorded in the 2000 survey and 15 points lower than the 39% in 1998). Just 10.8% of those polled believe capital punishment exists in republican legislations – here, 4.1% think capital punishment both exists and is applied, while 6.7% say it is not being implemented. Some 16.5% were unable to provide a response. The biggest differences in views on the issue were expressed last year in Belgrade and Montenegro.[215] This relationship remains visible in the response that capital punishment does not exist, which was given by 42.4% of those polled in Belgrade and no fewer than 53.3% in Montenegro. Vojvodinians lagged behind Montenegrins by just 0.4% this time. In last year's report it was concluded that there was a higher dispersion of views in Serbia than in Montenegro but this time the dispersion is equal in all parts of the FRY.

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[214] Comp. V. Dimitrijević, M. Paunović in collaboration with V. Djerić, *Ljudska prava* (Human Rights), Belgrade, Belgrade Centre for Human Rights, 1997, p. 230.

[215] See *Human Rights in Yugoslavia 2000*, p. 297.

The conclusion of the 2000 survey that a large majority of respondents were convinced that there were in the FRY no secret trials of "dangerous criminals" for whose alleged crimes there existed no reliable proof was reaffirmed in this survey. But respondents also showed they knew even less about the possibilities provided in federal and republican legislations for capital punishment.

3.3. Prohibition of torture, inhuman and degrading treatment and punishment

The prohibition of torture was handled in the survey through two of its forms: freedom from torture and reprisals by the state (institutionalised through the formal guarantee to suspects that they will not be subjected to extraction of confessions by force), and freedom from court-imposed corporal punishment.

In order to test their attitudes on torture and state reprisals, respondents were asked: "Is the use of force allowed when trying to obtain a confession for crimes punishable by death?" Some 55.3% gave a negative response – some 2.7% less than in 2000 but about 10% more than in 1998. In contrast, more than one in four (26.4%) think such use of force is legitimate – 17.3% said it should be allowed as long as it does not harm the health of the suspect, and 9.1% as long as it does not threaten the suspect's life. Compared with the preceding survey, the number of those supporting the use of force in extracting confessions as long as there is no threat to life has dropped (by 3.4%), but that of those who think it can be done as long as health is not threatened has gone up by 1.2%. If we add to the former those who do not know whether the use of force is or is not allowed, it turns out that there is still a large number of people (47%) not aware about the meaning of freedom from torture and state reprisals.

In contrast to the preceding survey, this one indicates a shift in opinions about court-imposed corposal punishment. Asked if corposal punishment existed in the FRY, the correct (negative) response was given by a majority (63.9%) higher than that in 2000 (57.3%). The incidence of those giving the incorrect response was halved – from 24.1% in 2000 to 12.4% in the 2001 survey. Another 2.4% provided the positive response, but limisted it to their own republic. While the number of those who think corporal punishment exists in the FRY fell, there was a considerable increase in the incidence of those who do not know one way or the other. The results point to a conclusion that in spite of all shifts, the research conclusion made in 1998 still stands – there is widespread belief in the FRY that an individual being prosecuted (both in the investigation and execution of sentence phases) cannot preserve his or her physical integrity and be spared maltreatment. Over one-third of the sample (36%) expressed doubts in this regard. Judging by the responses, physical violence as a mean of extracting confessions and as a sentence imposed by courts still exist in the legal consciosness of the Yugoslav people.

3.4. Prohibition of Slavery and Servitude

The survey did not encompass questions about the prohibition of slavery and servitude because of an obvious existence of cognisance of the prohibition of slavery in the legal consciousness of the people of the FRY.

3.5. Right to the Freedom and Security of Person and the Treatment of Persons Deprived of their Freedom

Awareness about the right to the freedom and security of person was in all three studies researched by processing answers to the following question: “How long is investigative detention under Yugoslav law?” The correct response (one month, and six months in exceptional cases) came from 45.2% of the respondents, while 7.5% believe it can last up to three years. No fewer than 18.5% think detention can last for as long as it takes to find evidence to convict (potentially for life!), while 28.8% are unsure about the legally-prescribed pre-trial detention. Comparing the results with those of the 1998 and 2000 surveys, one can see a continuing tendency of improvement. But comparing this year's survey with that of 2000 shows an almost unaltered incidence of those who gave the correct answer, but a shift in the direction of the “don't knows” of the number of those giving one of the incorrect responses. The number of those insisting on their (incorrect) answer has dropped, in favour of those who said they were not sure. In all three studies there was evident correlation between the responses to the question about the duration of detention and the respondents' educational levels – the higher the educational standards the more correct were the answers and vice versa. Viewed by this standard, 61% of all university-educated respondents gave the correct answer and just 21% of the uneducated group. The gender-dependent differences recorded in earlier studies remain: more men (53.9%) than women (36.6%) gave the correct answer. Other studies have shown that in reply to the question “What is you biggest bother and waste of time?” many more men than women say this happens in business trasacted with police. In 1998, this response was particularly widespread among men living in the Sandjak region.

The results lead towards a conclusion that respondents' consciousness about the limits of the state's infringement of the freedom and personal safety of individuals is improving, although it is still far from being well-developed. There continues to be little awareness of the right to personal freedom and security, hence the considerable number of people thinking the state authorities have a “right” to keep suspects in investigative detention for as long as they want.

3.6. Right to Fair Trial

The preceding two chapters show that most of the difficulties surrounding the exercise of human rights in the FRY are in the area of autonomy of the judiciary. Both in the matter of legal proceedings and the enforcement of binding legal decisions, the people of Yugoslavia are far from certain that they will be able to exercise their rights. A year after the democratic changes, when there was much talk about the establishment of an independent judiciary, in which numerous personnel changes have taken place, it was of some interest to look into reponses to questions dealing with the right to a fair trial.

The first question was about how long a suspect could be kept before being questioned by a judge. The biggest group did not know the answer, some 28.3% gave incorrect answers, and the rest (31.6%, less than one third) gave the corerct one. No significant shifts have taken place since the 2000 survey, except for a 5% fall in the number of those who think a suspect has to be brought before a judge within three months, and for an increase in the “don't knows” category.

Although there was a reduction in the number of those who believe in secret trials and executions by the SDB, some 6.3% of respondents still believe secret trials are organised in the FRY for "dangerous criminals" for whose alleged crimes no there exists no reliable evidence. Asked if the law prescribed that all legal proceedings must be public, compared with 2000 there was even a drop in the already small number of those who replied positively (18.9% now, compared to 21.5% a year ago). One out of four respondents is convinced that the rule is either not valid at all (25.4%) or that there are many exceptions from it (30.6%). Compared with the preceding survey, the number of "don't knows" has doubled (from 13.9% to 25.1%). Last year's finding that the highest incidence of those believing in numerous exceptions from the rule was recorded in Montengro was confirmed by the 2001 results, but the differences have been considerably reduced. Some 33.7% gave such an answer in Montenegro (compared with 44.8% in 2000) and 26.8% in Vojvodina (against 32.1% in 2000). Looking at correlations, however, indicates that responses to the question have little link with territorial location (region, republic or province).

Respondents were also asked whether there was automatic presumption of innocence in courts in the FRY. Responses showed little shift from those recorded in 2000. Two-fifths (40.1%) replied positively, and 10% said they did not know. The rest, almost one-half (49%) said either that the rule was inapplicable (9.2%) or that there were many exceptions in practice (39.8%). Together with the "don't knows", fully three-fifths of those polled were sceptical about the validity of presumption of innocence in the FRY.

In contrast to the repeated discouraging results in responses to the last three quesitons in the area of the right to a fair trial, those about the freedom to choose a defence attorney were once again better, but a little less so than those recorded in 2000. A convincing majority (69.4%) said the rule was applied without exception, 5% said the opposite, and 16.1% said there were many exceptions. The remaining 10.7% could not give an answer.

Respondents were also asked to rate the judiciary in the FRY. Compared with the 2000 survey, the number of those saying judges were mainly bad and dependent on political will dropped (from 53.7% in 2000 to 47.6% in 2001). Just one out of ten (9.5%) believe judges are good and independent, mirroring last year's results. About one-third (31%) believe that judges are trying to preserve their integrity in very bad conditions; this is 1.6% more than last year.[216] Some 11.9% did not have any opinion – 4.7% more than last year. Comparing data collected in all three surveys shows that the decline in the good reputation enjoyed by the judicial profession recorded between the 1998 and 2000 surveys has been halted, but the very high percentage who think judges are anything but good and independent has also dropped. The impression is gained that respondents have a vacillatory opinion of judges. There continue to be no regional or indeed other socio-demographic variations between Montenegro, Vojvodina, Belgrade or central Serbia, except that more of the better-educated respondents have an opinion about judges than those without any education or primary school. Respondents with secondary-school educations or trade schools were the most critical of judges, while the highest educated group generally tended to the view that they did their best in the prevailing conditions.

[216] In the *Human Rights in Yugoslavia 2000*, a typographical error gave the percentage for this response as 19.1%; the correct figure was 29.6%.

The results show that the people are generally well aware about the erosion of the judicial profession in the FRY and believe that the judiciary is still not independent. Respondents still exhibit very warped views about the possibilities offered by domestic procedural law – most of them challenge to a lesser or greater extent the existence of procedural guarantees, such as undelayed appearance of a suspect before a judge, publicness of legal proceedings and the presumption of innocence (in contrast to the right to a defence counsel of one's own choosing, which respondents think has been accomplished generally).

3.7. Right to the Protection of Private and Family Life, Home and Correspondence

In our survey the right to privacy was represented by two types of freedoms: freedom from inspection of private mail and monitoring of telephone communication, and freedom from police searches of homes without a warrant.

The survey showed that a large majority of those polled believe there is unconditional freedom of communication by mail and telephone in the FRY (60.7%). In 2000 this view was held by 63.5% of those polled, some 14 percentage points higher than in 1998. The latest figure is 3 points lower than a year ago. Some 32.2% believe police have a right to open mail and tap phones without authorisation from a court; in this total 6.1% think sufficient grounds for police would be protecting the authorities, while the remaining 26.1% believe the only justification can be the security of the country. The number of "don't knows" has risen (from 4.2% in 2000 to 7% now). The number of those who think police are entitled to open mail and tap phones has fallen from one-half of the sample in the 1998 survey to a third in 2000, and remains at that level.

Respondents were asked to list the cases in which police can search a private dwelling. Several answers were possible and the totals in Table 4 are therefore higher than 100%. Some 40% of the sample gave two answers, 20% gave three and the rest a single answer.

Comparing the results with those of the previous surveys shows evidence of a tendency, albeit with very modest movement. Some 73.2% said police can search a private home if they hold a warrant issued by a court; this figure is 4% down from last year's survey. There was a considerable drop in the number of those who believe police can search a flat at the instructions of the SDB (from 25% in 2000 to 19.7% now). The percentage of respondents who think a warrant from the interior ministry is sufficient for a search remained at last year's level (34.4%). Over one-quarter picked one of the two answers according to which no warrant is needed for a search, sufficient grounds being existence of suspicion that security has been threatened (15.4%) or simply whenever it is deemed necessary (11.3%).

Notwitstanding the large number of those who believe a warrant issued by a court is necessary in order to search a private home, there was still a considerable number of people who think all that is needed is someone's appraisal of the security situation or a need.

Table 4: Grounds for searching a private dwelling

	"In which cases can police search a	July 1998	December	December

	private home?"		2000	2001
1.	With a court-issued warrant	71.7	77.0	73.2
2.	If they have a warrant from the State Security Service (SDB)	32.7	25.4	19.7
3.	If they have a warrant issued by the Interior Ministry	43.2	34.7	34.4
4.	Whenever security is threatened	19.4	14.7	15.4
5.	Whenever they deem it necessary	20.6	15.3	11.3
6.	Doesn't know	5.3	5,7	6.6

3.8. Right to the Freedom of Thought, Conscience and Religion

Opinions about the right to the freedom of thought, conscience and religion were surveyed by looking into freedom from state ideology in the educational system, and the freedom of professing and manifesting one's religious convictions.

The first form of the right to the freedom of thought, conscience and religion considered here is freedom from state ideology in schools. We asked respondents if educational curricula had to correspond to some form of official teachings. Most (45.9%) said they did not know – some 15% more than last year. Some 38.7% said they did not have to conform to any official tenets; this is similar to last year's percentage. There was a large drop in the incidence of those who believe curricula must be brought in line with official doctrines (from 28.7% in 2000 down to 15.3% in 2001), but most of those who picked this answer declined to say which doctrines. Those who did listed "those defined by the minister of education", and "those advocated by the party in power". There was a rise in the number of respondents who mentioned the teachings of the Serbian Orthodox Church; this is not surprising as religious instruction had been introduced as an optional subject in schools immediately before the start of the survey.

The future of the educational system is obviously something of a puzzle to most people – hence so many (one in two) who said they had no idea what was happening to programmes of study at the moment.

The second form of the right to the freedom of thought, conscience and religion we surveyed was freedom to profess and manifest religious convictions. Asked "How extensive do you think is the freedom of professing and manifesting religious convictions?" 47.5% of those polled said there was genuine freedom. The incidence of those believing religious freedom was still limited has dropped by almost 8% compared with the previous survey, down to 12.1%. One-third (31.4%) think there is excessive freedom because dangerous sects are being tolerated. One out of eleven (9%) said they did not know. The number of those satisfied with the scope of religious freedoms stayed at last year's level, the number of those not satisfied fell, and that of those who don't

know rose.[217] Opinions are very polarised in Yugoslavia in regard to the freedom of professing and manifesting religious convictions.

Last year's report said polarisation was not as pronounced among the national minorities, and the current findings bear out this conclusion. In fact it is the Serbs who are the most sharply divided between those who believe religious freedoms are ample and those who think they are excessively broad. Polarisation, albeit lesser, was also recorded among Yugoslavs and Montenegrins. Besides this relatively low level of linkage of responses to ethnicity, we could say that viewed in statistical terms there is little correlation between the responses on religious freedoms and ethnic background.

3.9. Freedom of Expression

In the former SFRY, freedom of expression had been one of the rights most often threatened. Article 133 of the Federal Criminal Code[218] dealt with so-called "verbal offences" clearly with the aim of suppressing criticism. "Verbal offences" have been abolished formally in the FRY, but there remains some doubt whether relics of this institution survive. For that reason we sought to check whether people thought anything had changed in this area in the meantime. Three choices about the current situation were offered to respondents: absolute freedom of disseminating information, freedom of disseminating information up to limits defined by international law (the example given being restrictions on ruining someone else's reputation) and freedom to disseminate information with an attached ban on criticising the authorities. The first question was whether anyone could be prosecuted for disseminating information. Some 28.1% said there was absolute freedom of spreading information; this finding is similar to last year's. Some 38.4% said there were restrictions on the dissemination of information which proceeded from internationally-defined standards; this percentage is 7 points lower than that recorded in 2000. Belief that dissemination of information was still being limited in the FRY in all cases where the authorities were being criticised was expressed by 17.9% of the sample, just 1% less than in 2000. A fall in the incidence of those believing freedom of dissemination of information was restricted by a ban on tarnishing someone else's reputation caused a signifacant increase in the "don't knows" group (from 7.7% in 2000 to 15.6% now). The results show a continued decline in the incidence of those believing any criticism of the authorities represents grounds for limiting freedom of disseminating information, but the drop is not as pronounced as it had been between the 1998 and 2000 surveys. What provokes concern is the fall in the number of those who think restrictions on the dissemination of information were in accordance with international standards.

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[217] In the report *Human Rights in Yugoslavia 2000*, had a typographical error. Asked their opinion about the freedom of manifesting religion, some 39.3% of those polled said it was the desirable level (this percentage was given correctly), some 15.1% said religious freedoms were still restricted, and 37.4% that they were excessive, as dangerous sects were being tolerated (the Report gives a figure of 5.4%). Some 8% said they did not know. The error also produced an incorrect conclusion in the Report 2000 that there had been a considerable increase in the number of those believing religious freedoms were being tolerated excessively. Quite contrary to that conclusion, in 2000 there was a fall in this group of about 9%, and a small rise of 2% in the current survey.

[218] Compare collected papers: *Misao, reč, kazna* (Thought, Word, Punishment). Verbalni politički delikt (Verbal poliitcal offences), Belgrade, Institut za kriminološka i sociološka istraživanja, 1989.

The next question linked with freedom of expression was: “Is there censorship in art?” – some 19.6% replied positively, down 12% from the figure recorded in 2000. Some 11.2% said that there was no formal censorship but that it was being practiced in state institutions connected with the arts; this is 7% down on last year. But the fall in the number of those who believe some forms of censorship do exist in the FRY was not attended by a corresponding increase in the incidence of those who are absolutely certain that it does not exist – the figure of 28.6% recorded is similar to last year's. Viewed from 1998 on, there has been almost no change in the incidence of those who believe that there is no censorship of art, which means that the view that this form of censorship exists in the FRY persists in the legal consciousness of the people. The number of those who are not sure has doubled (from 20.7% in 2000 to 40.7% in 2001).

Responses to the question “Is there censorship of the press?” in the preceding surveys provoked even more concern. This was reflected in this poll, the only difference from the others being a small drop in the incidence of those who gave an unequivocal “yes” (from 51.4% to 46.9%). There was also a drop in the number of those who said that there was no formal censorship in the press, but informal censorship in some of its segments (from 10.9% to 6.8%). The incidence of the view that there is no press censorship remains at the 1998 and 2000 levels – only one out of four respondents (25.5%). Like many other questions in the survey, here too there was an increase this year in the number of “don't knows” (from 12.5% in 2000 to 20.8%). The 2000 report showed differences on this issue between respondents in Serbia and those in Montenegro. In this survey this difference was even more pronounced: in Montenegro no fewer than 60.1% of those polled believe there is censorship of the press in their republic (the view is held by more supporters of the opposition SNP than those of the ruling DPS), compared with a corresponding figure of 44.1% in Serbia. Just 14% of our respondents in Montenegro believe there is no censorship; in Serbia the figure is 28%.

Investigation of opinions about the freedom of the press included questions about the perceived attitude of the authorities towards that the independent segment of the press – that not owned and run by the state. Responses differed somewhat from those in 2000 in that there was a drop in the number of those who think the state is doing a lot to restrain the independent press (26.2% now, against 33.5% in 2000). All other responses mirrored last year's: 32.9% said the authorities treated independent newspapers the same as all others, and 19.3 % said the authorities tolerated them because they believed their influence was low. Again the number of “don't knows” grew, and territorial differences were evident: 22% of those polled in Serbia believe the state is doing everything to stifle the independent press, but there were twice as many in Montenegro (42.9%). On the other hand, 35.7% in Serbia think the state treats all equally, against just 20.1% in Montenegro.

A question about the position of independent publishers elicited similar responses: 31.6% said the authorities treated them like they did all other publishers. There was a small fall in the number of those who think the authorities tolerate private publishers because their influence is tiny (from 20.2% in 2000 to 17.9% in 2001). The biggest drop was in the incidence of those who think the authorities are out to suppress private publishers (21.6%, against no less than 38.8% in 1998 and 30.4% after the 2000 elections) – the figure has thus been virtually halved (17.2% fall) since 1998. But it should be noted that in spite of the significant drop, one out of five people in Yugoslavia

still believe the state is stifling private publishers. Once again, there was a corresponding increase in the number of "don't knows", leading to a conclusion that the people are still wary of the future, although changes are evident. There was also a territorial distinction: no fewer than 33.9% of those polled in Montenegro (against 19% in Serbia) think the state is seeking to strangle private publishers; in this total there were three times as many SNP supporters than those of the ruling DPS.

Respondents were also asked for their views about the position of independent radio and TV stations. Once again here was a drop in the number of those who believe the authorities are out to suppress them (from 31.3% in 2000 to 25.4% in 2001). But this did not lead to a corresponding increase in the incidence of those believing the authorities treated such radio and TV stations fairly: in fact their number dropped from 38.3% in 2000 to 34.8% in 2001. Again the only rise was the "don't knows" total (from 11.9% to 21.1% in 2001). Montenegrins once again expressed more displeasure with their government's attitude towards independent broadcasters (40.6%), against 22.1% dissatisfied in Serbia. In Montenegro, 62.5% SNP supporters held this view, against 14.6% of all DPS supporters.

A summarised picture of the perception of freedoms enjoyed by the mass media in the FRY is marked by a number of interesting points. Belief that there exists censorship in the media is still widespread in both republics – after 5 October it declined considerably, but is still shown by one in four and one in five, respectively. But this has not led to changes in attitudes to the existence of freedom. The euphoria which led after the democratic shift to a sudden turn in views about media freedoms gradually abated and turned into cautious expectations, hence the modest fall in the number of those who think the media are free and considerable rise in the number of those who are not sure either way. Differences between those polled in Serbia and Montenegro are still evident. In Serbia, about one-third of all respondents believe there is no state repression against the media; the distribution is about even among supporters of all parties, albeit slightly in favour of those of the ruling parties. Similar conclusions were made about the responses to the question on the existence of censorship. But in Montenegro the differences are very pronounced, depending on the political orientation of the respondent: most DPS supporters think the media are free, while most SNP supporters say censorship is very much present in Montenegro. The finding is also evidence of the existence of a growing media problem in Montenegro and tensions between the two opposed political options.

Respondents were also asked for their opinions about the organisations involved in monitoring human rights violations in the FRY and informing the domestic and international public about their findings. The incidence of those treating them as beneficial organisations had jumped by 18 percentage points between 1998 and 2000 (from 30.1% to 48.2%), but by 2001 dropped sharply to 38.9%. Although the fall of almost 10% may provoke some concern, it needs to be said that this group is still the biggest. The drops were divided equally between Serbia and Montenegro. The number of those viewing human rights organisations as illegal and foreign-financed and a threat to the state remained close to the level in 2000 (14.4%)[219], when it had been virtually halved compared with 1998 (25.6%). If we add to this those who think the said organisations are

[219] In the 2000 survey, the percentage of those who believed the said organisations were illegal, foreign-financed and a threat to the state was 13.5%.

useless and never did anyone any good (29.3%), we get a total of no less than 44% who have a negative attitude towards the said organisations, the conclusion being that more people in the FRY have a negative view than a positive one. The rest (17.3%) were "don't knows". The dynamics of change in attitudes towards human rights organisations leads to a conclusion that they are still not fully in the public eye. The sudden rise in positive views after the elections may have been a consequence of the post-electoral euphoria, whose abatement then returned public opinion to more realistic levels. Given that NGOs are still very new in this region, winning public support will require more time than could have been expected at the end of 2000.

3.10. Freedom of Peaceful Assembly

Respondents were also asked for their opinions about conditions under which peaceful public assembly can happen, with the aim of staging a public protest. Peaceful nature of the gathering was the choice of 33.8% of the sample, some 49.9% said clearance from a competent state authority was required (although none of the three constitutions in force contain any such requirement), while 8.4% picked the existing constitutional and legal requirement in Serbia[220] – that the assembly does not obstruct traffic. Another 7.9% did not know. Comparing results with those from 1998 and 2000, the first conclusion is that the findings of all three are almost identical, differences being confined to decimals. In fact this was the question with the smallest incidence of change in the entire survey. Many more respondents chose a restriction which does not exist in law (permission from the authorities) than one which does, in the Serbian constitution and law (not obstructing traffic). There were very small variations in the social, demographic, territorial, professional and ethnic distribution of answers.

3.11. Freedom of Association

We also sought to look into any changes in connection with the freedom of association after the fall of socialism, during which membership in the Communist Party was an important precondition for social promotion and a means of informal control. The first question involved listing the cases in which the law required membership in the ruling party for election and appointment to a certain post. Given that more than one answer was possible, the percentage totals in Table 5 exceed 100%.

Table 5: Cases in which membership in the ruling party is required by law

	"In which cases does the law require membership in the ruling party?"	July 1998	Dec. 2000	Dec. 2001
1.	For the appointment of a director in an enterprise which is socially-owned or in joint ownership	31.5	23.4	22.8

[220] The condition is defined under article 43 (2) of the Constitution of Serbia, and defined in detail in the Serbian Act on Assembly of Citizens from 1992.

2.	For the appointment of senior and junior officials in the state administration	38.7	25.7	26.2
3.	For the appointment of judges	27.9	18.3	18.8
4.	None	28.1	45.7	43.0
5.	Does not know	25.0	19.3	22.4

Just over two-fifths (43%) gave the correct answer: that under the law membership in a/the ruling party is not a requirement in any of the cases offered. In the survey conducted after the 5 October 2000 events and before the republican elections later that year, there was a major shift and an increase in views that the law does not require party membership for any office. The opinions given in that survey have generally been retained, with a small drop of 3% (perhaps the only visible change since 2000). Adding to this the "don't knows" total (22.4%), it appears as if a majority (65%) is not inclined towards the view that election to some posts requires membership in the ruling party. But one-third of those polled do think membership in the ruling party is a legal prerequisite for the appointment of managers, state officials and judges. In this group 26.2% believe the requirement covers the state administration, followed by 22.8% who think it relates to the socially-owned economy, and 18.8% to the appontment of judges. Responses did not differ territorially but did depending on professional criteria. The highest incidence of the correct response ("never") came from entrepreneurs (56.8%), followed by professionals and intellectuals (56.3%) and university and secondary-school students (50%), and the lowest from housewives (25.5%). There is also a certain level of educational interdependence – the higher the level of education, the higher the incidence of those giving the correct answer. There were no age or gender variations, but the highest interdependence was recorded in connection with political preferences: the highest number of correct answers came from supporters of the Civic Alliance of Serbia (82%), the Liberal Alliance of Vojvodina (60%), the Democratic Party (55.4%) and the Liberal Alliance of Montenegro (55%). Supporters of Montenegro's two biggest parties gave similar responses.

Trade unions are a specific form of association in Yugoslavia: in the former SFRY they were an integral part of the ruling establishment and thus unable to articulate and geninely represent the interests of their members.[221] Given the large number of strikes in the past year, it was deemed important to look into the efficiency of the newly-formed independent trade unions. Like the previous two surveys, the results of this latest one proved quite disappointing.[222] An even smaller number of those polled are satisfied with the organisation and activities of the independent trade unions in the FRY today than there were in 2000 (13.4% compared with 17.9%). Critical attitudes remain at the levels recorded in 2000 and 1998. Three-fifth of those polled (57%) view independent trade unions in a negative light. The biggest objection is that they are bad and poorly-organised

[221] See A. Molnar *Sindikalizam u Srbiji – prošlost i sadašnjost* (Sindicalism in Serbia – past and present), Dijalog, No. 1–2/96, pp. 79–83.
[222] See *Human Rights in Yugoslavia 1998* and *2000*.

and represent the interests of their members poorly (22.2%), followed by the objection that they are a just a front for manipulation by managers and politicians (20.3%) and that they only exist on paper (16.6%). Over one-third said they had no opinions about independent trade unions. The results show that the unions' public rating continues to be very poor. No social or demographic inter-linkage was recorded.

3.12. Right to Peaceful Enjoyment of Property

Social ownership was one of the pillars on which the legal system of the former SFRY was based.

After the collapse of the SFRY, social property continued to exist as the dominant form of ownership in the FRY (in fact only in Serbia, as Montenegro has abolished it).[223] Public opinion trends in connection with social and private ownership have been the subject of numerous surveys since the beginning of the 1990s. Even then attitudes towards social ownership began to change in a negative direction ("it is fertile ground for acquisition of wealth by the privileged few"), with a parallel normalisation of the formely distorted views of private ownership. In the past few years attitudes to private ownership have been largely positive, but those to "acquisition of wealth" have changed very slowly and split the public into three groups: the pros ("enrichment, but in what form?"), the cons, and the neutrals.[224] Serbia adopted in 2001 a privatisation law which has caused much public controversy; we therefore posed a question about the relationship between private and social ownership in the FRY. Some 25.9% said they were equal – twice as many as in 2000 (13.4%), and 16.7% said social ownership was dominant (close to last year's 18%). By far the biggest was the group which views social ownership simply as a front for illegal graft (45.5%); this percentage was nevertheless 13 points down from that in 2000 – 58.4%. The "don't knows" made up 11.9%. There clearly still exists among the people of Yugoslavia very widespread feelings that they were robbed and of the manipulative character of social ownership and discrimination against private property (in Serbia).[225] Attitudes differed towards these two forms of ownership between the youngest and the highest-educated respondents on the one side and the oldest and least educated on the other.

3.13. Minority Rights

Rights specific to minorities were in our survey represented by questions on publication and education in minority languages. Asked if national minorities were entitled to publish books and attend schools in their own languages, most respondents replied positively (46.7%), listing no additional conditions. The figure is far lower (13%) than that recorded in 2000 – 60%. Some 33.7% of the respondents said his right could not be exercised without explicit authorisation from the state authorities (7% more than in the preceding survey). Some 12% came out in favour of denying this right to "all disloyal" ethnic minorities (the figure in 2000 was 10%). This time there were more who did not know than in 2000. It is evident that the results are far more disappointing than those of

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[223] More on links of the "new" authorities and "old" social ownership: A. Molnar, *The Collapse of Self-Management and Rise of Führerprinzip in Serbian Enterprises*, Sociologija, No. 4/96, pp. 539–559.

[224] *Scan* has been monitoring public opinion on private and social ownership since 1990.

[225] All of *Scan's* public opinion surveys show that there is more fear and anxiety about privatisation in Montenegro than in Serbia, although the process was begun in Montenegro far earlier.

the survey conducted in the aftermath of the 5 October turn: although those who think minorities are fully entitled to publication and education in their own languages are the biggest group, there remain just as many who believe that they cannot do so without the permission of the state, or even that the state can strip ethnic minorities it deems "disloyal" of that right. Ethnic background played a major role in deciding the response: the most restrictive were Montenegrins, followed by Serbs and Yugoslavs. No fewer than 91% of the ethnic Albanians polled said the said minorities' right was unconditional; they were followed by Slovaks (85%), Croats (76%) and Hungarians (68%). The findings differ considerably from those of 2000, particularly in regard to the ethnic Albanian minority; it could be a consequence of last year's electoral fever and uncertainty which provoked anxiety among the people of Montenegro.[226] But the results also show that there is growing inclination among the majority populations, both in Serbia and Montenegro (Serbs and Montenegrins) towards restricting minority rights – this is a finding which provokes some concern.

3.14. Political Rights

Parliamentary elections were held in both republics in the period between the two surveys. In Serbia, the former communists (SPS and JUL) lost the first elections in many years: the theretofore weak opposition won power for the first time since the introduction of multi-partyism. In Montenegro, the former communists had split into two parties, the DPS and the SNP, the former of which has been in power from the start, although in 2001 it failed to win an outright majority and form a government on its own. A question which has still not been resolved fully in the minds of the people of Yugoslavia is whether political pluralism in fact exists and whether there can exist a right to peaceful political opposition which would automatically take over the government of the country after winning elections.

Respondents were asked the same question as in 1998 and 2001: Do we have in the FRY the same sort of multi-party system that exists in the West? Some 46.8% gave a positive response; this is almost identical to the 2000 results. More than one-third (35.7%) said a single party held all the power while opposition parties were entitled to run in elections: the incidence of this view is somewhat lower than in 1998 and 2000. The view that the former communists will not yield control was voiced by 3.9% of our respondents, continuing the falling trend since 1998 (20.1% in that year and 7.5% in 2000). The rest were "don't knows" (13.6%), whose incidence has doubled in a year's time (from 6.6% in 2000). Territorial differences recorded earlier remain evident: in Montenegro more people (46%) believe pluralism in their republic is not complete (as they have one party with undisputed power) than in Serbia, where the corresponding percentage is 33%. Concurrently, there were in Serbia 10% more who think their republic has a multy-party system similar to those in place in the West. In Montenegro a linkage was evident between responses and political preferences: 60% of all SNP supporters say multipartyism in Montenegro is an illusion as it is ruled completely by a single party, while among supporters of the ruling DPS 49% said pluralism was similar to that in the

[226] Most of the ethnic Albanians polled lives in Montenegro, where fears of ethnic strife and civil war had grown in 2001.

West, but there was also a considerable precentage (39%) among them who agree with the view held by most of the SNP supporters.

We also asked respondents what happens under domestic law when an opposition party or coalition wins elections; we asked explicitly for their views about the legal procedure of changing government following an opposition victory. Some 44.5% said the opposition would assume power automatically (in 2000 the percentage was 43.8%). But once again over two-fifths of those polled expressed doubts about a possibility of an automatic change at the helm. One-third (32.1%) think the Supreme Court has to confirm the results of the elections, and one out of ten said in such a case there would be repeat elections. Some 13.4% were “don't knows”. The results lead to a conclusion that there is still an absolute majority of people in the FRY who think that (or do not know if) the legal system contains mechanisms obstructing or preventing the opposition from assuming power. No territorial variations were recorded.

3.15. Special Protection of the Family and Child

The eruption of nationalism in the former SFRY also had a major effect on the family, where mixed marraiges are just one aspect of this complex problem. We posed a question about the biggest perceived obstacles standing in the way of mixed marriages today. One-half (50.3%) said there were no such obstacles; there has been a costant rise in this indicator (38.3% in 1998 and 40.6% in 2000). The decline also continued in the incidence of the response that such obstacles lay in (political) propaganda which had wormed its way into people's personal lives, from 32% in 1998, down to 27.6% in 2000 and 19.6% now. The number of those who think obstacles lie in views that mixing blood between different nationalities was undesirable retained its level of the past years (22.7%), as did that of those who see restrictions in repressive measures by the state (2.3%). “Don't knows” made up 5%. A large number of our respondents are aware of the obstacles which stand in the way of marriage, but attribute them mainly to the men and women themselves or the propaganda which had a decisive effect on the criteria according to which partners in marriage are chosen. No variations were recorded which depend on socio-demographic characteristics or ethnic background.

3.16. Right to Citizenship

The disintegration of the former SFRY which began in 1991 created a problem of citizenship which affected millions – in the former Yugoslavia many people might have been born in one republic, educated in another, set up home and married in a third, and lived in a fourth in 1991. The problem did not affect just those forced to move from their homes because of armed conflicts, destruction and hardship, but also many residents of Serbia and Montenegro who were born there and have lived there all their lives, yet were because of regulations in force at the time of their birth entered in registers kept in their parents' (usually fathers') hometowns. Most such people live in Vojvodina, as a consequence of a number of (mass economic and other) migrations to that fertile region. The problem became even worse after the creation of new states in the former SFRY in view of the very difficult position of people exiled from many parts of the former joint state: all of them encountered major difficulties when trying to regulate their citizenship status. Leaving aside this last set of problems, we will focus here on respondents' views of difficulties linked to the acquisition of Yugoslav citizenship.

Attitudes to this problems have changed visibly since the post-electoral political shift. Procedures have been streamlined, and the federal authorities have launched a campaign aimed at speeding up the resolution of the problem: this has affected public opinions on the subject. Asked about the necessary conditions for Yugoslav citizenship, there were many more today who think they are fair (38.9% now, compared with 28.4% in 1998 and 25.3% in 2000). There was a large drop in the incidence of those who say that complete chaos reigns in the area (32.6% in 1998, 33.9% in 2000, down to 22.2% in 2001). The number of those who say people are subjected to discrimination because the state is ignoring the fact that once we all lived in a single state has also fallen (from 25.5% in 2000 to 13.2% in 2001). One out of four did not have a view on the subject. Notwithstanding the positive trends we recorded, one out of three still see problems of a discriminatory nature in the area. No socio-demographic variations were noted.

There are several categories of people in the FRY not entitled to Yugoslav citizenship. They include those born here but barred by a formal condition, refugees, immigrants from Albania who had never even sought Yugoslav citizenship, as well as those who have acquired a foreign citizenship but would also like Yugoslav (dual) citizenship. This survey looked into attitudes towards these categories of people who are without Yugoslav citizenship. The finindings are listed in Table 6, together with corresponding figures from 1998 and 2000.

Table 6: Treatment by the state of persons seeking Yugoslav citizenship

	Persons applying for Yugoslav citizenship	July 1998				December 2000				December 2001			
		Unyie-lding	Fair	Pliant	Does not know	Unyie-lding	Fair	Pliant	Does not know	Unyie-lding	Fair	Pliant	Does not know
1.	Refugees applying for citizenship	30.7	46.4	23.0	-	40.5	38.3	17.8	3.5	21.7	52.9	13.3	12.0
2.	Ethnic Albanians who are not seeking citizenship	20.2	29.3	50.6	-	19.6	29.6	45.0	5.8	9.9	34.5	40.5	15.1

3.	Citizens of the B-H Federation who want Yugoslav (dual) citizenship	28.9	50.8	20.3	-	32.8	43.1	17.8	6.4	16.8	52.3	15.3	15.5
4.	Citizens of other ex-YU states who also want Yugoslav (dual) citizenship	28.0	52.1	19.9	-	31.7	43.4	17.8	7.0	16.0	53.9	13.9	16.2
5.	Citizens of other countries who want Yugoslav (dual) citizenship	23.0	56.1	20.9	-	21.9	49.4	21.6	7.1	10.8	58.0	14.3	16.9

The results show that respondents are aware of positive changes in the state's attitude to persons seeking Yugoslav citizenship: the change is evident in a shift in the states' rating from “Inflexibile” to “fair” in regard to its attitude towards all categories of such applicants. The number of those thinking the state is too flexibile has fallen, especially as regards refugees (10% less than in 2000 think the state is too yielding to them). A similar shift was recorded in the case of (ethnic) Albanians who are not seeking Yugoslav citizenship, the difference being that two-fifths of those polled now think the state is too yielding towards them. Compared with all other responses, these have the character of a tendency and are significant viewed against the 2000 survey. Fully 58% of those polled think the state treats foreign nationals seeking dual citizenship the best, followed by the citizens of the ex-Yugoslav states (53.9%); the smallest percentage in the “fair treatment” category was that for Albanians who are not seeking citizenship.

The findings of the 1998 and 2000 reports that citizens of the FRY differentiate between the conditions faced by the “indigeneous” population in the FRY on the one hand and refugees and foreign nationals on the other are no longer valid: all categories seeking Yugoslav citizenship are now treated about equally, except the Albanians, who are not seeking citizenship. Most respondents think the state treats the former categories fairly; those who do not think so mainly believe they are being discriminated against. The latter, most people say, come in for an overly soft treatment by the state.

3.17. Freedom of Movement

The investigation of views about freedom of movement included the question: “Can any citizen of the FRY live wherever he or she wants in the FRY?” An absolute majority (56.3%) gave an unconditional “yes”, while 23.1% believe resettlement requires permission from the authorities. Some 13.4% think people can only settle where they are

deemed desirable, and 7.2% could not give any answer. In contrast to the 2000 survey, no linkage with ethnic background was found.

Asked "Can every citizen of the FRY leave the country freely?", 45.1% gave an unconditional "yes" (9% more than in 2000). There was a significant drop (13%) in the incidence of those believing clearance from the authorities was needed, but this was still the choice of one in three (34.5%). Although the exit toll requirement for Yugoslavs travelling abroad has been abolished, some people (13.8%) still think only those who can afford to pay the said tax can leave the country (in fact 2% more than last year). We found that our respondents think there are more limitations to the freedom of movement for those trying to leave the country than those changing residence within it.

We also asked respondents to list those whom the country could legally expel. The correct response (only foreign nationals, and not Yugoslavs under any conditions whatsoever) came from just 36.3% of the sample, a result close to last year's. Some 17.4% think the state cannot expel anyone legally, and 16.1% think it can be done to "foreigners and Yugoslavs who have committed a serious criminal offence". There are still some who believe the state can expel foreigners and disloyal FRY citizens (8.1%) or foreigners and disloyal members of national minorities (5.0%). Some 17% did not provide any answer.

3.18. Economic and Social Rights

The diverse group of human rights making up the category of economic and social rights was investigated through three rights. The first concerns employment of juveniles. Asked if employing children under the age of 16 was punishable by law, there were fewer in 2001 than in 2000 who gave the correct answer ("Yes, in every case") – 43.2% now against 47.7% in 2000). All others gave incorrect responses: "Yes, if the child is not physically or mentally competent for the job" (16.5%), "No, if the child supports his or her family in that manner" (26.9%), or "don't know" (13.3%).

Respondents were asked which documents were needed to get a job in Yugoslavia today, besides the Workers' employment record book and educational certificates. Some 4.3% listed a certificate of nationality (which, of course, does not exist and was invented for the purposes of this survey); this is fewer than in the preceding years.[227] A political party membership card as a condition for employment was listed by 9.5% (in contrast to the previous years, when the parties mentioned were the SPS and JUL, this year more respondents listed "a ruling party", the party to which the company director belongs, the DOS etc.). One out of five (20.6%) said it was necessary to have a certificate of permanent residence in the town where the employer was based, and one out of four (24%) did not know. In contrasrt to the preceding surveys, there was an increase in the number of those who listed the only correct answer – none of the documents above (from 34.9% in 2000 to 41.7% in 2001). The results show that a relatively large number of people are still poorly informed about the documents needed to get a job.

The question we linked with the right to the use of scientific achievements was the employment of contraceptives. Respondents were first asked: "How widespread is the use of contraceptives today?" Compared with 2000, when the figure was 52.3%, there has been a considerable fall (34.4%) in the incidence of those who think contraceptives

[227] See *Human Rights in Yugoslavia 1998* and *2000*.

are not used adequately because the state is doing little to promote their use. The number of those who said their use was adequate jumped from 16.9% in 2000 to 21%, but so has that of those who picked "excessive" as the answer (from 11% to 15.9%) and of those who did not know (from 19.8% to 28.9%). A majority among those who say contraceptives are not used enough are younger and more educated persons; the incidence of this response in the overall structure fell in parallel with advancing age and declining education, but so did criticism of the state for not doing enough to popularise contraception. No variations according to gender were seen, while differences according to ethnic and regional backgrounds were statistically insignificant.

4. The Implementation of Human Rights

We ended by posing two questions on the respondents' views about the exercise of their own human rights (those mentioned earlier) and the best maner in which they could be protected. One out of three (32.1%) was completely satisfied with the exercise of his or her human rights, and 38.4% said they managed to exercise most of heir rights. Less than one-fifth (18.2%) said the exercise of their human rights was a rather random affair as they could be threatened by any person with impunity, while 11.3% said their rights were threatened mainly by the state. Over two-thirds of all respondents say they can exercise most or all of their human rights, and there has been a significant drop in the number of those claiming the rights are threatened, but there are nevertheless still almost one in three who say they feel threatened. No ethnic variations were recorded. Comparing the results with those of the December 2000 survey, we can see that most of the changes are visible among ethnic Albanians, after the elections in Montenegro.

Table 7: The Right Solution for Protecting Human Rights

	"If one of the human rights listed above is threatened, the best thing to do would be to approach …"	July 1998	Dec. 2000	Dec. 2001
1.	Influential people in the government	17.2	18.4	19.9
2.	An international court	9.7	7.6	7.4
3.	A domestic court	17.5	26.9	34.7
4.	People who do anything for money	17.7	9.7	8.6
5.	People with the right connections	32.1	31.0	24.4
6.	Someone else	5.7	4.4	2.2
7.	No answer	-	2.0	2.8
	T o t a l	100	100	100

Responses to the question what someone whose rights have been threatened should do (Table 7) show that a convincing majority (52.9%) continue to believe in unofficial mechanisms – talking to people who have connections, influence or power. Confidence

in the judiciary is low (the same goes for international courts), albeit somewhat higher than in the previous years.

5. Conclusion

A summarised view of the the status of human rights in the legal consciousness of people in the FRY based on the results of the survey conducted in December 2001 leads to a conclusion that there has been improvement compared with 2000. The survey in 2000 was conducted immediately after the political changes in October that year, and showed considerable changes compared with 1998. Those findings could have been influenced by emotions and feelings of euphoria rather than a reflection of a rational view of the situation in the legal consciousness of the public. Every conclusion therefore had to be attended by a measure of reserve.

But the results of the latest survey show that the changes recorded in 2000 have acquired the character of trends. In most cases they stayed at the levels recorded then, or rose modestly or stagnated due to a "wait and see" attitude; this concerns particularly institutions in which certain rights or mechanisms for their protection are exercised.

The change noted in 2000, a link between socio-demographic indicators and legal consciousness, is still evident. The factors which had until then played an important role in forming attutudes to human rights – age, education and profession (with some exceptions) – were no longer that. Political orientation remained the most important factor in Montenegro, but its importance declined considerably in Serbia (for example, supporters of parties of all colours rate media freedoms about equally), although it does remain important in some areas. Divisions are even more evident in Montenegro than they were in 2000, a possible generator or crises in the republic – the differences seen are similar to those recorded in Serbia before the 2000 elections, and have been made even more complex by the division into two opposed groups: 44% of the people of Montenegro favour an independent and internationally recognised Montenegro, against 46% who want it to remain together with Serbia in a reorganised Yugoslav community.

People in Serbia are slowly growing more critical of the new authorities in regard to some questions of legal consciousness, but their criticism shows patience, caution and even tolerance, leading to the conclusion that Serbia is developing a civic conscience marked by respect for processes and for the times ("nothing is possible overnight").

A concrete analysis of the cognisance of individual human rights and assessment of their exercise in the FRY shows continued progress, but also stagnation in the ratings of the respect for human rights and institutons in charge of protecting them. In spite of the progress recorded, there are still very many people who are poorly informed, especially in the human rights area dealing with procedural guarantees before the state authorities. In assessing the existing status of some human rights, the people of Serbia, and especially Montenegro, were more critical and realistic than at the end of 2000.

IV
MAIN ISSUES – 2001

1. Kosovo and Metohija

1.1. Introduction

The United Nations Security Council Resolution 1244 established international civilian and military administration in Kosovo and Metohija (Kosovo) in 1999.[228] The civilian administration – the UNMIK – was founded on four pillars: the UNHCR is in charge of humanitarian issues, the UNMIK itself handles the overall civilian administration, the OSCE is in charge of building up institutions, and the European Union is in charge of reconstruction and economic development. An important structural change in the civilian administration has taken place. In May, the first pillar, the UNHCR, was replaced by one consisting of the police and the judiciary. Its main components are the UNMIK police and the Department of Judicial Affairs, formerly part of the second pillar (the civilian administration).[229] The heads of pillars are also deputies to the Special Representative of the UN Secretary-General (SRSG).

In 2001, the SRSG was the former Danish Minister of Defence, Hans Haekkerup, who a few days before the year's end stepped down from the post, before completing his term, for what he said were personal reasons. Senior German diplomat Michael Steiner, a former Foreign and Security Policy Adviser to the Chancellor of the Federal Republic of Germany, replaced Haekkerup. The OSCE Mission head, Ambassador Daan Everts of the Netherlands, also left Kosovo at the expiry of 2001. Everts had held the post since the esdtalishment of the international administration in Kosovo. In January 2002, he was replaced by French diplomat Pascal Fieschi.

UNMIK is in charge of the entire legislative and administrative system in Kosovo, including control of the judiciary, while the Special Representatve of the United Nations Secretary-General, who heads it, holds supreme legislative and administrative authority.[230]

In 2001, UNMIK decentralised power partially by upgrading local self-government, transferring authority from five regional UNMIK administrators onto municipal authorities. Notwithstanding the decentralisation, or "Kosovisation of Kosovo", as Everts has called the process of establishing self-government institutions after the local and parliamentary elections, the province effectively remains an international protectorate, tempered by the transfer of some powers from the international administration onto the democratically elected authorities of Kosovo. Security-wise, however, Kosovo is a classical international protectorate, as its security is guaranteed in its entirety by foreign troops organised in the NATO-run KFOR. The new Kosovo government will have neither a defence nor a foreign affairs ministry.

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[228] UN doc. S/RES/1244 (10 June 1999).
[229] "New Police and Justice Pillar established", *UNMIK News* No. 93, 21 May 2001.
[230] UNMIK/REG/1999/1, On the Authority of the Interim Administration in Kosovo, 25 June 1999.

Under UNMIK Regulation 1999/24, amended by Regulation 2000/59,[231] the following are applied in Kosovo:

a. Regulations adopted the SRSG, and subsidiary enactments adopted thereupon;

b. The Law in force in Kosovo until 22 March 1989 where, in case of a conflict, the former shall prevail.

If the authority enforcing the law finds that a certain situation is not regulated by the said sources of law, but is regulated by a statute in force in Kosovo after 22 March, 1989, it can apply that statute, provided it is non-discriminatory and in accordance with internationally-recognised human rights standards.

Under UNSC Resolution 1244, the international civilian administration is in charge of protecting and promoting human rights.[232] This obligation is confirmed by Regulation 1999/1 on the powers of the Interim Administration in Kosovo[233] under which all public officials must in the performance of their official duties abide by internationally-recognised human rights standards. The initial and also the biggest part of this human rights review will be devoted to an analysis of the regulations adopted by the UNMIK, i.e., the SRSG. In this we shall focus only on those regulations and practice not in harmony with international instruments. The regulations will be viewed against provisions of the International Covenant on Civic and Political Rights (ICCPR), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

UNSC Resolution 1244 also provides for the establishment of provisional self-government institutions to which the international administration will gradually transfer its competencies.[234] In accordance with this, the Special Representative adopted on 15 May 2001 the Constitutional Framework for Provisional Self-Government in Kosovo.[235] Part two will therefore be an anlysis of the Constitutional Framework. Part three will deal with electoral regulations in Kosovo and the results of the elections there, and part four with the human rights situation in practice in Kosovo in 2001.

1.2. Human Rights in Regulations Adopted by UNMIK

1.2.1. Privileges and Immunities of UNMIK and KFOR

According to UNMIK Regulation 2000/47 on the privileges and immunities of the UNMIK and KFOR and their personnel,[236] the UNMIK, KFOR and their property enjoy judicial immunity. The KFOR's international staff enjoy criminal and civil law as well as administrative immunity with respect to all acts carried out on the territory of Kosovo, while their locally-employed staff enjoy so-called functional immunity – immunity with

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[231] UNMIK/REG/1999/24, On Law Applicable in Kosovo (12 December 1999); UNMIK/REG/2000/59, Amending UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, 27 October 2000.

[232] UN/RES/1244 (1999), para. 11. j.

[233] UNMIK/REG/1999/1, On the Authority of the Interim Administration in Kosovo, 25 July 1999.

[234] UN/RES/1244 (1999), para. 11. c and d.

[235] UNMIK/REG/2001/9, On a Constitutional Framework for Provisional Self Government in Kosovo, 15 May 2001.

[236] UNMIK/REG/2000/47, On Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo, 18 August 2000.

respect to acts performed in exercising their functions. As far as the UNMIK is concerned, the SRSG, the chief deputy and other four deputies, the police commissioner and other senior officials appointed by the SRSG enjoy criminal and civil law immunities for all acts performed on the territory of Kosovo, while the international and locally-engaged staff enjoy functional immunity.

Complaints by third parties in connection with loss and damage of property, injuries, sickness or death which can be attributed directly to the KFOR, UNMIK or their staff and which do not proceed directly from "operational needs" shall under UNMIK Regulation 2000/47 be processed by a Complaints Commission to be set up by the KFOR and UNMIK. At the time of writing, the commission had not been formed.

A number of objections to this Regulation can be raised.[237]

There is no doubt that under UNSC Resolution 1244, the UNMIK is the government of Kosovo. Therefore, there exists no *ratio* for guaranteeing UNMIK and KFOR immunity. Moreover, guaranteeing full criminal civil and administrative immunities to the state, or government, is contrary to the principles of democracy and the rule of law. The said Regulation also entirely excludes judicial control of the legislative and executive branches.

The regulation on the manner of establishment of a Complaints Commission empowered to process individual representations in connection with loss or damage of property, injuries, sickness or death that can be attributed directly to the KFOR, UNMIK or their staff and which do not proceed from "operational needs" represents a violation of the rules on the independence and impartiality of courts,[238] as the bodies whose actions are the objects of the proceedings before the Commission are also in charge of forming and operating the agencies which will investigate those actions.

UNMIK's failure to form a Complaints Commission more than a year after the relevant Regulation was adopted is an additional breach of the right of access to a court. It is also a violation of the right to an efficient legal remedy in the event of a human rights violation (ICCPR Art. 2 (3) and ECHR Art. 13), as individuals who are victims of violations of human rights committed by the UNMIK and KFOR have no opportunity of effecting a decision restoring their violated right or granting redress in other form.

1.2.2. Individual Human Rights

1.2.2.1. Right to Liberty – Under Regulation 1999/2 on the protection of access by individuals and their removal to secure public peace and order,[239] relevant agencies may keep an individual in custody for up to 12 hours if such action is in the opinion of the authorities and in the light of prevailing circumstances necessary for the said individual to be removed from a certain location or denied access to it. No detailed criteria for detaining an individual are defined, leaving the relevant agencies full discretionary powers to take such decisions. The wording does not meet the condition of legality

[237] More detail in: Special Report No.1 by Ombudsman in Kosovo on the level of harmony with international standards of UNMIK Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo, 26 Aprill 2001.
[238] PCPR Art. 14 (1) and 6 (1) ECHR.
[239] UNMIK/REG/1999/2, On the Prevention of Access by Individuals and Their Removal to Secure Public Peace and Order, 12 August 1999.

determined under international documents, and can therefore be held to be in contravention of the provisions of those instruments. The provision is also outside the framework laid down by the ECHR.[240]

The said Regulation also provides no possibility of taking proceedings with a competent court by which the lawfulness of the detention as it is defined here shall be decided, which is certainly in contravention of Article 9 (4) of the ICCPR and Article 5 (4) of the ECHR.

On the subject of the right to liberty and security of person, we need to point to what is already an established practice of carrying out arrests on the basis of executive orders of the SRSG. This practice without a doubt contravenes international standards in the area of human rights – no legal regulations applied in Kosovo define a procedure according to which arrests are possible on the basis of an order by the SRSG. In this way one of the necessary conditions laid down by international instruments for an arrest to be legal (ICCPR Art. 9 (1) and ECHR Art. 5 (1)) has not been met – that it has to comply with a legally-defined procedure. Furthermore, the grounds given for arrests ordered in the SRSG's executive orders have so far been mainly "the alleged threat the individual poses for the secure environment, public security and order" and similar – reasons outside the framework laid down by the ECHR (ECHR Art. 5 (1)).

Persons taken into custody on the basis of executive orders by the SRSG have also not been able to challenge in court the legality of their arrests and their detention,[241] also without a doubt in contravention of provisions of international instruments under which everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court of law and his release ordered if the detention is not lawful (ICCPR Art. 9 (4) and ECHR Art. 5 (4)).

Having this in mind, there is no doubt that depriving individuals of liberty on the basis of executive orders of the SRSG is unlawful, and that those deprived of liberty in this manner should be entitled to due compensation (ICCPR Art. 9 (5) and ECHR Art. 5 (5)). But the problem lies in the fact that the UNMIK and its personnel enjoy judicial immunity, so that individuals have no possibility of exercising this right.

1.2.2.2. Freedom of Movement – Under Regulation 1999/2 on the prevention of access and removal of individuals to secure public peace and order, the relevant authorities can temporarily remove an individual from a certain location and prevent access to that location if such an action is in the opinion of the relevant authorities and in light of the prevailing circumstances necessary to prevent a threat to public peace and order. A regulation formulated in this manner is insufficiently predictable and creates room for discretionary decisions, and seems not to meet the lawfulness criteria laid down by international instruments.

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[240] In contrast to the ICCPR, under which an individual can be taken into custody only on legally-prescribed grounds and according to a legally-prescribed procedure, the ECHR defines a list of grounds on the basis of which a person can be remanded in custody. The list represents a *numerus clausus* and defining any other grounds for detention is regarded as a violation of Art. 5 (1) of the ECHR.

[241] See Report No. 256/01 of the Ombudsperson in Kosovo *Cela Gashi vs. UNMIK*, 12 September 2001; Report No. 257/01 of the Ombudsperson in Kosovo *Jusuf Veliu vs. UNMIK*, 12 September 2001; Report No. 258/01 of the Ombudsperson in Kosovo *Avdi Behluli vs. UNMIK*, 12 September 2001.

1.2.2.3. Freedom of Association – Under the above-mentioned Regulation 1999/2 on the registration and operation of non-governmental organisations in Kosovo,[242] NGOs must register with the UNMIK, which may refuse registration on the basis of the conditions laid down in the Regulation. But there is no legal remedy against a refusal to register, whereby the right of association is being restricted.

1.2.2.4. Freedom of Expression – Under the Regulation on the Licensing and Regulation of the Broadcast Media in Kosovo[243] and the Regulation on the Conduct of the Print Media in Kosovo,[244] the interim commissioner for the media can punish media violating the prescribed rules of conduct; this does not exclude possible criminal prosecution. The harshest penalities are fines up to DEM 100,000, and closure of the offending medium. There is a danger that the severity of the penalties could in some cases represent a disproportionate restriction of the freedom of expression, as they would not be in proportion to the potential damage caused by a breach of the rules of conduct.

1.2.2.5. Right to Property – The right to the peaceful enjoyment of one's possessions (ECHR Art. 1 of Protocol I) has been seriously threatened by the confiscation of property by the UNMIK and KFOR without offering the owners any sort of compensation. Even if we assume that such a restriction of the right to property is essential for the successful performance of the missions of the UNMIK and KFOR, and that the condition laid down by Art. 1 of Protocol I of the ECHR (that deprivation of property has been carried out in the pulic interest) has been met, this does not rule out an obligation by the international civilian administration to pay the owners fair compensation.

The right to the peaceful enjoyment of one's possessions is also seriously threatened by Regulation 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas in Kosovo.[245] Under the Regulation, all contracts on the sale of immovables in the specific geographical areas defined by the SRSG must before registration with the competent court be registered with the municipal administrator, who has powers to inspect all relevant documents and request explanations about the contract and especially about the future purpose of the immovables. Should he discover the existence of one or more of the conditions defined in the Regulation (coercion, an unrealistic sale price etc),[246] the municipal administrator can decline to register the contract.

The criteria according to which the municipal administrator can refuse registration of a contract are not precisely defined and leave room for arbitrary decisions. We can therefore conclude that the condition of "lawfulness" as laid down by the ECHR has not been met. Furthermore, it can be assumed that it is in the public interest to preserve the ethnic balance in certain areas. But the practice of the European Court of Human Rights

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[242] UNMIK/REG/1999/22, On the Registration and Operation of Non-governmental Organisations in Kosovo, 15 November 1999.
[243] UNMIK/REG/2000/37, On the Licensing and Regulation of the Broadcast Media in Kosovo, 17 June 2000.
[244] UNMIK/REG/2000/36, On the Conduct of the Print Media in Kosovo, 17 June 2000.
[245] UNMIK/REG/2001/17, On the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo, 22 August 2001.
[246] See Art. 3 (1) of the Regulation.

has led to the adoption of a view that in order for interference by the authorities to be justified, a balance must be ensured between the public interest and the protection of the rights of the individual (*Sporrong and Lonnroth vs. Sweden* A 52, 1982). In the concrete case, the authorities can deprive an individual of a very important property authorisation without guaranteeing them the right to compensation; individuals bear the entire burden of the realisation of the public interest, and we cannot conclude that there exists a balance between the public and the private interests.

1.2.3. The Constitutional Framework for Provisional Self-Government in Kosovo

Based on UNSC Resolution 1244 (1999), which anticipates the establishment of local self-government in Kosovo, the SRSG on 15 May 2001 adopted the Constitutional Framework which contains detailed regulations on the rights and responsibilities of the organs of self-government, as well as provisions on human rights universally guaranteed in Kosovo.

1.2.3.1. Provisions on Human Rights – The Constitutional Framework for Provisional Self-Government in Kosovo contains numerous provisions on human rights. The document's preamble among other things cites the most important international human rights instruments and other relevant principles contained in "internationally-recognised legal instruments". Chapter 3 of the Constitutional Framework deals with human rights.

1.2.3.1.1. Individual Rights – The provisional self-government organs in Kosovo must respect and ensure the internationally-recognised human rights, including the rights and liberties guaranteed by:

– The Universal Declaration on Human Rights;

– The European Convention for the Protection of Human Rights and Fundamental Freedoms;

– The International Covenant on Civic and Political 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 European Charter for Regional and Minority Languages;

– The Council of Europe's Framework Convention on the Protection of National Minorities.

The Constitutional Framework lays down that the provisions on human rights and liberties embodied in these international instruments will be applied directly in Kosovo as part of the Constitutional Framework.

Instead of specifying individual rights and freedoms, the Framework therefore regulates their scope and content by specifying the direct enforcement of the international instruments listed *exempli causa*.

1.2.3.1.2. Prohibition of discrimination – Human rights and fundamental freedoms are enjoyed by all on the basis of full equality and non-discrimination on any grounds

whatsoever (Chapter 3, Art. 3 (1)). The Constitutional Framework therefore does not specify the customary forms of discrimination, but instead bans discrimination on any grounds whatsoever, which can create room for broader interpretation and inclusion of possible new forms of discimination, besides the traditional ones.

The Framework also contains provisions specifying special protection for some categories of people who may be the victims of discriminatory acts (refugees – Chapter 3, Art. 3 (4), and minorities – Chapter 4).

1.2.3.1.3. Minority Rights – The Framework focuses some attention on the rights of communities, which it defines as citizens belonging to the same ethnic, religious or lingustic group. The Preamble recognises the need to protect and promote the rights of all communities and their members. Chapter 4 of the Framework deals with the individual rights of communities.

The general provisions in Chapter 4 specify that no person is obliged to declare to which community he belongs or may suffer any disadvantages in connection with this. It also specifies the obligation of the provisional self-government organs to create the necessary conditions for preserving, protecting and developing the identity of communities.

With the aim of preserving, protecting and expressing their ethnic, cultural, religious and linguistic identities, communities are guaranteed the rights to:

– Use their language and alphabets freely, including before the courts, agencies and other public bodies in Kosovo;

– Receive education in their own language;

– Enjoy access to information in their own language;

– Enjoy equal opportunity with respect to employment in public agencies at all levels and with respect to access to public services at all levels;

– Enjoy unhindered contacts among themselves and with members of their respective communities within and outside of Kosovo;

– Use and display community symbols, subject to the law;

– Establish associations to promote the interests of their community;

– Enjoy unhidered contacts with, and participate in, local, regional and international non-governmental organisations in accordance with the procedures of those organisations;

– Provide information in the language and alphabet of their community, including by establishing and maintaining their own media;

– Provide for education and establish educational institutions, in particular for schooling in their own language and alphabet and in the community culture and history, for which financial assistance may be provided, including from public funds, in accordance with applicable law;

– Promote respect for community traditions;

– Preserve sites of religious, cultural and historical importance to the community, in cooperation with relevant public authorities;

– Receive and provide public health and social services, on a non-discriminatory basis, in accordance with applicable standards;

– Operate religious institutions;

– Be guaranteed access to, and representation in, the public broadcast media, as well as programming in relevant languages;

– Finance their activities by collecting voluntary contributions from their members or organisations outside Kosovo, or by receiving such funding as may be provided by the provisional institutions of self-government or the local public authorities, so long as such financing is conducted in a fully transparent manner.

In guaranteeing minority rights, the Constitutional Framework is very generous. In contrast to human rights in general, regulated by anticipating the direct application of international standards, the Framework goes a step further, specifying, besides the direct application of the provisions of the General Convention of the CoE, specific rights enjoyed by communities and their members.

1.2.3.1.4. Refugees – Some provisions of the Constitutional Framework concern the protection of refugees and displaced persons. The Preamble stresses the commitment to the safe return of refugees and displaced persons and the restoration of their property. Among the human rights provisions in Chapter 3 is one guaranteeing the right of refugees and displaced persons to return and the right to restitution of property. It also specifies an obligation by the relevant authorities to undertake necessary measures to facilitate the safe return of refugees and displaced persons and to cooperate fully in this process with the UNHCR and other governmental and non-governmental organisations dealing with the return of refugees and displaced persons to their homes.

1.2.4. Protection of Human Rights

1.2.4.1. Judicial Protection – The Constitutional Framework specifies only the regular judicial protection of human rights. The segment which concerns the judicial system (Chapter 9, Art. 4 (3)) defines the right of access to courts:

Each person shall be entitled to have all issues relating to his rights and obligations and to have any criminal charges laid against him decided within a reasonable period of time by an independent and impartial court.

All rights, including human rights, enjoy regular judicial protection under both civil and criminal law. The Constitutional Framework also provides for a possibility of administrative lawsuits, an additional form of judicial protection of human rights, among others (Chapter 9, Art. 4 (2)).

The segment dealing with the Supreme Court's special council in charge of issues relating to the Constitutional Framework defines among that body's powers review of the compliance of laws with the Constitutional Framework and the international legal human rights instruments listed in Chapter 3. An initiative can come from the President of Kosovo, a member of the Parlaments's presidency, one of its committees, or a minimum of five deputies or Government ministers. In case a law violates a provision of one of the international instruments dealing with human rights or the Constitutional Framework, the possibility exists of the authorised petitioners initiating a procedure of examining the compliance of the law with the Constitutional Framework or international instruments. A bad feature of this solution is the exclusion of individuals from the list of authorised petitioners.

1.2.4.2. Other Forms of Protection – The Constitutional Framework anticipates the institution of Ombudsperson, to whom natural and legal persons can submit petitions in connection with human rights violations or actions which represent abuse of office by any public authority in Kosovo. Besides this, the Constitutional Framework also defines a special mechanism for the proteciton of minority rights.

The institution of Ombudsperson was founded by UNMIK Regulation 2000/38 dated 30 June 2001, which contains very detailed provisions on the rights and obligations of the Ombudsperson. The Constitutional Framework itself specifies the application of the existing UNMIK legislation.

1.2.4.2.1. Ombudsperson – The Ombudsperson is an independent institution founded with the aim of promoting and protecting the rights and freedoms of natural and legal persons and securing the necessary conditions for all subjects in Kosovo to efficiently enjoy all fundamental rigts and liberties guaranteed by international instruments. The Ombudsperson is authorised to receive and look into petitions by natural and legal persons in Kosovo in connection with violations of human rights and actions (or failures to act, or decisions) representing abuses of the law by the interim civilian administration or another central or local authority being formed. The Ombudsperson has jurisdiction over the entire territory of Kosovo (and can also offer good services to the benefit of subjects from Kosovo outside its territory) in connection with cases which have arisen after Regulation 2000/38 became effective or those arising from facts which had been created before that date, if the human rights violation still exists.

The Ombudsperson's powers include the following:

– offering recommendations and advice in matters relating to the function of the Ombudsperson;

– promoting reconciliation between ethnic groups;

– offering advice and recommendations to natural and legal persons about the compliance of domestic regulations with international standards;

– carrying out investigations and implementing all possible measures to resolve petitions;

– looking into the documents of the interim civilian administration or other central or local authority being formed, and demanding from any person the provision of certain information, dossiers and documents (the SRSG can refuse to provide documents, but has to explain this in writing);

– to visit all locations holding persons who are in custody, meet those persons in private and attend their questioning;

– to recommend to the relevant authorities or officials the adoption of appropriate measures, failing which the Ombudsperson can inform the SRSG or issue a public statement;

– to make public his recommendations, findings and special reports;

– to submit an annual report to the SRSG etc.

The Ombudsperson, international and local staff enjoy functional judicial immunity. The Ombudsperson and international staff also enjoy other privileges and immunities as defined by Convention on the Privileges and Immunities of UN Officials.

The local staff enjoy immunity in regard to official duties, as well as relief from payment of taxes and other public contributions and public service duty.

The premises, records, documents, means of communication, property, funds and resources of the Ombudsperson are inviolable and cannot be the subject of any type of intervention by the executive, legislative or judicial authorities.

1.2.4.2.2. Protection of Community Rights – Chapter 4, devoted to the rights of communities and their members, contains regulations about the protection of those rights.

They are provisions determining an obligation of the provisional self-government institutions to ensure the exercise of the guaranteed community rights and equal representation of communities in public bodies at all levels. The SRSG retains the right to intervene in the exercise of self-government whenever necessary and towards protecting the rights of communities and their members. The right of the SRSG to ensure the full protection of the rights and interests of communities is also set forth in Chapter 8, which also defines the exclusive rights and obligations of the SRSG.

One of the mechanisms for the protection of the rights and interests of communities defined in the document is the formation of a Committee for the Rights and Interests of Communities, as one of the main parliamentary committees. The Committee is made up of two members from each of the Kosovo communities represented in the Parlament; it will be seen later that under the Constitutional Framework the most populous communities in Kosovo will certainly be represented in the Parlament; in case some communities are represented by a single member, that member will also sit on the Committee. At the request of a member of the Parlament's presidency, a proposed law is submitted to the Committee, which decides by majority vote whether to issue a recommendation with respect to it. If it so votes, the Committee will have two weeks from the reception of the bill to forward its recommendations to the Parlament's or the relevant functional committee.[247] The Committee is also empowered to propose laws and other measures within the purview of the Parlament it holds to be appropriate for review of issues of importance for communities. The Committee is also entitled to issue advisory opinions at the request of the Assembly presidency, the main or a functional committee or a minimum of ten deputies.

The Constitutional Framework lays down another mechanism for the protection of the rights of communities. The segment which regulates the procedure of adopting laws contains a special procedure for examining whether the adopetd law harms the elementary interests of the community. Any parliamentary deputy, with the support of five others, can within 48 hours of the adoption of a law submit a demand to the presidency claiming that a certain law or some of its provisions violate the vital interests of the community to which he belongs. The Constitutional Framework lists the grounds on which such a demand can be made: that it might discriminate against a community, that it is detrimental to the rights of a community or its members guaranteed in Chapters 3 and 4, or that it affects in some other adverse manner the capacity of a community to preserve, protect and express its ethnic, cultural, religious or linguistic identity. The presidency should within five days file a proposal with respect to the demand submitted to the Parlament. If it fails to do so, the issue is passed on to a three-member panel made

[247] The Parlament may also form committees on the basis of rules of procedure adopted after its constitution.

up of representatives of the two sides and a chairperson appointed by the SRSG. Within five days, the panel will by means of a majority vote recommend that the Parlament either reject the demand, or reject the disputed law or its provision, or adopt the law with amendments it proposes. The final say is always up to the Assembly, which can either approve or reject the proposal of the presidency, i.e., the decision of the panel.

It would appear that a better solution would have been to make the decision of the panel binding and final, as this would prevent the members of the majority people from outvoting another community in questions linked with its vital interests. But it would also be realistic to expect that in case the Parlament were to reject a recommendation of the panel, the SRSG would step in and act in accordance with his powers defined by the Constitutional Framework, as decisions taken by a panel almost always require a vote from the representative appointed by the SRSG (assuming that the ethnic Albanian and Serb members disagree).

1.3. Elections

The general elections held on 17 November were certainly the most important political event in Kosovo in 2001. In keeping with UNSC Resolution 1244 establishing the interim civilian and military administration in Kosovo[248], among the responsibilities assigned to UNMIK was "organising and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections" as well as "transferring, 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".[249] In keeping with this, the elections in Kosovo made possible a considerable transfer of responsibilities and executive and legislative authority from the international structures of the interim administration to new institutions.

In August and September, the international administration in Kosovo and the Yugoslav authorities organised registration of the adult population of the province as part of the preparations for the November 17 vote. The registration took place in Serbia and Montenegro, to which some 200,000 non-Albanians fled after the arrival of the international forces in Kosovo in June 1999. The registration was also carried out in Kosovo. "A total of 178,296 Serbs of voting age have been registered for the elections in Kosovo", said OSCE mission head Daan Everts, who added that this included 69,349 Serbs in Kosovo, over 102,000 in Serbia outside Kosovo, and 6,600 in Montenegro. A total of 910,000 ethnic Albanian voters were registered (*Politika*, 26 September, p. 3).

1.3.1. Constitutional Framework Provisions Dealing with Elections

1.3.1.1. Active and Passive Voting Rights – Each person having attained 18 years of age on the day of the election shall be eligible to vote, while persons fulfilling the voter eligibility requirements shall be eligible to stand as candidates in Assembly elections provided they are not:

[248] UNSCR 1244, adopted 10 June 1999.
[249] UNSCR 1244, Art 11. (c and d), 10 June 1999.

– Members of the Central Election Commission (CEC), the Election Complaints and Appeals Sub-Commission, an Assembly Election Commission, or a Polling Station Committee;

– Members of the Kosovo Protection Corps or the Kosovo Police Service;

– Serving as a judge or prosecutor;

– Serving a sentence imposed by the International Criminal Tribunal for the Former Yugoslavia or under indictment by the Tribunal and have failed to comply with an order to appear before the Tribunal; or

– Deprived of legal capacity by a final court decision.

1.3.1.2. Registration of Candidates – Registered political parties, groups of citizens, coalitions or independent candidates submit candidate lists to the CEC which can contain only registered voters fulfilling the conditions laid down by the Constitutional Framework. An interesting provision of Regulation 8/2000 requires that at least 33% of the leading 67% of the candidates on a list must be women and that each three-person candidate group must include at least one of each sex. In case the applicants fail to comply with this requirement, the CEC is entitled to implement various measures to bring the list in line with the said conditions.

The CEC can refuse registration if it finds that the requisite conditions had not been fulfilled, in which case the party submitting the list can demand that the CEC review its decision. But there is no legal remedy against the second decision issued by the CEC. Granting the same organ second-instance decision-making powers and allowing no possibility of judicial protection have additionally restricted the political rights of individuals (ICCPR Art. 25 and ECHR Protocol I Art. 3). The provisions could also be said to infringe upon the right to an efficient legal remedy.

1.3.1.3. Legal Remedies – Election regulation 2/2001 sets up a Complaints and Appeals Sub-Commission (Sub-Commission). The Sub-Commission is authorised to look into all individual representations with respect to violations of the election rights, except where the applicant claims that one or more of his rights have been violated by a decision of the CEC. The Sub-Commission is also authorised to look into appeals against decisions of the Director for Election Operations of the OSCE relating to voter registration and the right to vote. But regardless of whether it looks at complaints or appeals, a decision of the Sub-Commission is final and there is no possibility of appeal with another institution, whereby political rights are restricted.

It also needs to be said that names of candidates who had already been registered had been removed from lists on the basis of decisions of the SRSG. The Ombudsperson in Kosovo conducted an inquiry in connection with the removal of *Emrush Xhemajli* and *Gafurr Elshani* from the list of the People's Movement of Kosovo and *Sabit Gashi* from that of the National Movement for the Liberation of Kosovo.[250] All three were struck off election lists by decisions of the SRSG which they never received because they are allegedly listed by the US administration as "undesirable aliens". No existing legal document in Kosovo sets forth any conditions or procedure for removing candidates from election lists, based only on the discretionary powers of the SRSG, and the relevant decisions of the SRSG are therefore without any legal foundation. Such limitation of

[250] *Ex officio* investigation 19/01.

political rights can therefore not be regarded as permissible, as the main precision for this has not been fulfilled – that the limitation is in accordance with the law. This practice is therefore seen as a violation of political rights.

1.3.2. Election Results

According to the official results published by the Central Election Commission of Kosovo, 14 of the 26 political parties and groupings which had nominated candidates have representation in the Assembly. The biggest bloc is Ibrahim Rugova's Democratic Alliance of Kosovo (LDK) – 47 seats. Hashim Thaqi's Democratic Party of Kosovo (PDK) has 26 seats, having taken 25,7% of the vote, while Ramush Haradinaj's Alliance for the Future of Kosovo (AAK) has eight deputies. Smaller ethnic Albanian parties took one seat each – the National Movement for the Liberation of Kosovo (*LKÇK*), The National Movement of Kosovo (LPK), The Party of Rights (PD) and the Albanian Christian Democratic Party of Kosovo (PSHDK). Seven parties and political organisationas contested the 20 seats reserved for representatives of the non-Albanian communities. The Kosovo Serbs' "Povratak" (Return) coalition took 22 seats, which include the ten guaranteed to Serb representatives under the Constitutional Framework. The Bosniak and Gorani communities' "Vatan" coalition took four seats – one more than they are guaranteed by the Framework. Another seat reserved for the Kosovo Bosniaks was taken by the Party of Democratic Action of Kosovo (SDAK). The Democratic Party of Turks in Kosovo got three seats, alongside the two to which it is entitled under the Constitutional Framework, while the Democratic Party of the Albanian Ashkali community (PDASHK) got two. The New Initiative for a Democratic Kosovo (IRDK) got two seats and one went to the United Roma Party of Kosovo (PREBK). The 34 women make up almost one-third of the total number of deputies.[251] The Assembly has elected a President and Vice-Presidents of the Assembly, but by the end of the 2001 the deputies had elected neither a president of Kosovo nor a government. The political rivalry between various parties has prevented the conclusion of a coalition or a political agreement, as no single party enjoys either a two-thirds or even a simple majority.

1.4. Human Rights in Practice in 2001

Applicable law in Kosovo guarantees the protection of human rights according to the strictest international standards, including Regulation 1999/24 (under which public officials must respect human rights according to international standards)[252] and in particular the Constitutional Framework.[253] But the problems relating to the observance of human rights which have burdened the Kosovo society since the deployment of the international forces and establishment of the international administration had not been eliminated fully in 2001. In spite of the successful efforts by KFOR to improve the security situation (the number of murders has been reduced in comparison with the June 1999 – December 2000 period), personal security is still unsatisfactory, especially for the non-Albanian population, and the ethnic Albanians living north of the river Ibar. It needs to be pointed out, however, that the reduced number of incidents in Kosovo in 2001

[251] OSCE Mission in Priština, Press Release, 26 November 2001.
[252] UNMIK/REG/1999/24, (On the law applicable in Kosovo) 12 December 1999. Section 1.1.3.
[253] See UNMIK/REG/2001/9 (Constitutional Framework) 15 May 2001, Chapter 3, Section 3.3.

compared with the previous period is mainly the result of the fact that the minority communities[254], especially the Serbs and Roma communities, live in isolated enclaves under permanent KFOR guard and subject to enhanced security measures, rather than any improvement in ethnic tolerance in Kosovo. In other words, the intensity of ethnic violence and number of incidents in 2001 have dropped, but their forms have not changed. On his departure from the post of head of the OSCE Mission in Kosovo, Daan Everts said "there are still far too many who do not enjoy full rights and freedoms", and added that the situation was "unacceptable".[255] The lack of security is the biggest obstacle to the freedom of movement of the members of these communities, limiting for them unhindered access to public services and institutions (the right to an education and medical protection) as well as employment opportunities. The existing discrimination in Kosovo is for the moment primarily a result of a lack of equal security guarantees for all residents of Kosovo.

Closely linked with this is the continuing atmosphere of impunity in Kosovo. In spite of the fact that at the end of 2001 Kosovo had been an international protectorate for more than two-and-a-half years, the rule of law is still only being established in the province. The main obstacles to this process are the insufficiently developed judicial system and shortage of police forces capable of conducting proper investigations. The 4,450 international (UNMIK) policemen and women and more than 3,135 members of the Kosovo Police Service (KPS) are far too few in view of the incidence of crime in the province, and many criminal offences remain unsolved. This can only serve as additional motivation for those contemplating serious crimes. Courts are often forced to acquit suspects due to lack of evidence resulting not from a thorough police investigation but in fact the exact opposite, and in many cases responsibility is very hard to establish. The protection of the victims of violence and witnesses is also insufficiently developed – international observers have noted that especially in proceedings against ethnic Albanians their compatriots avoid giving testimony, especially in cases where the victims are of other nationality. On the other hand, due to their low numerical strength UNMIK police are still often forced to resort to support from KFOR troops in the performance of their law enforcement function. Although UNMIK-KFOR cooperation has proved efficient and beneficial in many cases, such a practice also has negative effects, as the two forces' mandates are completely different. During the conflicts in 2001 in neighbouring regions – Macedonia and the southern Serbian municipalities of Preševo, Medvedja and Bujanovac – in an effort to halt the spread of violence and arms smuggling, the KFOR arrested almost one thousand people in connection with the said conflicts. This meant that the detention unit in the Bondsteel US forces' KFOR base near Uroševac was often packed with persons arrested by KFOR for trying to enter Kosovo illegally from Macedonia and Albania or for illegal possession of arms – many of them had been arrested illegally by the KFOR. The principles of legality and security often collided during the year – acting under the command of the commander of the KFOR in Kosovo (COMKFOR), the persons arrested were held in detention unlawfully and

[254] The term "minority" refers here to ethnic groups making up numerical minorities on the territory of Kosovo (*de facto* status) rather than any legally-defined status (*de jure*) – non-Albanian populations in Kosovo or Albanians in the northern Kosovo municipalities of Leposavi, Zubin Potok and Zvečan and in the northern part of the town of Kosovska Mitrovica.

[255] OSCE Mission in Priština *Ambassador Daan Everts says farewell to Kosovo*, 30 November 2001.

without a legal basis by the KFOR; during this time the detainees were not informed about the right to legal counsel or the reasons for the arrest, and neither were they passed on to the civilian judiciary, even when they had so demanded explicitly.[256]

UNMIK was also responsible for unlawful detention. There are in Kosovo no elementary *habeas corpus* procedures on the basis of which detainees can challenge the legal basis of their custody, which means that detainees are not entitled to compensation for illegal detention. Especially controversial is the institution of Executive Order of the Special Representative, using which the SRSG personally decides on detention or remandment in custody, thereby bypassing all courts. International human rights organisations, the Department of Human Rights of the OSCE Mission in Kosovo, as well as the Ombudsperson's office have criticised the said institution as being in direct contravention of Article 5 of the ECHR and Article 9 of the ICCPR which deal with the freedom and security of person.[257]

In spite of certain improvements in the judiciary, the capacities of the judicial institutions have still not been sufficiently developed to guarantee fair and impartial trial. The international administration in Kosovo decided to replace the pillar in charge of humanitarian issues with one dealing with the police and judiciary precisely because it saw that a rule of law would never be imposed in Kosovo without consolidating those institutions. New regulations of the SRSG are also intended to enhance the successful prosecution of criminal offenders. The most important of these is a regulation which is amends Regulation 2000/6 which expands the powers of international prosecutors,[258] a regulation on the prohibition of trafficking in persons in Kosovo,[259] a regulation on the prohibition of unauthorised border/boundary crossings, which also determined the locations of 19 legal crossings in Kosovo[260] and the regulation on the prohibition of terrorism and related offences.[261] Another improvement is the establishment of a Legal System Monitoring Section in the Human Rights Division of UNMIK Pillar III which monitors trials before district and municipal courts in Kosovo and drafts detailed reports which, together with the reports of the Kosovo Ombudsperson, offer a good insight into deviations from international standards. But all improvements linked with the judiciary are still taking place slowly. The basic problem is still a shortage of independent and qualified judges and other professional staff, which can be seen in trials for serious criminal offences linked with ethnic hatred. A number of violations of the right to a fair and impartial trial were recorded during the year.

The Humanitarian Law Centre (HLC), which monitored the trial of Kosovo Serbs Čeda Jovanović and Anđelko Kolašinac, whom the District Court in Prizren in June found guilty of war crimes, said that "the trial of the two Kosovo Serbs was not fair and

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[256] OSCE, Department of Human Rights and Rule of Law, *Review of the Criminal Justice System in Kosovo*, October 2001, pp. 8, 37, 38.

[257] More on "executive order" in Ombudsperson, Special Report No. 3, 29 June 2001; OSCE, Department of Human Rights and Rule of Law, *Review of the Criminal Justice System in Kosovo*, 1 September 2000 – 28 February 2001; Amnesty International, *Amnesty International calls for an end to Executive Orders of detention*, News Service No. 136, 3 August 2001.

[258] UNMIK/REG/2001/2, *On the Appointment and Removal from Office of International Judges and International Prosecutors*, 12 January.

[259] UNMIK/REG/2001/4, *On the Prohibition of Trafficking in Persons in Kosovo*.

[260] UNMIK/REG/2001/10, *On the Prohibition of Unauthorised Border/Boundary Crossings*, 24 May 2001.

[261] UNMIK/REG/2001/12, *On the Prohibition of Terrorism and Related Offences*, 14 June 2001.

the verdict compromises the efforts of the international community to establish the rule of law in Kosovo", although the panel of judges was headed by German judge Ingo Risch.[262] The HLC also lists among violations of the right to a fair trial gross violations of the defendants' right to the use of their own language.

UNMIK's regulations are translated into Albanian and Serbian long after they are issued. By August, just eight of the 18 regulations had been translated into Albanian and only one into Serbian, and there are even some dating from 2000 that have still not been translated.[263] There are also often long delays in the dispatch of written verdicts to defendants, preventing them from lodging appeals to a higher-instance court in the legally-prescribed period. Some defendants have waited for more than eight months for their verdicts in writing in the District Court in Kosovska Mitrovica.[264]

2. International Criminal Tribunal for the Former Yugoslavia (ICTY)[265]

2.1. Introduction

The judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY) have thus far confirmed a total of 79 indictments – this number does not, however, cover the "sealed" indictments. A total of 25 cases had been completed by the end of 2001. Four trials begun in 2001 have still not been finalised. Three cases are currently being processed before the Appeals Chamber. Eleven indictments are still in the pre-hearing phase. The Detention Unit in Scheveningen now holds a total of 50 inmates.

2.2. Personnel Changes in 2001

The United Nations General Assembly elected on 14 March 2001 13 judges: Claude Jorda (France), Fausto Pocar (Italy), David Anthony Hunt (Australia), Patrick Lipton Robinson (Jamaica), Theodor Meron (USA), Carmel A. Agius (Malta), Wolfgang Schoburg (Germany), Liu Daqun (China), Richard May (United Kingdom), Alphonsus Martinus Maria Orie (The Netherlands), O-gon Kwon (Korea) and Mohamed Shahabuddeen (Guyana). Judge Mohamed el-Abasi Elhahdi (Egypt) was elected later. Claude Jorda was again elected president of ICTY and Mohamed Shahabuddeen was elected Vice-President.

The UN General Assembly elected at its 102 plenary session on 12 June 2001 the first 27 *ad litem* judges, who will be engaged in individual trials as needed.

The ICTY currently has a permanent staff of 1,120 from a total of 75 countries. Its basic budget for 2001 was around 95 million dollars.

A new version of the Rules of Procedure and Evidence was adopted in 2001 (Rev. 20, May 4, 2001).[266]

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[262] HLC, Press Release, 14 June 2001.

[263] OSCE, Department of Human Rights and Rule of Law, *Review of the Criminal Justice System in Kosovo*, October 2001, p. 16.

[264] *Id*., p. 15.

[265] See *Human Rights in Yugoslavia 1998*, *1999* and *2000* for elementary data about the Hague Tribunal and a chronology of events.

[266] See <http://www.un.org./icty/glance/index/htm>.

2.3. Investigations

Chief Prosecutor Carla Del Ponte said early in February that she had also launched investigations against "Kosovo Albanian forces, to establish whether they had committed crimes against the Serb population in Kosovo".[267] She later told the Italian news agency Ansa that "representatives of the international community in Kosovo are not co-operating in the Tribunal's investigation into crimes Albanian members of the KLA committed before and during the war".[268]

ICTY investigators questioned early in April 14 in Belgrade witnesses in connection with crimes committed by Croatian forces in their "Oluja" and "Bljesak" offensives in 1995.[269]

ICTY officials said at The Hague on October 9 that inquiries were under way into the complicity of another 15 persons in crimes committed in Croatia in 1991, including former Montenegrin President and Yugoslav Prime Minister Momir Bulatović and former SFRY Presidency member Branko Kostić.[270]

2.4. Mass Graves

Almost for the duration of the year, the local and international public was disturbed by reports of mass graves in Serbia allegedly containing the bodies of Kosovo Albanians killed in the fighting in Kosovo in 1998 and 1999. In two mass graves in Petrovo Selo, near Kladovo on the river Danube, and in mass graves in the Belgrade suburb of Batajnica, and at a site near Lake Perućac around 430 bodies were found.[271]

2.5. Indictments and Trials Begun in 2001

ICTY Prosecutor's spokeswoman Florence Hartman said in mid-May that 12 out of the 26 persons indicted for war crimes in the region of the former Yugoslavia were in the FRY.[272]

The Tribunal unsealed its indictment against (the late) Željko "Arkan" Ražnatović for crimes against humanity and war crimes committed against Moslems in Sanski Most in 1995 (at least 78 Moslems civilians). The indictment lists unlawful detention, torture, murder and rape.[273]

According to the indictment, Ražnatović's para-military Serb Volunteer Guard ("Tigers") operated constantly in collusion with the then Yugoslav People's Army (JNA) and the Serb forces in Bosnia and Herzegovina, as well as with the police authorities. In September 1995, a large number of Serb soldiers and civilians took refuge in Sanski Most before an offensive by Croat-Moslem forces. Arkan's forces arrived in the town on 15 September, at the invitation of the local Serb leadership. Ražnatović is claimed to have controlled from headquarters set up in Hotel Sanus actions in which his "Tigers" brutalised Moslems, looted and seized their homes for the needs of Serb refugees. On or around 20 September, eleven detained Moslems were murdered in the nearby village of

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[267] *Politika*, 6 February, p. 2.
[268] *Blic*, 30 March, p. 9.
[269] *Večernje novosti*, 11 April, p. 13.
[270] IWPR *Tribunal Update*, No. 244, Part I.
[271] More in II.2.2.1.2.
[272] *Blic*, 17 May, p. 8.
[273] *Danas*, 24 January, p. 8.

Trnovo. Their bodies were later found and their names are listed in the indictment. The following day, another 67 Moslems, including a woman, were killed in the village of Sasina, under the direct control of Ražnatović; the woman had previously been raped by the "Tigers".

The year 2001 was among other things marked by the first voluntary surrenders to the ICTY. Former President of Republika Srpska Biljana Plavšić surrendered to the ICTY on 9 January. The indictment against her had been issued on 7 April 2000 and made public on 10 January 2001. The 17-page indictment states that in her capacity as a member of the presidency of the so-called Serb Republic of Bosnia-Herzegovina, the extended War Presidency and the Supreme Command of the armed forces, Plavšić, together with Radovan Karadžić, Momčilo Krajišnik and others, took part in crimes for which she has been charged with the aim of securing control of those parts of Bosnia and Herzegovina proclaimed the Republika Srpska, encompassing a total of 41 municipalities. Mrs Plavšić was charged with genocide because together with Karadžić, Krajišnik and others she allegedly planned, incited, ordered and enforced the destruction, wholly or in part, of the Bosnian Moslems and Croats as national ethnic and religious groups, among other places in the municipalities of Bijeljina, Bratunac, Bosanski Šamac, Brčko, Doboj, Foča, Ilijaš, Ključ, Kotor Varoš, Novi Grad, Prijedor, Rogatica, Sanski Most, Višegrad, Vlasenica, Zavidovići and Zvornik. According to the indictment, the genocide was perpetrated by killing Moslems, Croats and other non-Serbs in attacks on the municipalities in which they had lived, in and outside detention camps, by causing grave physical and mental suffering in detainees, who were exposed to constant inhumane treatment, including murder, sexual violence, torture, beatings, robbery, or were constantly witnesses to such actions. Bosnian Moslems and Croats were incarcerated in camps under conditions calculated to lead to their total or partial annihilation as national, ethnic or religious groups. The number of those killed ranges from 10 to 190. Mrs. Plavšić has also been charged with the forcible expulsion of the non-Serb population. Before leaving for territory controlled by the government in Sarajevo, Croatia or Serbia, deportees were often forced to sign their properties over to the Republika Srpska.

On 2 May the Tribunal turned down a demand by Mrs. Plavšić to be tried separately from former President of Republika Srpska Momčilo Krajišnik. No new facts have appeared on account of which the ICTY might change the decision it adopted in February to try Plavšić and Krajišnik together. "There is no conflict of interest, and it is in the interest of justice that they be tried together", the ICTY said in a statement.[274]

After special guarantees were issued by the Government of the Republika Srpska, the ICTY decided to release Mrs. Plavšić on her own recognisance – she was released from detention on 6 September.

Blagoje Simić, one of five Bosnian Serbs charged with persecution of and crimes against Moslems and Croats in the 1991–1993 period in the Bosanski Šamac and Odžak municipalities, northern Bosnia, surrendered of his own free will to the ICTY on 12 March 2001. Simić's defence counsel, Belgrade lawyer Igor Pantelić, said "Simić decided to surrender to the ICTY because he believes that the entire Serb people may not be hostage to individuals". Simić's name is on a public indictment together with those of

[274] *Danas*, 3 May, p. 2.

Slobodan Miljković, Milan Simić, Miroslav Tadić and Simo Zarić, charged with ethnic cleansing. Blagoje Simić was the local president of the Serb Democratic Party in Bosanski Šamac and Vice-President of the Municipal Assembly from 1991 until 17 April 1992. Between 4 November 1991 and 30 November 1992 Simić was vice-president of the "self-proclaimed Serb Autonomous Region of Northern Bosnia, subsequently named the Serb Autonomous Province of Semberija and Majevica."

Under the indictment, "Serb military and political authorities in the said municipality arrested Bosnian Croats and Moslems and confined them in camps where they were murdered, beaten, tortured, sexually abused and mistreated in other ways". Following 17 April 1992 Simić was the highest representative of the civilian authorities in Bosanski Šamac and thus ranked superior to the local police. The prosecutor asserts that Simić knew or had reason to know that the local police head Stevan Todorović intended to commit or committed acts against which Simić failed to take appropriate measures to prevent their perpetration or to punish Todorović.[275] During his first appearance before the ICTY on 15 March 2001 Simić entered a plea of not guilty.[276] Serbian police arrested on 22 March 2001 Milomir Stakić (39) a citizen of Bosnia-Herzegovina, and turned him over to "authorised representatives" of the ICTY. Police said in a statement this had been done at the request of the Serbian Ministry of Justice. Stakić is charged with acts of genocide in the Prijedor area committed during 1992. The sealed indictment, confirmed in 1997, states that Stakić "planned, organised and participated in setting up detention camps for Moslems and Croats".[277]

Bosnian Serbs Duško Sikirica, Damir Došen and Dragan Kolundžija went on trial before the ICTY on 19 March 2001. Došen and Kolundžija are charged of crimes against humanity and Sikirica of genocide committed against Moslems and Croats in the "Keraterm" camp in Prijedor in 1992.

Sikirica is charged with genocide in his capacity as the commander of "Keraterm". He is personally accused of murder, torture and rape in the camp. Došen and Kolundžija are charged as commanders of the guards units in the May-August 1992 period. All three are also being tried on the basis of their chain of command positions, for neither preventing crimes nor punishing any of those responsible.

The prosecutor has described the slaughter of over 100 Moslems committed on 24 July 1992 in "Keraterm" as one of the gravest during the entire Bosnian war. It was also pointed out that the percentage of Moslems in Prijedor had fallen from about 43 % in 1991 to just 1% in 1997.[278]

The brothers Nenad and Predrag Banović, Bosnian Serbs born in Prijedor, were arrested by a Serbian State Security Service team on 8 November 2001. The ICTY's prosecutor has charged the brothers with crimes against humanity and violations of the laws and customs of war during the fighting in Bosnia-Herzegovina. Predrag and Nenad Banović, who had lived in Serbia for several years, were charged in July 1995 together with other eleven Bosnian Serbs formerly engaged on various duties in the Omarska, Keraterm and Trnopolje camps in the initial period of the Bosnian war. The arrest

[275] *Blic*, 13 March, p. 8.
[276] *Blic*, 16 March, p. 8.
[277] *Blic*, 24 March, p. 8.
[278] *Blic*, March 20, p. 8.

provoked a rebellion by the Serbian police Special Operations Unit (JSO).[279] In 1998, SFOR personnel had arrested in Bosnian two brothers they believed were Predrag and Nenad Banović. The men arrested, brothers Miroslav and Milan Vučković – wrongly identified as the Banović brothers – were immediately returned to Bosnia. The indictment against Nenad Banović contains five counts of crimes against humanity and four of violations of the laws and customs of war, while that against his brother has 12 counts of the former and 13 of the latter.[280]

Prosecutor Del Ponte has issued a collective indictment against several persons for the JNA's attack on the coastal city of Dubrovnik in the period between 1 October and 31 December 1991. The ICTY's president confirmed the indictment on 27 February 2001 and it was made public early in October. It contains a total of 16 counts, including serious breaches of the Geneva Conventions and violations of the law and customs of war, murders, attacks against civilians and non-military objects, looting and the destruction of historical monuments.[281] The charges of breaching the Geneva Conventions effectively mean that the crimes on the Dubrovnik front were qualified as part of an international military conflict.[282] The indictees are former JNA officers Pavle Strugar, Miodrag Jokić, Milan Zec and Vladimir Kovačević, the highest-ranking officers in the JNA's Second Army in the autumn of 1991. Strugar and Jokić turned themselves in of their own free will and have appeared before the Tribunal. Miodrag Jokić, one of the JNA units' commanding officers charged with attacking Dubrovnik and surrounding communities from 1 October 1991 surrendered on 11 November 2001 and flew to The Hague accompanied by the Serbian Interior Minister, Dušan Mihajlović. Jokić is charged with both individual and chain of command responsibility for violations of the law and customs of war on the Dubrovnik front in the autumn of 1991. On December 1, the tribunal released Strugar on his own recognisance.

Republika Srpska Army (VRS) Lt-Colonel Dragan Obrenović (38) entered on 18 April before the ICTY a plea of not guilty to charges of genocide and other war crimes. Obrenović ha been charged with complicity in genocide against the Moslem population in Srebrenica in July 1995.[283] Lt-Colonel Obrenović, commander of the army barracks in Zvornik, was arrested on 15 April 2001. During the offensive on Srebrenica, Obrenović was the acting commander of the Zvornik garrison, in charge of a large segment of the Srebrenica front.[284] The indictment against Obrenović was issued on 9 April 2001. The garrison's engineer corps used heavy machinery to cover up mass graves as the liquidations were in progress in the area of Orahovac, the Branjevo army agricultural complex, the Cultural Centre in Pilica and near Kozluk. According to the charges, between 1 August and 1 November 1995 Obrenović assisted in planning and organising the exhumation and relocation of the primary mass graves in Branjevo, Kozluk, Petkovci,

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[279] Members of the unit (so-called Red Berets) have said they would not take part in arrests and deportations of ICTY indictees because no law on co-operation with the Tribunal has yet been enacted. They also claimed that they had not been told the precise nature of their action. But there was speculation in the public that the rebellion was motivated by the fears of some JSO officers that they could be listed among those indicted by the Tribunal. (see IWPR *Tribunal Update*, No. 243, Part I).

[280] IWPR *Tribunal Update*, No. 243, Part II

[281] IWPR *Tribunal Update*, No. 238, Part I

[282] *Blic*, 2 March, p. 8.

[283] *Danas*, 19 April, p. 1.

[284] *Vreme*, 19 April, p. 32.

Orahovac and Glogova, in areas covered by the Zvornik and Bratunac Brigades of the Drina Corps. The remains of the victims were moved to 12 secondary graves along the Cancari road, four graves near Liplje, seven graves near Hodžici and six near Zeleni Jadar.[285]

Early in November 2001, the ICTY unsealed its indictment against Bosnian Serb Army (VRS) General Dragomir Milošević for the siege and shelling of Sarajevo from August 1994 until November 1995, at which time Milošević was the commander of the VRS's Romanija Corps, which held Sarajevo under siege.

The indictment against Bosnian Serbs Savo Todorović and Mitar Rošević was unsealed on 29 November 2001. Todorović and Rošević are charged with violations of the laws and customs of war, crimes against humanity and grave breaches of the Geneva Conventions committed in the camp in Foča in Bosnia in 1992.

2.6. Sentences

On 22 February 2001 the ICTY found three former Bosnian Serb paramilitary members guilty of crimes against humanity, rape, kidnapping and torture of Moslem women and girls in Foča late in 1992. Dragoljub Kunarac (40) was sentenced to 28 years' imprisonment, and Radomir Kovač (39) to twenty years. Zoran Vuković was sentenced to 12 years' imprisonment for raping and mistreating a fifteen-year-old Moslem girl. Sixteen victims of rape gave evidence during the trial, which had begun on 20 March 2000.[286]

The first sentence against a political leader of one of the warring sides was pronounced by the ICTY on 26 February 2001 when the former vice-president of the so-called Herzeg-Bosnia,[287] Dario Kordić, was sentenced to 25 years' imprisonment for the ethnic cleansing of Moslems in central Bosnia between the end of 1991 and 1994. The panel of judges said Kordić had been a "calculated and wilful perpetrator of a policy of genocide in central Bosnia".

It was proven that Kordić had been one of those who had issued orders for attacks on Moslem villages in central Bosnia, including Ahmići, in April 1993 at the start of the Croat-Moslem conflict. He was acquitted of charges in connection with the massacre in the village of Stupni Do near Vareš and the shelling of Zenica, as his responsibility was not proven. Judge May said the ICTY had rejected the defence's claim that the conflict was a civil war and that the Croats had done nothing but defend themselves. It was also pointed out that Kordić had played an important role in the crimes and that the fact that as a politician he had not taken part in the killing personally was of no significance because he had played his role just as surely as those who had pulled the triggers. The fact that Kordić was a politician only makes the crimes for which he is responsible even more serious, and there are no mitigating circumstances.[288]

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[285] *Vijesti*, 19 April, p. 11.

[286] The presiding judge, Florence Ndepele Mwachande Mumba of Zambia, told Kunarac at the conclusion of the trial: "You were a soldier exhibiting courage in combat and reportedly respected by your fellow-soldiers. You could easily have ended the suffering of those women. Your active participation in the sinister plan of sexual abuse is therefore all the more repulsive."

[287] Herzeg-Bosnia was the territory controlled by the Bosnian Croats during the conflict in Bosnia.

[288] Emphasis added, IWPR *Tribunal Update*, No. 232, Part I.

Croatian Defence Council (HVO) brigade commander in Vitez Mario Čerkez (41) was sentenced on 15 years' imprisonment for his involvement in attacks on Moslem communities, illegally detaining civilians, murder, hostage-taking, using Moslem civilians as human shields, the destruction of property and religious and cultural facilities. The prosecutor in the trial, which had begun on 12 April 1999 and lasted an effective 240 days, asked for life imprisonment for both defendants. A total of 241 witnesses gave testimony and about 4,500 other items of evidence were registered. This was the tenth first-instance judgement since the ICTY was founded.

The first person to be sentenced on charges of genocide since the Second World War was former VRS General Radislav Krstić, on 2 August 2001. Krstić was sentenced to 46 years' imprisonment for crimes committed in Srebrenica in July 1995. The court established his responsibility for the deaths of about 8,000 Moslems. Krstić was also charged with the deportation of about 30,000 women and children, and an attempt to conceal mass and organised killings. At the time of the Srebrenica massacre, General Krstić was the deputy commander of the Drina Corps of the VRS. The panel of judges said that they were aware that there were in the former Yugoslavia people who bore much more responsibility than General Krstić, but that his crime was also terrible and that it was one of the ways in which the Serb people was being stripped of collective responsibility.[289]

Duško Sikirica, Damir Došen and Dragan Kolundžija were sentenced to terms of imprisonment of 15, five and three years, respectively, for crimes committed in the Keraterm camp, genocide and crimes against humanity against Moslems and Croats in 1992. The trial began on 19 March 2001.

On 2 November a panel chaired by Portuguese judge Almiro Rodrigues sentenced five Bosnian Serbs to terms of imprisonment ranging from five to 25 years. Zoran Žigić, Mladjo Radić, Miroslav Kvočka, Milojica Kos and Dragoljub Prcać were found guilty of crimes against Moslems and Croats in the Omarska, Keraterm and Trnopolje camps in 1992.[290]

Zoran Žigić got 25 years, Mladjo Radić twenty, Miroslav Kvočka seven, Milojica Kos six and Dragoljub Prcać five years in jail. They were found guilty of persecution on a racial, religious and political basis, including torture. In this case also, the judges said the defendants were most definitely responsible for their crimes, but that the responsibility of those who had given them orders (in particular Radovan Karadžić, Ratko Mladić, Momir Talić and Radoslav Brdjanin, all also charged with genocide), was considerably greater.[291]

2.7. Second-Instance Judgements

On 5 July 2001 the appeals chamber of the ICTY sentenced Goran Jelisić, a Bosnian Serb from Bijeljina, to 40 years' imprisonment for murdering and torturing Moslems in a camp in Brčko. The chamber accepted the prosecutor's appeal, ruling that the first-instance court had misapplied material law when it acquitted Jelisić of the

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[289] *Id*.
[290] IWPR *Tribunal Update*, No. 242, Part II.
[291] *Id*.

genocide charges and did not return the case for a re-trial, but instead confirmed an earlier judgement.[292]

2.8. Slobodan Milošević – Arrest and Extradition

The question of the extradition of former FRY President Slobodan Milošević to the ICTY was a hot issue in the first half of 2001. Serious pressures for his transfer to The Hague began in January. The Chief Prosecutor and her closest aides made an increasingly frequent demands for a start of genuine co-operation with the ICTY and the surrender of all those who had been indicted.

The Yugoslav (Serbian) judicial authorities brought charges against Milošević and arrested him on 1 April 2001. But these charges concerned only financial irregularities and abuse of office. Milošević was delivered on 3 May: the indictment had been confirmed against him on 22 May 1999 for crimes against humanity committed against Kosovo Albanians. "In his capacity as the President of the FRY, Supreme Commander of the VJ and President of the Supreme Defence Council, and in accordance with his *de facto* powers, Milošević is responsible for the actions of his subordinates in the VJ and all police forces, federal and republican, who committed crimes in the Province of Kosovo" reads the indictment.[293]

The indictment against Milošević for crimes committed in Croatia was unsealed on 29 September 2001. The Chief Prosecutor has accused the former President of Serbia and the FRY of crimes against humanity, serious violations of the laws and customs of war.[294] Judge Richard May confirmed on 22 November the indictment against Slobodan Milošević for genocide in Bosnia-Herzegovina. The "Bosnian Indictment" charges Milošević with genocide and all other crimes which the Tribunal is authorised to prosecute. This is the first indictment against the former Yugoslav president, which contains genocide charges. It virtually repeats the charges listed against Bosnian Serb leaders Radovan Karadžić, Ratko Mladić, Momčilo Krajišnik and Biljana Plavšić, General Krstić in the Srebrenica case, Generals Galić and Milošević in the Sarajevo case, and a number of those charged and sentenced in the Omarska, Keraterm and Trnopolje, Bosanski Šamac and Sanski Most, and other cases. The prosecution hopes it will be able to prove that Slobodan Milošević stood behind all these operations of the VRS and several paramilitary forces.[295]

2.9. Controversial Arrests

Dragan "Jenki" Nikolić[296], accused of crimes against Moslems in 1992 in the Sušica camp near Vlasenica in eastern Bosnia, demanded late in May that he be released and returned to Serbia, where he had allegedly been illegally apprehended. According to a NATO statement, Nikolić was arrested on 21 April 2000 in Bosnia. According to the indictment, Nikolić was the commander of the camp in Sušica, in which about 8,000 Moslem civilians were detained between May and October 1992. Under the amended indictment, Nikolić is also responsible for the rapes and sexual mistreatment of a number

[292] *Blic*, 6 July, p. 9.
[293] *Blic*, 4 May, p. 8.
[294] IWPR *Tribunal Update*, No. 239, Part I.
[295] IWPR *Tribunal Update*, No. 245.
[296] Nikolić was the first person indicted by the ICTY.

of women who were in the camp in the said period. In his demand Nikolić cites the principle that illegal arrests annul the authority of the Tribunal, which may not condone any unlawful action.[297]

The question of the legality of arrest and transfer of the indictees to The Hague was first raised in the case of Bosnian Serb Stevan Todorović, who was arrested by SFOR personnel on Serbian territory in September 1998. The defence challenged the legality of the arrest, citing the fact that SFOR's mandate is limited to the territory of Bosnia-Herzegovina. In December 2000, Todorović's defence counsel and the court concluded a deal under which the defence withdrew its objection to the arrest in exchange for a lighter penalty for its client. In May 2001, the prosecution asked for 12-year term of imprisonment. Todorović admitted responsibility for just one count of the indictment – persecution of the civilian population – while the prosecution withdrew 26 counts: murder, torture and sexual abuse. Todorović said he genuinely regretted his actions and would, if given a chance, "try and redeem himself for his sins in some way".[298]

Colonel Vidoje Blagojević, head of the VRS Corps of Engineers, was arrested by SFOR troops in Banja Luka on 10 August 2001. Five SFOR vehicles intercepted the car holding Blagojević, VRS Lt-Colonel Vučinić and a driver – the two others were later released.

2.10. Sealed Indictments

Spokeswoman Florence Hartman told reporters in May that the sealed indictments contained just 12 names. The prosecution decided to release this information on account of "absurd claims that the sealed indictments contain most of the Serbian population". A total of 13 persons have so far been confined in the Detention Unit in Scheveningen on the basis of sealed indictments and arrest warrants. Nine were arrested by the SFOR and one each by the UN police, the Austrian and the Yugoslav authorities, while Biljana Plavšić turned herself in when she learned that she was among the indictees. Eight indictments were unsealed in 2001.[299] After the opening of the indictment connected with Dubrovnik, Hartman said that there were no FRY citizens on the seven remaining sealed indictments.[300]

The decision to seal an indictment (officially: non-publication until the arrest of the indictee) is issued by a ICTY judge at the request of the prosecutor, after approving the indictment on the basis of the examination of evidence. As Judge David Hunt has said in connection with the "Kosovo Indictments" against Milošević and others, the approval is issued if the evidence submitted by the prosecution is such that if the defence is not able to refute it during the trial, it would lead to the defendant being found guilty and condemned.

2.11. Reactions of the Authorities in the FRY

The question of co-operation with the ICTY at The Hague was in 2001 one of the main bone of contention in the ruling DOS coalition. In the first few months of the year, FRY authorities managed to sidetrack the issue, hence also their internal squabbles. But

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[297] *Blic*, 25 May, p. 8.
[298] *Politika*, 5 May, p. 6.
[299] See <http://www.un.org./icty/index-b.html>.
[300] *Politika*, 25 October, p. 4, *Nema Jugoslovena pod pečatom* (No Yugoslavs Under Seal).

early in March, the pressure began to rise for the question of co-operation with the ICTY to be opened and for the FRY to begin fulfilling its international obligations. An additional burden was the ongoing investigation against former President Milošević and the fact that the entire problem of co-operation was viewed through that prism. The reactions of the once ruling parties in Serbia, notably Milošević's own Socialist Party of Serbia, were understandably very negative.[301] But even some DOS parties (the most outspoken being Yugoslav President Vojislav Koštunica's Democratic Party of Serbia) came out against full co-operation with the Tribunal, especially the extradition of Yugoslav citizens. The discord became evident early on in the year, during a visit by an ICTY delegation to Belgrade.[302]

2.12. Reactions of the citizens of the FRY

The survey of the legal consciousness of the population in Yugoslavia included several questions about the International Criminal Tribunal for the Former Yugoslavia. The surrender of the former Yugoslav President Slobodan Milošević led to divisions in the political and professional public and the fall of the Federal Government. The Centre wanted to look into public opinion in the wake of those events about the ICTY and the prospects for other Yugoslav citizens to be prosecuted by it.

The first question was "What is your opinion about the activities of the Hague Tribunal?" Compared with the December 2000 survey, modest changes were recorded. There was an increase of 7% in the number of those who have a positive opinion of the ICTY (36.5%). In this total 29.6% believe this co-operation is a price Yugoslavia has to pay to be allowed to return to the fold of democratic states, while the rest (6.9%) think the tribunal's activities are welcome because they "allow us to avoid putting each other on trial and causing bad blood". But there was also an increase (from 38.9% in December 2000 to 43.2% in December 2001) in the number of those who think the ICTY is nothing but a tool of U.S. foreign policy. There was also a sharp drop (from 22.1% to 10%) in the incidence of those who say they are not in a position to give a realistic assessment because Milošević's regime prevented the people from being informed properly. The number of "don't knows" remained at a level of around 10%.

Asked about the jurisdiction of the ICTY over Yugoslav nationals, little change was recorded. The biggest group (46.2%, against 46.6% in 2000) think FRY citizens should be prosecuted by domestic courts. One out of five (20.1%, against 16.9% a year before) think indictees should be handed over to the ICTY. Although answers to the previous question showed a very critical attitude to the ICTY (43.2% of the sample), there was nevertheless a much smaller incidence of those who believe FRY citizens charged with war crimes are solely victims of anti-Serbian propaganda (17.8%); this is

[301] The SPS in a statement issued late in January 2001 compared the ICTY with the Gestapo. It said that as far as it was concerned, it made no difference whether Milošević was tried by the "The Hague Gestapo of the local branch of The Hague Gestapo". "It is obviously an attempt by the DOS to liquidate the biggest opposition party in the country – the Gestapo was well known for rigging various trials and liquidating political leaders and fighters who put up resistance to Fascism " (*Blic*, 31 January, p. 3).

[302] Our country should not protect anyone who is a war criminal or be a hostage to Milošević even now that he is no longer in power – Goran Vesić, the federal interior minister's security advisor said early in February, adding that ICTY representatives had said during their visit to Belgrade in January that while he was president Milošević had "secretly handed over one man to the Tribunal" (*Danas*, 6 February, p.1).

close to the December 2000 figure (16.7%). There was a drop (from 9.9% down to 7.3%) in the number of those who think indictees should be tried in the former Yugoslav republic where their alleged crimes had been committed. The others did not know (8.7%), again close to the 2000 figure of 9.8%.

Asked directly if they believed Slobodan Milošević was responsible for war crimes during his reign and should be prosecuted for them, 82% replied positively. A majority (52.3%) think he should have been prosecuted locally, while almost one out of four (24.9%) favour the ICTY. Like last year, there were 5% who think Milošević was most probably responsible for war crimes but should not be prosecuted for them. The incidence of those who think he was innocent rose modestly (from 13.8% to 15.6%). The fact that this was a rather emotional issue for most people was shown by the very small number of "don't knows", just 2.2%, the smallest among all questions.

2.13. The Fate of the Act on Co-operation with the Hague Tribunal

Momčilo Grubač, the then Minister of Justice in the FRY Government, presented early in April a draft Act on Co-operation with International Criminal Tribunal at The Hague. Grubač pointed out that besides the extradition of FRY citizens, the bill also provided for granting authority to ICTY investigators to independently question witnesses and collect evidence in FRY territory. It also provides for transfer through Yugoslav territory, as well as the transfer of legal procedures initiated domestically. In the following months the bill provoked major problems and tremors in the functioning of the Federal Government – representatives of the Montenegrin Socialist People's Party (SNP) refused to support first the bill and then also a proposed Decree regulating co-operation, ultimately leading to the resignation late in June of the Government of Prime Minister Zoran Žižić (SNP).[303]

Instead of submitting a law to parliament, the Yugoslav Government issued a Decree on the Procedure of Co-operation with the International Criminal Tribunal (*Sl. list SRJ*, No. 30/01), featuring the same provisions that the would-be law would have contained. The decree's constitutionality was immediately challenged before the Federal Constitutional Court by the Socialist Party of Serbia, the Patriotic Alliance of Yugoslavia and 89 others, including 51 current and former professors of Belgrade University's Law Faculty.

On 28 June 2001 the Federal Constitutional Court issued a preliminary injunction halting the enforcement of the Decree pending a decision on the case. The very same day the Serbian Government issued its own Decree on the basis of Articles 90 and 135 of the Serbian Constitution granting itself the authority to enforce the Statute of the ICTY directly, and on the basis of that decree handed over former Yugoslav President Slobodan Milošević. The action injected fresh complications into the functioning of the DOS, as well as the DOS – SNP coalition at federal level.

The Federal Constitutional Court issued on 28 December 2001 its ruling on the constitutionality and legality of the Decree on the Procedure of Co-operation with the International Criminal Tribunal (*Sl. list SRJ*, No. 70/01). The court ruled the Decree in

[303] *Danas*, 5 April, p. 3. Under the Yugoslav Constitution, a prime minister's resignation implies the resignation of the entire Government.

contravention of the FRY Constitution and the Criminal Procedure Code. The court said the government had exceeded its authority by regulating matters which can only be regulated by law (civic freedoms and rights, ratification of international treaties) and violated the Yugoslav Constitution by permitting the extradition of a Yugoslav citizen. The court considered a number of objections voiced by the petitioners in respect of the ICTY's Statute, but did not comment on them. But it nevertheless did refer to the legal nature of the Statute by considering the obligations contained in Art. 16 of the FRY Constitution, under which international treaties and generally accepted rules of international law are considered part of the internal legal order. The court ruled that UN Security Council Resolution 827, under which the ICTY was founded, is not included in these sources of international law, describing it as a "political document producing political obligations, but whose legal validity is achieved only by its legalisation by a legitimate and legal agency in the individual legal order of every state".

The incomplete Federal Constitutional Court, sitting with six of its seven judges, ruled on the petition without judge Momčilo Grubač, who excluded himself from the case as he had been a member of the Federal Government at the time of issue of the disputed decree. Three of the other judges were appointed by the former regime and the other three after 5 October 2000 – in other cases this would have led to a split vote, but it is believed that this time the older group of judges prevailed.

2.14. Visits by the ICTY Officials to Yugoslavia

ICTY Chief Prosecutor Carla Del Ponte visited Belgrade twice in 2001.[304] Her first talks focused on the extradition of Slobodan Milošević. Ms Del Ponte left Belgrade visibly displeased with her reception by the Yugoslav authorities and responses she had got in talks with President Koštunica. Florence Hartman said after the visit that that Carla Del Ponte had brought a sealed indictment with her to Belgrade.[305] Early in September, a delegation of the ICTY headed by the chief prosecutor once again visited the Yugoslav capital. On this occasion she talked with the families of people who are missing in Kosovo.[306]

3. The Status of Refugees and Displaced Persons

3.1. Introduction

There were 470,000 registered refugees in the Federal Republic of Yugoslavia in 2001, most of them in Vojvodina and central Serbia. Of this total 9% are pensioners, 17% university students and 37% jobless persons. Some 5% live in collective centres, while 20% in their own flats. Over 62% of the total have opted to remain in the FRY, and just

[304] On 23 January, Carla Del Ponte met with FRY President Vojislav Koštunica, Yugoslav Foreign Minister Goran Svilanović, Justice Minister Momčilo Grubač, Interior Minister Zoran Živković, National Bank of Yugoslavia Governor Mlađan Dinkić, Serbian Prime Minister Zoran Djindjić and Serbian Minister of Justice Vladan Batić (Vreme, 25 October, p. 11).
[305] *Id*.
[306] *Id*.

5% would rather return to their former homes.[307] About 105,000 refugees are below subsistence level.[308]

Of the roughly 228,500 displaced persons in the FRY, less than 10% live in collective centres. The rest are housed privately, but a growing number are moving into collective centers as they can no longer afford to pay rent.[309] About 47,000 displaced persons are below subsistence level.[310]

According to UNHCR data, at the moment their status was recorded, 18% of the registered refugees and 30% of the internally displaced persons said they had employment.

3.2. Refugees

3.2.1. The legal status of refugees

The status of refugees is regulated by the Convention on the Status of Refugees from 1951 (*Sl. list FNRJ (Dodatak)*, No. 7/60) and the Protocol on the Status of Refugees (*Sl. list SFRJ (Dodatak)*, No. 15/67), which were ratified by the former SFRY. As the number of refugees in the FRY rose during the war in Croatia, the Republic of Serbia regulated their status by the Law on Refugees (*Sl. glasnik RS*, No. 18/92).[311] Montenegro regulated the status of refugees by the Decree on the Sheltering of Displaced Persons (*Sl. list RCG*, No. 37/92). The very title of the decree manifests the position that persons who have fled from their homes in the territory of the former SFRY are displaced persons rather than refugees.

Serbia initially adopted Refugees Persons Relieve Decree, and after the Croatian Army action in Krajina in 1995, the Expelled Persons Relieve Decree (*Sl. glasnik RS*, No. 47/95). One could conclude that the formal difference between the terms refugee and exile might also imply different treatment in practice, but this was not to be.

The Refugees Act of the Republic of Serbia, as well as the Expelled Persons Relieve Decree are contrary to the Convention on the Status of Refugees, the Pact on Civil and Political Rights and the FRY and Serbian Constitutions. The Refugees Act makes an impermissible distinction between refugees who came from the territory of the former SFRY and all other refugees who might seek refuge in the FRY. Also discriminatory are provisions of the Yugoslav Citizenship Act (*Sl. list SRJ*, No. 33/96), according to which refugees who fled to FRY territory after 27 April 1992, are in a more unfavourable position in regard to the possibility of acquiring Yugoslav citizenship than those who had arrived before that date .[312]

In March 2001, the Yugoslav Parliament adopted alterations and amendments to the Yugoslav Citizenship Act (*Sl. list SRJ*, No. 9/01) making possible for refugees and exiles to apply for Yugoslav citizenship although they already have citizenship of another republic of the former SFRY (Art. 48).[313] Before the said changes, every citizen of the

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[307] *Glas javnosti*, 29 May, 2001.
[308] Research WFP/CES MECON.
[309] NRC Global IDP database.
[310] Research WFP/CES MECON.
[311] See *Human Rights in Yugoslavia 1998, 1999* and *2000*.
[312] See *Human Rights in Yugoslavia 1998* and *1999*.
[313] See more I.4.16.

former SFRY with permanent residence in FRY territory on 27 April 1992, could acquire Yugoslav citizenship only if he or she had none other, i.e., if they renounced the other citizenship they had.

According to some opinions, like that of Miladin Škrbić, legal advisor in the Serb Democratic Forum, refugees from Croatia should before applying for Yugoslav citizenship regulate their citizenship status in Croatia. Škrbić says this should be done because persons granted Yugoslav citizenship lose their refugee status and therefore make it more difficult for themselves to obtain Croatian documents and realise their ownership rights (e.g., Yugoslav citizens cannot acquire returnee status in Croatia, and therefore forfeit their right to apply for aid in reconstructing their homes as well as a right to a pension in Croatia).[314]

The Bosnia and Herzegovina (B&H) Presidency proposed to the FRY authorities an agreement on dual citizenship, under which those with residence in B&H could apply for FRY citizenship and vice versa. There are an estimated 150,000 B&H citizens in Yugoslavia at the moment. Under the draft agreement, persons with dual citizenship would vote and do their national service (for those subject to military service) only in the country in which they have permanent residence.[315]

3.2.2. The actual position of refugees in the FRY

3.2.2.1. The judicial epilogue of the mobilisation of refugees in 1995 – The first forcible mobilisation took place in January 1994 when between 2,000 and 3,000 refugees living in Vojvodina were transported under the escort of Yugoslav Army officers to the Republika Srpska (RS – Bosnian Serb Republic), where they fought in the RS Army for four weeks. In May and June 1995 the Serbian Interior Ministry organised at the request of the authorities of the RS and RSK (Republic of Serb Krajina) the arrests of about 4,000 refugees, who were then sent to the fronts in Bosnia and the RSK. The biggest mobilisation of refugees took place in August 1995, after the Croatian Army's "Oluja" operation, when over 150,000 refugees arrived in Serbia.[316] After the forced mobilisation, many refugees were sent to the headquarters of the Serb Volunteer Guard (SDG) in Erdut, where they were subjected to torture and other physical and mental abuse. From Erdut they were sent to the frontlines in the Osijek and Vukovar areas. Another group was sent to Janja (near Bijeljina) and thence to the warfronts in the Bihać, Glamoč and Manjača areas.

Lawyers of the Humanitarian Law Center (HLC) filed suits against the Republic of Serbia in connection with these cases. In July 2001 legal procedures were under way on behalf of a total of 644 refugees from Croatia and Bosnia for breaches of honour and civil and human rights, intimidation and the physical and mental suffering sustained. Suits had also been filed by that date on behalf of the families of 65 refugees who were killed after being unlawfully mobilised.[317]

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[314] *Pravi odgovor*, January 2001.
[315] *Pravi odgovor*, No. 19, November 2000, p. 28.
[316] See *Human Rights in Yugoslavia 1998*.
[317] HLC, Press Release, 19 July.

In 2001, courts in Serbia issued rulings ordering the Republic of Serbia to pay compensation to refugees from Bosnia and Croatia forcibly mobilised by Serbian police and sent back to the war-engulfed areas, where they had suffered torture while in captivity. However, acting on appeal by the Republic of Serbia, in a majority of the cases second-instance courts ruled that there was no causal link between the illegal actions of the Serbian police and the damage suffered by the refugees after being sent back to the areas affected by the war, as had been established by the first-instance courts in most cases. The compensations awarded by the courts were also disproportionate to the hardship suffered by the said persons.

The First Municipal Court in Belgrade issued a ruling ordering the Republic of Serbia to pay to the family of the late Milan Tadić, a forcibly mobilised refugee from Croatia, the sum of 450,000 dinars (DEM 15,000).[318] This is one of the cases in which HLC counsel expressed dissatisfaction with the award, describing it as wholly inadequate in view of the scale of the suffering and the violation of the right to life.

In the case of Rade Ćosić, a refugee from Croatia, the same court ruled that when Serbian police unlawfully arrested him and then handed him over to the RS authorities in Zvornik, they violated Article 33 of the Convention on the Status of Refugees. Under this article, none of the Convention's signatories may expel or deport a refugee to the territory of a state where his or her life or liberty would be threatened on the grounds of race, religion, nationality or affiliation with a certain social group or ideology. The court ordered the Republic of Serbia to pay the plaintiff the sum of 30,000 dinars (DEM 1,000).[319] Acting on appeal, the District Court in Belgrade overturned the verdict, ruling that there was no cause-and-effect link between the unlawful conduct of the Serbian police, who deported Ćosic to a warfront, and the hardship he suffered there.[320] The Supreme Court of Serbia upheld the decision of the District Court, explaining that the refugees had been mobilised at the request of the RSK, the state whose citizens they were at the time. This explanation contravenes provisions of the Convention on the Status of Refugees.[321]

On 10 October 2001 the HLC filed before the District Court in Belgrade another appeal against what it said was disproportionate compensation for a forcibly mobilised refugee from Croatia, Dušan Grbić. The first-instance court ordered the Republic of Serbia to pay Grbić the sum of 50,000 dinars (DEM 1,666 at the official rate) as compensation for his suffering following illegal arrest and transport out of the Republic of Serbia. The HLC said the court had failed to find the Republic responsible for the damages suffered by Grbić after his handover to the military authorities of the then RSK and his transfer to a territory affected by war.[322]

Another in the series of inadequate compensation appeals was filed on 24 October 2001. The Republic of Serbia was ordered to pay plaintiff Ljuban Mrđenović the sum of 50,000 dinars (DEM 1,666 at the official rate) as compensation for damages suatained as a result of his illegal arrest and handover to the RSK in August 1995. Citing the above-

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[318] *Blic*, 25 October, p. 9.
[319] HLC, Press Release, 15 November.
[320] HLC, Press Release, 19 July.
[321] HLC, Press Release, 15 November.
[322] HLC, Press Release, 10 October.

mentioned opinion of the Supreme Court of Serbia, the court awarded Mrđenović no compensation for the damages sustained during the time he spent on the warfront.[323]

Only in the cases of four forcibly mobilised refugees from Croatia – Nikola Vranešević, Milan Zrnica, Lazo Pupavac and Miodrag Kozar – did the District Court in Belgrade uphold the verdicts of the First Municipal Court ordering each to be awarded compensation of 50,000 dinars (DEM 1,666 at the official rate) for their illegal arrests and transport to the warfronts and the damages sustained there.[324] The District Court rejected the appeal of the Republic of Serbia and upheld the ruling that the illegal actions by the Serbian police had caused all the damages sustained by the refugees from the moment of their arrests in Serbia until their return from a period spent in captivity in a Moslem army camp in Bihać. The District Court was not guided by the position of the Supreme Court of Serbia that the Republic of Serbia was responsible only for the illegal arrests on its own territory because "(Serbia) had not sent the refugees into combat". However, like in the cases listed above, the actual awards are wholly disproportionate to the level of the suffering of the forcibly mobilised refugees and cannot offer them moral or material satisfaction.[325]

3.2.3. Integration

Many younger refugees or displaced persons have decided to remain where they are now living and to seek at least temporary integration there.[326]

According to a WFP report, the most threatened categories are refugees and displaced persons living in collective centres, followed by welfare cases in local populations, refugees and displaced persons in private accomodation, and pensioners.

Serbian Commissioner for Refugees Sandra Raškovic Ivić has said that a sum of 2.5 billion dollars would be needed to resolve the problems of finding permanent employment and accomodation for refugees. There exists a plan under which the problem of integration at local level should be resolved in the next 12 years, in the first of which 1,800 flats should be built, 2,200 farming plots secured and about 400 collective centres reconstructed in Serbia.

Republican Minister for Social Affairs Gordana Matković has said that special efforts will be made to help secure suitable accommodation for elderly and disabled persons, single mothers and children without parental care.[327]

On 10 July 2001 the Serbian Government announced the formation of a Working Group for Resolving Refugee Questions to operate at an inter-ministry level and to be made up of representatives of the Commissariat for Refugees, the Ministry of Labour and the Ministry of the Economy and Privatisation. The Working Group would be tasked with drafting a national plan for resolving the problem of refugees and displaced persons in Serbia. The Secretariat, whose operation was made possible by the UN High Commissioner for Refugees (UNHCR), The UN Development Programme (UNDP) and

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[323] HLC, Press Release, 24 October.
[324] Plaintiffs represented by HLC lawyers.
[325] HLC, Press Release, 21 December.
[326] Special Coordinator of the Pact for Stability for South-Eastern Europe, *Regional Return Initiative Agenda for Regional Action for Refugees and Displaced Persons*, Brussels, 27 June 2001.
[327] *Glas javnosti*, 29 May, *Većina izbeglica ne želi da se vrati* (Most Refugees Don't Want to Return).

the UN Office for the Coordination of Humanitarian Affairs (OCHA), begun its work in December.[328]

The World Food Programme (WFP) has, however, begun gradually reducing assistance to the FRY. The joint WFP – UNHCR programme – *Joint Food Needs Assessment Mission* (JFNAM) – will be completed by mid–2002 if the economic situation in Serbia becomes more stable. As far as refugees are concerned, food aid to the impoverished part of that population will end in June 2002 and will be decided jointly the Government and the UNHCR, in keeping with the objective situation. Various forms of humanitarian assistance are expected until then. The JFNAM and the Federal Government are both calling for altering criteria for choosing future beneficiaries from special categories to those who are threatened in all categories, as the difficulties faced by refugees, displaced persons and impoverished members of local populations are exactly the same.[329]

Since June 1999, the International Committee of the Red Cross (ICRC) and the Yugoslav Red Cross have been supplying monthly food and hygiene parcels to a great majority of the more than 228,500 displaced persons currently living in FRY territory.

In June 2001, somewhat over one-half (135,000) of all displaced persons in FRY territory received this form of aid, in keeping with the new criteria adopted by the ICRC and Yugoslav Red Cross, according to which only specific categories of people are entitled to humanitarian aid. These categories include: people housed in collective centres, single parents, children under 18, pregnant women, women over 60 and men over 65, mentally-disturbed persons, disabled persons and chronic sufferers.

It is no longer families that receive food aid, but individuals entitled to it under the said criteria.

Since January 2001, the ICRC has been increasingly considering the possibility of replacing traditional direct assistance with support aimed at helping beneficiaries to gain their own independence – projects which generate income, for the moment aimed mainly at the agricultural sector.[330]

3.3. Displaced persons

3.3.1. The legal status of displaced persons – The status of persons who fled from the territory of Kosovo to the rest of Serbia or Montenegro in the second half of 1999 has still not been resolved. By the end of 2001, no regulations had been adopted in the FRY to determine their status,[331] so that in the absence of legislation regulating the matter, the Yugoslav authorities should in keeping with Article 10 of the FRY Constitution apply relevant international documents, like the Principles of Displacement.[332]

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[328] OCHA Belgrade, *Humanitarian Situation Report*, 2 – 15 June 2001.

[329] WFP/ UNHCR, *Joint Food Needs Assessment Mission* (JFNAM), FRY, July 2001.

[330] ICRC, *Fact sheet ICRC in FRY*, 13 July 2001, <http://www.icrc.org>.

[331] SDL NHLO Bilten, June 2001, p. 11.

[332] The Principles of Displacement were adopted in 1998 as an annex to Resolution No. 1997/39 of the UN Commission for Human Rights at its 53 session. The document defines displaced persons as individuals or groups of individuals forced to flee from or leave their homes or residences due to armed conflicts, a situation of general violence, human rights violations, disasters – whether natural or caused by man – who have not crossed over internationally-recognised borders. Under the general principles, displaced persons enjoy all rights and liberties both in international and domestic legislations as the citizens of the state in

3.3.2. The actual status of displaced persons in the FRY – Displaced persons in the FRY unfortunately enjoy none of the rights defined in the General Principles of Displacement. For example, displaced persons who are housed in unrecognised collective centres (not recognised by the Commissariat for Refugees of the Republic of Serbia)[333] cannot get certificates of residence because they have no statement by the owner of the property that the displaced persons live there. They are thereby prevented from applying for new identity cards or passports (for which a valid certificate of residence is an essential requirement). In the worst situation are Roma who fled from Kosovo whose lack of proof of citizenship or birth certificates prevents them from applying for identification papers and thereby exercising their elementary human rights.[334] Tenants of unrecognised collective centres have no protection at all in case the properties' owners decide to move them out and change the manner of use of the property.

In official collective centres, on the basis of a lease contract concluded with the property's owner, the Commissariat for Refugees pays all utility costs and rents, and the displaced persons living in such centres have a fixed address, on the basis of which they can get a certificate of residence.

Registers of births, marriages and deaths from Kosovo have been moved to central Serbia, which makes it more difficult for displaced persons to obtain the relevant certificates because of high travel costs. Internally displaced persons cannot change their permanent residence, or apply for a permanent rather than temporary residence, even in cases where they fulfil all the prescribed conditions.[335]

As many of the said persons had been employed in the state sector, they are entitled to receive a certain percentage of their former pay and to be offered appropriate positions in their former employer's branches elsewhere in Serbia, but payments they receive are few and irregular, and most are refused when they seek a job with or assistance from their former employer in Kosovo. Persons who were employed in the agriculture or private business receive no aid at all.[336] The situation with retirement benefits is the same, although pensioners are a threatened category in the FRY generally.

The situation in collective centres is highly unsatisfactory as regards living space, privacy, running water, sanitary installations and other fittings. According to IFRC data, 15% of all displaced families, including those in private accommodation and collective centres, live in just 3–10 square metres.[337] According to OCHA data, two-thirds of all persons living in collective centres have no income of any kind.[338]

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question, without any negative discrimination. The state authorities have an explicit responsibility to render assistance and protection within their jurisdiction. Displaced persons are entitled to seek and receive the protection of and humanitarian assistance from the said authorities. The authorities have an obligation to issue to them all documents necessary for their full enjoyment and exercise of their legal rights. The authorities must in particular facilitate the issue of new documents or replacement of those papers lost during the displacement period.

[333] There are in the FRY about 550 collective centres – at least 100 of them are not recognised.

[334] HLC, Press Release, 26 November.

[335] NRC Global IDP database: Yugoslavia section: *Documentation Needs and Citizenship*.

[336] Results of a study conducted by the GRUPA 484 in collective centres in the vicinity of Belgrade, July 2001.

[337] IFRC, 7 August 2000.

[338] UNHCR, *Position On The Continued Protection Needs of Individuals From Kosovo*, March 2001.

One of the most important questions with which these persons are faced is that of their property in Kosovo. In an effort to resolve this problem, the UNMIK adopted on 15 November 1999, Regulation No. 1999/23 on the foundation of a Housing and Property Directorate (HPD) and a Housing and Property Claims Commission (HPCC).[339]

The HPD is in charge of regulating housing and property and settling disputes concerning property used as housing. The claims the HPD does not manage to settle are passed on to the HPCC. It is important to stress that regular courts are not authorised to handle claims relating to property with which the HPCC has been charged.

The HPD and HPCC are in charge of informing internally displaced persons about the different types of claims these persons may make relating to their property.[340] The initial deadline for filing claims to the HPD/HPCC was 1 December 2001 but this has since been extended by 12 months.

Until now HPD/HPCC offices existed only in Kosovo, making it difficult to approach them. The Memorandum on Cooperation signed by the FRY and UNMIK on 5 November 2001 anticipates the opening of representative offices in Serbia in 2001 (one has been opened in Novi Pazar, and Belgrade, Niš and Kraljevo are to follow), and in Montenegro in 2002; the HPD/HPCC will now be far more accessible.

Also important is Regulation No. 2001/17 on the registration of immovable property sales contracts in some parts of Kosovo, which came into force on 22 August 2001. The aim of the regulation was to protect ethnic minorities from extorted sales of property in areas of strategic importance for the preservation of minority communities.[341]

3.3.3. The prospects for returning to Kosovo – UN Security Council Resolution 1244 guarantees the safe return of all Kosovo refugees and displaced persons to their homes, but also the protection from enforced return. But an objective possibility of mass return still does not exist, owing primarily to the poor security situation in the province. The Serb population in Kosovo lives in enclaves under permanent KFOR guard, mainly without the necessary freedom of movement or any possibility of finding jobs, educating their children or securing adequate health protection.[342]

3.4. Conclusion

The position of refugees and displaced persons in the FRY continued to be very bad in 2001. The only visible improvement over the preceding period is much more benevolent stance of the Government and the Commissariat for Refugees. The international community is investing some effort in securing a return back to Kosovo, but the appropriate conditions for a mass return still do not exist and the entire process can still be said to be in an experimental stage.

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[339] UNMIK Regulation No. 1999/23, *On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission*, 15 November 1999.

[340] This includes, among other things: a request for the property to be placed under HPD/HPCC administration, a request for resolving the question of illegal occupancy by obliging the temporary occupants to pay fair compensation for the use of the flat/house, and a request for making possible reconstruction of property that has been damaged or destroyed.

[341] UNHCR/OSCE, *Assessment of the Situation of Ethnic Minorities in Kosovo*, March 2001 – August 2001. See IV.1.

[342] So far the only organised return has been to the village of Osojane, where Serbs have moved into 55 reconstructed homes. Another 50 houses are expected to be reconstructed in Osojane in 2002.

Conditions for the return of refugees to Bosnia and Herzegovina and Croatia are better, but a large number of them have opted for integration into the local community.

4. Truth and Reconciliation

4.1. The overall atmosphere at the beginning of 2001

Up until the historic changes which took place in Yugoslavia and Serbia in October and December 2000, war crimes, reconciliation between individuals, peoples and states in the region of the former Socialist Federal Republic of Yugoslavia (SFRY), the prosecution of those responsible for the tragic events and generally coming to terms with the past were questions which could only be raised within the civil sector. The state maintained a vigorous propaganda campaign aimed against those blaming the then authorities for the break-up of the SFRY, the conflicts and wars in it and the assistance those authorities rendered to the protagonists of armed conflicts and persons accused of war crimes and crimes against humanity. The cultural and media spheres were dominated by those who rejected completely every thought that the Serb leaders in Serbia and outside could bear any responsibility for the bloody post–1990 period.

Following the democratic changes in 2000, the public debate on establishing the truth, liability and reconciliation among all feuding sides came out into the open and gained legitimacy. There was now more public exposure and thus also awareness of the experiences of other countries, visits by representatives of foreign truth and reconciliation bodies, and their statements and reports.

The first signals that the state authorities would begin facing these issues came from the new federal foreign minister, Goran Svilanović, who stated on several occasions that an appropriate official body should be formed, albeit without defining precisely its nature and proposed composition.[343] According to reports not subsequently followed up by the media, the Yugoslav Ministry of Justice formed early in 2001 a working group tasked with drafting a statute or other legislative act on the establishment of a Yugoslav commission dealing with truth and reconciliation.

4.2. The Truth and Reconciliation Commission

In the atmosphere as it was at that time, there suddenly surfaced a report that Yugoslav President Vojislav Koštunica intended to set up such a commission by himself and that he had already held a meeting with potential members. This was confirmed by the publication in the *Sl. list SRJ* on 30 March 2001 of a Presidential Decree dated the previous day on the formation of a Truth and Reconciliation Commission.

According to the Decree, the mandate of the Commission was "organising research work on uncovering evidence in connection with the social, ethnic and political conflicts which led to the war and shedding light on the causes of those events; informing the domestic and foreign public about its work and findings; establishing co-operation with similar commissions and other bodies in the neighbouring and other countries for the purpose of exchanging operational experiences." The President did not quote a constitutional or legal basis for establishing the Commission, but instead cited an "obligation of the President of the Republic to oversee compliance with and enforcement

[343] *Radio B92*, Interview broadcasted 30 November, at <http//www.b92net/intervju/ 2000/1130.phtml>.

of constitutionality and legality and to contribute to the exercise of human rights and civil liberties".

The Decree also appointed the following to the Commission: Radovan Bigović (Dean of the Theological Faculty of the Serbian Orthodox Church), Mirjana Vasović (scientific counsel at the Institute of Social Sciences), Tibor Varady (professor at the Central European University in Budapest, former minister of justice in the Federal Government of Milan Panić), Svetlana Velmar Janković (writer from Belgrade), Mihajlo Vojvodić (Professor and former Dean of Belgrade University's Philosophy Faculty), Đorđije Vuković (Assistant Professor at BU's Philosophy Faculty), Sava Vuković (Bishop of Šumadija of the Serbian Orthodox Church), Vojin Dimitrijević (Director of the Belgrade Centre for Human Rights, former Professor at BU's Faculty of Law), Ljubodrag Dimić (Professor at the Belgrade University of Faculty of Philosophy), Slavoljub Djukić (free-lance journalist, former editor of the weekly *NIN*), Aleksandar Lojpur (attorney-at-law from Belgrade), Boško Mijatović (scientific counsel at the Institute of Economic Sciences), Radmila Nakarada (scientific associate of the Institute for European Studies), Predrag Palavestra (member of the Serbian Academy of Sciences and Arts), Latinka Perović (from Belgrade historian, a senior official of the League of Communists of Serbia in the 1960s and early 1970s), Zoran Stanković (forensic medicine expert, Yugoslav People's Army/JNA/general), Svetozar Stojanović (scientific counsel at the Institute of Social Sciences, held the post of advisor to former FRY President Dobrica Ćosić), Darko Tanasković (Professor at BU's Philology Faculty, former FRY Ambassador to Turkey) and Sulejman Hrnjica (Professor at BU's Philosophy Faculty).

Three of the above submitted immediately their resignations – Latinka Perović, Vojin Dimitrijević and Tibor Varady. The first two explained their reasons in open letters to President Koštunica[344]. Latinka Perović said she had expected the commission to be a fully independent rather than a state-appointed body, while Vojin Dimitrijević said that in his view the Commission lacked sufficient powers (for example to summon witnesses), that its mandate was too broad (going back too far) and that it lacked a single member from Montenegro, Serbia's smaller partner in the federation.

The remaining members of the Commission adopted at their first session the Commission's Basic Rules of Procedure, including the following:

"The purpose of the Commission is the facing with the truth on the conflicts in the SFRY and the successor states, which resulted in the crimes against peace, numerous violations of human rights, as well as war and humanitarian law thus to contribute to the general reconciliation inside Yugoslavia and with the neighbouring nations" and ... The Commission shall comprehensively examine and establish the causes and courses of conflicts conducive to the disintegration of the former state and the war causing enormous human sufferings and destruction in the past decade."

The "Commission shall organise research on the state crisis and social conflicts which resulted in the outbreak of the war. The Commission shall also seek to clarify the chain of causality of the events concerned. The Commission shall notify the public on the results of its work as established by these and other Rules of Procedure the Commission may adopt."

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[344] *Danas*, 18 April, pp. 1 and 6 and 21–22 April, p. II. The other Commission members expressed their regret over the resignations: *Politika*, 19 April, p. 12; *Danas*, 19 April, p. 3.

The Commission shall also “seek to establish co-operation with similar commissions and other governmental and non-governmental bodies in the neighbouring countries, as well as with international governmental and non-governmental organisations and bodies.”

The Commission must be completely independent: “The Commission shall consist of individuals who shall fully retain their personal status and professional independence with respect to the Commission Founder as well as any other political, state, international or other body or organisation. The Commission's work shall be of unwarranted interference by any individual or group, the Commission founder or any other state or political agency or body. The Commission shall consist of people whose names are listed in the Decision. The Founder may, if needed and subject to the previous written approval of the Commission, decide to appoint a new or terminate the membership of a Commission member. The Commission's consent on entry or termination of its membership shall be deemed existent if the Decision to that effect is voted in by a two-third majority of Commission members.”

“The Commission shall, upon the Founder's proposal, elect one of its members for the Commission Co-ordinator. The Co-ordinator shall organise the work of the Commission .... The Commission shall elect one of its members to act as its Rapporteur. The Rapporteur shall represent the Commission in its relations with the public, state bodies, international organisations and other organisations and bodies. The Rapporteur shall be elected for a period of six months. However, any Commission member may propose him/herself or another member to act as the Rapporteur. Decisions on such proposals shall be taken by secret vote. In the event of more than one candidate being proposed, the one who obtains the largest number of votes of the members present shall be elected. If the proposal for the change of Rapporteur is given before the expiry of the anticipated six-month tenure, the new Rapporteur may be elected only providing he/she obtains the votes of over half the Commission members. If need may be, the Rapporteur may, in co-operation with the Co-ordinator appoint a delegation of Commission members to establish co-operation with other similar bodies, domestic or international government and non-governmental organisations.

Using the authorities vested in it by the Founder in Section 3 of the above-mentioned Decision, the Commission shall elect a Secretary who shall be an employee in the Office of the Founder and shall have the job of providing the relevant services to the Commission and its bodies. The Commission Secretary shall be appointed by the Co-ordinator in agreement with the Office of the Commission Founder.

The Commission shall operate through working groups to be set up for such areas as historical data, constitutional issues, media, culture, economy, social-political relations etc. The Secretary shall notify all Commission members on the meetings of all working groups and all such meetings shall be open to all Commission members. General sessions of the Commission shall review the results of all working groups.”

Using the authority vested in it by the Founder in Section 3 of the above-mentioned Decision, the Commission shall establish that the Co-ordinator or the Commission working groups may decide to employ professionals or expert teams, as well as institutes and NGOs in specific research undertakings. The work of these auxiliary bodies shall be financed from the Commission's budget.

The Commission's operations shall be financed from the state budget and public donations, subject to the agreement of the Co-ordinator and the Office of the Founder.

Under the rules, the work of the Commission is public, in that after each Commission session Rapporteur shall "convene a press conference to inform the public on the Commission's proceedings." The Commission shall also "publish collections of works presenting the results of the research carried out by the Commission ... and reports which will provide a clear and synthesised overview of its work as well as that of its working groups and expert teams."

In accordance with the rules, on April 17 Professor Ljubodrag Dimić was elected to the post of Co-ordinator, and Dr Radmila Nakarada to the post of Rapporteur.

The Commission adopted at its first meting the *Elements for the Programme Document of the Commission for Truth and Reconciliation*. According to the text, "attempting to find the truth and accomplish historical reconciliation means:

– critically reappraising oneself, in the first place, as well as the others – reassessing one's own actions, failures, responsibilities, share in events and processes;

– relinquishing suggestive and emotional views arising from a public opinion consciousness and the need to force one's own views, self-assertiveness and value systems on others,

– openly appraising the situation in a state which is materially impoverished, morally damaged, extensively neglected, spiritually confused, destruction-riddled, eroded by separatisms and demolished by nationalisms;

– coming face to face without complexes and in rational manner with the frightening contours of the image the world has formed of the Serbs and Serbia in the last decade of the 20th century;

– reaching a new self-assertion and identity by reappraising the demographic state of the nation, its physical capacities, economic and technological potential, natural resources, social needs, institutions, political structures, national consciousness, ideas, the "dangerously" eroded standards of moral value, knowledge, tradition, habits, patriarchal and modern environments;

– carefully assessing the accumulated experience with a knowledge that it is possible to live with it and draw lessons from it only if has been thoroughly studied and rationally imparted."

According to the Elements, "The Commission would stimulate investigation of the causes and course of ethnic strife in the region of the former Yugoslavia with the aim of acquiring information which would offer an objective picture of the events and annul good-and-evil perceptions of victims and executioners. In that context, the Commission would organise comprehensive historical, legal, economic, sociological, politicological, psychological, cultural, linguistic research ... The Commission and the research teams it would form would endeavour to recognise the internal and international circumstances in which wars were waged, identify the real interests which initiated them, uncover their brutal character, establish the consequences they left as their legacy, and identify the scars etched into social and individual consciousness".

The Commission seeks the "understanding and support of the state authorities, which would have to allow its members and associate expert teams insight into records kept by the Archives of Yugoslavia, the Presidential Archives, the Yugoslav Army (VJ) Archives, the Interior Ministry Archives, the Foreign Ministry Archives and others".

The Commission's members met the critical domestic and international public at the international conference "The Search for Truth and Responsibility – Towards a Democratic Future", organised by the local *Radio B92* in Belgrade from 18–20 May 2001. The keynote speaker was President Vojislav Koštunica, while one of the reports was submitted by Commission Rapporteur Radmila Nakarada. The gathering was also addressed by Alex Boraine, Vice-President of the corresponding South African commission and the Director of the New York-based Institute for Transitional Justice, who was also presented as an advisor to the Yugoslav commission. Some participants came out strongly against the manner in which the Commission was established, its composition and programme of activities. Some even went as far as to say that the Commission was founded with the aim of delaying and obstructing Yugoslavia's co-operation with the War Crimes Tribunal at The Hague. Objections of this kind had also been voiced on earlier occasions.[345]

Very little has been heard about the work of the Commission since the Conference. According to a newspaper report dated 13 August, the Commission had still not been given an office or even a telephone line, and its budget had not been defined.[346] Simonida Simonović wrote in *Danas* in November 2001 that the "Truth and Reconciliation Commission has fallen into a state of deep hibernation".[347] Asked why the Commission had not proceeded past its first paper, Commission Co-ordinator Ljubodrag Dimić said in the *Radio B92 Katarza* broadcast on December 10:

"The Commission has had its first document for several months now. The obstacles are numerous, both mental, subjective and objective in character, but experience we have gathered from the work of similar commissions in other countries has shown that their formation had lasted at least six months each. We encountered a labyrinth of bureaucratic problems, from which we seem to have extricated ourselves in the past weeks and months, so that we shall probably begin work by the New Year with our own address, telephone number and letterhead, and a possibility of establishing contacts and having our own office which all those who want to participate in a project as serious as ours can contact, and I believe that already this will change the situation environmentally and make some efforts already invested more visible, and some results we want to accomplish more feasible or achievable. What is important is the will, what is important is the fact that at this moment what I think is a large part of our society, or even a majority, feels a need to learn the truth about ourselves, what is important is the realisation that we have no future if we fail to reassess ourselves above everything else, if we fail to critically review some directions along which we need to proceed. That co-operation will be established forthwith, and I believe that without an open exchange of information and data we have no chance of success, no chance of critically reassessing ourselves with all our good and bad sides, and all our attempts to see ourselves and show ourselves most often as better than we really are."[348]

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[345] *Danas*, 21–22 April, p. II. Interview with Boraine published in *Danas*, 22 May, p. 8.
[346] *Glas javnosti*, 13 August, p. 4, *Dug i skup hod do istine* (The Long and Expensive Trek to the Truth).
[347] *Danas*, 7 November, p. 6, *Dajmo istini šansu* (Give Truth a Chance) and *Danas*, 8 November, p. 8, *Lični oprost zarad šire dobra* (Personal Forgiveness for the Sake of the General Well-Being).
[348] See <http://www.b92net/emisije/katarza/2001_1210.phtml>.

Bishop Sava died on 17 June 2001. Darko Tanasković has been appointed FRY Ambassador with the Holy See. On 31 December 2001 four seats on the Commission, vacated by three resignations and the death of one member, remained open.

4.3. The work of non-governmental organisations

Most initiatives for establishing the truth and achieving reconciliation came from NGOs, the most prominent being the *Radio B92's* "Truths, Responsibilities and Reconciliations" project. The radio's publishing house, *Samizdat Free B92,* has published a number of books on the subject. *B92* presented at the conference mentioned above the results of a study conducted in the second half of April which show that there has been little progress towards accomplishing reconciliation with neighbouring peoples. The study showed that some 63.6% of the respondents in Serbia believed extreme caution was needed in relations with other people, 55.8% advised caution in dealing with other nationalities, 39.9% said the peoples with whom war had been waged should never again be trusted, while no fewer than 21% of those between the ages of 18 and 29 and 34.6% aged over 60 showed no readiness at all for reconciliation with the peoples who had been in conflict with Serbs. In response to the question on who had "done the most in the defence of the Serb nation in the wars in the last decade of the 20th century", the names topping the list were those of Ratko Mladić (41.8 %), Radovan Karadžić (28.5%), (the late) Željko "Arkan" Ražnatović (23.7%) and Slobodan Milošević (17.1 %) – all indicted for war crimes by the ICTY.[349]

[349] *Viđenje istine u Srbiji* (Perceptions of the Truth in Serbia), SMMRI, 2001.

Appendix 1 – The Most Important Human Rights Treaties Binding the FRY

Appendix 1

The Most Important Human Rights Treaties Binding the Federal Republic of Yugoslavia

– Convention against Discrimination in Education, *Sl. list SFRJ (Dodatak)*, No. 4/64.

– Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Medjunarodni ugovori)*, No. 9/91.

– Convention for the Suppression on the Traffic in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, No. 2/51.

– Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, *Sl. list FNRJ (Dodatak)*, No. 3/61.

– Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ*, No. 8/58.

– Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ*, No. 11/58.

– Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatak)*, No. 13/64.

– Convention on Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, No. 7/60.

– Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ*, No. 11/81.

– Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, No. 7/58.

– Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, *Sl. list SFRJ (Medjunarodni ugovori)*, No. 50/70.

– Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, No. 7/54.

– Convention on the Prevention and Punishment of the Crime of the Genocide, *Sl. vesnik Prezidijuma Narodne skupštine FNRJ*, No. 2/50.

– Convention on the Rights of the Child, *Sl. list SFRJ (Medjunarodni ugovori)*, No. 15/90; *Sl. list SRJ (Medjunarodni ugovori)*, No. 4/96; *Sl. list SRJ*, No. 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*, No. 9/59, *Sl. list FNRJ (Dodatak)*, No. 7/60, *Sl. list SFRJ (Dodatak)*, No. 2/64.

– International Convention on the Elimination of All Forms of Racial Discrimination, *Sl. list SFRJ (Medjunarodni ugovori)*, No. 6/67.

– International Convention on the Suppression and Punishment of the Crime of Apartheid, *Sl. list SRFJ,* No. 14/75.

– International Covenant on Civil and Political Rights, *Sl. list SFRJ*, No. 7/71.

– International Covenant on Economic, Social and Cultural Rights, *Sl. list SFRJ*, No. 7/71.

– Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Dodatak)*, No. 6/55.

– Protocol on Relating to the Status of Refugees, *Sl. list SFRJ (Dodatak)*, No. 15/67.

– Slavery Convention, *Sl. novine Kraljevine Jugoslavije*, No. 234/1929.

– Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak)*, No. 7/58.

Appendix 2 – Legislation Concerning Human Rights in the FRY

Appendix 2

Legislation Concerning Human Rights in the Federal Republic of Yugoslavia

Constitutions

– The Constitution of the Federal Republic of Yugoslavia, *Sl. list SRJ,* No. 1/92.

– The Constitution of the Republic of Serbia, *Sl. glasnik RS*, No. 1/90.

– The Constitution of the Republic of Montenegro, *Sl. list RCG,* No. 48/92.

Federal Legislation

– The Act on the Association of Citizens in Societies, Social Organisations and Political Organisations, *Sl. list SFRJ*, No. 42/90, *Sl. list SRJ*, Nos. 16/93, 31/93, 41/93, 50/93, 24/94, 28/96, 73/00.

– The Act on Bases of Labour Relations, *Sl. list SRJ*, Nos. 29/96, 51/99.

– The Act on Bases of the Pension and Disability Insurance, *Sl. list SRJ*, Nos. 30/96, 58/98, 70/01, 3/02.

– The Act on the Bases of the State Security System, *Sl. list SFRJ*, Nos. 15/84, 42/90, *Sl. list SRJ*, No. 15/00.

– The Act on Election of Federal Deputies in the Chamber of Republics of the Federal Assembly, *Sl. list SRJ*, Nos. 32/00, 73/00.

– The Act on Election and Term of the President of the Republic, *Sl. list SRJ*, No. 32/00.

– The Act on Election of Deputies to the Chamber of Citizens of the Federal Assembly, *Sl. list SRJ*, Nos. 57/93, 32/00, 36/00, 73/00.

– The Act on Enterprises, *Sl. list SRJ*, Nos. 29/96, 33/96, 29/97, 58/98, 74/99, 9/01.

– The Act on Finansing of Political Parties, *Sl. list SRJ*, No. 73/00.

– The Act on Movement and Residents Aliens, *Sl. list SFRJ*, Nos. 56/80, 53/85, 30/89, 26/90, 53/91, *Sl. list SRJ*, Nos. 16/93, 31/93, 41/93, 53/93, 24/94, 28/96.

– The Act on the Principles of Property Relations, *Sl. list SFRJ*, Nos. 6/80, 36/90, *Sl. list SRJ*, No. 29/96.

– The Act on Repealing the Decree passed by the Presidium of the FPRY National Assembly by which the Karadjordjević royal family were denied of their Yugoslav citizenship and their property confiscated, *Sl. list SRJ*, No. 9/01.

– The Yugoslav Army Act, *Sl. list SRJ*, Nos. 43/94, 28/96, 44/99, 74/99, 3/02.

– The Act on Yugoslav Citizens' Travel Documents, *Sl. list SRJ*, Nos. 33/96, 46/96, 12/98, 44/99, 15/00, 7/01, 71/01.

– The Amnesty Act, *Sl. list SRJ*, No. 9/01.

– 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 Criminal Procedure Code, *Sl. list SFRJ*, Nos. 4/77, 36/77, 14/85, 26/86, 74/87, 57/89, 3/90, *Sl. list SRJ*, Nos. 27/92, 24/94.

– The Criminal Procedure Code, *Sl. list SRJ*, No. 70/01 (new Criminal Procedure Code entering into force by the end of March 2002).

– Decision on Abrogation of the Payment of the Special Tax on Foreign Travel, *Sl. list SRJ*, No. 61/00.

– Decree on the Borba Federal Public Company, *Sl. list SRJ*, Nos. 15/97, 56/98, 10/00, 17/00, 34/00,7/01, 12/01.

– The General Administrative Procedure Act, *Sl. list SRJ.* Nos. 33/97, 31/01.

– The Introduction of the Register Numbers of the Citizens Act, *Sl. list SFRJ*, No. 58/76.

– The Federal Criminal Code, *Sl. list SFRJ*, Nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90, 54/90, *Sl. list SRJ*, Nos. 35/92, 37/93, 24/94, 61/01.

– The Personal Data Protection Act, *Sl. list*, Nos. 24/98, 26/98.

– The Procedure for the Registration in the Court Register Act, *Sl. list SRJ*, No. 80/94.

– 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*, Nos. 44/76, 22/91, *Sl. list SRJ*, No. 46/96.

– The Strikes Act, *Sl. list SRJ*, No. 29/96.

– The Yugoslav Citizenship Act, *Sl. list SRJ*, Nos. 33/96, 9/01.

– The Yugoslav Enviroment Protection Act, *Sl. list SRJ*, No. 24/98.

Republic of Serbia

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

– Regulation on the Use of Force, *Sl. glasnik RS*, Nos. 40/95, 48/95, 1/97.

– Rules on Entry of Trade Union Organisations in Register, *Sl. glasnik RS*, Nos. 6/97, 33/97, 49/00, 18/01.

– The Act on Abortion in Medical Facilities, *Sl. glasnik RS*, No. 16/95.

– The Act on Assembly of Citizens, *Sl. glasnik RS*, Nos. 51/92, 53/93, 67/93, 48/94, 29/01.

– The Act on Assets Owned by Republic of Serbia, *Sl. glasnik RS*, Nos. 53/95, 3/96, 54/96, 32/97.

– The Act on Child Welfare, *Sl. glasnik RS*, Nos. 49/92, 29/93, 53/93, 67/93, 28/94, 47/94, 48/94, 25/96, 29/01.

– The Act on Elementary Schools, *Sl. glasnik RS*, Nos. 50/92, 53/93, 67/93, 48/94, 66/94.

– The Act on Employment and on the Rights of Unemployed Persons, *Sl. glasnik RS*, Nos. 22/92, 73/92, 82/92, 56/93, 67/93, 34/94, 52/96, 46/98, 29/01.

– The Act on Financing of Political Parties, *Sl. glasnik RS*, No. 32/97.

– The Act on Judges, *Sl. glasnik RS*, No. 63/01.

– The Act on Labour Relations in Government Agencies, *Sl. glasnik RS*, Nos. 48/91, 66/91, 44/98, 49/99, 34/01.

– The Act on Medical Insurance, *Sl. glasnik RS*, Nos. 18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 46/98, 54/99, 29/01.

– The Act on Pensions and Disability Insurance, *Sl. glasnik RS*, Nos. 52/96, 48/98, 29/01.

– The Act on Political Organisations, *Sl. glasnik RS*, No. 37/90, 30/92, 53/93, 67/93, 48/94.

– The Act on the Seats and Districts of Courts and Public Prosecutor Offices, *Sl. glasnik RS*, No. 63/01.

– The Act on Shares Fund, *Sl. glasnik RS*, No. 38/01.

– The Act on Special Conditions for Real Property Transactions, *Sl. glasnik SRS*, Nos. 30/89, 42/89, *Sl. glasnik RS*, Nos. 55/90, 22/91, 53/93, 67/93, 48/94.

– The Act on Social Organisations and Citizens Associations, *Sl. glasnik SRS*, Nos. 24/82, 39/83, 17/84, 50/84, 45/85, 12/89, *Sl. glasnik RS*, Nos. 53/93, 67/93, 48/94.

– The Act on Social Security and Provision of Social Welfare, *Sl. glasnik RS*, Nos. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01.

– The Act on the Official Use of Languages and Scripts, *Sl. glasnik RS*, Nos. 45/91, 53/93, 67/93, 48/94.

– The Act on Organisational Structure of Courts, *Sl. glasnik RS*, No. 63/01.

– The Act on the State Administration, *Sl. glasnik RS*, Nos. 20/92, 6/93, 48/93, 53/93, 67/93, 48/94, 49/99.

– The Amnesty Act, *Sl. glasnik RS*, No. 10/01.

– The Building Lots Act, *Sl. glasnik RS*, Nos. 44/95, 16/97, 23/01.

– The Communication Systems Act, *Sl. glasnik RS*, No. 38/91.

– The Courts Act, *Sl. glasnik RS*, Nos. 46/91, 60/91, 18/92, 71/92, 63/01. (this act ceased producing effect on 1 January 2002, except provisions of Art. 14 – 20, which wuold cease to produce effect on 1 October 2002)

– The Decree Introducing Religious Instruction and an Alternative Subject in Elementary and Secondary Schools, *Sl. glasnik RS*, No. 46/01.

– The Decree on Opening State Security Service Secret Files, *Sl. glasnik RS*, Nos. 30/01, 31/01.

– The Election of the Members of Parliament Act, *Sl. glasnik RS*, Nos. 79/92, 83/92, 53/93, 67/93, 90/93, 107/93, 48/94, 32/97.

– The Election Act, *Sl. glasnik RS*, No. 35/00.

– The Elections of the President of the Republic Act, *Sl. glasnik RS*, Nos. 1/90, 79/92.

– The Enforcement of Criminal Sanctions Act, *Sl. glasnik RS*, Nos. 16/97, 34/01.

– The Expropriation Act, *Sl. glasnik SRS*, Nos. 40/84, 53/87, 22/89, *Sl. glasnik RS*, Nos. 6/90, 15/90, 53/95, 23/01.

– The Enviroment Protection Act, *Sl. glasnik RS*, Nos. 66/91, 83/92, 53/93, 67/93, 48/94, 44/95, 53/95.

– The Health Protection Act, *Sl. glasnik RS*, Nos. 17/92, 26/92, 50/92, 52/93, 53/93, 67/93, 48/94, 25/96.

– The High Judicial Council Act, *Sl. glasnik RS*, No. 63/01.

– The Housing Act, *Sl. glasnik RS*, Nos. 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94, 48/94, 44/95, 49/95, 16/97, 46/98, 26/01.

– The Inheritance Act, *Sl. glasnik RS*, No. 46/95.

– The Internal Affairs Act, *Sl. glasnik RS*, Nos. 44/91, 79/91, 54/96, 30/00, 8/01.

– The Labour Act, *Sl. glasnik RS*, Nos. 70/01, 73/01.

– The Labour Relations in Special Situations Act, *Sl. glasnik RS*, No. 40/90.

– The Legal Status of Religious Communities Act, *Sl. glasnik SRS*, No. 44/77.

– The Marriage and Family Relations Act, *Sl. glasnik SRS*, Nos. 22/80, 24/84, 11/88, *Sl. glasnik RS,* Nos. 22/93, 25/93, 35/94, 46/95, 29/01.

– The Ownership Transformation Act, *Sl. glasnik RS*, Nos. 32/97, 10/01.

– The Pardons Act, *Sl. glasnik RS*, Nos. 49/95, 50/95.

– The Privatisation Act, *Sl. glasnik RS*, No. 38/01.

– The Privatisation Agency Act, *Sl. glasnik RS*, No. 38/01.

– The Public Information Act, *Sl. glasnik RS*, Nos. 36/98, 2/01.

– The Public Prosecutors Office Act, *Sl. glasnik RS*, No. 63/01.

– The Radio and Television Act, *Sl. glasnik RS*, Nos. 48/91, 49/91, 53/93, 55/93, 67/93, 48/94, 11/01.

– The Refugees Act, *Sl. glasnik RS*, No. 18/92.

– The Safety of Work Act, *Sl. glasnik RS*, Nos. 42/91, 53/93, 67/93, 48/94, 42/98.

– The State of Emergency Act, *Sl. glasnik RS*, No. 19/91.

– The Act on Local Self-government, *Sl. glasnik RS*, Nos. 4/91, 79/92, 82/92, 47/94, 48/99, 49/99, 27/01.

– The Unique Registration Numbers of Citizens Act, *Sl. glasnik SRS*, Nos. 53/78, 5/83, 24/85, 6/89, *Sl. glasnik RS*, Nos. 53/93, 67/93, 48/94.

– The University Act, *Sl. glasnik RS*, No. 20/98.

– The Decision on Designation of Locations in Belgrade for Public Assembly, *Sl. list grada Beograda*, No. 13/97.

Republic of Montenegro

– The Decision on Competencies and Composition of the Republic Council for Protection of the Rights of the Members of the National and Ethnic Groups, *Sl. list RCG,* No. 32/93.

– The Decree on Displaced Persons, *Sl. list RCG*, No. 37/92.

– The Decree on Registration of Trade Union Organisations, *Sl. list RCG,* No. 20/91.

– The Act on Abortion Procedure, *Sl. list SRCG*, Nos. 29/79, 31/79, 29/89, *Sl. list RCG*, Nos. 28/91, 17/92, 27/94.

– The Act on Consitutional Court of Montenegro, *Sl. list RCG,* No. 21/93.

– The Act on Election of Deputies and Councilors, *Sl. list RCG,* Nos. 16/00, 9/01.

– The Act on Electoral Rolls, *Sl. list RCG*, Nos. 14/00, 30/01.

– The Act on Endowments, Foundations and Funds, *Sl. list SRCG*, No. 24/85.

– The Act on the Enforcement of Criminal Sanctions, *Sl. list RCG,* Nos. 25/94, 29/94.

– The Act on Health Protection and Medical Insurance, *Sl. list RCG*, Nos. 39/90, 21/91, 48/91, 17/92, 30/92, 58/92, 6/94, 27/94, 30/94, 16/95, 20/95, 22/95, 23/96.

– The Act on Finansing of Political Parties, *Sl. list RCG*, No. 44/97.

– The Act on Non-governmental Organisations, *Sl. list RCG,* No. 27/99.

– The Act on Public Assembly, *Sl. list RCG,* Nos. 57/92, 27/94.

– The Act on Social and Child Protection, *Sl. list RCG*, Nos. 45/93, 27/94, 16/95, 44/01.

– Act on the State Administration, *Sl. glasnik RCG*, No. 20/92.

– The Citizens Associations Act, *Sl. list SRCG,* Nos. 23/90, 26/90, 13/91: *Sl. list RCG*, Nos. 48/91, 17/92, 21/93, 27/94, 27/99.

– The Criminal Code, *Sl. list RCG,* Nos. 42/93, 14/94, 27/94.

– The Election of the President of the Republic Act, *Sl. list RCG,* Nos. 49/92, 50/92, 30/97.

– The Elementary School Act, *Sl. list RCG,* Nos. 34/91, 48/91, 17/92, 56/92, 30/93, 32/93, 27/94, 2/95, 20/95.

– The Employment Act, *Sl. list SRCG,* Nos. 29/90, 27/91, 28/91, *Sl. list RCG*, Nos. 48/91, 8/92, 17/92, 3/94, 27/94, 16/95, 22/95.

– The Enviroment Act, *Sl. list RCG*, Nos. 12/96, 55/00.

– The Family Law, *Sl. list SRCG,* No. 7/89.

– The Internal Affairs Act, *Sl. list RCG,* Nos. 24/94, 29/94.

– The Labour Relations Act, *Sl. list SRCG,* Nos. 29/90, 42/90, 28/91; *Sl. list RCG*, Nos. 48/91, 17/92, 27/94, 16/95, 21/96, 5/00.

– The Pardons Act, *Sl. list RCG,* Nos. 16/95, 12/98, 21/99.

– The Personal Names Act, *Sl. list RCG,* Nos. 20/93, 27/94.

– The Public Information Act, *Sl. list RCG,* No. 4/98.

– The Referendum Act, *Sl.list RCG*, Nos. 9/01, 17/01.

– The Rules on Register of Political Organisations, *Sl. list RCG,* No. 25/90, 46/90.

– The Act on Pensions and Disability Insurance, *Sl. list SRCG,* Nos. 14/83, 4/84, 12/85, 23/85, 3/86, 14/89, 29/89, 39/89, 42/90, 28/91, *Sl. list RCG*, Nos. 48/91, 17/92, 18/92, 14/93, 20/93, 27/94, SRJ 26/00 (SUS).

– The Secondary Schools Act, *Sl. list SRCG,* No. 28/91, *Sl. list RCG*, Nos. 35/91, 48/91, 17/92, 56/92, 27/94.

– The Unique Registration Numbers of Citizens Act, *Sl. list RCG,* Nos. 45/93, 27/94.