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HUMAN RIGHTS IN YUGOSLAVIA 1998

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

Belgrade Centre for Human Rights

Belgrade, 1999

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INTERNATIONAL HUMAN RIGHTS STANDARDS

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Abbreviations

A19	Article 19
AI	Amnesty International
ANEM	Association of the Independent Electronic Media
BBC	British Broadcasting Corporation
CAA	Centre for Anti-War Action
CESCR	International Covenant on Economic, Social and Cultural Rights of 16 December 1966
CESID	Center for Free Elections and Democracy
CoE	Council of Europe
Constitution of the FRY	Constitution of the Federal Republic of Yugoslavia of 27 April 1992
Constitution of RM	Constitution of the Republic of Montenegro of 13 October 1992
Constitution of RS	Constitution of the Republic of Serbia of 28 September 1990
CPA	Criminal Procedure Act
DC	Democratic Center Fund
DF CG	Democratic Forum for Human Rights and Inter-Ethnic Relations of Montenegro
EA	*Ravnopravnost* (Equality), Subotica
ECHR	European Convention on Human Rights and Fundamental Freedoms of 4 November 1950
FCC	Federal Constitutional Court
FH	Freedom House
FPRY	Federal People's Republic of Yugoslavia
FRY	Federal Republic of Yugoslavia

HB	Helsinki Committee for the Protection of the Rights and Freedoms of Bulgarians in Yugoslavia
HC	Helsinki Committee for Human Rights in Serbia
HLC	Humanitarian Law Center
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights of 16 December 1966
ICG	International Crisis Group
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHFHR	International Helsinki Federation for Human Rights
ILO	International Labour Organisation
Info. FRY 99	Information on the current situation in Kosovo and Metohija and efforts and measures for establishing a meaningful dialogue with the political representatives of the Albanian national minority with a view to reaching a political settlement, Information adopted in the meeting of the Federal Government of 14 January 1999
"KLA"	"Kosovo Liberation Army"
LCHR	Lawyers Committee for Human Rights
Montenegro	Republic of Montenegro
MRG	Minority Rights Group
NATO	North Atlantic Treaty Organisation
OSCE	Organisation for Security and Co-operation in Europe
PC	Penal Code
PCDHR	Council for the Defence of Human Rights and Freedoms, Priština
SD	U.S. Department of State Report
Serbia	Republic of Serbia

SFRY	Socialist Federal Republic of Yugoslavia
Sl. glasnik RS	*Službeni glasnik Republike Srbije* (Official Gazette of the Republic of Serbia)
Sl. list RCG	*Službeni list Republike Crne Gore* (Official Gazette of the Republic of Montenegro)
Sl. list SRJ	*Službeni list Savezne Republike Jugoslavije* (Official Gazette of the Federal Republic of Yugoslavia)
SC	The Sandžak Committee for the Protection of Human Rights and Freedoms
SRM	Socialist Republic of Montenegro
SRS	Socialist Republic of Serbia
UN	United Nations
UN doc.	United Nations document
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
Universal Declaration	Universal Declaration of Human Rights, UN General Assembly resolution 217 A (III) of 10 December 1948

Contents

Preface

The Report on the human rights situation in the Federal Republic of Yugoslavia in 1998 was produced by the Belgrade Centre for Human Rights with the wish to present to the public in Yugoslavia and abroad the most important information on how the internationally guaranteed human rights have been respected and enjoyed in the FRY. The intention of the Centre was to examine all the aspects in which human rights were manifested, regulated and enjoyed, restricted or violated in 1998 and to describe the circumstances which influence the true enjoyment of human rights in the country.

The Report consists of five parts.

In the first part constitutional, legal and administrative provisions on human rights are described and analysed. They are compared to international human rights standards and to the obligations that Yugoslavia has under international treaties. The findings in this part rely on the information and documents collected by the Centre and kept in its archives.

The second part of the Report is devoted to actual practice, i.e. to the *de facto* respect and enjoyment of human rights in the FRY. In order to present a clear and impartial picture the Centre did not rely only on its own research but on a careful study of the Yugoslav media and on available reports of organisations dealing with human rights, international and Yugoslav, governmental and non-governmental. The abundance of accumulated data, sometimes contradictory, prevented the Centre from always taking categorical stands, but the information and the sources have been faithfully reproduced so as to enable the readers to reach their own conclusions.

In the belief that the attitude of citizens towards their own rights and the rights of other human beings was as important as the tenor of legal provisions and their interpretation and application by the authorities, the Centre undertook, in the summer of 1998, a survey of the

public awareness of human rights on an important sample of citizens from all parts of Yugoslavia, except Kosovo and Metohija. The results of the survey are reproduced and interpreted in the third part of the Report.

A comprehensive report on the situation in a given period of time cannot be presented without some indications as to wider problems which have influenced the respect for human rights and their enjoyment by individuals. The fourth part of the 1998 Report therefore includes concise presentations of some topics which appeared of particular relevance: Kosovo and Metohija, refugees, the media, the autonomy of the universities and the International Criminal Tribunal for the former Yugoslavia. The reader is advised not to read other parts of the Report without referring to the relevant portion of the fourth part: this particularly applies to human rights in Kosovo and Metohija.

So as to facilitate comparisons of human rights situations in Yugoslavia at different times and in other countries the Centre undertook a comparative analysis of the situation in the former Yugoslavia (1983) and in the FRY (1998). The results are reported in part five.

The work on the Report started on 1 January 1998 and was completed on 20 January 1999. The relevant data for 1998 not available before the latter date were substituted by information from the previous year.

The Centre wishes to express its thanks to all collaborators on this Report, in particular to friends and colleagues associated with other organisations and institutions, for their determination, perseverance and patience.

Special gratitude is owed by the Belgrade Centre for Human Rights to the Danish Centre for Human Rights and the Royal Danish Ministry of Foreign Affairs for their generous support, without which this project would not have been possible.

Introduction

The Federal Republic of Yugoslavia (FRY) was officially created by the Constitution of 27 April 1992. As an alliance of the communist political leaderships of two republics of the former Socialist Federal Republic of Yugoslavia (SFRY) — Serbia and Montenegro — it had in fact existed even before that, during the crisis in the former SFRY in the second part of the 1980's and armed conflicts on its territory at the beginning of the next decade. Under the pressure of various disintegrative processes the SFRY formally ceased to exist, leaving behind itself five new states: the FRY, Slovenia, Croatia, Macedonia and Bosnia and Herzegovina.

Disregarding the dispute on whether it legally continues the existence of the previous state,[1] the FRY is without doubt one of the successor states of the former Yugoslavia and is thus bound by all international human rights treaties ratified by the SFRY. The number of these treaties is not small. However, no case was recorded where a court or another organ of the SFRY applied them in practice, although this was possible under its constitutions. A similar attitude towards international law has prevailed in the FRY, except in one case which was decided recently and which is addressed in this Report.

The SFRY was a "socialist" state with a soft variant of the "really existing socialism". Marxism was its official state ideology and the communist party ("The League of Communists of Yugoslavia") had the monopoly of political decision-making. There was even no formal separation of powers. In the Yugoslav party-state, law had not played an important role: it was dependent on the political decisions

1 Controversies on whether the SFRY disintegrated or whether four federal units (Slovenia, Croatia, Macedonia and Bosnia and Herzegovina) seceded from it are still alive. All FRY governments have taken the latter position and insisted on the legal identity of the SFRY and the FRY.

of the party leadership, which both personally and functionally was intertwined with the formal state structures.

In addition to the existence of international obligations regarding human rights, all successive constitutions of the SFRY, as well as those of its federal units, guaranteed human and civil rights which, however, were easily derogable by simple legislative acts and administrative regulations, or were simply ignored in practice. Furthermore, the Yugoslav constitutions did not contain the full catalogue of human rights enshrined in the treaties ratified by the SFRY. The deputies of the last session of the SFRY Federal Assembly, still almost without exception members of the League of Communists, belatedly recognised this: on 16 May 1990 (shortly before the disintegration of the SFRY), the upper house of the Parliament provisionally adopted a series of constitutional amendments; they included, *inter alia,* the proclamation of some hitherto disregarded human rights, such as the freedom of thought and religion, the right to private property, the right to privacy and the prohibition of discrimination on the basis of political opinions and social origin. This was an occasion for the parliamentarians to recognise that and even torture had not been prohibited by the previous constitutions![2] Nevertheless, the SFRY Constitution remained unchanged because the proposed amendments failed to receive the support of all constituent republics.

The SFRY enjoyed the reputation of a state "freer" than its ideological relatives in Central and Eastern Europe and the Far East. Improvements had started after the initial phase of the revolutionary communism and in particular after 1948, the years of the open conflict between the Communist Party of Yugoslavia and its leader, Josip Broz Tito, and the international centre of the communist movement, embodied in the Information Bureau of Communist Parties (*Informbureau*) and the omnipotent Secretary General of the Communist Party of the USSR, Joseph Stalin. The regime in Yugoslavia manifested great resilience in its showdown with the whole "socialist camp". However,

2 "Nacrt amandmana na Ustav SFRJ", *Skupštinski pregled, br. 40,* Belgrade, 21 May 1990

facing challenges to its legitimacy it started to reduce the intensity of political repression and even to adopt some liberal reforms.[3] Liberalisation did not affect the narrower political sphere, but new measures in economy and administration signified a partial retreat from ideological dogmatism and resulted in the reduction of powers of the central bureaucracy. These changes also affected the sphere of human rights. In the second part of the 1960s the unlimited powers of the secret police were restricted. The issuance of passports to citizens was facilitated and exit visas abolished, thus making the Yugoslav citizens the first subjects of any "socialist" country with relative freedom of international movement. To be sure, communist authorities did not recognise this freedom as a human right, in spite of its obligations under the International Covenant on Civil and Political Rights, which it had ratified in 1971.

As a founding member of the Non-Aligned Movement, the group of states playing at the time an important role in international relations, the SFRY had more influence in the United Nations and other universal organisations than suggested by its size and power. Yugoslavia's relations with the "capitalist" West, the "socialist" East and the "non-aligned" South were in the last period of its existence good, which enabled it to play an active diplomatic role. One of the favourable consequences for its citizens were the agreements abolishing visa requirements for their travel to many states.[4]

In accordance with the ideological wish to favour the working class, the last FRY Constitution of 1974 divided Yugoslavs into "working people" and "citizens": only the first category was entitled to all "self-managing rights". The system of socialist self-management, to which the 1974 Constitution devoted more space than to anything else, did not free the "working people" from the absolute rule of the party,

3 Nevertheless, the conflict with Stalin resulted in the merciless persecution of pro-Stalin and pro-Soviet communists in Yugoslavia. Thousands of persons were, without trial, sent to serve, what was euphemistically called, "administrative measures", i.e. were interned in isolated island camps in the Adriatic.

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

but allowed them a share in the decision-making at the place of work. Nonconformist statements by ordinary "workers", even when they were directed at their superiors appointed by the League of Communists, did not as a rule result in severe consequences or criminal prosecution. However, the system strongly controlled the activity of the intellectual elite, which was also limited through state ownership of the media, publishing houses, film companies, theatres, universities and research institutions. The resistance by the intellectuals was suppressed by police measures and other drastic means, such as the dismissal of university lecturers after the student protests in 1968. The infamous Article 133 of the Penal Code, making any statement which could "disturb the public" a punishable offence, was abolished only in 1988.

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

A description of the crisis which emerged in the SFRY and led to its disappearance is not a part of this Report. Nevertheless, the reader should bear in mind that in the twilight of the former Yugosla-

via, and especially during the armed conflicts which erupted in 1991, fundamental human rights were seriously violated by all political actors, from those who alleged to be state organs to sundry criminal groups attempting to ennoble their deeds by posturing as fighters for the national interest or the liberation of some of the ethnic groups. Although the rules of international humanitarian law had been exemplarily incorporated in the SFRY Penal Code and in the field manuals of the army, no person suspected to have committed war crimes or crimes against humanity has been seriously criminally persecuted in any successor state of the SFRY, including the FRY.

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

The first signs of serious disagreements among former communists became visible only in 1996 in Montenegro and led to an open rupture in the ruling DPS. Its reformist wing, led by Milo Djukanović, emerged victorious: it gained power in Montenegro and entered into a coalition with Montenegrin opposition parties with a similar orientation. The outcome of the intra-party conflict in DPS, and the resulting political changes in Montenegro, led quickly to a clash between the government of Montenegro, on the one side, and the government of Serbia and the federal government (which in 1998 still remained under the control of SPS and the President of the FRY, Slobodan

Milošević), on the other. The aggravation of this conflict marked the whole 1998.

Serbia entered 1998 with fresh memories of the three months long (winter 1996/1997) protests in Belgrade and other major cities against the rigging of the local elections. After stubborn resistance and use of violence against the demonstrators, the Serbian authorities indirectly admitted the irregularity of the elections through the adoption of a special bill, by which the Parliament, instead of electoral commissions and courts, recognised as final the initial (not tampered with) electoral results. Such conduct reinforced doubts as to the regularity of all previous elections in the FRY. In a paradoxical way the Serbian government and its propaganda apparatus themselves contributed to such suspicions by their insistence on claims that the latest elections in Montenegro, which had been won by the reformed DPS and its presidential candidate Milo Djukanović, had been irregular. Such claims were made with the intention to prepare the public for an attempt to *de facto* annul the results of the Montenegrin elections. On 13 January 1998 the followers of the unreformed wing of the Montenegrin communists, assembled in the new Socialist People's Party (SNP) attempted to invade the buildings of the government institutions in Podgorica, the capital of Montenegro. Several persons were injured in the clashes with the police, but the plan to topple the government of Montenegro failed.

Events in Montenegro had important effects on political developments in Serbia. With the intention to weaken the reformist forces in Montenegro, but also in Serbia, SPS was forced for the first time to seek formal alliance with other political parties. Its former ally, the Yugoslav Left (JUL), which has differed from SPS only by stronger communist rhetoric, was joined by the Serbian Radical Party (SRS) which, judged by its programme and the oratory of its indisputable leader Vojislav Šešelj, is a party of populist nationalism. In the course of 1997/1998 the regime gradually started to get closer to the nationalist and the monarchist Serbian Renewal Movement (SPO), which it had formerly considered its most dangerous opponent and even, in 1993, initiated proceedings to have it banned by the Constitutional

Court of Serbia.[5] SPS and JUL have entered into an informal coalition with SPO in Belgrade and some other places. The relation between SRS and SPO are still bad, at least in the realm of propaganda.

The authorities and the majority of political parties in the FRY have verbally supported human rights. However, since the beginning of the conflict in the former SFRY they have been obsessed by the desire to present and legitimise themselves predominantly as nationalists and patriots. Consequently collective rights of the nation have been paramount in their considerations: the attainments of collective rights of the respective nation have been treated as a prerequisite for the enjoyment of the individual rights of its members. This applies also to the political parties of national minorities. Their main aim has been the right to self-determination, which should lead to independence (Albanian parties) or to broad autonomy, territorial or personal (parties of other minorities). As in other European countries in transition, the inability of most political parties to recruit members belonging to both majority or minority ethnic groups has impoverished political life: persons belonging to minority groups have been unable to join mainstream political parties (which are either Serb or Montenegrin), and members of minorities have been compelled to associate only on the basis of their ethnicity and not according to their real political preferences and interests.

Unlike most other states that have emerged on the territory of former Yugoslavia, the FRY has remained pointedly non-homogenous in terms of the ethnicity of its citizens. The results of the latest census (1991) showed that the FRY then had 10,394,026 inhabitants, of whom only 7,023,814 were Serbs and Montenegrins (67.5%), while the rest were Albanians, Hungarians, Moslems, Roma, Slovaks and members of other ethnic groups. The prevalent official Serbo-Montenegrin national rhetoric has alienated a third of the population of the FRY and has weakened their civic motivation, which in turn has led the authorities and the ruling parties to express their strong doubts in the loyalty of citizens belonging to national minorities. The vicious circle of mistrust has thus been completed.

5 The proceedings were quietly dropped only in 1998.

The respect for human rights, and especially economic and social rights, has been eroded by the difficult economic situation in the country. By the decision of the UN Security Council the FRY was struck by economic sanctions almost immediately after its creation. This measure was justified by the involvement of the organs of the Yugoslav state in the war in Bosnia and Herzegovina. As all international sanctions of this kind they have strengthened the solidarity of the wide parts of the population with the regime, which has known how to use its media monopoly to offer only its own interpretation of the actions of the international community. Together with the war, sanctions have contributed to the criminalisation of the Yugoslav society. Enormous inflation in 1993 was caused by the simultaneous action of all these factors: it devastated the savings of citizens and transferred wealth into the hands of the narrow social stratum of the *nouveu-riches* and war profiteers, connected to the ruling political elite.

Hyperinflation was eliminated in 1994 but the economy has not recovered, partly because no privatisation plan has been implemented. Instead of fundamental changes towards the free market major companies, which used to be self-managing (social) enterprises, have been put under direct state control and are now owned by the state. The symbiosis of political and economic power has been more pronounced in the FRY than it used to be in the preceding "socialist" period: many directors of state enterprises have been simultaneously members of governments, federal or republic. Many workers who had been sent to involuntary leave because of the economic effects of international sanctions have not returned to work and go on receiving minimal compensation for fictitious employment.

The costs of living have been on constant increase. After the catastrophic leap of 222% in 1993, further increases were smaller but consistent and serious. In relation to the previous year they increased in 1996 for 91.5% and in 1997 for 21.7%. The rise of consumer prices, which was 116% in 1993, has continued since, and in 1997 it amounted to 18.5%. In 1990 imports were covered by exports by 78.1%; in 1997 this ratio was reduced to 50.5%. In the absence of income

deriving from economic activity the state has been forced to increase taxes for services, some of them non-existent. One of such taxes is the tax for every departure from the country, which has directly and in a discriminatory manner restricted the freedom of international movement of the nationals of Yugoslavia. As a result of the inflationary collapse, expenses for armed conflicts and the disastrous economic situation the state has considered itself unbound by its obligation to guarantee savings and social benefits.

There were some prospects that the atmosphere of war, which had reigned in the FRY from its very inception, would subside after the termination of the war in Bosnia and Herzegovina by the Dayton Agreement, which was negotiated by the then President of Serbia Slobodan Milošević as the head of the joint delegation of the FRY and the Bosnian Serbs. Milošević signed the agreement on behalf of the FRY.[6] Indeed, nationalistic propagandists were then temporarily restrained, but they returned in full pomp with the aggravation of the situation in Kosovo and Metohija, where even moderate political representatives of the ethnic Albanians do not accept any solution which does not amount to independence or *de facto* secession. Incitement to national hatred has been a constituent and legitimate content of the activity of the media owned by the state or by private persons favoured by the regime. Although such incitement has always constituted a criminal offence according to Yugoslav law no criminal proceedings have ever been instituted against persons suspected of advocating national hatred or intolerance.

The powers-to-be have inherited from the previous regime their mistrust of self-organisation of citizens and the civil society. Non-governmental organisations are now possible and legal and can be established easier than in the former SFRY. However, if they do not represent official attitudes or are critical of the authorities they have incessantly been subjected to accusations for alleged lack of patriotism

6 The Dayton — Paris Agreement has never been submitted to the Federal Assembly for ratification, although it was an international treaty in the sense of the FRY Constitution.

and susceptibility to foreign influences. Attacks against the civil sector have been facilitated by xenophobia, eagerly promoted by the state-owned media before, during and after the wars in the former Yugoslavia. In spite of this, non-governmental organisations have multiplied. At the beginning of 1998, at least 550 non-governmental organisations were registered in the FRY — the majority of them have been mainly or occasionally involved in human rights issues.[7]

7 See *Directory of Non-Governmental Nonprofit Organisations in the Federal Republic of Yugoslavia*, 2nd edition, Belgrade, Centre for the Development of the Non-Profit Sector, 1997.

I
LEGAL PROVISIONS RELATED TO HUMAN RIGHTS

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

1.1 Introduction

The present report provides an analysis of the compatibility of Yugoslav legislation with international standards of civil and political rights. The underlying conclusion of the report is that the incompatibility of federal and republic legislation with the Constitution of the Federal Republic of Yugoslavia (FRY), disregard of international standards in some important areas, as well as serious misgivings concerning the independence of the judiciary create a situation in which human rights are not adequately protected in Yugoslavia. Hence, one can hardly speak about the rule of law in the FRY.

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

Torture and the Convention on the Rights of the Child) were also taken into account.

This analysis of Yugoslav legislation also took into account, to a certain extent, the standards contained in the European Convention on Human Rights and Fundamental Freedoms (ECHR). Although the FR Yugoslavia is not a member of the Council of Europe and hence could not ratify the European Convention on Human Rights, it is believed that it is very important to analyse Yugoslav legislation also in view of the European human rights standards. The Belgrade Centre for Human Rights believes that the FR Yugoslavia should, like most European countries, become a member of the Council of Europe and ratify the European Convention on Human Rights. However, it should harmonise its legislation and practice with the ECHR standards beforehand, as did some countries, e.g. Finland and Hungary[8]. Therefore, the present report should represent an initial step in a comprehensive and detailed analysis of the compatibility of Yugoslav legislation with the ECHR.

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

a) whether a particular right is guaranteed at all;

b) if the answer to the above question is positive, what is the actual formulation and does that formulation differ from that contained in the International Covenant on Civil and Political Rights;

c) whether guarantees of a certain right provided by Yugoslav legislation and their interpretation by state authorities ensure

8 See: Andrew Drzemczewski, Ensuring Compatibility of Domestic Law with the European Convention on Human Rights Prior to Ratification: The Hungarian Model, *16 HRLJ 241* (1995).

the same scope and content of the right in question as the International Covenant on Civil and Political Rights;

d) whether restrictions of a right in question envisaged by the Yugoslav legislation correspond to those allowed by the International Covenant on Civil and Political Rights;

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

The report was prepared in the course of 1998. It is based on legislation that was in force on 31 December 1998. For each right a preliminary working paper was drafted, providing a detailed analysis of the compatibility of the Yugoslav legislation with international guarantees of the given right. The present final version of the report has been produced on the basis of those working versions.

1.2. Constitutional Provisions on Human Rights

According to the Constitution, adopted on 27 April 1992, the Federal Republic of Yugoslavia (FRY) is a federal state based on the equality of citizens and of its member republics, Serbia and Montenegro (Art. 1 of the FRY Constitution). The rule of law and separation of powers are principles proclaimed by the Constitution (Art. 9 and Art. 12). The FRY Constitution and constitutions of the republics have separate chapters on human rights and fundamental freedoms (chapter II of the FRY Constitution; chapter II of Republic of Serbia (RS) Constitution; part II of Republic of Montenegro (RM) Constitution). Besides the civil and political rights, that will be discussed in this Report, the Constitution also provides guarantees for the economic, social and cultural rights, such as the right to work, the right to social security and health protection and the right to education. According to its Constitution, the FRY "shall recognise and guarantee the rights and freedoms, recognised under international law" (Art. 10).

The exercise of human rights and freedoms is based directly on the FRY Constitution. However, those freedoms and rights are restricted by "the equal rights and freedoms of others and in instances provided for in the present Constitution" (Art. 9, para. 3), as well as

by the manner of their implementation prescribed by law (Art. 67, para. 2 — see also I.3.1.1).

A number of laws inherited from the Socialist Federal Republic of Yugoslavia (SFRY), which are still in force, are not in conformity with the FRY Constitution. The Constitutional Act for the Implementation of the FRY Constitution (*Sl. list SRJ*, No. 1/1992) prescribes that the FRY Constitution shall be implemented as of the date of its proclamation, unless the said Act provides otherwise in specific cases (Art. 1). According to the Constitutional Act, all federal statutes that have not been explicitly abolished shall continue to be in force "until they are harmonised with the Constitution, within the time frame determined by the present Act" (Art. 12). Deadlines for the harmonisation of these laws have been extended several times and many laws had not yet been harmonised (six years after the proclamation of the Constitution). Such a situation may have grave consequences in the field of human rights, since the laws of the former SFRY indirectly restrict present constitutional rights. In fact, in many areas of human rights protection, the FRY Constitution's guarantees have not been implemented. The most drastic example concerns the provisions on detention in the Criminal Procedure Act (*Sl. list SFRJ*, No. 4/77, 36/77, 14/85, 26/86, 74/87, 57/89, 3/90, 27/92, 24/94; for more details see I.4.4). The bottom line is that in some areas provisions of the communist SFRY Constitution of 1974 are still in force.

1.3. International Human Rights and the FR Yugoslavia

International human rights treaties that the Socialist Federal Republic of Yugoslavia (SFRY) had ratified are binding on the FRY. The Preamble of the FRY Constitution speaks about the "unbroken continuity of Yugoslavia" proclaiming, hence, the internal continuity of the SFRY. The FRY made a statement that it would abide by all international commitments of the former SFRY[9]. According to the

9 "The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly

interpretation of the Human Rights Committee, all states created after the break-up of the SFRY would in any case be bound by the International Covenant on Civil and Political Rights, since once the Covenant was ratified the rights enshrined in that treaty belong to the persons living in the territory of the state party, regardless of the fact that a state party dissolved into several states[10].

According to the FRY Constitution, ratified international treaties form an integral part of the internal legal system and as such are a segment of the federal law. In the legislative hierarchy, international treaties are on a higher level than both the federal and the republic laws[11]. Hence the conclusion that only the provisions of the FRY Constitution are of a higher legal "power" than ratified international treaties. In addition to international treaties, customary international law is also part of the Yugoslav legal system (Art. 16 the FRY Constitution). However, in reality state authorities and courts pay little attention to provisions of international human rights treaties.

The former SFRY had ratified all major international human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights,

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abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally". Quoted in: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina vs. Yugoslavia)*, ICJ, Judgement of 11 July 1996.

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

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

the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and other Cruel, Inhumane or Degrading Punishment or Treatment, etc. (see Appendix 1 for the list of major international human rights treaties ratified by the SFRY).

The SFRY had signed, but had never ratified, the Optional Protocol to the International Covenant on Civil and Political Rights. There are no indications that the FRY will ratify the Protocol in the foreseeable future[12]. However, the SFRY had recognised the right of individuals to submit petitions to the Committee Against Torture on the basis of Article 22, and the possibility for submission of interstate petitions on the basis of Article 21 of the Convention against Torture and other Cruel, Inhumane or Degrading Punishment or Treatment, which is also binding on the FRY. It should be noted that the RM Constitution provides for the right of all persons to "approach international institutions for the purpose of the protection of individual rights and freedoms guaranteed by the Constitution" (Art. 44, para. 2), but the enforcement of this right depends first and foremost on the readiness of the federal state to ratify the Optional Protocol.

The FR Yugoslavia is not bound by the European Convention on Human Rights and is not a member of the Council of Europe. However, the Yugoslav Government submitted in March 1998 a request for admission to the Council of Europe and expressed readiness

12 According to the report of Elisabeth Rehn, the Special Rapporteur of the UN Commission on Human Rights, the Yugoslav Foreign Ministry informed the Belgrade Office of the UN High Commissioner for Human Rights that the FRY for the time being had no intention to ratify the Optional Protocol. On the other hand, the Government of Montenegro expressed interest in ratification. See *Situation of Human Rights in the Territory of the Former Yugoslavia — Report on the Situation of Human Rights in the Federal Republic of Yugoslavia, submitted by Ms. Elisabeth Rehn*, 31 October 1997, UN Doc. E/CN.4/1988/15, p. 11 and 12.

to accept all human rights obligations related to the membership of this organisation[13].

2. The Right to Effective Remedy for Human Rights Violations

Article 2, para. 3 ICCPR:

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

2.1. Ordinary Legal Remedies

The FRY Constitution prescribes that "the rights and freedoms recognised and guaranteed by the present Constitution shall enjoy the protection of the courts" (Art. 67, para. 4). The Serbian Constitution contains similar provisions (Art. 12, para. 4). The Constitution of

13 See the statement of the FRY Federal Ministry for Foreign Affairs, *Naša borba*, 20 March 1998, p. 1.

Montenegro guarantees (Art. 17) the right to the protection of rights in a "procedure established by law", which may suggest that judicial protection is not ensured in all circumstances. Nevertheless, judicial protection in Montenegro is eventually secured through the constitutional appeal to the Constitutional Court of Montenegro, if some other requirements are met.

In judicial proceedings in Yugoslavia both the parties concerned and the courts have seldom directly invoked international treaties, although they have the same legal force as federal statutes (see I.1). However, the right to effective remedy does not necessarily require that victims of violations of human rights guaranteed by an international treaty can directly invoke such a treaty before domestic courts. It is enough that the victim's claim in essence corresponds to a right guaranteed by an international treaty[14].

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

While in some cases criminal proceedings can be initiated by private action, for most criminal offences action by the public prosecutor is required. In the latter case, only if the prosecutor is of the view that there are no reasons for criminal prosecution may a victim pursue the matter on his/her own initiative (Art. 60 of the Criminal Procedure Act — CPA). Non-governmental organisations have claimed that the public prosecutor has often simply failed to initiate criminal proceedings for human rights violations committed by state authorities, thereby preventing victims from doing it themselves[15]. This is parti-

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

15 See *Annual Report of the Humanitarian Law Center on the Human Rights Situation in the FR Yugoslavia for 1997*, Part 3.3, published in *Naša borba*, 3 March 1998.

cularly true when serious human rights violations occur, for example, when the police apply torture or inhuman treatment in order to obtain confession. Also, the prosecutor sometimes fails to inform the victim that the matter will not be prosecuted, although a notice to that effect should be served within eight days of a decision to discontinue prosecution (Art. 60, para. 1 CPA). As a result, a victim may be deprived of a possibility to initiate criminal proceedings, since he/she must act within a period of three months of the date when the prosecutor had rejected the criminal complaint or had decided to discontinue prosecution, whether or not a victim was aware of the prosecutor's decision (Art. 60, para. 4 CPA). Consequently, victims of human rights violations lose the possibility to initiate criminal proceedings against a perpetrator, especially if he/she is a government official.

The effectiveness of legal remedies for human rights violations in the FR Yugoslavia is reduced in practice through repeated acts of non-compliance with constitutional and other legal norms by state authorities: 1) prosecutors often delay criminal proceedings in cases of human rights violations, thereby preventing victims from using adequate legal remedies; 2) the judiciary is under strong influence of the executive branch and courts are very rarely ready to deliver a judgement against the state or state officials and to provide compensation to victims — this is particularly true if human rights were violated by members of the police force; 3) there have been numerous allegations that court proceedings were deliberately delayed in cases when victims of human rights violations pressed charges; 4) there are serious problems with and delays in the enforcement of court decisions. The police often fail to co-operate with court officials, and judicial decisions are then practically unenforceable.

2.2. Constitutional Appeal

The constitutional appeal is a special legal remedy, introduced by the 1992 FRY Constitution. The Constitution of Montenegro also provides for this remedy. A constitutional appeal can be lodged with

the Federal Constitutional Court (Constitutional Court of Montenegro) in cases of "a ruling or action violating the rights and freedoms of a man and the citizen enshrined in the present Constitution" (Art. 124, para. 1, line 6 of the FRY Constitution; Art. 113, para. 1, line 4 of RM Constitution). A constitutional appeal cannot be filed for human rights violations caused by general legal acts (laws, decrees, etc.), even if such acts, by virtue of their existence, represent a direct violation of constitutionally guaranteed human rights. The only way to challenge such legislation is to initiate proceedings for the evaluation of their compatibility with the Constitution and other laws, an initiative that the Constitutional Court may or may not accept at its own discretion (Art. 127 of the FRY Constitution).

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

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

A constitutional appeal can be lodged only by persons whose rights have been violated, by a federal agency in charge of human and minority rights (on its own initiative or on behalf of a victim), as well as by non-governmental organisations for human rights protection on behalf of a person whose rights have been violated (Art. 37 of the Federal Constitutional Court Act, *Sl. list SRJ*, No. 36/92). The state agency in charge of human rights has never filed a constitutional appeal. As far as non-governmental organisations are concerned, the Court has had, so far, a restrictive approach in interpreting their right to file constitutional appeals on behalf of individuals concerned. The Court held that non-governmental organisations can file an appeal only upon the request of a victim (decisions No. U 1/95 of 22 February 1995 and 2/95 of 11 October 1995, *Odluke i rešenja SUS*, 1995, p. 245–246 and 261–262). Such interpretation renders the authority of non-governmental organisations to file constitutional appeals meaningless: they (their lawyers) can file a constitutional appeal anyway as legal representatives of a person whose rights were violated (Art. 20, para. 1 of the Federal Constitutional Court Act). It should also be noted that a person filing a constitutional appeal could remain anonymous, i.e. unknown to the public, a prospect which may discourage some of the potential appellants.

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

> ... a discontented party can challenge the final decision of the Republic Bureau for Labour Exchange through the administrative litigation before the Supreme Court of Serbia. (...) The Court established that the person who filed the constitutional appeal had at his disposal other means of legal protection before the competent regular court *which he had used*. (...) For those reasons ... the Court ... decided to reject the constitutional appeal (italics added; No. Už

10/95 of 10 May 1995, *Odluke i rešenja SUS*, 1995, p. 256. See also decisions No. Už 19/95 and 21/95, *ibid.*, p. 259 and 265).

The Court has thus reduced the constitutional appeal to the level of a theoretical legal remedy, since the Yugoslav legal system formally provides remedies for the protection against almost all types of human rights violations. One can only imagine that legal protection would not be available in cases of human rights violations caused by a special parliamentary act or an act of the President of the Republic[17].

Similarly, the Constitution of Montenegro provides that the constitutional appeal can be lodged with the Constitutional Court of Montenegro only "when other court protection is not available" (Art. 13, para. 1, line 4 of RM Constitution). The Constitutional Court of Montenegro interpreted this provision in the same manner as the Federal Constitutional Court did: constitutional appeal can be filed only when no other court protection existed at all, but not when other legal remedies were exhausted (see e.g. the decision of the Constitutional Court of Montenegro No. U. 62/94 of 15 September 1994). The Constitutional Court of Montenegro accepted constitutional appeals that were filed against the decisions of municipal presidents (case *Indok-centar Tivat* No. U. 81/93 and 17/94 of 22 March 1994), against the reports of the Republic Electoral Commission, the reports of the Representatives' Terms and Immunities Committee of the Assembly of

17 According to the previous Administrative Litigation Act of 1977 (the new Act was adopted in 1996, *Sl. list SRJ*, No. 46/1996–18) there was a special additional administrative procedure for violations of constitutional freedoms and rights through individual legal acts or by official acts (Art. 66–67 of the former Act). It was possible to get protection against a parliamentary decision or an act of the president that resulted in human rights violations. While this solution was available it was almost impossible to imagine a situation to which a constitutional appeal would apply. For example, a group of members of the Federal Parliament appealed the decision of the Representatives' Terms and Immunities Committee by which their representation in the parliament was terminated, claiming that such decision had violated their active and passive electoral rights. The Court rejected the appeal and instructed the appellants to initiate proceedings for human rights protection pursuant to the Administrative Litigation Act, which was in force at the time (decision No. 39/94 of 15 February 1995, *Odluke i rešenja Saveznog ustavnog suda,* 1995, p. 244–255)

Montenegro, the conclusions and statements of the Assembly of Montenegro (No. U. 5/96, 9/96 and 10/96 of 3–4 October 1996; No. U. 35/98 of 26 May 1998).

It should be emphasised that the Federal Constitutional Court and the Constitutional Court of Montenegro have not taken into any consideration whether a certain form of legal protection is effective or not. The only important issue for the two courts has been that legal protection is available *per se*, even if it is a mere formality. For example, the Federal Constitutional Court rejected the constitutional appeal in case of failure of administration to act, both in the first instance and upon the subsequent complaint in the proceedings to obtain an approval for sales of real estate. The Court held that remedies were available, that is to say that an appeal to a higher authority had been filed. The fact that the constitutional appeal was filed precisely because that higher organ failed to act was disregarded (see decision No. Už 21/95, *Odluke i rešenja SUS*, 1995, p. 265).

The constitutional appeal provided by the FRY Constitution appears only as a theoretical legal remedy, since in fact it can be used in extremely rare and exceptional cases. The statistics of the Federal Constitutional Court are further proof of the lack of effectiveness of this remedy — all constitutional appeals that were considered as of the end of 1996 (a total of 60) were rejected by the Court. The effectiveness of this remedy in Montenegro has also been very poor. Nevertheless, the Constitutional Court of Montenegro has shown more readiness to accept constitutional appeals and has on one occasion even decided in favour of the appellant (case of *Indok-centar Tivat*).

3. Restrictions and Derogations

Article 4 ICCPR:

> 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant

may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

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

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

3.1. Restrictions

3.1.1. General Restrictions

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

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

> The manner in which various rights and freedoms of a man and the citizen are to be exercised may be prescribed by law when so provided for by the Constitution or when necessary for their implementation.

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

The second situation provides opportunities to prescribe the manner in which human rights will be exercised *if that is necessary for their implementation*. This provision also speaks about human rights that cannot be directly implemented and authorises the parliament to decide through law how they should be implemented. However, the difference between this and the first hypothesis is that the Constitution does not determine which rights can be directly implemented and which cannot, and leaves this to the discretion of the

legislator. This may result in an abuse of authority and in restrictions of rights through ordinary laws. So far, neither the parliament nor the courts have offered an interpretation as to which rights are considered to be self-executing and which are not. This provision may be in collision with the provision of Article 67, para. 1 of the FRY Constitution, which emphasises that the rights and freedoms shall be exercised "in conformity with the Constitution".

3.1.2. Optional Restrictions

Constitutions provide for optional restrictions and define them. In this connection, the Constitution of Serbia explicitly states that human rights may also be restricted when "the Constitution determines so" (Art. 11 RS Constitution). Although the constitutions of the FRY and Montenegro do not contain explicit provisions concerning possibilities for constitutional human rights restrictions, both documents prescribe certain human rights restrictions in articles dealing with specific rights. For example, the FRY Constitution has a provision stating that the freedom of peaceful assembly may be restricted by a decision of the competent authorities "in order to obviate a threat to public health and morals or for the protection of safety of human life and property" (Art. 40, para. 2). Similarly, the freedom of movement may be restricted by federal statute "if so needed for criminal proceedings, the prevention of contagious diseases or for the defence [of the FRY]" (Art. 30, para. 2). In addition, it should be noted that in reality new restrictions have been introduced through regulations, some of which not even published in the official gazette (see e.g. I.4.8.).

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

3.2. Derogation in "Time of Public Emergency"

3.2.1. General

The FRY and RS constitutions provide for the derogation of certain guaranteed human rights during the state of war. Both constitutions use the rather clumsy term "restriction" for actual derogation (suspension). That may create some confusion. The Constitution of Montenegro does not prescribe that human rights guaranteed by that act may be derogated in emergency situations.

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

3.2.2. Derogation during the State of War

According to the FRY Constitution, it is within the jurisdiction of the Federal Assembly to proclaim the state of war, a state of imminent threat of war and state of emergency (Art. 78, para. 3). When the Federal Assembly cannot be convened, the Federal Government is authorised to approve the derogation after having sought the opinion of the President of the Republic and the presidents of the Assembly chambers (Art. 99, para. 1, lines 10 and 11). If the Federal Assembly is not able to meet, the Federal Government is also authorised, applying the above procedure, to adopt legislation concerning issues that are

within the jurisdiction of the Federal Assembly. However, the Government may adopt acts derogating certain human rights only during a state of war (but not at the time of imminent threat of war or state of emergency).

> Enactments adopted during a state of war may throughout the duration of the state of war restrict various rights and freedoms of man and citizen, except those listed in Articles 20, 22, 25, 26, 27, 28, 29, 35 and 43 of the present Constitution. The Federal Government is obliged to seek the approval of the Federal Assembly for those measures as soon as it is able to convene. (Art. 99, para. 1, line 11 of the FRY Constitution).

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

The Constitution of Serbia contains similar language. However, the President of Serbia is entitled, when the People's Assembly cannot be convened, to declare the state of war after having sought the opinion of the Prime Minister (Art. 83, para. 1, line 6 of RS Constitution). The President of Serbia can issue acts, independently or proposed by the Government, which derogate certain human rights. The President should submit those acts to the People's Assembly for approval once it can be convened (id. line 7). In fact, it appears that on this issue the RS Constitution contradicts the FRY Constitution, according to which the declaration of the state of war, imminent threat of war and state of emergency is exclusively within the federal jurisdiction. Provisions in both the FRY and the RS constitutions requiring that legislation by which certain human rights are being derogated should be submitted to the federal and assemblies, respectively for approval as soon as they can meet, is in line with the OSCE standards in this field (*Documents of the Moscow Meeting of CSCE on Human Dimension*, 1991, p. 28.2.)[18].

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

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

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

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

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

guage, religion or social origin. The FRY Constitution prohibits discrimination based on other elements as well, such as political and other beliefs, education, property and other personal status (Art. 20). Furthermore, derogation of the prohibition of torture is not allowed (Art. 22, para. 1 and Art. 25), as well as the derogation of the principle of legality in criminal law (Art. 27) and of the freedom of conscience (Art. 35 and Art. 43).

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

3.2.3. State of Emergency

The FRY Constitution does not provide for the derogation of rights during a state of emergency or a state of imminent threat of war. The same applies for the Constitution of Serbia. Nevertheless, the Serbian State of Emergency Act (*Sl. glasnik RS,* No. 19/1991–636) prescribes that the President of the Republic of Serbia, who can declare a state of emergency on the basis of a government proposal, can issue orders and other acts in order to eliminate such a situation. For that purpose the President may: "establish a labour obligation; restrict the freedom of movement and residence; restrict the right to strike, the freedom of assembly and of other gatherings; restrict the freedom of

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

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

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

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

4. INDIVIDUAL RIGHTS

4.1. Prohibition of Discrimination

Article 2, para. 1 ICCPR:

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

Article 26 ICCPR:

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

4.1.1. General

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

The three constitutions in Yugoslavia contain provisions on the prohibition of discrimination: the FRY Constitution (Art. 20), the RS Constitution (Art. 13), and the RM Constitution (Art. 15). The most comprehensive are the provisions of the FRY Constitution:

> Citizens shall be equal irrespective of their nationality, race, sex, language, religion, political or other beliefs, education, social origin, property, or other personal status.
>
> Everyone shall be equal before the law.
>
> Each person shall be duty bound to respect the rights and freedoms of others and shall be held responsible for this. (Art. 20)

The above provisions differ substantially from the obligation of the FRY on the basis of Article 26 ICCPR. On the one hand, the FRY Constitution guarantees in the same manner as the first part of Article 26 ICCPR that everyone shall be equal "before the law" (*devant la loi*), meaning that laws apply to all persons in the same manner[19]. However, the FRY Constitution, as well as the republic constitutions, guarantee only to FRY nationals the right to "equal protection of the law" (*une egale protection de la loi*), the right which is also based on Art. 26 of the Covenant. The right to equal protection of the law has two aspects: the prohibition of discrimination through laws and other regulations and the obligation to provide equal and effective legal protection against every form of discrimination[20]. A literal interpretation of Article 20 of the FRY Constitution leads to the conclusion that foreigners, refugees and persons without nationality who find themselves on the territory of Yugoslavia can be subjected to discrimination through law. In this connection it is also worth noting the provision of the FRY Constitution stipulating that "Aliens [in the FRY] shall enjoy the freedoms and the rights and duties laid down in the Constitution, federal law, and international treaties" (Art. 66, para. 1). Hence, foreigners in the FRY can only invoke the provisions of the Covenant and

19 See Manfred Nowak, *UN Covenant on Civil and Political Rights — CCPR Comment*, Kehl am Rhein, 1993, p. 443.

20 *Ibid*., p. 467–468.

other international treaties that are binding on the FRY in order to seek protection against discrimination. Although international treaties are, according to Article 16 of the Constitution, higher in the FRY legal hierarchy than domestic laws, the Yugoslav courts have not taken into account international treaties, especially not human rights treaties. Therefore, the constitutional protection against discrimination remains vague and precarious.

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

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

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

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

The fact that the Constitution of Montenegro has not listed the usual forms of discrimination and instead prohibited differentiation based on any "specificity or personal status" could open space for a broader interpretation of discrimination. That could provide a possibility to cover new forms of discrimination if they emerge. The Consti-

tutional Court of Montenegro has not had, so far, an opportunity to give an interpretation of this provision.

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

> All citizens are equal in rights and duties and have equal protection before state organs and other authorities irrespective of race, sex, birth, language, nationality, religion, political or other beliefs, education, social origin, property and any personal status.

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

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

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

The fact that discrimination is identified as a criminal offence means that the obligation based on Article 2, para. 1(a) of the Convention on the Elimination of All Forms of Racial Discrimination, according to which all States Parties should "prohibit racial discrimi-

nation carried out by persons groups or organisations “, has been fulfilled. Also, the FRY PC, in accordance with Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, prohibits the incitement of racial hatred and intolerance (Art. 134 the FRY PC; see I.4.8.4).

4.1.2. Examples of Discrimination in Yugoslav Legislation

4.1.2.1. Real estate transactions. — The Special Conditions of the Sales of Property (*Sl. glasnik SRS,* No. 42/1989) has been strongly criticised ever since it was adopted for its discriminatory provisions, which restrict the right to enjoy property. The main objective of this Act was to maintain ethnic balance and prevent members of minority ethnic groups in certain parts of the territory of Serbia to sell property and leave the area to members of the local majority. The discriminatory character of this Act is even more obvious in view of the fact that it does not apply to Vojvodina (Art. 1), a region which is also inhabited by an ethnically mixed population. The real purpose of the Act was to prevent the migration of Serbs from Kosovo, not the desire to maintain the ethnic balance of all groups that live there. The Act also provided for punishment for real estate transactions that are carried out without official consent, but only for buyers. In reality buyers have been predominantly ethnic Albanians. (For more details see I.4.11.)

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

Definitions of all these criminal acts (except rape, a victim of which is always a woman) envisage that men can be victims only if "unnatural fornication" is committed against them, implying sodomy. There are provisions in criminal legislation penalising homosexual rape (Art. 110, para. 1 of RS PC; Art. 91 of RM PC). However, criminal legislation does not take into account the situation in which a man is a victim and a woman the perpetrator of rape, forced intercourse, intercourse with and infirm person, as well as intercourse based on abuse of authority (prescribed only in the RS PC, Art. 107).

4.1.2.3. Refugees and citizenship.[21] — The situation and status of refugees in the Federal Republic of Yugoslavia are governed by relevant international instruments, in particular the 1951 Convention and the 1967 Protocol on the Status of Refugees. Republics also adopted legislation in this field (The Refugee Act of Serbia, *Sl. glasnik RS*, No. 18/1992–593; the Decree on the Assistance to Displaced Persons, *Sl. list RCG*, No. 37/1992–637). These regulations have been strongly criticised because they unjustifiably limit the scope of the definition of refugees and their rights[22]. According to the Refugee Act of Serbia (Art. 1) refugees are:

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

The fact that the text begins with words "Serbs and citizens of other nationalities" gives ample proof of the discriminatory character of the Act. Serbs are in a certain manner distinguished from other refugees, although their legal and social status must be equal. In

21 See also IV.2.

22 See Report No. 20 of the Humanitarian Law Center, *Pod lupom: kršenja ljudskih prava izbeglica u Srbiji i Crnoj Gori* , October 1995, p. 3.

addition, the Act deals only with refugees from the territory of the former SFRY who were persecuted by authorities of the former Yugoslav republics. It is not clear how the Act could apply to refugees from countries other then the former SFRY. It is especially important to note in this connection that authorities in Serbia have always applied the Refugee Act, while the Convention on the Status of Refugees has never been directly implemented and seldom invoked.

The problem of the discrimination of refugees is evident also in connection with the Citizenship Act (*Sl. list SRJ*, No. 33/96; for more details see I.4.15). According to this Act, all citizens of the former SFRY who had their residence on the territory of the FR Yugoslavia on 27 April 1992 — including numerous refugees who had been granted residence by that date — can acquire Yugoslav citizenship on the basis of their request, provided that they had no other citizenship (Art. 47). However, those who became refugees after that date can acquire Yugoslav citizenship only by a decision of the Federal Ministry of the Interior, which at its own discretion evaluates whether the "reasons quoted in the request are justified", taking also into account "the security and defence interests, and the international position of Yugoslavia" (Art. 48). Hence, refugees who have come to Yugoslavia after 27 April 1992 have been unjustifiably placed in an unfavourable position.

4.2. The Right to Life

Article 6 ICCPR:

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

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force

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

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

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

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

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

4.2.1. General

The Yugoslav constitutions guarantee inviolability of human life (Art. 21, para. 1 of the FRY Constitution; Art. 14, para. 1 of RS Constitution; Art. 21. para. 1 of RM Constitution). The term "inviolable" is used to emphasise the fundamental nature of the right to life. On the other hand, while the FRY Constitution does not provide for capital punishment and prescribes that criminal offences prescribed by federal statute may not carry the death penalty (Art. 21, para. 2 of the FRY Constitution), the constitutions of Serbia and Montenegro allow capital punishment: "Capital punishment can be prescribed on an exceptional basis and it can be imposed only for the most serious forms

of grave criminal offences" (Art. 14, para. 2 of RS Constitution; Art. 21, para. 2 of RM Constitution). This contradiction creates the paradox that capital punishment may not be prescribed for some of the most serious criminal offences, which fall under federal jurisdiction, such as war crimes, genocide or international terrorism, while some types of murder that are within the republic jurisdiction can carry the death penalty.

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

The constitutions also contain guarantees of fair trial and the principle of *nulla poena sine lege* (Art. 27 of the FRY Constitution; Art. 23 of RS Constitution: Art. 25 and Art. 26 of RM Constitution; for more details I.4.5). This is in line with Article 6, paragraph 2 of the Covenant, pursuant to which a death sentence may be imposed only in accordance with the law in force at the time of the commission of a crime, and can only be carried out pursuant to a final judgement rendered by a competent court.

The state has special obligations towards persons who have been deprived of liberty or whose freedom has been restricted. Failure to provide medical assistance or food, as well as torture or failure to prevent suicide of persons deprived of liberty, can represent a violation of Article 6, paragraph 1 of the Covenant. In this connection, the Yugoslav constitutions proclaim the inviolability of physical and psychological integrity of the human being, the respect for human dignity, as well as prohibition of any use of force against a person deprived of liberty (Art. 25, para. 1 and 2 and Art. 22 of the FRY Constitution; Art. 28 of RS Constitution; Art. 24 of RM Constitution; for more details see I.4.3).

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

It is worth noting that the FRY Constitution does not prohibit the derogation of the right to life in case of war or emergency, which is contrary to the relevant Covenant provisions. The Constitution of Serbia also allows for derogation of human rights during a state of war and fails to indicate that there are rights that may not be derogated (for more details see I.3.2).

4.2.2. Criminal Legislation

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

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

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

4.2.3. Abortion

Abortion is regulated by the legislation of the republics. The relevant laws are: in Serbia, the Act on the Abortion Procedure in Health Institutions of Serbia (*Sl. glasnik RS*, No. 16/195–497), and in Montenegro the Act on Requirements for and Procedure of Abortion (*Sl. list SRCG*, No. 29/79–458). These laws provide that abortion may be performed only at the request of the pregnant woman. The Serbian Act requires the explicit written consent of the woman concerned. Such a request is sufficient requirement for abortion to be performed up to the tenth week of pregnancy.

Thereafter each abortion is considered as an "exceptional abortion" and may be performed only in the following cases:

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

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

4.2.4. Capital Punishment

According to the Federal Criminal Procedure Act (CPA, *Sl. list SFRJ*, No. 26/1986–789), defendants in cases that carry capital punishment must have defence counsel. If a death sentence is pronounced, the convicted person is entitled to free counsel in the subsequent appeal procedure under extraordinary legal remedies (Art. 70, para. 2 and para. 4)

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

Regulations in both republics dealing with pardon procedure prescribe that the request for pardon has to be submitted *ex officio* if the convicted person failed to do so (Art. 4, para. 3 of the Pardons Act of Serbia, *Sl. glasnik RS*, No. 49/1995 and 50/1995; Art. 5, para. 3 of the Pardons Act of Montenegro, *Sl. list RCG*, No. 16/1995). Therefore, the obligation pursuant to Article 6, paragraph 4 of the Covenant has been implemented.

The penal codes of Serbia and Montenegro prescribe, in accordance with Article 6, paragraph 5 of the Covenant, what categories of persons may not be subjected to capital punishment. Article 3a of the Act on Amendments of the Penal Code of Montenegro (*Sl. list RCG*, No. 27/1994–391) reads as follows:

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

The Act on Enforcement of Penal Sanctions of Montenegro (*Sl. list RCG*, No. 25/1994–360) elaborates on the issue:

> A person who is seriously physically or mentally ill, during the illness, as well as a pregnant woman during pregnancy and until

her child has reached the age of three may not be subjected to the sentence of death..

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

4.2.5. Use of Force by State Authorities

The legislation concerning the enforcement of penal sanctions of Serbia (*Sl. glasnik RS*, No. 16/1997–298) and Montenegro (*Sl. list RCG*, No. 25/1994–360) spells out the conditions for the use of force against convicts. The Serbian Act states that force may be used against a prisoner only if necessary to prevent: "1) escape; 2) physical assault on another person; 3) self-inflicted injuries; 4) material damage; 5) active and passive resistance during the enforcement of a lawful order of an official" (Art. 136). The relevant Act of Montenegro contains the same provision (Art. 61).

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

if the fugitive is hiding within a group of persons and their lives may be at risk.

The internal affairs acts of Serbia (*Sl. glasnik RS*, No. 44/1991–1721) and Montenegro (*Sl. list RCG*, No. 24/94–414) define the powers of the members of the police to use force. Further elaboration in considerable detail is found in other regulations. The Serbian Act states that firearms may be used only if other means of force cannot ensure the protection of objects in question (Art. 23, para. 1, lines 1–6). Firearms may be used, *inter alia*, "to repulse an attack on an object" (line 6). It appears that the use of firearms on this basis resulting in fatalities would probably not meet the requirement of "strict proportionality" laid down in ICCPR. First, in such a case the loss of life would not correspond to any of the exceptions envisaged by this Covenant. Secondly, the requirement of strict proportionality would not be met (*Stewart vs. United Kingdom*, No. 10044/82, 39 DR 162, 1982, p. 171). Similar provisions exist in the Internal Affairs Act of Montenegro (Art. 17 and Art. 18), with the additional safeguard that a member of the police is required to issue a warning before using firearms (Art. 19, para. 2).

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

Article 7 ICCPR:

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

4.3.1. General

Besides the obligation concerning the prohibition of torture based on Article 7 of the Covenant, Yugoslavia is bound by the Convention on the Prohibition of Torture and other Cruel, Inhuman or

Degrading Treatment or Punishment (hereinafter the Convention against Torture), ratified by the SFRY[23]. At the time of ratification, the SFRY recognised the jurisdiction of the Committee Against Torture regarding the receipt of interstate (Art. 21, para. 1 of the Convention against Torture) or individual petitions (Art. 22, para. 1).

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

> The inviolability of physical and psychological integrity of the individual, his privacy and personal rights shall be guaranteed.
>
> The personal dignity and security of individuals shall be guaranteed (Art. 22).
>
> Respect for the human personality and dignity in criminal and all other proceedings in the event of detention or restriction of freedom, as well as during the serving of a prison sentence, shall be guaranteed.
>
> Use of force against a suspect who has been detained or whose freedom has been restricted, as well as any forcible extraction of confessions or statements, shall be prohibited and punishable.
>
> No one may be subjected to torture or degrading treatment or punishment.
>
> Medical and other scientific experimentation may not be carried out on an individual without his consent (Art. 25).

One may question the need to have two separate provisions dealing with the protection of human personality. A possible explanation is that Article 22 establishes the general prohibition of torture and similar treatment, i.e. the obligation to respect the inviolability of

23 In 1998, with a delay of six years, Yugoslavia submitted its Initial Report on the Implementation of the Convention to the Committee against Torture. See UN Doc. CAT/C/16/Add. 2.

physical and psychological integrity. Hence, this article covers not only acts of state authorities but of private individuals as well. Consequently, Article 25 should only elaborate a general obligation prescribed by Article 22, and do so in relation to the state and its officials, prohibiting torture and similar treatment "in criminal and all other proceedings". In such a manner, the responsibility of state organs has been emphasised, in particular of the police, which plays a significant role in criminal proceedings.

It should be noted that paragraphs 3 and 4 of Article 25 use the language of Article 7 of the Covenant, but not in its entirety, since the prohibition of cruel and inhuman treatment and punishment has been left out.

Similar omissions exist in the last paragraph of Article 25 of the FRY Constitution, which prohibits medical and other scientific experimentation without the consent of the individual concerned. However, the provision does not state that consent should be "free". Most commentators believe that this term is essential in the wording of Article 7 of the Covenant dealing with the prohibition of experimentation.

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

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

4.3.2. Criminal Legislation

The Convention against Torture provides that all acts of torture and other similar treatment should be prohibited by law, as well as that

punishment of such acts should take into account their "serious nature" (Art. 4). Yugoslav legislation has responded to this obligation to a large extent.

Several provisions dealing with abuse of authority prohibit torture. It should be noted that the federal Penal Code covers such criminal acts only if committed by federal agencies' officials. (Chapter XIX FRY PC). The most important criminal offence in this group is abuse in the exercise of official duties (Art. 191 of FRY PC):

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

Although the term "torture" is not explicitly used, the commission of this criminal offence includes, *inter alia*, infliction of serious physical and mental suffering, which corresponds to the description of torture. In addition, this definition is comprehensive and applies to the enforcement of criminal sentences. An important element of the definition is that "intent" has been left out, unlike in the definition of torture contained in the Convention against Torture (Art. 1). Harassment is also included, even if it does not result in serious physical and mental harm. Abuse, insults and violation of human dignity are included as well: acts that could be identified as inhuman or degrading treatment depending on actual circumstances.

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

The Committee against Torture criticised the FRY for the fact that Yugoslav penal codes do not contain the provision incriminating torture *per se*, in accordance with Article 1 of the Convention against Torture. The Committee recommended that the FRY should abide by the definition of the torture in the Convention.[24]

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

The Convention against Torture goes beyond the prohibition of torture by an official or a person acting in that capacity. The Convention also applies to situations in which serious pain and suffering has been inflicted at the instigation and with the agreement and consent of an official. The FRY PC prohibits the incitement to abuse in the exercise of duty, extortion of testimony or the violation of equality of citizens. However, the question is whether there is a basis for the responsibility of an official who agrees with or condones torture. In such a situation the following provisions of the FRY PC could be applied, depending on circumstances: Article 174 (abuse of official function); Article 182 (failure to act in good faith while on duty); Article 199 (failure to report the commission of a criminal act — if a five-year or longer prison sentence could be pronounced in the given case).

It is safe to assume that acts described above mostly reflect elements of the definition of torture found in Article 1 of the Convention against Torture. Nevertheless, some omissions should be mentioned. It appears that the punishment for the act of abuse in the exercise of official duties (Art. 191 of FRY PC) — three months to three years of imprisonment — is not adequate, i.e. severe enough, in view of the seriousness of the crime of torture. On the other hand, an attempt to

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

commit this offence is not punishable, since the prescribed minimal punishment is below the legal limit necessary to punish an attempt.

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

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

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

4.3.3. Criminal Proceedings and the Enforcement of Sanctions

The FRY Criminal Procedures Act provides that the investigating judge or the police may order pre-trial detention (Art. 196 of CPA). It is limited to 72 hours. In reality, the most serious cases of violations of the prohibition of torture and similar treatment occur during the 72 hours of police detention. Procedural guarantees during the police detention are weak. For example, during the first 24 hours of detention the police are not obliged to afford legal counsel. These provisions of

Yugoslav legislation were also criticised by the Committee against Torture; the Committee was on the view that the length of detention should be limited to 48 hours, and that the detainee should be allowed unlimited access to legal counsel immediately upon the arrest.[25]

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

Nevertheless, it is interesting to note that the CPA when speaking about the rights of detainees mostly uses the term "defendants", implying persons who have been detained on the basis of an order of an investigating judge pursuant to Article 192. On the other hand, every person in police detention is not necessarily a defendant. In view of the lack of procedural guarantees for the protection of persons who have been placed in police detention, it appears that analogy with detention based on an order of an investigating judge would not suffice. The rights of all defendants in pre-trial detention are not formulated in a manner that would explicitly cover persons in police detention as well.

The status of persons serving sentences is defined and described in detail in the Enforcement of Criminal Sanctions Act of Serbia (*Sl. glasnik RS*, No. 16/1997–298). This Act deals with the status and the rights of prisoners, the most important of which is the right to humane

25 *Ibid*; p. 12 and 17

treatment. According to Article 56 of the Act, all persons concerned should respect the dignity of a prisoner. Provisions of the said Article prohibit violation of the bodily or mental health of a convict. Articles 57 to 103 deal with the treatment of a convict. These provisions ensure, at least formally, humane treatment and do not leave much room for violations of the prohibition of torture and inhuman and degrading punishment and treatment.

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

4.3.4. Use of Force by the Police

Pursuant to the Internal Affairs Act of Serbia (*Sl. glasnik RS*, No. 44/1991) the police may use force only in a manner that would cause "minimal adverse effects" (Art. 3). The Rules on the Conditions for and the Manner of the Use of Force (*Sl. glasnik RS*, No. 40/1991–1503) provide more details on the issue. According to Article 2 of the Rules an official may:

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

While using force, an official must respect the life and human dignity of the person affected (Art. 3). The means of force described by the Rules are: physical force, baton, handcuffs, special vehicles, specially trained dogs, cavalry, chemical agents and firearms. Within 24 hours the immediate superior officer is in charge of control of the means applied, (Art. 32, para. 1). An officer authorised by the Ministry of the Interior is entitled to evaluate whether the means of force applied were justified and used properly. In the case of unjustified and improper use of force, this official should advise the minister to take appropriate steps (Art. 31, para. 4).

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

4.4.1. Right to Liberty and Security of Person

Article 9 ICCPR:

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

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

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

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

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

4.4.1.1. Prohibition of arbitrary arrest and detention. — The basic purpose of Article 9 ICCPR is to ensure procedural guarantees against arbitrary and unlawful arrest. It compels signatory states to precisely define the cases where arrest is allowed, and to assure the judiciary control of the legality of arrests. This Article, according to the interpretation by the Human Rights Committee, guarantees the right to personal security which imposes on the states the obligation to undertake "reasonable and appropriate" measures to protect the personal integrity of every individual against the violations which could be inflicted to him or her (see *Delgado Paéz vs. Colombia*, No. 195/1985, para. 5.5).

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

The demand that arrest be lawful and the prohibition of arbitrariness in Article 9, para. 1 ICCPR do not only concern the detention in criminal proceedings, but also all cases of deprivation of liberty, e.g. because of mental disease, vagrancy, alcohol and drug addiction, etc. The Yugoslav constitutions use the terms "deprivation of liberty" and "confinement", where the term "confinement" concerns criminal cases only[26], while "deprivation of liberty" includes all cases of detention, and not only the criminal cases. Nevertheless, the constitutional provisions do not make a difference between these two categories: Article 23 of the Constitution of the FRY, about arrest, prescribes the right of persons deprived of liberty "to hire a counsel of their choice" (para.

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

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

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

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

The Criminal Procedure Act (CPA) provides that arrest may be ordered, *inter alia* if there is ground to believe that the accused person may repeat the criminal offence, or complete the committed offence, or that he or she might commit the criminal offence, which he or she threatened to commit" (Art. 191, para. 2, line 3). In principle this is compatible with international standards, but not in accordance with the federal constitution, which allows detention only if necessary for the criminal procedure, but not for the protection of public security.

There is also an important discrepancy regarding the authority which may order detention. Namely, the FRY Constitution says that detention may be ordered only by the decision of the competent court of justice (Art. 24, para. 1), and not "by decisions of other competent organs ...", as it was under the previous Constitution of 1974. Thus the provisions of the CPA envisaging the order of detention by the police

(Art. 196) or by a judge who is not competent in the case (Art. 194) are incompatible with the Constitution of the FRY; however, because of the perpetuation of the deadline for the harmonisation of the CPA with the Constitution, they are still in force, while at the same time it is not possible to challenge their constitutionality. This incongruence represents one of the most important problems in the protection of human rights in criminal proceedings.

4.4.1.2. The right to be informed of the reasons for arrest and of charges. — Para. 2 of Article 9 ICCPR guarantees the right of everyone who is arrested to be informed about the reasons for his or her arrest "at the time of arrest", and the right to be informed of any charge against him or her, without delay, i.e. "promptly". The Constitution of the FRY and the Constitution of Montenegro contain provisions on the right of arrested persons, "to be informed immediately, in their own language, or in the language they understand, of the reasons for the arrest" (Art. 23, para. 3 of the Constitution of the FRY; Art. 22, para. 2 of the Constitution of Montenegro). These provisions are in accordance with the somewhat more precise guarantee of the ECHR, for they provide that an arrested person must be informed of the reasons for the arrest and about the charge in the "language he or she understands" (Art. 5, para. 2 of the ECHR). However, the Constitution of Serbia does not give those guarantees to arrested persons. In a similar view, the federal and Serbian constitutions contain provisions on the right of the arrested person to get the "reasoned decision at the moment of the arrest, or not later than 24 hours after arrest" (Art. 24, para. 2 of the FRY Constitution, Art. 23, para. 2 of the Constitution of Montenegro), while the Serbian Constitution does not contain such a provision.

The provision of the CPA should be harmonised, in this part, with the FRY Constitution. Namely, the former does not prescribe the obligation of the police to submit, at the moment of arrest (i.e. immediately), the information about the reasons for the arrest. Thus e.g., the police are obliged to bring without delay the person to the competent

investigation judge ..." (Art. 195, para. 1), but it can occur that due to "unavoidable hindrances it is not possible to take the arrested person to the investigation judge within 24 hours ..." (para. 2); in that case the time within which the arrested person has to be informed of the reasons for arrest is extended. Contrary to that, both republic acts on internal affairs prescribe that in the cases of arrests envisaged by that Act[27], "an authorised person from the ministry must ... inform immediately the arrested person about the reasons for arrest ..." (Art. 15, para. 4 of the Internal Affairs Act of Montenegro, Art. 11, para. 4 of the Internal Affairs Act of the Republic of Serbia).

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

4.4.1.3. Prompt appearance before a judge and right to trial or release within reasonable time. — This set of rights concerns only criminal cases: it guarantees prompt appearance before "a judge or other officer authorised by law", and, subsequently, trial within a reasonable time, or release. It is difficult to define the term "promptly", but it seems that the delay should not exceed, even in exceptional cases (e.g. terrorism), four days, and in normal conditions should be much shorter (the European Court of Human Rights in *Brogan vs. the United Kingdom*, A 145, p.

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

33). The expression "other officer authorised by law to exercise judicial power" means that such an organ must be independent and impartial; independent, first and foremost of the executive and of the public prosecutor, who is authorised to detain or free an arrested person (the European Court in *Schiesser vs. Switzerland*, A 34, 1991, p. 31).

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

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

A person against whom custody is ordered has the right to be tried within a reasonable time, or to be released. In the Yugoslav law, the duration of custody is limited only during the period before the trial, and not during the trial, when only a periodical control of the justification of further detention is required.

In accordance with international standards, and following the constitutional provisions which require the duration of the detention to be reduced to the "shortest period" (Art. 24, para. 3 of the FRY Constitution, and Art. 23, para. 3 of the Constitution of Montenegro; "shortest necessary period", Art. 16, para. 2 of the Constitution of Serbia), the CPA not only repeats those guarantees, but compels "all organs who take part in the criminal procedure and all organs who

provide legal assistance to them to act with special urgency if the defendant is detained" (Art. 190, para. 2). Moreover, the detention order shall be revoked "as soon as the reasons due to which detention was ordered cease to exist" (para. 3). According to the letter of the law, the end of detention does not depend on the request of the parties; however, such a request is not ruled out. The Supreme Court of Serbia took the contrary view that "during the investigation, the defendant and his or her counsel are not entitled to propose the revocation of the detention order, therefore no decision should be taken in response to the proposals of the counsel of the defendant requesting the cancellation of detention" (Penal Code, 403/81).

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

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

4.4.1.4. The right to complain to the court against arrest or detention. — The right to complain to the court against detention

concerns all cases in which other organs, and not the court, took the decision on detention (see the European Court on Human Rights in *De Wilde, Ooms and Versyp vs. Belgium*, A 12, 1971, p. 76). According to the FRY Constitution, only courts can order custody of a person reasonably suspected of having committed a criminal offence (Art. 24). However, in other cases the FRY Constitution does not provide for the right to have a court re-examination of the lawfulness of detention. True, the Constitution guarantees to everyone "the right to ... legal means against decisions which deal with his or her rights or lawful interests" (Art. 26, para. 2); however, the right to the lawfulness of detention guaranteed by Art. 9, para. 4 ICCPR cannot be identified with the right to complain in the case of violation of a right. Constitutions of Serbia and Montenegro contain identical provisions to that effect (Art. 15, 12, para. 2 and Art. 22, para. 2 of the Constitution of Serbia; Art. 22 and 17, para. 2 of the Constitution of Montenegro). Accordingly, the republic laws on internal affairs (*Sl. glasnik RS*, No. 44/1991–1721; *Sl. list RCG*, No. 24/1994–327) prescribe e.g. that a detained person can complain to the minister of the interior (Art. 16 of the Montenegrin, and Art. 12 of the Serbian Act); there is no reference to the right to complain to a court, which is not in conformity with international standards.

4.4.1.5. The right to compensation for unlawful arrest or detention. — The FRY Constitution prescribes that " a person ... detained without a legal basis, is entitled to rehabilitation, to compensation of damages by the state, and has other rights defined by federal law" (Art. 27, para. 4). Identical provisions exist in the constitutions of Montenegro (Art. 25, para. 4) and of Serbia (Art. 23, para. 4). Furthermore, both the Constitution of the FRY and the Constitution of Serbia contain a general provision on the right to compensation in all cases in which damage is done to individuals " by illegal or irregular work ... of an official or of a state agency or organisation ..." (Art. 123, para. 1 of the FRY Constitution; Art. 25, para. 1 of the Constitution of Serbia). The Constitution of Montenegro does not contain such a provision.

The provisions on compensation are elaborated in more detail in the laws; in this part, the Yugoslav legislature is in conformity with the international standards.

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

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

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

4.4.2. Treatment of Persons Deprived of Their Liberty

Article 10 ICCPR:

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

> 2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as not convicted persons;
>
> b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
>
> 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

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

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

The Federal Penal Code prescribes that a criminal offender can be deprived of certain rights or such rights may be limited during the enforcement of the penal sanction "only to the degree corresponding to the nature and the content of the sanction" and "only in a way which assures the respect of the person of the offender and of his or her human dignity" (Art. 6 of the PC of the FRY; see, *mutatis mutandis*,

Art. 6, para. 2 of the PC of the Republic of Serbia). Also, it is prohibited to "insult the person or the dignity of the defendant during criminal proceedings" (Art. 201, para. 1 of the CPA).

The Penal Sanctions Enforcement Act of Montenegro (PSEA of Montenegro, *Sl. list RCG*, No. 25/1994–360) prescribes that the treatment of convicted persons must be "humane, and in a way which assures the respect of his or her person, dignity, and the preservation of his or her physical and mental health" (Art. 15, para. 1). A similar provision exists for minors who serve corrective sentences; besides, it is emphasised that they must be treated "in a way which is appropriate to their psychological and physical development" (Art. 107, para. 2).

The Penal Sanctions Enforcement Act of Serbia (PSEC, *Sl. glasnik RS*, No. 16/1997–298) prescribes that "everyone must respect the dignity of the convicted", and that nobody shall endanger his or her physical and mental health (Art. 56). Minors who are sentenced to corrective sentences in institutions or to juvenile imprisonment have the same rights as adults; those rights can be expanded (Art. 218, para. 1). Unfortunately, the PSEC of Serbia does not prescribe special protection of minors sentenced to disciplinary measures or to measures of increased supervision, as does its Montenegrin counterpart (PSEC of Montenegro, Art. 107, para. 2). Finally, according to the Serbian Act, a person on compulsory psychiatric treatment and custody "has the same rights and obligations as the persons serving sentences of imprisonment, if medical reasons do not require different treatment" (PSEC of Serbia, Art. 191).

According to the PSEC of Serbia, prison authorities are bound to inform the convicted persons about their rights and obligations, and the "text ... of the rules of house order must be accessible to the convicted during the entire time of their sentence" (Art. 51, para. 2 and 3). This rule is also applied to detained persons, juvenile convicts, and to persons subject to compulsory psychiatric treatment (Art. 314, 218, para. 1 and Art. 191). The PSEC of Montenegro does not contain a provision on the access to information and on guaranteed rights. Also, Yugoslav regulations do not explicitly prescribe that the training

of the prison personnel must include familiarisation with the provisions on the protection of convicts.

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

The right to complaints of the convicted persons against the conditions under which they serve the sentences is very much limited and not precisely regulated. According to the PSEC of Serbia, convicts are entitled to present to the director their grievances "on the violations of their rights and other irregularities" (Art. 103, para. 1); if they do not get answers to such grievances, or if they are not satisfied with the answers, they can submit written petitions to the Director of the

Directorate (para. 3)[28]. Unfortunately, the Serbian Act does not prescribe the time period within which the director of the directorate must consider the grievance. The PSEA of Montenegro contains an even less favourable solution, according to which a prisoner is entitled to submit a "grievance to the head of the organisation" (Art. 34, para. 2), which does not prescribe the deadline for the answer to the grievance, nor the right to subsequent grievances. According to the PSEC of Serbia, this also applies to the detained persons (Art. 314), juvenile convicts in institutions or prisons for minors (Art. 218, para. 1), and for persons subjected to compulsory psychiatric treatment (Art. 191).

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

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

The CPA prescribes that "as a rule ... accused persons and convicted persons may not be put in the same premises", while the PSEC of Montenegro (Art. 16, para. 4) and the PSEC of Serbia (Art. 312, para. 1) prescribe, without exception, the separation of detained and the convicted persons, which is in accordance with the international standards. However, the PSEC of Serbia contains also the general rule according to which "the detained persons stay in institutions under

28 According to the PSEC of Serbia, hierarchically speaking, there exist the Director of the Administration, the Director of the Institution, and the Head of the Service. The directors are appointed by the Government of the Republic of Serbia at the proposal of the Minister of Justice, while the heads of services are appointed by the Minister of Justice. In Montenegro, according to the Regulation on the establishment, internal organisation and mode of operations of the Institution for the Enforcement of Penal Sanctions of Montenegro (*Sl. list RCG*, No. 31/1994) there is a director of the Institution for the Enforcement of Penal Sanctions, appointed by the Government of Montenegro, with the heads of organisational units, appointed by the director.

the same conditions as the convicted persons, if the CPA does not prescribe differently" (Art. 314). This runs counter to the requirement of ICCPR (Art. 10, para. 2.a *in fine*) that accused persons shall be submitted, "to separate treatment appropriate to their status as unconvicted persons".

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

4.4.2.3. The penitentiary system. — According to the ICCPR, the essential aim of the treatment of prisoners shall be their reformation and social rehabilitation. According to the PC of the FRY, the purpose of the punishment is "to prevent the convicted person from committing criminal offences, and his or her re-education ... corrective influence preventing others from committing criminal offences ... strengthening morals and influence on the development of social responsibility and of the discipline of citizens". The PSEA of Montenegro (Art. 14) prescribes that the purpose of imprisonment is the "... re-socialisation of convicted persons", while the PSEC of Serbia does not especially mention the aim of punishment. However, in order to prove whether that provision ICCPR is fully implemented, it is necessary to

analyse the provisions on the education of the convicts, on their training for certain professions and useful work, on guaranteed post-penal assistance, which is outside the realm of this text.

4.5. The Right to Fair Trial

Art. 14 ICCPR:

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

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

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

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

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

c) To be tried without undue delay;

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

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

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

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

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

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

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

closure of the unknown fact in time is wholly or partly attributable to him.

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

4.5.1. Independence and Impartiality of Courts

The Constitution of Serbia (Art. 96, para. 1) and the Constitution of Montenegro (Art. 100) proclaim the courts to be autonomous and independent and bound only by the Constitution and by other general acts; the federal Constitution does not contain such provisions. All three constitutions proclaim the principle of separation of powers (Art. 12 of the FRY Constitution; Art. 9 of the Constitution of Serbia; Art. 5 of the Constitution of Montenegro). However, the integrity of the judiciary does not depend so much on constitutional provisions, but rather on how courts act. Although it can be easily said that the general impression in the FRY is that the courts are not fully independent, it is very difficult to prove such a statement. Nevertheless, in some cases, as e.g. with the annulment of the local elections in Serbia in November 1996, where the judiciary, including the Supreme Court of Serbia, played an enormous role, the claims that the courts are biased and liable to political influences were well documented (see I.4.13.).

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

the Courts Act of Montenegro, *Sl. list RCG*, No. 20/95), while the proposal of the budget of the courts is subject to a procedure which cannot be influenced by the judiciary.

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

However, the provisions on the independence of military courts are problematic in many respects. Although the independence and autonomy of military courts was proclaimed (Art. 138, para. 2 of the FRY Constitution, and Art. 2 of the Military Courts Act, *Sl. list SRJ*, No. 11/1995), they have been relativised by the provision which prescribes that judges and judges-jurors in military courts are appointed, not elected (Art. 26, para. 1 of the Military Courts Act), by the rule that the regulations "which regulate the service relations and the rights, duties and responsibilities of the military", also apply to presidents and judges of military courts (Art. 41 and 42). Furthermore, a judge of a military court "may be relieved of his duties if the competent organ decides to decrease the number of judges in a military court"

(Art. 37, para. 1); this jeopardises the principle of the tenure of a judge, otherwise confirmed in the Military Courts Act (Art. 28, para. 1–3). Furthermore, if a judge is sent to work temporarily in another military court, his consent for that is not required (Art. 40), as it is with judges of other courts (see the previous paragraph).

The provisions on the exclusion of judges and of judges-jurors, and the possibility of delegation of competence assure the principle of impartiality of judgement. There are two kinds of exclusions — compulsory and optional; they differ by the reasons for and the procedure of exclusion. The CPA enumerates the grounds for compulsory exclusion (Art. 39, para. 1–5 — e.g. kinship, participation in the investigation in the same case, participation in the adoption of a decision of a court at a lower level), while the reasons for optional exclusion are not enumerated in the law, but included in the general phrase "if there are reasons which could lead to doubts as to ... impartiality" (Art. 39, para. 6). An absolutely critical violation of the provisions of the criminal procedure, which results in the abolition of the judgement exists "if a judge or judge-juror ... who was excluded from that trial by a judgement in force" or "if a judge or a judge-juror was eventually excluded participated in the main trial" (Art. 364, para. 1, lines 1 and2).

4.5.2. Fairness and Transparency of Trials

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

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

One of the most important elements required by the guarantee of fair trial is the equality of arms (*audiatur et altera pars*). According to the CPA, the defendant has the right "to present his or her opinion about all facts and evidence against him/her, and to present all facts and evidence in his or her favour" (Art. 4, para. 2). This principle is elaborated in a number of provisions — the defendant can study the documents and the piece of evidence (Art. 131, para. 5); can be present at the performance of certain investigative actions and to participate actively in such actions, and the investigative judge is bound to inform the defendant and his or her counsel "about the time and place of the performance of investigative actions, except in cases where there is a danger of postponement" (Art. 168), para. 5, regarding Art. 73, para. 2). These rights may be temporarily abolished, until the charge is brought. A regular charge must be submitted to the defendant without delay, and if the defendant is in prison, "not later than 24 hours after receipt" (Art. 266, para. 1). The provision of Article 369 of the CPA on the compulsory submission of the complaint to the opposing party for reply has the same sense. Disregard of these provisions represents a substantial violation of the rules of criminal procedure.

Adversity is achieved easily and thoroughly at the main oral hearing. The equality of arms is endangered by the provision of the CPA prescribing that the public prosecutor must be always informed about the sessions of the chambers of the court of second instance,

(Art. 370, para. 3), whereas the defendant and his or her counsel receive notice only at their request, or if the court believes that it is "useful for the explanation of the situation" (Art. 371, para. 1). Nevertheless, the failure to inform the defendant and his or her counsel in the cases in which they requested such information represents a substantial violation of the provisions of the CPA. The Supreme Court of Serbia emphasised that such omission "represents a violation of the right of the defendant to defence, which could influence orderly judgement" (SCS, PC, 35/80, 25 December 1971).

According to the CPA, a decision of the court cannot be based on minutes and information, information as e.g. acquired by the police outside criminal procedure (Art. 151, para. 3); the statements by the defendant given in the absence of his or her counsel or under duress (Art. 218, para. 10; see also Art. 228 and 244, para. 1), must be "separated". Nevertheless, these documents can be used at the main hearing, at the explicit request of the defendant (Art. 84, para. 1). However, in exceptional cases, for criminal offences leading to 20 years of imprisonment, or to capital punishment, the court may decide that statements given in the absence of the counsel and information acquired by police outside criminal procedure can be used without the consent of the defendant, if important facts in the procedure may be cleared and the court is satisfied that the use of such facts would contribute to the clarification of the case (Art. 84, para. 2). However, "a conviction cannot be based exclusively on the statements in such minutes and information" (Art. 86). Accordingly, the court may use otherwise unlawful evidence in cases when the heaviest sentences may be pronounced, where the strictest guarantees of fair trial should prevail. These provisions of the CPA place the public prosecutor in a better position and thus endanger the principle of equality of arms.

Instead of containing the obligation of the prosecutor to reveal to the defence all material evidence for and against the defendant, the CPA prescribes in Art. 15 that "the court and the state agencies participating in the criminal proceedings are bound to ... ascertain, truthfully and fully all facts which are important for the adoption of a

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

4.5.2.2. The transparency of the hearing and judgement. — In addition to the general provision on the transparency of the work of all state agencies (Art. 10), the Constitution of Serbia contains a special provision on the transparency of court hearings (Art. 97, para. 1). On the other hand, the federal Constitution contains only the provision on the transparency of work of all state agencies (Art. 122, para. 1), while the Constitution of Montenegro guarantees the transparency of court hearings (Art. 102). The Federal Court Act (*Sl. list SRJ*, No. 27/1992) prescribes that the proceedings of the court are public and determines how transparency must be assured, e.g. by public hearings and by informing the public on the activities of the Court (Art. 6, para. 1 and 2). The republic laws on courts do not contain special provisions on public hearings; however, such provisions are included in the corresponding laws on criminal procedure.

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

Art. 364 of the LA). Unlawful exclusion of the public from the main hearing represents a substantial violation of the provisions of criminal procedure and is a basis for an appeal (Art. 364, para. 1, line 4 of the CPA; Art. 354, para. 2, line 12 of the LA).

According to the CPA, the public is always excluded from the hearings in trials of minors (Art. 482 of the CPA). The public may also be excluded "officially, or at the request of the parties, but always after hearing the parties, if that is necessary to protect a secret, public order, morals, the interests of minors or to protect other special interests of the society". These grounds are generally, in accordance with the standards ICCPR, except the last one — the protection of other special interests of the society — which appears too broad, thus allowing the exclusion of the public from a hearing because of reasons not mentioned in Art. 14, para. 1 ICCPR. Exclusion is not necessarily complete (Art. 288 of the CPA). The court chamber may allow the presence of the so-called professional public and of the defendant, at his or her request (Art. 289, para. 2 of the CPA).

Similar provisions are found in the LA, which prescribes that the public can be excluded from "the entire main hearing or from a part thereof if it is in the interest of the protection of official, business or personal secrets, or of the interests of public order or morals" (Art. 307, para. 1). The public can also be excluded when security measures cannot assure the unhindered conduct of the hearing (Art. 307, para. 2). The chamber can allow the presence of the so-called professional public and of not more than two persons designated by a party, at the party's request (Art. 308).

Judgements must be pronounced publicly both in criminal and civil cases, even if the public was excluded during the proceedings (Art. 352, para. 2 of the CPA; Art. 336, para. 3 of the LA). However, the announcement of the reasoning depends on the previous exclusion of the public: if it had been excluded, "the chamber shall decide whether to exclude, and in what degree the public during the announcement of the reasoning of the judgement" (Art. 352, para. 4 of the CPA; Art. 336, para. 3 of the LA). In accordance with the decision

on the exclusion of the public from the proceedings against minors, the CPA prescribes that the consent of the Court is necessary for the publication of the record of the proceedings and of the judgement (Art. 461, para. 1). Nevertheless, "the name of the minor and other data which could lead to the relation of the identity of the minor" cannot be published (Art. 461, para. 2).

In administrative procedure, oral hearings are always public. Otherwise, oral hearing must take place when a number of parties with conflicting interests take part in the proceedings, or during the investigation or the hearing of a witness or of a court expert. In other cases, an official may order oral hearing if such a hearing would be useful for the clarification of the case (Art. 139 of the Administrative Procedure Act, *Sl. list SRJ*, No. 33/97). The reasons for the exclusion of the public from administrative procedure are similar to those in lawsuits (Art. 140 and 141 of the APA). However, the public may not be excluded during the announcement of the decision (Art. 140, para. 5).

In administrative suits, "the court decides on a closed session" (Art. 32, para. 1 of the Administrative Disputes Act, *Sl. list SRJ*, No 46/96). However, the Court may decide to allow an oral hearing because of the complexity of the case, or in order to clarify the situation (Art. 33, para. 1 and 2). Parties and interested persons are invited to the oral hearing (Art. 35, para. 1). The deliberation and the vote take place in the absence of the parties (Art. 40, para. 3). The judgement, or the decision may be published only if there has been an oral hearing, immediately after its end (Art. 42, para. 1).

4.5.3. Guarantees to Defendants in Criminal Cases

4.5.3.1. Presumption of innocence. — According to Yugoslav law, everyone has the right "not to be considered guilty of a criminal offence, before guilt is established by a final decision of the Court" (Art. 27, para. 3 of the FRY Constitution, Art. 23, para. 3 of the Constitution of Serbia, Art. 25, para. 3 of the Constitution

of Montenegro). Although the wording differs somewhat from the wording in ICCPR, according to which everyone shall have the right to be presumed innocent, until proved guilty, there is no practical difference, and both wordings result in the same legal consequences: they release the defendant from the burden to prove his/her innocence, and bind the Court to act, if the guilt was not safely established, in manner most beneficial to the defendant — to give him the benefit of doubt.

The CPA affords the presumption of innocence in the same way as the constitutions (Art. 3), and it elaborates the principle *in dubio pro reo* when providing that the Court is bound to adopt the judgement of not guilty if guilt is not proven for the lack of evidence, although the suspicion remains (Art. 350, para. 1, line 3). The burden of proof falls exclusively on the prosecutor, the law compels the prosecutor to always indicate, in the indictment, the evidence on which the accusation is based (Art. 158, para. 3 and Art. 262, para. 1, line 5 of the CPA).

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

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

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

The right of the defendant "to present his or her view regarding all facts and evidence against him or her and to present all evidence in his or her favour" (Art. 4, para. 2 of the CPA), is one of the assumptions without which the defendant could not organise or present the defence; according to the CPA that assumption is one of the basic principles of procedure. It is spelled out in a set of provisions which give the right to the defendant to study the documents and the objects

serving as evidence (Art. 131, para. 5), to be present at some investigative actions, and to take active part in such actions (Art. 168). The rights of the defendant can be temporarily withdrawn, "during the preliminary proceedings until charges are brought ... when that is necessary because of special reasons of national defence or national security" (Art. 73, para. 2, in conjunction with the articles mentioned above).

Oral and written contacts between a detained defendant and his or her counsel are not possible before the first interrogation of the defendant (Art. 74, para. 1). This provision is contrary to the constitutionally guaranteed right of a detained person to retain counsel (Art. 23, para. 5 of the FRY Constitution, Art. 22, para. 5 of the Constitution of Montenegro; the Constitution of Serbia does not contain such a provision). Moreover, a detained defendant may correspond and talk to his counsel freely and without supervision only after the investigation is completed or direct charges brought (Art. 72, para. 2 and 3 of the CPA). That means that the defendant does not have an advocate until that time, although he or she officially retained an advocate. This is also contrary to the FRY Constitution, which considers the right to counsel as one of the constitutional rights (Art. 29, para. 1). This shows once more that the discrepancies between the CPA and the FRY Constitution represent one of the most important shortcomings in the field of the protection of human rights in the FRY.

4.5.3.4. The right to be tried without undue delay. — According to the CPA (Art. 14), the court is bound "to try to initiate proceedings without delay and to prevent any kind of abuse of the rights belonging to persons who participate in the procedure". This principle has been elaborated in a number of provisions of the CPA (e.g. Art. 175 — the deadline for the completion of the investigation, Art. 181 — the right to complain to the President of the Court because of unwanted extensions of the procedure (or because of other irregularities) during the investigation, Art. 279, para. 2 — the deadline for the convocation of the main hearing, Art. 292 — on the conduct of the main hearing, Art. 336, para. 1

— the deadline for the elaboration of the charge). Furthermore, the CPA requires, in proceedings against minors, special expedience (Art. 462, 479 and 484). The court is authorised to fine the participants in the procedure (except the public prosecutor) "if their actions are obviously intended to drag the criminal procedure"; if that is done by the public prosecutor, a higher prosecutor shall be informed about that (Art. 144, para. 1 and 3).

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

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

> The right to defence and the right to retain an advocate before a court and other organs competent for the conduct of the procedure are guaranteed to everyone.
>
> No person accessible to the court or to other organs competent for the conduct of the procedure shall be fined or punished if

it was not made possible to that person, in accordance with the federal law, to be heard and to present his or her defence.

Everyone is entitled to have an advocate, chosen by him or her, present during the interrogation.

The federal law determines the cases where the defendants must have advocates.

A defendant may take his or her own defence only in the cases where the law does not demand compulsory counsel (Art. 11, para. 1 and 2 of the CPA). In any case, the court is bound to inform the defendant about his or her right to have an advocate (Art. 13, 67, para. 2, 183, para. 3, and 193, para. 1). Counsel is appointed by the court in two cases: when the defence is compulsory, and the defendant does not hire an advocate, and when the defendant invokes indigence. The law defines situation where the defendant must have an advocate: if the defendant is dumb, deaf, or unable to defend himself or herself successfully, or if the trial is for an offence for which capital punishment may be pronounced (from the first interrogation on); if the defendant is accused of a crime, for which a sentence of more than ten years imprisonment may be pronounced (from the time of the submission of the charges); if the defendant is tried in absence (when a decision on trial in absence is adopted (Art. 70). Instead of an officially appointed advocate, the defendant may always retain another one (Art. 72, para. 1). Furthermore, the defendant may request that the President of the Court "dismiss the appointed advocate if he or she is not diligent in the performance of his or her duties"; the President may do that on his own initiative, but with the consent of the defendant (Art. 72, para. 4). Concerning the right to indigence, the CPA prescribes that an advocate may, but not necessarily, be appointed to defend persons who, because of their poverty, cannot bear the expenses of the defence, when the trial is for a criminal offence which may result in sentences of over three years imprisonment (Art. 71).

4.5.3.6. The right to examine witnesses. — During the entire procedure, the defendant may request that new witnesses or experts be called, or new evidence presented (Art. 282, 322, para. 4, 335 and 336). The consequences of not responding to the

invitation of the court, or for refusal to testify are the same, whether a witness or an expert were proposed by the prosecutor or by the defendant. The defendant may, with the permission of the chairman of the chamber, question directly witnesses and experts (Art. 327).

4.5.3.7. The right to assistance of interpreter. — Article 49 of the FRY Constitution prescribes that everyone "has the right to use ... in the court procedure, his or her language, and to be informed about the facts, during the procedure, in his or her own language". The Constitution of Serbia contains an identical provision (Art. 123, para. 2). Unlike that, the Constitution of Montenegro prescribes that "the right to use their own language in proceedings in state agencies" is granted only to the members of national and ethnic groups (Art. 72), but does not prescribe the right of every person to an interpreter if such a person does not understand the language of the Court.

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

4.5.3.8. The prohibition of self-incrimination. — The defendant has the right to defend himself or herself by silence; he or she must be informed, already at the first interrogation, that "he or she is not bound to present his or her defence, or to answer to the questions" (Art. 218, para. 2). The defendant has also the right not to express his or her opinion about the charge, nor to present his or her defence (Art. 316, para. 5).

The CPA prohibits the use of "violence, threats or other similar means in order to obtain statements or admissions from the defendant" (Art. 218, para. 8). Also, the decision of the court may not be based on the statement by the defendant obtained contrary to that prohibition

(Art. 218, para. 10). The organ conducting the procedure is bound "to collect other evidence, besides the admission of the defendant ..." (Art. 223), and the court is bound to present other evidence, even when the defendant admits the offence at the main hearing (Art. 323).

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

The preparatory procedure is conducted by the judge for minors, and the main hearing is conducted by the chamber for minors. The judges-jurors must be specialised. The procedure for juveniles is not open to the public, but the public need not necessarily be completely excluded — the so-called limited/professional public is allowed (Art. 482). Also, there is an absolute prohibition of trial of minors in absence (Art. 454). A minor may not waive the right to complaint, nor desist from an already filed complaint. Finally, the court plays a special role in the supervision of the enforcement of pronounced educational measures (Art. 491 and 492).

4.5.3.10. The right to appeal. — The FRY Constitution (Art. 26, para. 2 and Art. 119) "guarantees to everyone the right to complaint or to other legal means against a decision which concerns his or her rights or legally based interests". Identical provisions are found in the Constitution of Montenegro (Art. 17, para. 2) and of Serbia (Art. 22, para. 2). In the Yugoslav criminal procedure, the two instance principle is a rule without exception — an appeal against the decision of the court of first instance is never excluded, and an appeal to the third instance is allowed

under certain conditions. One of the grounds for the admission of an appeal to a court of third instance concerns the situations when the court of second instance changes an acquittal by the court of first instance into a judgement which proclaims the defendant guilty (Art. 391, para. 1, line 3 of the CPA). The problem with a court of third instance, as a "higher court" arises in the cases when the judgement was pronounced in the first instance by a district court, since in such a case the higher (second instance) court is the Supreme Court. There is no court of third instance in the Republic: in such cases a chamber of that same (supreme) court decides in the third instance, only with a different composition (since Art. 39, para. 1, line 5 of the CPA excludes from the trial judges who took part in the decision which was challenged by the appeal). The same situation exists in the case of military courts, where the Supreme Military Court always conducts second and third instance trials, but in different chambers (Art. 20 of the Military Courts Act). This problem could be solved if the Federal Court would decide upon the complaints against the second instance judgements of the supreme courts of the republics and of the Supreme Military Court.

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

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

Article 12 of the CPA, which corresponds to the provision of the Federal Constitution, is elaborated in detail in its Chapter XXXII, which deals with the definition of unjustly convicted persons, and the grounds and procedure for the enforcement of the rights which belong to such persons. A person is considered as unjustly convicted if convicted by a valid judgement, while the new procedure based on extraordinary legal remedies resulted in an acquittal or in a judgement which rejects the charge, or discontinues the procedure (Art. 541 of the CPA). A person who consciously provoked, by a false admission or in any other way, his or her conviction, is not considered unjustly convicted, except if such a person was under duress.

4.5.3.12. Ne bis in idem. — International standards (Art. 14, para. 7 ICCPR and Protocol 7 para. 4 line 1 ECHR) prescribe that "none shall be liable to be tried and punished again for an offence for which he has already been finally convicted or acquitted ...". The ECHR, unlike the ICCPR, allows a deviation from that principle — the procedure may be repeated "if there is evidence of new or newly discovered facts or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case" (Art. 4, para. 2 of the Protocol No. 7, with the ECHR).

The provision of Art. 28 of the FRY Constitution does not formulate in an appropriate way the principle *ne bis in idem*, since the Constitution prohibits a repeated conviction and/or liberation and does not — which is the substance of this principle — prohibit repeated procedure for the same criminal offence against a person against whom such a procedure already took place and have been duly terminated. The solution in the Constitution of Montenegro is much better: "none can be held responsible twice for one and the same criminal act" (Art. 27). Unfortunately, the Constitution of Serbia contains no provision on this procedural principle.

The principle *ne bis in idem* is not specially defined in the CPA, but it is obvious that it was adopted to a certain degree: the violation of that principle represents a basis for a decision of non-admissibility.

However, in some cases the deviation from the principle *ne bis in idem* is allowed, and the repeated procedure may take place, even to the detriment of the defendant (Art. 403 and 404 CPA).

4.6. The Right to the Protection of Privacy, Family, Home and Correspondence

Article 17 ICCPR:

> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> 2. Everyone has the right to the protection of the law against such interference or attacks.

4.6.1. Privacy

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

4.6.1.1. Access to personal data. — The FRY Constitution explicitly guarantees, in Article 33, the protection of personal data:

> The protection of the data about a person is guaranteed.

> The use of data about a person for other purposes than those for which they are collected is prohibited.
>
> Everyone has the right to be informed about the personal data collected about him or her and the right to legal protection in the case of the abuse of such data.
>
> The collection, processing, use and protection of personal data about a person are regulated by federal laws.

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

The Personal Protection Data Act (*Sl. list SRJ*, No. 24/1998) regulates the protection of personal data. It prescribes that personal data may be collected, processed and used only for the purposes prescribed by the Act, and for other purposes only with the written consent of the citizen (Art. 13). It is also prescribed that citizens may request data about themselves, or may request to see such data, and the deletion of the data which are not in accordance with the law, and the prohibition of the use of erroneous data (Art. 12). However, a citizen may not use such rights if the data collected are in accordance with the regulations on penal records, or in accordance with the regulations on records in the field of security of the FRY (Art. 13). Such a broad definition of the grounds for the prohibition of access to data practically hollows those rights, and leaves to the state agencies broad discretionary powers to refuse access to the data.

4.6.1.2. Sexual autonomy. — The Law of the FRY does not prohibit voluntary sexual relations between adult homosexuals (above 18 years of age), which is in accordance with the international interpretation of sexuality as an element of the right to private life. The penal codes incriminate voluntary sexual relations between homosexuals in which one of them is under 18 years of age, with possible punishments up to one year imprisonment

(Art. 110, para. 4 of the PC of Serbia; Art. 91, para. 4 of the PC of Montenegro).

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

4.6.2. Home

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

> An official may enter the apartment or other premises without a warrant and search them without the presence of witnesses if that is necessary for the direct arrest of a person who committed a criminal offence, or necessary for protecting persons and property, in a way prescribed by federal law (Art. 31, para. 4).

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

The Federal CPA regulates the search of homes and of person, and deviations from the rules of their inviolability (Art. 206–210 of the CPA). The search of apartments and of other premises of a defendant or of other persons may be undertaken if it is probable that the defendant would be apprehended in the search, or that traces of a criminal offence or objects connected to the criminal procedure would be found (Art. 206). The search is ordered by the court by a written

reasoned warrant. Search warrant belongs exclusively to the competence of courts, while the search itself is controlled by the investigative judge, or by the police, at the instruction of the investigative judge (Art. 106, para. 3). The search takes place always in the presence of witnesses and it must be recorded in the minutes (Art. 208).

In exceptional cases, the police may perform searches without warrants: 1. if the owner of the dwelling so wishes; 2. if this is necessary in order to apprehend an offender *in flagranti*; 3. for the safety of persons and property; 4. if a person who must be apprehended by force, at the order of the competent organ of the state, could hide there; 5. if it is obvious that evidence could not be secured otherwise Art. 210, para. 1). In these cases, the search may be performed without witnesses, if it is not possible to find witnesses, and there is a danger of postponement (Art. 210, para. 3). When the police perform a search without a court order, they are bound to immediately submit report to the investigative judge or to the public prosecutor, if the investigation has not already begun (Art. 210, para. 5).

The provision of the CPA on the search without warrant does not appear to be in accordance with the FRY Constitution, for it introduces new grounds for intrusive searches. Thus the possibility to perform a search because evidence cannot be assured otherwise, or in order to arrest a person who must be apprehended by force and who did not commit a criminal offence (but e.g., a traffic misdemeanour) is unconstitutional. It must be taken into account that the CPA was adopted at the time of the former SFRY and it has still not been harmonised with the new constitution.

The Internal Affairs Act of Montenegro (*Sl. list RCG*, No. 24/94–327) prescribes, in Art. 3, that "authorised officials" may enter an apartment and search it without a warrant and without the presence of witnesses, "if it is necessary for the direct arrest of a person who committed a criminal offence, or to save persons and property". Regardless of the fact that this text respects the exceptions prescribed by Art. 31, para. 4 of the FRY Constitution, the entire provision is unconstitutional, for the exceptions of the guarantee of inviolability of

apartment may be prescribed only by a federal law. Also, there is no mention of any supervision of such procedure, which opens space for abuses.

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

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

4.6.3. Correspondence

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

The Criminal Procedure Act covers in more detail the deviations from the right to the secrecy of letters. An investigative judge may order the post, cable and other organisations to submit to him (with a receipt), letters, cables and other pieces of mail sent to the defendant or by the defendant, if there exist circumstances which lead to well-

founded conclusion that such pieces of mail might be used as evidence in the procedure (Art. 214, para. 1). The pieces of mail are opened by the investigative judge in the presence of two witnesses. When letters are opened, care must be taken to preserve the seals, and to keep the envelopes and the addresses. Minutes on the opening must be taken (Art. 214, para. 3). If the interests of the procedure allow, the defendant or the person to whom the mail is addressed may be informed, completely or partially, about the content of the mail; the mail may be also given to such persons. If the defendant is absent, the piece of mail shall be given to some of his relatives, and if there are no such relatives, it will be sent back to the sender, if that is not against the interests of the procedure (Art. 214, para. 4).

When the defendant is kept in custody, and has already been interrogated, his or her counsel may correspond with or talk to the defendant (Art. 74, para. 1). Nevertheless, the investigative judge may order that the correspondence between the defendant and the counsel is sent only after being seen by him, the investigative judge, or that the defendant may talk to the counsel only in the presence of the investigative judge (para. 2). It seems that this rule is too broad, and that it could represent a violation of the right to fair trial. This concerns especially the rule that the defendant may talk to his or her counsel only in the presence of the investigative judge or of a person designated by the investigative judge (see the judgement of the European Court of Human Rights in *S. vs. Switzerland*, A 220, 1991, p. 48). Also, it follows, *a contrario*, from the provisions of Art. 74, para. 1 of the CPA, that communication with the advocate is completely impossible before the defendant is interrogated. This provision, too, is a possible violation of the right to fair trial, or of the right to defence.

As concerns the convicted persons, their status is regulated by the Implementation of Penal Sanctions Act (*Sl. glasnik RS*, No. 16/1997). This law prescribes that a convicted person has unlimited right to correspondence (Art. 65 and 66).

The Internal Affairs Act of Serbia (*Sl. glasnik RS*, No. 44/1991–1721) foresees a procedure on the basis of which the police may

control letters and other means of communication (Art. 13). At the request of the Public Prosecutor or of the Minister of the Interior, the Supreme Court of Serbia may allow the perusal of letters or eavesdropping (tapping), if that is necessary for the conducting of the criminal procedure or for the security and defence of Serbia. The Supreme Court of Serbia, i.e. its President or a judge appointed by the President, decides on such requests. Following the decision of the court, the Minister orders "measures enabling a deviation from the principle of the inviolability of the secrecy of letters in regard to some individuals or organisations ..." (Art. 13, para. 3). It must be stressed that this Act is not in compliance with the Constitution of Serbia and of the FRY, since it envisages the "security" of the Republic of Serbia as one of the grounds for the opening of correspondence; this ground does not exist in any constitution. The only mitigating circumstance is that this deviation from the principle of secrecy of letters appears to be controlled by courts.

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

4.6.4. Honour and Reputation

In accordance with the international standard prescribed by Art. 17 ICCPR, stating that no person shall be exposed to unlawful attacks on his or her honour or reputation, the penal codes of the republics foresee the criminal offences of slander and insult (Art. 92 and 93 of the PC of Serbia; Art. 76 and 77 of the PC of Montenegro). Also, the disclosure of personal and family circumstances of a person which might be detrimental to his or her honour and reputation is prescribed

as a criminal offence (Art. 94 of the PC of Serbia; Art. 78 of the PC of Montenegro).

4.7. The Right to Freedom of Thought, Conscience and Religion

Article 18 ICCPR:

> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such restrictions as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
>
> 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

All constitutions in Yugoslavia guarantee the freedom of thought and conscience (FRY — Art. 25; Serbia — Art. 45; Montenegro — Art. 34 para. 1 and 2). In addition, the constitutions of the FRY and Montenegro expressly guarantee the freedom of belief. The freedom of belief, thought and conscience, as well as the freedom of

religion, are absolute and cannot be restricted in the state of war (more in Section 3). In the framework of the general prohibition of discrimination (Art. 20 of the FRY Constitution), religious, political and other beliefs are cited as forbidden grounds for distinctions. According to the FRY Constitution (Art. 137, para. 2) conscientious objection is accepted.

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

> Freedoms of religious belief and public or private expression of religious belief and practising of religious customs are guaranteed.
>
> No one is under the obligation to disclose their religious beliefs.

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

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

According to Art. 18 para. 4 ICCPR, states parties are under the obligation "to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions". In Yugoslavia, neither the federal nor the republic constitutions guarantee this right. When this right of the parents is interpreted in conjunction with Art. 13, para. 3 and 4 of ECHR[29] it can be concluded that parents have the right to establish private schools to educate children in accordance with their religious beliefs. However, in the FRY private persons cannot establish elementary schools — this can be done only by the state (Art. 9 of the Serbian Elementary Schools Act — *Sl. glasnik RS,* No. 50/1992–1726; Art. 17 of the Montenegrin Elementary Schools Act — *Sl. list RCG,* No. 34/1991–574). This leads to the conclusion that the FRY does not fulfil its obligations under Art. 18, para. 4 ICCPR.

The FRY Constitution also secures the right to conscientious objection (Art. 137 para. 2), in accordance with the new tendency to recognise this right as part of the freedom of conscience and religion[30]:

> A citizen who for religious or other reasons of conscience does not want to fulfil his military obligations under arms will be given the opportunity to fulfil this obligation in the Army of

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

30 See Resolution 1989/59 of the UN Commission of Human Rights and the recommendation of the Council of Ministers of the European Union R (87)8 of 9 April 1987. See also the interesting *obiter dictum* of the Human Rights Committee in its views in the case of *J.P. vs. Canada* (No. 446/1991, para. 4.2) where the Committee explicitly states that conscientious objection is protected under Art. 18 ICCPR.

Yugoslavia without arms, or in civilian service, in accordance with federal law.

Conscientious objection is regulated in more detail by the Army of Yugoslavia Act, according to which recruits who invoke conscientious objection serve their term in double duration, i.e. 24 months. This Act allows the recruit 15 days to request in written form that he perform military service as a civilian. However, the state is not under an obligation to inform the recruit about the availability of this alternative service; if the recruit misses this opportunity, he cannot invoke his beliefs as an objection to serve under arms. The recruitment commission decides on the request within 60 days. Its decision can be appealed, but not before a court.

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

If conscientious objection is recognised as pertaining to the freedom of conscience and religion, then the same logic must apply to a persons freedom to change religion or belief. However, the Army of Yugoslavia Act (*Sl. list SRJ,* 67/1993) does not offer this possibility to those who have performed their military service normally to choose to later do their reserve duties without arms on the basis of a newly acquired belief. The Federal Constitutional Court has not accepted the initiative to examine the constitutionality of the relevant provisions of the Army of Yugoslavia Act (Decision No. 51/94 of 25 May 1994, *Odluke i rešenja SUS,* 1994, p. 28–29). According to the Court, the Constitution itself determines that conscientious objection is practised

"in accordance with federal law". The Court stated that the relevant federal law in the case under consideration was the Army of Yugoslavia Act, which states that conscientious objection can be invoked only at the time of recruitment and not later (Art. 298). Obviously the Court believes that the scope of conscientious objection is determined only by law and that there has never been an obligation of the legislator to take into account the possibility of changing religious and other beliefs[31]. It is interesting to note that the Army of Yugoslavia Act allows the opposite: namely, if a recruit who has previously decided to invoke conscientious objection changes his beliefs and decides to carry arms, he will be welcomed to do so (Art. 297, para. 2).

4.8. The Freedom of Opinion and Expression

Article 19 ICCPR:

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

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

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

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

31 Had the FRY Constitution, in accordance with international standards, guaranteed the fundamental human right to change religion or belief, the decision of the Constitutional Court would have necessarily been different.

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

4.8.1. General

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

All constitutions safeguard the freedom of public expression of opinion (FRY — Art. 35; Montenegro — Art. 34 para. 2; Serbia — Art. 45). Additionally, the FRY and Montenegrin constitutions contain a separate provision guaranteeing "the freedom of speech and public appearance" (FRY — Art. 39; Montenegro — Art. 38). The Montenegrin Constitution in its Art. 34 para. 2 also states that "no one is under an obligation to declare one's opinion ...".

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

> Censorship of the press and other media of public information is prohibited.
>
> No one can prevent the distribution of the press and the circulation of other information, unless it is determined by the

> Court that they contain invitations to the forcible disruption of the constitutional order, infringement of the territorial integrity of the FRY, violation of guaranteed freedoms and rights of man and citizen, or provocation of national, racial or religious intolerance and hatred.

The conditions for the restrictions of the freedom of the press, set out in the FRY Constitution, do not include all those found in ICCPR and ECHR (e.g. the protection of public health and morals). Neither is it expressly provided that the restriction must be provided by law, although this can be inferred from other provisions of the FRY Constitution (e.g. Art. 67 — see I.3.1.1). There is no mention of the principle of proportionality, which suggests that the purpose of the restriction should be achieved with minimal damage to the freedom of expression. Since the general principle of proportionality in relation to the enjoyment of human rights has not been adopted in the Yugoslav legal order, it is very important that it be included in specific legislative acts.

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

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

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

— when enumerating the reasons for restrictions of the freedom of information the Serbian Constitution adds that "no one can prevent the distribution of the press and circulation of other information ... unless they *provoke and incite to* national, racial or religious intolerance and hatred (Art. 46 para. 6, italics added). Accordingly, restrictions are possible not only if the press provokes *intolerance and hatred* (as in the FRY Constitution and the Montenegrin Constitution) but also if it *incites* it. "Incitement" is a wider term than "provocation", which means that the Serbian Constitution offers more possibility for the restriction of the freedom of the press. Nevertheless, it should not be

concluded that this is a significant departure from international standards; such restrictions can rather be viewed as the enforcement of Art. 20 para. 2 ICCPR dealing with the prohibition of "hate speech" (see I.4.8.4);

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

Provisions on the freedom of expression in Yugoslav constitutions appear to be generally in accordance with international standards. However, these constitutions do not follow international treaties in their entirety and do not refer to the freedom to seek and receive information regardless of borders and the medium of transmission (cf. General Comment of the Human Rights Committee No. 10 (19) of 27 July 1983, p. 2). Even if granted that "receiving" information is generally covered by the guarantee of the freedom of the media, the question of the freedom to seek information from the organs of the state remains open. This gap is strongly felt in practice, especially by journalists who are faced with arbitrary refusal of information and access to events.

4.8.2. New Limitations of the Freedom of Expression in Serbia — the 1998 Legislation on the Media

In the last quarter of 1998 the position of the media in Serbia drastically worsened, with the adoption of a new Public Information Act, which had been preceded by a Decree placing the media under strict and arbitrary government control.

4.8.2.1. "The Decree on Special Measures in the Situation of Threats to our Country by NATO Armed Attacks" (*Sl. glasnik RS*, No. 35/98). — At the beginning of October 1998 the crisis involving possible NATO military strikes against targets in Serbia and Yugoslavia was at its peak. In the shadow of intense diplomatic activity a meeting was held on 6 October in the Government of Serbia between the representatives of the Government — the

Deputy Prime Minister Milovan Bojić (JUL) and the Minister of Information Aleksandar Vučić (SRS) — and representatives of the media. The members of the Government accused some parts of the media with betrayal of state interests and propaganda for the West. The ministers orally forbade the electronic media to re-transmit the broadcasts in Serbian of some foreign radio and TV stations (Voice of America, Radio Free Europe, Deutsche Welle, BBC and other)[32]; they also announced a corresponding "formal decision of the Government". Such a prohibition, not based on any law, certainly represents unlawful interference in the work of media, contrary to international standards and to the constitutions of Serbia and Yugoslavia.

The Official Gazette of Serbia published a Decree on 8 October 1998, formalising the threat announced at the meeting. The third part of the Decree (Art. 7–11) under the title *Operation and Responsibility of the Media of Public Information,* introduced the duty of the media "to act in accordance with the rights and duties of citizens to protect territorial integrity, sovereignty and independence of the Republic of Serbia and the Federal Republic of Yugoslavia" (Art. 7). The Decree also prohibited "re-broadcasting of parts of programmes, i.e. programmes and texts of foreign media, which act against the interests of our country, spread fear, panic and defeatism, or negatively affect the readiness of citizens to protect the integrity of the Republic of Serbia and the Federal Republic of Yugoslavia" (Art. 8, para. 1). The Decree further prohibited the media "to spread defeatism and act contrary to the resolutions of the Federal Assembly and the People's Assembly of the Republic of Serbia" and proceeded to instruct them "to use their programmatic content to oppose such activity of other means of public information" (Art. 8 para. 2). The Decree prescribed sanctions for the violations of its provisions: they amounted to temporary suspension of work and confiscation of equipment. Punishment was to be preceded by a warning from the Ministry of Information to the medium which "does not act in accordance with the rights and duties of citizens to

32 See *Naša borba,* 8 October 1998, p. 12 (Bojić and Vučić's Orders to Serbian Media)

protect territorial integrity"; if the Ministry estimated that the warning had not been heeded, the punishment was imposed by the same agency, without any participation of courts (Art. 9 and 10). The decision of the Ministry could be appealed, but the appeal did not stop its execution (Art. 1). Similar provisions have never been a part of Serbian legislation, even in the communist past. The prohibition to listen to foreign radio programmes existed only under German occupation in World War II. Almost immediately, the Constitutional Court of Serbia received a motion to examine the constitutionality and legality of the Decree. The following observations are based on the points made in the submission.

The Decree was not issued after a formal declaration on the state of emergency or immediate danger of war, as provided for by the constitutions of Serbia and Yugoslavia. The Constitution of Serbia and ICCPR allow derogation of the freedom of expression only in situations of emergency (Art. 4 ICCPR). According to Art. 46 of the Serbian Constitution, censorship is prohibited and the distribution of the press or the spreading of particular information can be banned only by the decision of a competent court. The provisions of the Decree impose drastic restrictions to the freedom of expression in extremely vague terms ("in accordance with the rights and duties of citizens to protect ..."). This opens the way to arbitrary interpretations. Furthermore, obligations of media were determined by an act which does not correspond to the legal meaning of the term "law"; this is contrary to Art. 19 ICCPR and also violates the Constitution of Serbia, because restrictive measures and related sanctions are to be determined by the executive, without any participation of the judiciary. Similar vagueness is contained in the prohibition to re-broadcast the programmes of foreign media: the notions of "panic" and "defeatism" are not defined in any legislative act or by any decision of a court in the FRY. The prohibition on re-broadcasting corresponds to preventive censorship, because it affects all future broadcasts of foreign origin, irrespective of their content, whereas censorship is expressly prohibited by Yugoslav law. The introduction of the duty of the media to oppose "defeatist" and similar activity of other media is totally incomprehensible and

illegal: it does not introduce any restrictions but represents a state order to all media to act in a certain manner, regardless of whether they are owned by the state or by private persons.

Harsh sanctions provided by the Decree for the violation of its vague provisions are also contrary to the principle of legality. According to international law and the Constitution of Serbia, only the prohibition of the distribution of certain newspapers and certain information is admissible, but not the termination of the work of a medium. Finally, such a punitive measure is in the hands of an executive organ — the Ministry of Information, and not within the competence of a court, as provided by the Constitution of Serbia.

4.8.2.2. The new Public Information Act of the Republic of Serbia. — On 20 October 1998, under the rules of urgent procedure and practically without debate, the People's Assembly of Serbia adopted a new Public Information Act (*Sl. glasnik RS*, No. 36/98). The draft, prepared by the Government, had been kept secret so that even the deputies received it on that very day.

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

Administrative proceedings against the media, prescribed by the new Act, have been compared to summary trials. Magistrates, which in the FRY are not judges but officials of the executive branch,[33] have only 48 hours at their disposal to decide on the guilt and liability of the media and of their responsible editors. After receiving an appeal against a medium, the magistrate must set a hearing within 24 hours and announce a decision within the next 24 hours. In the proceedings, which are criminal in nature, there is a presumption of guilt of the accused, who is not allowed to prove the veracity of the statements he or she has published. If the magistrate imposes a fine, the convicted

33 See the decision of the Constitutional Court of Serbia of 10 July 1997, *Sl. glasnik RS,* No. *37/1997–767.*

person is left only 24 hours to pay — after that the property of the convicted medium or the responsible person will be impounded. This property will be auctioned within 7 days. Taking into account that fines prescribed by the Act are generally very high (especially in view of the sorry state of Serbian economy),[34] it is clear that the purpose of pecuniary punishment is to put disobedient media out of business. The provisions described above are incompatible with the guarantees of the freedom of expression in international law and in the Constitution of Serbia (Art. 19 ICCPR, Art. 10 ECHR, Art. 46 Constitution of Serbia) and especially with the interpretation of Art. 10 ECHR given by the European Court of Human Rights.[35] The new Act also disregards the corresponding rights to fair trial and defence (Art. 14 ICCPR, Art. 6 ECHR, Art. 22–24 Constitution of Serbia). They also violate the principle of equality of arms, guaranteed by Art. 22 of the Serbian Constitution and Art. 14 ICCPR, as well as the presumption of innocence, contained in Art. 23 of the Serbian Constitution, Art. 14 para. 2 ICCPR and Art. 6 para. 2 ECHR. The rules in the Act governing the delivery of summonses are a precedent in procedural law: they allow the latter to be served in ways that do not even remotely satisfy the requirement that the accused learn about the fact of the accusation; these rules do not take into any consideration such obstacles as illness or absence.[36] Furthermore, the appeal does not stay the enforcement of the magistrate's decision.

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34 In the first trial after the adoption of the Act a Belgrade magistrate sentenced on 23 October 1998 the founders, owners and editors of the weekly *Evropljanin* to a total fine of USD 250,000.

35 See *Lingens vs. Austria,* ECHR A 103.

36 The Act provides that summonses and other decisions of the magistrate can be served to the accused, as well as to "a worker who is found in the office" and, if this is not possible, "by fixing the summons on the door, when it is considered to have been served". In addition, for them to be considered to be handed, summonses and other documents can be announced by a medium (Art. 72 para. 2 and 3)! The accusation against the Montenegrin weekly *Monitor,* which is published and printed in Podgorica, was announced by *Radio Jugoslavija*, a station belonging to the Federal Government, with very few listeners in Montenegro. See *Monitor*, 4 December 1998.

The scope of sentences available to the magistrate according to the new Act has also given rise to serious concerns. The seminal Misdemeanours Act provides for maximum and minimum limits of sanctions for petty offences: however, the new Act prescribes fines which exceed the maximum limit by more than 400 times! According to the Misdemeanours Act, the maximum fine is YUD 1,000 for a natural person, and YUD 10,000 for legal persons. The new Public Information Act prescribes that a natural person (e.g. the responsible editor of a newspaper) can be sentences to a fine up to YUD 400,000 and a legal person (e.g. the company publishing the newspaper) up to YUD 800,000.[37] The Serbian Parliament attempted to circumvent this discrepancy by adopting simultaneously an amendment to the Misdemeanours Act providing that the upper limit of fines provided for in the Misdemeanours Act should not apply to misdemeanours in the field of public information. In the motion to examine the constitutionality of the Information Act the applicants also question the constitutionality of the amendment to the Misdemeanours Act: they reason that misdemeanours are by definition the mildest form of unlawful behaviour and that, if such severe punishment is envisaged, conduct penalised by the Act cannot be considered petty offences, but serious crimes.[38] Fines are imposed by magistrates, sitting alone, who are not members of the judiciary but officials of the executive, appointed and removed by the Government. This results in a lack of procedural safeguards, which is unusual for trials that may result in heavy sentences, similar to those for criminal offences. Other petty offenders, such as violators of traffic regulations or prostitutes, are accordingly privileged, which again runs counter the principle for non-discrimination, contained in Art. 13 and 22 of the Constitution of Serbia.

The ban of re-broadcasting of foreign programmes "with a political-propagandistic content" was transferred to the Public Infor-

37 In December 1998, 1 YUD was worth USD 0.10.

38 The Federal Penal Code sets the maximum fine for a criminal offence as 50,000 YUD, with the proviso that offences motivated by greed can be punished by a maximum fine of 200,000 YUD. Consequently, under the new legislation a petty offence in the field of information can incur a punishment much higher than that prescribed for a crime by the Penal Code.

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

4.8.3. The Establishment and Operation of Electronic Media

The greatest difficulties with the implementation of the freedom of expression and information in Yugoslavia and Serbia have occurred in the work of electronic media. Provisions on the establishment, beginning of operation and activity of electronic media are dispersed in many federal and republic acts and regulations. They are often incoherent or controversial and have created a situation where it is practically impossible legally to establish and manage a private radio or television station. Legal problems facing private stations are almost entirely linked to the application of provisions relating to the law on telecommunications (acts on radio and television and acts on the systems of communications). On the other hand, provisions that directly deal with the operation of the media itself (acts on information) caused lesser problems until 1998. It should be noted that the provisions on the operation of electronic media in the FRY, and in particular in Serbia, grant large privileges to the state electronic media (public enterprises for radio diffusion); the latter practically have a free hand in using frequencies. On the other hand, Montenegrin legislation is much better adapted to international standards; the relevant Montenegrin 1998 Public Information Act (*Sl. list RCG,* 4/1998–3) was drafted with the assistance of OSCE experts. The following analysis will

therefore be limited to the activity of radio and television stations in Serbia.

In order to establish and make operational a radio or television station in Serbia the following requirements should be fulfilled:

— a request has to be submitted to the government of Serbia for permission to use a frequency for a station, in accordance with Art. 4 of the Radio and Television Act (*Sl. glasnik RS,* 48/1991–1995);

— an enterprise for broadcasting of radio and television programmes has to be established and registered — according to Art. 3 of the Serbian Radio and Television Act and the jurisprudence of the courts, the court of registration cannot register the enterprise without a proof that it has obtained permission to use the frequency;

— permission must be obtained for the acquisition and operation of a station (a radio or TV transmitter), according to Art. 68–79 of the Federal Communications Systems Act, (*Sl. list SFRJ,* 41/1988–1137) and the Decree on the Data and Documentation to be Submitted with the Request for the Grant of a Permission for a Radio Station (*Sl. list SFRJ,* 22/1991–413);

— an existing decision of the enterprise licensed to broadcast radio and TV programmes to establish a broadcasting station in accordance with the federal and republic acts on public information;

— registration of the established broadcasting station with the Ministry of Information of Serbia, in accordance with the provisions of the Serbian Public Information Act (*Sl. glasnik RS,* 19/1991–633),[39] and the Instruction on the Entry of Organisations for Radio Diffusion into the Register of Media of Public Information.

39 This condition is provided by Article 17 of the new Serbian Public Information Act as well (*Sl. glasnik RS*, No. 36/1998–890).

4.8.3.1. Obtaining frequency. — A request to be granted the use of radio-frequency has to be submitted to the Government of Serbia (Radio and Television Act, Art. 4). The government is under an obligation to announce annual competition for the allotment of radio frequencies (Art. 7). However, since 1993 the Government has not published a single announcement for the allotment of radio frequencies thereby violating a clear legal obligation and preventing private radio and television stations from obtaining concessions on the basis of public competition. There is, however, another way to obtain the use of a frequency: namely, the state broadcasting enterprise can obtain the concession without a public tender (Art. 6). The state enterprise can in turn confer the use of these frequencies to other broadcasting organisations on a contractual basis (Art. 15). By such devious means the decision-making on the allotment of frequencies has been actually transferred from the Government of Serbia to Radio-Television Serbia (RTS), which can choose with whom to sign the contract. State television having been under control of the ruling party this has meant that frequencies have been allotted without social and legal control, based on the criterion of political acceptability and closeness to the powers to be.

The method of granting radio and TV frequencies in Yugoslavia has departed from international standards, especially those of ECHR, which prescribes that the only acceptable criterion for the allotment of frequencies is the fulfilment of technical requirements and implies that the power to grant frequencies cannot be used to damage the substance of the freedom of expression (see e.g. the judgement of the European Court of Human Rights in the case of *Gropera radio et al. vs. Switzerland*, A 173, 1990, para. 61).

4.8.3.2. Establishing a broadcasting enterprise. — According to the jurisprudence of the registration courts in Serbia, an enterprise for the broadcasting of radio and television programmes cannot be established without the submission of proof that the founder of the enterprise possesses the right to use a radio frequ-

ency. Courts have found support for this attitude in Art. 3 of the Radio-Television Act. However, this Art. is inconsistent with the new FRY company law, covered by the 1996 Enterprises Act (*Sl. list SRJ,* 29/1996–1) and the accompanying legislative provisions. According to this Act the *establishment* of an enterprise is simple and devoid of formalities, whereas the *operation of* the enterprise is subject to administrative control. From that moment on, activity described by the law as "radio and television activity" and designated by No. 120350, has been divided into two activities. Production of radio and television programmes has become "activity No. 92200", and activity called "communication; broadcasting of radio and television programmes" has become "activity No. 64200". These provisions superseded Art. 1 of the Serbian Radio-Television Act, which had defined "radio diffusion activity". This means that the need for a prior concession of a radio frequency, according to Art. 3 of the Radio-Television Act, ceased to exist — an enterprise engaged in the production of radio and TV programmes certainly does not depend on a frequency in order *to produce* programmes. Registration courts in Serbia have interpreted the provisions quoted above in a different manner and have refused to allow the registration of enterprises without a prior permission to use frequencies. The result has been that it has not been possible to register an enterprise for broadcasting of radio and television programmes: no competition for the allotment of frequencies has been published and Radio-Television of Serbia has contractually granted frequencies very sparingly and arbitrarily. The Federal Ministry of Telecommunications published in February 1998 an announcement for the issuance of temporary permissions for the use of radio frequencies and TV channels. The right to participate in the competition was limited only to enterprises registered for broadcasting radio and television programmes. This completed the vicious circle: without being registered as a broadcasting enterprise, no frequency can be obtained — without a frequency, no entity can be registered as an enterprise for the broadcasting of RTV programmes.

4.8.3.3. Permission to acquire and operate a radio or television station. — According to Art. 72 of the FRY Communications Systems Act, a request to obtain permission to acquire and operate a radio station must be accompanied by information on technical data pertaining to the station (transmitter) — its location, purpose, outgoing force, antennae, as well as the opinion of the competent state agency on compliance with the plan of the development of radio communications. Unfortunately, the Serbian Ministry of Transportation and Communication has never reacted to any request to deliver such an opinion, which has resulted in perpetual "silence of administration". General Administrative Procedure Act (*Sl. list SRJ,* 33/1997–1) allows the Federal Ministry of Communications to issue a permission for the transmitter without the previous opinion of the agency of the republic, if the latter refuses to react. However, in reality the federal Ministry has always refused to decide on the application without the opinion of the republic agency, so that it has not been possible to obtain a permission for the acquisition and operation of radio stations.

Additional requirements are set by the Regulation on the Data and Documentation to be Submitted with an Application for the Acquisition of a Permit to Operate a Radio Station (*Sl. list SFRJ,* 44/1976–1329, Art. 14 para. 1.1). It requires the presentation of the following documents:

— a certificate that the applicant has been registered for the activity for broadcasting of television programmes, issued by the court of registration (see I.4.8.3.2)

— a decision of the republic Ministry of Information to include the enterprise into the register kept by that Ministry (see I.4.8.3.5).

The aforementioned provisions of the Regulation increase in fact the number of requirements for the submission of an application for a permit to operate the transmitter; as it happens very often in the FRY, a right is further restricted by legal provisions below the rank of legislative act. The Regulation is therefore probably contrary to the

Constitution; furthermore, it lacks logic demanding two state organs to mutually condition the issuance of their acts, neither of them willing to be the first to act (see I.4.8.3.5).

4.8.3.4. Establishing a public station (radio or television). — A radio station is established when the enterprise intending to broadcast radio and TV programmes adopts the relevant act. Given that the adoption of an act on the establishment of a station does not require the participation of any organ of the state, this has been the only step performed without major difficulties. The contents of the establishment act are prescribed by Art. 5 of the still valid 1990 Basis of the System of Public Information Act of the former Socialist Federal Republic of Yugoslavia (*Sl. list SFRJ*, 84/1990–2353).

4.8.3.5. Registering a station. — Art. 7 para. 1 of the RS Public Information Act states that a public medium can start its operation only after having been entered into the registry of the means of public information kept by the Serbian Ministry of Information.[40] Entry into the registry is a constitutive act: only properly registered media can operate legally. Taking into account that the main purpose of the register is to record information, and not to determine the conditions under which the media can operate, this condition appears to be in accordance with international standards.

According to the Public Information Act (Art. 7) and the Instruction for the Entry of Radio Broadcasting Organisations into the Registry of Media[41] the application must be accompanied by the following:[42]

40 The same according to the new Serbian Public Information Act (Art. 17).

41 The Instruction is an internal act of the Serbian Ministry of Information, not published in the Official Gazette.

42 The new Serbian Public Information Act (Art. 18, para. 3) provides that secondary legislation cannot require additional submissions besides the application for the entry into the registry, which would mean that the provisions of the internal Instruction are no longer applied. However, in reality it appears that additional documents are still required. It is still unclear whether the provisions of the Instruction for the Entry of Radio Broadcasting Organisations into the Registry of Media are still applied.

— the decision of the court of registration confirming that the enterprise has been registered for the activity of radio and TV broadcasting (see I.4.8.3.2);[43]

— the act establishing the medium (see I.4.8.3 4);

— the decision of the government of Serbia allotting the frequency (or the contract with the state Radio-Television of Serbia — see I.4.8.3.1);

— the permission to acquire and operate a radio station, issued by the federal Administration of Radio Communications (i.e. the federal Ministry of Telecommunications — see I.4.8.2.3). However, the real condition for the issuance of a permit has been the submission of a copy of a decision to enter the medium into the registry, which has led to the vicious circle described above: neither the federal Ministry of Communication, nor the Ministry of Information of a republic have been prepared to act first, even if their decision would be accompanied by the warning that its validity is conditioned upon the issuance of the decision of the other authority. The only way to overcome this burden has been a contract with the Radio-Television of Serbia (RTS); with such a contract, the programme is technically broadcast via a RTS transmitter. Naturally, RTS has always possessed all the necessary permissions, not least because the Director of the federal Authority for Radio Communication, which issues the permits, has as a rule occupied the position of the technical director of RTS.

The problems with the establishment and operation of electronic media have been all but insoluble. The only way to legally establish and operate a radio and TV station has been via a contract with RTS. This contract includes a frequency allotment, leading to the registration of the enterprise; the permit for the transmitter is already possessed by RTS, so that the final registration has not been too difficult. However, RTS has concluded such contracts with great hesitancy.

Under the existing provisions at various levels it has been practically impossible for private persons to establish electronic media.

43 This submission is not required by the new Serbian Public Information Act.

This barrier is of legal nature. Under such circumstances the freedom to receive and impart information and ideas of all kinds has been restricted in Yugoslavia on grounds not referred to in Art. 19 para. 3 ICCPR. Some restrictions have been imposed by provisions below the level of legislative acts. Furthermore, it has never been determined that restrictions have been necessary for the respect of the rights and reputations of others or for the protection of national security or of public order, health or morals. Restrictions in Yugoslav law have been designed to limit the scope of the freedom of expression and information, which is legally absolute (cf. General Comment of the Human Rights Committee, No. 10/19 of 27 July 1983 para. 4). Neither could it be maintained that the restrictions found in Yugoslav law are in accordance with the ECHR, especially after the decision in the case of *Informationsverein Lentia et al. vs. Austria* (A 276, 1993), where the European Court of Human Rights took the position that a public monopoly of broadcasting which resulted in severe restrictions of the freedom of expression could be reasoned by a "pressing need". However, the ECHR permits the retention by states of their right to regulate radio and TV broadcasting on their territory by linking them to prior permission.

4.8.4. Relevant Criminal Legislation

The nature of the restrictions imposed in Yugoslavia on the freedom of expression and information can be best observed by the perusal of the Penal Code of Serbia, which in many respects departs from international standards and facilitates criminal prosecution and intimidation of journalists and the media. To be sure, some offences are described in such a way to include exculpation if the act was committed in the exercise of the profession of a journalist. The Act provides that, when determining the nature of the offence, the court has to take into account the manner in which a text was written, which corresponds to the requirement of the European Court of Human Rights that the seriousness of a journalist's contribution is an important element to determine whether a restriction is "necessary in a democratic society" (*Jersild vs. Denmark,* A 298 1994, para. 34). Thus, the

FRY Penal Code (Art. 157, para. 2) and the Penal Code of Serbia (Art. 98, para. 2) contain identical provisions determining that an act against the reputation of the state will not be punishable if:

> ... derogatory remarks were made in a scientific, literary or Artistic work, in serious criticism, in performance of official duties, *in the exercise of the profession of a journalist,* in political and other social activity, in the defence of a right or in protection of justified interest, *if the manner of expression and other circumstances do not indicate that the statement was made with the intention to denigrate,* or if the author proves the veracity of the statements, or proves that there were justified reasons to believe that the statement made or reproduced was true.[44]

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

> A person making public or reproducing false information or *statements* with the intention to cause malaise *or disquietude among citizens* or to endanger public order or peace, or with the intention *to obstruct the enforcement of decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures* will be punished by imprisonment for a maximum three years[45].

Thus formulated, the criminal offence of circulating false information offers a wide opportunity to the authorities to prosecute anyone who utters statements which the former find objectionable, so that the freedom of speech and public appearance, guaranteed by the FRY Constitution, as well as the international standards on the freedom of expression, have been unreasonably restricted. Circulation of false news (Art. 218 para. 1; Art. 219 para. 2 in conjunction with Art. 219 para. 1 of the RS Penal Code) can be considered a criminal offence,

44 Italics added.
45 Italics added.

but its incrimination should be in accordance with the international obligations of the FRY.

Stipulating that circulation of false information is punishable if there is an intention "to cause malaise or disquietude among citizens" is very general and vague and cannot meet the requirements of Art. 20 ICCPR and Art. 10 ECHR. Bearing in mind that Yugoslav courts in such cases will not apply the principle of proportionality, this wording is not consistent with the international obligations of the FRY.

The offence of circulating false information "with the intention to obstruct the *enforcement of* decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures" is defined in such a manner to facilitate the prosecution of political opponents. In some instances a similar restriction could be reasonable in order to e.g. protect the authority and the impartiality of the judiciary. In Yugoslav law, especially because of the absence of the principle of proportionality, there is no safeguard that such a broad wording will not be used to suppress opinions found unacceptable by the authorities, and to restrain political debate. The offence of circulation of false information has been widely used by the communist regime in Yugoslavia to prosecute dissidents.

The definition of the offence of "unlawful possession and operation of a radio station" in the Serbian Penal Code deserves to be quoted:

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

wider area, the perpetrator will be punished by one to eight years of imprisonment.[46]

This is a very severe incrimination in view of the legal impossibility of obtaining the permission to own and operate a radio station (I.4.8.2.3). Only an incrimination related to the possession of a legal radio station could be possibly justified by the restrictions envisaged in Art. 10, para. 1 *in fine* of ECHR.

It is no wonder then that journalists and editors working for the media not controlled by the state have in most cases been prosecuted because of alleged offences under Art. 218 of the Serbian Penal Code (journalists and editors of printed and electronic media) and under Art. 219 of the Code (those working for the electronic media).

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

Article 20 ICCPR:

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

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

The relevant Yugoslav constitutional and legal provisions generally correspond to the prohibitions imposed in Art. 20 ICCPR. However, there have been very few instances of criminal prosecution for advocacy of national, racial and religious hatred or for propaganda for war, although everyone agrees that "hate speech" and propaganda for war have been very conspicuous both before the outburst of conflicts in the territory of the former SFRY and after 1991, when military operations at larger scale started.

46 Italics added.

The constitutions in the FR Yugoslavia do not contain the prohibition of propaganda for war, but such propaganda is a criminal offence according to the federal Penal Code, which in its Art. 152 simply states that persons "advocating or instigating to *aggressive* war" will be punished by imprisonment from one to ten years. The difference between this Article and the corresponding provision in ICCPR, which prohibits "*any propaganda for war*" (Art. 20) is conspicuous.[47]

The provision of the Yugoslav Penal Code can nevertheless be tolerated bearing in mind the interpretation of the term "propaganda for war", given by the Human Rights Committee. The Committee expressed the view that only propaganda aiming at the commission of acts of aggression and breaches of peace contrary to the UN Charter was prohibited, but not of military activity in the protection of the sovereign right to self-defence or of the right of peoples to self-determination (General Comment 11/19 of 29 July 1983). Hence the greatest difficulty in the application of Art. 152 of the Penal Code is to establish whether the advocated war is a war of aggression or armed action in the exercise of self-defence or of the self-determination of peoples.

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

> Any incitement and instigation to national, racial, religious or other inequality, as well as any instigation and inflammation of national, racial, religious and other hatred and intolerance is contrary to the Constitution and punishable.

A similar provision is found in Art. 43 of the Constitution of Montenegro. However, an explicit prohibition of "hate speech" does not exist in the Serbian Constitution, which indirectly refers to "incitement and instigation of national, racial and religious intolerance and

47 Italics added.

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

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

Some questions arise in a relation to Art. 134 of the FRY Penal Code, which explicitly prohibits the instigation of national, racial and religious hatred, discord or intolerance.

> Any person instigating or inflaming national, racial or religious hatred or intolerance among the nations and national minorities living in the FRY will be punished by imprisonment from one to five years. If an act defined in para. 1 of this Article was committed by coercion, ill-treatment, endangering of security, defa-

> mation of national, ethnic or religious symbols, causing damage to the property of others, desecration of monuments, memorials or tombs, the perpetrator will be punished by imprisonment from one to eight years.
>
> Anyone committing acts described in para. 1 and 2 of this Article through the misuse of his/her position or powers, or if such acts have led to disorders, violence or other serious consequences to common life of peoples and national minorities living in the FRY, the perpetrator will be punished for an act in para. 1 of this Article — by imprisonment from one to eight years, or for an act in para. 2 of this Article — by imprisonment from one to ten years.

The second and the third paragraphs of the cited Article precisely define the manner in which incriminated acts under para. 1 can be committed. They also encompass elements of some other criminal offences. This is obviously the result of the events and official attitudes in the course of the last fifteen years, especially in Kosovo. Para. 1 seriously diminishes the scope of Art. 20 ICCPR. The prohibition of the advocacy of national hatred is needlessly limited only to "peoples and national minorities living in the FRY". ICCPR insists on the prohibition of "any advocacy of national, racial or religious hatred", irrespective of the national group and of the area where it resides. Para. 1 uses only the term "inflame" instead of "advocate" or "instigate". Although the selected term can be illustrative, it is better in principle to use language made precise in international treaties and tested in the jurisprudence of their supervisory organs.

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

4.9. The Right to Freedom of Peaceful Assembly

Article 21 ICCPR:

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

4.9.1. General

The freedom of peaceful assembly is guaranteed in the Yugoslav constitutions, and both republics regulated in more detail, in their laws, the enjoyment of this right (Public Assemblies of Citizens Act of Serbia, *Sl. glasnik RS*, No. 51/1992–1791; Public Meetings Act of Montenegro, *Sl. list RCG*, No. 57/1992–1053). According to the FRY Constitution (Art. 40):

> The freedom of meetings and other public assemblies is guaranteed to the citizens, without permission, with a previous notification by authorities.
>
> The freedom of meetings and other peaceful assemblies may be temporarily limited in order to prevent the endangering of health and morals, or for the protection of persons and property.

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

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

The Constitution of Serbia (Art. 43), mentions, besides the restrictions prescribed by the FRY Constitution and in the Constitution of Montenegro, as a reason for the restriction of peaceful assemblies, the "prevention of the disruption of public traffic". This provision opens broad avenues for abuses of the restriction of the freedom of public assembly; furthermore, there is no mention of it in the international instruments.

The Yugoslav constitutions guarantee the right to the freedom of assembly to "citizens" only, and not to "everyone", as it is said in international documents. Nevertheless, according to the Citizens Assemblies Act of the RS, a foreigner may convene a public meeting, with the previous approval of the police. Furthermore, the law says that police approval is necessary for the appearance of a foreigner at a meeting (Art. 7). This provision not only regulates the enjoyment of the right to the freedom of assembly, but it also, apparently, represents a very broad restriction of the right to the freedom of expression.

According to the Serbian Act, public meetings may take place in one place, or may be moving (Art. 3, para. 1 of the Citizens Assemblies Act of RS). Such a provision, which regulates the modalities of public meetings, has its sense in a country in which the tradition of public demonstrations by private actors did not exist for a long time.

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

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

It follows that, in order to hold a public meeting in a certain area, such a meeting, must not *inter alia* provoke "disturbances of public traffic". As already stated, this reason for the restriction is already found in the provisions of the Constitution of Serbia. True, the law somewhat mitigates this restriction, for it prescribes that a meeting may be held in an area with public traffic, if it is, *inter alia*, possible to change temporarily the regime of public traffic (Art. 2, para. 3). It seems that the "disturbance of public traffic" represents an excessively restrictive basis for the restriction of the freedom of assembly, and that is incompatible with international standards. The other reasons for the restriction of that freedom, quoted in the Act, which make an area inappropriate for public meetings, refer to much more important and broader public interests, as, e.g., the health hazards. Unlike that, the "disturbance of public traffic", as a rule cannot reflect a public interest liable always to prevent the enjoyment of the freedom of assembly at a certain place, it being "necessary in a democratic society". Public traffic can always be regulated in accordance with the needs.

It should be also emphasised that the problem lies in the fact that a municipality or a city are expected to decide in advance what areas are "appropriate" for public meetings. For instance, the City Assembly of Belgrade prescribed the places for the meetings of citizens, some of them outside downtown Belgrade, so that in such cases the convenors of the meetings could hardly hope to achieve the objective of the meeting (Decision on the determination of the areas for the meetings of citizens in Belgrade, *Sl. list Grada Beograda*, No. 17/1992–939). Although the Montenegrin Act, unlike the Serbian one,

does not define the appropriate areas for gatherings, and does not mention the disturbance of public traffic as a reason for restrictions, it still prescribes that the municipality "defines the places, i.e. areas for public meetings" (Art. 4 of the Public Meetings Act of RM).

The organisation of public meetings has thus been spatially limited in advance, instead of having the authorities decide, in each individual case, whether a certain area is, at a given moment, suitable ("appropriate") for public meetings. Of course, the organisers of meetings will always wish to convene their meetings in the most attractive places, in order to attain maximum effects, and so as to attract the greatest possible number of persons. According to the international standards, the right to assembly may be exercised in various ways: outdoors or indoors, in private areas or in private premises, in streets or on squares, still or in motion (demonstrations, protest marches, etc.) In certain cases, authorities may prohibit or interrupt public meetings, or the state, if it wants to limit the freedom of assembly, may check, for each individual case, whether some of the reasons for the restriction of the meeting exist, and whether it is "necessary in a democratic society".

It must be conceded that in practice the restrictive provisions of the Serbian law have mainly not been applied and that public meetings have been held, more or less, without restrictions. In most cases, the police have not shown enthusiasm to enforce the restrictions, except in the case of the months-long demonstrations of the citizens of Serbia because of the annulment of the 1996 local elections (1996–1997). At that time, it was prohibited to demonstrate on roadways in Serbian cities, and huge police force was used to enforce that prohibition.

Concerning the places of public meetings, the federal Strikes Act (*Sl. list SRJ*, No. 29/1996) contains a provision according to which the place of meetings of workers on strike cannot be outside the premises of their enterprise (Art. 4, para. 5, line 3). In that way, accordingly, strikers cannot hold public demonstrations. The Federal Court refused to examine the constitutionality of these provisions, considering that they do not affect the enjoyment of human rights, guaranteed by the FRY Constitution. According to the Court:

> The legal limitation of the place of the gatherings of the participants in a strike to the business premises of employees does not represent a restriction of the personal and political freedoms of the citizens, which are manifested in the freedom of all citizens to move, to think, speak and gather together (Decision IU, No. 132/96, of 9 October 1996, Decisions of the FCC, 1996, p. 33–34);

According to the republic laws, the organisers of public meetings are bound to notify the police, at least 48 hours in advance in Serbia, and 72 hours in Montenegro, of the public meeting (Art. 6, para. 1 of the Assemblies of Citizens Act of RS; Art. 3, para. 1 of the Public Meetings Act of RM). According to the Serbian law, if a public meeting is held on a place with public traffic, which means that the traffic regime should be changed, the meeting must be announced 5 days earlier (Art. 6, para. 2). The Serbian Act prescribes that the police shall dispel a meeting which is held without previous announcement and that "measures for the establishment of public order and peace shall be undertaken" (Art. 14).

4.9.2. Prohibition of Public Meetings

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

prohibition may bring results months after the prohibition, when the public meeting is deprived of any purpose.

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

If there appears the need for a temporary or permanent prohibition of a meeting during the meeting itself (see above), the police may interrupt the meeting (Art. 12, para. 1). The legal protection in the case of interruption of a public meeting depends on the nature of the prohibition: whether it is a prohibition by the police, or a temporary prohibition, in which case the court must decide in the last instance, to make it a permanent measure.

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

Concerning legal protection, the Montenegrin law allows complaints to a higher administrative body; an administrative suit is possible against the decisions of such authorities. The Montenegrin law prescribes that a public meeting may be held if the competent organ does not take a decision on the complaint within 24 hours from the reception of the complaint (Art. 10, para. 4). This provision is more liberal than the one in the Serbian law (Art. 11 of the Assemblies of Citizens Act of RS), but still does not secure urgent protection of the courts in the cases of prohibition or interruption of a public meeting.

4.10. The Freedom of Association

Article 22 ICCPR:

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

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

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

4.10.1. General

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

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

The political and trade union associations in the FRY, which act on the entire territory of the FRY, are established and operate according to the federal Act on Association of Citizens into Societies, Social Organisations and Political Organisations established for the territory of the FRY (*Sl. list SFRJ*, No. 42/90–1253; further on "The Association of the FRY Citizens Act"). The status of the organisations whose activities are limited to the territory of only one republic is governed by separate republic laws. Montenegro adopted the Association of Citizens Act (*Sl. list RCG*, No. 23/1990–321), while in Serbia, there are two laws; 1) The Social Organisations and Citizens Associations Act (*Sl. glasnik SRS*, No. 24/1982–1193), which regulates the establishment and activities of social organisations and of citizens associations; and 2) The Political Organisations Act (*Sl. glasnik SRS*, No.

37/1990–1381), which deals with political organisations. There are two laws in Serbia because the Social Organisations and Citizens Associations Act was adopted in 1982, in the time of the one-party system.

All the laws were adopted before the coming in force of the present constitutions, therefore they are not completely harmonised with them. In Serbia, the trade union organisations and of citizens associations are still established on the basis of the 1982 Social Organisations and Citizens Associations Act, which is very much burdened by socialist rhetoric and archaic restrictions. For instance, Article 2 prescribes that "the association of working people and citizens into social organisations and associations contributes to the further development of the socio-political system, to the creation of new contents and new elements which stimulate the development of human beings as free and creative persons in the self-managed socialist society". The ideological nature of that Act is in complete disharmony with international instruments. Bearing in mind its obsolescence and partial inapplicability due to the disappearance of the socio-political system on which it was based, there is an acute need for a new law, which would regulate the association of citizens in harmony with the new constitutional order.

The freedom of association does not represent only an individual right of individuals to establish political and trade union organisations with persons of the same mind or to join already existing organisations; it also includes the collective right of organisations to self-organisation and activity aimed at the achievement of common interests of their members. The ILO Convention 87 on the trade union freedom and on the protection of trade union rights explicitly prescribes, in Art. 3, that the trade union organisations are authorised to adopt their statutes and administrative rules, to elect freely their representatives, to organise their management and their activities and to formulate action programmes. Similarly, the Federal Constitutional Court concluded that the provision of Art. 5, para. 2 of the Election of the President of the Republic Act was unconstitutional (*Sl. list RCG*, No. 49/1992); according to that provision "one political party may nomi-

nate only one candidate for the election of the President of the Republic" (No. IU 155/97, *Sl. list SRJ*, No. 46/97–2). In the reasoning, the Court states that the "constitutional freedom of political association assumes that nobody and nothing, including legal prescriptions, can deprive a party of the right to self-organisation, nor of the right to regulate autonomously the modalities of its activities ..." and that such a legal prohibition "prevents the citizens associated in political parties from autonomously regulating those relations which, in accordance with the constitutional principles of the freedom of association, represent their autonomous right ...".

4.10.2. The Registration and the Termination of Activities of an Association

The freedom of political and trade union organisation is conditioned on registration by the competent ministry of justice — for political organisations, and by the competent ministry of labour for trade union organisations. On the day of the registration, the organisation acquires the status of a legal person and may start its activities. Since an organisation may act only after the registration by the competent authority, the provision of the FRY Constitution prohibiting "the establishment of secret organisations and paramilitary organisations" is superfluous (Art. 42, para. 2). The procedure of registration starts with the submission of an application to the competent authority to register the organisation in the registry within 15 days (30 days for the establishment of political parties in Serbia).

The question of the cessation of the activities of political and trade union organisations, i.e. of the basis for their deletion from the registry is very important for the enjoyment of the right to free association. All Yugoslav laws prescribe that an organisation ceases to exist a) by the decision of the organ determined by the statute of the organisation, b) if the number of members of the organisation decreases below the limit determined for the establishment of the organisation, c) if it is found that the organisation discontinued its activities (except for political organisations in Serbia), or d) if the activity of the organisation is prohibited.

The adoption of a decision on the prohibition of the activities of a political or trade union organisation should be within the competence of a court, and not of an administrative body. The ILO Convention No. 87 prescribes explicitly, in its Article 4, that administrative authorities may not dissolve or suspend trade union organisations. Contrary to that, the decisions on the prohibition of the activities of the trade union organisations in Serbia, and of political and trade union organisations registered at the FRY level, are taken by the administrative body which is competent for their registration. (Art. 67 of the Association of Citizens of the FRY Act ; Art. 20 of the Social Organisations and Associations of the Citizens of Serbia Act). The Social Organisations and Associations of Citizens of Serbia Act, unlike the Association of the Citizens of the FRY Act, does not require that the decision on the prohibition of activities be reasoned. Furthermore, both laws contain a pernicious provision, according to which organisations are bound to cease their activities on the day when they receive the decision, and not on the day of the coming of the decision into force. The Association of the Citizens of the FRY Act foresees the possibility of administrative dispute before the Federal Court against decisions on the prohibition. However, the Social Organisations and Associations of Citizens of Serbia Act does not prescribe any kind of special court protection.

The decisions on the prohibition of the activities of political organisations in Serbia are taken by the Supreme Court, at the proposal of the public prosecutor (Art. 12, para. 5 of the Political Organisations of Serbia Act). Complaints may be filed against the decisions of the Supreme Court (Art. 13, para. 4). In Montenegro, the Constitutional Court decides on the prohibitions of political organisations or of citizens associations, at the proposal of the public prosecutor or of the administrative body which keeps the registry of the organisations (the Constitutional Court of Montenegro Act, *Sl. list RCG*, No. 44/1995–342).

4.10.3. Associations of Aliens

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

Nevertheless, the laws do not deny completely the freedom of association of aliens. The Montenegrin Association of Citizens Act and the Serbian Social Organisations and Associations of Citizens Act allow the establishment of associations of aliens, but not of their political and social organisations, including trade unions. The associations of aliens are subject to a special regime, which is regulated in more detail by the federal Movement and Residence of Aliens Act (*Sl. list SFRJ*, No. 56/1980–1662). According to Article 68, para. 1 of that Act, "the associations of foreigners are established on the basis of permission of the competent authorities". Licenses for the establishment of associations of foreigners, established for activities in the territory of the FRY, and for activities in the territory of Serbia, are issued by the federal and republic organs of the interior (police), respectively.

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

4.10.4. Restrictions

4.10.4.1. Prohibition of an organisation. — All constitutions in the FRY prohibit political and trade union organising and

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

It should be underlined again that the Yugoslav legal system does not accept the principle of proportionality in the restrictions of human rights, and does not take into account the fact that all restrictions must be "necessary in a democratic society" as it is required by the ICCPR and the CESCR, concerning the freedom of association. In certain cases, the prohibition of political parties, according to the Yugoslav constitutions and laws, may prove to be contrary to the requirements of Art. 22 ICCPR.

Furthermore, the existing laws expand in an inadmissible way the scope of the prohibition of the activities of organisations and associations. Thus the Association of the Citizens Act of the FRY prescribes that political and trade union organisations may be prohibited not only if they act in a way which is not in accordance with the law, but also if they do not act in accordance "with the objectives for which they were established, or with a certain programme orientation, or programme of a political organisation" (Art. 20). According to that

provision, e.g., a political organisation might be prohibited if it declares in its programme that it is a royalist organisation, and does not act, according to the assessment of the competent body, in accordance with its royalist orientation. Such a provision permits inadmissible interference in the activities of trade union and political organisations, it gives the possibility to the authorities to assess by themselves what is the meaning of a programme of a political organisation, whether it behaves in accordance with that programme, etc. It is very difficult to see what general social interest could stand behind such a provision which allows direct interference of the state in the freedom of association — one of the fundamental human rights.

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

The FRY Constitution prescribes, in Art. 41, para. 2, that "the sources of revenue of political parties are accessible to the view of the public", which is understandable, for that makes transparent the financing of the political parties, which is desirable in a democratic society. On the other hand, political organisations are not allowed to receive funds from abroad, either from physical or from legal persons (Art. 5, para. 2 of the Association of Citizens Act of the FRY; Art. 11, para. 2 of the Association of the Citizens Act of Montenegro; Art. 2, para. 1 of the Financing of the Political Organisations Act of Serbia, *Sl. glasnik RS*, No. 32/1997–638). Although it can be said that such a restriction represents a part of allowed grounds for the restriction of the freedom of association, like e.g. the protection of the public order or of the national security (the prohibition of receiving money from abroad by the political parties is meant to prevent inadmissible interference of foreign countries in the internal political life), it is still a question whether the complete prohibition of financing from foreign countries could be considered as "necessary in a democratic society".

Citizens Associations Act of Montenegro (Art. 28, para. 3) and the Political Organisations Act of Serbia (Art. 12, para. 3) prescribe that a political organisation shall be prohibited if it acquires funds from abroad for the achievement of its objectives. Such a measure does not correspond to the interest which is protected, and could not be considered as necessary in a democratic society. The Associations of Citizens Act of the FRY prescribes a more appropriate solution, and that is the confiscation of the funds acquired abroad and fine for the delinquent political organisation (Art. 22, para. 1, line 2, and Art. 24).

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

The prohibition of the establishment of political and trade union organs (but not including the prohibition to take part in them), five years after serving a sentence, or after pardon or the expiration of the enforceability of a sentence, was established by law. Also, it is probably in the domain of admissible grounds for restrictions of the right to the freedom of association, as, for instance, national security or public order.

The public interest in this case is to prevent persons sentenced for certain criminal offences (e.g., against the constitutional order and the security of the FRY, like the disclosure of state secrets, armed rebellion, instigation to violent change of the constitutional order, etc.)

to, possibly, repeat their criminal offences. This is why they are not allowed to be founders of political or trade union organisations. The intention is to prevent them from repeating their criminal acts. On the other hand, it is not prohibited to them to be members of such associations, which makes such a measure absurd: such persons may establish trade unions or political parties by the intermediary of their friends, and eventually direct the activities of such organisation to become unlawful; in that way the purpose of the prohibition of founding organisations is completely missed.

An association is prohibited if its activities are directed at the violent overthrow of the constitutional order, to the fostering of racial or national hatred, etc. In that case, the consequence is being punished — the prohibition of an organisation is the final sanction for the unlawful activities of the organisation. If an organisation is founded by persons who have been sentenced for certain criminal offences, and have served their sentences, this does not mean that their association would be involved in unlawful activities. The right to the freedom of association of such persons thus is completely abolished: this freedom includes the right to establish political or trade union associations. The effect is similar to the effect of "preliminary censorship" in the field of the freedom of press. Something is prohibited for preventive reasons, before it is established whether it should be prohibited due to justified reasons. There are other ways of monitoring the activities of political and trade union organisations and of preventing their unlawful activities. This is the most severe measure, which is obviously not necessary in a democratic society for the achievement of the legitimate interest of the protection of the public order or of national security.

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

The ICCPR and the CESCR authorise states to restrict the right to free association of the members of the armed forces or of the police, and, according to the CESCR, of the members of the state administration as well (Art. 22, para. 2 ICCPR and Art. 11, para. 2 of the European Convention). In view of the traditional meaning of the word

"restriction" and the fact that both the ICCPR and CESCR talk about the restriction in "exercising" the right to free association, which means that the measure should not endanger the existence of that right *per se*, the absolute prohibition of political and trade union association to these categories of persons cannot considered to be acceptable.

Nevertheless, the Yugoslav constitutions and laws provide for the absolute prohibition of political and trade union association to the professional members of the army and of the police. According to the FRY Constitution, "the professional members of the army and of the police of the Federal Republic of Yugoslavia are not allowed to join trade unions" and "shall not be members of political parties" (the FRY Constitution, Art. 42, para. 2 and 3). This provision is made operational in the Army of Yugoslavia Act (*Sl. list SRJ*, No. 43/1994–600), which prescribes, in Art. 36, that "professional soldiers, students of military academies and students of military secondary schools may not be members of political parties, are not entitled to trade union organisation and to strikes". The right to the freedom of trade union and political association is thus completely denied to such persons.

Unlike that general prohibition, para. 2 of the same article prescribes that "soldiers, when serving the military service, and members of the reserve, while in service in the army, may not participate in the activities of the political parties". This restriction would be in accordance with the ICCPR and the CESCR, because it concerns the restriction of the *exercise* of political activities (expression) and of the right to association during a determined time period, and it does not endanger the substance of that right, as the previous Article.

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

The personal restrictions of the freedom of association are extended, in the Yugoslav constitutions, to some other persons, not referred to in the international instruments. Therefore, such restrictions should be assessed in the light of generally admitted restrictions. Thus

the FRY Constitution prescribes that the "judges of the Federal Constitutional Court, judges of the Federal Court, the Federal Public Prosecutor ... may not be members of political parties" (Art. 42, para. 3 of the FRY Constitution). The Constitution of Serbia does not contain that prohibition; however, the Serbian Public Prosecutor's Office Act (*Sl. glasnik RS*, No. 43/1991, Art. 7) and the Courts Act (*Sl. glasnik RS*, No. 46/1991, Art. 5) prescribe that both the Public Prosecutor and the Deputy Public Prosecutor and the judge "may not exercise political functions".

It can be assumed that the restriction of the freedom of political organisation of the judges and public prosecutors is intended to protect a legitimate interest, and that is the assurance of impartial and independent judiciary, and, consequently, the protection of public order. Nevertheless, the complete denial of the right to political organising of these persons, established by the FRY Constitution, represents an exceedingly radical and inappropriate measure which does not satisfy the standard of "being necessary in a democratic society", for there exist other, less restrictive ways to protect public interests. In that sense, the solutions of the Serbian laws on the prosecutor's office and on the courts are more appropriate: these laws do not deny the right of political organising to public prosecutors and judges; they only limit such rights, for it does not allow these persons to perform political functions. An even more precise solution is found in the Constitution of Montenegro, where Art. 41, para. 3 prescribes that the "judges, judges of the Constitutional Court and public prosecutors may not be members of the *organs* of political parties" (italics added).

The Act on Labour Relations in the Organs of the State of Serbia (*Sl. glasnik RS*, No. 48/1991) expands the restriction of the freedom of political organising to persons employed in state agencies and to appointed persons. Art. 4, para. 3 of that law prescribes that such persons "may not be members of the organs of political parties". This restriction is in accordance with the CESCR, which permits the restriction of the enjoyment of the right to free association of the employees in the state administration. Unlike the European Convention, the ICCPR prescribes such restriction only for the members of

the army and of the police, and not for the persons employed in the state administration. In this case, that restriction should be evaluated in accordance with the general conditions of the restriction of the freedom to association. Concerning those persons, the prohibition is personally too broad, for the definition of persons employed in the state administration includes translators, typists, librarians, etc. It cannot be said that there exists an important social interest, "necessary in a democratic society", which would not allow these persons to be members of the organs of political parties.

The Constitution of Montenegro prohibits "political organisation in state agencies" (Art. 41, para. 1). Also, State Administration Act (*Sl. glasnik RS*, No. 20/1992) prescribes, in Article 6, that it is prohibited "to organise political parties and other political organisations or various organisational forms of such organisations in the organs of the state administration". This prohibition is in accordance with the international standards, for its purpose is to prevent the identification of the state organs with any political organisation.

4.10.6. The Right to Strike

Trade unions and political organisations have the right to undertake actions aimed at the protection of their members. The right to strike represents one of the most important measures which may be undertaken by the trade unions to that purpose. That right is explicitly guaranteed by Art. 8, para. 1 (d) CESCR and by Art. 6, para. 4 of the European Social Charter, but not explicitly by the ICCPR or the ECHR.[48]

48 Unlike the Human Rights Committee which decided, in a controversial view, that the right to strike was not included in the right to association guaranteed by the ICCPR (*Alberta Union vs. Canada, No. 18/1982),* the European Court of Human Rights recognised the importance of the right to strike for the promotion of the freedom of trade union association, but its scope and importance are still to be elaborated in the jurisprudence of the Court (*Schmidt and Dahlstrom vs. Sweden*, A 21, 1976). The ILO Committee for the freedom of association also took the view that the right to strike, which is not explicitly mentioned in the ILO Convention No. 87, represents a legitimate and essential way in which the trade unions promote the interests of the employees (No. 118/1982, para. 2.3).

The Yugoslav constitutions guarantee the right to strike. According to the FRY Constitution "employees have the right to strike, in order to protect their professional and economic interests, in accordance with the federal law" (Art. 57, para. 1; the same in the Constitution of Montenegro, Art. 54, para. 1). The Constitution of Serbia does not prescribe what is meant under strike, but only says that "the employees have the right to strike, in accordance with the law" (Art. 37 of the Constitution of Serbia).

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

According to the FRY Constitution, Art. 57, para. 2, "the right to strike may be limited by federal law, when that is required by the nature of the activity or by public interests". The Strikes Act (*Sl. list SRJ*, No. 29/1996) establishes a special regime of strikes "in operations of public interest or in operations where the interruption of work could, due to the very nature of the operation, endanger the health and lives of the public, or cause great damage" (Art. 9, para. 1). Operations of public interest include the activities important for the defence and security of the FRY, and the activities necessary for the fulfilment of international obligations (Art. 10, para. 3). In such operations, the right to strike may be exercised if some special conditions are fulfilled "to assure the minimum of the working process which guarantees the safety of persons and property or represents an irreplaceable condition of life and work of citizens, or of the operation of other enterprises ..." (Art. 10, para. 1) or the continuation of activities important for the defence of the FRY and for the international obligations of the FRY. The minimum working process is determined by the director, and, in the case of public services and public companies, the founder, in the

way determined by the general act of the employer, in accordance with the collective agreement (Art. 10, para. 3).

It is quite obvious that there is a need for a special regime for strikes in the activities of special importance for the normal functioning of the state, but it should be met in a different way. The indispensability of the minimum working process is acceptable for the vital facilities, and only in some fields of activities. The rules determine that the minimum should be very restrictive, but for employers and not workers. The way in which that process is prescribed by the existing Strike Act defines the minimum working process so broadly that it raises doubts as to whether a strike may take place at all, or whether it could have any effect. Furthermore, broad wordings like "the fulfilment of international obligations" make it possible to completely prohibit strikes in some cases: the production of an enterprise may be completely export oriented. The existing strike regime, to a certain degree, negates the right to strike.

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

4.11. The Right to Peaceful Enjoyment of Property

Article 1 of the First Protocol to ECHR:

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

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

4.11.1. General

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

> Nobody could be deprived of ownership, and such ownership could not be limited, except when it is required by the general interest determined in accordance with the law, and for compensation which must not be interior than the market value of the possessions.

Similar guarantees of the right to ownership exist in the Constitution of Montenegro (Art. 45) and in the Constitution of Serbia (Art. 34 and 63). These provisions of the Yugoslav constitutions follow the international standards.

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

list SFRJ, No. 6/1980–189, 36/90–1197, *Sl. list SRJ*, No. 29/1996–41). Since it would be impossible to analyse in detail all provisions on various kinds of ownership, attention will be given only to the fields where there is discrepancy with the international standards. These are primarily the problems linked to the protection of rights to immovable property which appear in various republic laws.

4.11.2. Expropriation

The Expropriation Act (EA — *Sl. glasnik RS*, No. 53/95) regulates the restrictions and deprivation of the right to property on real estate, which represent the gravest forms of interference in the right to the peaceful enjoyment of property. That law introduces some improvements in comparison with the previous Expropriation Act (*Sl. glasnik SRS*, No. 40/84, 53/87, 22/89, 15/90 and the *Sl. glasnik RS*, No. 6/90); however, it does not go far enough to satisfy the international standards regarding the right to peaceful enjoyment of property. For instance, the Expropriation Act provides better guarantees to the owner that the compensation will be paid in due time, since the beneficiary of the expropriation, who acquires the right of ownership on the immovable property at the moment when the decision on the expropriation comes into effect, may take the possession of the immovable property only on the day when the decision on compensation comes into effect, or on the day of the conclusion of the agreement on compensation (Art. 34). According to the previous Act, the beneficiary of the expropriation had the right to take the possession of the immovable property at the moment when the decision on the expropriation comes into effect, which was very much detrimental to the owners who had to wait, in some cases, up to ten years for actual payment.

Still the EA foresees the possibility for the beneficiary of expropriation to take the possession of immovable property before the day of the coming into effect of the decision on compensation or before the conclusion of the agreement on compensation, if the Ministry of Finance is satisfied that that would be necessary because of the urgency of the construction of a certain building or of certain works (Art. 35, para. 1). Because of the vague nature of the wording "urgency

of construction of a certain building or of the works", this provision offers broad powers to the Ministry of Finance and cannot be considered precise enough to fulfil the conditions of legality in accordance with the European standards. Namely, according to the jurisprudence of the ECHR, in order to satisfy the conditions of legality, a law must be accessible, foreseeable (precise enough in given circumstances) and must provide protection against arbitrariness in the decision-making of the state agencies. Although there is obviously an interest for a more rapid procedure of expropriation in some exceptional situations, the terms of the application of a special procedure must be formulated more precisely than it is prescribed in Art. 35 of the EA, in order to avoid abuses.

According to the jurisprudence of the European Court of Human Rights, in every interference with the rights to peaceful enjoyment of property, it is necessary to establish a balance between the public interest, at the one hand, and the rights of individuals, at the other. The seriousness of the interference of the state should influence the decision on whether circumstances justify such measures and the amount of compensation. However, that does not mean that the question of the monetary compensation appears only in the case of deprivation of the property: compensation may be required for restrictions of less intensity as well (*Sporrong and Lonnroth vs. Sweden*, A 52, 1982). The analysis of the Expropriation Act shows that there is no adequate possibility to establish the balance during all phases of the procedure.

First of all, Art. 20 of the Expropriation Act does not prescribe the obligation of the Government of Serbia to take into account the interest of the owner of real estate when determining the existence of the general interest for expropriation, nor to see whether the interest of the owner to keep the property and to continue to be engaged in his or her activities is possibly stronger than the general interest. The actual conduct the Government of Serbia has confirmed that the individual interests have not been respected in practice.

Individual interests are endangered in the procedure of the municipal institutions which adopt the decisions on expropriation. In

most cases, the owner is not allowed to build on the real estate, and the enjoyment of property is also made difficult because a notice on expropriation is entered in land registers. That means that the position of the owner is clearly unfavourable, both concerning the use of the property and concerning the possible sales of the property. The EA does not prescribe a time limit for the conclusion of that phase of the procedure, nor is there a possibility to compensate the owner in the case of very long procedure. Experience has shown that owners may remain in such unfavourable position for more than ten years. The reason lies primarily in the overburdened and ineffective judiciary, and in some cases in the interest of the beneficiaries to drag the procedure until they collect the necessary funds for construction and for payment of compensation.

A similar situation occurs in cases when a decision on expropriation is adopted, and compensation remains undetermined. The position of the (now former) owner of the expropriated property becomes even worse, since the beneficiary of the expropriation acquired the right of ownership over the immovable property, and the former owner retains only factual possession. If Art. 35, para. 1 of the EA is applied, the owner forfeits another safeguard, and compensation is not paid. This phase can also last for more than ten years. The amount of the compensation also represents a problem, because, although Art. 44 of the Act guarantees material compensation which cannot be lower than the market value of the real estate, the method of determination of the compensation and the slowness of the payment reduce in practice the real value of the compensation.

4.11.3. Sales of Immovable Property

The Act on the Special Conditions of the Sales of Property (SCSP — *Sl. glasnik SRS*, No. 30/1989–1139) prescribes that the approval of the Ministry of Finance is necessary for every sales of immovable property in the territory of the Central Serbia and of Kosovo and Metohija. Such an approval shall be given if the change of ownership does not cause changes of the national structure of the population or exodus of members of a given nation or nationality, and

if the sales does not provoke uneasiness, uncertainty or inequality of the citizens of another nation or nationality (Art. 3). If the Ministry of Finance does not approve the sales, a Commission of the National Assembly of Serbia decides upon the complaint of the interested person in the second instance. The Act explicitly excludes the possibility of an administrative suit against the decision of the Commission. Sales contracts concluded contrary to the provisions of this Act are null and void, and the physical or legal persons who take possession of the property without the approval of the Ministry of Finance can be punished by imprisonment up to 60 days, or fined.

It is necessary to differentiate between the seller of the immovable property, on the one hand, and the buyer, on the other. Namely, the SCSP limits the right of the seller to exercise his/her right of ownership on immovable property, which is very clearly protected by ECHR. As far the buyer, the SCSP limits his or her right to acquire property, which is not protected by Article 1 of the First Protocol to ECHR. However, if there is discrimination of potential buyers in the acquisition of ownership, and if that article is read in conjunction with Article 14 ECHR (prohibition of discrimination), then the protection given in the framework of the basic right would become somewhat broader, and one could argue that it includes the potential buyers of immovable property.

The public interest which is seemingly protected by SCSP, and that is the preservation of the ethnic balance in a multiethnic community and the protection of minorities, including local minorities, could be considered, according to the European standards, as a legitimate interest in a democratic society. However, the SCSP objective, becomes questionable, because it has not been applied in Vojvodina, where its application, given the ethnic structure of the population, would be most necessary. Also, the debate in the National Assembly when the SCSP was adopted, as well as the systematic discrimination of minority populations, and especially of the Albanian, when issuing approvals for the purchase of immovable property, show that the basic aim of the Act was to prevent ethnic Albanians from buying real estate

from Serbs in Kosovo. If, therefore, the real objective of the SCSP is discrimination of persons belonging to ethnic minorities in the acquisition of property, it is obviously contrary to the understanding of public interests in a democratic society.

Furthermore, Article 3 of the SCSP, which does not clearly define the conditions for the issue of approvals for the sales of property, gives broad discretionary powers to the Ministry of Finance, which puts the potential sellers in a situation of complete uncertainty. Therefore, that provision is not sufficiently foreseeable and allows arbitrariness in decision-making, and therefore does not conform to the condition of legality according to the European standards.

Finally, the SCSP does not regulate in a satisfactory way the balance between the legitimate public interest and the necessity to protect the rights of individuals. Even if it is assumed that in certain cases, in order to preserve the ethnic balance, it would be necessary to prohibit some transactions of immovable property, and if the fact that the Act is not precise is disregarded, it is still necessary to fulfil the condition of the proportionality of interference. However, the SCSP makes it possible for a seller to be deprived of a part of the substantial rights of ownership and does not prescribe the possibility of material compensation for the damage incurred. It may happen that the owner of a property does not obtain the approval for a number of years, because the Ministry believes that none of the proposed transaction is in accordance with the public interest, this may cause considerable harm to such owner. SCSP does not respect the necessity to protect the individual interests of the owners of immovable property.

4.11.4. Inheritance

The Inheritance Act of Serbia (*Sl. glasnik RS*, No. 46/1995–1690) provides that a person subject to military service who leaves the country in order to avoid participation in the defence of the country, and does not return to the country until the death of the testator, is considered unworthy of inheritance (Art. 4, para. 5). Since the FR of Yugoslavia insisted, from the outset of the armed conflicts in the

territory of the former Yugoslavia, that it was not a belligerent, it is not clear whether that provision is meant for the future or will apply only to the persons who refused to take part in those conflicts. However, it is quite clear that in any case that provision represents a drastic violation both of the right of the owner to dispose of his or her property after his or her death and an unlawful restriction of the right to inheritance, which, as a human right, could in no way represent a danger for the "defence of the country".

4.12. Minority Rights

Article 27 ICCPR:

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

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

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

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

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

> The Federal Republic of Yugoslavia recognises and guarantees the liberties and rights of national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and other separate characteristics, the right to the use of their national symbols, in accordance with international law.

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

Concerning the specific elaboration of the rights of minorities, there is a lack of uniformity in relation to the general provisions of the existing constitutions of the FRY and of the republics and their approaches. In the FR of Yugoslavia, the right to the use of minority languages is guaranteed (Art. 45 of the FRY Constitution). All Yugoslav constitutions (Art. 15, para. 2 of the FRY Constitution; Art. 8, para. 2 of the Constitution of Serbia; Art. 9, para. 3 of the Constitution of Montenegro) guarantee the right to use minority languages before the organs of the state. Thus according to the FRY Constitution (Art. 15, para. 2): "In the regions of the FRY, inhabited by national mino-

rities, their languages and alphabets are in official use, in accordance with law".

In Serbia, this right is elaborated in the Act on the Official Use of the Language and Alphabet of Serbia (*Sl. glasnik RS*, No. 45/1991). According to the Act, the decision on whether the languages of the minorities will be used for official purposes shall be taken by the communities where those minorities live (Art. 11, para. 1). The law did not prescribe the criteria which the communities shall respect when deciding on the languages to be officially used. This shortcoming has resulted in different responses in the communities[49].

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

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

The law does not allow the replacement of the geographic and personal names contained in public inscriptions by other names; it only prescribes that they be inscribed in the languages of the minorities (Art. 7). That means that it is not allowed to replace geographic and personal names in the public signs by traditional names in the languages of minorities; it is only permitted to use the orthography of the languages of the minorities, while the official names in Serbian have still to be used. This has annoyed the members of minorities, especially since the traditional names were freely used in the previous period (e.g. Szabadka — Subotica, Ujvidek — Novi Sad).

The right to education in the languages of the minorities is guaranteed in all three Yugoslav constitutions (Art. 46, para. 1 of the FRY Constitution; Art. 32, para. 4 of the Constitution of Serbia; Art.

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

68 of the Constitution of Montenegro). Furthermore, the FRY Constitution and the Constitution of Montenegro guarantee to persons belonging to minorities the right to information in their languages (Art. 46, para. 2 of the FRY Constitution; Art. 68 of the Constitution of Montenegro).

According to the Montenegrin Act on Primary Schools (*Sl. list RCG*, No. 34/1991–574), the teaching in Albanian shall be assured in the schools "in the regions with significant numbers of members of the Albanian nationality". Also, if necessary prerequisites exist, teaching in Albanian can be introduced in other schools as well (Art. 11).

In Serbia, education in minority languages is regulated in a more precise way: if more than fifteen pupils apply, teaching must take place in the language of the minority (Primary Schools Act of Serbia, *Sl. glasnik RS*, No. 50/1992–1726). If there are less than fifteen pupils, the teaching may take place in the minority language with the approval of the Minister of Education (Art. 5). Teaching can be conducted in the languages of the minorities only, or in two languages. If the teaching is in the language of the minority, then the pupils are bound to attend lessons of the Serbian language.

However, the right to education in a minority language depends very much on the language of the pre-school education. According to the Social Care of Children Act (*Sl. glasnik RS*, No. 49/1992) the communities are the founders of pre-school institutions (Art. 45), which means that the establishment of pre-school groups in the languages of the minorities depends on the decisions of the competent organs of the communities. In that way, the enjoyment of the constitutionally guaranteed right of the members of the national minorities to education in their respective languages is made more difficult, for if the education of the children in their own respective languages is not assured at the pre-school level, their further education would be impaired.

The FRY Constitution and the Constitution of Montenegro, provide that the members of the minorities have the right to establish and maintain contacts with their kin states, which is a step further from

the Article 27 of ICCPR, and in accordance with the European Framework Convention for the Protection of National Minorities (Art. 17). On the other hand, the Constitution of Serbia does not guarantee that right.

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

> The right to establish and maintain unhindered mutual relations in the FRY and outside its borders with the members of their nation in other countries, and to participate in international non-governmental organisations, but not to the detriment of the FRY or of its member republics, is guaranteed to the members of national minorities.

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

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

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

The general clause concerning the protection of the minorities against persecution and hatred is prescribed by the constitutions of the FRY and of Montenegro (but not in the Constitution of Serbia):

> Every instigation and fostering of national, racial, religious or other inequality, and the instigation and stirring of national, religious and other hatred and intolerance is unconstitutional and punishable" (Art. 50 of the FRY Constitution; Art. 43 of the Constitution of Montenegro).

Besides that general prohibition, all three constitutions prescribe the possibility of the restriction of the freedom of expression and of the right to the freedom of association, if the use of such liberties is directed to the "... instigation of national, racial or religious hatred and intolerance" (see I.4.8. and I.4.10).

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

Regardless of the quality of the methods of implementation of the international obligations of the SFRY on the protection of the minorities, they must be assessed according to the results of their enforcement. Unfortunately, the problems faced by the FRY, and especially by Serbia, regarding the ethnic Albanians in Kosovo, and other minorities in general, show that they cannot be proud of these results achieved in this field.

4.13. Political Rights

Article 25 ICCPR:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
>
> a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

c) To have access, on general terms of equality, to public service in his country.

4.13.1. General

Article 8 of the FRY Constitution proclaims that power in Yugoslavia belongs to the citizens, who exercise it directly or through their freely elected representatives. A Yugoslav citizen above 18 years of age has the right to elect members of the organs of the state and to be elected to them (Art. 34). The constitutions of Serbia and Montenegro also proclaim popular sovereignty and universal and equal suffrage (Serbia — Art. 2 and 42; Montenegro — Art. 2, 3 and 32).

The FRY recognises the multiparty system: political parties are freely established and act freely (see I.4.13). In Montenegro and Serbia coalitions of parties are now in power, the dominant role in both of them belonging to parties originating from former communist parties. They have a relative majority in both parliaments. Opposition parties in Serbia believe that none of the elections since the introduction of the multiparty system in 1990 have been truly free and fair. Their objections relate to the organisation of elections and the regularity of the electoral process, as well as to the partiality of the state media. Serious faults in the organisation of elections in Serbia have also been reported by OSCE observation missions.[50]

The annulment of some results of local elections in 1996 caused mass protests in all the larger cities in Serbia, and lasted nearly three months. The crisis was resolved thanks to the report of the Special Representative of the OSCE Chairman-in-Office, Felipe Gonzalez. The

50 See e.g., *Republic of Serbia: Parliamentary Election September 21 1997, and Presidential Election September 21 and October 5 1997,* OSCE Office for Democratic Institutions and Human Rights (in the further text: *OSCE Report 1997*).

Parliament of Serbia thereupon adopted a special law which recognised as final the initial results of the vote and the victory of the coalition of opposition parties (Zajedno — Together) in many cities.[51] It transpires from the Gonzalez Report that the cancellation of the results of the November 1996 election was a violation of Article 25 ICCPR. Gonzalez determined that there were structural faults in the electoral system of Serbia which made it possible to misrepresent and manipulate the sovereign will of citizens. The report also referred to the role which the courts of law played in the electoral fraud through their arbitrary decisions.[52]

Some opposition parties boycotted the latest parliamentary and presidential elections (1997); OSCE observers in Serbia also expressed their objections to the conduct of these elections. On the other hand, the OSCE found that the 1997 presidential elections and 1998 parliamentary elections in Montenegro had been free and fair.[53]

4.13.2. The Right to Vote and to be Elected

The right to vote in the elections for the National Assembly of Serbia and the National Assembly of Montenegro, as well as in municipal elections in both republics belongs to citizens of the relevant republic residing in its territory (Art. 12 of the Elections for Popular Deputies Act — *Sl. glasnik RS*, 79/1992; Art. 30 of the Territorial Organisation and Local Administration Act — *Sl. glasnik RS*, 4/1991; Art. 11 of the Election of Deputies and Councilpersons Act — *Sl. list RCG*, 4/1998). According to the law, citizens of Montenegro residing in Serbia and those of Serbia residing in Montenegro are not able to

51 Act Recognising as Final the Provisional Results of the Elections for the Councilpersons of Assemblies of Municipalities and Cities Quoted in the OSCE Report (*Sl. glasnik RS*, 5/1997). When introducing the draft act, the then President of Serbia, Slobodan Milošević, qualified it as "Lex Specialis"; this is the name under which it has been popularly known in Yugoslavia.

52 See the letter of Felipe Gonzalez to the OSCE Chairman-in-Office Flavio Cotti of 27 December 1996 (REF TC-784/96).

53 See OSCE publications: R*epublic of Montenegro: Presidential Election, 5 and 19 October 1997, Final Report*, p. 5 and *Republic of Montenegro (Federal Republic of Yugoslavia): Parliamentary Elections, 31 May 1998.*

vote at republic elections; they can only vote in the elections for the Council of Citizens of the Federal Assembly (the Act on Elections for Federal Deputies in the Council of Citizens of the Federal Assembly — *Sl. list SRJ, 57/1993, Art*. 10). In reality, in recent elections in Serbia all FRY citizens residing in its territory were allowed to vote owing to the fact that both citizens of Montenegro and Serbia residing in Serbia were enrolled in the electoral register. This practice has been due to general untidiness of the electoral records. It is unlawful and contributes to legal insecurity.

The factual possibility to participate in elections and be elected depends on whether a person has been registered in electoral rolls. Timely innovations of these rolls (registering persons who have attained the necessary age and removing those who died or changed their residence) is one of the basic prerequisites for the enjoyment of the individual right to vote and for the general regularity of elections. Experiences of previous elections include many irregularities and deficiencies in maintaining of electoral rolls (*OSCE Report 1997*, p. 9–10). The new Montenegrin Elections for Deputies Act makes an effort to regulate in detail the system of the control of keeping of electoral registers. *Inter alia* it precisely determines how registers are to be kept and updated and provides for the punishment of anyone responsible for violations (Art. 16). The transparency of the electoral register is also secured by this Act: political parties participating in the election have the right to receive diskettes containing full registers within 48 hours of asking for them.

On the other hand, the federal (the Act on Elections for Federal Deputies in the Council of Citizens of the Federal Assembly) and Serbian provisions in this field do not prescribe any sanctions for persons found to be responsible for untidy electoral registers.[54] Unlike the analogous Montenegrin Act, laws in Serbia do not allow access to

54 The corresponding Serbian Act provides for the criminal responsibility of a person unlawfully not entering into the register or removing from the register another person *with the intention to prevent the latter from voting in the elections* (Art. 114 of the Elections for People's Deputies Act of Serbia — italics added).

all the electoral lists in the entire electoral register, which is necessary in order to control the regularity of elections. Access to the entire register is of great importance for the regularity of the elections: the fact that electoral registers are kept in the municipalities provides an opportunity for the same person to appear in the registers in several municipalities. The provisions of the Serbian Act allowing citizens to inspect the electoral register and to ask for corrections are inadequate. It cannot be expected that citizens will visit all municipalities and check every municipal register.

4.13.3. Electoral Procedure

4.13.3.1. Electoral commissions. — In addndnition to provisions of relevant legislative acts, very important rules governing the electoral procedure are found in the decisions of the federal and republic electoral commissions. These commissions supervise the legality of the electoral process and the uniform application of electoral laws. They also control the appointment of the permanent members of the electoral commissions for each electoral districts (in Montenegro: municipal electoral commissions). The federal and republic electoral commissions issue instructions for the work of other electoral commissions and polling boards. The former also decide in the second instance on complaints lodged during elections.

The federal and republic commissions are appointed by the respective parliaments (Elections of the Federal Deputies Act — Art. 33, para. 2; Serbian Elections of Popular Deputies Act — Art. 38, para. 1; Montenegrin Elections of Deputies Act — Art. 29). Members of electoral commissions are of two kinds: there are six permanent members and the permanent chairman, appointed by the parliament while the rest of commission consists of representatives of organisations that have submitted electoral lists (political parties, coalitions or groups of citizens). The permanent nucleus of the commission is expected to be politically neutral and its members come as a rule from the judiciary; however, due to the inferiority of the judicial branch and its dependence on the executive, permanent members of electoral commissions

have tended to represent the interests of the ruling parties. Non-permanent members come from all interested political parties and become active only after the electoral lists have been made public in the respective electoral districts. The representatives of the opposition parties thus do not participate in the drafting of the instructions for the enforcement of the electoral law and do not influence the appointment of the permanent members of the electoral commissions and of the polling boards. Furthermore, non-permanent members (except the representatives of the ruling parties) have always been in the minority in these authorities where decisions are made by majority vote. Electoral commissions have been perceived as instruments of the ruling establishment and not as a component of a democratic electoral system.

4.13.3.2. Control of ballot papers and safekeeping of electoral documentation. — Federal and republic laws state that members of the central electoral commissions decide on the method, place and control of the printing of ballot papers. However, there have been no detailed instructions regulating this process and setting out control mechanisms (*OSCE Report 1997*, p. 11). During and after the latest parliamentary and presidential elections in Serbia, the Electoral Commission of the Republic of Serbia never disclosed the total number of ballot papers printed. Nor do the instructions of the Central Electoral Commission contain precise obligations concerning the protection of the electoral records before they are handed to the local electoral commissions (such as the sealing of the premises, etc.).

4.13.3.3. Grounds for annulment. — The Election of People's Deputies Act of Serbia provides for two kinds of reasons for the annulment of elections at a polling station. If there exists a reason to conclude that they were *null and void*, elections at a polling station have to be repeated, the polling board dissolved and new members appointed (Art. 90, para. 9). On the other hand, when reasons are of lesser significance the electoral commission, acting on an appeal, is free to determine whether the elections shall be annulled or not (see Art. 69 of the Serbian Act and Art.

72 of the Montenegrin Election of Deputies Act). The Serbian Act enumerates the reasons for mandatory annulment in great detail. Elections have to be annulled if it is determined that members of the polling board have not properly explained the method of voting to a voter (Art. 79, para. 2), if symbols of political parties were observed within a diameter of 50 metres of the polling station (Art. 66), etc. The result is that elections can be annulled because of minor defects which do not necessarily affect the results.

4.13.3.4. Legal remedies. — According to the existing electoral laws the basic legal remedy relating to irregularities of elections is the complaint which any voter or other participant in the elections can lodge with the respective electoral commission. In the elections held so far, and in particular following the 1996 municipal elections in Serbia, many important loopholes have been found in this part of the legislation. This has resulted in legal insecurity and inequality in the exercise of the right to an effective remedy for protection of the individual right to vote.

No existing electoral act contains rules on the procedure which the electoral commission should apply when deciding on an appeal; this has resulted in the lack of uniformity relating to the determination of facts, to the use of evidence, and in particular to equality of arms. It is only the new Montenegrin Election of Deputies Act (Art. 111) that provides for the subsidiary application of the federal Administrative Procedure Act (*Sl. list*, 55/1996–1). The Federal Electoral Commission has taken the position (although never in proper form) that the Administrative Procedure Act is not applicable in proceedings relating to federal elections; however, the Commission has never indicated which procedural rules should be applied to electoral disputes.

Montenegrin law states that all decisions on complaints should be announced in accordance with the procedure prescribed by the federal Administrative Procedure Act. This Act requires all interested parties to be informed about the contents of a decision. There is no corresponding provision, however, in federal and Serbian law; not all

participants in federal elections and elections in Serbia have always been informed about complaints and able to take part in ensuing proceedings.

The absence of provisions securing the application of the federal Administrative Procedure Act has led to arbitrariness in the proceedings dealing with elections, especially regarding evaluation of evidence. Namely, the Administrative Proceeding Act provides that facts in administrative proceedings must be determined correctly and fully and supported by evidence (Art. 8 and 149), whereas in many proceedings decisions were made on the *grounds* of uncorroborated assertions of interested parties.[55]

The Territorial Organisation and Local Administration Act (*Sl. glasnik RS, 4/1991*), which is applicable to municipal elections, provides that a decision of the municipal electoral commission rejecting the complaint can be appealed before the competent municipal court (Art. 40a). It is not clear, however, which procedural rules should govern the consideration of the appeal; this has resulted in courts acting not uniformly and applying different rules in proceeding of this kind, especially in the turbulent era following the November 1996 elections.

4.14. Special Protection of the Family and of the Child

Article 23 ICCPR:

1. The family is the natural and fundamental grouping of society and is entitled to protection by society and the State.

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

2. The right of men and women of marriageable age to marry and to found a family shall be recognised.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary Protection of any children.

Article 24 ICCPR:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

4.14.1. The Protection of the Family

The FRY Constitution guarantees "special protection of the family, of mothers and children" (Art. 61, para. 1). Similar provisions exist in the constitutions of Serbia and of Montenegro (Art. 28, para. 1 and Art. 29, para. 1 of the Constitution of Serbia; Art. 59, para. 1 and Art. 60, para. 1 of the Constitution of Montenegro). The principle of the protection of the family prescribed by the constitutions is further elaborated in the republic laws — in the Marriage and Family Relations Act of Serbia (LMFR of Serbia — *Sl. glasnik SRS*, No. 22/1980) and the Families Act of Montenegro (LF of Montenegro, *Sl. list SRCG*, No. 7/1989).

Thus e.g., according to the LMFR of Serbia, the society assures, by its development policy, and by special measures in the fields of

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

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

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

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

4.14.2. Marriage

The FRY Constitution mentions marriage only in the context of the assurance of the equality of legitimate and illegitimate children (Art. 62, para. 2). According to the Constitution of Serbia, marriage

and marital relations are prescribed by the laws (Art. 29, para. 2), while the Constitution of Montenegro emphasises that a marriage may be concluded "only with the free consent of the woman and of the man" (Art. 59). Detailed provisions on marriage are found in the already mentioned republic laws (the LMFR of Serbia and the LF of Montenegro). According to those laws, marriage is concluded by a free consent of a woman and a man (Art. 6, para. 2 of the LMFR and Art. 3 of the LF of Montenegro), which is in complete accordance with the ICCPR (Art. 23, para. 3).

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

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

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

4.14.3. Special Protection of the Child

4.14.3.1. "The measures of protection ... required by the position of minors". — According to Art. 24, para. 1 ICCPR "every child shall have without any discrimination ... the right to measures of protection ... on the part of his family, society and the state". Although the ICCPR contains the general prohibition of discrimination (Art. 2 and 26, see I.4.1), the cited provision specially emphasises the obligation of the state to assure that inadmissible discrimination does not affect the protection of children. In accordance with that, the FRY Constitution (Art. 20) explicitly prescribes (Art. 61, para. 2) that illegitimate children have the same rights (and duties) as the children born in wedlock. The republic constitutions contain corresponding provisions (Art. 13 and 29, para. 4 of the Constitution of Serbia, Art. 15, 17, para. 1 and 60, para. 2 of the Constitution of Montenegro); they are further elaborated in the republic acts on marriage and family (Art. 5 of the LF of Montenegro and Art. 7 of the LMFR of Serbia).

Parents have the right and duty to care about the personalities, rights and interests of their children. It is their duty to bring them up and educate them, to care about their lives and health, their education and professional training in accordance with their abilities. Parents are bound to secure financial means for the sustenance of their children in accordance with their financial possibilities. Parents are also bound to guide their children towards the adoption of family and other values

(Art. 113–117 of the LMFR of Serbia, and Art. 58–61 of the LF of Montenegro).

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

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

The basic forms of protection of children without parental care are adoption and placing in another family; the decision on such measures is adopted on the basis of comprehensive studies of each individual case and of the possibility of selection of the form of family protection of a child which corresponds best to the needs of the child (Art. 148 and 149 of the LMFR of Serbia). Adoption is permitted if it is beneficial to the adopted child (Art. 152 of the LMFR of Serbia). Family accommodation is assured in families which may successfully fulfil parental duties, especially regarding good care, upbringing, education and habitation for autonomous life (Art. 202 of the LMFR of Serbia, Art. 217 of the LF of Montenegro), and the organ of guardianship may adopt a decision on the termination of the agreement if the family ceases to fulfil those conditions (Art. 211, para. 1 of the LMFR of Serbia, Art. 225 of the LF of Montenegro).

Children may possess property, which they can acquire by inheritance, gifts or other forms of acquisition without compensation.

The assumption is that children under fifteen years of age do not acquire property by their work, but such a possibility cannot be excluded.

Serbia and Montenegro have separate regulations which deal with the social care of children (the Act on the Social Care of Children of Serbia, *Sl. glasnik RS*, No. 49/1992; the Regulation on the Implementation of Protection of Children, *Sl. list RCG*, No. 5/1994 and the Regulation on the Detailed Conditions and on the Way of Achievement of the Rights of Common Interest in the Field of Social Care of Children, *Sl. list RCG*, No. 66/1992). The objective of these rules is to assure the conditions for the appropriate psycho-physical development of children, to assure their pre-school education and upbringing, health protection, and special care about handicapped children and children without parental care.

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

Penal sanctions may not be imposed on children who are under the age of fourteen; children between 14 and 16 years of age (younger minors) are subject to educational measures only. Children between 16 and 18 (elder minors) are subject to educational measures, and, exceptionally, to imprisonment (for grave criminal offences). The purpose of the educational measures is to provide protection and assistance to children who committed criminal acts and to assure their appropriate development and upbringing (see in more detail Art. 72 — 75 of the PC of the FRY). The Act also prescribes the obligation of the institution in which the educational measures as enforced to present to the court which pronounced the measure, every six months, reports about the behaviour of the child (Art. 491 of the CPA).

Criminal procedure against children, are subject to the provisions of a separate chapter of the CPA (chapter XXVII, Art. 452–492),

while the other provisions of the act are applied to children if not at variance with the provisions in that chapter. Since penal sanctions cannot be applied, according to the Penal Code of the FRY, on children under 14 years of age, the CPA prescribes that criminal procedure against children under the age of 14 at the time of the commitment of the criminal act should be suspended, and that the organ of guardianship shall be informed about that (Art. 453 of the CPA). Furthermore, the CPA contains a specific provision which prohibits trials of children in absentia. The agencies that take part in the procedure, when undertaking actions in the presence of the child, and especially during the interrogations of the child, must take into account the mental development of children, their sensibility and their personal characteristics, in order to prevent influences of the procedure on the development of a child (Art. 454 of the CPA). A child must have an advocate from the very beginning of the procedure, if the procedure concerns a criminal act which is liable to more than 5 years imprisonment, and in other cases if the judge is of the opinion that the child needs an advocate. Only members of the bar at law may defend children (Art. 455 of the CPA).

The law especially emphasises the obligation to establish, besides the facts concerning the criminal act, the facts relevant to the assessment of the mental state of the child, to the understanding of the personality of the child, and to the circumstances in which the child lives (Art. 471 of the CPA). As an exception to the provisions of the CPA on the duty of testimony, it is prescribed that no person could be exempt of the duty to give evidence about these circumstances (Art. 456 of the CPA).

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

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

4.14.3.2. The name of the child. — Under Yugoslav law, the personal name consists of at least two words: the name given at birth, and the family name. The name of the child at birth is decided concurrently by the parents. A child may take one or both family names of the parents, common children may not have different surnames (Art. 395 of the LMFR of Serbia). Parents are bound to choose the personal name of the child, for entry into birth registers, within two months of the birth.

4.14.3.3. The nationality of the child. — For the acquisition of the nationality of a child, see I.4.15.

4.15. Nationality

Article 15 of the Universal Declaration of Human Rights:

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

Article 24, para. 3 ICCPR:

> Every child has the right to acquire a nationality.

4.15.1. General

The Universal Declaration of Human Rights prescribes the right of every individual to nationality, and the prohibition of arbitrary deprivation of citizenship and of the denial of the right to change nationality (Art. 15). The ICCPR does not mention separately the right

to citizenship. Nevertheless, Article 24 ICCPR which deals with the status of children (see I.4.14) guarantees, in para. 3, the right of every child to acquire a nationality. This is done in order to avoid the increase of the number of stateless persons. This provision only obliges states to enable new-born children to acquire citizenship, and not necessarily to give their respective citizenship to every child. The manner of and the conditions for the acquisition of citizenship are governed by national law. In any case, there should be no discrimination among the new-born children, on any possible grounds (citizenship of the parents, legitimacy).

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

The Constitution of Serbia, unlike the federal and Montenegrin constitutions, proclaims that citizens of Serbia with another citizenship may be deprived of Serbian citizenship "only if they refuse to fulfil the constitutionally prescribed duties of citizens" (Art. 47, para. 4). On the other hand, the FRY Constitution prescribes that every Yugoslav citizen is at the same time a citizen of a Member Republic" Furthermore, the regulation of Yugoslav citizenship is within the competence of the federation (Art. 17, para. 2 and 5). Deprivation of the Serbian nationality, according to the Constitution of Serbia, may result in a situation in which one person would have Yugoslav, but not the republic citizenship, which would be contrary to the federal Constitution.

During the existence of the SFRY, the dissolution of which raised doubts as to the nationality of a large groups of its citizens, four federal nationality acts were adopted. The Citizenship Act of the

Democratic Federal Yugoslavia (1945); the Citizenship Act of the Federal People's Republic of Yugoslavia (1946); The Yugoslav Citizenship Act (1964) and the SFRY Citizenship Act of 1976 (*Sl. list SFRJ*, No. 58/1976). The law of 1976 was in force at the moment of the dissolution of the SFRY. Today, all states which emerged on the territory of the former SFRY have new nationality acts. In the FRY, the nationality is regulated by the Citizenship Act of the FRY (*Sl. list SRJ*, No. 33/1996).

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

After long hesitation the FRY adopted a new nationality act. In spite of the fact that the old Citizenship Act of the SFRY was in force until the adoption of the new law on citizenship in 1996, the state organs did not apply that law. In that way, many citizens of the former SFRY who found themselves, due to various reasons, in the territory of the new FRY (some of them were refugees from the former Yugoslav republics, others had their place of residence in the territory of the SFRY, but did not have the republic citizenship of Serbia or of Montenegro), found themselves in a situation of extreme legal insecurity. They were, first of all, exposed to serious discrimination, for they could not enjoy certain rights (e.g., the right to education, the right to employment) or could not get documents (passports, identity cards) because they were not considered as Yugoslav citizens.

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

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

1. For the citizens of the former SFRY, who had the citizenship of another republic, not of Serbia or Montenegro, if they had their place of residence, on 27 April 1992, in the territory of

the present FRY, if they do not have foreign citizenship. This provision is valid also for the descendant of that category of persons, if they are born after the proclamation of the FRY (Art. 41, para. 1);

2. for the citizens of the former SFRY who had another republic citizenship, not Serbian or Montenegrin, and who accepted to become professional officers or non commissioned officers or civilians working in the Yugoslav Army, their spouses and descendants, if they do not have foreign citizenship (Art. 41, para. 1).

These two categories of persons must submit requests for entry into the book of citizens, within one year of the day when that law came into effect. That term may be prolonged to three years, in justified cases. The requests for registering, the persons who apply for citizenship must contain a statement that the applicant is not a foreign nationality (Art. 47, para. 4).

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

The refugees from the other republics of the former SFRY, who did not have the republic citizenship of Serbia or of Montenegro, and who did not reside in the territory of the FR of Yugoslavia on 27 April

1992, have had most serious problems with nationality. Huge number of refugees from Croatia and Bosnia are in such a situation. The new law on citizenship should solve the question of their citizenship. However, the institution of "acceptance" does not do it for these persons who do not have the right to citizenship — the reasons of their requests are evaluated by the Yugoslav authorities taking into account the "security, defence and international position" of the FRY. Such broad discretionary powers in granting citizenship give the possibility to the authorities to decide upon the citizenship of many persons in accordance with the political interests of the moment.

4.15.3. The Acquisition of Yugoslav Nationality

Yugoslav citizenship may be acquired by origin, by birth in the territory of Yugoslavia, by naturalisation and according to international agreements (Art. 2). Yugoslav citizenship by origin is acquired, according to the law (*ex lege*) by the children whose parents are Yugoslav citizens, regardless of their place of birth, and children with only one Yugoslav parent, if born in Yugoslavia. Furthermore, children born abroad, with one Yugoslav parent, acquire Yugoslav citizenship by origin if the other parent is unknown or without citizenship (Art. 7) or if one of the following conditions is fulfilled (Art. 8):

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

According to the Yugoslav law, the basic criterion for the acquisition of citizenship by origin (*ius sanguinis*) is corrected by the acquisition of the citizenship by place of birth (*ius soli*). Thus the children born or found in the territory of the FRY get the Yugoslav

citizenship if their parents are unknown or stateless. In that way, the prevention of the statelessness from birth is relatively well achieved. Nevertheless, the statelessness from birth is possible when children born in Yugoslavia have parents with the nationality of a country which accepts only the system of acquisition of citizenship according to the place of birth (*ius soli*)

4.16. The Freedom of Movement

Article 12 ICCPR:

> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.
>
> 4. No one shall be arbitrarily deprived of the right to enter his own country.

4.16.1. General

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

> The freedom of movement and residence and the right to leave the FRY and to return to the FRY is guaranteed to the citizens.

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

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

4.16.2. Restrictions

The restrictions of the freedom of movement contained in the Yugoslav constitutions are formulated in accordance with the international standards. It is prescribed that a restriction must be established by law and necessary for the attainment of a legitimate goal. There are only a few reasons for restrictions mentioned in the Yugoslav constitutions, and they are formulated in a narrower way than the ones mentioned in the ICCPR. However, in reality, these restrictions of the freedom of movement have been introduced by sub-legal acts, by decrees and instructions of the executive; in that way a regime is created which in fact limits the rights contained in Art. 12 ICCPR.

4.16.2.1. The special tax for the exit from the country. — The Federal Government adopted, in 1993, the Decision on the Payment of a Special tax on Departure from Yugoslavia (*Sl. list SRJ*, No. 85/1993), which prescribes that Yugoslav citizens are bound to pay a special tax when they leave the country. The tax is also paid for motor vehicles immatriculated in Yugoslavia, when leaving Yugoslavia. The Decision has been changed several times, but only concerning the part determining the amount of the tax.

This obviously restricts the right of Yugoslav citizens to leave freely the FRY. According to Art. 30 of the FRY Constitution, restrictions of the freedom of movement may be introduced only by law: however this measure was introduced by a decision of the Federal

Government. Even if it were adopted in the form of a law, this measure would not correspond to Article 30 of the Constitution, or to Art. 12 ICCPR. The possibilities of the restriction of the freedom of movement are clearly defined in the text of the Constitution, which allows such restrictions only if they are necessary for the prevention of the spreading of contagious diseases, for the conduct of criminal procedure or for the defence of the country. The introduction of such a tax obviously does not satisfy any of these requirements, but the excuse for it was the need to fill the federal budget. No attention has been paid to the general legal consequences of the introduction of this measure.

The question of the constitutionality of the tax for leaving the country was submitted to the Federal Constitutional Court, but it refused to consider it. According to the opinion of the Court, the obligation to pay that tax does not represent a restriction of the freedom of movement:

> Article 30, para. 2 of the FRY Constitution prescribes that the freedom of movement and of settlement, and the right to leave the FRY and to return to the FRY is guaranteed to the citizens, and Article 67, para. 2 of that Constitution says that the way of the implementation of various freedoms of individuals and citizens may be prescribed by laws, when that is foreseen in the Constitution or when it is necessary for the achievement of such freedoms.
>
> According to the view of the Federal Constitutional Court, the obligation to pay a tax when leaving the country does not limit the freedom to leave the country and to return to it (Decision IV U, No. 2, 3, 6, 7, 8, 9, 12 and 13/94 of 28 March 1994, *Odluke Saveznog ustavnog suda*, 1994, p. 76).

The Court thus refused to examine the constitutionality of the special tax without giving any reason for that. That confirmed once more the reluctance of the Constitutional Court to be involved in the consideration of the questions of the respect of human rights in the FR Yugoslavia. It should be also noted that, e.g., in 1997, the federal state collected, thanks to the special tax, more than DEM 51 million

(309,870,177 dinars — the Final Account of the Federal Budget for 1977, *Sl. list SRJ*, No. 26/1998).

4.16.2.2. The prevention of the return of Yugoslav citizens to the country. — In the last years, the state organs have prevented a number of FRY citizens to return to the country, by returning them from the border to the countries they were coming from. These were mainly the citizens of Albanian or Moslem nationalities. It seems that this practice of the border services has been based on an instruction of the Federal Government, adopted in 1994[56], i.e. at the time when some western countries started to plan a massive return of the FRY citizens who resided illegally in those countries. According to that instruction citizens who have sought asylum abroad cannot return to Yugoslavia if they have not obtained a certificate of the authenticity of their passports or a travel document issued by a FRY consulate. The instruction reveals that the Government started from the assumption that asylum had been sought in a foreign country even by persons who had a valid working permit, a permit of stay or a tourist visa.

The right of a citizen to return to his or her own country may under no conditions be limited, either according to international standards, or according to the Yugoslav constitutions and laws (The Act on Travel Documents of the Yugoslav Citizens, *Sl. list SRJ*, No. 33/1996, 46/1996). The above instruction of the Federal Government and the practice of the Yugoslav authorities do not represent only a serious violation of the international standards of human rights, but of the FRY Constitution as well.

56 This instruction has never been published in the Official Gazette, nor may it be obtained from the federal authorities. Its existence is mentioned in a letter of the Deputy Federal Minister of Transport and Communication (No. /70–03–292/94–002, of 16 November 1994), which explains the conditions under which certain categories of persons may enter the FR of Yugoslavia, The Documentation of the Belgrade Centre for Human Rights. It is also included verbatim in the report on Albanian asylum-seekers from Kosovo, Parliamentary Assembly of the Council of Europe, Doc. 7444 (22 December 1995, Appendix, p. 59–60).

4.16.2.3. The choice of the place of resistance. — Citizens of the Federal Republic of Yugoslavia can freely choose their places of dwelling, i.e. of settlement. However, the freedom of the choice of the place of dwelling is indirectly limited in Serbia by the adoption of the Special Conditions of the Sales of Immovable Property Act (*Sl. glasnik RS*, No. 30/1989; see I.4.11.3). This law prescribes that the Ministry of Finance of Serbia has to approve the sales of immovable property in the territory of Serbia (without Vojvodina) in the cases, "when it is satisfied that the sales does not influence the change of the national structure of the population or the exodus of the members of a certain nation or nationality, and when such a sales does not provoke disquiet, or uncertainty or inequality of the citizens of another nation or nationality" (Art. 3). The interpretation of this provision, and the practice of the granting of approvals for the sales of immovable property, lead to the conclusion that this law, which was adopted for political reasons, because of the conflicts in Kosovo, restricts the freedom of choice of the places of dwelling; persons who do not obtain such approvals are prevented from settling down in the part of the territory of Serbia where they wish to settle.

4.17. Economic and Social Rights

4.17.1. The Right to Work

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

The Constitution of the FRY and the Constitution of Serbia guarantee, to a certain degree, the safety of jobs, by stipulating that employed persons may lose their employment against their will only under the conditions and in the cases prescribed by the law and in collective agreements (see Art. 54, para. 2 of the Constitution of the FRY and Art. 35, para. 2 of the Constitution of the RS). The laws on labour relations and collective bargaining explicitly determine the conditions for the termination of labour relations regardless of the will of employees; dismissals because of other reasons would be unlawful. The decision on the dismissal which must be reasoned, is taken by the director, and it is final (see Art. 65 of the Bases of Labour Relations Act, *Sl. list SRJ*, No. 29/96). The disciplinary measure of the termination of labour relations may be taken also only in the cases of the violations of labour relations explicitly prescribed by the law or in the collective agreement. This measure is also pronounced by the director, and in companies which have a board of management, the board is competent, to re-examine the decision in the second instance, at the complaint of the employee (see. Art. 56, para. 2 of the Bases of Labour Relations Act).

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

Republic laws also prescribe the compulsory term for giving notice, which cannot be shorter than one month, nor longer than three months, or six months in Montenegro (see. Art. 55 of the Labour Relations Act, *Sl. list RCG*, No. 29/90, 42/90, 28/91 and Art. 112 of the Labour Relations Act, *Sl. glasnik RS*, No. 55/96). An employee

may cease to work before the expiration of the term of notice — in Serbia, with the consent of the employer, and in Montenegro by a decision of the employer; in any case, the employee is entitled to reimbursement of salary until the expiration of the term of notice. If an employee is called to military reserve duty, or to complete his military service (up to three months), or is unable to work during that time, the term of notice is stopped and continues to run after the cessation of those circumstances (see Art. 112, para. 3 of the Labour Relations Act of the RS and Art. 56 and 57 of the Labour Relations Act of RM).

The law prescribes the special rights of the employees which belong to the so-called technological surplus. These are persons who lose their jobs because of the cessation of the need for their work in the case of the introduction of technological, economic or organisational changes. These persons may terminate their labour relations only if they get one of the rights prescribed by the law, and that is a job in another company, or professional training, or re-training or additional qualification, purchase of retirement time, or a lump compensation amounting to at last two yearly salaries. If one of these rights cannot be fulfilled, the labour relations may cease after the payment of the severance pay, the amount of which depends on the duration of the payments for insurance (see Art. 43 of the Bases of Labour Relations Act). Until one of those conditions is fulfilled, the employee is entitled to reimbursement of salary (see Art. 31, para. 3 of the Labour Relations Act of the RS).

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

the employers. Exchanges also offer professional guidance in the choice of professions and of jobs, they prepare persons for employment, through re-training, additional qualification and the innovation of knowledge.

4.17.2. The Right to Just and Favourable Conditions of Work

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

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

In order to assure the financial and social security of employees, in the cases in which the employer is not capable, due to difficulties in the operations, of paying their earnings, the law prescribes the right of employees to minimal guaranteed earnings. The amount of the guaranteed net earnings is determined by the decision of the government of the republic. The employer is bound to pay to the employees, under the conditions determined by individual collective agreements, the difference between the guaranteed net earnings and the income

they got in accordance with the collective agreement (see Art. 65 of the Labour Relations Act of the RS).

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

Full working time amounts, according to the regulations on labour relations, to 40 hours in a working week. The law prescribes the obligation to introduce of reduced working hours for persons performing especially difficult, strenuous, and hazardous work, proportional to the noxious influence on health, i.e. on the working capacity of employees; in Montenegro that reduction is limited to 36 hours weekly (see Art. 19 of the Labour Relations of the RS and Art. 17 of the Labour Relations Act of the RM). The working hours of an employed person may exceed the full working hours, but not for more than 10 hours weekly, except in cases explicitly prescribed by the law, when there are obligations to work overtime, and more than 10 hours weekly (e.g. in the cases of natural disasters, fires, explosions etc., see Art. 20 of the Bases of Labour Relations Act).

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

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

The Bases of Labour Relations Act prescribes the obligation of the employer to assure the necessary conditions for the protection at work. An enterprise may start to operate only after the competent inspectors have reported that, *inter alia* security measures have been introduced (see Art. 18 of the Enterprises Act, *Sl. list SRJ*, No. 29/96). The employer is bound to inform the employees about all work hazards and about the rights and obligations concerning the protection at work and working conditions. The employees have the right to refuse to work because the precautions have not been taken, but only if there is objective danger to their life and health (see Art. 33–34 of the Bases of Labour Relations Act).

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

Detailed provisions of the protection at work in Serbia are found in the separate Protection at Work Act, while in Montenegro they are included in the Labour Relations Act. These regulations, and the by-laws adopted on the basis of these regulations prescribe more specifically the obligations of the employers regarding the measures and means necessary for safe working conditions, the organisation of the protection at work, the training of employees to work safely, and

the assurance of emergency and rescue services. The enforcement of these laws, regulations and collective agreements in the field of protection at work is supervised by the labour inspection. Non-observance of the measures of protection at work represents a basis for the termination of the operations of an enterprise (see Art. 100, para. 1, line 1 of the Enterprises Act), and represents, under some conditions, a criminal act (see Art. 90 of the Penal Code of the RS and Art. 74 of the Penal Code of the RM).

4.17.3. The Right to Social Welfare

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

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

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

The system of retirement and disabled persons benefits is regulated by federal and republic regulations. The bases of the system are determined by the federal Act on the Bases of Pension and Disabled Persons Insurance, which adopts a broader concept of the “bases” and prescribes almost all rights in that field of social security. The republic regulations regulate some questions in more detail, and the functioning

of the funds for disabled persons and retirement insurance; some other rights are prescribed, as well. In Montenegro, the law adopted in 1983 is still in force; that law is highly non-harmonised with the new system of pension and disabled persons insurance.

Compulsory insurance covers all employed and self-employed persons and farmers. Besides the compulsory insurance, there is the possibility of voluntary insurance for persons who are not compulsory insured, and for persons who want to provide for themselves and for their families broader benefits than those prescribed by law (see Art. 16 of the Act on the Bases of Retirement and Disabled Persons Insurance, *Sl. list SRJ*, No. 30/96). These rights are the right to old age retirement, rights of disabled persons, rights in the cases of danger of becoming disabled, the right to family pension and the right to compensation for physical damages. The Act on Retirement and Disabled Persons Insurance of the Republic of Serbia also prescribes the right to monetary compensation for assistance and care, the right to the acquisition of special prostheses for reading and writing, and the right to the compensation of funeral costs.

An insured person acquires the right to old age pension if he/she fulfils cumulatively the conditions regarding the age and the duration of the insurance (see Art. 22 of the Act on the Bases of Pension and Disabled Persons Insurance). The amount of the old age pension is determined by the base for pension and the duration of insurance. The base for the pension is the monthly average of earnings, i.e. of the base of the insurance premiums during the ten year period which is the most favourable for the insured person. The law limits the amount of the pension base to 3.8 average net salaries of employees in the territory of the Republic of Serbia in the previous year (see Art. 10 of the Act on Pension and Disabled Persons Insurance, *Sl. glasnik RS*, No. 52/96). The amount of the pension is determined as a percentage of the pension base, depending on the number of years of insurance. The law limits that percentage, to not more than 85% of the pension base (see Art. 35, para. 3 of the Act on Bases of Pension and Disabled Persons Insurance).

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

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

The Act contains provisions on the lowest age for disabled persons pensions; they are of protective nature, and are aimed to assure the minimum existence to those who have been insured for a short time and/or have had low earnings. The base for such pensions is not the average ten year earnings or the duration of the insurance period, but the average net earnings of employees in the territory of the

Republic in the previous year. The lowest pension is determined as a percentage depending on the duration of the insurance: that percentage is between 40%, for insurance periods up to 20 years, and 80%, for insurance periods of 35 years or more (men) or 32 or more years (women), (see Art. 77 of the Act on the Bases of Pension and Disabled Persons Insurance).

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

The law also prescribes the right to monetary compensation in the case of physical injury, but only if it is caused by injuries at work or by professional disease or has impaired total abilities by at least 30% (see Art. 74, para. 2 of the Act on the Bases of Pension and Disabled Persons Insurance). The amount of the monetary compensation depends on the degree of physical damage, and the base for the compensation is 25% of the average monthly earnings per employee in the Republic in the previous year (see Art. 34 of the Act on Pension and Disabled Persons Insurance of the RS). The compensation, determined in such a way, is paid to the insured persons in monthly instalments and it belongs to the insured persons in addition to the rights due to invalidity, if invalidity is established.

In the case of death of an insured person, or of a beneficiary of old age or disabled persons pension or beneficiary of rights on the basis of reduced working capacity, the members of his or her family shall have the right to family pensions. They shall have that right if they fulfil certain conditions which are different for various members of the family. The base for the family pension is the old age or disabled persons pension which would belong to the deceased, or which belonged to them at the moment of death. The amount of the family pension depends on the number of the beneficiaries and it is between 70% for one member of the family and 100% for four or more members of the family (see Art. 64–73 of the Act on the Bases of Pension and Disabled Persons Insurance).

The law prescribes compulsory harmonisation of the pensions and monetary compensations for physical damage which is calculated according to the average trends of net earnings in the Republic, twice a year, on 1 June and 1 January. Pensions may be adapted in the meantime as well, if the earnings rise or fall for 5% or more.

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

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

The right acquired according to this insurance is to monetary compensation in the case of terminating employment, under the condition that the person was insured for not less than 9 months without interruption or 12 months with interruptions, within the last 18 months (see Art. 13 of the Act on Employment and on the Rights of Unemployed Persons, *Sl. glasnik RS*, No. 22/92, 73/93, 82/92 and Art. 28 of the Employment Act, *Sl. list RCG*, No. 29/90). Monetary benefits are not granted in all kinds of the termination of employment. In Serbia, cases in which persons are entitled to benefits are enumerated (see Art. 12 of the Act on Employment and on the Rights of Unemployed Persons of the RS), while the Montenegrin law prescribes exceptions when the insured person does not have that right (see Art. 31 of the Employment Act of the RM). In principle, if employment is terminated because of a breach on the part of the employee, or of his own volition, the employee forfeits the right to benefits. Benefits are paid for a determined time period which depends on the duration of the insurance and may last between 3 and 24 months (see Art. 13 of the Act on Employment and on the Rights of Unemployed Persons of the RS and Art. 33 of the Employment Act of the RM). Benefits are also provided

after that period in certain cases, such as during the time the unemployed person is preparing for employment, being trained or acquiring additional qualification, during pregnancy and birth and during temporary inability to work (see Art. 15 of the Act on Employment and on the rights of Unemployed Persons of the RS and Art. 34 of the Employment Act of the RM). The base for benefits is the average monthly net earnings of the unemployed person during the last three months of employment; it is paid at the end of the month, and under certain conditions it may be paid as a lump sum. During the time they receive benefits, the unemployed have the right to health and retirement insurance (see. Art. 27 of the Employment Act of the RM and Art. 8 para. 6 of the Health Insurance Act of the RS). The competent labour exchange decides upon the rights of the unemployed.

As a difference from social security, where employees save a part of their income in order to assure certain rights for themselves and for the members of their families in cases of old age, disease, invalidity and death, social welfare assistance relies on contributions from public funds, formed by taxes, which individuals receive on the basis of their positions and their social needs.

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

The fundamental right in the field of social protection is the right to financial security. In Serbia, that right belongs to individuals or families with earnings below the level of social security. The level of social security is determined by the law in percentages; the percentage depends on the number of family members and on the average

net earnings per employee in the previous quarter in the economy of the Republic (see Art. 11 of the Act on Social Protection and on the Assurance of the Social Security of Citizens, *Sl. glasnik RS*, No. 36/91, 33/93, 67/93, 53/93, 46/94, 48/94, 52/96). Besides this general pre-requisite the law foresees a series of additional individual conditions, i.e. lack of ownership on movable or immovable property, etc. (see Art. 12 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of the RS). Financial security benefits are determined in monthly amounts, which represent the difference between the average monthly income of individuals, or of the family, earned in the previous quarter, and the level of social security (see Art. 20 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of Serbia). The amount of financial insurance is harmonised with average earnings. Similar solutions regarding financial security are found in the Act on Social and Child Protection of Montenegro.

Other rights in the system of social protection, prescribed by both republic laws, are the right to supplements and assistance for the help and nursing by other persons, the right to assistance in vocational training for work and the right to be placed in institutions of social welfare or in another family.

The right to the supplement for the assistance and nursing by other persons belongs to the persons with serious physical or sensory disturbances and to persons with serious diseases like autism, chronic mental diseases, etc. (see Art. 24 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of the RS and Art. 36, para. 1 of the Act on Social and Children Protection, *Sl. list RCG*, No. 45/93), and to persons who need assistance and nursing by other persons, and who fulfil the conditions for financial security (see Art. 23, para. 1 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of the RS and Art. 36, para. 2 of the Act on Social and Children Protection of the RM). The supplement is paid in monthly instalments determined differently in Serbia and Montenegro (see. Art. 27 of the Act on Social and Children Protection of

the RM, and Art. 25 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of the RS).

The right to assistance for vocational training belongs to children and young persons whose development has been hindered and to disabled persons who may be habilitated for some kind of work, corresponding to their age and their psychophysical capabilities (see Art. 26, para. 1 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of the RS). This right is implemented in the form of actual training, financial benefits, compensation of accommodation costs, transport costs and habitation costs (see Art. 27 of the Act on Social Protection and on the Safeguarding of the Social Security of Citizens of the RS).

The right to accommodation in institutions of social welfare or in other families belongs to certain persons in need, as e.g. parentless children, children with impaired mental development or with disturbed social behaviour, pregnant women or mothers with small children, disabled adults and elderly persons (see Art. 37 of the Act on Social Protection and on the Assurance of the Social Security of Citizens of the RS, and Art. 30 of the Act on Social and Children Protection of the RM).

Besides these rights, the Act on Social Protection and on the Assurance of the Social Security of Citizens of Serbia prescribes the right to assistance at home which is provided for elderly and chronically ill persons, or to daily stay for persons who have the right to be accommodated in the establishments of social welfare, whatever is more convenient to them (see Art. 31 and 32 of the Act on Social Protection and on the Assurance of the Social Security of Citizens).

Social and Child Protection Act of Montenegro also prescribes the right to health protection of the beneficiaries of the rights to social welfare and of needy members of their families, if they can not benefit from such protection from other sources. This law also prescribes that funeral costs in case of death of a single person, beneficiary of the right to financial security, or of the right to accommodation in an

institution of social welfare, shall be covered from the budget of the Republic (see Art. 39 and 40 of the Act on Social Protection and on the Assurance of the Social Security of Citizens).

The appropriate social welfare institutions decide upon all these rights.

4.17.4. The Right to the Protection of the Family

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

Employed women enjoy special protection, according to the law on labour relations, both because of their special psychophysical characteristics as women, and because of pregnancy and motherhood. Special protection of working women at work and of young and disabled persons is guaranteed by all constitutions (see Art. 56, para. 3 of the FRY Constitution, Art. 38, para. 3 of the Constitution of the RS, and Art. 53, para. 4 of the Constitution of the RM). The major part of these rights, and of the rights based on the special protection of youth are prescribed by the Bases of Labour Relations Act. Labour Relations Act of Serbia reproduces all the provisions of the federal law, and contains some more precise supplementary rules, as a differ-

ence from the Labour Relations Act of Montenegro, which has few provisions on the special protection of women and youth.

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

The basic right of employed women concerning pregnancy and birth is the right to maternity leave. A woman may go on maternity leave 45 days before delivery; she must go on leave 28 days before delivery (see. Art. 36, para. 3 of the Bases of Labour Relations Act). Maternity leave lasts at least until the child is one year old or, according to the Labour Relations Act of Serbia, until the end of the second year of life of the third child (see Art. 37 of the Bases of Labour Relations Act and Art. 79 of the Labour Relations Act of the RS). In case of a stillborn child, or of the death of a child before the expire of the maternity leave, employed women have the right to prolong their maternity leave for the time they need to recover after the loss of the child, but not less than 45 days; during that time they have all rights

based on maternity leave (see Art. 39 of the Bases of Labour Relations Act).

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

If the child needs special care because of a health condition, or if the child is heavily handicapped, the mother of the child has the right to additional leaves, after the expire of the maternity leave (see Art. 37, para. 4 of the Bases of Labour Relations Act). In Serbia, such women have the right to be absent from work (in that case they receive compensation for their lost earnings according to the regulations on health insurance), or to work half-time; in the latter case they have the right to the earnings for the time they work and the right to the compensation of the earnings for the second half of the working hours, but not longer than three years after child birth (see Art. 40 of the Labour Relations Act of the RM). The republic regulations also prescribe that one parent, or only the mother in Montenegro, may be absent from work until the child is three years of age. During that period, the rights and obligations of that person are suspended; in Montenegro, mothers have the right to health and retirement insurance if they benefit from that right (see Art. 86 of the Labour Relations Act of the RS and Art. 42 of the Labour Relations Act of the RM).

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

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

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

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

The constitutions extend to youth in the same guarantees as given to women. The lower limit for employment is 15 years of age

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

4.17.5. The Right to Health

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

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

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

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

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

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

Health protection includes measures of medical control and prevention, treatment, medicines, rehabilitation, etc. and it is determined in more detail by the Institute of Health Insurance. The costs of health protection are born by the health insurance, to the measure prescribed by those acts. Costs in excess are born by beneficiaries.

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

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

The right to the compensation of the earnings belongs only to certain active insured persons, i.e. those who pay the contribution for the insurance, but not to the members of their families. Such persons are entitled to that right if they are temporarily unable to work due to disease or injury, or if they are ordered to care for member of their close family, or to escort a patient sent for treatment or for medical examination outside the place of residence. The base for determining the compensation is the net earnings of the insured person, effected in the month immediately before the month of the occurrence of the insured case, and it amounts to not less than 75% and not over 85% of the base. If temporary impossibility to work is caused by an injury at work, by professional disease or by donations of organs or tissue, the beneficiary has the right to 100% of the base. The compensation of the earnings during the impossibility to work because of pregnancy also amounts to 100% of the base, but under the condition that the employed woman has a certain seniority of insurance; otherwise, the compensation is lower, but may not be lower than 80% of the base (see Art. 44 and 47 of the Health Insurance Act of the RS). The law

also guarantees the minimum amount of the compensation of earnings by stipulating that the compensation may not be lower than the guaranteed monthly net wages determined by the republic government for each month.

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

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

5. Conclusion

1. Although Yugoslav laws and regulations are generally in accordance with international human rights standards, serious structural flaws in the legal system, as well as non-compliance with international standards in several important areas, compel the conclusion that the Yugoslav legal system as a whole does not guarantee sufficient protection of human rights. In addition, the rule of law is not established in the FR Yugoslavia, primarily for the following reasons: a great number of contradictory regulations are in force, laws that restrict constitutionally guaranteed human rights are nevertheless enforced and there is no independent judiciary.

2. Human rights guarantees in the federal constitution and particularly the provision that ratified international treaties prevail over ordinary legislation establish a basis for the development of a system for the protection of human rights and the rule of law. However, a significant number of federal and republic laws and regulations have

not been harmonised with the federal constitution for more than six years, even though the deadline for harmonisation has been extended several times. As a result, some of the most important constitutional guarantees of human rights are not effectively implemented in practice. Instead, unconstitutional and restrictive provisions of old laws and regulations have been enforced. A particularly grave problem is the contradiction between the Serbian constitution and the federal constitution. The fact that the republic laws and regulations have not been harmonised with the federal constitution and laws is a reason for particular concern because most of the federal laws are executed by the authorities in the republics, who in case of the conflict between the federal and republic legislation follow the latter.

3. Particularly significant is the fact that the federal Criminal Procedure Act (CPA) has not been harmonised with the federal constitution. As a consequence, enforcement of the CPA for all practical purposes annuls some constitutionally guaranteed rights. For example, the CPA (as well as the Serbian constitution) provides additional legal grounds for detention. Contrary to the federal constitution which provides that only a judge may order detention, the CPA extends this authority to the police. In addition, police do not have the obligation to inform detained person of the reasons for their detention. This is also contrary to the federal constitution.

4. The Yugoslav legal system does not provide effective legal remedies for the protection of human rights, primarily because there is no independent judiciary. Despite constitutional pronouncements that courts are independent, it seems that the principle has been implemented neither at the regulatory level nor in practice. For instance, courts cannot control the work of court administration, which is supervised by the justice ministry. Moreover, courts have no budgetary independence, which makes them dependent on the executive and legislature. Influence of the executive branch on the judiciary was particularly visible during the crisis over the local elections in Serbia held in November 1996, when the courts had a major role in the annulment of the election results. Subsequently, the president of a district court that had been instrumental in the crisis became the

Serbian minister for justice. The position of the judiciary puts in question the implementation of the guarantee of fair trial contained in Article 14 ICCPR and particularly the right to a hearing by "a competent, independent and impartial tribunal."

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

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

7. Guarantees of fair trial in criminal matters are insufficient. The prosecution is not under an unconditional obligation to make available to the defence all the evidence for and against the accused. This is a matter left to the public prosecutors discretion. Also, minimum guarantees for persons charged with criminal offences are not fully respected, particularly in regard to the right to have adequate time and facilities for the preparation of defence and right to communicate with counsel.

8. Liberty of parents to ensure religious and moral education of their children in conformity with their own convictions is not expressly

guaranteed. The enjoyment of this right is limited in practice because it is not possible to establish private elementary schools in the FR Yugoslavia, which is contrary to the International Covenant on Economic, Social and Cultural Rights.

9. Conscientious objection is allowed by the federal constitution but it is a guarantee without meaning because it has been severely restricted by the implementing legislation: conscripts must declare their objection in an extremely short time (15 days) after having been called to the army and the state has no obligation to inform them about the possibility of civil service. Once a person has entered the military service, there is no possibility to declare conscientious objection. This also applies to those members of the reserve who were in the military at the time when the conscientious objection was not recognised, so they never have had a chance to express their convictions.

10. As regards freedom of expression and of the media, most of the problems appear in relation to the establishment and work of electronic media (radio and TV), because this area is regulated by contradictory laws and regulations. As a result, it is almost impossible in practice to establish and run a private radio or TV station in compliance with law. In the FR Yugoslavia, and particularly in Serbia, the state-owned radio and television have been given wide competencies, especially in regard to the telecommunications frequencies, which forms the basis of the state's broadcasting monopoly.

11. At the end of 1998, a very restrictive Public Information Act was adopted in Serbia. The law provides for extremely high penalties which are directed to financial destruction of the independent media. Furthermore, the penalties are received in a procedure which does not ensure fair hearing. The new law has also prohibited transmission of the Serbian-language programmes of foreign radio and television stations, which is contrary to both the federal and Serbian constitutions.

12. Several provisions of the criminal law provide a basis for possible violations of freedom of expression and persecution of the press. This is particularly the case with “dissemination of false news”, a criminal offence sanctioned by the Serbian Penal Code, whose broad

and vague definition may be used for the persecution of political opponents and restrictions on freedom of the press. Indeed, the criminal offence of "dissemination of false news" had previously been used for the persecution of dissidents during Yugoslavia's communist period.

13. Recommendations contained in the report of Felipe Gonzalez, Special Representative of the OSCE Chairman-in-Office, have not been implemented. One of the findings of the report was that there were structural deficiencies in the electoral system in Serbia which resulted in flawed elections and the manipulation of electoral results. Nevertheless, electoral legislation in Serbia has not been reformed in accordance with the report's recommendations.

14. With regard to freedom of assembly, the Serbian constitution allows that a public demonstration may be prevented if it impairs free flow of the public traffic. This provision is too broad and has served as a justification for violations of the right.

15. Regulations of freedom of association allow prohibition of an organisation for reasons that are contrary to international human rights standards. This is also the case with the provision that persons convicted of a criminal offence cannot be among the founders of political or trade union organisations. Contrary to international standards there is a complete ban on the right of membership to political and trade union associations for members of army and police, as well as a prohibition on striking for all state employees, professional soldiers and police officers.

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

17. Of particular concern is the existence and application of the Special Conditions of the Sales of Property Act in Serbia, which

clearly violates the prohibition of discrimination (as it *de facto* only applies to the transactions between ethnic Serbs and ethnic Albanians) and the right to peaceful enjoyment of property. Since its coming into force, the law has been severely criticised but it is still enforced.

18. The instruction given by the federal government which prevents the return to Yugoslavia of a large number of Yugoslav citizens (mainly ethnic Albanians and Moslems) is in flagrant violation of the federal constitution and international law. Freedom of movement has also been seriously impaired with the unconstitutional introduction of a special tax that has to be paid by every Yugoslav citizen going abroad.

II
HUMAN RIGHTS IN PRACTICE

1. Introductory Remarks

The regulation of human rights by the law of a country is not the same as their enjoyment in everyday life. Former socialist countries were known to formally recognise human rights, but the respect of them more often than not depended on arbitrary decisions of the party and state officials. This is the reason why the second part of this Report is dedicated to the manner in which the legal provisions on human rights are applied in Yugoslavia.

Research for this part of the Report was done on the basis of data and reports in the national press, reports by international organisations, as well as in reports by Yugoslav and foreign non-governmental organisations.

1.1. Yugoslav Press

The Yugoslav press is a significant source of information on the state of human rights in Yugoslavia. Among the mass media in Yugoslavia, it is precisely the press that enjoys the greatest freedom (despite the fact that the authorities in Serbia started to impose serious restrictions on the press, in the second half of 1998).

In the two Yugoslav federal units — Serbia and Montenegro — there are 12 relevant political dailies which are published regularly and distributed throughout the whole territory of the federation, their circulation ranging at around 1,300,000 copies. Five of the dailies are

pro-government newspapers, either in mixed or quasi-private ownership (private owners are controlled by the ruling parties through formal or informal channels), while the remaining seven are privately owned and are considered as independent newspapers. Four weeklies with the greatest political influence in Yugoslavia are privately owned and none of them represents the interests of the government.

Our survey includes 11 newspapers; 9 dailies and 2 weeklies (with a circulation of about 1,150,000 copies). Among the 9 dailies, 3 are close to the authorities in Serbia (*Politika, Politika ekspres* and *Večernje novosti*), 1 is close to the authorities in Montenegro (*Pobjeda*), and 5 are independent (*Naša borba, Dnevni telegraf, Blic* and *Glas javnosti* from Belgrade, and *Vijesti* from Podgorica). Among the weeklies included in the survey, one is from Serbia (*Vreme*) and the other from Montenegro (*Monitor*). Both of them are considered to be independent.

By the end of October, two dailies (*Naša borba* and *Dnevni telegraf*) were closed down. On that occasion, the owners of *Dnevni telegraf* were sentenced to high fines, but they did not desist from publishing this daily, and they re-registered it in Montenegro. In reference to *Naša borba*, the reasons for its closing down were not simple. After a several month-long agony and a big conflict between the owners and the editorial board, this daily was first banned, under the Decree of 9 October, only to be definitely closed down after the adoption of the Public Information Act, with the explanation that there were no conditions for normal operation "as long as the Serbian Public Information Act was in effect".

The total number of texts on human rights published in the above 11 newspapers from February till November 1998 was 26,059, ranging between 982 and 4,040 per month (see Table 1). In reference to this, one must bear in mind that the articles on the human rights of the Serbs and Montenegrins outside the FR Yugoslavia were excluded from this set of records (i.e. they are not included under the item "Other"), because they account for 40% of all the articles on human rights in pro-government papers published at the beginning of the

year.[57]As these articles had a completely different political purpose, they were not taken into account, since attributing to them genuine human rights concerns would lead to an unrealistically high impression of the coverage of human rights topics in pro-government dailies. Later on, when armed conflict in Kosovo began, the number of similar articles dropped to only between 5 and 10% of the total number of pieces on human rights in pro-government dailies.

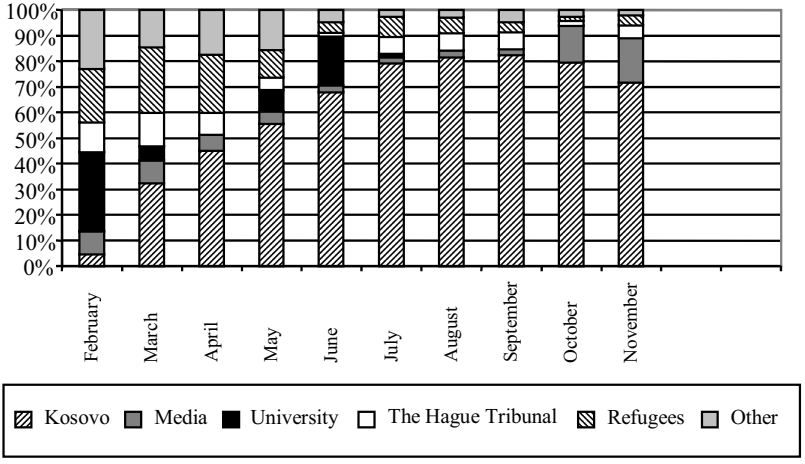
Table 1: Pieces on human rights in 11 newspapers (February — November, 1998)

Month	Kosovo	Media	University	The Hague Tribunal	Refugees	Other	Total
Feb	80	155	0	201	361	401	1,198
Mar	336	93	0	135	265	153	982
Apr	761	103	0	147	384	295	1,690
May	1,387	121	149	117	269	395	2,438
Jun	2,071	78	97	43	125	146	2,560
Jul	2,717	81	132	221	278	79	3,508
Aug	2,997	99	82	253	217	115	3,763
Sep	2,732	82	246	217	116	163	3,556
Oct	3,116	556	122	78	63	105	4,040
Nov	1,592	386	200	106	93	47	2,424
Total	17,789	1,754	1,078	1,418	2,171	1,859	26,059

57 Thus, for instance, in February, *Politika* published 188 articles on human rights, among which 83 were dedicated to the problems of the Serbs and Montenegrins outside the FRY.

The sudden increase in the number of texts dedicated to the problems of human rights after March 1998 was the result of the intense armed conflicts that broke out in the Province of Kosovo and Metohija. That increase is illustrated by the fact that of the 1,198 articles in February 1998, only 80 were dedicated to the threats to human rights in Kosovo, while in October, 3,116 out of 4,040 texts, were dedicated to this subject. Such texts accounted for 50 to 75% of the total number of texts in all the newspapers during the clashes (Chart 1). The problem of human rights violations in Kosovo is the subject of a special section (see IV.1).

Chart 1: The structure of the texts on human rights in 11 newspapers (on a monthly basis)

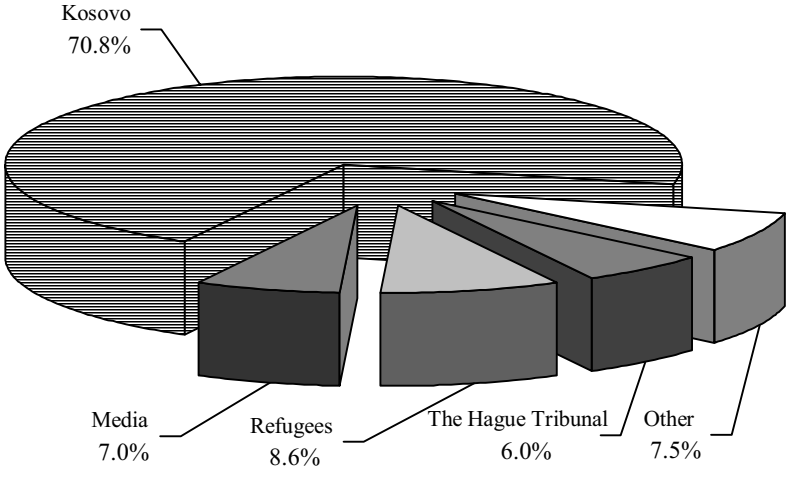


Articles on human rights, particularly in the pro-government newspapers, most frequently are news items and information relating solely to concrete events. Articles giving a genesis of the problems are rare. The pro-government newspapers contain almost no articles describing to their readers what rights they are supposed to enjoy and describing the international obligations of Yugoslavia.

In general, the pro-government newspapers publish only articles about human rights violations that cannot be linked directly to the authorities and responsibility for which is attributed to non-governmental entities. This is why pro-government papers quite often write about violence in schools and in the family, as well as about the habits of members of religious sects. Another topic favoured by the papers which are close to the Serbian regime are alleged human rights violations in Montenegro.

Independent dailies sometimes tend to insist on sensationalist details relating to human rights violations.

Graph 2: The structure of the texts on human rights in the 11 newspapers (for 1998)



There is a great difference between the number of articles dealing with of human rights in the pro-government newspapers and in the independent ones. Thus, for instance, *Naša borba,* the circulation of which is only half of that of *Politika,* published 50 to 70% articles more on this subject in the same time (excluding articles on the conflict

in Kosovo) than the latter.[58] A good illustration of the difference between the pro-government and the independent newspapers with respect to the articles on human rights, is the reaction to the 1998 U.S. Department of State Report (on the state of human rights in the FRY) and the refusal to consider the request by the FRY for admission in the Council of Europe. It was *Naša borba* that presented the U.S. Department of State Report to the FRY public in full. *Politika*, which is close to the government, did not carry the Report. However, it published a commentary under the title *Incorrect and Tendentious Report on Human Rights in the FRY*, denying all the claims concerning the threats to human rights in the FRY. "The U.S. Department of State Report is full of unsubstantiated claims regarding the so-called maltreatment and murders of Kosovo and Metohija Albanians, which were allegedly politically motivated (...) There is no mention that the Shiptars from Kosovo and Metohija are trying to found their own para-state by establishing certain paramilitary formations, with the aim to secede by force from Serbia and Yugoslavia, and establish an independent state of Kosovo, or to create Greater Albania (...) Bearing in mind the current practice relating to the respect for human rights in our country, Serbia and the FR Yugoslavia have so far had no reason, nor will they have it in the future, to fear any kind of objective control and well-intentioned advice coming from the relevant international institutions and countries that respect truth and justice" (*Politika*, 8 February, p. 2).

A month later, the FRY submitted its request for admission to the Council of Europe, which was discussed at length in the pro-government newspapers, including *Politika*. However, after silence on the part of the Council of Europe, it was only the independent newspapers which reported on that (e.g.: "Yugoslavia cannot even contemplate being admitted to the Council of Europe before it meets the

58 In March, *Naša borba* published 47 articles on human rights and *Politika* 16. In April, that ratio was 87 to 47 in favour of *Naša borba*, while in June and July, *Politika* published 19 texts each, and *Naša borba* 72 and 84. This difference was the most evident in October when *Naša borba*, which was issued only for 15 days, published 133 articles on human rights, while *Politika* wrote about that topic only 88 times during that whole month.

requirements of the Contact Group, says Fischer. It is incredible that one could have chosen such a bad moment, was the most frequently heard remark on this initiative in Strasbourg" — *Blic*, 23 June 1998, p. 4). The pro-government newspapers ignored these reactions.

Generally speaking, the Yugoslav press wrote in 1998 much more about the human rights violations in the country than they did in the previous years. However, that increase in interest, as already mentioned, was dictated primarily by the need to report on the conflicts in Kosovo in the period March-October, and not by an increased interest in human rights as such. This can best be seen from Chart 2, which shows that the proportion of articles on human rights in Kosovo in the total number of articles dealing with human rights amounts to as much as 68%.

1.2. Reports of Non-Governmental Organisations in the FR Yugoslavia

The other source from which data was gathered for this part of the Report consisted of reports by national non-governmental organisations. Below is a list of the reports used for this purpose (together with their abbreviations).

a) Humanitarian Law Center:

1. Pod lupom: Praksa kršenja ljudskih prava u vreme oružanih sukoba, Belgrade, Fond za humanitarno pravo, 1995 (HLC-A);
2. Pod lupom: Ljudska prava u Srbiji i Crnoj Gori, Belgrade, Fond za humanitarno pravo, 1996 (HLC-B);
3. Pod lupom: Protivpravno postupanje organa unutrašnjih poslova u Srbiji i Crnoj Gori, Belgrade, Fond za humanitarno pravo, 1997 (HLC-C);
4. Pod lupom: Politička upotreba policije protiv građanskog protesta u Srbiji 1996–97, Belgrade, Fond za humanitarno pravo, 1997 (HLC-D);

5. "Godišnji izveštaj Fonda za humanitarno pravo", *Naša borba* 3 March 1998 (HLC-1);
6. "Donji Prekaz, 5–6. mart 1998, izveštaj Fonda za humanitarno pravo", *Odgovor,* 23 April 1998 (HLC-2);
7. "Izveštaj Fonda za humanitarno pravo o kršenju ljudskih prava u Glođanu tokom i posle sukoba između policijskih snaga i naoružanih Albanaca", *Naša borba*, 23–24 May 1998 (HLC-3);
8. Pod lupom, Izveštaj br. 26, Fond za humanitarno pravo, Belgrade, May 1998 (HLC-4);
9. "Nestanci na Kosovu, januar-maj 1998. Izveštaj Fonda za humanitarno pravo 4 June 1998", *Naša borba*, 6–7 June 1998 (HLC-5);
10. "Izveštaj Fonda za humanitarno pravo o Kosovu od 15. januara do 30. jula, Nestanci u vreme oružanih sukoba", *Naša borba*, 31 July, 1–2 August 1998 (HLC-6);
11. "Fond za humanitarno pravo 'Istraga u Drenici'", *Nezavisni*, 13 March 1998 (HLC-7);
12. "Godišnji izveštaj Fonda za humanitarno pravo o stanju ljudskih prava u SR Jugoslaviji u 1998. godini", *Vreme* (supplement), 7 January 1999 (HLC-8);

b) Helsinki Committee for Human Rights in Serbia:

13. "Izveštaj Helsinškog odbora za ljudska prava u Srbiji o stanju ljudskih prava Bošnjaka — Muslimana u Sandžaku", *Helsinška povelja,* 4–5/1998 (HC-1);
14. *Godišnji izveštaj Helsinškog odbora za ljudska prava u Srbiji*, Belgrade, January 1998 (HC-2);

c) Sandžak Committee for Human Rights:

15. *Izveštaj Sandžačkog odbora za ljudska prava*, Novi Pazar, January 1998 (SC);

d) Council for Defence of Human Rights and Freedoms, Priština:

16. *Polugodišnji izveštaj Odbora za zaštitu ljudskih prava u Prištini za period januar-juni 1998* (PC-1);
17. *Godišnji izveštaj Odbora za zaštitu ljudskih prava u Prištini za 1997* (PC-2);

e) Center for Free Elections and Democracy:

18. *Izveštaj CESID-a o sprovođenju referenduma održanog u Srbiji 23. aprila 1998*, (CESID-1);
19. *Oko izbora 2, izveštaj Centra za slobodne izbore i demokratiju*, Belgrade, 1998 (CESID-2);

f) Centre for Anti-War Action:

20. *Romi u Srbiji*, Centar za antiratnu akciju, Belgrade, 1998 (CAA-1);
21. *Položaj manjina u Vojvodini*, Centar za antiratnu akciju, Belgrade, 1998 (CAA-2);

g) "Equality" Association:

22. *Istraživanje položaja nacionalnih manjina u Vojvodini, Sprovođenje pravnih propisa u vezi sa službenom upotrebom jezika nacionalnih manjina prilikom ispisivanja javnih natpisa u Vojvodini*, Subotica: "Ravnopravnost" August 1997 (EA);

h) Democratic Centre Fund:

23. *Pravni položaj izbeglica i proces integracije*, Belgrade, Fond Demokratski centar, 1997 (DC);

i) Democratic Forum for Human Rights and Inter-Ethnic Relations, Montenegro:

24. *Ostvarivanje, zaštita, ugrožavanje i kršenje osnovnih ljudskih i nacionalnih prava i sloboda u Crnoj Gori u 1996. godini*,

Podgorica, Demokratski forum za ljudska prava i međunacionalne odnose Crne Gore, 1997 (DFCG);

j) Helsinki Committee for the Protection of the Rights and Freedoms of Bulgarians in Yugoslavia:

25. *Policijsko nasilje nad pripadnicima bugarske nacionalne manjine u Srbiji— vređanje ljudskog dostojanstva i ograničavanje slobode kretanja*, Dimitrovgrad, Helsinški odbor za zaštitu prava i sloboda Bugara u Jugoslaviji, 1998 (HB);

k) Association of the Independent Electronic Media:

26. *Napadi na nezavisne medije u Srbiji*, Belgrade, Asocijacija nezavisnih elektronskih medija, December 1998 (ANEM);

1.3. Reports of International Institutions and Non-Governmental Organisations

This Report also relies on the reports of international and foreign non-governmental organisations on the state of human rights in Yugoslavia. The reports involved were those produced by the United Nations (UN), the Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe (CoE), as well as those of: *Amnesty International* (AI), *Human Rights Watch* (HRW), *International Helsinki Federation for Human Rights* (IHFHR), *Minority Rights Group* (MRG), *Freedom House* (FH), *Lawyers Committee for Human Rights* (LCHR), *Article 19* (A19) and U.S. Department of State (SD). The regular reports of foreign, and international intergovernmental and non-governmental organisations have been cited, by quoting their abbreviated names and the year covered by their reports (e.g.: *Human Rights Watch* report for 1998 — 98 HRW). Other reports and statements will be referred to by quoting the abbreviated name of the organisation and the date (e.g.: letter by *Human Rights Watch* of 7

March 1998 — 7/3/98 HRW) or the month of publication (e.g. *Amnesty International* report of June 1988 — 6/98 AI).

2. Judicial Protection of Human Rights

There was no special protection of human rights by constitutional courts in the past nor is there any now. Yugoslav courts never apply the ratified international treaties on the protection of human rights (one may say that these contracts have never become an integral part of the internal legal system, except in the cases when the legislator introduced the obligations under the international treaties in the laws). Also it has never been possible to complain to an international instance for violations of human rights.

In the time of communism, the SFRY was frequently accused of systematically restricting the independence of the judiciary and of rigged political trials. The communist "revolutionary" ideology was a sufficient reason to control the courts. Nevertheless, the civil, criminal and administrative judicial protection of the proclaimed human rights was on a respectable level, which contributed to the level of legal security that existed in the SFRY. The fall of communism was followed by the grievous erosion of the judiciary, which stemmed from the inadequate (often politically inspired) selection of judges, the deterioration of the material position of the entire judiciary, poor organisation of the courts, etc. The control of the party over the functioning of the courts did not disappear, as was clearly evidenced by the involvement of the courts in rigging local elections in Serbia in November 1996.

A particular problem is that it is impossible to enforce final court decision: a party to a lawsuit may be granted declaratory protection of its rights by the court, but there are no guarantees that the authority responsible for enforcing the judgement will act according to the enforcement order.

In addition to this, procedural law allows for arbitrary choices, the abuse of rights, and the delay of proceedings and irrelevant rulings.

The judicial protection of human rights in Yugoslavia is inadequate.

2.1. The Independence and the Impartiality of the Judiciary

In the preceding chapter (Section I.4.5.1) the inadequacy of safeguards for independent and impartial trials in the FRY, and particularly in Serbia, was discussed. The problems arise already on the normative level, while in practice, they turn sometimes into the very negation of the proclaimed principle of independent and impartial proceedings.

It is very difficult to determine the dimensions of the control carried out by the executive branch over the judiciary. However, the liberty that Dragoljub Janković, the Minister of Justice of Serbia, took in his address to the newly elected judges on 28 May 1998, can serve as an illustration of the attitude of the executive towards the judiciary in Serbia. He said: "Your duty is, not only to protect the constitution and the law, but also to love this country. Do not forget the roots from which you have descended (...)" (HLC-8).

The financial autonomy of the judiciary in the FRY is not regulated by law. Courts do not have stable and satisfactory sources of income, and the housing problems of the judges are not in the jurisdiction of the judicial, but of administrative organs, i.e., the Ministry of Justice, without any previously established criteria. The salaries of the judges are defined by law. However, the government of Serbia has additionally limited the judges salaries by a decree. The basic salary of a municipal court judge calculated in this manner amounts to 1,570 dinars (about DEM 200), and that of a district court judge, whose jurisdiction still includes the pronouncement of capital punishment, amounts to 1,730 dinars (about DEM 250). This is just slightly more than half the amount needed for feeding a four-member family, by the standards of the FRY Federal Bureau of Statistics. Such a

material status and the irresponsible attitude of the executive has contributed to the fact that more than 700 experienced judges (1/3 of their total number in Serbia) have left the judiciary in 4 years.

The immovability of the judge from the office to which he is elected is one of the generally recognised guarantees of the independence of the judiciary. In the FRY, this guarantee exists only in law, judges have been transferred to other courts, sometimes with the promise of being promoted (contrary to the established criteria) and given financial benefits (contrary to the standard rules).

The procedure of nominating candidates for the election of judges in Serbia also displays many shortcomings. The Ministry of Justice plays a significant role in the preparation of proposals, and the personnel commissions of the governing parties frequently wield the greatest influence. Judges are elected without any medical and psychological tests and without ethical criteria, which has had repercussions on the functioning and standards of the courts. The poor standards of selection (apart from several obvious cases of judges suffering from psychological disorders) have manifested themselves in the increased tendency towards corruption (also helped by the miserable income of judges). According to an unpublished survey conducted by the Association of Judges of Serbia in March 1998, corruption of judges is quite widespread in this republic. (report presented at a meeting in the Assembly of the City of Belgrade, 14 March 1998.) In addition to corruption, there are also cases of nepotism. It happens that even spouses or other close relatives sit in the same case in the first-instance or appellate courts.

The presidents of the supreme courts in Serbia and Montenegro (the Federal Court is an exception) are elected by the republic assemblies *ad personam*. Thus, presidents of the supreme courts are not senior officers elected by their colleagues and they do not have the status of the first among equals, but are in a rather ambivalent position: on the one hand they are judges, and on the other, they are bearers of administrative authority in relation to the other judges. Being responsible directly to the executive — the Ministry of Justice — presidents

of the supreme courts have to act in accordance with its instructions, whether they wish to or not. One of the significant administrative powers of the presidents of the supreme courts is their discretionary right to assign concrete cases to certain judges, whereby the concept of the right to an independent judge (based on the doctrine of a "natural", i.e. random judge, whose personality must be of no significance to the parties and the decision to be made), is negated. The criteria used by the presidents of the supreme courts in assigning the cases are not defined by any regulation, they are not transparent and they are not subject to control. In an antagonised society such as the Yugoslav, and particularly the Serbian, political criteria predominate in the performance of the function of a chief justice, making the constitutional declaration on the independence and impartiality of the judiciary a mere decoration instead of a binding principle.

The legal and factual guarantees of the judges personal safety are poor. According to the reports of the non-governmental organisations, a judge in Niš was killed because of the outcome of a lawsuit; a Belgrade district court judge was sprayed with tear gas by the accused at the hearing, and in Pančevo, the accused threw a bomb in the courtroom. It is precisely for these reasons that the judges have proposed that "court police" be formed who would be responsible for the enforcement of court sanctions in addition to keeping order in the courtroom. This initiative has not been accepted so far.

A particular problem is the military judiciary which has broad competence under the Yugoslav law and many citizens under its jurisdiction. It is impossible to achieve the real independence and impartiality of the military courts, because the judges of such courts are appointed and relieved of their duties by the President of the Republic in a procedure which is not defined, and which is not subject to any control, while they themselves retain the duties and responsibilities of members of the armed forces.[59]

59 See I.4.5.1.

2.2. The Public Prosecutor and the Police

The status of the public prosecutor in the judicial system of the FRY is contradictory. His role in the judicial proceedings is very often too dominant. Although he should only be a party to the proceedings, according to the Criminal Procedure Act, the public prosecutor is much more than that (which is also indicated by the fact that the public prosecutor's office is quite often located in the court building). On the other hand, the relationship of the public prosecutor towards citizens — potential private plaintiffs is no less problematic.

The status of the public prosecutor is much more favourable than that of the procedural position of the private plaintiff in the procedure before the court, although the status of all the parties should be equal according to the law.[60] When the public prosecutor receives criminal charges from a citizen, he usually forwards them to the competent police station in order to obtain so-called preliminary information. If he is informed that the case concerned is a delicate one, the public prosecutor usually remains passive, i.e. he neither desists from prosecution nor initiates proceedings before the court. This is when the rights of the plaintiff are in jeopardy, since he/she cannot appear in the role of a private prosecutor for as long as the public prosecutor does not desist from prosecution. Such a game may last even until the case falls under the statute of limitations. Conversely, if the public prosecutor desists from prosecution, without informing the plaintiff about the fact, and if the court also fails to inform the plaintiff about this, the plaintiff may also be wronged, since he has a preclusive three-month term within which he may continue with prosecution. If he/she fails to act within this term, the plaintiff is deprived of the right to prosecute the accused, regardless of the fact that he was not duly informed about the decision of the public prosecutor (Article 60 CPL). This problem becomes quite acute when charges are brought for unlawful treatment by the police. In such cases, as the Humanitarian

60 See I.4.5.2.1.

Law Center reports, threats and blackmail are also used in order to deter the plaintiff from criminal prosecution (HLC-C).

Proceedings against the members of the police pose a particular problem. Private prosecutors have great difficulty in winning judgements in their favour. In these cases, the courts tend to postpone hearings, sometimes even for years, thereby violating the provisions of the Criminal Procedure Act. The extent to which it is difficult to initiate proceedings before the court against policemen can best be seen from the case of Dušan Lukić from the vicinity of Belgrade. On 5 March 1995, he was caught by the police in relation to automobile theft. He stated that the policemen banged his head against the concrete pavement and beat him up with baseball bats. When he was admitted to hospital "his whole body was blue, his spleen was ruptured, his kidneys injured, ribs broken and his brain seriously damaged". Lukić died on 24 March, and it was only three years after that the court began proceedings against the two police inspectors, after many efforts made by his family in that respect. (*Dnevni telegraf*, 18 April 1998, p. 13).

Even when it happens that the court starts proceedings, the police frequently react by bringing criminal charges against the private prosecutor, thus forcing him to withdraw his indictment. The normal course of criminal proceedings is also regularly hindered by the fact that it is extremely difficult to ensure the presence of the members of police at hearings. The only possibility left to the courts is to refer to the senior officer of the accused member of the police with the request that he be brought before the court; however, as a rule these requests remain without effect. Finally, even after the trial is ended by the court sentencing the accused, as a rule the sentence is suspended. (HLC-C).

2.3. Inadequate Civil Procedure

The main civil laws in the FRY (Contentious Procedure Act, Non-Contentious Procedure Act, Enforcement Procedure Act and Receivership, Bankruptcy and Liquidation Act) are obsolete. Adopted in the time of the former SFRY, these laws were based on different social, economic and legal postulates than those that a society in

transition should aspire to. This can be seen in the example of unlawfully obtained evidence, as well as evidence procured by violating human rights. The use of such evidence is not prohibited by any of these laws, which offers vast opportunities for abuse.

Civil law suits drag on for years, and sentences are often pronounced under political pressure (HC-2). Tremendous difficulties are caused by the fact that no firm stands have been adopted by the judiciary with respect to many controversial issues, as a result of which the principles of legal security and equality of the citizens are violated. The decisions of appellate courts are marked by a particular lack of uniformity, as a result of which the interpretation varies depending on one's personal view.

Judicial protection of rights is also rendered difficult by the fact that the state records are not updated. The records of the deceased are particularly badly kept, and the procedure of issuing death certificates takes a long time, creating difficulties for the relatives of the deceased. Probably the most problematic records are those relating to the citizens places of residence. For many reasons (evasion of military draft is one that should not be disregarded) many citizens do not register their addresses after moving. Thus, avoidance of receiving indictments and summons to testify before courts (which may last for as long as a year and a half) has become widespread. The poor records of citizens place of residence, coupled with the inefficient court delivery service and disrespect for the regulations shown by the persons delivering court documents, are a significant cause of the inefficiency of the courts.[61]

61 In Kosovo and Metohija there is the almost unbelievable phenomenon of one person having several identities, which are all backed by documents issued in regular procedure. It is conspicuous among the citizens of Albanian ethnicity, who register their children who are born at home at the relevant offices in several different towns, always citing a different name keeping only the same surname. When the children grow up, they can easily avoid summonses, and thus the enforcement of sanctions.

2.4. Enforcement of Judicial Decisions

Court sentences in the FRY are very difficult to enforce, regardless of the fact whether they involve criminal or civil action or commercial lawsuits.[62] There are several reasons for this state of affairs, however, two of them are the most important.

The first reason is the poor and archaic legislation. Thus, new proceedings can be instituted in the course of an enforcement procedure, and in extreme cases this may last for as long as several years. The inefficiency of judicial enforcement has led to a tide of agencies that offer to collect debts by force, and to the corruption of the enforcement agencies.

In commercial courts political criteria influence the (non)enforcement of decisions, particularly when the affected parties sentenced are state bodies or companies whose directors are close to the ruling political parties. This practice has caused well-operating companies to go bankrupt, because, despite the existence of enforceable sentences they are unable to collect their debts.

Another shortcoming is the privileged role of debtors in the enforcement procedure. Under normal circumstances, a debtor in the enforcement procedure would have to be the weaker party. In the FRY, however, the debtor is given *special* protection due to which he becomes the stronger party, contrary to the nature of the enforcement procedure. The reason for this is the adherence to the communist doctrine advocating that the debtor has to be protected from the creditor, at all costs, since it is presumed that the latter is a "capitalist" and an "exploiter". The debtor is undeservedly provided favourable conditions even by the individual rules of the Enforcement Procedure Act (*Sl. list SFRJ*, No. 20/78, 6/82, 74/87, 57/89, 20/90, 27/90, 35/01; *Sl. list SRJ*, No. 27/92, 31/93 and 24/94).

Another significant reason for the non-enforcement of sentences is of a political nature. In the FRY, and particularly in Serbia, there is an evident practice of giving privileges to persons who engage in

62 The enforcement agencies in each of the listed spheres are specialised.

politics on the "right side". In addition to this, local administrative authorities usurp the right to evaluate the appropriateness of court rulings, often refusing to enforce them if they are contrary to their political interests (17/3/98 IHFHR). The enforcement of prison sentences gives prison staff many opportunities to abuse their power. This is evident from the example of Destan Rukici, a lawyer from Priština and defence attorney of ethnic Albanians in many political trials, who was severely beaten up in the Lipljan prison (where he was serving his misdemeanour sentence pronounced on account of his acts when defending Cena Dugoli).

Neither the system of extraordinary legal remedies nor the acts of mercy by the state have been geared to ensure equal treatment by the state authorities. The extraordinary mitigation of penalties and the release from prison on parole are applied inconsistently and are carried out on the basis of insufficiently transparent procedures, so there is no guarantee that the same decision will be adopted for two identical or similar cases.

3. Individual Rights

3.1. Prohibition of Discrimination

3.1.1. Ethnic discrimination. — This is the most frequent form of discrimination in the FRY. There is a great difference between the federal units, since discrimination on ethnic grounds is the most frequent in Serbia.

The greatest number of cases of discrimination have been noted in relation to ethnic Albanians.[63] Albanians in Montenegro are also exposed to discrimination, but their status in that republic is much better than in Serbia. Nevertheless, the ethnic Albanians in Montenegro have difficulties, primarily with local nationalist parties and groups.

63 See IV.1.

Thus *Vijesti* reports on the case of ethnic Albanian Dema Feraj, who was prevented by the inhabitants of Risan from moving into the house that was assigned to him by the municipal authorities.

"Some unidentified inhabitants of the local community stole some building material from Feraj, worth 1,500 dinars, which he himself had bought, and set fire to his hut nearby, which had been allotted to this Albanian family. After the incident, the representatives of the local community of Risan sent an official letter to the police and the mayor of the municipality of Kotor, kindly asking them not to permit the Feraj family to move in, because otherwise others who had not resolved their housing problems could be expected to do the same" (*Vijesti*, 6 April 1998, p. 3).

The other category of the population frequently exposed to discrimination are Moslems. The authorities have maintained an unfavourable stanza towards them since the beginning of the war in neighbouring Bosnia and Herzegovina (1992–1995). In that war, the military forces of the central Bosnian authorities, composed mainly of Moslems, fought against the Bosnian Serbs. Such a relationship towards the Moslems has not changed significantly even after the Dayton Peace Accord of November 1995, when two entities with a high level of autonomy were established in Bosnia and Herzegovina (the *Republika Srpska* and the Moslem-Croat Federation). This discrimination is not as pronounced as in the case of ethnic Albanians. However, it has manifested itself diffusely, in different everyday circumstances, most conspicuously in the municipality of Novi Pazar, where Moslems make up the majority population. Thus, for instance, according to the data of the *Sandžačke novine*, the state-owned company *PTT Srbija* decided that telephone line connection in the villages of the Novi Pazar municipality which are populated by Serbs shall be four times lower than in the city of Novi Pazar, where the majority of the population are Moslems. A female professor in a Novi Pazar secondary school was dismissed from work because she came to her class "wearing a scarf". The headmistress, who had consulted the Ministry of Education of Serbia on this point, considered this as attire with a religious connotation "which is not permitted to be worn at school" (SC).

Discrimination is particularly widespread in relation to the Roma, although not much is heard about this in public, since there is no strong organisation that would represent their interests and protect their rights. At the same time, having learnt from their former bad experience, they avoid protesting against the violations of their rights. The Helsinki Committee for Human Rights in Serbia has reported on numerous attacks against the Roma. In certain places in Serbia, the inhabitants do not permit the burial of the Roma in local cemeteries; in the Raška region, they are not permitted entry into some coffee shops; three schools in Kragujevac were covered with the slogan "Death to the Gypsies", and the Romani children do not attend these schools out of fear (HC-2). In the second half of 1997, there were several dozen physical attacks against the Roma. "In early October 1997, a group of skinheads spent a whole night beating the Roma in Skadarska street and the surrounding streets in Belgrade. Two young men and a woman 7 months pregnant were severely injured. The police registered the case but they did not identify the perpetrators nor did they inform the public about the event" (*Naša borba*, 23 February 1998, p. 12). The most drastic case, certainly, was the event that occurred on 25 April 1997, in Jazovo near Čoka. According to the report of the Sandžak Committee for Human Rights, that day, two minor twin-brothers from the neighbouring village of Ostojićevo slew two Romani children aged three and five and strangled their mother Desanka Radu, without any obvious reason.

The case of the fourteen-year-old Dušan Jovanović drew greater public attention. The boy was beaten to death by two skinheads in Belgrade, in October 1997, only because he was Romani. This triggered public protests, and the perpetrators were sentenced to 10 years in prison in the spring of 1998 (17/3/98 IHFHR).

Milder forms of discrimination against the Roma, however, are much more numerous. The independent newspapers reported on the case of the eight-member Roma family Urošević from Kragujevac. Their Serb neighbours exerted pressure on them to move away to the settlement of Beloševac, only because they were Romani. They expla-

ined this by claiming that the Roma had "never lived there", and that it was impossible to live with them because they were "dirty, they drink, shout, curse and walk around naked". According to the claims of the Uroševićs, the neighbours hang their cat, killed their dog and threatened "to make necklaces for them made of Gypsy fingers and to poke their Gypsy eyes" if they refused to move away (*Dnevni telegraf*, 12 August 1998, p. 5). Animosity towards the Roma exists even among children. A Romani girl, studying the fourth grade of the elementary school "Jovan Popović" in Novi Sad, was chased away by her school friends who shouted at her "go away, you are a Gypsy" and threatened her with a knife, saying "all Gypsies should be killed". They never touched anything she had first held in her hands before cleaning it well. The school management deny the problem and refuse to discuss it for the newspapers (*Naša borba*, 17 and 18 February, p. 20).

The Roma children in the FRY need special support in order to at least partially eliminate the consequences of the difficult economic conditions in which they live and their poor knowledge of the Serbian language in which they are obliged to study at school. However, attempts to provide positive discrimination of the Roma have met with opposition from the population. Thus, the Open Society Fund of Yugoslavia has helped the Roma in Niš to organise a kindergarten for their children. When the kindergarten was to be opened, the citizens in the borough in which it was situated protested filing a petition in which they claimed that "the Gypsies can learn Serbian just as well in their own families" and they cynically asked: "are we soon going to have to organise special schools and faculties for our Gypsies". The idea about the kindergarten was thus abandoned, irrespective of the good intentions of the municipal government (Naša borba, 13 April, p. 12).

3.1.2. Gender discrimination. — According to the data of the International Labour Organisation, there were 834,000 unemployed persons in the FRY in May 1998, among them 470,992 women. Women prevail in the population of the unemployed, but not conspicuously. The situation might be worse, however, if the

number of housewives was taken into account, who do not seek employment for patriarchal reasons, i.e. because their husbands persist in the view that "a woman's place is in the home".

A 1997 survey by the Belgrade UNICEF Office which involved a sample of women aged between 20 and 55, from all the parts of Yugoslavia, among whom a great majority (71.5%) had secondary or university level education, showed that, despite the fact that elementary education in the FRY is compulsory, almost 7% of Yugoslav women are without education or with incomplete elementary education. Only 5.2% of women are skilled or highly skilled workers, which reflects the view that trades are mainly reserved for men.

In reference to independent decision-making on one's own education and its termination, almost 70% of the respondees made this decision on their own. 47.1% of the respondees left school because of family reasons, i.e. because of marriage or childbirth. Although the women voluntarily terminated their schooling, they were under a strong influence of the patriarchal environment, particularly in the rural regions. A fact pointing to this is that two thirds of the respondees who could not attain the desired level of education "due to family reasons" were from Kosovo and Metohija.

Despite the high percentage of educated women among the respondees, only 51.9% were employed. The share of housewives among dependent women (pupils, housewives, unemployed and supported persons) amounts to 24%. The lowest degree of economic activity, only slightly more than a quarter, was registered among the women in Kosovo and Metohija. The view of the respondees with respect to employment points to the fact that their behaviour in practice involves elements of "false emancipation". Namely, as many as 57.1% of the women stated that they would not be employed if they did not have to.

The majority of employed active women are employed in public and "socially-owned" companies, reflecting the general structure of the employed. However, according to the data from the census on the labour force conducted by the Federal Bureau of Statistics, a relatively

smaller number of women than men work in the private sector, which points to the fact that private employers discriminate against women when hiring their staff.

Almost half of the women earned incomes which amounted to less than half of the average Yugoslav earnings, while only 25% of the women had earnings that exceeded 1.5 average earnings in the preceding month. This distribution is very similar to the distribution of total earnings in Yugoslavia, but, in reference to temporary employment, which represents the predominating source of income for a large part of the Yugoslav population, the share of women is negligible (10% accounting for free-lance work and 3% accounting for working illegally).

The majority of women (about 80%) declared that they were equal to men with respect to the treatment they have at work. Almost a quarter consider, however, that their status regarding promotion is worse. The factual state of affairs is unsatisfactory, because only 2.1% of the respondees occupy managerial posts. The data that only 5.8% of the women performed specialised jobs also points to the unsatisfactory status of women. A traditional view also prevails with respect to private companies: family companies, as well as real estate acquired in marriage are still registered under the husband's name. Only 2.1% of women are formally registered as owners or co-owners of private companies.

More than half of the women have equal status to that of other members of the family in disposing of money, and in reference to the families where decisions are not taken jointly, women dispose of money in a slightly larger percentage than men (17.5% : 13.1%). The data varies depending on the level of urbanisation, and so, the situation in Kosovo and Metohija is less favourable for women. There, 22.1% of the households make decisions on disposing of their money jointly, but once the decision is made, it is the husband (43%) and the father-in-law (12.8%) who mainly dispose of the money, while women do so only in 8.5% of the cases.

Women bear the greater burden of household chores and children care. Almost one third of the women get no help from the members of the family at home, and more than half of them take care of the children and their upbringing by themselves, while fathers do so only in 2.2% of the cases. Yugoslav women spend the greatest part of their time performing the role of a housewife or as active persons who earn an income, then, in caring for children, and the least time for cultural and information activities and for their personal hygiene and cosmetics. More than three-quarters of the respondees almost never or only rarely go to the cinema, the theatre or to concerts.

The level of health-related knowledge and culture of Yugoslav women is low. Almost one half of the women go to see the physician only when they are ill, and never for preventive purposes. About one third of the respondees stated that they suffered from chronic diseases, among whom 90% stated that their disease was not being monitored by a physician. The low level of the health culture of women is reflected in their care for their reproductive health. Only one quarter of the women have regular gynaecological check-ups, while 35% of the women almost never have such check-ups. Modern contraception is used by only 27.7% of the respondees; almost one half of the women had abortions, and even 12.1% had more than three abortions, which ranks Yugoslavia at the very top of the European countries (three abortions in proportion to one birth). Since abortions are legal, many women stated that abortion was performed professionally in public hospitals. Nevertheless, about 13% of the abortions in Kosovo and Metohija were performed illegally.

In reference to violence in marriage, more than three quarters of the women estimated that their relationship with their husbands was harmonious; 27%, however, stated that no violence was used in the case of a dispute with their partners, while more than half of them stated that violence was sometimes used, and 16.3% claimed that this happened frequently. Such results raise the issue of what the women in the FRY imply by a "harmonious relationship" and "normal" marriage. This may point to women being reconciled with their subordinate role.

3.2. The Right to Life

3.2.1. The right to life in armed conflicts. — According to the assessments by both international and local organisations, in 1998, the right to life in Yugoslavia was massively endangered in the Province of Kosovo and Metohija, where intensive armed clashes between the Army and the security forces on the one hand and the armed ethnic Albanians, on the other, went on from March to October. It is estimated that, about 2,000 persons lost their lives in Kosovo, among them at least 800 ethnic Albanians. It is still unknown how many of them were "KLA" fighters who were killed in the clashes themselves, and how many were civilian victims killed by the state organs or the "KLA".

3.2.2. Threats to the right to life in police custody. — This has also been frequent in Kosovo and Metohija. Threats to the lives of detained ethnic Albanians in this Serbian province started to multiply as early as 1997.[64]

In 1998, the Humanitarian Law Center collected data on six cases of death in which the victims of police torture were detained ethnic Albanians (HLC-8).[65] *Amnesty International* devoted more at-

64 According to the data of Albanian human rights organisations quoted by the Humanitarian Law Center, the police killed 32 detained ethnic Albanians in Kosovo during 1997. The Priština Council for the Defence of Human Rights and Freedoms claims that 35 ethnic Albanians were killed during that same period of time, and that there were 2 murder attempts and 22 cases of wounding, while *Amnesty International* reports on at least three ethnic Albanians who died in custody as a consequence of torture or wounds inflicted by firearms (98 AI). The same organisation published a special report on torture and murders during custody in Kosovo, describing in greater detail the cases of Ismet Gjocaj, who was killed in November, and Jonuz Zeneli, who died in the prison hospital on 16 October 1997. (3–6/98 AI). Quoting the data of the Council for the Defence of Human Rights and Freedoms (CDHRF), the U.S. Department of State reports on the death of Besnik Restelica, who had traces of torture on his body, although the police claimed that he had committed suicide (SD 98). Special Rapporteur Elisabeth Rehn complained that the Yugoslav authorities had not accepted her call to take the necessary measures and examine these cases (31/10/97 UN). See IV.1 for more details.

65 In reference to one of these cases, the Centre brought criminal charges against the unidentified policemen (HLC-1).

tention to two of the six-murdered ethnic Albanians, Redzep Bisljimi, a human rights activist and Cena Dugoli, a political activist. Bisljimi was arrested on 6 July; two weeks later he was hospitalised in the Priština hospital with injuries and a broken rib, and he died a day after undergoing kidney surgery. Dugoli, who had been arrested with four other persons on 21 June on suspicion of terrorism, died on 17 August in the Priština hospital, where he had been transferred from prison the day before, and had been operated on (18/8/98 AI).

Threats to the right to life in police custody has also occurred outside Kosovo and Metohija, involving persons who are not members of ethnic minorities. Nineteen-year-old Veselin Pavlović from Belgrade was falsely accused by the police of having stolen a passport and was beaten up in the police station. He died of the consequences of the beating in June 1998 (*Blic*, 2 June 1998, p. 8). The murder of eighteen-year-old Milan Ristić from Šabac is interesting because this was the first Yugoslav case to appear before the UN Committee Against Torture (Ref. No. 113/1998).[66] The police confused Ristić with another person they were looking for, in February 1995, only to arrest him immediately after that, and beat him up inflicting a fatal injury to his head with a blunt object. The police tried to cover up the case by presenting it as suicide, but Milan's father, Radivoje Ristić, "managed to obtain the reports of the emergency medical service and the police which deny the claim about Milan's alleged suicide" (*Dnevni telegraf*, 26 September 1998, p. 14).

3.2.3. Threats to the right to life by militant groups. — Another proof that not only the police jeopardise the right to life in the FRY, but also citizens who usurp the right to administer justice according to their own standards is the case of Vitko Dikić (44). This Serb fled from Kosovo because of the tensions in that province and settled in Čačak. A local skinhead Saša Vasiljević (22), and Saša Stevčić (19) from Niš, who was of a similar mind,

66 Although the citizens of Yugoslavia have had the right to submit their appeals to the Committee since 1991, when the Convention Against Torture was ratified, the Ristić case was the first to be referred to it.

attacked Dikić late in October with the explanation that "he is not a Serb but an Albanian" and beat him up so severely that he died of the injuries (*Vreme*, November 7, p. 57).

The right to life of the Serbs and Montenegrins in Kosovo, was also endangered in 1998 by members of the illegal armed organisation of the Kosovo Albanians known as the "KLA". It is responsible for the murder of 27 Serbs and Montenegrins and there are grounds for suspicion that about 100 Serbs and Montenegrins were liquidated after being kidnapped. There are no reliable details about how many ethnic Albanians have been liquidated by the "KLA" under the accusation that they were collaborating with the Serbian authorities.

3.2.4. Death penalty. — During 1998, one could often find articles in the press advocating the abolition of capital punishment, which exists in the penal codes of Serbia and Montenegro (but not in the federal Penal Code). The reason was the initiative of the Serbian government to replace all three existing criminal laws (the federal and the two republic ones) with the federal Penal Code and thus abolish capital punishment on the territory of the FRY for good. The Montenegrin government rejected this idea judging that behind this move was the intention of the Serbian government to diminish the authority of Montenegro as a federal unit. The papers that supported the policy of the Serbian government, particularly *Politika*, dedicated a great deal of space to propaganda for the abolition of the death penalty, tacitly overlooking the fact that in 1993 the Serbian government most strongly rejected the abolition of capital punishment in the current federal Penal Code. The *Politika* article entitled "Death Penalty Abolished in the Majority of European Countries" claims that "the absurd disharmony between the federal and the republic regulations will be overcome with the adoption of the new federal Penal Code". The real attitude towards the death penalty is illustrated by the text under the title "Serbia Immature for the Abolition of Capital Punishment", published by *Dnevni telegraf.* Among other things, Nebojša Marković, Deputy Belgrade District

Prosecutor stated the following for this paper: "I think that capital punishment should not be repealed although in principle, I am against it (...) I think it is not wise to abolish capital punishment at a time when brutal murders and robberies committed out of greed are multiplying (...) Also, in Yugoslavia there are a great deal of arms and persons who plunder in addition to taking part in the fighting in the battlefields. Being aware of the fact that they cannot be sentenced to capital punishment, their self-restraint must certainly be lower when they torture or kill people" (*Dnevni telegraf*, 6 September, p. 2).

The last time death penalty was enforced in Serbia was in 1992 in Sombor, when Johan Drozbek from Karavukovo, was executed, a bully and the murderer of a six-year-old girl. According to the report of *Amnesty International*, no less than three death penalties were pronounced in the FRY during 1997, for murders subject to prosecution by republic laws, but there is no record of their enforcement (98 AI). The daily *Blic* found out informally that there were 12 persons in Serbia awaiting execution in 1998. (*Blic,* 24 April 1998, p. 7).

3.3. Prohibition of Torture

In 1998, the Humanitarian Law Center recorded "about 500 cases of torture, cruel or inhumane treatment by the police, the greatest number of which were registered in Kosovo" (HLC-8). The Center also claims that the police of Serbia and Montenegro employ torture not only to extract confessions, but also out of sheer brutality. Torturing most frequently starts immediately after arrest, with the abuse of the procedure in the arrest, detention, police custody and interrogation. The Center has investigated several dozen cases and has arrived at the conclusion that the police frequently act contrary to the law in performing their routine controls — identity checks, testing whether drivers are drunk and maintaining order. What gives rise to special concern is that children have also been the victims of such abuse. On the basis of a series of the cases investigated, the Humanitarian Law Center

claims in its report that it happens that physicians remain silent and conceal or even diminish the unlawful behaviour of the police. The Centre states that this collusion between the physicians and the police, not only threatens peoples health but also makes the status of the victim in an eventual criminal procedure extremely precarious (HLC-8).

Bearing in mind the data presented by the NGOs about the violation of the provisions of the Convention Against Torture, as well as the statements in the periodical report by the FRY, the Committee Against Torture expressed its concern, conclusions adopted in November 1998, about the extent of violations of the prohibition of torture in the FRY. First of all, the legislation in the FRY still does not comply with the Convention Against Torture, and two of its provisions should be singled out in particular: torture is not prescribed as a separate criminal offence and the provisions on custody during the investigation procedure are not adapted to the standards of the Convention (16/11/98 UN CAT). According to the Committee, the situation that prevails in practice gives even more reason for concern. The numerous cases of torture by the police and extraction of testimonies, which are supported by substantiated medical certificates, are recorded in the reports of NGOs and have been reported to the Yugoslav authorities, who have, however, ignored them (16/11/98 UN CAT).

The competent authorities in the FRY do not act in accordance with Articles 12 and 13 of the Convention which prescribe their obligation to investigate all allegations of torture, without delay and in an impartial manner. The reports of all international organisations for 1997 cite examples of serious violations of the prohibition of torture in the FRY. The Special Rapporteur of the Commission on Human Rights, Elisabeth Rehn, emphasised in her final report for that year that she had received information during her mandate on numerous cases of torture, and inhumane and humiliating treatment by the police.

According to the data of *Amnesty International* (1–8/98 AI)[67] this went on in 1998, while the situation in Kosovo grew even worse.

67 See IV.1.

According to the Humanitarian Law Center, members of the police in Priština incised a cross on the chest of Asim Krasnici after torturing him for several hours on 30 April 1998. Soka Rugovac, a bus driver from Rožaje (Montenegro) was stopped by the police in the middle of April in Peć (Kosovo and Metohija). They took him to the police station without explanation, where he was beaten up by masked policemen who asked him who he had voted for at the presidential elections in Montenegro. When he said that he had voted for President Milo Djukanović, the political rival of the Yugoslav President Slobodan Milošević, they incised the name of the Montenegrin President on his chest with a welding torch, he states (HLC-8). Arif Dacić, from Rožaje too was also beaten up by a Serbian policeman, without any reason, at the police control point near Vučitrn (Kosovo and Metohija), in June. Dacić later gave the following description of what had happened to him: "I was stopped by the police patrol, who asked me to open my baggage and to show them my ID card. One of them cursed my Turkish mother, hitting me with his fist and took me to a nearby shelter where he beat me up with a baseball bat while the others stood and watched. After that, he ordered me to go back to where I had come from and never to appear in Kosovo again, which was a holy Serbian land where we (Moslems) had no business to be" (*Vijesti*, 27 June, p. 3). The Humanitarian Law Center registered several cases in which the police beat up the Roma — in Valjevo, Belgrade and Novi Sad. On the occasion of the arrest of Dino Toplica, President of the Municipal Board of the Congress Party of the Roma in Novi Sad, the police severely beat up his seventeen-year-old son (HLC-8).

The above allegations, which, in addition to torture, involve elements of discrimination based on ethnicity and political views, have been rejected by the Serbian police and labelled as "political propaganda". Dailies close to the government in Serbia, particularly *Politika*, do not write about them, but, on the other hand, they publish police denials. However, these dailies are very interested in every case of police torture in Montenegro. Thus, in early 1998, *Politika* noted the following: Nedjo Stanović, a participant in the January demonstrations

against President Milo Djukanović in Podgorica, was arrested on 15 January and detained for four days. During his detention, Stanović was beaten up by the police every day (*Politika*, 17 February, p. 16). Reports by Montenegrin NGOs and the press did not confirm these claims. However, they reported on some other cases of torture in Montenegro. Thus, the Montenegrin police beat up Veselin Žižić, member of the Main Board of the opposition Socialist People's Party in Nikšić, in the night between 7 and 8 October. The police arrested him in his cafe, handcuffed him and beat him up in the car and in the basement of the police station. The members of the police, who took part in the battering of Žižić, were suspended immediately and were dismissed at the end of November (HLC-8).

At the beginning of June, without any reason, the Montenegrin police beat up a young man from Novi Sad who was spending his summer holidays in Budva. In addition to these two cases, the weekly *Monitor* also mentions the case of Zoran Jelić, whom the Podgorica police beat up with electric cables and truncheons in order to extract a confession. Jelić claims that they even took him out for a mock execution. The Montenegrin weekly *Monitor* states that the police beat up whole families in Rožaje and that the incident had become so critical that the Montenegrin Minister of the Interior had to come to this place and calm the situation down (*Monitor*, 16 October, p. 21–23).

3.4. The Right to Freedom and Security of Persons and the Treatment of Arrested and Detained Persons

3.4.1. Police detention. — The trouble with the abuse of custody by the police already starts at the level of legislation, which provides for the very broad right to order three-day detention.[68] In practice, however, detention often lasts longer than the

68 See I.4.4.1.1.

three legally permitted days. Violations of the law in this respect are particularly widespread in Kosovo. The Humanitarian Law Center has reported several such cases, among which the case of ethnic Albanian Hafir Salja, a physician in the Public Health Centre in Glogovac, who was arrested and taken to the police station in Priština on 10 April, and about whom there was no information until early in June (HLC-5). The U.S. Department of State annual report also speaks about the practice of arbitrary arrests and detaining in custody, primarily in Kosovo and to a slightly smaller extent, in Sandžak, but also in Belgrade, during the student protests in May and June 1998 (98 SD).

3.4.2. Detention by court order. — Unlawful imprisonment of citizens on the basis of judicial rulings in the FRY is frequent. According to the data of the Ministry of Justice of Serbia, the District Court in Kragujevac assigned 483 adult citizens to be held in custody in the period from 1991 to 1997, among whom 303 were later released as innocent. The same court also conducted 120 investigations which lasted between 6 months and a year and 24 investigations which lasted longer than a year. According to the data of the Ministry, the Kragujevac court also massively violated the legal provision on the duration of custody (three days). Of all the cases listed above, in only 34 custody lasted three days, while in 39 cases it even lasted longer than ninety days. "All this is encouraged by the Criminal Procedure Act which leaves ample scope for abusing the institution of custody. Under this law, custody may also be determined in order to prevent the public from being disturbed by the fact that the perpetrator of a certain offence is not arrested", says Tatomir Leković, advocate from Kragujevac and President of the Board for the Protection of Citizens from Oppression by the State Authorities (*Večernje novosti*, 22 June, p. 11).

3.4.3. Abductions. — This form of violation of the right to freedom and personal safety has existed for a long time on the whole

territory of Yugoslavia;[69] however, during 1998, it was the most frequent and the most drastic in Kosovo and Metohija. The most numerous victims of abduction during this year were the local Serbs and Montenegrins.[70] In reference to responsibility for the abductions, *Amnesty International* declared the Serbian police responsible for the missing ethnic Albanians who were arrested during the armed clashes with the illegal "KLA" or arrested under other circumstances, while it blamed the "KLA" for the missing ethnic Albanians who were believed to be "collaborators" of the Serbs, and for the members of the Serbian, Montenegrin, Romani and other ethnic groups (2–8/98 AI). Jiri Dienstbier, Special UN Rapporteur for Human Rights, stated that the "KLA" was accused of abduction 249 civilians and policemen, some of whom it killed and tortured. He added that the International Red Cross was monitoring 140 cases of abduction in Kosovo (*Blic*, 21 November, 1998, p. 3). The discovery of mass graves of (presumably) Serbian and Montenegrin civilians, in the villages of Glodjane, Klečka

69 The Helsinki Committee for Serbia claims, referring to the local NGOs, that six abductions were committed in Sandžak in the "pre-Dayton period" in which 51 Moslems were abducted, 34 people of "Moslem-Bosnian" ethnicity were killed, fifty one facilities were blown up and fifty one villages were ethnically cleansed. According to the Committee, it is believed that the army of the Bosnian Serbs is the most responsible for the violations of the rights of the Moslems, but that the local authorities did not try to prevent this. The cases best known to the public are the abductions in Mioča and Štrpci. On 22 October 1992, 17 Moslems were abducted from a bus which shuttled between Priboj and Sjeverin. The kidnapped people were taken off in an unidentified direction. The Helsinki Committee for Serbia cites the data of the unofficial military sources according to which they were soon killed close to Višegradska Banja (the *Republika Srpska*). On 27 February 1993, 21 passengers were kidnapped from a train on the Belgrade — Bar line, in the village of Štrpci. They were also killed soon thereafter in the territory of the *Republika Srpska*. Milan Lukić, commander of the "Osvetnik" detachment, was accused and arrested for the abduction on 16 April 1996, but he was released from prison after about twenty days (HC-1). Nebojša Ranisavljević from Despotovac, the only accused for the abduction at the Štrpci railway station, on 4 May 1998 was brought to trial before the District Court in Bijelo Polje, but no other hearings were held after the first one. The Public Prosecutor of Montenegro, faced with accusations by the public that he was trying to cover up the whole case, replied that he did not schedule the main hearing because the procedure of hearing evidence in the territory of BH was in progress (HLC-8).

70 See IV.1. for details.

and in the Volujak mine, confirms the fear that the majority of the kidnapped Serbs and Montenegrins were killed. Among the kidnapped civilians were also Djuro Slavuj and Ranko Perinić, journalists of the Radio Priština programme in the Serbian language, whose fate has remained unknown since late in August (26/8/98 HRW). Nebojša Radošević and Vladimir Dobričić, journalists of the Yugoslav state agency TANJUG were kidnapped by the "KLA" on 18 October, and were sentenced to 60 days in prison by a "KLA" court-martial for allegedly violating the "legally effective provisions of the 'KLA'" (which have not been published anywhere nor is their content known).[71]

3.5. The Right to a Fair Trial

According to the reports of international organisations and foreign governments, the right to a fair trial is one of the most endangered rights in the FRY, since the concept of the whole judicial system is inappropriately designed and it is susceptible to political influence and corruption. Some of the most significant problems related to the Yugoslav judicial system were presented in II.2. At this point, it is important to say more about the extent to which current political conflicts in the FRY have reflected on the functioning of the courts.

A proof of the existence of political control over the judiciary is the official judicial approval of the electoral fraud from the "Zajed-

71 This case raised an outcry among the international public. Following the information that the "KLA" sentenced two journalists to prison, Amnesty International sent open letters to Adem Demaci, a "KLA" political representative, and Mons Nyberg, OSCE spokesperson, in which it drew their attention to the provisions of the First Protocol of the Geneva Convention on the Protection of Journalists, as well as the Reference of the Council of Europe No. R(96)4 (principle 8), stating that this Protocol should be applied also in internal armed conflicts (11/98 A19). Human Rights Watch also reacted with its appeal to both sides that they should respect the integrity of journalists and warned them that any act of violence against them was strictly banned by the provisions of international humanitarian law (24/10/98 HRW). Radošević and Dobričić were amnestied under foreign pressure, and they were set free on 27 November 1998.

no" Coalition, in favour of the ruling Socialist Party in Serbia, at the local elections in 1996. On that occasion, appeals before the First Municipal Court in Belgrade and the Supreme Court of Serbia were heard by judicial panels formed on an *ad hoc* basis by their presidents, in deviation from the annual schedule of court business. Both of the presidents of the supreme courts who were the most responsible for the abuses of the judiciary for political purposes, were later promoted: one became the Minister of Justice in the government of Serbia and the other, the President of the Supreme Court of Serbia. The very recognition of the regularity of the election results in the form of a special law (the so-called *lex specialis*) of March 1997 (*Sl. glasnik RS*, No. 5/97) was an unequivocal sign of support for the judges implicated in the scandal. The political message sent out, on that occasion, to the whole judicial profession and each judge individually, was that their disrespect for the law, when made at the order of the executive, will never be sanctioned under the law.

The Serbian government went on squaring accounts with the remnants of the opposition forces in Yugoslavia (after the fall of the "Zajedno" Coalition). Thus, in December 1998, under the evident political influence of Slobodan Milošević and the Serbian government, the federal Constitutional Court adopted a decision on the constitutionality of the Montenegrin Act on the Election of Delegates to the Chamber of the Republics (*Sl. list SRJ*, No. 3/99), disregarding the protests by the Montenegrin lawyers. That same court had refused an earlier Serbian law with the same contents.

In the context of abolition of the autonomy of the university[72] the students of the University in Belgrade, Teodora Tabački, Nikola Vasiljević, Dragana Milenković and Marina Glišić, were sentenced to misdemeanour penalties for writing graffiti inviting citizens to stage peaceful resistance to the new Serbian University Act. The four students who had never been prosecuted before, were sentenced by the magistrate, in summary proceedings, at the beginning of November

72 See IV.4.

1998, and were immediately sent to serve their 10–day prison sentences for "demonstrating civil disobedience to the authorities and disturbing the public".

Conspicuous violations of the right to a fair trial occurred in the application of the penal provisions of the new Public Information Act.[73]

This law, adopted on 22 October 1998, took only two days to be seen in practice. The prosecuting party for instituting misdemeanour proceedings was the Patriotic Alliance of Belgrade, a hitherto unknown non-governmental organisation represented by its president Milorad Radević. The accused Slavko Ćuruvija, owner of the weekly *Evropljanin*, Dragan Bujošević, its-editor-in-chief, and Ivan Tadić, director of the publishing, of the company "De Te Press", who were charged with "inciting to the forceful overthrow of the constitutional system" were brought before the magistrate, Mirko Djordjević. The suit was filed on 22 October, the hearing was scheduled for the next day at 3 p.m. and the accused received their summons only six hours prior to the hearing. The accused emphasised that the weekly had been printed as early as on 19 October, and that the application of this law, which came into effect after that, was retroactive. The private prosecutor could not prove any of his allegations. The burden of proof fell completely on the accused. The defence attorneys moved for dismissal because of lack of *locus standi*, since, even under the new law, only the Ministry of Information is authorised to file a request for instituting misdemeanour proceedings. The defence also moved to have witnesses summoned, who could confirm the accuracy of the disputed claims. The magistrate rejected both proposals without any explanation. During the hearing of the representative of the prosecuting party, the defence attorney requested that he explain in what way his organisation was damaged by the writing of the accused. The magistrate overruled this proposal as well. The head of the municipal magistrates also rejected the request for exemption of the judge Djordjević, and the

73 See I.4.8.2.

request for the exemption of the chief judge himself, Dragoljub Glavonić, was not even taken into consideration. All the accused were pronounced guilty within 24 hours, and were sentenced to pay high fines (2.4 million dinars).

The defence lodged an appeal. The Magistrate Appeal Board in Belgrade, rejected it on 7 November. Its decision provided no answer to the objections regarding the violation of the rules of procedure. "The procedure was violated by the refusal of the Board to establish in what way the members of the Patriotic Alliance were damaged" said one of the attorneys, adding that none of the evidence proposed by the defence was allowed to be heard (*Dnevni telegraf*, 7 November 1998; *Blic*, 24–25 October 1998; the Legal Department of the ANEM "Attacks on the Independent Media in Serbia").

The first issue of the *Dnevni telegraf* newspaper that came out after its temporary prohibition under the Decree on the behaviour of the media in conditions of an armed threat by NATO[74] which had been repealed in the meantime, was the subject of a new misdemeanour procedure. Bratislava Morina, the Republic Commissioner for Refugees, filed charges against the newspaper on 7 November, on behalf of the Alliance of the Women of Yugoslavia, accusing it of having published an advertisement of the students organisation "Otpor". It was on 7 November, around 20:30 hours, that the court messenger pasted the summons on the door of the old editorial office of the newspaper (which had, meanwhile, moved to Podgorica), and the hearing was scheduled for 11:30 the next day. The defence requested that the charges be rejected as inadmissible because "... according to the law, Morina is not authorised to file a request for instituting misdemeanour proceedings under Articles 67–69. According to Article 65, only the Ministry of Information is authorised to supervise the enforcement of this law". They also claimed that the prosecutor had abused her function as she did not have the authorisation of the body prescribed by the rules of the Alliance of the Women of Yugoslavia. The municipal

74 See I.4.8.2.

magistrate, Vesna Dabetić-Trogrlić turned down these requests as well as the request to allow the defence to inspect the original identification documents of the Alliance. The defence requested the exemption of the magistrate and the chief municipal magistrate Dragoljub Glavonić. It was Glavonić himself who decided on the proposal for the exclusion of magistrate Dabetić-Trogrlić, although that same request by the defence included a demand for his own exclusion. After the request was rejected, the defence attorneys and the journalists left the court-room so as to enable "... the judge and the lawyers of JUL to decide on the sentence quietly and by themselves", as one of the attorneys said. *Dnevni telegraf* was sentenced to pay a fine of 1.2 million dinars (*Dnevni telegraf*, 8, 9, 23 November 1998; *Blic,* 9 November 1998, *Vijesti*, 9 November 1998, the Legal Department of the ANEM "Attacks on the Independent Media in Serbia").

The District Public Prosecutor's Office in Belgrade submitted a request to the municipal magistrate on 16 November, for initiating misdemeanour proceedings against the Podgorica weekly *Monitor* because of its "call to overthrow the constitutional order by force". The summons for the hearing was delivered on 16 November, through the *YU radio*, located in Belgrade: it was broadcast in a regular five-minute news programme at 20:00 hours and after that every hour. The hearing was held on 17 November, before the municipal magistrate, Dragan Pavlović. The minutes state that the defendants did not attend and that they did not retain a defence attorney, although they had been duly "summoned". After no longer than sixty minutes, the magistrate pronounced the highest fine ever imposed, amounting to 2.8 million dinars. Until 18 November, the editorial board of this Montenegrin weekly were not aware that misdemeanour proceedings had been instituted against them, not to mention that they had already been completed. The court decision did not reach Podgorica until 20 November (*Monitor*, 27 November 1998; *Pobjeda*, 20 November 1998; *Blic* 21–22 November 1998; *Dnevni telegraf*, 8 and 23 November 1998; *Vijesti,* 9 November 1998).

According to the Humanitarian Law Center, the most drastic violations of the right to a fair trial occurred in Kosovo, at the trials of ethnic Albanians accused of terrorism and associating with the purpose of carrying out hostile activities (HLC-8). *Amnesty International* has reached a similar conclusion, citing as a characteristic example the manipulations during the trials of Mehmet Memcaj and another four ethnic Albanians (among whom one was tried *in absentia*) in May 1998. The accused were sentenced to between three and seven years in prison for the offence of planting a bomb in Prizren, smuggling arms and belonging to secret organisation *The People's Movement for the Republic of Kosovo* (4–6/98 AI). The Humanitarian Law Center also reports on the cases of preventing contacts between political prisoners and their defence advocates. Thus, for instance, in February and March, the authorities in the correctional institution in Niš prevented Uksin Hoti who was serving there his prison sentence, from meeting his defence attorney on several occasions (HLC-1, HLC-4).

3.6. The Right to the Protection of Privacy, Family, Home and Correspondence

In its annual report, the U.S. Department of State points to the phenomenon of republic ministries of the interior abusing their broad discretionary authority in deciding to place certain persons under surveillance, and it states that the general opinion among the public is that the authorities do wiretapping and open letters. Also, contrary to the federal and the Serbian law[75], the post office registers all the letters coming from abroad, under the pretext that it protects postmen from the accusation that they steal enclosures. According to the U.S. Department of State, the legal restrictions in performing searches are frequently violated, particularly in Kosovo and Sandžak. In these

75 See I.4.6.3.

regions, the police has an already customary practice of conducting random searches of houses, vehicles, stores and offices of ethnic Albanians and Moslems, claiming that they are looking for weapons (98 SD). The Humanitarian Law Center also considers that the right to privacy was most often violated in Kosovo and Metohija on the occasion of frequent police searches for weapons. The police usually did not produce any warrants when making the searches (HLC-1).

3.7. The Right to the Freedom of Thought, Conscience and Religion

3.7.1. The Orthodox religious community. — Although the equality of religious groups has been proclaimed in the FRY, in reality, the Serbian Christian Orthodox Church has a privileged status. In Montenegro, such a situation manifests itself as discrimination not only of the non-Orthodox believers, but even of a number of the Orthodox believers. The persons concerned are the members of the Montenegrin Christian Orthodox Church, which was the target of attacks in the media in Montenegro, on several occasions, according to the data of the *International Helsinki Federation for Human Rights* (17/3/98 IHFHR). In addition to this, the Serbian Orthodox Church refused to recognise the Montenegrin Orthodox Church and obstructed the return of the church buildings (about 600 buildings) which had been taken away from this Church in 1920. The Serbian authorities, on the other hand, still refuse to return to all the Churches — and even to the Serbian Orthodox Church itself — their assets which were nationalised after World War Two.

3.7.2. The Catholic religious community.— The Catholic Church, its clergy and believers have experienced a series of essential restrictions of their rights in the FRY over the past several years. Since 1991, a number of attacks were registered against the Catholic religious buildings, clergy, believers and their houses and property, so that

the number of the religious services in certain religious facilities had to be reduced (HC-2). Over the past year, the religious buildings and the clergy in Vojvodina were a special target of the extremists.[76] The Catholic Church also had troubles in Kosovo, in the Central Serbia and in Montenegro. Thus the local authorities in Klina (Kosovo) prohibited the construction of a Catholic church on the land belonging to the Church, regardless of the licence issued by the judicial authorities (which was confirmed by the decision of the Supreme Court of Serbia). The Helsinki Committee in Serbia cites the case of Blaško Zvonko, assistant parish priest in Niš, who learnt from the press that criminal proceedings were conducted against him at the military Court on charges of espionage and that a wanted circular had been issued for him (since, allegedly, his address was not known to the court). Zvonko immediately reported to the authorities and it was only on his own insistence that the summons was handed to him. Later on, he was arrested at the airport, and was interrogated again, after which he was released (HC-2). *The International Helsinki Federation for Human Rights* reports that the Catholic Church has an ongoing dispute with the Serbian Orthodox Church concerning the ownership of the St. Petka church in Sutomore (Montenegro). Although both of the Churches have been joint owners of this church building since the 15th century, the Serbian Orthodox Church and the local government do not permit the Catholics to use it for their religious services (17/3/98 IHFHR).

76 In the letter to the Ministry of Religion of the Republic of Serbia of 23 May 1995, the bishopric vicar for Srem, Stjepan Miler, stated that the church in Vasića was destroyed by means of an explosive, that the catholic cemetery in Surčin was demolished, that the churches in Neštin, Erdevik and Hrtkovci and the parish office in Gibarac were burnt down, that the door of the church in Ruma was destroyed by means of an explosive, that the church in Novi Banovci was demolished by means of an explosive. Other attacks cited were breaking of the window at the parish offices in Sremska Mitrovica, Hrtkovci, Sremski Karlovci, Nikinci, Beška, and the monastery in Zemun. In the same letter, Miler states that the parish priest in Šid, Djuro Djuraj, was beaten up, suffering five broken ribs, and that the parish priest in Kukujevci, Stjepan Moroslovac, has developed mental disorders because of harassment.

3.7.3. The Islamic religious community. — The Sandžak Committee's report cites four cases of obstructing religious gatherings and attacks on religious facilities in 1997 (SC).

3.7.4. Religious sects.— Over the past few years, the Serbian authorities and the Serbian Renewal Movement have led a campaign against religious sects. They have explained their propaganda action by the fact that there is no law governing the activities of religious communities (the old law was rescinded in 1993), and by the bad experiences certain European countries (e.g. France) have had in this regard. During the campaign, however, it became evident that it was based on the "conspiracy" theories and the need to protect the privileged status of the Serbian Orthodox Church in the FRY.

The government of the Province of Vojvodina submitted a document to the provincial parliament, in the second half of June (which was later withdrawn) under the heading "Information on the Membership of Children and the Youth of Vojvodina in Religious Communities". In that document the activities of sects are assessed as a massive and socially dangerous phenomenon for the two-million population of Vojvodina, and this is backed by the detail "that 34 persons aged between 7 and 18 are members of religious sects". As stated in this document, "religious sects are a spiritual plague of our time, which has been spreading from the USA as an instrument of the new world order. Their devastating effect is particularly directed at children and the youth, and their purpose is to destroy the Orthodox religion and Serbdom. Regardless of whether they encourage pacifism and have a negative effect on army recruits, or whether they incite brutal militarism or massive and individual suicides, religious sects contribute to the entropy of the family and society and weaken the defensive capacity of the state" (*Naša borba*, 20 June, p. 9). A manual on self-defence from sects was written in the same spirit, in which Zoran Luković, a police captain, says that "it is easier to train five missionaries in a period of five years than to buy 50 tanks or aeroplanes for an invasion, and the results are the same (...) all sects spread

denationalisation and suppress patriotism in a country" (*Politika*, 16 October, p. 19). In February, some citizens of Valjevo, believing that there was a link between suicides and the activities of the Jehovah's Witnesses, stoned the house of some members of this sect and expelled them from the town, with the police there standing "guard". The Orthodox priest from this town, Stojadin Pavlović said that the "church cannot allow its children to join a sect. Our church is obliged to protect its flock, but it also has to take care of Serbs who are not closely related to the Church" (*Vreme*, 7 March, p. 54). Jehovah's Witnesses in Montenegro have been also exposed to attacks by unidentified persons and are not able to build their own facilities; the Montenegrin authorities do not seem to react to this (17/3/98 IHFHR, *Monitor,* 27 March, p. 11, 10 April, p. 26, 9 October, p. 38 and *Vijesti,* 18 November, p. 3).

3.7.5. Conscientious objection. — This right, as a manifestation of the freedom of conscience, was introduced in Yugoslavia (i.e. Serbia and Montenegro) by the Constitution of the FRY of 1992.[77] It is very difficult, however, to exercise this right. Thus, according to the claims of *Amnesty International*, in February 1997, the Military Court in Belgrade sentenced one member of the Jehovah's Witnesses to six months in prison because he pleaded conscientious objection and refused to perform his military service (98 AI). Pavle Božić (27), a stone cutter from Stari Banovci (Vojvodina) and member of the Nazarene sect, had a similar experience, refusing to perform military service under arms as his "religious beliefs did not permit him to carry arms". The local authorities met his request in October 1997, and permitted him to perform his military service as a civilian for a term of 24 months. However, at the end of December, the police arrested Božić at the order of those who had approved his alternative military service two months earlier. Finally, on 23 February 1998, a military court sentenced Božić to a year in prison because of his "refusal to obey by orders" (*Naša borba* and *Blic*, 7 April 1998, pages 9 and 12).

77 See I.4.7.

3.8. Freedom of Opinion and Expression

3.8.1. Freedom of the media. — From 1990 on, many independent newspapers and journals started being issued in Serbia and Montenegro, and a minor number of independent electronic media started functioning. However, conditions of real media pluralism have never been established.[78] Control over the media by the ruling parties in Serbia and Montenegro has been the key factor of their remaining in power.[79] In 1998, the situation in Montenegro started improving. On 16 December, the Supreme Court of Montenegro cancelled the decision of the Secretariat of Information of 13 August, which had prohibited the functioning of *Radio Pljevlja* and *Pljevaljske novine* (the last of the media controlled by the Socialist People's Party of Momir Bulatović, defeated after the May elections). Conversely, state repression against the independent media in Serbia reached its highest intensity in 1998 and there is no indication that any court could stand up to a crackdown by the branch.

3.8.2. The position of journalists. — In Serbia, there were cases of physical and psychological abuse of journalists, registered in 1998. Vojkan Ristić, correspondent of *Naša borba* from Vranje, was summoned to the police for questioning, where he was threatened and ordered to stop writing about the minister Dragan Tomić, who was also the director of the Simpo company in that town (*Naša borba*, 3 February, p. 8). Miroslav Miletić, journalist of Radio Kragujevac, was beaten up by an unidentified person in the centre of the town. After this event, Miletić stated that he had been threatened several times because of the contents of his broadcasts, but had not taken the threats seriously (*Blic,* 23 February 1998, p. 9). The police also expelled foreign journalists from Kosovo. In the middle of August, a three-man crew from the German ARD television was expelled and at the same time for-

78 See IV.3.
79 See I.4.8.2. and IV.3.

bidden entry in Yugoslavia for a period of two years. This was justified by the assertion of the Serbian Ministry of the Interior that the crew "had fabricated an attack by the police against a village, in which, allegedly, there were civilian victims, and that they used the report for the purpose of media manipulation" (*Blic*, 15 August 1998, p. 8). The German television crew denied the allegations of the Ministry, and the relevant authorities did not inform the public whether they had conducted any investigation into this case.

3.9. Right to Freedom of Peaceful Assembly

In the period between 1991 and 1997, the Serbian authorities threatened the right of the citizens to assemble and demonstrate peacefully, on several occasions.

The first time this right came under attack was on 9 March 1991, when the opposition parties in Belgrade organised public demonstrations against the monopoly of the ruling party over the media. The demonstrations rallied several tens of thousands of citizens (among whom there were also persons from other cities). Strong police forces attacked the peaceful demonstrators on the Republic Square, which was followed by clashes all over the city. At the end of the day, army tanks drove out into the streets and massive arrests ensued. One policeman and one demonstrator were killed.

The next denial of the freedom of peaceful assembly occurred two years later. After an incident in the Federal Assembly on 1 June 1993, when one deputy of the Serbian Renewal Movement was physically assaulted, several hundred supporters of this party gathered to protest and were joined by several thousand citizens of Belgrade. One policeman was killed in the clash between the police and the demonstrators, but the investigation never established under what circumstances this happened. According to the Humanitarian Law Center, in the night between 1 and 2 June 1993, the police beat up more than 250 demonstrators and many citizens, who accidentally happened to be out

in the streets. According to unnamed official sources quoted by the Center, 106 persons were arrested and 32 injured. One demonstrator was sentenced on misdemeanour charges, and misdemeanour charges were filed against five persons (HLC-A). On 3 June, the Republic Public Prosecutor's Office requested the Constitutional Court of Serbia to ban the Serbian Renewal Movement, with the explanation that this party had grossly abused the freedom of political organising and activity. The Constitutional Court rejected this request, but only five years later, at the end of 1998.

At the local elections of 16 November 1996, the opposition coalition "Zajedno" won in about forty large municipalities in Serbia. However, the election results were cancelled and this was the reason for a three-month peaceful civil protest in Belgrade, and in almost all major towns in Serbia. On 24 November 1996, the police mainly did nothing to prevent the citizens from demonstrating peacefully, but it applied violence selectively against certain participants in the gathering and beat them up as they went home individually. According to the Humanitarian Law Center, 24 participants in the protest were arrested between 29 November and 19 December 1996, on charges of allegedly disturbing the public order and peace, and 20 persons were sentenced on misdemeanour charges (HLC-D). According to the Center, the trials at which the demonstrators were tried for misdemeanour were conducted in summary procedure which involved violations of the rights of the accused to a fair trial. Criminal charges were filed against four of the participants in the protest. Seven of the 20 demonstrators who were sentenced on misdemeanour charges were subjected to criminal proceedings initiated against them when they were already serving their sentences (HLC-D). A new tide of arrests ensued on 3 and 4 February 1997. Several dozen demonstrators were beaten up and several dozen were arrested (HLC-D; 98 AI). *Human Rights Watch* states that several hundred demonstrators were injured in the incidents at the end of December 1996 and the beginning of February 1997, while at least 50 persons were arrested and sentenced on charges of disturbing the public order and destroying property, in judicial procedures which did not meet international standards. After the end of the demonstrations,

the authorities did not launch proceedings against the persons responsible for brutality, although more than 60 criminal suits were filed against the police because of their excessive use of force (98 HRW).

After the protest against the election results, the most serious and the most frequent violations of the right to free assembly took place in Kosovo and Metohija. During 1997, the Independent Union of the Priština University Students organised mass demonstrations on several occasions, with the demand that school and university facilities be freed unconditionally. Apart from Priština, the protests were held in several other cities as well. Strong police forces dispersed the demonstrators by force. During the protest on 1 October 1997, the Priština Council for the Defence of Human Rights, registered 537 cases of demonstrators being subject to police abuse. *Amnesty International* states that in crushing these students protests the police injured several hundred persons (3–6/98 AI). On 29 October, the police also intervened against the demonstrators in Peć and Djakovica, while 179 participants reported to the Committee that they had been mistreated by the police on 30 December (PC-2; HLC-1; 3–6/98 AI).

A series of violations of the right to free assembly was noted in Kosovo and Metohija in 1998. After the police action in Drenica at the end of February and the beginning of March 1998, demonstrations were organised in Priština and other towns, attended by several tens of thousands of citizens of Albanian ethnicity. Several dozen demonstrators were injured in the police intervention, and according to the claims of the Priština Council for the Defence of Human Rights, the police prevented medical staff from aiding the injured (PC-1). *Amnesty International* also reported on these demonstrations with the statement that the police used excessive force. The case of Cerim Malici was singled out in particular, who was killed in the demonstrations of 18 March, in Peć, when the police fired at the demonstrators who threw stones at them (3–6/98 AI; HLC-8).

The Serbian police prevented and dispersed demonstrators in Central Serbia as well. Peaceful protests by the parents of army recruits (who were sent to Kosovo in the height of the clashes in this Province),

in Belgrade, were prevented and dispersed as were the demonstrations of Belgrade taxi drivers and students, as well as the public gatherings of independent trade unions members. "A group of embittered mothers of recruits who had been taken away to Kosovo, who had not had any contact with their children for a month or longer, sat down on the pavement in Knez Miloš street, demanding to talk to someone from the Yugoslav Army General Staff. The police harshly pushed them back to the sidewalk and the most persistent protesters were literally carried away" (*Dnevni telegraf*, 19 June 1998, p. 3). The police also prevented the protests of the Belgrade students on Kosovo. "Since they took away their van with a loudspeaker system, claiming that they had to carry out a technical inspection of the vehicle, the police formed cordons to shut off the part around the Faculty of Philosophy, preventing about 200 students from demonstrating throughout the city" (Naša *borba*, 8 April, p. 18).

Taxi drivers also experienced the brutality of the police when they protested against the high taxes late in February in Belgrade. "Traffic police squads, reinforced by special units of the Ministry of the Interior of Serbia, tore off the licence plates and smashed the automobiles with their truncheons and had them towed away with towing trucks. Several strikers were taken to police stations" (*Naša borba*, 25 February, p. 1).

On 23 April, the police prevented the movement of several hundred demonstrators, members of the "Nezavisnost" trade union, who wanted to march through the streets of Belgrade. Two months later, the police blocked the access roads to the town of Kragujevac, where the women workers of the weapons plant were demonstrating and who were supposed to be joined by workers from other parts of Serbia (HLC-8).

The protests of Belgrade students and citizens because of the new University Act, late in May and at the beginning of June, ended in beatings. "The police, yesterday, dispersed the people protesting against the new University Act in front of the building of the Serbian Parliament in a brutal intervention, in which several dozen students and citizens were injured and arrested. According to the claims of

eye-witnesses, this police action involved several dozen persons in civilian clothing, who the Belgrade police claim are their field officers. After this the students withdrew to the plateau in front of the Faculty of Philosophy, where they were cordoned off by the police in order to prevent them from moving through the city". (*Naša borba*, 27 May, p. 1). The pro-government dailies presented these protests as "endangering of the public order and peace". Thus, in the article entitled "A Group of 300 Citizens Block the Roadway, Throwing Objects at Policemen and Refusing to Move Away from the Street" *Politika* informed that the students had started the protest "without a prior notice", and that as a result of their resistance to the police, Dušan Aleksić was arrested and sentenced to 10 days in prison, Predrag Simić was sentenced to pay a fine of 100 dinars and Mladen Manić was later released (*Politika*, 28 May, p. 18). "In various parts of the city, the police (...) used truncheons to prevent the students from holding protest meetings. According to the claims of Slobodan Homen, member of the Co-ordinating Board for the Protection of the University, after the "action" the police took about a dozen students to the police station, and confiscated the film material from the photographers of several Belgrade newspapers and from the Studio B cameraman (*Dnevni telegraf*, 3 June 1998, p. 1).

3.10. The Freedom of Association

3.10.1. The right to form and join political parties. — The Socialist Party of Serbia (SPS) and its Montenegrin partner the Democratic Party of Socialists (DPS), easily attained domination at the first parliamentary elections in Serbia and Montenegro, held in 1990. This was a time when they also presented themselves as guarantors of continuity (because they originated from the League of Communists of Serbia, and the League of Communists of Montenegro, respectively) and as parties with a strong national orientation, promising to safeguard the Serbian national interest and to correct the injustices towards the Serbian and the Montenegrin peoples in the then still existent SFRY. This domination

also continued without any difficulty following the disintegration of the former SFRY and the proclamation of the FR Yugoslavia. A characteristic feature of these two parties from the very beginning has been their discriminatory relationship towards the opposition parties, whether they were represented in parliament or not. Namely, the ruling parties and the media under their control have not considered the opposition parties and the opposition politicians as their political opponents but as their enemies. In view of the fact that they had retained the feature of the communists of identifying themselves with the people, they have not hesitated in proclaiming the opposition parties as enemies of the people. The SPS and the DPS easily conveyed the view they advocated to their coalition partners as well.

In Serbia, hostility towards the opposition became particularly evident after the parliamentary elections in 1997, which were boycotted by certain opposition parties in the belief that after the rigging of the local elections in November 1996, the opportunity for the voters to freely express their will did not exist. The parties which boycotted the elections have been in complete isolation since then and the media close to the government mention them only when they are to be accused of hostile and destructive activities. Paradoxically, according to such statements and articles they are, at the same time, both dangerous and negligibly small. This view advocated by the SPS and its most faithful ally, the JUL, also obtained the support of certain other parties which took part in the elections and later gradually drew close to the former communists. For instance, the Belgrade television station Studio B was also instructed by its Managing Board, which is controlled by the Serbian Renewal Movement (SPO), not to allow the members of non-parliamentary parties to appear in its programmes, and the parties implied by the Board were obviously those that had boycotted the Serbian elections, irrespective of their former significance.

A proof of persistent intolerance came recently from the highest place. In his New Year's message, the President of the FRY, Slobodan Milošević, who is at the same time the President of the SPS, dedicated

the following words to the remaining opposition parties: "Exceptions involving certain minor parties and individuals will be remembered in the future by the fact that they were not with their country when it was in the most difficult situation; they are wrong and harbour vain hopes if they believe that they will be able to avoid the judgement of history and honour". That the reference here is to traitors, can be deduced from his preceding statement: "The year behind us was both difficult and significant. Difficult, because the pressure against our country in that year was the most intense, and significant, because all the citizens, all the parties, all the institutions of our country united in response to the brutality of that pressure and in their firm resolution to defend the freedom and the dignity of the people and the integrity of the country" (*Politika*, 31 December 1998 — 1, 2, and 3 January 1999, p. 1).

According to the statements by high-ranking government officials and the authors of the University Act, this law was supposed to target particularly those professors who were politically active in otherwise legal opposition parties. Thus, in addition to other reprimands, the Serbian Vice Prime Minister and president of the Serbian Radical Party, Vojislav Šešelj, stated the following in his television address: "... It is no secret that Soros has occupied the Faculty of Philosophy and that the Civic Alliance still has its strongholds in certain faculties, abusing the interests of the students and entertaining its sick ambitions against the state which finances the University" (*TV Palma plus*, Jagodina, 5 January 1998). The Civic Alliance of Serbia (GSS) considers that one of the reasons for such an intention by the legislator lay in the Faculty of Law in Belgrade: of the seven professors who were dismissed from the faculty by its dean, who had been appointed by the Government of Serbia under the new University Act, four are members of the governing bodies of the GSS and one had been a deputy of the opposition Democratic Party of Serbia (DSS) in the Serbian parliament. Teachers at other faculties, who were members of opposition political parties, also found themselves under fire, as for instance, Vladeta Janković, a professor at the Faculty of Philology and vice president of the DSS, who was dismissed.

The result of such a development is a dangerous polarisation in the political life of Serbia and signals the absence of political tolerance, which is particularly conspicuous in the state media.

During 1998, developments in Montenegro went in a different direction. The DPS split into two factions, one of which retained the name of the party and the other, which created the new Socialist People's Party (SNP). Parallely to its increasing differences with its former political ally in Serbia, the SPS, the altered DPS, to which the President of Montenegro Milo Djukanović also belongs, changed its attitude towards the opposition, both that part with which it formed a coalition when the Montenegrin government was formed, and the parties which remained in the opposition, such as the new SNP.

3.10.2. The right to form and join trade unions. — Following the introduction of the multiparty system in 1990, several hundred independent trade unions were established in Serbia, many of which have remained inactive. The most active independent trade unions have been accused by the authorities of behaving like traitors; the letter permanently have harassed them. "Dragoljub Stošić, president of the trade union of the Belgrade Municipal Transportation Company (GSP) was arrested at the end of 1996 because of a strike he had been heading and was dismissed on 30 April 1998. The reason of Stošić's dismissal was to eliminate him from the company as the president of the trade union, because, for more than two years, he had been drawing attention to the criminal offences of the former GSP management " stated Stošić's lawyer Milojica Cvijović (*Naša borba*, 25 May, p. 10). A similar fate befell those who organised a strike in the GSP in July, demanding payment of long delayed wages. "The GSP management handed decisions of dismissal to twenty-eight workers and managers of the facilities, who are considered to be the most responsible for organising strikes in the past 7 days. We do not have the right to file an appeal to this decision, says Dragoljub Stošić, president of the drivers trade union, who was given notice for the second time, just like the secretary of the independent trade union, Miodrag Krstić" (*Blic*, 30 July, 1998, p.

22). The hew and cry against the independent trade unions was also joined by the privileged League of the Autonomous Trade Unions of Yugoslavia, which is under the control of the Socialist Party of Serbia. A branch of this trade union in the Belgrade Engine and Tractor Industry (IMT) accused the independent trade union in this company that by organising the strike it "caused damage to the interests of the company and the state, which is under strong pressure from abroad". "Although we have provided for the payment of six wages in arrears from 1997 and have enabled the functioning of the production process, certain leaders of the independent trade union have created chaos, anarchy and caused a halt in the operation of the company, succeeding in their aim and winning credit for this from their masters, was the statement of the independent trade union of the IMT" (*Dnevni telegraf*, 3 October 1998, p. 5).

3.11. The Right to Peaceful Enjoyment of Possessions

3.11.1. Real estate transactions. — The most frequent form of the violation of the right to property in Serbia is related to real estate sales. According to the current legislation, it is necessary to have a permit from the Republic Ministry of Finance[80] for any purchase and sales of real estate, whereby the door is been open for different kinds of abuse and discrimination. Another problem is the government's refusal to return the property nationalised after 1945, to the then owners or their descendants, which it is obliged to do under the *Act on the Return of Land*.[81]

80 This obligation is not applicable to Vojvodina, for unidentified reasons. See I.4.11.3.

81 The exact name of the act is: The Act on the Manner and Requirements for Recognising the Right to and the Return of Land Which Was Declared Social Property on the Basis of the Agrarian Reform and Confiscation Due to Default on the Obligations of the Compulsory Purchase of Agricultural Land, *Sl. glasnik RS*, No. 18/91, 20/92.

3.11.2. The freedom of business activities. — Two executive managers of the Montenegro Bank from Podgorica, Žarko Smolović and Miroslav Kaludjerović, were arrested at the Belgrade airport, just before the plane took off for Podgorica. On that occasion DEM 1.2 million were taken away from them. Although the money belonged to the bank, and was being transported to the head office in Podgorica accompanied by the necessary documents and permits, the Serbian police seized it. The pro-government daily *Politika* hastened to reveal to its readership "evidence" about the suspicious origin of the foreign notes. The very fact that "the foreign currency found with Žarko Smolović and Miroslav Kaludjerović at the Belgrade Airport was in small denominations" was sufficient for this newspaper to conclude that all this "points to a suspicious transaction" (*Politika*, 26 April, p. 18). Two days later, Smolović and Kaludjerović were released from custody, but at the end of 1998, the money was still not returned to the bank.

3.11.3. *Peaceful enjoyment of possessions.* — It is difficult, by means of the legal instruments, to eliminate trespassing on residences of other persons in Serbia. The police most frequently accept the newly-established situation, directing the aggrieved party (i.e. the owner of the apartment who is deprived of his property) to file a lawsuit. The judicial procedure itself takes a very long time and its outcome is uncertain.[82] According to the Helsinki Committee for Human Rights in Serbia, the practice of forceful entry into residences, whose owners are members of ethnic minorities, was still going on. This was particularly evident in the Belgrade municipality of Zemun, where the Serbian Radical party is in power. On several occasions, the members of the municipal bodies took measures to evict citizens of Croat origin from their residences. The most notorious case was that of the eviction of the Barbalić family. Although a court issued a decision in 1998 in favour of the Barbalić family, it has not yet been

82 See II.2.

enforced, since the police have refused to remove the tenants who had illegally moved in (HC-2; 17/3/98 IHFHR; HLC-8). Jovan Stavrić broke into and took up residence in the apartment of Hilda Crkvenik from Zemun on 5 July 1995. On 17 July, 1995, the court assigned a temporary measure and made it binding upon the accused to vacate the residence. In 1996, Stavrić was sentenced to pay a fine for the criminal offence of endangering the inviolability of residences (PC of the RS Art. 68, para. 1). The Fourth Municipal Court in Belgrade issued a decision on 4 June 1997, ordering Stavrić to move out within a period of eight days and hand over the apartment to its legal user. Despite all the court rulings, the police has not yet removed Stavrić (HC-2). In the summer of 1995, refugees from Croatia moved into the apartment of Ivan Muslin, a Croat from Stanišić, in the Sombor municipality. The authorities adopted several rulings in his favour, but the police have refused to take part in their enforcement (HC-2).[83]

In reference to the freedom of peaceful enjoyment of property, the situation in Kosovo is difficult. The Humanitarian Law Center claims that the members and the reserve units of the Ministry of the Interior of Serbia break into Albanian houses and throw their tenants out into the street. According to the allegations of Albanian lawyers, cited by the Center, more than 450 Albanian families were forcefully removed from their houses, while 300 families were evicted from state-owned apartments which they had been using legally (it is not clear from the Report what period of time this information refers to).[84] On the basis of the eighteen investigated cases the Center claims that among the persons who had illegally moved in, the majority were employed in the Ministry of the Interior of Serbia. The ethnic Albanians who had been moved out unlawfully, as a rule, cannot go back to their residences, and the legal proceedings instituted by them have dragged on for years (HLC-B).

83 See Elisabeth Rehn in 31/10/97.

84 According to the data of the Helsinki Committee, thirty one Albanian families were thrown out of their residences in 1997, which were then settled by Serbs (HC-2).

3.12. Minority Rights

Ethnic minorities make up a third of the population of the FRY. The violation of their rights is the most frequent and most widespread form of human rights violations, not only in the FR Yugoslavia, but also in the other states that have been created on the territory of the former SFRY. National and foreign human rights organisations[85] have devoted a great many specialised reports to this topic. It is interesting to note that at the beginning of December, the FR Yugoslavia ratified the 1995 Council of Europe's Framework Convention on National Minorities[86], although it is not even a member of the Council of Europe, nor did it receive the respective invitation from the Ministerial Committee of the Council of Europe to do so. Even if it had wanted to, the Ministerial Council could not have sent an invitation to the FRY to ratify the Convention because it requires membership in the OSCE for this, and the FR Yugoslavia's membership in this organisation was suspended in July 1992 (HLC-8). It is not clear what the Yugoslav government's motive was in proposing the ratification of the convention to the parliament.

85 Thus, in 1996, the Special Rapporteur for the Human Rights Commission, Elisabeth Rehn published a special report on the position of minorities on the territories of the whole of the former Yugoslavia, and in her 1997report, she analysed the position of the minorities in Vojvodina, Sandžak and in Kosovo. The International Helsinki Federation for Human Rights devoted an extensive report to the same topic (17.3.98 IHFHR).

86 At the request of the Committee for the Elimination of Racial Discrimination, in January 1999, the federal government submitted its *Information on the current situation in Kosovo and Metohija and efforts and measures for establishing a meaningful dialogue with the political representatives of the Albanian national minority with a view to reaching a political settlement*, in which it stated that " on 3 December 1998 the FRY Assembly adopted a law whereby it ratified the Framework Convention on the Protection of National Minorities. This has once thus once again expressed FRY's adherence to the principles set out in the Framework Convention and confirmed the fact that the relevant regulations in the FRY are in harmony with this Convention. We wish to point out that the FRY is not a member of the Council of Europe, nor has she been invited to accede the Framework Convention, and that about half of the Council of Europe member countries have still not ratified this Convention". The FRY government release, January 1998, p. 3–4.

3.12.1. Ethnic Albanians in Kosovo. — In Kosovo and Metohija, where the Albanians are the dominant ethnic group, at the beginning of the nineties, the Serbian authorities dismissed nearly all the ethnic Albanians who were directors in "socially-owned" and state-run enterprises, and over 100,000 ethnic Albanians were dismissed from their jobs (HC-2). At the same time, about 20,000 Serb refugees from Croatia and Bosnia and Herzegovina were settled and given jobs in Kosovo. Thus, a completely segregated society was formed in Kosovo: Serbs and Montenegrins control the state apparatus and "socially-owned" enterprises, and ethnic Albanians have been left with agriculture and the grey economy. Meanwhile, the ethnic Albanians have established a kind of parallel system of governance, which does not comply with the Serbian Constitution and laws.

The education system in Kosovo and Metohija has now been ethnically segregated for many years: the Serbs and members of some minorities attend state schools, while Albanian pupils and students attend classes in the establishments of a parallel educational system, which the authorities do not recognise and consider as illegal.

On 1 September 1996, the Serbian government signed an agreement with the representatives of the Kosovo Albanians, in which the Catholic humanitarian organisation *St. Egidio* acted as the mediator, in order to normalise the situation in education. This agreement, however, has still not been implemented in full despite the intimations given in the second half of 1998, following the agreement within the parity group of representatives of the government and the Kosovo Albanians[87] (31/10/97 UN). By a law adopted in 1992, the Historical Institute of the Kosovo Academy of Sciences and Arts was repealed.

The state-controlled Priština Television broadcasts a daily programme of 47 minutes in the Albanian language, consisting exclusively of propaganda. Competent authorities have not yet granted frequencies to any independent radio or TV station in Kosovo (HLC-1).

87 See IV.1.

Three independent daily newspapers and several weeklies are published in the Albanian language, and there is also a Kosovo Information Centre which is close to the Democratic Alliance of Kosovo. The authorities have tolerated the activities of these media.

The names of places, institutions, enterprises, squares, etc. are written in Serbian, in the Cyrillic alphabet, and the monuments to Albanians in front of schools, university faculties and on squares have been replaced by monuments dedicated to Serbian historical figures. The Priština Committee for the Defence of Human Rights claims that ethnic Albanians cannot go in for sports without encountering difficulties. According to the Committee's data, the authorities have usurped all the sports facilities (PC-2).

3.12.2. Moslems in Sandžak.[88] — According to the reports of the Humanitarian Law Center and the Helsinki Committee in Serbia, the violations of the rights of Moslems were particularly frequent during the war in Bosnia and Herzegovina.[89] Moslems were abducted in Sandžak at that time, and the police conducted numerous searches for weapons. Members of the Bosnian Serb army, as well as various paramilitary units, infiltrated Sandžak every day and it is believed they are largely responsible for the abduction of Moslems. Children were also victims in these abductions: a group of Bosnian Serb army members entered the hamlet of Selište on 15 February 1993 and abducted 12 Moslems, three of them children. As a result of these events, masses of Moslems, particularly from Bukovice, fled, some even to Turkey (HC-1). So as to halt the exodus and protect the Moslem population, Yugoslav

88 This report uses the term Moslems although the members of this ethnic group have increasingly identified themselves with "Bosniaks", claiming that their kin state is Bosnia and Herzegovina. The official terminology of the FRY avoids using the word Sandžak, which is of Turkish origin, preferring to call it the "Raška region".

89 According to the Helsinki Committee for Human Rights in Serbia, during 1993 and 1994, 1,082 house searches were conducted in the houses of Moslems, and weapons were found only in nineteen cases (HC-1). The situation was especially difficult in the Bukovice region (Montenegro), which consists of a group of mountain villages on the border with Bosnia and Herzegovina.

Army reserve soldiers were stationed in this area. They did not threaten the local population, but neither did they try to protect it from the Bosnian Serb army.

The families of the kidnapped still suffer great hardship. They do not receive any welfare assistance nor do they have any other source of income, and their apartments and houses have been looted (SC). Moslems from the border villages fled after 1992, mostly to Priboj, where the majority have remained as displaced persons. The Sandžak Committee for the Protection of Human Rights claims the Moslems still fear to return to their farmsteads. Even so, the state requires them to pay their taxes regularly.

In its report of 9 November 1998, the International Crisis Group (ICG) mentioned that starting from 1992, about 80,000 Moslems moved out of Sandžak as a result of the repression of the Serbian authorities (*Parlament*, 27 November, p. 14).

According to the data of the SPS in 1993, carried by the Helsinki Committee for Human Rights in Serbia, 75% of employees in Novi Pazar are Moslems, and 25% are Serbs. According to the data of the Moslem parties, also carried by the Committee, 53% of the employed in the "socially-owned" sector are Moslems, while 47% are Serbs. There are no Moslems occupying senior positions in the Novi Pazar police, and of the eight judges in the Municipal Court, six are Serbs and two are Moslems (HC-1). At the local elections in November 1996, the Moslem List for Sandžak won in the Novi Pazar and Tutin municipalities. The Serbian government dissolved the Novi Pazar Municipal Assembly in July 1997,[90] with the explanation that

90 From the very start, there have been frequent misunderstandings between the new local authorities and the Serbian central authorities. The then Serbian Justice Minister, Arandjel Markićević asked the presidents of the Sjenica, Tutin and Novi Pazar municipalities to remove the flag of the Moslem National Council of Sandžak from the municipal premises. According to the Sandžak Committee, several dozen members of the MIA forced their way into the Novi Pazar Municipal Assembly Hall, accompanied by an RTS crew, Minister Markićević and local SPS and JUL officials, on 10 July 1997. On that occasion, there was a skirmish between the local citizens and the police in which a number of people were injured (Report by Elisabeth Rehn, 31 October 1997).

there had been irregularities in the municipality's personnel policy (the municipal officials and members of administrative boards and directors of public enterprises were members of the List for Sandžak), that party emblems (of the Sandžak List) were displayed in the municipal premises, that new municipal decisions had been passed regarding local communities and that the expenses for running the schools had not been covered. A new municipal assembly was formed and members of the SPS and JUL were appointed as the assembly speakers and deputy-speakers. The municipal officials, directors and administrative board members of public enterprises were also dismissed and replaced by members and supporters of the ruling parties in Serbia. This state of affairs continued in the Novi Pazar municipality in 1998; there were signs that the Serbian authorities were preparing to introduce extraordinary rule in the Tutin municipality as well, however, this did not occur (HLC-8).

According to the Helsinki Committee in Serbia, the network of schools in the part of Sandžak belonging to Serbia is extremely poorly developed. The names of certain schools have been changed, so they have gained features of Serbian culture (HC-1). The report of the Sandžak Committee claims that in the region of Sandžak, particularly in the Tutin municipality, the health care service is very bad. The dispensary in the village of Dolovo is not working and, on the eve of the November 1996 elections, the former president of the municipality and director of the health care centre publicly declared that the dispensary would reopen if the local inhabitants voted for the Socialist Party of Serbia (SC).

Where the Moslems in Montenegro are concerned, it should be noted that the majority of them voted for Milo Djukanović in the presidential elections in Montenegro in 1997, which subsequently resulted in an anti-Moslem media campaign mainly involving supporters of the Socialist People's Party and the state-run media in Serbia. The Helsinki Committee in Serbia filed criminal charges for spreading racial and nationalist hatred against some of the participants in this campaign. At their meetings, the supporters of the Socialist People's Party threatened the Moslems with bloodshed (SC).

3.12.3. Bulgarians. — According to the data of the Helsinki Committee for the Protection of the Rights and Freedoms of Bulgarians in Yugoslavia, the Serbian authorities obstructed the work of non-governmental and political organisations with members from the Bulgarian ethnic minority, and prevented them from maintaining contacts with institutions and citizens in neighbouring Bulgaria. Dr. Marko Šukarev, the president of the Democratic Alliance of Bulgarians of Yugoslavia (DABY) was arrested in the centre of Dimitrovgrad on 1 June. "At about 1 p.m. on that day, two policemen arrested Šukarev in the street, handcuffed him, pushed him into a car and drove him off to the police station. A misdemeanour charge was immediately brought against him 'for having attempted to organise a gathering in Dimitrovgrad on 24 May, without having previously notified the authorities'." However, the police were unable to find a single witness in the town to corroborate their claim so they released Šukarev. At the railway station in Dimitrovgrad, on 7 July, the police confiscated from Šukarev 20 copies of Helsinki Committee bulletins printed in Sofia, a Xerox copy of the article published by the Sofia *Duma* about the position of the Bulgarian ethnic minority in the FR Yugoslavia, and his personal notes. The local board of the Serbian Radical Party issued a statement, broadcast at the Caribrod local TV station telling the president of the DABY, his family and supporters to move to Bulgaria to their masters, who pay them." This TV station repeated this statement on 13 July. Subsequently, in its 14 July issue, *Naša borba* published a commentary; this was the reason why the newspaper did not appear that day at the news-stand in Dimitrovgrad (*Naša borba*, 7 August, p. 7).

The introduction of the tax on border crossings[91] particularly affected members of the Bulgarian ethnic minority in the FR Yugoslavia with many relatives and friends in Bulgaria. Not even students studying in Bulgaria were exempt from paying the exit taxes. The Helsinki Committee for the Protection of the Rights and Freedoms of

91 See I.4.16.2.1.

Bulgarians in Yugoslavia claims that the Yugoslav-Bulgarian border is the most difficult one to cross in Europe for members of this minority, and that members or sympathisers of the Democratic Alliance of Bulgarians in Yugoslavia or the Helsinki Committee in Dimitrovgrad, in particular, have trouble with the border police. The Committee also claims the State Security Service often calls in students studying in Bulgaria for questioning. According to the Committee, persons with dual nationality have special difficulties (HC).

In the municipalities of Dimitrovgrad and Bosilegrad, where most of the population are Bulgarians (in the former, all of 90%), classes in elementary schools are exclusively held in the Serbian language, with the explanation that there is not enough interest for organising classes in the Bulgarian language.

"The authorities have deprived the Bulgarian minority of the right to education in their mother tongue by first suggesting to them the variant of bilingual schooling, then schooling exclusively in the Serbian language, and finally, two weekly lessons of Bulgarian. At present, pupils who belong to the Bulgarian minority celebrate the feast of St. Sava, but not the feast day of literacy dedicated to the Bulgarian Enlighteners. At the beginning of each school year, the parents of pupils must fill in application forms indicating in which language they wish their children to be taught, and after doing so they must sign the application form" (*Naša borba*, 17 February, p. 8).

The local Caribrod RTV station, which is financed by the Dimitrovgrad city authorities, broadcasts seven hours of programmes daily, in which only several minutes are devoted to broadcasts in the Bulgarian language. Names of streets in Dimitrovgrad itself are written in two languages, as well as signs bearing the name of the municipality and of the municipal court, while the sign with the name of the police station is written only in Serbian. The majority of judges in the municipal court and members of the police force in Dimitrovgrad are of Bulgarian ethnic origin. The municipal assembly speaker is also Bulgarian. The border police and customs officials are mainly Serbs who are not from that area.

3.12.4. The Roma. — According to the data of A. Mitrović and G. Zajić, quoted by the Centre for Anti-War Action, relatively low level of economic activity and a high rate of unemployment (38.3%) are characteristic for the Roma in the FR Yugoslavia (27%)[92]. This is the result of social and economic backwardness, distinct barriers in employment, but also the demographic factor. The Romani population is extremely young. Those older than 15 years of age account for 58.3% of the Romani population (while in the other population this is 75.5%). The number of dependent persons among the Roma amounts to 60% (for the sake of comparison, in Serbia the average number of dependants accounts for 37.6%). The majority of able-bodied Roma are employed in occupational groups that are the lowest on the social scale. The level of income in Romani households, according to Mitrović and Zajić, is considerably lower than the income earned in households of workers with the lowest wages or those of unemployed persons. The Roma are particularly affected by the reduction in welfare assistance to the most impoverished families (social welfare benefits, child benefits and the like). The amounts of these various forms of assistance have constantly dwindled and payments have become more and more irregular in recent years. According to data from 1981, the Roma have the largest percentage of illiteracy: 34.8%, and 78.7% of the Roma are without a complete elementary school education, while only 0.4% of them have completed secondary school or a university course. That means there are only 181 Roma in the whole of the former SFRY with an advanced level of education (CAA-1, *The Roma in Serbia*, 1998).

In the main, the Roma live in separate town and village settlements that have no sewage, or water and electricity supply systems. Because of bad living conditions, irregular nutrition, poor clothing and footwear and the lack of basic hygiene items, the Roma mainly suffer from malnutrition, avitaminosis, lung diseases, intestinal and contagious diseases (HC-2).

92 Data refers to 1992.

The Helsinki Committee in Serbia underlines that there is no education in the Romani language in Serbia. The number of children who attend school is still very low, which is interpreted as being due to the low level of culture of the parents, poor knowledge of the Serbian language, poverty, the lack of pre-school preparation, etc. In 1997 facultative classes of the Romani language and literature began in two schools in Vojvodina and in some schools in Kosovo (HC-2).

In Serbia there are several Romani political parties, all non-parliamentary. Some parties, after being founded, merged with other political parties (e.g. JUL). The Congress Party of the Roma has about 2,000 members (HC-2). However, the Roma have very few deputies in representative assemblies. Out of the total of 7,574 deputies elected in the local elections in Serbia, only 32 are the Roma (0.42%). Not a single Romani is to be found in other representative bodies that have political functions, or in other prestigious positions (BC).

Since 1992, Radio Belgrade has broadcast a one-hour, weekly, bilingual programme (in the Serbian and Romani languages). Other radio stations also have programmes in the Romani language (Niš, Kruševac, Trstenik, Prizren, Gnjilane, Kikinda, Vršac, etc.). Once a month TV Priština and TV Novi Sad alternate in broadcasting a half-hour programme in the Romani language, and the local television stations in Niš and Kruševac broadcast programmes in Romani (HC-2).

According to the same source, a privately published monthly publication under the title *Romano lil* (*Romani News*) comes out in Belgrade, which is financed by the Information Ministry. In Novi Sad, a magazine dealing with Romology, called *Romologija*, is published, as well as a monthly publication dealing with the culture, art and social issues of the Roma under the heading *Alav e Romengo*. They are financed from the budget of Vojvodina. In Priština, a privately-owned monthly magazine appears in the Arlian dialect, under the heading *Rota* (Wheel) and in Gnjilane, there is a monthly magazine published under the title *Ahimsa* (Non-Violence); it is also in the Arlian dialect.

3.12.5. Minorities in Vojvodina. — There are many ethnic groups in Vojvodina, although the majority population is Serb. The Hungarians are the most populous ethnic minority (17% of the entire population of Vojvodina). The representation of the ethnic minorities in the bodies of authority in Vojvodina is not adequate. At the republic elections in 1992 and 1993 and at the federal elections in December 1992, Vojvodina had been divided into two electoral units, while in the federal elections in 1996 and in the republic elections in 1997, the number of electoral units was increased to seven. By increasing the number of electoral units, in actual fact the electoral threshold was significantly increased above the formal 5%, which reflected negatively on the representation of the ethnic minorities in these assemblies. According to the current electoral rules, among the Vojvodina ethnic minorities only the Hungarians, due to their large number, have a realistic prospect of winning seats in the assemblies. In determining the electoral units for the federal and republic elections in 1996 and 1997, the ethnic minority communities, particularly the Hungarians and Croats, were carefully divided into several electoral units so as to reduce the electoral success of their political organisations. With the 1996 federal Electoral Units Act about 65% of the voters of Hungarian ethnicity were concentrated in two electoral units — Zrenjanin and Subotica — while the remainder of 35% were spread in five electoral units.

The Centre for Anti-War Action claims that in the past ten years, significantly fewer members of the ethnic minorities have had important political functions than in the previous period. On the territory of Vojvodina, there are 30 municipal and six district courts, and 23 municipal public prosecutors' offices. Only one president of the court and only one public prosecutor are Hungarians (in Senta). Of a total of 60 judges in six municipal courts in the same area, 26 are Hungarians (43.33%). The District Court of Subotica has 15 judges: ten are Serbs and Montenegrins, three are Hungarians and one is a Croat; the President of the Court is a Serb. The President of the District Commercial Court is a Yugoslav, three judges are Hungarians, three

are Serbs and one is a Croat. All the departmental chiefs of the MIA and the police station commanders on this territory are Serbs or Montenegrins, as are the majority of policemen (HC-2). The heads of all seven districts in Vojvodina are either Serbs or Montenegrins (CAA-2).

According to the same source, in their statutes, 37 of the 45 Vojvodina municipalities have regulated the official use of the languages of the ethnic minorities: Hungarian is officially used in 30 municipalities, Slovak in 14, Rumanian in 10, Ruthenian in six, and Czech and Croat in one municipality each. The use of the Latin alphabet is regulated in 20 municipalities (CAA-2).

The association "Ravnopravnost" in Subotica has conducted an extensive poll on the application of the provisions of the Act on the Official Use of Languages and Alphabets on public signs. Their results indicate that the provisions of this act are not respected in more than 50% of the municipalities. The provisions of this law are violated in most cases to the detriment of the ethnic minorities and their languages. Except in the case of the names of the state organs, there are fewer public signs in the Serbian language inscribed in Cyrillic, and the Latin alphabet is used more frequently. The municipal bodies covered in the survey mainly respect the legal provisions when displaying public signs, such as the names of streets and squares. In spelling their names, the Republic and federal bodies (except the judicial bodies) systematically violate the law to the detriment of the ethnic minorities. Some local branches of the state bodies such as the "National Bank of Yugoslavia (NBY) — Payments Flow Service", "Republic Geodesic Institute — Land Register and Property Service" and "Federal Customs Administration", did not display their signs in the languages of the ethnic minorities in any of the 15 municipalities covered in the survey. The report notes that the Ministry of Justice ordered the governor of the District Prison in Subotica to display the sign on the prison building only in the Serbian language — in Cyrillic — instead of in the correct multilingual sign. The majority of multilingual signs were displayed before the Act on the Official Use of Languages and Alphabets came into effect. The new signs are regu-

larly written only in Serbian, even in places where the national minorities constitute a majority. Although the violation of the law to the detriment of the ethnic minorities is a general phenomenon, the ministries and their local branches do nothing to prevent this, so that no charges have been brought against the responsible persons. Furthermore, the Republic inspectors regularly warn and penalise private business owners who do not display the names of their firms in the Serbian language, in Cyrillic, but they have never called on them to write them out in the languages of the ethnic minorities, in keeping with the law (EA; compare also 17/3/98 IHFHR).

3.12.5.1. Hungarians. — According to the data of the Alliance of Vojvodina Hungarians quoted by the Helsinki Committee in Serbia, on the territory of seven Bačka municipalities in which the Hungarians make up the majority of inhabitants (Ada, Bačka Topola, Bečej, Mali Idjoš, Kanjiža, Senta, Subotica), Hungarians are managers of only 30 of 91 large "socially-owned" and state-run companies or banks (33%), (HC-2).

According to the data of the Secretariat for Education, in the school year of 1996/97, 79.2% of the Hungarian pupils were included in elementary school education in their mother tongue or bilingually; 59.94% of the ethnic Rumanian pupils attended elementary school classes in their own tongue or bilingually; 72.37% of Slovak children and 50.3% of Ruthenian children were included in this form of education. According to the same source, 67.21% of Hungarian pupils, 27.94% of Rumanian, 17.87% of Slovak and 14.92% of Ruthenian pupils in secondary schools, were able to pursue their education in their mother tongue or received bilingual education in that same school year. The Centre for Anti-War Action does not question this data, but it underlines two shortcomings in the education of members of the ethnic minorities in their mother tongue in Vojvodina: the lack of textbooks and of teaching staff. Bilingual education is more frequent in secondary than in elementary schools. The number of students included in bilingual classes at the University in Novi Sad is small and constantly declining (CAA-2).

3.12.5.2. Croats. — Since the beginning of the nineties, many Croats, most often under direct pressure, left Vojvodina.[93] It is hard to tell how many Croats left Vojvodina. The Helsinki Committee in Serbia estimates that there may have even been 30,000 (HC-2). According to the same source, about 6,000 Croats moved out of Kosovo, and another 5,000 (HC-2) from other parts of Serbia, Belgrade in particular. The data of the Bishopric of Djakovo and Srem indicate that in the period from 1991 to 1995, the Catholic population in Srem fell from 37,682 to 22,444.[94]

An illustration of the exodus of the Croats is the dramatic case of the village of Hrtkovci. According to the 1991 census, there were 2,684 inhabitants in Hrtkovci (Municipality of Ruma), of whom 1,080 were Croats, 445 Yugoslavs, 515 Hungarians, 555 Serbs and Montenegrins. According to the HLC, the mass exodus of Hrtkovci Croats began in May 1992 and by August of the same year, 450 Croat and ethnically mixed families had moved out (HLC-A).

The report the Yugoslav government sent to the UN Committee for the Elimination of Racial Discrimination in August 1994, stated that ethnic intolerance had been observed among Serbs, Croats and Hungarians in Nikinci, Ruma, Ruski Krstur,[95] Golubinci, Kukujevci, Novi Slankamen and Beška. The same report concludes that the problems arose in the village of Hrtkovci "where about 500 refugee families were given accommodation; these refugees were Serbs who had

93 According to the Humanitarian Law Center, more than 10,000 Vojvodina Croats exchanged their property with Serbs from Croatia and moved out of the FRY, in July and August 1992 alone. Organised pressure exerted by members of the Serbian Radical Party, local officials and militant groups of refugees from Croatia played an important role in this process. This was done with the tacit approval of the republic and provincial authorities, who mainly did nothing to prevent the exodus of Croats (HLC-A).

94 According to: Marko Kljajić, *How My People Died Out*, Petrovaradin, 1996, p. 344.

95 There are only 41 Croats and 45 Hungarians living in Ruski Krstur, whereas 89% of the population are Ruthenians. Independent reports contained no information about whether there was any ethnic friction in this place.

fled from Croatia, including 350 former fighters. About 200 families, in other words 600 persons, moved away from that village to Croatia, mostly by means of the legal exchange of their property." The report goes on to mention that many Croat youths had volunteered for service in the Croatian Army and that the local inhabitants had collected significant donations "to help Croatia's struggle, for which President Tudjman expressed his special gratitude."[96]

In August 1995, after the fall of the Knin Krajina, when tens of thousands of Serb refugees arrived in Vojvodina, attacks on Croats began again, but then the police intervened, and many, especially the Srem Croats who had been driven out of their homes, were escorted by the police back to their homes. Nevertheless, police intervention was not always timely or effective.

Very few citizens of Croatian origin are employed in the state bodies and education. They are often declared redundant or transferred to less important posts.

In Vojvodina there are five associations which foster the cultural identity of the Croats. The Municipal Assembly of Subotica helps two culture societies and two newspapers. The Executive Council of Vojvodina and the Ministry of Culture of Serbia financed some of the activities of two Bunjevac cultural societies in Subotica: the Bunjevac Renewal Society and the Bunjevac Culture Centre. In the dispute regarding the ethnic identity of the Bunjevac community, the authorities help those organisations and individuals who insist on the unique (non-Croat) ethnic identity of the Bunjevac community. The majority of Bunjevci consider themselves to be Croats (HC-2).

The Subotica Bishopric runs classical gymnasium, the "Paulinum", which provides secondary school level education for future clergy, and the Institute of Theology, which prepares future teachers in religious instruction. The religious monthly magazine *Zvono* is

96 "The suppression of racial discrimination and religious intolerance in the FR Yugoslavia", *Yugoslav Survey* No. 3/1994, p. 43–44.

printed in Subotica, and the Belgrade Archbishopric issues a quarterly magazine *Blagovest*, which is printed in Belgrade. Once a week Radio Subotica broadcasts a 15–minute Catholic religious programme for Croats, which is prepared by Catholic priests. The "Ivan Antunović" Catholic Institute for Culture, History and Spiritual Affairs in Subotica, has its own publishing activities (HC-2).

3.13. Political Rights

3.13.1. Electoral Rights

3.13.1.1. The Republic of Serbia. — Since 1990, when the Constitution of the Republic of Serbia was adopted, the parliamentary elections in Serbia were held in 1990, 1992, 1993 and 1997, the presidential elections in 1990, 1992 and 1997, and elections for the Federal Parliaments Chamber of Citizens in 1992 and 1996. Finally, local elections in Serbia were held in May and November 1996. According to the assessments of non-governmental organisations, none of those elections were fair. In the elections held so far, the ruling party in Serbia and its candidates have enjoyed great privileges in the media, and the election system was adjusted to suit the needs of the ruling Socialist Party of Serbia and its partners. Because they regarded the election conditions as unfair, some opposition parties boycotted the federal and municipal elections in 1992. A part of the opposition block also boycotted the 1997 parliamentary and presidential elections in Serbia.

The absence of equality has been compounded by electoral fraud. When the "Zajedno" coalition won the 1996 local elections in Serbia, the authorities made an attempt to annul the oppositions victory. Various methods were used. In Belgrade, the election results were annulled by the First Municipal Court. After the "Zajedno" coalition filed complaints, those court rulings were confirmed in the second instance, by the Supreme Court of Serbia; in Niš, the election records were forged and, in other cases the cancellation of the will of the voters

was most often carried out by municipal electoral commissions.[97] As the result of such action taken by the authorities in Serbia, protest rallies began that lasted for three months.

The authorities had to recognise the opposition's victory in the local elections, but they did it by passing a special law (*Lex specialis*) in the National Parliament which proclaimed the provisional election results as final (*Sl. glasnik RS*, No. 5/97).

The OSCE Chairman's Special Representative, Felipe Gonzalez, concluded in his report that certain defects were contained in the election system, which made possible the violation of the citizens' sovereign will and the incorrect presentation of the election results. Gonzalez found them in the functioning of the judiciary (resulting in the citizens' lack of confidence in the independence of courts) and in the state's treatment of the independent media (12/96 OSCE).

The Centre for Free Elections and Democracy (CESID) prepared an extensive report for the Republic of Serbia's President, concerning the elections held in September and December 1997 (CESID-2).[98] According to CESID, the ruling coalition (Socialist Party of Serbia — Yugoslav Left — New Democracy) enjoyed privileges in the election procedure and also had a superior position in all aspects regarding equality: economic, institutional and media. The media, controlled by the state, such as the RTS and the *Politika* daily, set an example, as

97 The OSCE expert group also confirmed in its report that the election results were rigged. The rigging of the local election results in Serbia was also admitted, in a specific manner, by the then Serbian President Milošević's political ally, Zoran Žižić, the vice-president of the Socialist People's Party of Montenegro (SNP), who said: "Irregularities in Serbia were rather flagrant, not so exaggerated, but serious". (*Monitor*, 1 January 1999, p. 32)

98 The Republic Electoral Commission rejected a request made by CESID, as a local, non-partisan and non-governmental organisation, to monitor the work of bodies in charge of conducting the elections — polling committees and electoral boards. The Commission's decision is contrary to Article 8 of the OSCE Copenhagen Document, which prescribes that the participation of both foreign and domestic observers improves the election process. By allowing only foreign nationals to monitor the elections, the Commission also committed an anti-constitutional act of discriminating against the citizens of the Federal Republic of Yugoslavia.

they had done during all previous elections, in breaking the rule of equality when presenting candidates. According to CESID's analyses, the Studio B Television gave one of the presidential candidates, Vuk Drašković, preference over the others.

At polling stations, CESID observers noted many irregularities in the voting procedure, for which the law prescribes that elections should be repeated at such a polling station, but this was done in a negligibly small number of cases. CESID came to the conclusion that the results of the second round of the presidential elections held in December were rigged. Namely, the voter turnout in the December elections, in the electoral units outside Kosovo, was almost equal to the response in September. However, in the electoral units which covered parts of the territory of Kosovo and of southern Serbia, the voter turnout in the second round of the presidential elections in December allegedly increased by 22.33% in the constituency of Vranje, by 39.60% in the Kosovska Mitrovica constituency, by 48.11% in the Priština constituency and by 89.75% in the Peć constituency. According to the census conducted in 1991, those four electoral units had a total of 273,449 Serbs and Montenegrins with the right to vote; there being 464,462 voters, it means that at least 191,013 members of ethnic minorities cast their votes, providing that all Serbs and Montenegrins went to the elections and that there was no emigration of the non-Albanian population from the time when the census had been conducted. As the ethnic Albanians boycotted the elections, CESID came to the conclusion that the results were rigged (CESID-2).

The Human Rights Committee in Sandžak stated, in its report, that in the September and October parliamentary and presidential elections, many Moslems were prevented to vote because they had not been registered in the electoral rolls. The Committee also alleged that there were cases of electoral manipulations.

The OSCE Office for Democratic Institutions and Human Rights monitored the presidential and parliamentary elections in Serbia and Montenegro, which were held in the second half of 1997 and the first half of 1998. The conclusions and recommendations, contained in

Felipe Gonzalez's report on the local elections, were the starting point for the work of OSCE observer missions.

In the report on the first elections monitored by the OSCE (the presidential and parliamentary elections in Serbia from 21 September to 5 October 1997), it was assessed that those elections were "basically misleading". Namely, although the very day of voting ended relatively peacefully and the observers' general impression was positive, the OSCE pointed out that the elections were not a "one-day event" and that the election procedure had to be observed as a whole. The basic remarks concerning the election procedure were:

— the absence of clear written rules concerning all phases of the election procedure (the Republic Electoral Commission issued a large number of instructions in an oral form, which made it difficult to regulate the electoral commission's work in the territory of the whole republic in a uniform manner);[99]

— the state-owned media's bias and the difficulties concerning the independent media's registration (the OSCE assessed that the state-owned media did not make a clear distinction between the ruling parties electoral campaign and reports on government activities, and that the manner of reporting significantly favoured the ruling parties);

— the lack of confidence in the impartiality of the members of the electoral bodies (which partly results from the fact that many of members were involved in the judicial manipulations after the local elections in 1996, including the Republic Electoral Commission's chairman himself);

— denying domestic observers the right to monitor the elections;

— the absence of confidence in the role of the judiciary in the election procedure (10/97 OSCE).

99 Thus, for example, there were no clear written instructions on the printing, packing and the distribution of voting tickets, on the voting procedure for soldiers and the delivery of election material after closing the polling stations.

In the report on the December presidential elections in Serbia, the OSCE repeated, to a large degree, its comment made concerning the elections held in September. This time, as part of the mission's role, the team of "Observers from Pavia" scrutinised the reports presented on the state-owned television in both election rounds and found them to be extremely biased (in the first election round, reports on the ruling coalitions candidate, Milan Milutinović, were 74% positive, whereas the reports on Vuk Drašković were 45% positive, and 9% where Vojislav Šešelj was concerned). The European Media Institute found that Studio B Television favoured Vuk Drašković. The media's attitude was similar in the second round of elections. In Kosovo, the OSCE noted irregularities on the very day of voting too, because a certain number of polling stations were not open, and the respective election results subsequently appeared in the reports from the whole Republic, presenting an incredible turnout of voters (nearly 100%) with almost all votes being cast for the ruling coalitions candidate, Milutinović. The report specifies the names and numbers of some of those polling stations (12/97 OSCE).

In Serbia, on 23 April 1998, a referendum was held in which citizens declared themselves on the question of foreign mediation in resolving the Kosovo issue. According to official reports, the majority rejected it. CESID regards the official results as questionable. According to those results, 73.05% of the electorate went to the polls — which is a higher percentage than in any of the elections held since 1990, and much higher than in the presidential elections of December 1997 (52.7%). Judging by the official results 521,303 voters went to the polls in the Kosovo and Metohija municipalities. According to the census taken in 1991, the constituencies of Vranje, Kosovska Mitrovica, Peć and Priština, which include the territories of the Province of Kosovo and a part of southern Serbia, have 273,449 Serbs and Montenegrins who have the right to vote. Assuming that in recent years there was no emigration of the non-Albanian population and that all Serbs and Montenegrins responded to the call to appear at the referendum, it turns out that, in the aforementioned electoral units, no less than 247,854 voters belonging to ethnic minority groups went to the

polls. Compared to the December presidential elections, when at least 191,013 ethnic Albanians and citizens belonging to other ethnic communities allegedly voted in those constituencies, it emerges that their number at the referendum increased by at least 56,841 citizens.

CESID also noted that in some municipalities the number of voters was much higher than in the December presidential elections (e.g. in Štimlje, the Province of Kosovo and Metohija, where the response increased by 336.3%!) CESID claims that the number of the ethnic Albanians who went at least once to the polls in 1997, or voted in the referendum in 1998, must have been at least 316,461, or perhaps as many as 500,000. One could, therefore, arrive at the conclusion that the ethnic Albanians have not boycotted elections at all and do not follow their political leaders (but go to the polls and vote for the Socialist Party of Serbia, the Serbian Radical Party and the Yugoslav Left, which is quite unbelievable if one bears in mind the political situation in Kosovo. In the enclosure to the CESID Report, professor Zoran Lučić of the Belgrade University expressed his doubt that the referendum results in other regions of the republic were correct either. The census shows that in the Kraljevo constituency 68,333 Moslems with the right to vote mostly reside in the municipalities of Novi Pazar and Tutin. According to the official results, more than 50% of the adult citizens voted in the referendum, so that it turns out that 35,000 Moslems gave their votes too. Since the total number of voters in those two municipalities, who appeared at the polls was 43,909, Lučić arrived at the conclusion that the proportion between Moslem (35,000) and Serb (9,000) voters in those municipalities was approximately 4:1, which is impossible if one bears in mind the political situation in Sandžak. In the Subotica constituency, the official results of the referendum show that 116,988 citizens gave their vote. According to the census taken in 1991, 29,880 Serbs and Montenegrins with the right to vote live in this electoral unit, so that it seems as if 87,102 citizens, belonging to ethnic minority groups, most of them Hungarians, also voted in the referendum. Similarly, in the Zrenjanin constituency, out of 253,075 citizens who took part, at least 85,793 ethnic minority members must have cast their vote, the majority of them being Hun-

garians as that constituency is inhabited by 167,282 Serbs and Montenegrins entitled to vote. Therefore, out of 171,919 Hungarians with the right to vote, more than 70% must have voted. On the basis of the official results, one could reach the conclusion that the vast majority of that ethnic minority supports the regime in Belgrade.

CESID points out that the commission for supervising the referendum was headed by Balša Govedarica, who was the chairman of electoral commissions in the previous elections, in which irregularities were found.

In its report CESID also registered the objections made regarding the very procedure of vote in the referendum. Without any basis in the relevant law, citizens were allowed to vote within a four-day period (from Monday, 20 April to Thursday, 23 April 1998). However, even this *ad hoc* rule was violated, because in some special institutions (e.g. the Gerontology Centre at Bežanijska Kosa), votes were cast the day before (on Sunday, 19 April 1998). Contrary to Articles 82 and 83 of the Elections of People's Deputies Act, to which Article 20 of the Referendum and Popular Initiative Act refers, the citizens could also vote outside their place of residence, i.e. in the place where they were staying temporarily (e.g. on business trips, on a visit to relatives, in holiday resorts), without having to prove that they have the right to vote. They could simply explain why they were not able to vote at the place of their permanent residence. Such a procedure created the possibility for multiple votes. Some companies unlawfully introduced some kind of "referendum discipline". For example, after the referendum, the employees of the Lapovo railway station were obliged to inform their superiors of the hour when they had cast their votes and the number under which they were listed in the electoral roll.

The referendum results were announced on the day after it ended (24 April 1998), whereas one had to wait for several days until the results of the previous elections would be announced (CESID-1).

3.13.1.2. The Republic of Montenegro. — The impression the OSCE had of the presidential elections in Montenegro, held in October 1997, was much better. After the second round of

elections, the report reads as follows: "The election procedure in every country may have its shortcomings and mistakes, and Montenegro is not an exception. Generally speaking, the voting procedure at the polling stations was correct. Administrative difficulties arose, particularly due to the late entry of additional excerpts from the electoral rolls so that voters could sign them at the polling stations. That additional measure resulted in long queues at many polling stations and their closing at later hours. However, the elections were conducted in peaceful atmosphere, and it is important to point out that the response of the voters was high — around 73%."

The basic objection the OSCE had regarding the presidential elections in Montenegro was that the electoral rolls were outdated (many voters were not registered, whereas they contained names of deceased persons and those who had changed their place of residence). The OSCE, therefore, regarded as positive the measures which the Supreme Court of Montenegro, the Ministry of Justice and municipal administration took between the two election rounds in order to examine all the citizens requests to be entered into the electoral rolls (10/97 OSCE).

The OSCE also monitored the parliamentary elections in Montenegro, held in May 1998, and assessed that the Montenegrin authorities had adopted most recommendations made by the OSCE observer mission in October 1997, as well as those made by the OSCE mission for technical aid at the beginning of 1998. The report confirmed that the election laws had been adopted with the approval of all the parliamentary parties and that there had been no major obstacles on the very day of the elections. However, in the opinion of the OSCE, the media campaign did not fully comply with the international standards. The Montenegrin Radio-Television observed its legal obligation to give all the parties the opportunity to present themselves in a special programme devoted to the elections, entitled "1998 Elections", but the reports in other information programmes favoured President Djukanović's party (DPS). The reports on official business were neutral or

positive (the "Observers from Pavia" found that, in prime-time news, 47.5% of the time was dedicated to the state business, and 10% to the ruling coalition). On the other hand, the state-owned media (television and press) in the Republic of Serbia did not observe, as the Montenegrin did, laws on the pre-election silence and the ban on making public the results of opinion polls in the last week before the elections were due. Their reports on the Montenegrin authorities and the Democratic Party of Socialists were extremely negative. Also, there are no federal laws or agreements on co-ordinating media activity during the electoral campaign, which would regulate the activity of the Serbian media (5/98 OSCE).

3.14. Special Protection of the Family and the Child

Providing special family and child care is a permanent subject in the Yugoslav, and particularly in the Serbian, pro-government media, which advocate a growing birth rate and keep announcing measures that will be taken to improve the position of the family and children. However, child benefit payments are now being paid out one year in arrears. The conditions in the Belgrade secondary schools are such that there are not enough chairs in the classrooms for seating the 40 and more students. The articles on violence in schools, published in *Politika* in the first half of the year, provide information on the specific violation of children's rights. "That slaps sometimes replace kind words in our schools is illustrated by a recent incident which took place in the village of Medvedevac, near Medvedja (the very south of Serbia), where the teacher, Živojin Stamenković, flogged his pupil in the first grade Marija Vuksanović. Last year, the Municipal Court in Peć (the Province of Kosovo and Metohija), sentenced to 60 days in prison the teacher from the village of Glaovica because he had beaten two pupils for no reason. A similar court decision was pronounced for a mathematics teacher who had thrown a triangle at an eighth-grade girl pupil, causing serious bodily injury. The cases of a female teacher who pressed a red-hot ten-dinar coin into a girl-pupil's palm, and the teacher from Peć who smacked his eighth-grade pupils on their palms

fifteen times each, had a similar outcome in court. Experts in statistics have also begun dealing with classroom-incidents, so that the 1995 statistics show that corporal measures were imposed on 590 elementary school pupils and 73 secondary school students. In 185 cases, the incidents were so grave that they required hospitalisation and intervention by the police or social workers". (*Politika*, 2 February, p. 15).

Blic, an independent daily dedicated more attention to the mentally retarded Aleksandar Popržen (12) from Novi Sad, whose clavicle was broken and a tooth knocked out by his instructor Miodrag Ivković at the end of January. "On that Thursday, Aleksandar was supposed to do physical exercises, but he did not want to exercise and hit a woman-instructor's hand with a stick; this he did not try to conceal. As I subsequently learned, Miodrag Ivković kicked my son in the stomach and struck his face with his fist several times. He used a belt to tie his arms behind his back, lifted him up and threw him down. This was not enough for him, so he tied the belt around his neck and dragged the boy, tied in this way, through the yard. As a result, he had bruises that were visible three weeks after the incident, says the child's mother Živana Popržen (*Blic*, 13 February 1998, p. 9). Information has not been given on whether those instructors were punished.

It is difficult to obtain reliable and detailed data on sexual and other forms of abuse of children and women in the family. "A survey encompassing 700 pre-school, elementary and secondary school children established that one child out of five was sexually molested." (*Politika*, 3 February, p. 19). "Last year's data supplied by the Council for Women and Children — Victims of Violence indicate that in Belgrade, a rape occurs every half hour, and every fifteen minutes a woman is beaten. Last year, the volunteers on the hot line received 3,101 calls, whereas in the first 40 days of 1998, 305 persons asked for help" (*Dnevni telegraf*, 20 February 1998, p. 3). "At the beginning of the war (1991), it was recorded that violence in the family increased by 30%. Leading on the scale of men who beat and insult their wives are men who carry arms when they are on duty (policemen, night guards and army officers). To make things even worse for women,

when the police arrive, such cases usually end without any charges. Even when they do arrive, they often sympathise with the brutal husband ... In Belgrade alone, statistics record 200,000 cases of women and children battered up by their men — husbands, lovers, fathers, brothers." (*Vreme*, 14 November, p. 30–31).

3.15. The Right to Nationality

In recent years, resolving the issue of citizenship was one of the greatest problems for many citizens of the Federal Republic of Yugoslavia.[100]

In the report referring to the January-September 1997 period, Elisabeth Rehn recorded the difficulties which the refugees in the Federal Republic of Yugoslavia faced when they wanted to obtain Yugoslav nationality. Although the Citizenship Act grants Yugoslav citizenship to citizens of the former Yugoslavia who came to the Federal Republic of Yugoslavia after 27 April 1992 and have no other citizenship, the Ministry of the Interior retained the discretionary right to refuse to grant it. When they submit the application for Yugoslav citizenship, refugees must renounce their former citizenship (e.g. that of Croatia or Bosnia-Herzegovina), which for them results in the loss of their ownership rights and the possibility to return to their homes.[101] The Special Rapporteur thinks that dual nationality would be a lasting solution which would enable refugees to preserve their property in the countries they have left (31/10/97 UN).

The Act prescribed that 31 December 1997 would be the deadline for the citizens of the former Socialist Federal Republic of Yugoslavia, whose citizenship has not been decided on, to apply for citizenship of the Federal Republic of Yugoslavia or to be entered in the citizenship register. In practice, this was an acute problem not only for

100 On the shortcomings of the Citizenship Act of the Federal Republic of Yugoslavia, see: I.15.

101 See: IV.2.

the refugees, but also for the citizens of Serbia and Montenegro who have lived in the territory of the FRY for a long time, often since their birth, and did not automatically acquire Yugoslav citizenship. According to the Helsinki Committee in Serbia, many citizens, most often through being uninformed, only began resolving the issue of their status as late as the end of 1997 (HC-2). Since they needed many documents, the applicants were threatened by the expiration of the deadline. The Helsinki Committee reports that, in Belgrade, one had to wait for six weeks to obtain a simple certificate of residence, which was issued at only one office in the city. It was not until 30 December that the Federal Government issued a regulation which extended the deadline.

One of the shortcomings of that law is that it prescribes a very lengthy procedure for acquiring citizenship, so that it may last as long as one year. That is why persons who have submitted their applications, cannot obtain identity cards, sell real estate and enjoy the rights for which citizenship is a necessary prerequisite (17/3/98 IHFHR).

3.16. Freedom of Movement

3.16.1. The freedom of movement across the border. — In the Federal Republic of Yugoslavia, a decision of the Federal Government is in force requiring payment of special taxes for citizens leaving the country. The tax amounts to 100 dinars per person, and 200 dinars for a vehicle. Given that, in October, the average salary in the Federal Republic of Yugoslavia was 1,200 dinars, the exit tax may be considered as a serious violation of the freedom of international movement.

3.16.2. The freedom of movement within the country. — As one could assume, in 1998 the major obstacles to exercising the freedom of movement in the territory of the FRY existed in Kosovo and Metohija. Due to the armed conflicts, a large area in that province was practically inaccessible, and the freedom of movement was also limited on the roads connecting southern

Serbia and Kosovo. Zoran Djindjić, the President of Democratic Party and Vice-President, Zoran Živković, were prevented to enter the territory of Kosovo by car. "Yesterday morning, at the check-point in Kuršumlija, policemen stopped the car with the Democratic Party President and Vice-President, Zoran Djindjić and Zoran Živković, stating that they were given orders to prevent these party officials from entering the territory of Kosovo and Metohija. After a futile half-hour conversation, Djindjić decided to continue the trip and told the policemen that the only way to stop him was to use firearms, which they did not do" (*Dnevni telegraf,* 27 October 1998, p. 1).

Since the conflict between the Serbian and Montenegrin authorities began, problems have also occurred on the border between Serbia and Montenegro. In 1998, the independent press reported on several "mild" cases of obstructing the freedom of movement in that area. In one case, a group of members of the Red Cross of Montenegro were temporarily restrained. "A delegation of the Montenegrin Red Cross organisation, which was on its way to attend the conference on this organisation's activity, on Mount Zlatibor, was stopped at the border between the two federal units, and held up there for a whole hour and had their driving license and personal identification documents taken for inspection. Revolted by such an act, the members of the delegation requested that the documents be returned as they intended to return to Montenegro. But their request was not met, they were stopped and warned not to move away from the check-point until the inspection was completed" (*Dnevni telegraf*, 5 April 1998, p. 1).

3.17. Economic and Social Rights

3.17.1. The right to work. — The disintegration of the Socialist Federal Republic of Yugoslavia, the war, international economic sanctions and misguided economic policy caused increasing unemployment in the 1990s. The former SFRY was a country with a high unemployment rate (11.5% in the 1952–75 period,

19% in the 1972–76 period), but the Federal Republic of Yugoslavia not only exceeded those rates, but rose to the very top of the list of countries with the highest unemployment rates. According to data provided by the International Labour Organisation, in 1998 the unemployment rate in the FRY was 26.5%, which exceeds the respective rate not only in other countries in transition, but in all other countries in the world too. (*Glas javnosti*, 6 January 1999, p. 5). The situation would be even worse if the percentage of hidden unemployment were taken into account. Judging by the estimates of Aleksandra Pošarac and Srdjan Bogosavljević referring to 1996, the percentage of the unregistered unemployment was as high as 40% of the labour force (i.e. around 800,000 persons), which, together with the number of the "officially unemployed" (also around 800,000 persons), led these authors to conclude that there were 1,600,000 unemployed, i.e. around 50% of the Yugoslav able-bodied population.[102]

Unemployment has mostly affected young persons, with no previous working experience, women rather than men. The period of waiting for the first job tends to be longer and longer. Also, the shortage of jobs is a predominantly urban phenomenon.

The unstoppable growth of the grey economy is an obstacle to determining the true scope of unemployment rate in the FRY. Many persons are engaged in the grey economy in one way or another. In the years of economic crisis, in which the years of chaotic hyperinflation and the UN sanctions (1992–1994) stand out, the practice of sending workers to compulsory leave became common; the demand for workers decreased and those who had work objectively became redundant although they, formally, still had their employment contracts. In order to survive, many of them were involved in contraband,

102 Aleksandra Pošarac – Srdjan Bogosavljević: "The soup-kitchen programme in the FRY and the identification of the most vulnerable social groups that need humanitarian aid", the Survey conducted for the Yugoslav Red Cross Organisation and the International Federation of Red Cross and Red Crescent Societies, Belgrade, July 1996, p. 14.

reselling and other forms of the grey economy which, in the most critical years, accounted for 55.4% of the Yugoslav social product.

In the FRY, being employed does not necessarily mean earnings income. In recent years, the failure to pay workers their wages or the symbolical payment of amounts which do not cover the cost of the bare necessities have become common. "Around 315,000 workers did not receive any wages in the first half of 1998. If one includes the workers who receive wages lower than the guaranteed minimum and those with shorter working hours, then we get the true picture, assessed the Independent Trade Union. And the picture shows that 500,000 employed persons in Yugoslavia, i.e. one quarter does not have enough means to cover the costs of living (*Dnevni telegraf*, 31 August 1998, p. 5). Otherwise, in April 1998, the average net salary in Yugoslavia amounted to USD 69, and the guaranteed salary was USD 18.90, calculated according to the official exchange rate. At the same time, the consumer basket, which includes only the cost of food and drinks for a four-member family, cost 1,869.29 dinars, i.e. USD 176.30.

Such a situation resulted in many strikes in 1998, some of which turned into hunger strikes, e.g. in the "Zastava" and "Crna Gora šume" companies. "The protest rallies of the workers employed in the special production (military) plants of the Kragujevac-based factory, "Zastava", have lasted for three consecutive weeks. For eight days now, 61 workers have been on a hunger strike in order to get their wages for the previous three months. They demand that the state repay the factory a debt of USD 70 million for the arms that have been sold to foreign countries" (*Politika,* 21 May, p. 21). "The workers of the state-owned company "Crna Gora šume", with its administration office in Bijelo Polje, began a hunger strike three days ago, demanding that their outstanding salaries be paid. The general manager promised to pay two outstanding monthly salaries, but the strikers rejected the offer and demanded that all of the six salaries be paid, including the company's other outstanding debts" (*Vijesti*, 11 April, p. 4).

The difficult economic situation makes the position of employees very insecure and subject to the arbitrary decisions of company

managers (who are, as a rule, either members or supporters of the ruling parties). Judging by the cases reported to the Helsinki Committee in Serbia, notice of dismissal is frequently given to workers who belong to ethnic minorities, those who share the political views of the opposition or the workers who are members of trade unions that are not controlled by the Serbian authorities. There is no open discrimination, so that notice of dismissal, as a rule, has a legal form. Thus, for example, V. Vinko, a Croat from Smederevo, an invalid with the third degree of disability, was dismissed because he refused to work overtime. The protection of the employed is inadequate: in this case too, the non-existence of an independent and efficient judiciary makes the situation even worse. The failure to carry out the court rulings in labour disputes has taken large proportions (HC-2).

3.17.2. The right to social welfare. — The proclaimed social programme of the FRY is hard to carry out because of limited sources of funding due to the low level of economic activity. Yet the existing level of economic development could provide for a more efficient social security system. However, as the inefficient system of social security, dating from the socialist period (with proportionally large expenses and a low level of rendered services) has been preserved, the current possibility to provide social welfare has drastically decreased. The rights in the field of social security, which are guaranteed by law, have remained mere promises.

The social welfare system should aim at providing social security for the most vulnerable strata of the population. The economic crisis, an inadequate system and the abandonment of radical reforms were a serious challenge for the envisaged system of protecting the most impoverished strata of the FRY population. Instead of implementing a reform, the state has recently decided rather to re-distribute the existing poverty. As the system is financed from the budgets of the federal units, and the funds are gradually diminishing, there is a discrepancy between the norm and reality, the consequences of which have been disastrous. Consequently, one can no longer speak of social

protection, not even of social welfare, but merely of aid provided for the category of the population that lives in utmost poverty.

Table 2: Persons enjoying the right to social protection in Serbia (1992–1997)

Year	Financial aid and care	Aid for another person	Accom-modation in an institution or family	Training for work	Total number of users
1992	159,582	16,480	13,186	533	189,781
1993	132,973	17,229	20,855	712	170,865
1994	143,817	21,238	19,554	644	185,024
1995	141,297	22,982	20,872	828	185,979
1996	129,087	23,531	22,844	594	176,056
1997(Jan)	104,049	21,137	17,146	602	142,056
1997(Jun)	85,224	21,137	17,146	602	124,109

Source: the Serbian Ministry of Labour, Veterans and Social Welfare

The analysis of the data provided by the Serbian Ministry of Labour, Veterans and Social Welfare[103] on citizens enjoying their social protection rights in the period 1992–1997 (Table 2), shows a decline in the number of persons receiving financial aid (by around 50,000 persons). In the first half of 1997 alone, compared to the situation in the previous year, the number of recipients decreased by 43,867 persons, i.e. 66% in relation to 1996. At the same time, the number of families which received financial aid fell by 7,768, that is, it decreased from 44,782 to 37,014. This indicates that the decline of

103 *The Report on the work of social welfare centres on exercising citizens rights in the framework of the social protection system in 1997*, Belgrade, June 1998. The data for 1998 is not available yet.

the social standard has resulted in a notable decrease of the number of social welfare recipients and in the tightening of the conditions for welfare. Besides, the payments of financial aid have become more and more irregular, so that the respective funds have been transferred from one fiscal year to another. As the amount of financial aid is calculated on the basis of the average wage of the employed in the same month of the previous year, the delays in payments are accompanied by an immense decline in the real value of the payments and a great difference between the amounts paid by individual municipalities.

3.17.3. The right to retirement benefits. — Contributions for the retirement insurance in Yugoslavia are fixed on the basis of current adjustments with social insurance expenditures, in keeping with the so-called *pay-as-you-go* system. That system is very unfavourable for the state in which the so-called dependence coefficient (i.e. the proportion between the number of retirees and the number of persons who pay contributions) is continuously rising.[104] In Serbia this happens as the result of early retirement,[105] a lower number of persons contributing to retirement funds[106] and tax evasion. Tax evasion is made possible by informally allowing state-owned companies, whose managers are often close to the persons in power, to pay out salaries without calculating and paying the respective taxes and contributions. Private companies with close connections to the government occasionally also enjoy a similar, unlawful privilege. Another form of tax evasion is to present an employment contract as contract for rendering services or authorship (where taxes are not paid). The third form of tax evasion is to cover social security contributions by giving subsistence farming products in exchange, the valorisation of which is inadequate. It has been estimated that tax evasion

104 In 1983, the dependence coefficient in Serbia was 25.7% (the proportion was 4 workers to one pensioner), whereas in 1994, it reached 55.4%, and in 1996 it was 55.6% (the ratio was 1.8 employed persons per one pensioner).

105 In Serbia, the average retirement age is 53 for women, and 57 for men.

106 The unemployment rate is 26.5%.

in Serbia accounts for almost one third of the total contributions for the retirement fund.

The bad effects of the *pay-as-you-go* system and the increasing life span[107] have caused a deep crisis in the retirement system, which is primarily expressed in low pensions and their irregular payment. In recent years, the average pension ranged between USD 90 and USD 150. According to some analyses, the pensions of more than 75% of pensioners are not sufficient to cover their monthly electricity, public utility and telephone bills, and the costs of basic nutrition, whereas 90% of pensioners live below the poverty live. "The data supplied by the state pension fund shows that over 1,100,000 pensioners, i.e. 90% of their total number, cannot cover, with their pensions, the costs of living of a two-member family."(*Naša borba,* 6 July, p. 7).

3.17.4. The right to health insurance. — Low wages, which are the basis for computing the contribution for health insurance do not make it possible to secure the elementary funds to make this insurance function and meet the basic needs of those covered by insurance.

In 1996, the average net salary of employees in the FRY was 658 dinars[108], i.e. USD 128, in keeping with the official exchange rate. In 1996, the total expenditure of the health insurance fund per one policy-holder amounted to USD 126, and USD 414 per one policy holder who was still working. The share of the expenditure that was intended for health protection amounted to USD 112 per one policy-holder, i.e. USD 367 per still active policy-holder. In 1996, the income deriving from the policy-holders contributions covered 97.3% of the health insurance funds total income. The Yugoslav health insurance funds function on the principle of the on-going coverage of expenses, i.e. of the policy-holders needs and the average prices of medical

107 The ageing of the population results from the demographic tendencies in the majority of developed countries and the countries in transition. Thus, in Serbia, life expectancy in 1972 was 68.3 years; ten years later it was 70.4 years, and in 1992, it was 71.4 years.

108 According to the then used methodology of calculating the average net salary. See: *Statistički godišnjak Jugoslavije*, 1997, p. 100.

services have been constantly growing. Consequently, the expenses per one policy-holder are very low and significantly below the standard which would secure the policy-holders basic rights in keeping with international obligations. Due to the high costs of living in comparison to their income, the majority of Yugoslavs cannot cover by their savings the costs of basic medical services. The savings they had before hyperinflation were either depreciated or were plundered by the para-state banks, or have become part of the state's frozen assets.

In 1998, those who received compensation from the fund, and, according to estimates, belong to the predominant group of compensation users, were able to cover only 42.8% of the costs of food per one household member, calculated according to the minimum standards set by the Federal Bureau of Statistics. If those who receive compensation also supported family members, they had to reconcile themselves to starvation; the lowest compensation from the health insurance fund, amounted in April 1998 to only 10.7% of the price of a consumer basket for a four-member family.[109]

If the compulsory health insurance funds cannot cover the funding of public medical service (lack of money for basic medical supplies and equipment, low wages of medical staff), medical institutions become paralysed. Some medical services cannot be rendered if the policy-holder does not provide the necessary medical material and pay the fee for the service. In addition to that, the Yugoslav health care service suffers from massive corruption, i.e. good service to a narrow circle of the privileged. This creates the false impression that the public health care system functions, preventing the true problem to surface.[110]

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109 The data were taken from the Report on the Social Welfare Centres engagement in exercising the citizens rights and social protection.

110 The majority of medical workers are not satisfied with the present situation, which is confirmed by their occasional strikes. The protesters' demands have mostly been for a wage increases and improvement of working conditions. Some state-owned medical institutions, who are run by members of the ruling parties, are well equipped, have sufficient personnel and their employees earn good wages. However, only a small circle of people use their services at the expense of the health insurance fund.

The amendments and supplements to the Health Protection Act of Serbia provide that physicians who are not employed in public medical institutions may open private medical or dental surgeries, dispensaries, health care services, laboratories, nursing services, medical advice centres, pharmacies, polyclinics, home-nursing services, etc. Thus, private medical practice is legalised. Although there are still no official statistics to illustrate the scale of private health care, the experience of citizens who increasingly need to seek medical assistance with private physicians shows that the private medical sector is quite developed and that the quality of services in that sector, on the whole, is on a much higher level than in the majority of the state-owned medical institutions. The owners of private medical facilities have invested an effort to obtain new and modern equipment and have engaged, as consultants and collaborators, the best experts from the state medical centres. A decision of the Serbian government of May 1998, cast a doubt on their future work.

Due to the difficult economic situation and the inability to receive benefits from the compulsory health insurance schemes, the death rate has increased. The total number of deaths in Yugoslavia rose from 97,588 in 1985 and reached 107,535 in 1995. The number of deaths per 100,000 inhabitants also went up, from 956 in 1985, to 1,020 in 1995.

III
HUMAN RIGHTS IN THE LEGAL CONSCIOUSNESS OF YUGOSLAV CITIZENS

1. Introductory Notes

This part of the Report presents the results of a survey on the legal consciousness of the citizens of the Federal Republic of Yugoslavia, conducted by the Belgrade Centre for Human Rights[111] in the second half of June and the first half of July 1998. The survey involved 2,200 persons from all parts of Yugoslavia, *without Kosovo and Metohija*.[112] It is, therefore, important to bear in mind that *the data presented are representative only of the Yugoslav population outside Kosovo and Metohija.*

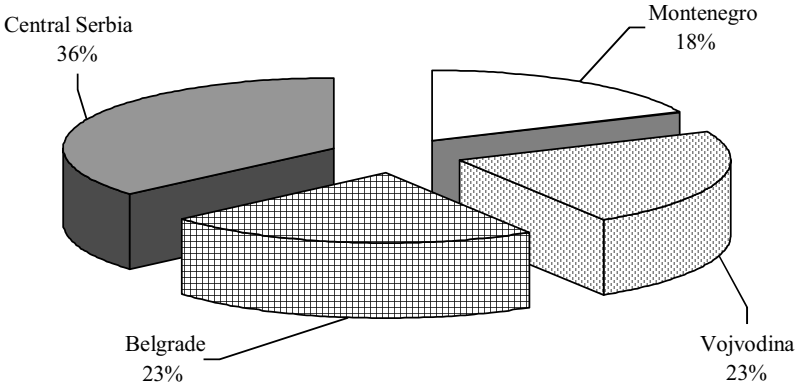
The survey was conducted using a standardised questionnaire with a limited choice of answers. The respondents were citizens from 90 agglomerations in 52 municipalities. The sample was partly stratified for the adult population. Since the survey involved the population of Serbia (1,800 respondents) and Montenegro (400 respondents), the number of respondents in the latter republic had to be increased in

111 The surveying and collection of the data were contacted to the *Scan Agency* in Novi Sad.

112 It was planned to conducted there survey as well, but the idea had to be abandoned because of the armed conflict in the Province, which culminated in the summer months.

relation to its actual share in the population structure of the FR Yugoslavia. Regional representativeness of the sample of Serbia was attained, regarding Belgrade (500 respondents), Vojvodina (500 respondents) and central Serbia (or "Serbia proper") (800 respondents).

Figure 1: Regional structure of the sample



The sample involved 51.7% men and 48.3% women. According to their ethnicity, Serbs were the most numerous (61.2%), followed by Montenegrins (10.2%), Yugoslavs (10.1%), Moslems (6.3%), Albanians (3.2%), Hungarians (2.4%), Slovaks (1.9%) and Croats (0.8%). According to their occupations, highly skilled and skilled workers were the most numerous (30.8%), followed by retirees (17.6%), persons with higher education and highly skilled workers (14.3%), pupils and students (10.2%), housewives (8.4%), the unemployed (6.1%), unskilled workers (4.6%), farmers (3.7%) and entrepreneurs (2.6%). The graphical presentation of the structure of the sample according to age and education variables looks like this:

Chart 1: Age structure of the sample

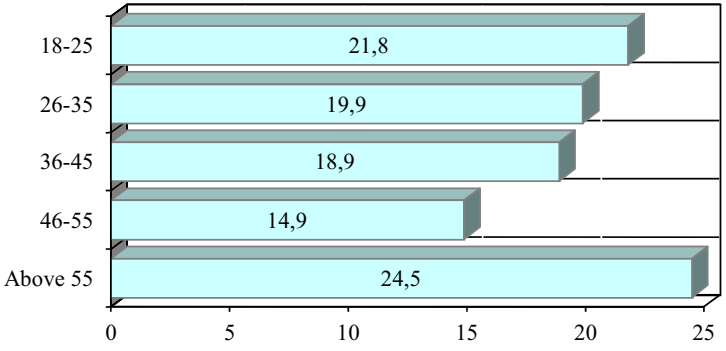
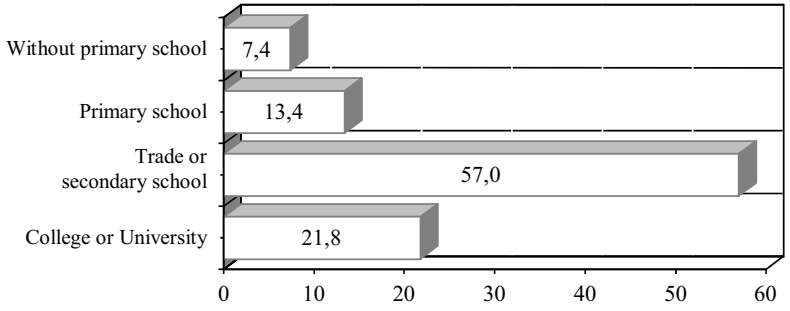


Chart 2: Educational structure of the sample



It is very important to emphasise, at this point, the structure of preferences for political parties in the sample. Namely, political passiveness in the FR Yugoslavia, and particularly Serbia, grew very rapidly in the nineties. Concurrently with the awareness that elections cannot yield any changes, there has been a tendency towards electoral abstention combined with an apolitical mood. Former communists (renamed socialists since 1990) have remained in power in Serbia in

Montenegro; and even if they have in the meantime lost a significant part of their initial popularity (which they had gained by resorting to nationalism), they have, on the other hand, managed to compensate for the loss by crushing and vilifying their competitors — parties of the so-called "democratic opposition". Following the disintegration of the coalition "*Zajedno*" (Together) in the summer of 1997, the parties constituting it — the Serbian Renewal Movement (SPO), the Democratic Party (DS) and the Civic Alliance of Serbia (GSS) — contributed themselves to the process of the destruction of a democratic alternative to the regime. As a result of this, the extreme right-wing party of Vojislav Šešelj (SRS) has become the second strongest party in Serbia and the coalition partner of the Socialist Party of Serbia (SPS) in the government of Serbia. The ultimate result of all these developments is a strong feeling of resignation, lack of perspective and disorientation in the electorate of Serbia (while the situation in Montenegro is quite different[113]), which has shown declining support for the ruling party but has been unable to translate its dissatisfaction into active support for the opposition.

This trend is evident in the survey as well. Responding to the question as to which party they had voted for in the latest elections, a third of the respondents answered that they had not voted at all or that they did not remember who they had voted for. The same reply to the question as to which party they would vote for if the elections were to be held that very day come from 45% of the respondents. It is very important to emphasise the difference between the two federal units: while the percentage of respondents revealing political abstinence in Serbia has reached 50.2%, in Montenegro it was only 22.4%. This speaks of the much higher capability of the Montenegrin political

113 The latest elections in Montenegro brought about a thorough restructuring of the political scene: the ruling party (The Democratic Party of Socialists — DPS) split, with its reformist part forming a coalition "For a Better Life" with the parties were in opposition only yesterday and joining the "democratic opposition" parties in their struggle against the despotism of the coalition partners in Serbia — the SPS, JUL and SRS.

parties to win their voters' confidence without disappointing them after the elections. If the losses in the electoral support are viewed with respect to the latest elections, it can be seen that the ruling parties in Serbia have suffered the greatest loss: the SPS (from 21.8% to 16.4%) and the SRS (from 13.0% to 8.1%), while support for other parties has remained uniformly small (none of them would be able to cross the 5.0% census). If the data are viewed separately on the level of the republics, the picture looks slightly different, since the two largest Montenegrin parties can count on twice as much support from their voters than the two largest parties in Serbia. While 20.0% of the respondents from Serbia would vote for the SPS today and 9.6% for the SRS, the ruling coalition "*Da živimo bolje*" (For a Better Life) enjoys the support of 41.7%, and the Socialist People's Party (SNP) of 21.1% of the respondents from Montenegro.

In addition to the questions relating to the already mentioned variables, the questionnaire presented to the respondents also included 47 questions relating to the knowledge of human rights. Although serious thought had been given to the possibility of applying the so-called KOL (Knowledge and Opinion about Law) standard in the survey, i.e. to differentiate the questions in such a way that the respondents could also state what they knew about existing human rights legislation and their own views as to what the existing legislation *should* be, the idea was eventually abandoned and only the first component retained. However, these were not the only problems. On the basis of former surveys, it is known that what respondents in the FR Yugoslavia imply by existing human rights legislation is not what is contained in legal documents (norms), but what one can encounter in practice (facts). This is why the very low scores registered so far in KOL surveys relating to the knowledge of human rights in Yugoslavia,[114] can partly be explained by the critical view the respondents

114 Miklo š Biro and Aleksandar Molnar: "Znanje i stavovi studenata prava o ustavnim rešenjima", *Glasnik Advokatske komore Vojvodine*, Vol. LXVIII, No. 6/1996, p. 219–225; Miklo š Biro, Aleksandar Molnar and Dragan Popadić: "Stavovi građana Srbije prema pravnoj državi: relacija s obrazovanjem, autoritarnošću i poznavanjem ljudskih prava", *Sociologija*, Vol. XXXIX, No. 2/1997, p. 207–221.

hold regarding the manner in which such rights are implemented. If we made a distinction in the questions in our questionnaire between those referring strictly to legislation and those relating to practice, this would cause many methodological problems. It was therefore decided that the survey should be made with as simple a set of questions as possible, involving no differences between the three dimensions of human rights mentioned above (the ones guaranteed by the legislation, those implemented in practice and the ones desired). That is why one must constantly bear in mind while studying the data presented below that the replies of the respondents contain no clear delineation between these three dimensions of human rights, as a result of which there is a general and undifferentiated judgement about the *reality of human rights in the FR Yugoslavia.*

2. Perception of Human Rights

The survey was intended to find out, before all, what the respondents implied by human rights. We proceeded from the assumption that human rights could be comprehended as a category of natural law ("human rights are inherent rights that are above state law") as a positivist category ("human rights are rights established by the constitution and international law"), as a real-political category ("human rights are mere tools in the struggle for political power") and as a global conspiracy category ("human rights are mere tools used by world power-holders to blackmail *us and our leaders*"). The results are presented in Table 1.

The majority of the respondents were prone to view human rights in terms of natural law, as rights that "belong to everyone", irrespective of the state and its legislation. The preference of this modality in relation to the positivist one (according to which human rights are a part of international and constitutional law) is, to a great extent and most likely, the consequence of the fact that there are no institutional possibilities for protecting human rights before the constitutional courts in the FR Yugoslavia. Since the citizens cannot strive

for their human rights within legal institutions, it is to be expected that they tend to have an abstract and less formal understanding of these rights. On the other hand, one should not disregard the number of persons who completely rejected the special legal status of human rights: more than one third of the respondents were inclined to regard them as a mere tools of political struggle (whether it is a matter of conflicts among local politicians or the "blackmailing" of local power-holders by foreign politicians).

Table 1: Perception of Human Rights

N^{o}	"What are human rights",%	
1.	Rights belonging to everyone, irrespective of the state and laws	38.8
2.	Just a piece of paper used by politicians	24.9
3.	Part of the international and constitutional law	22.3
4.	An instrument to blackmail small states (Serbia and Montenegro)	11.1
5.	Something else	2.9
	Total	100.0

Another important problem should also be borne in mind when discussing the perception of human rights. The past ten odd years have been marked by an acute crisis of the legal system of the FR Yugoslavia. The decay of socialism was followed by the disintegration of the SFR Yugoslavia and war on its territory. The past few years were a period when a whole series of bad, contradictory and even unconstitutional or illegal legislative acts were hurriedly adopted. Since legal chaos poses a threat to the privileged status of human rights in the legal system, we wanted to find out what the respondents' understan-

ding was of the hierarchy of legal norms. That is why we asked them to answer what they thought had priority in case there was discrepancy between legal norms. The results show that there was a very poor understanding of the legal system, i.e. the manner of its functioning in the FR Yugoslavia. Almost one half of the respondents thought that certain individuals arbitrarily settled the issue of conflicting legal rules,[115] while only a minor number (15.6%) of respondents in the remaining group, who had opted for individual categories of legal acts, gave priority to international legal instruments.

Table 2: Inconsistency of legislation

N^{o}	"If legal norms are not consistent, what is given priority?",%	
1.	What people holding power say	22.9
2.	What say learned persons	22.9
3.	What is written in the Constitution	22.5
4.	What is found in international legal documents	15.6
5.	What is written in the laws	14.6
6.	Something else	2.6
	Total	100.0

The respondents' understanding of the legal system of the FR Yugoslavia, as well as the status of human rights in it, is generally far from satisfactory. International and constitutional components do not

115 Among the respondents who replied to this question with "something else", the majority only provided a different formulation for the arbitrary powers of individuals ("Slobodan Milošević", "Mira Marković", "persons with money", "power", etc.) in settling the issue of conflicting legal acts.

play a significant role in it, but, on the other hand, arbitrariness and the logic of power are considered to be very important. The prevailing natural-law understanding of human rights in the given circumstances points to the tendency of the respondents to transcend the entire existing legal system and to find a stronghold in their own moral consciousness. This must be borne in mind when considering the results of the survey in respect of concrete human rights and their forms.[116]

3. Individual Rights

3.1. The Prohibition of Discrimination

The survey of the opinions about the prohibition of discrimination was carried out in five different segments, formulated as five questions. Three questions related to the prohibition of discrimination on the basis of gender (in the spheres of marriage, employment and promotion at work and participating in politics), one referred to the prohibition of discrimination on the basis of ethnicity (in the sphere of employment) and another one to sexual orientation (homosexuality).

Judging by the answers, there is no doubt about the existence of gender inequality in political life. Almost half of the respondents (48.3%) consider that women are inadequately represented in it, while only 29.6% are satisfied with the existing situation. Only every sixth respondent answered that there were too many women in politics. As could have been expected, women prevailed among the respondents not content with the degree of political participation of women

116 Methods of Charles Humana were used in selecting human rights and their forms (to be discussed on the following pages). See: Humana, Charles: *World Human Rights Guide.* First Edition, London; Hutchinson & Co. 1983; Humana, Charles: *World Human Rights Guide.* Second Edition, London: Economist Publications 1986; Humana, Charles: *World Human Rights Guide,* Third Edition, New York and Oxford: Oxford University Press 1992.

(60.2%), but it is indicative that this view is shared by one third of the men (37.2%). Also, it is significant that the majority of the respondents who considered that women were poorly represented in political life are in Montenegro (64.3% of the total number of respondents from Montenegro).

The situation is slightly better in the field of employment and promotions at work: 42.4% of the respondents do not see any gender discrimination in this regard. However, 37.8% of the respondents were of the opposite opinion, and consider that women are not equally treated in the field of employment and promotions.[117] The percentage of the dissatisfied here was much higher among women (48.8%), than among men (27.5%), just as it was higher in Montenegro again (48.1%) than in Central Serbia (32.1%), Belgrade (39.0%) and Vojvodina (37.4%).

Finally, the respondents showed the greatest accord regarding equality between the genders with respect to marriage. Half of the respondents (49.5%) consider that there is equality between genders in marriage, while 41.4% are of the opinion that the domination of men still prevails (with the negligible 5.4% who believe that women dominate in marriages today, bringing men into inferior position). Among women themselves there is little agreement in this respect: in contrast to 49.3% of female respondents who consider that men still dominate in marriages, 44.1% of them expressed the belief that representatives of "the fair gender" have attained emancipation (while 3.2% declared themselves even to be in favour of women's domination!). Various regional differences were evident even in respect to this issue: while the smallest number of respondents who consider that men still dominate in matrimony was found in Vojvodina (33.2%), the greatest was in Montenegro, amounting to 54.5%.

The above data warrant the conclusion that the citizens of the FR Yugoslavia consider that the process of the emancipation of women

117 Regarding employment and promotion at work, 14.8% of the respondents consider that men have an unequal status in relation to women. This is not a negligible percentage.

has made the greatest progress in the sphere of matrimony, followed by the business sphere, while it encounters important obstacles in the political sphere. The situation in Montenegro proves to be much worse than in Serbia.

Discrimination of ethnic minorities has been investigated in the survey only when it relates to employment and promotion at work. The following is the answer the greatest number of respondents (53.1%) gave to the question regarding the chances of the persons belonging to ethnic minorities for employment and promotion at work: "Same as Serbs/Montenegrins". The remaining answers were relatively uniformly distributed among those who considered that persons belonging to ethnic minorities got employment and promotion at work more easily (13.1%), those who considered that they had trouble achieving this (20.5%), and those who gave no reply to this question (13.3%). It is interesting that such a view was mainly shared by the persons belonging to ethnic minorities themselves,[118] the Moslems being the only exception; 64.2% of the respondents who have declared themselves to be Moslems considered that the chances of the persons belonging to ethnic minorities in terms of employment and promotion at work were poorer than is the case of Serbs and Montenegrins. As far as Albanians were concerned, as an ethnic group that found itself in the most sensitive position at the time of the survey (due to the armed conflict in Kosovo and Metohija), it can be said that a majority of them continued to believe that the persons belonging to ethnic minorities either had the same chance of being employed and promoted at work (43%), or better chances (9,3%).[119]

118 Slovaks and Hungarians were most convinced in the existence of the equality of chances for ethnic minorities to employment and promotion at work (61.0% of the former and 57.7% of the latter). The percentage was even greater than that among the Serbs (56.6%) and Montenegrins (53.6%).

119 Among the respondents who have declared themselves as Albanians, there were 33.7% who stated that the chances of employment and promotion at work for the persons belonging to ethnic minorities were worse than the chances of the Serbs and Montenegrins. The remaining 14.0% were not able to state their views about this issue.

When speaking about the discrimination of homosexuals, it must be underlined right away that the survey revealed a great diversity of views. Almost one third of the respondents (30.4%) had no idea about whether homosexuals are condemned and boycotted by society or not, while the remainder were divided into those who emphasised (22.2%) and those who denied the existence of discrimination (23,6%), as well as those who considered that too much leniency was shown towards homosexuals in the FR Yugoslavia (23.9%). If any judgement can be made on the basis of this data, only one fifth of the respondents were convicted that there social condemnation and boycott of homosexuals existed at all.[120]

3.2. The Right to Life

The views of the respondents concerning the respect for the right to life in the FR Yugoslavia were surveyed using the examples of two forms of this right: freedom from extra-judicial killings and freedom from the death penalty. As for the first form, the respondents were asked the question "What is done to the persons who are known to be dangerous criminals, although there is no evidence to prove it? The respondents were confronted with a trap by the use of the phrase "known to be dangerous criminals", suggesting that there is no reliable evidence about the alleged crimes of such "dangerous criminals". The unequivocal feature of a repressive regime is its possibility of organising secret trials for such "dangerous criminals" (without the application of the customary procedural guarantees) and even liquidating them by the State Security Service without any trial.

Two thirds of the respondents (65.7%) rejected the possibility of the state organising secret trials and liquidations and endorsed the

120 Unfortunately, we cannot say how many homosexuals there were among the respondents, since we did not inquire about sexual orientation. Thus, the data relating to this question cannot be differentiated on the basis of the answers of the "normal" majority and a "deviant" minority.

option according to which the suspects are free from any interference until substantial evidence has been provided. The belief that these "dangerous criminals" who have not been proven as such, are tried at secret trials in the FR Yugoslavia, was shared by 5.4% respondents, while the conviction that there is a practice of liquidating them by the State Security Service was shared by 18.5% of the respondents. The remaining 10.4% gave no answers to this question.

In reference to the death penalty, there is unusual situation prevailing in the FR Yugoslavia: the Federal Constitution prohibits the death penalty in the case of the criminal offences prescribed by the federal law, while the republic constitutions allow the death penalty prescribe by republic law for "the most serious forms of criminal offences". Consequently, it is not possible to prescribe the death penalty for the most serious criminal offences such as war crimes or genocide, but on the other hand, it is possible to envisage it for certain forms of murder, defined in the penal codes of the federal units.[121] The constitutional possibility of prescribing the death penalty has been used by both the Serbian and Montenegrin legislators, and thus this punishment has been allowed in the whole territory of the FR Yugoslavia — on the basis of the republic penal codes. Since the situation, such as it is, can hardly be termed as anything else but chaotic, our intention was to determine the views of the respondents on the status of the death penalty in the FR Yugoslavia.

The results show that 26.6% of the respondents considered that there was no death penalty in the FR Yugoslavia; 39.0% of them thought the death penalty existed only in the federal legislation, and 15.5% that it existed only in the republic legislation. If we consider the latter group, which gave the right answer, it can be seen that a lesser number (4.8%) believed that the death penalty not only existed in the republic legislation, but that it was also applied, while the majority (10.7%) stated that the death penalty, did exist but was not

121 See: Vojin Dimitrijević, Milan Paunović and Vladimir Djerić: *Ljudska prava*, Belgrade, Belgrade Centre for Human Rights, 1997, p. 230.

applied. The percentage of the respondents who were unable to express their views was 18.9%. Such a large dispersion of views reflects the legislative chaos and may be considered its direct consequence.

All in all, quite a large number of the respondents expressed the conviction that no secret trials were organised in the FR Yugoslavia for "dangerous criminals" whose "crimes" were not based on substantial evidence, while, on the other hand, they showed a poor knowledge of the possibility of pronouncing death penalties as defined by the present Yugoslav (federal and republic) legislation.

3.3. Prohibition of Torture

The prohibition of torture was included in the survey in its two forms: freedom from torture and state repression (concrete procedural guarantee against obtaining evidence by the use of force) and freedom from being sentenced to corporal punishment by a court.

In order to determine the views of the respondents on the freedom from torture and state repression, they were asked the following question: "Is it allowed to use force against a suspect in the case of a serious criminal offence punishable by death so as to make him/her confess?". 45.8% of the respondents gave a negative answer to that question, 17.0% considered that the use of force was permitted if it did not constitute a threat to the health of the suspect, 19.4% allowed that the threshold of the suspect's life be exceeded, while 17.7% did not know what to answer to this question. As can be seen, there is a very high percentage (36.4%) of respondents who consider that the use of force is allowed in order to obtain confession from a suspect in a capital criminal offence. If account is taken of the percentage of respondents who gave no answer to this question (17.7%) there are strong reasons to confirm widespread unfamiliarity with the meaning of freedom from torture and state repression in Yugoslavia.

The same picture and relationship of the respondents was obtained with respect to freedom from corporal punishment pronounced

by the court. The question "Is there corporal punishment in the FR Yugoslavia?" an identical number of the respondents as in the previous case — 45.8% gave the correct (negative) answer. The rest either gave the wrong (affirmative) answer (30.5%), or answered by "I don't know" (23.7%). This points to the very widespread disbelief on the part of the respondents in the ability of an individual in legal proceedings (both at the investigation stage and the stage of enforcement of the judicial decision) to preserve his physical integrity and to be spared from maltreatment. No matter how obsolete this may sound at the end of the 20th century in Europe, but, physical violence as a method of obtaining confessions and as a judicial punishment, is still far from absent from the legal consciousness of the citizens of the FR Yugoslavia.

3.4. The Right to Liberty and Security and Treatment of Persons Deprived of their Liberty

The awareness of the right to freedom and personal safety was investigated in the survey trough the question: "How long can one be detained in the course of investigation, according to our law?" The correct answer (one month, and only exceptionally six months) was given by 31.4% of the respondents, while 9.5% thought that detention could last up to three years, and as many as 37.9% thought that it could last as long as it took to find evidence (which means even for life!). The remaining 21.2% did not know what to answer to this question.

The responses show that the respondents are even less of the scope of possible interference of the state into individual freedom and personal security than they are aware of the inviolability of physical integrity. In a certain way, this is even logical: if in regular proceedings the court can order the suspect to be beaten, why may it not hold an individual in custody for an indefinite period of time?

3.5. The Right to Fair Trial

The two previous chapters have already shown that the greatest problem related to human rights in the FR Yugoslavia lies in the domain of the independence of the judiciary. Whether trials or enforcement of judicial decisions are concerned, citizens of the FR Yugoslavia experience great uncertainty as to whether they will be able to enjoy their rights. That is why it is worth to take a look at the answers the respondents gave to five questions covering the sphere of the right to a fair trial.

The first question the respondents were asked was: "What is the deadline by which the arrested has to be brought before the judge?" The majority of the respondents (43.7%) replied that they did not know the answer, one third (32.9%) gave wrong answers, while only the remaining 23.5% gave the correct answer (within 24 hours). Therefore, less than a fourth of the respondents considered that a very important procedural right belonging to them would be violated if they were arrested and not brought before the judge within 24 hours.

We have already seen, that 5.4% of the respondents believe that secret trials are organised for "dangerous criminals" in the FR Yugoslavia, whose "crimes" are not based on substantiated evidence (if it is "known", nonetheless, that they have committed the crimes). The answers to the question as to whether there is a rule in the FR Yugoslavia according to which all court trials are public showed that only one fourth of the respondents (24.5%) were ready to answer in the affirmative. The rest were of the opinion that the rule did not exist at all (22.5%) or that it existed, but that there were a great many exceptions to it (34.3%), while 18.6% of the respondents stated that they did not know the answer. This means that a large majority of the respondents believed that there are secret trials organised in the FR Yugoslavia — either sporadically or as part of regular proceedings.

The respondents were also asked to replay by the question as to whether the rule that everyone is presumed innocent until evidence to the contrary has been provided before a court observed in the FR Yugoslavia. The question was answered in the affirmative by 42.5% respondents, while 7.5% gave no answer. The remaining 50.0% either completely denied the observance of the right to be presumed innocent (11.4%) or stated numerous exceptions to the rule (38.6%). All in all, every second respondent was more or less sceptical about the observance of the rule of the presumption of innocence in the FR Yugoslavia.

In contrast to the three depressing replies to the three previous questions relating to the sphere of fair trial, the replies to the question "Is everyone free to choose a lawyer to represent him?" proved to be encouraging. A large majority of 68.7% stated that this right was respected without exception, 5.3% of the respondents generally denied the respect for this right while 18.7% of the respondents cited numerous exceptions to this right (7.3% stated that they did not know the answer).

Finally, the respondents were given the opportunity to state their opinion about judges administering justice in the territory of the FR Yugoslavia. The greatest number (49.5%) expressed their belief that the judges were mainly bad and dependent upon politicians. A far smaller number (13.2%) were of the opinion that judges were mainly good and independent, while 27.5% of the respondents emphasised the efforts of the judges' to stay honest under existing unfavourable circumstances (9.8% of the respondents expressed no view). The lowest option of the judges was held by the youngest, the best educated and highest qualified respondents (intellectuals and professionals): 54.7% of the first group, 50.8% of the second and 52.2% of the third group responded that judges were mainly bad and dependent on politicians. Viewed regionally, the judiciary is held in lowest esteem in Montenegro, where 62.8% of the respondents were convinced of the judges dependence on politicians, while the opposite views were the most widespread in central Serbia (16.5%).

On the basis of their reactions it is clear that the respondents have a realistic perception of the erosion in the judiciary of the FR Yugoslavia and that they are aware of the non-existence of an independent judiciary. Also, the respondents revealed a very distorted view of the guarantees offered by Yugoslav law on criminal procedure; the majority of the respondents contested, to a greater or lesser extent, the existence of procedural guarantees, such as the prompt appearance of the arrested before judges, the publicity of judicial proceedings and the presumption of innocence (as opposed to the right to the free choice of defence counsel, which the respondents believe to be observed in the greatest possible measure).

3.6. The Right to Protection of Privacy, Family, Home and Correspondence

The right to privacy was covered in the survey in two forms: freedom from opening letters and wire tapping and freedom from police searches of without a judicial warrant.

The view that unconditional freedom of communication, postal correspondence and telephone exists in the FR Yugoslavia was shared by 49.2% of the respondents. 45.7% of the respondents were convinced in the existence of the right of the police to open letters and tap telephone lines (without a judicial warrant), and 11.3% of them believed that it was sufficient for the police to have as a reason the protection of the existing authorities, while the remaining 34.4% considered that the only reason for these acts was national security (5.1% of the respondents did not answer this question). Nevertheless, approximately half of the respondents proved to be ready to justify the interference of the police in the freedom of postal and telephone communications without a judicial warrant.

The next question the respondents were asked related to the cases in which they thought the police could search a private apartment. Since there was a choice of different answers, the results shown on Table 3 add up to a score of over 100%.

Table 3: Grounds for searching private homes

N°	"What are the cases in which the police may search a private home?",%	
1.	If they have a judicial warrant	71.7
2.	If they have a warrant from the Ministry of the Interior	43.2
3.	If they have a warrant from the State Security Service	32.7
4.	Whenever they deem it necessary	20.6
5.	Whenever security is threatened	19.4
6.	I don't know	5.3

As can be seen, the greatest number of respondents gave judicial warrants as the basis for police searches of apartments. If only cumulative one answer had been offered, options 2–6 would have attracted 3.3% and 8.8% of the respondents, while option 1 would have definitely prevailed (71.7%). However, when the respondents were given the opportunity to choose one of the three answers (according to their option) it became evident that there was a widespread belief that the police had the right to search apartments also with warrants of the Ministry of the Interior (43.2%), and the State Security Service (32.7%), but also without any warrant — i.e. whenever it was estimated that security was threatened (19.4%) or, simply that such a measure was necessary (20.6%). The significance of the large percentage of respondents who opted for the judicial warrant in the first answer thereby became rather relative. Namely, the majority of the respondents would find it quite irrelevant what kind of warrant the police would produce when entering their homes in for a search: they would let them in, anyway!

3.7. The Right to the Freedom of Thought, Conscience and Religion

The first aspect of the right to the freedom of thought, conscience and religion which will be discussed here is the freedom from state ideology at schools. After the fall of socialism, Marxism was removed from the curriculum in Yugoslavia: since then, the whole educational process should have evolved without any attributes of state ideology. This is why we asked the respondents whether they thought the situation was really corresponding to this or whether the curriculum still had to be adapted to some kind of official doctrine. 40.7% of the respondents answered that there was really no state ideology at schools, while 42.4% said they did not know the answer. The remaining 15.9%, who claimed official doctrine was still present at schools today, implied quite different things under "official doctrine", as a result of which their answers were quite different. However, if we sum up all their answers referring to the ideology of the governing "left wing" parties in Serbia in one or another way ("Slobism",[122] "Mirism",[123] "Marxism", "quasimarxism", etc.), we arrive at the figure of 8.0% of respondents who believed that some doctrine was imposed on children at school. Therefore, although a small number were convinced that there was indoctrination of children at schools (in line with the "left wing" ideology of the ruling parties), what gives rise to concern is the large number of those who were undecided, and were obviously not convinced that there was no state ideology in education.

The second aspect of the freedom of thought, conscience and religion surveyed is the freedom to have and manifest religious beliefs. It is generally known that the church was in a very unfavourable position under the socialist regime; therefore, we thought it would be interesting to find out what the respondents thought about the extent to which the process to remedy this situation had advanced after the fall of socialism. The question "What measure of freedom exists today

122 I.e. ideology of President Slobodan Milošević.
123 I.e. ideology of President's wife Mira Marković.

to have and manifest one's religious beliefs?" was answered by 39.3% of the respondents by "The proper measure". There were 41.4% of the respondents who thought that the freedom of confession and expression of religious beliefs in the FR Yugoslavia was still quite limited, in contrast to the 5.4% who thought that it was even exaggerated because even dangerous sects were tolerated. A very small number of respondents (3.7%) refused to express their views on this issue. As we can see, views in the FR Yugoslavia are quite polarised as to the actual state of the freedom of having and manifesting religious beliefs. It is important to note that this polarisation is much less pronounced among the persons belonging to ethnic minorities (who are mainly Catholics and Moslems); the reply "The proper measure" was given by 65.4% Hungarians, 59.5% Slovaks, 52.9% Croats, 47.8% Albanians and 39.7% Moslems. The difference probably ensues from the level of aspirations: while ethnic minorities are satisfied with an ordinary negative freedom (i.e. freedom from state interference in the matter of manifesting religious beliefs), the Serbs and Montenegrins (as well as Yugoslavs) primarily consider the rather unfavourable attitude of the actual regime towards the Serbian Orthodox Church and the absence of positive discrimination in favour of persons belonging to the Serbian Orthodox.

3.8. The Freedom of Expression

The freedom of expression was one of the most restricted rights in the former Socialist Federal Republic of Yugoslavia (SFRY). Critical thought was particularly suppressed on the basis of the already notorious Article 133 of the SFRY Penal Code,[124] which sanctioned the so called "verbal offence". This is the motive to see if the respondents thought that something had changed, since the deletion of the corresponding article of the Code. We offered three options to the respondents to describe the prevailing situation: absolute freedom of

124 See: Ljubo Bavcon, Nebojša Popov, Vladan Vasiljević (ed.) *Misao, reč, kazna,* Belgrade, Institut za kriminološka i sociološka istraživanja, 1989.

dissemination of information, freedom to spread information within internationally defined limits (the example that was used referred to the restriction regarding defamation of character) and freedom of disseminating information without the right to criticise the government. It turned out that 24.5% of the respondents were convinced that there was an absolute freedom to disseminate information, 33.5% of those who thought that it was restricted in accordance with international legal standards, while 33.9% of the respondents considered that the freedom of disseminating information in the FR Yugoslavia was restricted when it involved criticism of the government (8.1% of the respondents refused to answer this question). Consequently, an entire third of the respondents sees criticism of government as the basis for restricting the freedom of disseminating information in the FR Yugoslavia.

The next question from the cluster related to the freedom of expression reads as follows: "Is there any censorship of works of art?" An affirmative answer was given by 34.0% of the respondents gave 16.8% of them were of the opinion that, formally, there was no censorship, but that it was practised informally in state art institutions, while only 26.9% of the respondents answered by giving an unreserved "No". 22.3% of the respondents stated that they did not know whether there was any censorship regarding works of art in the FR Yugoslavia. All this means that there is quite a widespread view among the respondents that one or another form of censorship is been applied to works of art.

The answers to the question "Is there any censorship of the press?" were even more distressing. As many as 51.7% of the respondents answered with a direct "Yes", another 12.5% stated that censorship of the press did not exist formally, but that it was informally applied to one part of the press. Only 21.5% claimed that there was no censorship of the press in the FR Yugoslavia, while 14.3% were unable to give any answer. Therefore, it can be interred without any hesitation that there is a deeply rooted awareness of the existence of press censorship among the population of the FR Yugoslavia, and

particularly among its younger, better educated and professionally qualified part, also tending to politically oppose the regime.

Referring to censorship of the press, one is faced with the question of the attitude of the government towards the part of the press it has not yet succeeded to place under its control. According to the opinion of 43.3% of the respondents the government does a great deal to stifle the independent press: 23.9% are of the opinion that this press has been tolerated by the government because it considers it to be of little significance. Only 18.5% of the respondents stated that the government treated the independent press the same as any other press (while 14.3% of the respondents refused to answer).

Similar results were obtained with respect to the question about the position of independent publishers: 38.8% of the respondents were of the opinion that the government had done a great deal to stifle them, 24.9% considered that the government tolerated them because they were considered to be of minor significance, 17.7% held the view that the government treated them in the same way as any other publisher, while 18.6% gave no answer. It is obvious that in the minds of the respondents the destiny of independent publishers is inseparably linked to the destiny of the independent press. Just as in the case of the previous two questions, those who proved to be the greatest critics of the existing state of affairs were the youngest, best educated and persons politically opposed to the regime.

We then asked the respondents about their views concerning the position of the independent radio and TV stations. Their replies to this question did not differ much from the ones to the previous two questions: 43.3% of the respondents considered that the government did a great deal to suppress them, 22.7% of them preferred the option of the government being tolerant because of their minor significance, and 22.5% insisted on the view that the government treated them on the same term as any other radio and TV station (11.4% of the respondents could reply nothing except “I don't know”).

The respondents were also asked to state their opinion about the organisations that monitor violations of human rights in the territory

of the FR Yugoslavia and inform the local and international public about their findings. Only 30.1% of the respondents stated that these organisations were useful, contributing to the respect for human rights; 29.7% simply proclaimed these organisations to be meaningless and useless, while 25.6% described these organisations as illegal and mercenary organisations, and their activities to be dangerous to the state (14.5% of the respondents could not say anything specific about the organisations). As we can see, the prevailing opinion about the organisations dealing with the monitoring of respect for human rights is negative, ranging from rejection because of their being useless, to accusations because of anti-state activities. The respondents of advanced age were the most numerous supporters of the latter view, proving to be the most responsive to the regime's campaign in the state-controlled media against these organisations as "treacherous" and "anti-Serbian". On the other hand, the greatest understanding of, and support for these organisations was given by the youngest (36.0%), and the best educated among the respondents (39.9%), intellectuals and professionals (42.1%), persons belonging to opposition parties: 71.9% of the supporters of the Liberal Party of Montenegro (LPM) 57.9% of the supporters of the Democratic Party (DS), 48.1% of the supporters of the Serbian Revival Movement (SPO), as well as 49.4% of the supporters of the ruling coalition in Montenegro "For a Better Life", as well as by the respondents in the territory of Montenegro (40.0%). Also, as it could be expected, persons belonging to ethnic minorities who feel themselves to be "identified" with the enemies in the past and existing wars against the "Serbs", support the work of such organisations to a large extent: 64.7% Croats, 54.4% Moslems and 41.2% Albanians.

All in all, there is a conspicuous awareness among the respondents of the efforts of the existing regime to restrict the freedom of the critical media and persons in the sphere of culture. Taking into account that the survey had been conducted before the adoption of the controversial Information Law of the Republic of Serbia, after which repression against the independent media started mounting, it can be

concluded with great certainty that, had the survey been carried out in November or December 1998, it would have revealed even more unfavourable perceptions (at least in regard to the attitude of the Serbian authorities towards the media).

3.9. The Right to Freedom of Peaceful Assembly

The respondents were invited to state their views about the legal requirements for assembling in public places to express protest. The peaceful nature of the gatherings was preferred by 35.0% of the respondents, 48.6% opted for permission of the competent state authority (not required under any of the three constitutions in the FR Yugoslavia), 9.1% opted for the constitutional and legal requirement in Serbia[125] that the public assembly does not obstruct public traffic (while 7.4% of the respondents answered "I don't know"). As we can see, in quoting the conditions under which assembly in public places is legal, the respondents predominantly opted for the restrictive requirement which is not prescribed by the constitutions and the law (permission of the competent state authority), rather than for the restrictive condition (non-interruption of public traffic) which is prescribed in Serbia (by the Constitution and Public Assemblies of Citizens Act).

3.10. The Freedom of Association

In the former SFRY, membership in the communist party was an important requirement for social promotion and informal control; for this reason the SFRY was frequently accused of violating the freedom of association. It is generally known that former communists in Serbia and Montenegro only changed their name in 1990 and went

125 This condition is prescribed in Article 43, para. 2 of the Constitution of Serbia and is further elaborated in the Public Assemblies of Citizens Act of Serbia, adopted in 1992.

on ruling as socialists, retaining a significant part of their party network and infrastructure. That is why we wanted to hear the opinion of the respondents as to what has changed regarding the freedom of association since the fall of socialism. They were asked first to describe the situations where it is better to be a member of the ruling party? As several answers were excepted, the total score of the results, reproduced in Table 4. exceeds 100%.

Table 4: Cases in which membership in the ruling party is required

N°	"In which cases is membership of the ruling party required by law?",%	
1.	When appointing officials and employees to government agencies	42.6
2.	When appointing directors of "socially-owned" and mixed companies	31.3
3.	When electing judges	30.7
4.	Never	28.0
5.	I don't know	24.8

First of all, Table 4 makes it evident that almost half (47.2%) of the respondents claim, even now, that it is necessary to be a member of the ruling party in order to be able to hold certain positions. That group includes a majority who consider that it is necessary to be a member of the ruling party in order to be appointed as an official and be employed in government agencies (42.6%), while a slightly smaller number of the respondents (30.7% and 31.3%, respectively) consider that the same requirement exists for the election of judges and directors of "socially-owned" and mixed companies. By the nature of things, the majority of supporters of opposition parties emphasised the re-

quirement of membership in the ruling party as the precondition to hold the mentioned positions. It should also be noted that the number of those who did not know the answer to this question was quite large (24.8%), leaving relatively few respondents who claimed that membership in the ruling party was in fact not a precondition for holding any position (28,0%). Accordingly, from the perspective of the respondents, not much has changed in the FR Yugoslavia in comparison to the former Socialist Federal Republic of Yugoslavia: membership in the former League of Communists of Yugoslavia, as the basis for privileges in employment, has now been substituted by membership in the SPS, JUL and DPS, respectively.

Trade unions are specific associations. In the former Socialist Federal Republic of Yugoslavia they were part of the ruling structure of power and could not truly articulate and represent the interests of their members.[126] The respondents were asked to answer how effective trade unions were today. The results we obtained are depressing: only 8.7% of the respondents were satisfied with the organisation and activities of the independent trade unions in the FR Yugoslavia. In contrast to this view, critical views were prevalent: 22.9% of the respondents blamed the trade unions for their bad organisation and poor representation of the interests of their members, while 22.7% went so far as to claim that trade unions served as a cover for the machinations of directors and politicians; 21.9% of the respondents claimed that trade unions existed only on paper, and 23.8% did not know what to say about them. As it can be seen, the newly-founded independent trade unions are very poorly rated in the eyes of the population of the FR Yugoslavia: they are still far from the position which could ensure them at least a more or less equal position in confronting employers and state trade unions (under the control of the SPS and JUL).

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126 See: Aleksandar Molnar: "Sindikalizam u Srbiji — prošlost i sadašnjost" *Dijalog*, No. 1–2/1996, p. 79–83.

3.11. The Right to Peaceful Enjoyment of Property

Social ownership was one of the foundations of the SFRY. After the disintegration of the country, it did not share the destiny of the system of which it was such an important element, but it went on existing as the prevalent form of ownership in the FR Yugoslavia (or, more precisely, Serbia).[127] The respondents were, therefore, asked to answer the question about the relationship between social and private ownership in the FR Yugoslavia. 17.4% of the respondents were of the opinion that the two forms of ownership were treated equally, 15.9% were of the opinion that social ownership dominated over private ownership, whereas the vast majority (55.0%) considered that social ownership was only a screen for concealing the illegal methods of acquiring private property — primarily on the part of directors and politicians (11.7% of the respondents could not give an answer to the question). Therefore, it is evident that there is a widespread awareness among the population of the FR Yugoslavia about the manipulative character of social ownership and discrimination of private property, which has evolved under the slogan of the purported "equality" of both forms of ownership. It is important to note the great level of disagreement between the younger and the older respondents, on the one hand, and the least educated and the best educated respondents, on the other: 60.2% of the youngest and 61.0% of the best educated persons in the survey saw social-ownership as a screen for accumulating private property, as opposed to the opinion of 39.6% of the oldest and 23.5% of the least educated among the respondents. As could be presumed, SPS supporters were the least inclined to choose the former answer as opposed to the supporters of the SPO (76.5%) and the DS (75.9%). Also, the awareness of the manipulative character of social ownership is more acute in Montenegro (64.4%), where this type of

127 About the connection between the "new" autorities and the "old" social ownership, compare Aleksandar Molnar: "The Collapse of Self-Management and the Rise of *Fuhrerprinzip* in Serbian Enterprises", *Sociologija*, Vol. 38, No. 4/1996, p. 539–559.

ownership is rapidly disappearing, than in Central Serbia (49.4%), where it still persists most tenaciously.

3.12. Minority Rights

The special rights of the persons belonging to ethnic minorities were surveyed through the right to publishing and education in the mother tongue. The question "Do persons belonging to ethnic minorities have the right to publish books and attend schools in their mother tongue?" had the greatest number of affirmative answers (55.1%), without recognition of any conditions for this. 26.4% of the respondents considered it was necessary to have the approval of the state authorities as a necessary precondition to exercise that right, while 13.0% of the respondents believed it was denied to all "disloyal" ethnic minorities (followed by 5.5% of the respondents who were not familiar with the subject). As we can see, although a majority of the respondents had a correct perception of the exercise of that right, there were still more than one third of them who were not inclined to think that there was a system of state issued permits, and believed in the possibility to deny that right to "disloyal" ethnic minorities. As for the persons belonging to ethnic minorities themselves, they mainly shared the opinion of the Serbs and Montenegrins,[128] with the only exception of the Moslems, who, for the greatest part, considered that it was necessary for them to have a permission from the relevant state authority to be able to use that right (38.2%).

3.13. Political Rights

The FR Yugoslavia and its two federal units, respectively, Serbia and Montenegro, represent an exception in relation to the model

128 56.8% Serbs, 52.9% Croats, 61.5% Hungarians, 45.7% Montenegrins, 73.8% Slovaks, 61.2% Yugoslavs, 48.5% Albanians, 36.0% Moslems and 60.5% persons belonging to other ethnic groups chose the answer" "Yes", without any additional preconditions.

of the political development of post-socialist countries in Eastern and Central Europe. Namely, the Serbian and Montenegrin communists have not lost control of power, even for an instant. Renamed socialists, they have skilfully adjusted themselves to the new conditions of party pluralism. As the old ruling communist establishment has never relinquished power, it is difficult to say whether there exists a pluralist, democratic system in the FR Yugoslavia at all.[129] In any case, the unscrupulous electoral fraud at the expense of the coalition "Together" in the November 1996 local elections,[130] is good reason to fear that the ruling party in Serbia — the SPS — does not even consider the possibility of ceding power if it loses in the elections (leaving aside the manipulation of the state media, electoral lists, etc.). It is, therefore, problematic whether there can be a right to peaceful political opposition in the FR Yugoslavia (or at least in Serbia), in favour of political parties which could really take power if they won the elections.

Recalling these observations, the respondents were asked whether the multiparty political system such as can be found in the countries of the West existed in the FR Yugoslavia at all. That question was answered in the affirmative by one third (32.9%) of the respondents. The remaining two thirds account for the respondents who either did not know what answer to give (7.3%) or denied the existence of a normal multiparty system in the FR Yugoslavia (59.8%). The majority of the latter group (accounting for 39.7% of the total number of the respondents) were of the opinion that there was one party ruling supreme in the FR Yugoslavia, allowing the opposition parties only the right to take part in the elections, while the remainder (20.1% of the total number of the respondents) were decidedly in favour of the view that there was no multiparty political system in the FR Yugosla-

129 One of the essential requirements of democracy, which has a great significance in the post-socialist countries, is that there be at least one peaceful change of government.

130 Similar machinations were repeated also during the presidential elections in Serbia in September and December 1997, when the Socialists faced the threat of Vojislav Šešelj, being elected president. According to the reports of independent observers, the first elections were regular (i.e. more than 50% of the voters turned out) and Šešelj won in the regular procedure.

via, since power was concentrated in the hands of the former Communists. Differing views about the existing government in the FR Yugoslavia mainly result from the differences among the generations, persons with different educational and professional backgrounds and party affiliations. Thus, the view that there was a multiparty system in the FR Yugoslavia identical with that in the countries of the West was shared by a vast number of the oldest respondents (58.4%), the least educated (59.3%), persons engaged in agriculture (56.8%) and supporters of the SPS (74.9%) and JUL (66.7%). This was a minority view of the younger respondents (20.1%), of the best educated (29.7%), of the respondents in intellectual and professional occupations (25.8%), and of the supporters of the Liberal Party of Montenegro (3.1%) and of the supporters of the DS (8.8%). The regularity already observed in connection with many human rights was repeated in this case: the younger the respondents are and the better educated and professionally qualified they are, and favouring an opposition party, the more critical was their attitude towards the powers-to-be.

The respondents were also asked to state what they thought would happen under FRY law in the event of an opposition party or coalition winning the elections. The respondents were specifically asked on the law relating to the change of government as the result of the will of the voters expressed in the elections. The responses were far more devastating than in the case of the answers to the previous question. Only one fourth (25.0%) of the respondents stated that the opposition party or coalition automatically would take over. In contrast, 35.5% of the respondents thought that, according to our law elections had to be repeated, and 25.8% that the results of the elections in such a case would have to be confirmed by the Supreme Court in order to become valid (13.8% could not answer this question)! The respondents not only recognise that a normal pluralist system in the FR Yugoslavia does not function, they are even convinced that the legislation itself provides for mechanisms which make the transfer of power from the hands of the former Communists (present-day Socialists), to the opposition impossible. The most numerous among those who supported this view were the youngest, the best educated, with

the best professional qualifications and sympathetic to parties in opposition to the regime.

3.14. Special Protection of the Family and of the Child

The eruption of nationalism in the territory of the former SFRY reflected, to a large degree, on micro-social groups as well, such as the family and matrimony. One aspect of this complex problem has to do with ethnically mixed marriages. The respondents were asked to say what they thought was the greatest obstacle to entering into mixed marriages today. Slightly more than a third of the respondents (38.3%) stated that there were no obstacles to mixed marriages in the FR Yugoslavia. The remaining 61.7% of the respondents could not cite exactly what the obstacles to mixed marriages were (7.5%), or they identified them as repressive measures of the state (3.4%), or inhibitions in the persons themselves, who consider that the mixing of blood of different nations is a bad thing (18.8%), or in the propaganda that has penetrated persons' private lives (32.1%). A large number of the respondents are aware of the existence of obstacles to contracting mixed marriages, but they are inclined to attribute them to the motivation of the women and men themselves, i.e. propaganda, which has had a decisive effect on the hierarchy of the criteria for the choice of the spouse. It is interesting that there are significant differences regarding this between the Serbs and Montenegrins, on the one hand, and persons belonging to ethnic minorities: the latter (Hungarians and Slovaks in particular) stated predominantly that there were no obstacles to ethnically mixed marriages.

3.15. The Right to Nationality

The disintegration of the former SFRY has aggravated, among other problems, the problem of nationality. In the former state, persons were often born in one republic, educated in another, settled and married in the third, only to find themselves in the fourth after the

disintegration of the country in 1991. Such persons have had great problems in trying to settle the issue of their own identity in the newly established states in the territory of the former SFRY. Leaving aside this problem (which was discussed in detail in chapter I.4.15), we shall take a look here at how the persons involved in the survey see the problems relating to the acquisition of Yugoslav nationality.

The conditions for acquiring Yugoslav nationality were assessed in a negative sense by the majority of the respondents: 32.6% considered that such chaos prevailed in this field that no one could sort it out, while 22,1% were of the opinion that there was discrimination among the persons, who had lived together in one state in the past (and now cannot obtain the nationality of the state in which they live as normal citizens). 28.4% of the respondents stated that the requirements for obtaining Yugoslav nationality were appropriate, while the remaining 16.9% could not give any answer. As we can see, there is dissatisfaction with the conditions for obtaining Yugoslav nationality, and it is most intense among the youngest and the most educated among the respondents: 40.3% of the respondents aged between 18 and 25 and 36.1% of the respondents with high secondary school and university education consider that there is such a chaos prevailing in this matter that no one can find their way in it. It is interesting that the Serbs, Montenegrins and Yugoslavs are dissatisfied with the requirements for obtaining nationality and alongside with persons belonging to ethnic minorities, Croats, Hungarians, Slovaks, and even Albanians (Moslems are the only exception). This can be explained predominantly by the factor of spatial mobility and immigration trends; while persons belonging to the above ethnic minorities are, as a rule, indigenous groups, which have dispersed over the past few years, Serbs, Montenegrins and Yugoslavs existed outside the borders of Serbia and Montenegro before 1991, only to be compelled to immigrate to the FR Yugoslavia during the wars in Slovenia, Croatia and Bosnia and Herzegovina, and to face problems in obtaining nationality. Paradoxically, it thus happens that the policy of granting citizenship in the FR Yugoslavia has affected the dominant ethnic groups — Serbs and Montenegrins (as well as Yugoslavs, however).

In the FR Yugoslavia there are several categories of persons who cannot obtain nationality. Apart from the "indigenous population" which cannot obtain nationality due to certain formal requirements, there are also refugees, ethnic Albanian immigrants from Albania, who have never obtained Yugoslav nationality, nor did they ever apply for it, as well as persons who have already become foreign nationals, but wish to retain Yugoslav (dual) nationality as well. Our intention was to discover the opinion of the respondents about these categories of persons without Yugoslav nationality. The results obtained are reproduced in Table 5.

Table 5: Assessments of the respondents regarding the way the state treats persons applying for nationality

N^{o}	Applicants for nationality	Reaction of the government		
		Intransi-gent	Correct	Lenient
1.	Refugees requesting nationality	30.7	46.4	23.0
2.	Ethnic Albanians without Yugoslav nationality who have not applied for it	20.2	29.3	50.6
3.	Citizens of the BH Federation who want to obtain Yugoslav (dual) nationality	28.9	50.8	20.3
4.	Citizens of all countries created in the territory of the former SFRY who also want to have Yugoslav (dual) nationality	28.0	52.1	19.9
5.	Citizens of other states who also want to have Yugoslav (dual) nationality	23.0	56.1	20.9

On the basis of the data presented in Table 5 one can notice the generally unfavourable views of the respondents in relation to dual nationality and the persons who apply for it. The regime of the FR Yugoslavia appears to be enjoying substantial support from the population in its policies directed against dual nationality. It is interesting to note that a large majority of the respondents (69.4%) consider that the attitude of the Yugoslav state towards the refugees has either been correct, or lenient. The issue where the respondents were critical was the attitude of the Yugoslav state towards the Albanians who do not have Yugoslav citizenship and never applied for it — half of the respondents would take repressive measures against this category of persons without Yugoslav nationality.

All in all, the respondents make a great difference when assessing the requirements for obtaining Yugoslav nationality which are applied to the "indigenous population" in the FR Yugoslavia, on the one hand, and the requirements demanded of the refugees and foreign citizens, on the other. As to the first, they find them to be discriminated by the state, while in the latter case they mainly believe that the state has behaved properly.

3.16. The Freedom of Movement

The respondents in the survey were also asked the question: "May the citizens of the FR Yugoslavia take up residence wherever they want in the country?" 56.5% of the respondents answered "Yes, without any preconditions", 25.0% were of the opinion that a permission of the relevant state authority was needed for settling down in another place, while 12.5% of the respondents thought persons in the FR Yugoslavia today could settle only in the neighbourhoods where they were accepted (6.0% of the respondents could not give any answer to the question).

The question "Is every citizen of the FR Yugoslavia free to leave the country?" was answered as follows: 32.5% replied "Yes, without any preconditions", 36.0% held the view that a permit was needed for leaving the country, issued by the relevant state authority,

while a whole quarter (25.6%) of the respondents considered that exit taxes were a discriminatory measure directed at the poor strata of society (5.9% gave no answer to this question). As can be seen on the basis of this data, the respondents noted that the freedom of movement in the FR Yugoslavia in the case of leaving the country was much more restricted, than when changing one's place of residence.

Similarly, the respondents were asked about the situation with respect to expulsions, i.e. who the state can presently lawfully expel from its territory. The correct answer ("only aliens — but never citizens of the FR Yugoslavia") was given by only 25.2% of the respondents. The others opted for the following answers: "foreigners and citizens of the FR Yugoslavia who have committed a serious criminal offence" (17.3%), ("foreigners and disloyal citizens of the FR Yugoslavia" (18.5%), "foreigners and disloyal persons belonging to the national minorities" (8.0%), " no one" (17.3%) and "I don't know" (13.8%).

3.17. Economic and Social Rights

The heterogeneous group of human rights named economic, social and cultural rights was represented in the survey by four rights. The first right referred to the employment of minors. The question "Is the employment of minors aged under 16 punishable?" 42.1% of the respondents answered correctly: "Yes, in any case." The others either did not know what to answer to this question (11.7%) or quoted (non-existing) exceptions to the rule — when a child is psycho-physically mature for the job (12.6%) and when it supported itself and its family (33.5%).

The respondents were also asked to indicate the documents required for employment in the FR Yugoslavia today, in addition to the employment booklet and school certificate. A certificate of ethnicity (which, of course, does not exist, but it was made up for this occasion) was cited by 8.8% of the respondents, the membership card of the ruling parties in Serbia and Montenegro was cited by 18.9% (2.4% of the respondents also cited the membership cards of other

parties). In addition to that, the supporters of the opposition parties in Serbia, in particular, insisted on membership cards of the ruling parties (42.9% of the supporters of the SPO, 42.1% of the supporters of the DS and 32,6% of the supporters of the Socialist Democratic Party). The rest did not refer to the above documents (40.2%) or did not know the answer to the question (28.9%). All in all, a relatively high level of misinformation was displayed in relation to the documents required for employment.

The right to use achievements in science was surveyed through the question on the contraceptives. The respondents were asked the following question: "According to your opinion, to what extent are contraceptives (for the prevention of unwanted pregnancy) used today?" The greatest number of the respondents (39.3%) answered "Too few, because the state does nothing to promote them and make them available". Prevailing among them, as could have been expected, were the youngest, the best educated persons with secondary school or university education: 54.9% of the first, 47.0% of the second and 65.3% of the third group accused the state of passivity in promoting and facilitating the supply of the means of contraception. 18.4% of the respondents stated that contraceptives were excessively used today, while 18.0% stated that the means of contraception were used to the right extent (while 24.3% could not give any answer to the question). As it can be seen, very few respondents expressed their satisfaction with the frequency of the use of means to prevent unwanted pregnancy. No significant differences between women and men were identified in the answers to this question, while ethnic and regional affiliation, as well as party affiliation played a minor role.[131]

A existing topic at the time of the survey was the adoption of the University Act of the Republic of Serbia (after a brief consideration and without any public debate). The respondents were asked to answer

131 The Croats, Hungarians, Slovaks and Albanians were slightly less critical of the state because of its poor promotion and passivity in supplying means of contraception. On the other hand, the greatest criticism was evidenced among the citizens of Belgrade and supporters of the SPO, DS, DSS and the "Vojvodina coalition").

what they thought was the reason for passing that law. According to the majority of the respondents, the purpose of the new University Act was to enable the ruling party to appoint its own members as professors (28.0%). A slightly smaller number of respondents (24.3%) thought it was meant to improve the quality of instruction and promote scientific work. 13.5% of the respondents saw the *raison d'être* of the new University Act in removing politically undesirable professors from the Serbian universities, and 7.3% thought it was a means of preventing new protests (such as those organised in 1996/97). Some of the respondents (4.2%) offered their own answers, including: abolishment of the autonomy of the university, revenge against the University (for the 96/97 Protest), the appointment of professor Mira Marković as Rector of the University in Belgrade, etc. Finally, 22.7% of the respondents did not know what to answer to this question.

It is therefore clear that only one quarter of the respondents has accepted the official explanation of the government of Serbia for the adoption of this law (improvement of the quality of instruction and the promotion of scientific work), the other quarter did not yet know why the law had been adopted, while half of the respondents were convinced of the repressive purposes of the law. It is interesting that the supporters of the SPS, JUL and SRS showed a much greater harmony of views with their parties than it was established in a survey in May, conducted only in Vojvodina: the respondents who identified themselves as voters of these parties believed that the purpose of the law was to improve the quality of instruction and promote scientific work (SPS: 59.8%, JUL: 50.0%, SRS: 37.6%). Finally, it is important to point out that the respondents from Montenegro were much more critical towards the University Act than the respondents in Serbia: thus, there was a slightly larger number of persons in Montenegro who considered that the purpose of the law was to persecute politically undesirable professors (18.2%), and a significantly smaller number of those who referred to the improvement of the quality of instruction and the advancement of scientific work (14.2%). The respondents in the regions of Serbia (Vojvodina, Belgrade and Central Serbia) displayed almost no differences.

4. Enjoyment of Human Rights

At the end of the questionnaire we put two questions on the basis of which we tried to ascertain the extent to which the respondents were satisfied with the realisation of the previously discussed human rights and what they thought was the best method to protect them. 23,7% of the respondents were completely satisfied with the enjoyment of their human rights; 25,6% of the respondents thought they could enjoy the majority of their human rights; 19.8% thought the state was the actor who jeopardised their human rights in the first place, while the majority (30.9%) stated that enjoyment of human rights depended on chance, because anyone could violate them without being liable for it. We can see then that the respondents were completely polarised into the group that could enjoy all their human rights or the majority of them (49.3%) and the group whose human rights were endangered by the state, either directly or by simply leaving it all to chance circumstances (50.7%).

Table 6: How to protect human rights

N^{o}	"If someone is denied some previously discussed human rights, it will be best for him/her to turn to the following:"	%
1.	Influential persons with connections	32.1
2.	Persons who due anything for money	17.7
3.	The regular court	17.5
4.	Influential persons in power (Slobodan Milošević, Milo Djukanović, and others)	17.3
5.	An international court	9.7
6.	All other answers ("God", "oneself", "some embassy" and the like)	5.7
	Total	100.0

The answers provided to the question about what one should do today if denied a human right (Table 6) show that the largest number of respondents (67.1%) preferred extra-institutional solutions, i.e. turning to persons who have connections, influence or power. Confidence in the regular institutions of the legal system is extremely low (and that applies to international courts as well). The idea of "self-help" was quite rare (0.4% in total), much rarer than expressions of resignation, of the kind: "there is no help", "there is nothing to do but cry", "one must reconcile with one's destiny" etc. 3.3% in total). Concluding of our analysis it appears best to quote the answer provided by one of the respondents to the question as to how one should react in the case of denial of a certain human right: "one should move there, where human rights exist".

5. Conclusion

The conclusion that can be drawn on the basis of the study presented in this chapter is that, unfortunately, the legal consciousness of human rights in the FR Yugoslavia is very low. The concrete analysis of the familiarity with certain human rights and the assessment of their respect in the FR Yugoslavia show that the knowledge of facts is quite poor — especially in the field of human rights relating to procedural guarantees before the state authorities. On the other hand, it is indisputable that a great deal of criticism and realism was manifested when judging the existing state of certain human rights. Probably the greatest problem this research encountered refers to unravelling the knot of mistaken judgements about human rights and critical evaluation of the existing reality of human rights in the FR Yugoslavia, something a future enquiry should tackle more seriously. A very significant incentive for a more committed confrontation with the situation involving violations of human rights would certainly be a keener awareness of the real content of human rights (i.e. the international standards).

The most important factors that influence attitudes towards human rights were found to be age, education, profession and party orientation (inversely, gender, and ethnic and regional affiliation did not prove to be particularly significant in giving answers to the majority of the questions in our questionnaire). Briefly, the older the respondents, the lower the level of their education, with occupations requiring lower qualification, and in addition supporters of the SPS and JUL, the greater the probability that they will be less informed about human rights, and look upon them with greater distrust. *Et vice versa.*

If one were to summarise in one sentence a general impression on the basis of the information provided in this chapter, one could say the following: in a state where the majority of the population understands human rights in terms of natural law and is of the opinion that such rights have been endangered most of all by the state itself, or that the latter simply leaves them to the chance circumstances, the idea of "self-help" is clearly missing, and remedy — when a certain right is really denied — is sought by turning for help to persons with connections, influence and power and who are able to solve problems in an informal way, i.e. by bribery, violence or abuse of office.

The atomisation of individuals in their relationship towards the all-powerful state is a result of long rule by the socialist regime. It is difficult to overcome quickly (particularly there where socialist indoctrination has been substituted, almost automatically, by national mobilisation in circumstances of war and international isolation). The legal consciousness of human rights is exactly the sphere in which that problem is most acutely reflected. Therefore, if anything should be the main task of all non-governmental organisations and other subjects dealing with the promotion and protection of human rights in the FR Yugoslavia, it must be to raise the present very low level of their recognition in the society.

IV
MAIN ISSUES — 1998

1. Kosovo And Metohija

1.1. Introduction — Methodological remarks

1.1.1. Terminology — In addition to other conflicts, the province of Kosovo and Metohija has also been the venue of a verbal war waged in relation to the name of the territory and its inhabitants. Very often it is possible to identify the ethnicity and the political affiliation and prejudices of the interlocutor by the names that he or she uses.

The name of the province itself, *Kosovo and Metohija*, is prescribed by the current constitutions of Serbia and the FR Yugoslavia, and is the only term used by the state authorities. The state officials, the media close to the regime and the supporters of the ruling parties duly respect it, but in their less formal public addresses they use the abbreviated term *Kosmet*. In other words, though not quite accurately, it is assumed that this is the approach taken by all those who are opposed to broader autonomy in the Province and who are not inclined towards the Kosovo ethnic Albanians. The former name of the Province, solely *Kosovo*, is widespread among those who speak and write in the Serbian language, and who do not pay much attention to official terminology and "political correctness"; this applies to the majority of the independent media. Even when using the Serbian language, the ethnic Albanians from Kosovo, themselves, insist on the Albanian term

Kosova. This toponomachia has spread to foreign languages as well. Until recently, almost all foreigners, except for the ethnic Albanians, have used only the Serbian version (*Kosovo*); however, as of late, the Albanian version (*Kosova*) has been used more often. Opting for the Albanian version has frequently been interpreted as sympathising with the Kosovo ethnic Albanians and the political objectives of their leaders. The official statements of the authorities, the state media and agencies go as far as quoting even foreigners as having used the abbreviation *Kosmet*, which they which they almost never do.

Explanations of the emotional and political significance of the names used to designate the members of the Albanian ethnic community are even more complex and less rational. In Serbia, for a long time they were called *Arbanasi* and *Arnauti*. In the desire to come closer to the name used by the members of this ethnic group, themselves, the new socialist regime legalised the word *Šiptari* after 1945. After 1966, when the Province began to acquire broader autonomy and when ethnic Albanians started being appointed to more important posts, at their request the name *Albanci* was adopted. Officially, this exists today as well. However, except in most formal official verbal and written communication (and often in it) Serbian and Montenegrin officials, politicians, journalists and other authors of national orientation rather revert to the old name *Šiptari*, most likely because of the pejorative connotation the word has acquired, or they believe it has. Some of them call the Albanians living in Yugoslavia *Šiptari*[132] and those living in Albania Albanians. Other former designations, *Arnautin* and *Arbanas*, sound not only archaic today, but also pejorative.

The terminology used in this Report is the official one, without any wish thereby to suggest any kind of political stance. Members of the Albanian nation are called Albanians, regardless of whose citizens they are, and the respective part of the territory of the FR Yugoslavia

132 For them the extensive designation "members of the Albanian national minority" has become customary in official texts in Serbia. (The FRY Info. 99). Behind this is the desire to confirm that the Albanians may be the majority in Kosovo and Metohija but remain a minority in relation to the overall population of Serbia.

and Serbia is called *Kosovo and Metohija*, although the term *Kosovo* by itself is sometimes used in order to disburden the text.

1.1.2. Demography. — The majority of the population in Kosovo and Metohija today are ethnic Albanians. Their numbers, as well as the number of Serbs, Montenegrins and members of other ethnic groups in the Province, are the subject of constant dispute, which has become exceptionally agitated since 1990. According to the 1981 census, there were 1,226,736 ethnic Albanians living in Kosovo and Metohija. The Kosovo Albanians mostly refused to take part in the latest census in Yugoslavia (then still the SFRY) taken in 1991. In the assessment of the Federal Bureau of Statistics, the total number of persons living in Kosovo and Metohija that year was 1,956,196. Among them there were 1,596,072 ethnic Albanians, 194,190 Serbs, 20,365 Montenegrins, while other citizens (145,569) were members of smaller ethic groups.[133] It is believed that due to the emigration of the Serbs and the high birth rate of the ethnic Albanians[134], the percentage of the latter in 1998 was even greater, and that of the Serbs even smaller. In its report to the Committee on the Elimination of Racial Discrimination (CERD), the Yugoslav government estimated the total number of ethnic Albanians in Yugoslavia in 1997 at 1,714,768. Since recently, the Serbian authorities and their media have been trying to reduce the number of ethnic Albanians in Kosovo and Metohija, insisting in particular on the claim that there are many more members of other ethnic groups living there (Turks, Moslems, Roma, Gorani, Egyptians, etc.) than it has been assumed.[135] On the other hand, Albanian politicians and their

133 *The Statistical Yearbook of Yugoslavia*, 1998.

134 The assessed birth rate in Kosovo and Metohija is 17.2%, in the whole of Yugoslavia it is 3.1%, while in Central Serbia it is negative: 0.5%.

135 The Minister of National Minority Rights in the government of the Republic of Serbia stated in the middle of 1998 that the figure of 1.7 million people had been presented by the "Albanian leaders for their own purposes"; according to him, there were 1.2 million Albanians in the whole of Serbia (*Politika*, 30 May 1998, p. 2). In his interview to *The Washington Post*, the Yugoslav President Slobodan Mi-

newspapers tend to increase the number of ethnic Albanians in the FR Yugoslavia.

1.2. The Present Constitutional and Political Status

The territory known as the Province of Kosovo and Metohija today did not constitute an administrative entity until the second half of the 20th century. In the mediaeval period it belonged to the Serbian state, and following imposition of Turkish rule, the area belonged to different Turkish administrative units — *kazas*. The whole area of the present Province has never been a part of a more comprehensive territorial unit — *vilayet.* This was not even the case with the former Kosovo vilayet.

Following the First Balkan War, Metohija was incorporated into Montenegro, and Kosovo was incorporated into Serbia. After the establishment of the Kingdom of Yugoslavia, the territory involved here first belonged to different districts and later to different *banovine*.

The toponym Kosovo originates from the Serbian word for a blackbird — *kos*. It designated the area around the Kosovo plain, where the Serbian army was defeated by the Turks in 1389. The toponym Metohija originates from the Greek word — *metoh* — meaning a monasterial estate. The region of Metohija spreads to the south and south-west of Kosovo. Nowadays, the small region of Gora near Prizren is usually considered part of Metohija, while the concept of Kosovo also includes the area of Kolašin in the Ibar Basin and the Kosovo Morava Basin, i.e. a part of the confluence of the rivers Ibar and South Morava.

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lošević estimated the number of Albanians in Kosovo at only 800,000 (FLC-8). The federal Minister of Foreign Affairs Živadin Jovanović stated that "we must convince Europe and other key factors that there are not 90 percent of Albanians and 10 percent of Serbs and Montenegrins in Kosovo, but that there are 600,000 citizens of other nationalities as well" (*Politika*, 31 December 1998 — 1,2,3 January 1999, p. 2).

The first time Kosovo and Metohija were defined as an administrative and political entity was after the establishment of communist rule in Yugoslavia. This was in 1945, and officially on 31 January 1946, the date of the promulgation of the Constitution of the Federal People's Republic of Yugoslavia (FPRY). According to that Constitution, the Autonomous District of Kosovo and Metohija (ARKM) was formed in one of the six Yugoslav republics — Serbia. Serbia was the only one of the six republics to have forms of territorial autonomy established on its territory. Also, at this time, the Autonomous Province of Vojvodina was established; according to the views prevailing at the time, a province had a higher degree of autonomy than a district.

The political system whose foundations were laid by the 1946 Constitution, was very reminiscent of the Soviet one. The then Yugoslav ruler — Tito, held the office of Secretary General of the Communist Party and president of the federal state.

The system, such as it was, started changing after the split between Tito and Stalin. The FPRY Constitution was changed by a special act of constitutional rank, which was adopted in 1953. On the basis of that act, Tito became the head of state and Prime Minister of the Federal Government at the same time. He also kept his leading position in the Communist Party. Power being concentrated in the hands of a single man who was more than sixty years old at the time, the communist regime set up as it was, the issue of succession started gaining in importance and become one of the main issues on the agenda.

It looked as though the issue of succession had been settled by the Constitution of 1963, under which the name of the state was altered to: The Socialist Federal Republic of Yugoslavia (SFRY). According to the 1963 Constitution, Serbia was the only republic with autonomous territories; it was then that the status of Kosovo and Metohija was equated with that of Vojvodina. Kosovo and Metohija became an autonomous province. Tito became the President of the SFRY: he was no longer the Federal Prime Minister, but he retained his position as the communist leader. His apparent successor was the newly appointed

Vice President of the federal state. Aleksandar Ranković, Serbian communist politician and the intelligence chief.

Less than three years later Ranković was dismissed from his position in the *nomenklatura*, at the so-called Brioni Plenary Session in 1966. Position No. 2 was then abolished, and modifications were made in the 1963 Constitution. It was considered that the downfall of this powerful Serbian politician brought about a decline of the Serbian influence in Yugoslavia. This certainly affected the influence of the Serbian part of the communist *nomenklatura*, but not the influence of Serbs in general.

The diminishing powers of the circles which were firmly anchored in the intelligence service resulted in a change in the political climate in Kosovo and Metohija. Within the framework of the constitutional changes initiated in 1968 the name of the Province was changed into the Province of Kosovo and it acquired new, extended powers which reduced the jurisdiction of the Republic of Serbia. All this was to be retained in the political and constitutional system of 1974, under which the communist Yugoslavia ultimately was to see its own end.

On the basis of the 1974 Constitution the Republic of Serbia was to retain the provinces of Vojvodina and Kosovo, but in many respects their status was equated with that of the republic itself, and, one might say, almost gave them an advantage over it.

Under the 1974 Constitution, the Yugoslav state somewhat resembled the feudal age. National communist *nomenklatura*s had gained power in the republics formally constituting the federation, which in essence, was a confederation. Tito was declared President for life, and remained the communist leader in the capacity of a virtual suzerain.

What the Constitution envisaged for the time after Tito was a collective leadership and a rotating Presidency based on a one-year term of office at the helm. In that body each province had one seat, just like the republics.

According to the 1974 Constitution, the Republic of Serbia found itself in a worse position than the one it had had previously. Not only were the two Serbian provinces directly represented at the federal level, enjoying an almost equal status to that of the Yugoslav republics, but they also acted as a kind of blockade in relation to their mother republic. For instance, according to Article 427 of the 1974 Constitution of the Republic of Serbia, the adoption of amendments to that Constitution required the approval of both Provinces. Thus, the Provinces acquired the so-called *Kompetenz— Kompetenz.*

Within such a system, Kosovo had its parliament, its government, and all other state institutions, parallel to those of the Republic, such as, for instance, a supreme court, a national bank and a public prosecutor. All these institutions — not only in Kosovo, but also in the whole of Yugoslavia — lacked in legitimacy. These institutions in the Province were appointed by the Provincial Assembly; however, the latter was not elected by the citizens in free elections. The Provincial Assembly was composed of deputies nominated by the local organisations of the League of Communists and their satellite associations or local assemblies formed in the same manner.

It was precisely this lack of legitimacy of the constitutional organs that served as a pretext for the abolishment of the system established under the 1974 Constitution. The nationalisms of the different nations and groups were burgeoning in Yugoslavia. What was missing were integrative political forces, as the communist organisation was splitting along its national seams, and a pluralist system was just at its beginnings. Moreover, pluralism emerged in the narrower, republic frameworks and was strongly inspired by nationalism.

From among the ranks of leaders of the communist *nomenklatura* a group of authoritarian politicians rose to prominence in this set of circumstances in Serbia. Their programme represented a mixture of communist dogmatism and Serbian nationalism. It was clad in the attire of the Yugoslav idea, but in the technique of its presentation it was openly populist.

Initially, enjoying grass-root support as well as that of certain intellectual circles, this policy pointed to the prospect of changing the unfavourable status of Serbia and the Serbs in Yugoslavia. In its rhetoric it frequently referred to the Kosovo problem and the threat looming over the Serbian minority in the province.

It was in this atmosphere that the Constitution of Serbia was amended in March 1989. This amendment changed the status of the provinces, and consequently, the status of the Province of Kosovo. The system established on that occasion was later buttressed by the new Constitution of the Republic of Serbia, promulgated in September 1990. This Constitution retained the two provinces inherited from the communist period, with their competence on the level specified in the 1989 amendments, and returning to the southern province the name of Kosovo and Metohija. Formally, this situation has since remained unchanged.

1.3. Human Rights

1.3.1. Kosovo in the former Socialist Federal Republic of Yugoslavia. — Established in 1945, the communist system in Yugoslavia like anywhere else, gave little consideration to human rights. In spite of that, it did introduce certain measures that had an impact on the exercise of human rights.

The most drastic measure in Kosovo and Metohija at the beginning of communist rule was the abrogation of the old legal system. It rescinded the *Sharia* law, which was applied in Yugoslavia in the period between the two world wars in keeping both with international and the Yugoslav constitutional provisions. Moslem law applied to the rules governing the family and inheritance among Moslems, who accounted for more than half of the total population of Kosovo and Metohija. The provisions relating to the ban on the veil worn by Moslem women were particularly unpopular and many Moslem women found it very hard to adjust to the new situation.

Marxist doctrine advocated national equality and respect for the rights of national minorities, which was to form the foundation for the emancipation of the Albanian community in Kosovo and Metohija, and for its cultural advancement.

The ruling ideology in the SFRY was, in principle, internationally oriented. Just as it advocated that nations should disappear in a global revolution, so it insisted that the petty nationalism of certain groups and nations in Yugoslavia should be suppressed. However, this idea has partly been abandoned with time. Nationalism proved to be tough and resistant, so it survived communism.

What contributed to the survival of nationalism was the communist system itself, which absorbed nationalism. The *nomenklaturas* in the republics, particularly after the adoption of the 1974 Constitution, started presenting themselves as defenders of national interests. Serbia was in a specific position in that regard and the Serbian people were the most widely distributed in the territory of Yugoslavia. Because of this, the impression was that the Serbs were in an unfavourable position — an impression not to be considered as altogether wrong. This attitude provided fertile soil for the germination of new Serbian populist nationalism. The new nationalism, however, was nothing but the old, authoritarian, Marxist — Leninist dogmatism, very suspicious of democracy, rule of law and the respect for human rights.

Despite its numerous shortcomings and basic contempt for human rights, the "socialist" system had certain positive effects. These certainly include the already mentioned emancipation of the Albanian community in Kosovo and Metohija. After the severe clash with Moslem customs at the very outset, the communist system devoted much political energy and important financial resources to the modernisation of Kosovo.

Investments were first made in the Province in the field of electrification and the construction of new industrial facilities, so as to provide new jobs. Later on, education started spreading along with literacy, resulting in a significant drop in the illiterate ethnic Albanians.

The use of two languages in the Province grew more widespread, along with the introduction of instruction in the Albanian language in secondary schools and university colleges. In the sixties, a university was established in Priština, and the Priština television studio programme was broadcast almost exclusively in Albanian. The number of ethnic Albanian women with employment was constantly increasing.

Such measures, which objectively brought progress in many fields were still the fruit of the illegitimate communist regime. The Kosovo Serbs sometimes saw them as yielding to Albanian nationalism.

Domination was the obsession with communists. The idea of domination is the root of the eternal division into "us" and "them", i.e. the rulers and the subjects. That division, which was initially conducted along political lines, acquired ethno-national features in the specific Yugoslav conditions of nationalised communism. With Tito's assistance and that of the Yugoslav officialdom, the communist party top echelon, in which ethnic Albanians outnumbered Serbs, took over the helm in Kosovo.

This is why it can be said that the tide of exclusively communist domination over Kosovo was followed by a tide of Albanian domination. Hence, the distrust of the local Serbian population in relation to the emancipation of the Albanians, the introduction of bilinguality and other measures. In the sixties and seventies, the Serbian population started moving out of Kosovo, first slowly and then more and more rapidly. Emancipation, coupled with the absence of tolerance, led to the escalation of nationalism in the Albanian party leadership in Kosovo.

The tide of Albanian domination in the Province came to an end with the breakthrough of the new Serbian national populism and the rise of the present rulers to power. The pendulum then swung in the opposite direction.

The view prevailed — at least among the ruling circles — that Albanian domination must be replaced by Serbian domination. There

was no mention of tolerance. The idea of revenge was stronger than the need to deal with many complicated issues.

1.3.2. Kosovo and Metohija in the Federal Republic of Yugoslavia. — The members of the Albanian community reacted unfavourably to the change in the political situation. About twenty ethnic Albanians were killed in the demonstrations against the adoption of the constitutional amendments in March 1989. The protest which took place in late January and early February 1990 ended with a death toll of 27 ethnic Albanians and one policemen, while 54 demonstrators and 43 policemen were injured.

Certain crimes with Serbs as victims, which occurred close to the end of the period of Albanian domination in the Province, reverberated strongly in the media.

Neo-bolshevik nationalism responded in the same manner. Almost the entire ethnic Albanian teaching staff of the University in Priština was sacked. The treatment they received had only the semblance of legality.

The dismissed ethnic Albanian professors resorted to alternative methods. They established a parallel university, not recognised by the authorities, where they have since lectured in Albanian. This scholastic apartheid was not an isolated phenomenon. The Albanian community created a parallel social structure in various spheres of life. Just as emancipation had led to the domination of the majority ethnic group, so the change of the dominating group led to the communities living separate lives.

The separation of the two communities — the Albanian and the Serb — in Kosovo and Metohija has become practically total. After the removal of the ethnic Albanians from the official institutions of public life, the Serbian government has tolerated their parallel social organisation. The Albanian community created not only its own university, but also schools, hospitals and various other institutions, including utility services — even a parallel tax system.

The Serbian government has tolerated the Albanian press and so a number of dailies and several weeklies which are not financed by the state are published, not concealing that they support the demands of those Albanian political forces convinced that the Kosovo problem cannot be resolved in any other way but by secession from the FR Yugoslavia, or at least by granting to Kosovo the status of a federal unit in the FRY, with equal prerogatives. The state television programme has remained under Serbian government control. It broadcasts news in Albanian, but one does not have the impression that its programme has a high viewing rate among the ethnic Albanian population. It was not till 1998 that a private bilingual radio station was established in Priština; however, it was immediately closed down by the authorities.

The relatively peaceful coexistence of the communities under general repression was significantly upset in the spring of 1996, with the appearance of the "Kosovo Liberation Army" ("KLA")[136], an illegal Albanian organisation resorting to arms in their struggle for the independence of Kosovo. From June 1996, when the first armed attack on a police patrol in Kosovo was registered, until the end of February 1998, the Serbian media registered sixty attacks against the personnel of the Ministry of the Interior of Serbia (MIA) and police facilities in Kosovo, twenty attacks against ethnic Albanians employed in state institutions or known to be members of the ruling Socialist Party of Serbia, and eleven attacks against Serbs and Montenegrins. The federal government claims that from the beginning of 1991 until the end of 1998 there were 2,018 terrorist actions in Kosovo and Metohija, with a death toll of 327 persons, among whom 199 civilians and 128 members of the police (The FRY Info. 99). The illegal "Kosovo Liberation Army" has claimed responsibility for most of these actions.

According to the reports of the Humanitarian Law Center between 1983 and 1992, 181 persons were charged with criminal offences against the social system and security of the SFRY/FRY and

136 In Albanian: "Ushtria Çlirimtare e Kosovës (UÇK)".

931 of them were sentenced. At three trials in 1997, fifty-two ethnic Albanians were sentenced to a total of 557 years in prison. During the proceedings the defence attorneys were allegedly hindered in their contacts with their clients and in getting access to investigation activities. The judgements were based mainly on confessions and testimonies extracted under duress, sometimes later withdrawn; however, courts refused to take notice of this. According to the same source, there were few witnesses at these trials and the majority of them withdrew their testimonies claiming they had been forced to give them. The media close to the authorities, primarily RTS and the dailies *Politika* and *Politika ekspres*, anticipated the guilt of the defendants in their reports, calling them criminals, terrorists and the like (HLC). The Priština Council for the Defence of Human Rights and Freedoms claims that the juries did not take into consideration any facts or evidence submitted by the defendants and that the defendants were denied their right to defence. The Council was supported in its allegations by international organisations. (PB, 10/97/UN, 6–10/98 AI).

The Priština Council for the Defence of Human Rights and Freedoms alleges that in 1997 there were 5,031 cases of maltreatment (587 cases of serious bodily injury and one attempted rape) and 13,194 cases of violations of human rights of ethnic Albanians by the police and other state authorities or citizens of Serbian ethnicity during 1997. One of the most frequent forms of persecution of ethnic Albanians in Kosovo, according to the Council, were the police searches for weapons during which 854 persons were taken to police stations, arrested, beaten up or tortured (PB). *Amnesty International* quotes the same data (1–8/98 AI).

According to the Humanitarian Law Center the police arrested a large number of members of the Albanian ethnic community in violation of legal procedure. They were primarily activists of the Democratic Alliance of Kosovo, and of professional and other associations, trade union members, human rights activists, participants in cultural and sports events. According to the Centre, citizens of Albanian ethnicity were exposed to frequent random raids; the police

applied the Arms and Ammunition Act in a discriminatory way, solely searching ethnic Albanians and their homes on suspicion of illegally possessing weapons. Following to the same source, the police took many of ethnic Albanians to police stations for questioning. The Centre alleges that in 1994 alone, there were 14,000 police interrogations of this kind, with summons mostly not served; even if they were, the reasons were not stated. The Centre has established that children were also questioned as witnesses or as the accused. The Centre alleges that the police employed brutal methods (HLC-B).

The problem of the parallel system of education in Kosovo and Metohija was ostensibly resolved by the agreement reached between the authorities in Serbia and the political representatives of the Kosovo Albanians, signed on 1 September 1996 with the mediation of *St. Egidio,* a Catholic humanitarian organisation. The government of Serbia was represented on that occasion by three high ranking officials and the Kosovo Albanians by three politicians close to the Democratic Alliance of Kosovo, which was considered, at the time, to be the strongest political party of the Kosovo Albanians. Without ever meeting, Slobodan Milošević, the then President of the Republic of Serbia, and Dr. Ibrahim Rugova, president of the Democratic Alliance of Kosovo, signed the agreement. It provided for a gradual return of the pupils and students of Albanian ethnicity to elementary and secondary schools and to the University, but many issues, the most difficult of which was that of the curricula, remained open. The implementation of the agreement was to be the responsibility of a parity group composed of three representatives of the government and of the Kosovo Albanians (Group 3+3), with the presence of the representatives of *St. Egidio*. No measures to implement the agreement were taken before March 1998.

The Government of the FR Yugoslavia considers that the members of national minorities, including the ethnic Albanians, "are guaranteed ... all civil, political, economic, social and cultural rights in the broadest sense, without limitations and discrimination", but that "some

of the members of the Albanian national minority do not want to exercise the mentioned rights and freedoms".[137]

1.4. The Situation in 1998

1.4.1. General deterioration of the situation. — The situation in Kosovo and Metohija started deteriorating rapidly in early 1998. The illegal KLA increased the number of its terrorist attacks against the police and the representatives of the authorities, as well as against other Kosovo Serbs and those ethnic Albanians whom it considered to be collaborating with the Serbian authorities.[138] At the end of February and the beginning of March, the police reacted by launching a large-scale operation in the region of Drenica. Almost 90 persons were killed in the attack in which heavy arms were used on the buildings which were allegedly the stronghold of the illegal KLA. Due to its indiscriminate nature this action triggered protests by non-governmental organisations in Yugoslavia and abroad.

Armed Albanians then shifted to large-scale armed operations and soon managed *de facto* to seize more than one third of the territory of Kosovo and Metohija. The forces of the Ministry of the Interior of Serbia (MIA) and the Army of Yugoslavia launched a broader offensive in the middle of May, with the aim to place under their control all the major settlements and to create a safety zone along the border with Albania, so as to cut off the supplies of the illegal KLA and the

137 Information on the Current Situation in Kosovo and Metohija and Efforts and Measures for Establishing a Meaningful Dialogue with the Political Representatives of the Albanian National Minority with a View to Reaching a Political Settlement, Belgrade, January 1999 (The FRY Info. 99). This text is intended for the Committee on the Elimination of Racial Discrimination (CERD).

138 The federal government has informed the Committee on the Elimination of Racial Discrimination (CERD) that terrorism in Kosovo and Metohija was financed by forcing the Kosovo Albanians who live abroad to pay contributions, by collecting these contributions through accounts that are advertised in the media and by income from smuggling and other criminal activities (The FRY Info. 99).

influx of new fighters, recruited mainly among Albanians abroad. The strongest attack lasted from July till September, and stopped only in the middle of October, after the signing of the agreement between the Yugoslav authorities and the various envoys of the international community.

Concurrently with the escalation of the armed conflict diplomatic activities intensified. Under the pressure of the international community, the President of the FRY, Slobodan Milošević, agreed to meet with one of the political leaders of the Kosovo Albanians, Ibrahim Rugova, President of the Democratic Alliance of Kosovo. It appeared that this meeting would also mark the beginning of negotiations on the settlement of the Kosovo crises; however, this never came true and clashes broke out again.

1.4.2. Referendum on foreign participation in the settlement of the Kosovo and Metohija problem. — The National Assembly of Serbia called for a referendum to decide on the participation of foreign mediators in the settlement of the Kosovo problem. The referendum was held on 23 April. According to official reports, there was a large turnout of citizens (73.05%): a huge majority (94.73%) was reported to be against any such participation of foreigners. Only 3.41% of the voters were in favour of accepting international mediation or good offices.

The official results gave rise to serious suspicions that, in the absence of real control, the ballot had been adjusted to the needs of the parties which had advocated the referendum (SPS, JUL, SRS, and SPO). Thus, in the Peć municipality, the official number of citizens who turned out at the referendum was 130,000, and the vast majority of them allegedly voted following the recommendations of the ruling parties, i.e. against the participation of foreign mediators. This means that at least 100,000 ethnic Albanians in this municipality turned out at the referendum and voted as the government had desired. This is very unlikely.[139] According to the official results, several hundred

139 *Naša borba*, 29 April 1998, p. 2.

thousand Albanians in Kosovo voted against international mediation. The government also gave the number of voters who turned out at the referendum in Belgrade as being 50 percent higher than in the parliamentary elections in September 1997. All the political parties campaigning for participation at the April 1998 referendum were also involved in the 1997 elections; the huge increase in the number of voters in 1998 appears therefore highly unlikely.

1.4.3. The role of international organisations and foreign countries. — Despite the outcome of the referendum, almost all major international organisations tried to contribute in the course of 1998 to the settlement of the problem in Kosovo and to mediate between the sides in the conflict.

The Contact Group for the former Yugoslavia, which is composed of the representatives of the USA, United Kingdom, France, Germany, Italy and Russia, met as early as 9 March and requested the UN Security Council to impose an embargo on arms deliveries to the FR Yugoslavia, to ban the export of material which could be used for police repression or terrorism, to prevent the issue of visas to Yugoslav and Serbian officials responsible for the violence and to cancel trade and investment loans for Serbia. Russia refused to support some of these demands. At its next meeting, at the end of April, the Groups members threatened to freeze the assets belonging to the governments of the FRY and the Republic of Serbia. This threat was fulfilled on 9 May, however, without the participation of Russia.

On 7 May the European Union decided to freeze the assets belonging to the FRY and Serbia. The respective decision was confirmed on 22 June.

On 31 March the Security Council adopted its Resolution 1060, prohibiting arm deliveries to the FRY. In its Resolution 1119 of 23 September, the Security Council condemned the violence in Kosovo and Metohija. Referring to Chapter VII of the UN Charter, which relates to threats to peace and security, it called upon the parties in the conflict to end their hostilities and upon the representatives of the FRY and the political leaders of the Kosovo Albanians to immediately start

a meaningful dialogue. The President of the FRY was requested by the Council to fulfil the promises he had made on 16 June to the President of the Russian Federation Boris Yeltsin. In their joint declaration, both heads of state had agreed that the FRY would not carry out any armed actions against the civilian population, that it would facilitate the return of refugees and guarantee the representatives of the UN High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross free access to Kosovo and Metohija.

Relying on the Security Councils decision, the North Atlantic Treaty Organisation (NATO) took a tougher stand towards the FRY. As early as 11 June, the NATO member countries defence ministers instructed NATO military commanders, to make preparations for possible armed operations against the FRY. In order to intensify the threat NATO held military manoeuvres in Macedonia. In June, at the height of the government forces offensive in Kosovo and Metohija, NATO issued an activation order to its armed forces. The FRY was threatened with air strikes if it should fail to withdraw all the military and police units from Kosovo which had not been stationed there before the outbreak of the conflict. This term was later extended by another 10 days.

Under this pressure and in the grim atmosphere caused by the threat of military intervention a meeting was held between the Yugoslav president Milošević and Ambassador Richard Holbrooke, the U.S. diplomat who had brokered the Dayton peace accord for Bosnia and Herzegovina. The exact content of the discussions is unknown but they ended with the announcement of an agreement on the conditions under which the threats of armed sanctions were to be withdrawn and the peace process in Kosovo and Metohija was to begin. On the basis of that arrangement, which was made known to the public by the government of the Republic of Serbia on 13 October,[140] two international agreements were made. One was signed by the representatives of the OSCE and the FRY Minister of Foreign Affairs, and the second by

140 *Politika*, 14 October 1998, p. 1, 14.

the commander of NATO forces in Europe and the Chief of the General Staff of the Yugoslav Army. Respect for the truce in Kosovo was to be supervised by 2,000 OSCE observers; no more than 800 of the latter arrived by the end of 1998. According to the military agreement, unarmed NATO aircraft were entitled to fly above the territory of Kosovo and Metohija in order to control the extent to which the FRY was fulfilling the obligations it had undertaken. On 27 October NATO announced that it had desisted from intervention.

After some hesitation, the police and military units started withdrawing from Kosovo; however, the area they had abandoned was gradually taken over by the forces of the illegal KLA.

Approving the Milošević-Holbrooke agreement the Government of the Republic of Serbia promised on 13 October to grant amnesty to the perpetrators of all the criminal offences related to the conflict in Kosovo, except crimes against humanity and international law defined in Chapter XVI of the Penal Code of the FRY (*Politika*, 14 October, 1998, p. 14). No decision on amnesty was adopted in 1998.

1.4.4. Political negotiations between the representatives of the governments of Serbia and Yugoslavia and the representatives of the Albanians and other ethnic groups from Kosovo and Metohija. — No negotiations had started between the representatives of the Kosovo Albanians and the Yugoslav and Serbian authorities by the end of the year. On several occasions, the government of Serbia sent its negotiating team to Priština and published eighteen invitations for a dialogue, but the only ones who accepted to come were the representatives of other, non-Albanian ethnic communities. At one of these meetings on 2 November, the participants adopted a Joint Draft Agreement on the Political Framework for Self-Government in Kosovo and Metohija, which represents the plan of the Serbian government for the administration of Kosovo and Metohija on the basis of the consensus of all ethnic groups.[141]

141 The Joint Draft was signed by the delegates of the People's Party of Kosovo, the Kosovo Democratic Initiative, the National Community of the Turks, the National

The political leaders of the Kosovo Albanians did not accept this Draft. Nevertheless, on 25 November the signatories of the Draft and the representatives of the parties represented in the National Assembly of Serbia, adopted in Priština the Declaration on the Joint Draft Agreement on the Political Framework for Self-Government in Kosovo and Metohija.

Three days later, the National Assembly formed an Interim Executive Council of Kosovo and Metohija, composed of 17 members. The political representatives of the Kosovo Albanians did not recognise the Council and rejected the invitation to sign the mentioned agreement.

1.4.5. Violations of human rights and humanitarian law. — The clashes in Kosovo brought about a further deterioration in the human rights situation in the Province and of the conditions in which its multinational population were living.

Many persons abandoned their homes to escape danger. The number of displaced persons cannot be established accurately. According to the reports of the Humanitarian Law Center, about 300,000 persons were forced to leave their homes and seek shelter in other parts of Kosovo and Serbia, in Montenegro, Albania, Macedonia and Bosnia and Herzegovina. The Council for the Defence of Human Rights and Freedoms of Kosovo, composed of ethnic Albanians, claims that by November there were 545,000 refugees and displaced persons of Albanian ethnicity. According to the same source, 465,000 of them were still in Kosovo and Metohija while about 80,000 had taken refuge in Montenegro,[142] Albania, Macedonia and Bosnia and Herzegovina. At

Community of the Gorani, the National Community of the Moslems, the National Community of the Roma, the National Community of the Egyptians, the Socialist Party of Serbia and the Yugoslav Left. Prior to this, the President of the Republic of Serbia, Milan Milutinović, consulted the representatives of the SPO, the New Democracy and the Alliance of Vojvodina Hungarians (The FRY Info. 99). The text of the Draft was published in the supplement to *Politika,* 21 November 1998.

142 The government of Montenegro closed the border with Kosovo and Metohija on September 11, and prohibited further entry of refugees. Two days later, 3,200 refugees who had already arrived in that republic were expelled to Albania.

one time, representatives of international humanitarian organisations reported that the number of displaced persons was close to 240,000, with 65,000 of them outside the FRY. At one point, about 80,000 persons were living out in the open. After the Milošević-Holbrooke agreement and the withdrawal of the police and military forces, almost all displaced persons returned to their homes. However, the UNHCR reported at the end of November that there were still 175,000 displaced persons in Kosovo and Metohija. Representatives of the Serbian authorities claimed all the while that these figures were exaggerated.

Many lives were lost in the armed operations and terrorist acts. According to the independent BETA news agency, about 2,300 persons from all ethnic groups were killed by 19 December 1998. The Priština Council for the Defence of Human Rights and Freedoms claims that the number of ethnic Albanians killed in 1998 was 1,795. The Humanitarian Law Center has registered 27 cases of killings of Serbs and Montenegrin civilians (HLC-8).

Terrorist acts attributed to the illegal KLA also multiplied. According to the data of the Priština Media Centre, close to the Serbian government, there were 1,854 terrorist attacks carried out in the course of 1998: 284 persons were killed and 556 wounded. The casualties included 11 killed policemen and 169 civilians; while 399 policemen and 157 civilians were wounded. The Federal Government informed the Committee on the Elimination of Racial Discrimination that the Kosovo Albanians carried out 1,884 terrorist acts in 1998, killing 288 persons and wounding 561 (The FRY Info. 99).

Both sides claim that they discovered mass graves of persons executed by the other party in the conflict. The most striking example of this was the information issued by the state authorities about the discovery of the bodies of the victims of the illegal KLA near Glodjane and Klečka[143] and the claims by the "KLA" that the Serbian police

143 34 bodies were found near Glodjani on 8 August; they were still unidentified by the beginning of 1999. In the village of Klečka, on 27 August, the police discovered a crematorium in a lime pit; the federal government claims that 22 kidnapped Serbian civilians were cremated there and that two arrested terrorists confirmed this (The FRY Info 99).

executed without trial a large number of ethnic Albanians burying them in an unmarked grave in Orahovac (HRW). No light has yet been shed on these charges. After lengthy hesitation, the Yugoslav government allowed a team of Finnish forensic experts access to Kosovo; however, they did not complete their assignment and left Yugoslavia temporarily, complaining about the lack of co-operation by the state authorities.

The terrorist attacks were also been related to abductions and the taking of hostages. According to the Priština Media Centre, the terrorists kidnapped 290 civilians, among whom 31 were killed, 108 were set free, 9 escaped while the fate of the remaining 142 is still unknown. The illegal KLA abducted 14 policemen: 3 of them were killed, 3 were released, while the fate of the remaining eight remained unknown. The data of the federal government is similar: they claim that in 1998, the Albanian terrorists kidnapped 292 in total, among whom 173 were Serbs and Montenegrins, 100 Albanians, 14 Roma, one Macedonian national, one Moslem, one Bulgarian and two persons of other nationalities. The FRY government alleged that 31 kidnapped persons had been killed, 110 released, 9 escaped and that the destiny of 142 persons was unknown (The FRY Info. 99). International non-governmental organisations ascribe between 100 and 300 kidnappings of Serbs, Roma and ethnic Albanians to the illegal KLA. Thirty of these persons are known for certain to have been seen in the "KLA" prisons. The illegal KLA kidnapped 4 Serbian journalists, only two of whom were subsequently set free. According to the HLC reports, there is reason to believe that about 100 kidnapped Serbs and Montenegrins have been killed. The members of the so-called KLA also killed several dozen ethnic Albanians, working in the state services.

Many residents of Kosovo have been reported as missing. According to the BETA news agency, the number of missing persons has risen to above 1,600. According to the Council for the Defence of Human Rights and Freedoms, 750 ethnic Albanians and "11 families with an unidentified number of members" disappeared after March 6. Fifty-two persons of Serbian ethnicity and about 50 persons of Albanian ethnicity disappeared after the fighting around Orahovac alone,

between 17 and 22 July. The HLC has established that, by the end of July, no information was available as to the whereabouts of the 47 arrested ethnic Albanians, that 22 had disappeared under unidentified circumstances, and that at least 50 ethnic Albanians disappeared after the clashes in Orahovac; the disappearance of 3 ethnic Albanians was related by the Centre to the illegal KLA. According to the same source, the fate of the 42 persons of Serb and Montenegrin ethnicity who had undoubtedly been kidnapped by the illegal KLA, as well as that of the 54 Serbs and Montenegrins, 8 Roma and one Moslem, who had disappeared under unidentified circumstances, remained uncertain (HLC-8).

The Kosovo Albanians were most frequently arrested and sentenced on charges of criminal offences relating to terrorism. According to the announcement of the government of Serbia of 4 October, 1,242 Kosovo Albanians were sentenced for terrorist acts; among them 684 were imprisoned. The familiar complaints made by non-governmental organisations in the past in relation to the treatment during detention and imprisonment were repeated in 1998. They claimed that the courts in Kosovo had used testimonies given under duress and that the suspects had been deprived of defence counsel.

Around eighty judgements were pronounced in the municipal courts in the course of 1998, in which ethnic Albanians were sentenced to prison for acts of terrorism or conspiracy to perform hostile activities. According to the Kosovo Council for the Defence of Human Rights and Freedoms the courts in Kosovo sentenced 77 ethnic Albanians that year.[144]

Non-governmental organisations consider that the occasional trials before "courts martial" of the illegal KLA do not meet the basic requirements of fair trial. Delegates of the International Committee of the Red Cross (ICRC) and members of the families of the abducted persons were not allowed to attend the trials of the two kidnapped journalists of the TANJUG state news agency, who were released on

144 Website of the Council for the Defence of Human Rights and Freedoms — Priština (http://www.albanian.com/kmdlnj), December 1998.

27 November, after more than a month of detention (HRW, 8 December 1998).

International humanitarian organisations could not perform their mission successfully in Kosovo and Metohija because of risks involved and obstruction by both sides. The ICRC complained of having been refused access the makeshift prisons, where the illegal KLA held the kidnapped and arrested persons. Three representatives of humanitarian organisations were killed in August as they were trying to supply food to the victims of the conflict. Both sides accused representatives of the humanitarian organisations, both inter-governmental and non-governmental, of bias and even espionage.

1.4.6. Implementation of the agreement on schools and the education system. — The Parity Commission for the implementation of the Milošević-Rugova agreement on the return of the ethnic Albanians to the schools in Kosovo and Metohija (3+3) reached an agreement on 23 March. By 30 June, ethnic Albanian students and professors were to enter some of the buildings of the University in Priština, and by 30 September, they were to obtain access to the libraries, dormitories and other university facilities. It had also been agreed that by 30 April, all Albanian pupils of elementary and secondary schools should return to the premises of such schools in Kosovo and Metohija. The new agreement did not resolve the conflict regarding the curricula. The Serbian Minister of Education stated on 2 May that the students would have to leave the university buildings if they did not agree to work in accordance with the laws and the educational programme of the Republic of Serbia.[145]

On 31 March the same government member handed the keys to building of the Institute of Albanology, which had been dissolved, to its former director, an ethnic Albanian. Also, on 15 May, he delivered to the representative of *St. Egidio* a copy of the decision to remove the Serb and Montenegrin students from the building of the Priština

145 *Naša borba*, 27 May 1998, p. 3.

Faculty of Engineering. However, the Chancellor of the University in Priština, supported by a large number of Serb and Montenegrin students, refused to abide by the agreement to hand over the university buildings. The Serb and Montenegrin teachers and students protested together with their co-nationals from the Province, and in the middle of May a group of students barricaded themselves inside the building of the Faculty of Engineering. The police evicted them on 17 May. Since then this building has been open and students of several university faculties have been attending lectures there. However, the agreement has not been implemented in other schools. Albanian secondary school pupils have returned only to the high school in Podujevo.

2. The Position of Refugees

2.1. The Nature of the Refugee Population

The Commissariat for Refugees of Serbia and Montenegro and the UNHCR carried out a census in May 1996 involving refugees and war victims staying in the territory of the FRY. It showed that there were 646,066 war victims in the FRY, among them 566,275 refugees who had that status in accordance with the international law, as well as 79,791 persons without that status. There are 537,937 refugees in Serbia, and 79,791 other war victims, which makes a total of 617,728 persons affected by war or 95,6% of their total number in the FRY. In Montenegro, there are 28,338 such persons or 4.4% of the total number. Of all the registered war victims and refugees in Serbia, 259,719 or 42% are accommodated in Vojvodina, 170,955 or 27% in Belgrade, 166,875 or 27% in central Serbia excluding Belgrade, and 20,179 or 3.3% in Kosovo and Metohija.

According to recent official data[146], the total number of refugees in the FRY is 725,526, 705,677 of whom are accommodated in

146 The source was the Internet page of the Yugoslav government, address http://www.gov.yu.

Serbia (271,731 in Vojvodina, 419,039 in central Serbia, 14,914 in Kosovo and Metohija) and 19,849 in Montenegro.[147]

According to the census of 1996, 44.4% of those who have fled to the FR Yugoslavia came from Bosnia and Herzegovina (35,3% from the territory of the Moslem-Croat Federation and 9.1% from the *Republika Srpska*). The number of refugees and war victims who came from Croatia was 336,999: 284,007 (44%) of them were from the former UN zones, i.e. from the areas where Serbs constituted the majority population, and 52,922 (8.2%) from other parts of Croatia.

It has been estimated that the number of war victims is larger than the one quoted, considering that not all of them responded the call to participate in the census.[148]

The age of the majority of the refugees was between 19 and 44 (40%). Children (younger than 18) accounted for 27%, and adults aged 45 to 64 for 13%.[149]

The majority of the refugees (54%) have been housed in their relatives' and friends' homes, while 20% found accommodation on their own. Only 5% were owners of residential facilities in the territory of the FRY. The number of the refugees placed in collective shelters has not been reported by the FRY government, but it is estimated that they account for about 20% of the whole number. The government claims that about 57,000 refugees live exclusively on humanitarian aid.

Some 20% or 113,000 refugees suffer from health and mental disorders. Of this number, 10% persons suffer from chronic diseases. The number of registered refugee children is 143,000 (26.6% of the total number). Among them are 683 children who have lost both

147 The difference between the figures of 1996 and 1998 was not the consequence of a subsequent influx of refugees and war victims, although there have been such cases as well, but of a difference between the methodology of registration of the persons applied by the government of the FRY in collaboration with the UNHCR, and the methodology applied without the participation of the UNHCR; the latter is presented on the Internet.

148 The FRY government has estimated that the total number of refugees should be increased by roughly another 20%, to include persons who have not responded.

149 Data of the FRY government on the Internet.

parents in the war, and 6,915 children who lost one parent. A quarter of the children are below the age of 7.

A characteristic feature of the refugee population in the FRY is that it has a more advantageous educational structure than the local population. The share of persons in the refugee population, above the age of fifteen, who have completed secondary school education is 46.7% (Serbia 32.0%), and of those with secondary school and university degrees qualifications is 10.6% (Serbia 8.9%). Of all the refugees and war victims, women account for 52%, and men for 48%. In terms of their age structure, there is no significant difference between them and the local population. According to a survey conducted in 1996 by the Institute of Economics in Belgrade, a large number of the refugees had lived in villages or suburban settlements before the war; as refugees, 81% of them lived in cities, meaning that many of them have fundamentally changed their environment.[150]

According to the census, about two thirds of the refugees aged above fifteen (338,700) were unemployed. Of the 66,200 who have jobs, 22,400 are contractually employed and 43,800 have permanent jobs. The majority of them are employed in the private sector. Numerous war victims have found a livelihood in the "grey economy". According to the survey of the Institute of Economics, about 40% of the war victims are engaged in some kind of business, while 60% do not work at all. If the fact is considered that retired persons do not receive their pensions, it becomes quite clear that an enormous number of the refugees are not able to make their own living and depend on humanitarian aid.

At the time when the census was conducted, 63.5% of the war victims declared that they wanted to remain in the FRY, 18.4% did not declare themselves on their future country of residence, 8.3% were ready to accept voluntary repatriation, while 7.3% stated their intention to move abroad. Of the total 410,300 persons willing to stay in the FRY, 277,800 have found lodgings, while 212,300 are jobless.

150 Gordana Matković — Borka Vujnović, "Izbeglice i druga lica ugrožena ratom", *Jugoslovenski pregled* 2/1997.

2.2. The Legal Status of the Refugees

2.2.1. General. — The status of the refugees in the FRY is regulated by the 1951 Convention on the Status of Refugees[151], and the 1967 Protocol on the Status of Refugees[152], ratified by the former SFRY. However, following the influx of refugees, the Republic of Serbia adopted a special Refugee Act[153], which applied to the refugees from the territory of the former SFRY, while the Convention and the Protocol were applied to other refugees. The Republic of Montenegro also regulated the issue of refugees from other parts of the former SFRY by adopting a Decree on the Care for Displaced Persons[154], which treats all these persons are displaced persons, and not refugees. A Decree on Care for Refugees was also adopted in Serbia, and it was only after the Croatian army operation in Krajina in August 1995 (the "Storm" offensive), that a new Decree on the Manner of Providing for Expellees was adopted.[155] The purpose of the latter decree was to make a distinction among the refugees between those considered refugees under the Refugee Act, who had fled (from Croatia and Bosnia and Herzegovina) up to the moment of the adoption of the Decree, and those who had fled to the FRY after the Croat offensive, in August 1995. The latter were termed as "expellees". This distinction should also entail differences in terms of status: however, none have been noticed to date.

The Refugee Act of the Republic of Serbia, as well as the Decree on the Manner of Providing for Expellees, are not in conformity with the international obligations of the FRY and the constitutions of the FRY and Serbia.

2.2.2. The basic shortcomings of the Refugee Act

2.2.2.1. The inappropriate definition of refugees. — Art. 1 of the Refugee Act of Serbia, defines a refugee as follows: "Serbs

151 *Sl. list SFRJ*, Supplement, No. 7/60.
152 *Sl. list SFRJ*, Supplement, No. 15/67.
153 *Sl. glasnik RS*, No. 18/92.
154 *Sl. list RCG*, No. 3/92.
155 *Sl. glasnik RS*, No. 8/95.

and the citizens of other nationalities who have been forced, under pressure of the Croat authorities or authorities in other republics, (...), to leave their places of residence in these republics and flee to the territory of the Republic of Serbia (hereinafter referred to as refugees) ..."

This definition is not in conformity with the definition of the refugee in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees. The Convention (Art. 1, A-C) and the Protocol (Art. 1) define refugees in a very similar manner. According to them, refugees are persons who have fled from the country of their nationality and who have escaped to a country whose nationality they do not have, and do not wish to return to their country of origin because of a well founded fear of persecution.

The way in which the concept of a refugee was defined in the Refugee Act is also at variance with the Covenant on Civil and Political Rights (ICCPR). Art. 2 and 26 of the Covenant prohibit discrimination. This Covenant specifies that a signatory state is bound to guarantee "to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind ..." (Art. 2 ICCPR). Also, the Covenant prescribes that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law", and that any discrimination must be prohibited by the law, particularly discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Art. 26 ICCPR).

According to ICCPR, the enjoyment of the rights contained therein shall not depend on nationality, the jurisdiction of the authorities of a signatory state. This also includes all refugees. However, the Refugee Act in the territory of the FRY classifies the refugees in two groups: one consists of "Serbs and members of other nationalities" who have fled from the territory of the former SFRY republics, to whom both the Convention on the Status of Refugees and the Refugee

Act are applied, and who have been taken care of by the Commissariat for Refugees of Serbia; the other group includes all the other refugees who come to the territory of the FRY; they only benefit from the Convention, but not from Refugee Act, are not under the care of the Commissariat for Refugees, and are within the jurisdiction of the UN High Commissioner for Refugees (UNHCR). This distinction among the persons who are in the territory of a state and under its jurisdiction is contrary to the provisions of the ICCPR, which prohibits any discrimination, and it is also contrary to Art. 20 of the FRY Constitution and Art. 13 of the Constitution of Serbia, which also prohibit discrimination, specifying this in a language similar to the quoted part of the Covenant.

The relevant article of the Refugee Act is also contrary to the Convention on the Status of Refugees, its Art. 3 prohibits discrimination in the application of this Convention "as to race, religion or country of origin". Art. 1. of the Refugee Act makes an illegal distinction between the refugees from the territory of the former SFRY and all the other refugees in the FRY. It is evident that this is a distinction in respect of the country of origin, but it might also imply distinction as to race.

2.2.2.2. The obligation of refugees to serve in the army and to work. —The Refugee Act of the Republic of Serbia in Art. 2 and 18 para. 3 prescribes the obligation of military (and work) services for the refugees. Such provisions are not in conformity with the Constitution of the FRY, the Convention on the Status of Refugees, as well as with the Army of Yugoslavia Act.

Military service in the FRY has been regulated by the Constitution of the FRY and the Army of Yugoslavia Act. According to Art. 63 of the Constitution, "The defence of the Federal Republic of Yugoslavia is the right and duty of every citizen." The Constitution of the FRY in Art. 134 prescribes that the Army of Yugoslavia is made up of Yugoslav citizens, and that military service is performed in the

Army of Yugoslavia, with or without weapons, and by civilian service. Since military service is done in the Army of Yugoslavia, and the later consists of Yugoslav citizens only, this means that the obligation of military service binds only Yugoslav citizens. Despite the limitation so clearly defined in the Constitution and the Army of Yugoslavia Act, the Refugee Act of the Republic of Serbia in Art. 2, para. 2 prescribes the obligation of military service for refugees: "Refugees have the right to employment and schooling, in accordance with the law, and *are subject to the obligation of military and work service, respectively, under the same conditions as the citizens of the Republic of Serbia."*[156]

According to the definition of a refugee in the 1951 Convention, the refugees in the FRY cannot be Yugoslav citizens; conversely, Yugoslav citizens may not be considered as refugees in terms of the Convention. Yugoslav citizens may not obtain the status of refugees in Yugoslavia. Therefore, all those who have the status of refugees cannot in the same time be citizens of the FRY. Likewise, the citizens of the FRY, irrespective of the place from where they have escaped, may not have the status of refugees in their own country, the Federal Republic of Yugoslavia. In addition to this, the Convention in its Art. 1, para. 2A, explicitly specifies that only a person who for reasons given in greater detail, "is outside the country of his nationality" may be considered a refugee. It follows therefore, that refugees are not citizens of the country where they have found refuge. Accordingly, the refugees in the FRY cannot be its citizens and hence cannot be subject to military service. Under Art. 7, para. 1 of the Convention, every country that shelters refugees shall apply to them the regime applied to "aliens generally".

Military service might be considered only if the citizens that are driven out of the territories of the former republics of the SFRY were granted the FRY nationality. But even if the view were to be adopted that they have already acquired Yugoslav nationality and that they may have the obligations deriving from nationality, including military serv-

156 Italics added.

ice, then the term "refugee" would be completely inappropriate, and there would be no reason to apply to them the Convention on the Status of Refugees; they would not be entitled to UNCHR aid and assistance. Namely, in that case they would not be refugees in accordance with the Convention, and refugee status under the Convention is the basis for involving the UNHCR. However, refugees are still not citizens of the FRY, and they do not have the rights and obligations deriving from nationality; they are refugees, subject to the Convention on the Status of Refugees, as can be seen from Art. 6, para. 2 of the Refugee Act, where the legislator refers to the international treaties ratified by Yugoslavia: "In accordance with the provisions of the international conventions ratified by Yugoslavia, which regulate the status and the rights of refugees, ...". Every uncertainty has ceased with the adoption of the Yugoslav Nationality Act, which prescribes the procedure for refugees to obtain Yugoslav nationality. Any possibility of refugees having the obligations that only citizens of the country have, such as duty to perform military service, must be excluded, as long as they have not acquired Yugoslav nationality in accordance with the provisions of the Nationality Act.

2.3. The Fate of Refugees

The destiny of the refugees in the FRY since its establishment in 1992 has been described in the reports by non-governmental organisations. The main difficulties the refugees faced up to 1998 were the following:

2.3.1. Mobilisation of the refugees in the spring and summer of 1995. — The first mobilisation of the refugees was carried out in January 1994, when two to three thousand Serbian refugees, who were accommodated in Vojvodina, were sent to the *Republika Srpska*, escorted by the officers of the Army of Yugoslavia. There they served as "volunteers" in the army of the Bosnian Serbs for periods of four weeks. In May and June 1995, at the request of the Bosnian Serb authorities and the authorities of the

so-called Republic of Serbian Krajina, the police rounded up around 4000 refugees in Serbia and handed them to the armies of the Bosnian and Krajina Serbs. A real *razzia* was carried out on that occasion: the refugees were arrested in buses, in the streets, and even at proms, and were taken to special collective centres whence they were sent to the *Republika Srpska* and Krajina. Several refugees were seriously injured as they attempted to escape, one of them was severely wounded by machine gun fire in the collective centre in Sremska Mitrovica. Members of the military police of the armed forces of the Bosnian and Krajina Serbs occasionally took part in organising these mobilisations on the territory of the Republic of Serbia.

The most massive mobilisation of refugees was carried out in August 1995, after the fall of Knin, when at least 150,000 refugees came to Serbia. NGO reports allege that the police of Serbia broke into collective shelters and took men away in large groups, most often first to training centres in Slavonia and then to Bosnia, or directly there. According to the testimonies of some of the mobilised, they were mistreated and humiliated in those centres.

It was in April 1998, for the first time, that a Yugoslav court pronounced a judgement in which it referred to an international treaty on human rights. The First Municipal Court in Belgrade found that Serbia had violated the Convention on the Status of Refugees by mobilising Serb refugees from Croatia in the course of 1995 and by sending them to Croatia and Bosnia and Herzegovina, where they were exposed to torture and imprisonment. The court ordered compensation to be paid by the state of Serbia. The Serbian authorities filed an appeal against the judgement.

2.3.2. Denial of asylum. — NGOs have alleged that Serbia had refused to receive refugees on several occasions, in violation of the international obligations of the FRY. In January and February 1993 Moslem refugees from Trebinje were turned away at the border; they later went to Denmark, via Montenegro. In May 1995, the authorities in Serbia refused to admit refugees from

Western Slavonia, who were then escorted by the Serbian police and lodged in Eastern Slavonia. According to a report of the Humanitarian Law Center, following the fall of the Knin Krajina, thousands of Krajina Serbs were sent to the army of the Bosnian Serbs straight from the border.

On several occasions the authorities of Serbia and Montenegro deported refugees of Moslem nationality from Bosnia to the *Republika Srpska*. A large number of Moslem refugees came to Montenegro (according to the 1996 census there were still 1800 of them — mainly to municipalities with a majority Moslem population). The Montenegrin authorities soon started arresting them and expelling many of them to the *Republika Srpska*. According to the reports by Montenegrin NGOs, in May and June 1992 alone, Montenegrin police arrested and handed over about 200 Moslem refugees to the army and the police of the Bosnian Serbs. There were also Serbs among the deported refugees. According to a noted Montenegrin journalist[157], the detained refugees were tortured; one of them, Muhamed Pilipović, attempted to save himself by jumping from the window of the Security Centre in Herceg Novi. The same author considers that the majority of the deported Moslems were later executed in the *Republika Srpska*. In April 1994 the Minister of the Interior of Montenegro Nikola Pejaković confirmed in his reply to the question of an deputy that 82 persons, mainly from Foča (Bosnia and Herzegovina), had been surrendered to the Bosnian Serbs in May 1992, allegedly because of indications that they had committed crimes. The Ministry of the Interior of Montenegro made public a list of the deported persons which, also included Serbs.

The Humanitarian Law Center also reported on the cases of deportation of Moslem refugees from Serbia to the *Republika Srpska*. In June and August 1995, about 2000 Moslem refugees from Žepa crossed the border at the Drina. According to the Sandžak Board for the Protection of Human Rights, on whose data the Centre relied, about one hundred and eighty men disappeared trying to enter Serbia. Ac-

157 Šeki Radončić, *Crna kutija. Policijska tortura u Crnoj Gori, 1992–1996* , Podgorica 1996, p. 13.

cording to the same sources, the Army of Yugoslavia arrested more than 50 refugees in the border area and handed them over to the military authorities in Višegrad (*Republika Srpska*). The police of Serbia arrested at least 200 Moslems from Bijeljina, who had tried to enter Serbia illegally. Some of them were handed over to the *Republika Srpska* authorities immediately, while others were sentenced on charges of illegally crossing the border.

Refugees have been punished for illegally crossing the border, which has discouraged them from coming to Serbia. Thus, during the offensive of the Croat army and the army of the Bosnian Moslems in central and western Bosnia (August — September 1995), more than 100,000 Serb civilians fled from the region affected by the war operations. With the exception of about twenty women and children who crossed over into Serbia on 18 September 1995, the others were not allowed to approach the border. Representatives of the Commissariat for Refugees of Serbia told them publicly that "they should stay there were it is better for them".

2.3.3. Deportation. — The FRY government considers that the only acceptable long-term solution for the majority of refugees (some 60%) is local integration, i.e. settlement in the FRY. Among them are younger persons, who have already found a job or who are studying. 50,000 expressed the wish to emigrate to third countries, slightly more than 9,000 of whom did so between 1992 and 1998 with the assistance of the UNHCR and the IOM.[158]

The return of the refugees to the countries of their origin has been very slow, although it seems that in the course of 1998 it was slightly accelerated. According to the assessment of the Belgrade office of the Serbian Democratic Forum, about 35,000 Serbs returned to Croatia by the middle of 1998. Only 1,115 refugees were repatriated from 1992 until the end of 1997, under the auspices of the UNHCR. The Croatian authorities have used various legal and factual means to slow down the process of repatriation or to render it impossible.

158 Data of the government of the FRY on the Internet.

2.3.4. Integration. — The integration of refugees in the FRY has also been very slow due to numerous status-related difficulties. Since current Yugoslav law allows dual nationality only in exceptional cases, the refugees are requested to relinquish other nationality if they want to apply for Yugoslav citizenship. Because of this a comparatively few refugees have filed requests for registration as Yugoslav citizens (according to the Helsinki Committee for Human Rights in Serbia, about 30,000 by the beginning of 1998). Refugees from Croatia who do not possess documents of that country and cannot obtain Yugoslav passports, have had their freedom of movement seriously reduced.

Under the new federal Yugoslav Nationality Act[159], citizens of the FRY are considered to be citizens of the former SFRY who had the citizenship of the republics of Serbia and Montenegro at the time of promulgation of the Constitution of the FRY (27 April 1992) and their children born after that date.

The institution of *admission* into Yugoslav nationality was intended for refugees. To be admitted, applicants must provide evidence that they were forced to flee from the territory of some of the other republics of the former SFRY (therefore, they do not have to have their refugee status recognised by the Commissariat: it suffices that they are *de facto* refugees, even if they have never applied for that status or have never obtained it). Applicants must declare that they have no other nationality, i.e. to declare that they have relinquished it. Applications for children are filed by one of the parents (it must be assumed that a child's guardian will have the same authorisation in practice), and if the child is older than 14 his/her approval is also required.

Official data about the number of the refugees who have applied to be admitted to Yugoslav citizenship in this manner are not accessible. Data about the number of persons whose applications were favourably considered or rejected in the course of 1998 are not accessible either. According to the data collected from the refugees, the relevant Yugoslav authority, the Federal Ministry of the Interior, has been very

159 *Sl. list SRJ*, No. 33/96.

slow in deciding on the applications: the procedure may last longer than a year. However, over the past few months, it has been noted that representatives of the Ministry have visited the refugees who had applied, trying to ascertain the accuracy of their statements. This gives reason to expect that the procedure might be speeded up. The impression is that the refugees who are accepted are those who have in the meantime succeeded in obtaining their ID cards and acquired property in the FRY.[160] There is less and less public debate on the problem of the refugees' nationality. Refugees who have submitted their applications, expect to get an affirmative answer. Those who have not done so, hope that they would be able to return to Croatia or Bosnia. Conversations with the refugees point to the fact that the dual nationality seems to be the best solution for all of them, considering that they believe that in that case they would be able to effectively protect their property, which has remained in the places from where they have fled, and that it would be easier for them to decide on their integration or repatriation.

Humanitarian aid has been diminishing from year to year[161], and the survival of many of refugees depends on that aid. Although the refugees are mainly equated with the local population in respect of their right to work, enjoying that right is even more difficult for them than it is for the citizens of the FRY. Most refugees who have jobs are not registered as employed or are hired to work in the grey economy, meaning that they have no health or retirement insurance. As the system of health care in Serbia has actually broken down, the majority of health services charge fees, which places the refugees in a particularly difficult situation.[162]

160 They are, most frequently, persons who arrived to the FRY in the course of the first years of the war and who were, therefore, in the position to obtain an ID card, passport, etc., due to the lack of instructions to the contrary. Later, the practice of issuing personal documents to the refugees has been more restrictive.

161 In 1996 UNHCR earmarked 46 million US dollars for that purpose, and in 1998, it hoped to raise 35 million.

162 According to the Association for the Aid to Refugees and Expellees in the FRY, the director of the Military Medical Academy (Central Military Hospital) ordered on 10 August 1998 that refugees be denied treatment in this institution due to unsettled bills (*Danas*, 29–30 August 1998).

Representatives of women's organisations in Serbia have cautioned that women refugees are at greater risk than others in the enjoyment of their rights, due to the double disadvantage of being women and being refugees. In addition to other troubles, they have also been exposed to sexual abuse, particularly by persons who are in the position to take advantage of them (employers, landlords, etc.).

2.4. The Crisis in Kosovo and Metohija and the Problem of Displaced Persons

The clashes in Kosovo and Metohija in 1998 led to a new deterioration of the status of the refugees in the FRY and propelled another large movement of the population in Kosovo and Metohija, as well as the emergence of new categories of displaced persons and refugees. According to the data provided by various NGOs in Kosovo and Metohija, as well as to assessments by international humanitarian organisations, the number of persons who were compelled to seek shelter outside their homes for a shorter or longer period of time exceeded 300,000. The majority of them escaped to the parts of Kosovo and Metohija which were not affected by the clashes or to the mountains and the woods outside the zone of combat (about 25,000), while some found refuge in Montenegro (at one point almost 40,000). At least 2000 inhabitants of Kosovo and Metohija fled to Serbia, according to unofficial data. All of them have the status of displaced persons. Some fled to third countries. It is assumed that in Bosnia and Herzegovina there are more than 10,000 ethnic Albanians (according to some estimates, it is believed that the premises of the Coca Cola plant in Sarajevo alone house 10,000, and that there are up to 20,000 in the whole of Bosnia and Herzegovina). About 20,000 have fled to Albania, and several thousand have found refuge in Slovenia, Hungary, Germany and other countries.

The group of 3,000 Albanian refugees from Kosovo and Metohija who had gone to Montenegro at the beginning of September 1998

was expelled to Albania, regardless of the appeals made by international humanitarian organisations. Montenegrin authorities claimed that there was a group of several hundred armed men among the refugees.

The majority of the displaced persons started returning to their homes during the last two months of 1998. The factors that contributed to this were bad weather and the lessening of tension after the agreement between the President of the FRY Slobodan Milošević and the U.S. envoy Richard Holbrooke had been signed. The main reason for the relatively slow return of the displaced persons has been their feeling of uncertainty and concern about personal safety. Their return is frequently impossible because some villages in Kosovo and Metohija have been partly or completely destroyed. The absence of a definite political settlement, as well as frequent sporadic clashes and incidents with casualties, have also discouraged the displaced persons from returning to their homes.

3. The Media

3.1. Developments before 1998

Since the beginning of political pluralism in Serbia and Montenegro (1990) the Socialist Party of Serbia (SPS), as the former League of Communists of Serbia was renamed, has endeavoured to keep the state and "socially-owned" media under its firm control and to prevent the establishment of private media. The SPS, together with its Montenegrin political allies at the federal level, has kept up its efforts to limit and prevent the operation of all independent media.[163] As far as legal

163 The term "independent media" is not quite accurate, but is widespread in Yugoslavia. It has been used to denote the media, both in private and communal ownership, that maintain a critical attitude towards the authorities and rely on all sources of information.

regulations are concerned, the most serious setback for media freedoms came with the adoption of a new Public Information Act of the Republic of Serbia, on 20 October 1998.

As early as 1991, the government of Serbia took over some of the media which were free from its control by contesting their ownership transformation.[164]

The authorities further reinforced the control they already had had over the electronic media by their centralisation and by dismissal of "disloyal" journalists, both of which had started as early as July 1990. At that time, the government ("Executive Council") of Vojvodina, a Serbian autonomous province, relieved all editors and directors of TV Novi Sad of their duties and appointed "reliable" persons in their place. At the same time, emergency measures were introduced in RTV Priština (Kosovo and Metohija). About 1,300 ethnic Albanian journalists and technicians were fired, and the programming, technical and financial independence of the station was abolished.

The Radio and Television Act of 1991 (*Sl. glasnik RS*, No. 48/91) abolished the regional public broadcasting companies in Novi Sad and Priština and merged them in the newly-founded, centralised public company, Radio Television Serbia, which became the owner of all the relays, transmitters and other technical equipment. The RTS and its editorial policies are under the firm control of the Serbian government.

A purge of large numbers of journalists took place in early 1993 pursuant to a decision of the director of RTS. A total of 1, 054

164 That year, the People's Assembly of the Republic of Serbia passed the Act on the Requirements for Transforming Social into Other Kinds of Ownership, which mandated the re-examination of all acts of privatisation of "socially-owned" enterprises carried out until then. The companies whose privatisation was disputed were to be returned to the state. Thus, in late 1994, the federal authorities took over the renowned independent daily *Borba*. At the end of December 1994, at the request of the authorities in Belgrade (SPS), the privatisation of *Studio B,* the only independent TV station at the time, was annulled. The newspaper *Svetlost* in Kragujevac and *Radio Smederevo* were taken over in a similar way in 1995 and 1996, and were placed under the control of the SPS dominated municipal authorities.

employees were sent on a "compulsory leave", including some the most distinguished people in the profession. Later, many of them lost their jobs. The courts frequently ruled that the dismissed RTS journalists and other employees should be reinstated (similar rulings were given in regard to the dismissals in the renowned daily *Politika*) However, their decisions have been ignored. Some lawsuits are still pending.

Local radio stations in Serbia and Montenegro had operated as "socially-owned" companies until 1991 and 1993, respectively, when they were transformed into public companies founded by municipal assemblies. This reinforced the control of the municipal authorities over their editorial policies. After the Serbian opposition had won local elections in a number of cities in November 1996, several local stations were immediately incorporated into RTS by the decisions of their managing boards, before the new, opposition-controlled, municipal authorities could be constituted. This way, Radio Novi Pazar, Radio Kikinda and TV Kragujevac became parts of RTS. However, some local radio and TV stations remained under control of the new municipal authorities. These stations, together with a number of private stations, joined to form the Association of Independent Electronic Media (ANEM) in the course of 1997 and 1998.

In order to preserve their media monopoly, the authorities have been selective in awarding radio and television frequencies. Although the FRY Constitution provides that power to award the frequencies belongs exclusively to the federal state, in practice they have been being awarded by the republics. In Serbia, the frequencies are awarded by a government commission, on the basis of a public competition. Since the decision to establish the commission was not made public, it is not known who are its members and what standards it applies when allocating the frequencies.[165]

So far the Serbian government has announced two competitions for the allotment of frequencies (1992 and 1994), although the republic law mandates that this has to be done once a year. The competitions

165 See I.4.8.2.

were announced only for local frequencies, and licences have been awarded to twenty-one radio stations (eleven privately owned) and twelve TV stations (four privately owned). The private stations that were awarded the frequencies almost exclusively broadcast entertainment programmes. Not a single frequency for the territory of Kosovo and Metohija has been offered at the competitions.[166]

3.2. The Situation in 1998 — Difficulties Experienced by the Independent Media

In February 1998 the Federal Ministry of Telecommunications announced that it would award licences for the use of frequencies. In May it came up with a list of 174 radio and 74 television stations which were awarded one and two-year licences, respectively. Again, most of the stations that were awarded licences did not broadcast news programmes. About two hundred radio and TV stations remained without a licence, among them all members of ANEM, except the Belgrade Radio B-92[167] and TV Pančevo. In total, several hundred radio and television stations in Serbia (according to some sources, about 400) broadcast their programmes without any licences.

166 At the beginning of June 1997 the Federal Ministry of Telecommunications prohibited further broadcasting to all electronic media which did not have licences for operation. In the course of that and the following month, 77 radio and TV stations stopped broadcasting. Most of them operated in the opposition-controlled municipalities. This government action was arbitrary. Some of the stations were issued with a ban on further operation, while others continued broadcasting. On the eve of the September 1997 parliamentary elections, the authorities desisted from closing private electronic media, only to resume with it in the summer of 1998. On 19 August 1998, inspectors escorted by police broke into *Radio-City* in Niš, which had not obtained a licence in the preceding competition, confiscated its equipment, and placed a ban on its further operation. On 21 August 1998 the municipal civil-engineering inspection in Negotin ordered *STB Negotin* to stop broadcasting by 15 September because it did not have the construction permit for its transmitter (*Danas*, 12–13 September 1998). The municipal authorities removed the transmitter on 17 September.

167 Radio B-92 had to pay a 180,000 dinars fee (USD 18,000 at the time) for using the frequency. After several appeals the fee was reduced.

Government representatives have rejected ANEM's complaints that the competition for frequencies has been used as a means to restrict the freedom of the media. They claimed that Yugoslavia has become a country with the highest level of media freedoms. "In 1994 there were six dailies in Yugoslavia, and today there are 24; five private news agencies have been established in addition to the state agency. Such a trend has not been seen in any European country. We now have about 70 radio and TV stations which are operating freely" stated Goran Matić, Federal Secretary of Information (*Politika*, 19 February, p. 15).[168]

In February 1998, the Serbian authorities launched a campaign for the ban on the transmitting of the *Voice of America* at the Belgrade station *Studio B*.[169] The management of the station and the Serbian government characterised these programmes as "unprofessional, amateurish and one-sided"; they chided the *Voice of America* for its coverage of the situation in Serbia, and especially in Kosovo. As a result, the programme was transmitted with interruptions until the adoption of the Decree of 8 October 1998, which imposed an all-out prohibition on the re-broadcasting of foreign programmes.[170]

The authorities in Serbia have restrained the independent media in other ways as well. Serbia has only one newsprint factory — the *Matroz* plant in Sremska Mitrovica, which is under state control. Representatives of the independent media claim that it sells newsprint to them at a higher price then to its pro-regime customers. In Serbia there are only few newspaper printing plants, all of them under state

168 Already during the citizens protests in Serbia in the winter of 1996/97, *Radio B-92* and *Radio Index,* (the only radio stations in Belgrade which regularly reported on the protests) were being jammed. In December 1996, the *B-92* transmitter was disconnected. The management of RTS, on whose aerial post the transmitter was mounted, claimed that the interruption had been caused by water penetrating a coaxial cable. *Radio Indeks* had similar difficulties. Some radio stations in the interior of Serbia (*Radio Ozon* in Čačak and *Radio Bum 93* in Mladenovac) were also prevented from broadcasting.

169 Since the beginning of 1997, *Studio B* has been under the control of the municipal authorities in Belgrade, where the Serbian Renewal Movement (SPO) soon became dominant, with the support of the SPS and the Serbian Radical Party (SRS).

170 See I.4.8.4.

control. On several occasions they refused to print independent and opposition newspapers.[171] The major media enterprises, controlled by the regime, also have a monopoly on the distribution of the press, which has been used occasionally to limit the distribution of independent newspapers.

The regime propagandists frequently blame the independent media for the difficulties in the FRY. For instance, the independent media were blamed for an abrupt slide of the value of dinar in February 1998. "The so-called independent media and those who claim to be independent experts have placed themselves as vassals in the service of foreign power centres in order to destabilise their country, create chaos and spread doubt among the citizenry in order to hinder all our reforms and all our endeavours ... aimed at creating a strong and economically stable state", said the Serbian Prime Minister, Mirko Marjanović (*Dnevni telegraf*, 3 February, p. 2).

Miodrag Tmušić, the Belgrade district public prosecutor, accused the dailies *Naša borba*, *Dnevni telegraf*, *Blic*, *Danas* and *Demokratija* of "playing around with the communiqués on Kosovo of the Ministry of the Interior of Serbia, reducing the number of casualties in the clashes in Kosovo and reporting about the Albanians who have been killed, instead of qualifying them as terrorists, as the police officially calls them" (*Politika*, 6 March, p. 18). "The articles in *Danas, Demokratija* and the like, make it clear what is the subject assigned to them by their financiers and principals. The representatives of the legal government bodies should be described as 'brutal criminals' who exterminate all Albanians, in the service of an 'authoritarian' and 'undemocratic' regime; the terrorists and criminals should be described as victims, thus providing the Albanian separatists with propaganda support" (*Politika ekspres*, 10 March, p. 2). This was followed by the police interrogation of journalists, but also by public protests, and as a result the action to discipline the independent media was abandoned for a while.

171 In June 1996, the BIGZ printers declined to print the opposition newspaper *Srpska reč*, although the money for printing had been paid in advance. On 26 November, 1996, the *Borba* printing company refused to print the independent daily *Blic.*

The reports on the crisis in Kosovo by the Yugoslav independent media, as well as their reprinting of foreign media reports, were one of the reasons for the adoption of the Decree on Special Measures in Conditions of Threat of an Armed Attack by NATO. The day before the Decree was adopted, Serbian officials had threatened to close the media that did not bring their reporting into line with the views of the government.[172]

The Decree prohibited the transmission of the programmes of foreign stations whose founders are foreign states and foreign organisations. The Serbian Ministry of Information and its Minister, Aleksandar Vučić (SRS) justified the ban by invoking higher state interests: "They keep spreading panic, fear and defeatism at a time when our country is exposed to serious threats of an attack by NATO forces." The Decree, however, was not repealed even after the agreement on Kosovo was signed between the President of the FRY, Slobodan Milošević, and the US mediator, Richard Holbrooke. Instead, it was subsequently transformed into the new Public Information Act.

On the basis of the Decree, the Ministry of Information banned independent newspapers and seized their property, because they had reprinted reports of foreign media on the situation in Kosovo and Metohija and on the deteriorating relations between the FRY and the international community. The Ministry cautioned the daily *Danas* that it had acted in defiance of the Decree, and threatened to confiscate the property of the publisher. The newspaper published the warning and was subsequently closed down. The decision of the Ministry, *inter alia*, says that

172 At a fifteen-minute meeting with media editors, the Deputy Prime Minister of the Government of Serbia Milovan Bojić, and the Minister of Information Aleksandar Vučić, reiterated their *ad hoc* restrictions of the independent media and informed their interlocutors that a recommendation concerning the ban on the re-broadcasting of programmes in the Serbian language produced by *Voice of America*, *Radio Free Europe,* the *BBC* and *Deutsche Welle* now became a oral decree. *The Statement by the ANEM on the occasion of imposing the ban on the re-broadcasting of the programmes of radio and TV stations in the Serbian language, 7 October, 1998.*

"... The text under the title *NATO Cannot Play on the Serbian String* quotes an article ŠpublishedĆ in the *Washington Post* and concludes that the Kosovo Albanians will almost certainly resume their resistance and prompt another bloody crackdown by the Serbs, warning that NATO cannot play on the Serbian string ... The issue of 10–11 October quotes the report of the German newspaper *Die Welt* in its article titled *The First Targets in the Vicinity of Belgrade* and claims that in the event of a NATO intervention one of the first targets must be in the vicinity of Belgrade and that this involves a radar installation of the Serbian anti-aircraft defence forces. Also, it states that the Yugoslav air forces are not a serious match for NATO. Such writings disseminate fear, defeatism and panic and are contrary to the resolutions of the Federal Assembly and the People's Assembly of the Republic of Serbia. Also, they have a negative effect on the readiness of citizens to protect the territorial integrity and sovereignty of the FR Yugoslavia and refer in a derogatory manner to the efforts by the Government of the Republic of Serbia to implement special measures in the conditions of the threats of an armed attack on our country. Therefore, *we warn you* ... that your newspaper must act in accordance with the rights and duties of citizens to protect the territorial integrity, sovereignty and independence of the Republic of Serbia and the FR Yugoslavia. If your newspaper continues to act in defiance of Article 7 of the Decree, the Ministry will be forced to place a temporary ban on the publication of your newspaper for as long as the Decree is effective. Publication of this warning is *prohibited,* as well as issuing any information about it".[173]

At the same time, *Radio Indeks* was jammed and eventually closed.[174]

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173 The warning was followed by a ban and seizure of *Danas*. The independent daily *Naša borba* was economically devastated by the Decree and ceased publishing. *Dnevni telegraf* and *Danas* moved their head offices to Montenegro, from where they have been reaching the readership in Serbia with a lot of difficulties.

174 This students radio, very critical of the government, did not obtain its frequency licence at the February competition. In the autumn of 1998, its signal was exposed to interference by commercial radio stations close to the government. In the night

3.3. The Effects of the New Serbian Public Information Act

The new Serbian Public Information Act was adopted hastily in October 1998. The Serbian authorities tried to offset numerous protests against the Act by claiming that it was a modern and democratic piece of legislation, which the society needed. One day after the adoption of the new legislation, the regime-controlled newspaper *Politika* published an article entitled "Media are Free, Penalties for Lies", claiming that the Act did not threaten the freedom of the media (22 October, p. 1). The Serbian Assistant Minister of Information, Miljkan Karličić, said that "the Act is in accordance with the constitutional provisions as well as with public international law. It is in complete harmony with the International Covenant on Human and Civil Rights (sic!) adopted by the General Assembly of the UN", said Assistant Minister of Information.[175] This was confirmed by the Deputy Minister of Information, Dušanka Antonović Djogo, who said that "new Act does not deny the freedom to write and to shape news, everything is permitted, except lies about other people and re-broadcasting of the political

between 8 and 9 October 1998, the security staff of RTS evicted *Radio Indeks* from its premises in the RTS building, despite a valid contract for their use. *Radio Indeks* then started broadcasting on a different frequency, where it was again met by interference. The Belgrade *Studio B* then lent it its frequency, but soon changed its mind under the pressure of the Federal Secretariat of Information. In November, the Governing Board of the University of Belgrade, which has a share in the management of *Radio Indeks*, replaced Nenad Cekić, the editor-in-chief, without consulting the management. At the same time it appointed Vladan Drašković in his place. Drašković had been appointed member of the Governing Board of the Faculty of Law in Belgrade after the abolishment of the autonomy of the University. The governments decision (*Sl. list RS,* No. 23/98–611) stated that he was a post-graduate student at the Faculty of Law. Until then Vladan Drašković has hardly been known to the public.

175 The reference to the UN document is not clear: it might be the International Covenant on Civil and Political Rights (ICCPR), although the reference to the UN General Assembly and not to the ratification by Yugoslavia might point to the Universal Declaration of Human Rights.

propaganda information of foreign power centres, which are against our country."

Concerns about the freedom of expression in Serbia voiced from abroad were answered by the Serbian Minister of Information, Aleksandard Vučić, who said: "... we are shocked and surprised by the exceptional interest you have shown in ... the functioning of the legislation in the sphere of the media, particularly if one bears in mind the absolute lack of interest in assisting our government, country and people to dissuade certain aggressive powers from applying their tomahawk democracy on the innocent people of Serbia and the FR Yugoslavia" (*Politika*, 27 October, p. 14).

The first victim of the new Act was the weekly *Evropljanin*, which was accused of incitement to the forcible overthrow of the constitutional system, for the texts in its issue of 19 October (published one day before the adoption of the Act). The private prosecutor was the Patriotic Alliance of Belgrade — an organisation with undisclosed membership — represented by its officials, who are close to the SPS and JUL.[176] They claimed that *Evropoljanin* had falsely reported that there were two million unemployed in the country and that more than 100,000 young people had emigrated because of the fear of war or because they did not see any future in Yugoslavia. Disregarding the evidence (the data coming from the official trade union that there were 830,000 jobless and that the same number of workers were on com-

176 The complaint against the *Evropljanin* was filed by the president of the Alliance, Milorad Radević, otherwise the director of the Archives of Serbia and a member of the JUL. The director of the Archives is appointed by the Government of the Republic of Serbia. Later on, another suit (against the daily *Dnevni telegraf*) — this time on behalf of the Women's Alliance of Yugoslavia — was filed by Bratislava Morina, the Commissioner for Refugees. The officers of the Alliance from Montenegro claimed that Morina had acted on her own, without the consent of the organs of the Alliance. "I am surprised by the information that the Women's Alliance of Yugoslavia sued *Dnevni telegraf*, because no one had consulted us ... The Statute and by-laws of the Alliance make it obligatory that each decision first be agreed upon by the members of the Alliance", stated Anka Žugić, president of the Organisation of Women of Montenegro (*Dnevni telegraf*, 9 November, p. 1).

pulsory leave and the reports of the Yugoslav Army that at least 20,000 young people had left the FRY in the period from 1991 — 1995 in order to avoid their military service), *Evropljanin* was sentenced to a fine of 2.4 million dinars (about USD 250,000).

In the night between 24 and 25 October, police and para-police forces seized the property of the weekly, which was later sold at an auction at a price far below its actual value; thus the state collected about 80,000 dinars. The owner of *Evropljanin*, Slavko Ćuruvija, stated that "he had no money to pay the fine and even if he had, he would not pay it". (*Blic,* 26 October, p. 6). During that night, the security forces tried to prevent Jiri Dientsbier, the UN Special Rapporteur on human rights in the former Yugoslavia, from entering the editorial office of *Evropljanin*.

The next to be punished was *Dnevni telegraf*, a daily belonging to the same publishing enterprise, for having published the advertisement of the students organisation *Otpor*, calling on citizens to protest against the Serbian University Act.[177] One month later, the Montenegrin weekly *Monitor* and its editors were sentenced to pay the highest fine up to now, amounting to 2.8 million dinars in total. The defendants were not informed about, and did not participate in the proceedings. Copies of *Monitor* were seized three times in Serbia, as well as in Montenegro, in a township where the local government is controlled by the Socialist People's Party (SNP) of the FRY Prime Minister Momir Bulatović, the political ally of the Serbian government. *Glas javnosti*, a Belgrade daily, had to pay the penalty because it had quoted a member of the Serbian Radical Party as saying that its leader, a Serbian Deputy Prime Minister, allowed members of that party to maintain contacts with the "Kosovo Liberation Army".

The pro-government *Politika* was also fined 150,000 dinars (this was one of the two sentences pronounced against pro-government media, although more than 500 charges have been brought against

177 See IV.4.

them).[178] *Politika* used the same arguments in its defence as the other newspaper publishers, but with no avail. "Although the legal counsel of *Politika* submitted all relevant evidence, on the basis of which it was indisputably established that in the article *Politika* reported truly and objectively on everything that was said at the press conference, the court accepted the deformed interpretation of Mr. Djindjić[179] and punished *Politika* ..." (*Politika*,13 November, p 17). *Politika* was later fined again, but this time for libel, sanctioned under the Penal Code of Serbia.

The last sentence in 1998 was again against *Dnevni telegraf*, for publishing an article which allegedly offended the dignity of Milovan Bojić, Deputy Prime Minister of Serbia and one of the main authors of the information and university acts.

At least formally such fines have brought 7.6 million dinars to the budget. It is doubtful whether the state will be able to collect the money: a kilogram of confiscated newspapers is auctioned as old paper at 0.4 dinars, and the convicted journalists, as a rule, possess no property that can be seized, while only up to one-third of their modest salaries can be withheld.

The Serbian authorities also introduced new taxes for media registration, as much as 400 hundred times higher than before. In order to register a newspaper, one has to pay 5,000 dinars; changes of any data (e.g. address) in the register cost 1,000 dinars; the same amount has to be paid to register the *closing down* of the media!

In November 1998, the Yugoslav Academic Internet Network, owned by the Ministry of Science of Serbia, prevented its users from accessing all locations of *Opennet*, run jointly by a group of independent media and non-governmental organisations. The latter contained

178 Attempts to ascertain whether the *Politika Company*, which is close to the government, has in fact paid the fine, have not been successful. It is believed that no payment has been made, as *Politika* does not pay most of its taxes and other contributions to the state.

179 Charges were brought by the Democratic Party (DS), whose president is Zoran Djindjić.

news by the independent media and non-governmental organisations in Serbian and English.

The Federal Secretary of Information Goran Matić (JUL), accused the British Embassy in Belgrade of interfering with the internal affairs of Yugoslavia by giving support to *Radio B-92* and the ANEM network. Matić referred to a fax communication in which the Embassy had invited ANEM to propose six journalists from Kosovo for professional training in the BBC.[180] "This means that the British Embassy has gone far beyond the framework of the work and responsibilities of a diplomatic mission and service and that it has attempted to interfere seriously in the internal political affairs of the FRY", said the federal minister (*Politika*, 9 December, p. 2).

Reacting to the Public Information Act of Serbia and the manner of its enforcement, the European Union called upon all its members to deny visas to nineteen Serbian officials considered to be the most responsible for the persecution of the independent media. Among the officials are three deputy prime ministers, three ministers, three deputy ministers and ten party officials, including the secretary general and spokesperson of SPS, as well as the spokesperson of JUL.[181]

3.4. Montenegro

The media situation in Montenegro improved in 1998. New media legislation was adopted. Its provisions are in compliance with international human rights standards. The press in Montenegro is not being banned, confiscated or fined as in Serbia. The position of the electronic media is also more favourable in Montenegro. The only case which caused concern was an attempt of the Montenegrin government

180 The BBC has regularly organised training for journalists of all Yugoslav media, but the employees of the regime media have refused to participate.

181 The list includes Vojislav Šešelj, Aleksandar Vučić, Miljkan Karličić, Dušanka Antonović-Djogo, Miodrag Popović, Dragoljub Janković, Gorica Gajević, Željko Simić, Života Cvetković, Ivica Dačić, Slavko Veselinović, Stevo Dragišić, Tomislav Nikolić, Nataša Jovanović, Milovan Bojić, Živorad Djordjević, Ivan Marković, Milorad Radević and Bratislava Morina.

to close down *Radio Pljevlja* and *Pljevaljske novine*, which was prevented by the Constitutional Court of Montenegro.[182]

The League of Communists of Montenegro won the first multiparty elections in Montenegro in 1990 and later changed its name into the Democratic Party of Socialists (DPS). The DPS remained a faithful ally of the SPS for a long time and treated the mass media in a similar manner as its ally. As a result of a conflict within the DPS, the party split in 1997. A faction that retained the DPS name has reformed itself and progressively moved away from its former Serbian ally SPS and the President of the FRY, Slobodan Milošević; Another faction, faithful to Milošević, formed a new party — Socialist People's Party (SNP). It is headed by Momir Bulatović, the current federal prime minister. The reformed DPS won the latest parliamentary and presidential elections in Montenegro.

4. Universities in Serbia

4.1. Introduction

There are six state universities in Serbia (Belgrade, Niš, Kragujevac, Priština, Nova Sad, and the University of Arts in Belgrade) and several smaller, privately-run universities, whose importance for science is negligible.[183] There are also some state-run faculties, that are not attached to universities, in smaller towns.

182 On 13 August 1998, the government banned the radio station *Radio Pljevlja* and the newspaper *Pljevaljske novine* on the ground that they "prevented the SDP, the DPS and the People's Party (NS) (members of the ruling coalition in Montenegro, who are a minority in Pljevlja municipal government), from taking part in the programme, thereby violating the Republic Information Act" (*Pobjeda*, 14 August, p. 5). The media resumed their activity on 17 December 1998, following the courts decision.

183 A description will be given here, of the law only as it applies to state universities and faculties.

In terms of academic excellence, the University in Belgrade is the most important. Its students and teachers were often the initiators of social changes in Serbia and Yugoslavia. This resulted in clashes with the authorities both in the Kingdom of Yugoslavia and in all the later versions of the Yugoslav state[184].

Even the current regime is dissatisfied with the universities. Earlier attempts were apparently insufficient to curtail their autonomy and so on 26 May, the People's Assembly of Serbia, almost with no debate, passed a new University Act. The Serbian government had drafted this law in complete secrecy without consulting the academic public; university teachers in Serbia, even rectors and deans, were unable to obtain information about the contents of the draft. With this law, the government seized the proprietary rights and control over all universities in Serbia that had been established by the state.

The enactment of this new legislation has removed the autonomy of the universities that has existed in Serbia since the foundation of its first institution of higher education. The first university was created in the Kingdom of Serbia in 1904. According to the law of that time, university teachers elected the rectors, deans and professors, while the Minister of Education only confirmed their appointment.

The University Act passed in the Kingdom of Yugoslavia, in 1930, during the dictatorship of King Aleksandar, envisaged the right of the University's employees to elect the Rector, deans, collective bodies, and the research and teaching staff, themselves. The Minister of Education had confirmed their choice.

Under the Nazi occupation in the II World War, the puppet regime in Serbia passed a Decree in 1941, providing broader autonomy than the 1998 Act. The Minister of Education nominated the Rector,

184 In 1968 the students of Belgrade University organised demonstrations, seeking social and political reforms. See Nebojša Popov, *Contra fatum*, Belgrade, Mladost, 1989. After the changes in the constitutional structure of Serbia and Yugoslavia, the university in Belgrade or some of its faculties organised protests in 1991, 1992, 1996–97 and 1998.

deans and professors, but in his choice he was limited to the University's proposals which he could accept or reject.

In communist Yugoslavia, the laws, at least in the formal sense, granted the universities broad autonomy, but the ruling party's influence was decisive. The subsequent laws on the university envisaged the majority of the members in the collective bodies of administration to be from the faculties, while a minor number were appointed by the government and the students. The degree of caution the regime demonstrated then can be seen from the fact that it took more than five years to overcome the resistance of the University governing bodies in order, in 1975, to remove eight dissident professors from the Belgrade University with whom it had begun to square accounts long before, by virtue of their role in the 1968 student protest. It ultimately did this by passing a special law. The University Act of 1992, which preceded the current law, was more restrictive in relation to its predecessors but, in comparison to this present one, it respected a far broader autonomy.

4.2. Autonomy of the University

4.2.1. Autonomy as legal principle — Autonomy is a necessary condition for free academic development and is the basis of higher education. It allows the university to maintain an impartial approach in relation to other institutions and to take part freely in the events of society.

In order to exist, the autonomy of the university must be built into the legal order. In its legislation, the state must guarantee the independence of work in universities, in their organisation and decision-making. There are three basic legal guarantees of autonomy — the right of the employees to take part in administration, the governance of the university, the independent legal personality of the university and the inviolability of university and faculty premises. These three elements must be cumulatively respected.

4.2.2. International law. — Only one international document explicitly mentions the obligation to respect university au-

tonomy. This is the UNESCO Recommendation on the Status of Teachers in Higher Education, adopted at the XXIX Session of the UNESCO General Conference, held from 21 February to 12 November 1997. Since the resolutions of international organisations are so-called *soft law*, states are only obliged to take steps to apply them and to inform the organisation of this. One can link the autonomy of universities, however, with certain rights guaranteed by basic international human rights instruments and view them as the pre-condition for their implementation.

Thus, the International Covenant on Economic, Social and Cultural Rights urges the signatory states to make it possible for everyone to acquire an education which is designed to promote tolerance and enable the individual to participate in a free and democratic society (Art. 13. CESCR). Such an education is possible only if it is provided by free and democratic institutions. As the institutional bearer of higher education, the university must be free of all pressure, which is possible only if the state guarantees its autonomy.

Art. 18 ICCPR, which guarantees freedom of thought, conscience and religion, can be similarly interpreted[185]. The university cannot be the bearer of the development of scientific thought unless it is free of all political ideologies and religious influences.

4.2.3. The Yugoslav Constitutions. — The Constitution of Serbia does not explicitly mention the autonomy of its universities, but it proclaims the freedom of the sciences. "Freedom is guaranteed for the creation and publication of scientific and artistic work, scientific discovery and technical innovation, as are the moral and property rights of their creators" (Art. 33, para. 1). If this is interpreted the same way as Art. 18 ICCPR and Art. 13 CESCR, one can conclude that the guarantee of freedom of academic research also means the freedom of the university as the institutional bearer of scientific thought. The Constitution of Montenegro, besides the guarantee of the freedom of sciences, also

185 See I.4.10.

guarantees the autonomy of the university as its consequence. The Constitution of Serbia does not contain such a provision.

4.2.4. Abrogation of the autonomy of universities. — The guarantee of the participation of university staff in its governing administration, implies their participation in electing its bodies of administration and the right to hold a specified number of positions in those bodies of administration (in most countries all positions in the bodies of administration are reserved for the staff). Until the adoption of the new University Act, in Serbia too, the staff elected the bodies of administration, independently or with the approval of state officials. The state never essentially limited this freedom, even though the university was financed largely from the state budget.

The previous University Act entitled a dean, who was elected by the staff and whose appointment was confirmed by a faculty council, to administer the faculty within the limits of the law. There was a science and teaching council of which all the teachers and fellows were members. The university was administered by a council, half of whose members were appointed by the state, while the other half were elected by the staff. The new law has transferred all administrative rights to the Serbian government, which is considered to be the founder and proprietor of the university.

The guarantee of the university's status as a legal subject existed in the previous law and functioned within the system of "socially-owned" property and self-management. When the privatisation process began, the current authorities transformed all "socially-owned" property into state property. Thus, a large portion of the economy, the education and the health care system became state property, The new University Act consistently applied such provisions on "privatisation", and declared the independent universities and faculties to be state owned. This law goes a step farther than Privatisation Act of 1994, prohibiting the privatisation of the existing faculties and universities (Art. 10).

The new law gives faculties the status of a legal person "in keeping with the law". Thus — as opposed to the previous law, which granted this status unconditionally — the new law introduces the possibility of universities and faculties losing their status as a legal subject, not only according to the law, but also according to their own statutes. For the sake of illustration, the law does not prevent the state from declaring the university to be a subordinate organ of the executive.

The new law gives the government the right to close the university and faculties without explanation: "The government shall decide on the closure of universities and faculties founded by the Republic" (Art. 18, para. 2). Contrary to the previous law, the new one does not cite criteria which would justify closure nor does it fix the procedure for closure.

According to the new law, the university bodies of administration are: the Rector (managing director), the Governing Board (board of directors) and the Supervisory Board (supervisory committee). The rector has the rights and obligations of the managing director of a company, and the university is equated in status with any state-run company. The rector is nominated and dismissed by the government of Serbia, without consulting the employed staff of the university. Art. 111 implies that the rector must be a full professor.

The members of the boards of administrators and supervisors are also nominated and dismissed by the government of Serbia. Of the fifteen members of a board of administrators, only six must be from the ranks of the employed staff and three from among the students. The other members of a board of administrators are officials of the government as the founder. The five members of a board of supervisors are also nominated by the government of Serbia, two of them being from the ranks of the employed staff. Employed staff do not take part in the election of these bodies (Articles 108–133).

The new law retained the science and teaching councils in the faculties and the faculty department councils, but changed the position of their members. According to the previous law, the science and

teaching councils consisted of all teachers and fellows, but according to the new law they consist of teachers and fellows, or their representatives. The reduction of the membership offers scope for the exclusion of the science and teaching staff from the professional bodies of the faculties as well. According to the new university and faculty statutes adopted after the coming into force of the new Act, the dean or the faculty department are the only ones authorised to nominate the representatives of the staff in the science and teaching councils (Articles 103–105).

This manner of administration, in actual fact, also excludes professors, senior lecturers and junior lecturers from the decision-making process in relation to appointments. According to the earlier law, teachers and fellows independently decided on the election and re-election of professors (full and associate), senior and junior lecturers. Everyone except full professors was employed for a four-year term. After this term expired, the faculty had to announce a competition to fill the vacant positions, and a commission of teachers recommended the best candidate. The commission submitted an affirmative or negative report to the dean. For a candidate to be elected, it was necessary for the science and teaching council to confirm the affirmative report of the commission.

The new law envisages that in the case of the employment of all professors, senior and junior lecturers, with the exception of full professors, the decision rests with the dean alone. He appoints full professors as well, but he must have the consent of the government. As in the case of the old law, the dean makes this decision on the basis of a report by a commission whose members he appoints himself! True, the new law does allow the faculty department to propose members of the commission, but the dean is not bound by the proposal. He may decide not to nominate a candidate for a teaching post, even if the latter fulfils all the requirements for employment. His decision does not have to be justified. This gives the dean the freedom to apply criteria that are not professional (political suitability, religious belief or ethnic origin), which opens the possibility for discrimination. The

dean is no longer even expected to announce a vacant teaching post when the teacher or fellow's term has expired, which can prevent his re-election (Articles 87–95).

The new law also annuls the freedom to dispose of funds, and prescribes that the university of which the government is the founder (formerly: public universities) is financed from the budget of Serbia. Budgetary funding (considering that the Serbian budget is more than one year in arrears in fulfilling its obligations) can place the university's survival at risk. Such a hypothesis is not impossible since the very adoption of this law has shown that the Serbian authorities wish to discipline the university and for this they now have a powerful instrument — money. True income from tuition fees or services to third parties are still viewed as funds belonging to the faculty, but they can only be used with the approval of the government of Serbia.

The new law annuls the right of the staff to decide on the academic programme, a part of the freedoms of scientific creativity and freedom of thought, guaranteed in the Yugoslav constitutions and under international law. According to the earlier law, the staff were the only ones authorised to draw up plans, syllabi and curricula, and the science and teaching council was responsible for making final decisions on them. The new law eliminates this right by turning the administrative bodies into state agencies within the university and by changing their composition. According to the majority of faculty statutes adopted after the new law came into effect, the councils consist of representatives of the teachers and fellows who are appointed by the dean or faculty department. The dean does not give reasons for his decisions on appointments. This gives him the right to apply other than professional standards. Furthermore, the university as a whole, i.e. its science and teaching council, which is also under the full control of the government, decides on the plan approved by the faculty science and teaching council.

The new law has also placed the internal organisation of the faculties and university under double supervision. The previous law envisaged the adoption of the statute by the science and teaching council, with the approval of the dean; the new law states that the

statute shall be adopted by the faculty board of administrators, at the proposal of the dean. For the new statute to come into effect, the government's consent is required.

Autonomy implies the guarantee of the inviolability of the premises of the faculty. In comparative and Yugoslav law, there is a rule that prohibits the entry of armed persons (primarily the police) into faculty and university buildings. The previous law contained a provision that banned armed persons entry into faculties, altough this was not respected during the civil protest in 1996–97. The new law does not contain such a provision.

"The staff of the university, or faculty, who were employed before the day this law came into effect are obliged to sign a contract of employment within 60 days from the day this law come into effect." (Art. 165).

This article deserves special attention because of its legal shortcomings, the political importance it has acquired following the adoption of the law, and because this has been one of the principal grounds for the criticism of this law.

According to Article 35 of the Constitution of Serbia, the work contract can cease against an employee's will only under the conditions established by the law and the collective agreement. The reasons for dismissal are enumerated in Article 108 of the Labour Relations Act, but not even here, as in the University Act, is it envisaged that employment ceases because the employee has refused to sign a contract of employment. Moreover, in Article 149 of the Labour Relations Act, it states: "Employees, who established labour relations before the day the Labour Relations Act came into effect (*Sl. glasnik RS*, No. 55/96), are not under an obligation to sign a contract of employment."

Apart from this, Article 165 imposes the obligation for the employee to sign a contract of employment, but not for the employer. For this reason, it is in contradiction to Article 11 para. 1 of the Labour Relations Act: "The authorised organ of the employer is obliged to sign a contract of employment before the employee commences work ...". Article 165 is *lex imperfecta*, because no penalties are envisaged for failure to honour the obligation of signing such a contract.

4.3. Implementation of the New University Act

At the very first intimations of its content, the majority of the academic community raised its voice against the draft law. In the course of the procedure in the People's Assembly of Serbia, students tried to organise demonstrations, but the police prevented them by using force.

The initial proposal envisaged a stricter regime of studies including, among other things, an increase in tuition fees and stricter conditions for enrolling in the ensuing year of studies. In reaction to the protests from the public, university teachers and students, the Minister of Education declared in parliament that the new rules in the regime of studies would be withdrawn. This occurred. The general opinion is that with this move the government tried to create a rift between the students and the professors, and that its aim was not to improve university studies, but to place the teaching staff under stricter supervision and make it possible to eliminate teachers who did not conform, especially those who took part in the 1996–97 protests. The Deputy Prime Minister of Serbia, Dr. Ratko Marković, otherwise a professor at the University of Belgrade Faculty of Law, confirmed this in his exposé in the Serbian legislature, when he said that "political activity, party work and religious activities as well as every other form of ideological activity, are prohibited in the university and its faculties" (*Vreme*, 30 May, p. 10–11).[186]

The then Rector of the Belgrade University, Professor Dragan Kuburović, handed in his resignation as soon as the law was passed. Even the Academic Council of the University expressed its opposition to the new law, but it left the decision of whether to go on strike to the teachers at each individual faculty. The teachers at the Faculty of Philosophy declared that they would go on strike, and several other

186 Vojislav Šešelj, one of the deputy prime ministers, stated that "failed politicians will not be allowed to turn faculties into political parties. The Faculty of Law is under occupation by the Civic Alliance, and the Faculty of Philosophy is under the occupation of Soros." (*TV Palma Plus*, Jagodina, 5 June 1998).

faculties protested in diverse ways against the new law and its enforcement. Then, a lull set in during the summer holidays and the 60–day period allotted for signing the new contracts of employment.

The government appointed Professor Jagoš Purić, a member of the Yugoslav Left, as Rector of the Belgrade University, and appointed prominent members of the Socialist Party of Serbia, the Yugoslav Left and the Serbian Radical Party to the posts of faculty deans. Thus, leading members in the Yugoslav Left became the deans of the Faculty of Political Sciences, the Faculty of Economics, the Faculty of Mining and Geology, and the Faculty of Organisational Sciences. A member of the Serbian Radical Party was appointed Dean of the Faculty of Philology, and a member of the Socialist Party of Serbia was appointed Dean of the Faculty of Technology and Metallurgy. These appointments certainly refute the statements of the government officials who claimed that one of the fundamental reasons for passing the law was to depoliticise the university.[187]

The predictions that the new University Act would be enforced selectively and arbitrarily soon proved to be true. A number of teachers and faculty fellows refused to sign the Contract of employment, prescribed by Article 165, because they interpret it as a *de facto* declaration of loyalty to the regime and the new administrations of the faculties and universities, as well as consenting to any future variation in employment procedures.[188]

187 However, in November 1998, the Yugoslav Left (JUL) formed a branch at the university "Committee of the University Left (KUL)". Dr. Milovan Bojić, a professor at the Faculty of Medicine, a high-ranking official of JUL and Serbian Vice-Premier became the Committee Chairman.

188 From the University in Belgrade, they are: Marija Bogdanović, Jovan Aranđelović, Sreten Vujović, Radoš Ljušić, Mladen Lazić, Aleksandar Kron, Đuro Šušnjić, Marica Šuput, Ivan Štajnberger, Jerko Denegri, Bora Kuzmanović, Ranko Bulatović, Ksenija Kondić, Ivan Ivić, Slobodan Dušanić, Anđelka Milić, Miloš Arsenijević, Aljoša Mimica, Aleksandar Loma, Mirjana Pešić, Aleksandar Jovanović, Jelena Vlajković, Branislav Todić, Dragan Popadić, Marjanca Pakiž, Olivera Milosavljević, Tünde Kovacs-Cerović, Žarana Papić, Slobodan Mijušković, Jelena Srna, Goran Opačić, Marija Mitić, Nikola Samardžić, Dušan Bataković, Smilja Marjanović-Dušanić, Ivana Radovanović, Ljiljana Vulićević, Jasna Šakota-Mimica, Ljiljana Levkov, Vojin Nedeljković, Boris Pendelj, Svetlana Loma, Jelka Imširović, Branka

The new deans immediately began to make use of their powers under the new law. Some of them, primarily the deans of the Belgrade

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Arsić, Gordana Vulević, Dejan Matić, Miroslav Vukelić, Aleksandar Gordić, Slobodan Cvejić, Lazar Tenjović, Staša Babić, Dušan Popović, Žarko Petković, Danica Anđelković, Ivan Vuković, Dijana Plut, Nadežda Ignjatović-Savić, Igor Bogdanović (Faculty of Philosophy), Ranko Bugarski, Zoran Žiletić, Vladeta Janković, Slobodan Vukobrat, Leon Kojen, Miodrag Sibinović, Dragan Stojanović, Đorđe Trifunović, Ljubiša Jeremić, Slavko Vukomanović, Mirko Krivokapić, Darinka Gortan-Premk, Aleksandar Gačić, Željko Đurić, Ljubomir Žiropađa, Mirka Zogović, Aleksandar Ilić, Zoran Milutinović, Miodrag Loma, Aleksandra Bajazetov-Vučen, Ajša Đulizarević Simić, Aleksandra Mančić-Milić, Marina Ljujić, Tijana Stojković, Adrijana Marčetić, Jasmina Moskovljević, Predrag Stanojević, Ivana Trbojević, Srđan Vujica, Maja Krstić, Kornelija Ičin, Đorđije Vuković, Zorica Nedeljković, Zorica Bećanović-Vitić, Predrag Brebanović, Vladimir Ignjatović, Branka Nikolić (Faculty of Philology), Kosta Čavoški, Vojin Dimitrijević, Danilo Basta, Miroljub Labus, Dragoljub Popović, Mirjana Todorović, Jovica Trkulja, Vesna Rakić-Vodinelić, Vladimir Vodinelić, Gašo Knežević, Aleksandra Jovanović, Radmila Vasić, Dragor Hiber, Dragica Vujadinović, Slobodanka Nedović, Mirjana Stefanovski, Olga Popović, Goran Svilanović, Milica Delević-Đilas, Vladimir Djerić (Faculty of Law), Branko Popović, Slavoljub Marjanović, Dejan Živković, Jovan Radunović, Dušan Velašević, Milan Merkle, Dragan Vasiljević, Borivoje Lazić, Milenko Cvetinović, Srbijanka Turajlić, Vladana Likar-Smiljanić, Milan Ponjavić (Faculty of Electrical Engineering), Nikola Tucić, Ana Savić, Miloje Krunić, Gordana Cvijić, Danka Savić, Jelena Djorđević (Faculty of Biology), Radoslav Božović, Mijat Damnjanović, Smilja Tartalja, Milan Podunavac, Dobrosav Mitrović, Čedomir Čupić, Jasmina Glišić (Faculty of Political Sciences), Fedor Zdanski, Jovan Jovanovic, Obrad Savić, Mile Pavlovski (Faculty of Chemical Engineering), Ivan Juranić, Ivan Mićović, Živorad Čeković (Faculty of Chemistry) Slobodan Marinković, Dušan Lekić, Božo Trbojević (Faculty of Medicine) Desanka Radunović, Zoran Lučić (Faculty of Mathematics), Goran Milićević, Refik Šećibović (Faculty of Economics), Žarko Trebješanin, Jelena Đorđević (Faculty for Special Education), Tomislav Smrečnik (Faculty of Defence and Protection), Vera Mijušković (Faculty of Transportation), Slobodan Jarić (Faculty of Physical Culture), Gordana Đurić (Faculty of Veterinary Science), Miljenko Perić (Faculty of Physical Chemistry), Gavrilo Mihaljević (Faculty of Architecture), Mališa Tošić (Faculty of Agriculture), Slobodan Petković, Slađana Marković (Faculty of Forestry);

From the University of Arts in Belgrade: Nikola Jevtić Goran Marković, Živojin Pavlović, Filip David, Srđan Karanović, Slobodan Šijan, Nenad Prokić (Faculty of Dramatic Arts);

From the University in Niš: Dragan Žunjić, Slobodanka Kitić, Momčilo Stojiljković, Draško Bjelica, Ljiljana Marković, Tatjana Paunović, Nenad Popović (Faculty of Philosophy), Bogdan Đurović (Faculty of Civil Engineering), Zoran Jovanović (Teachers' Training Faculty in Vranje).

University Faculties of Law, Philology and Electrical Engineering, were particularly zealous. At the end of August and beginning of September, the first notes of dismissal were delivered to teachers who refused to sign.

The Dean of the Faculty of Law began by rejecting a proposal of the professional commission for associate professor Dr. Vladimir Vodinelić, to be promoted to the post of full professor, and refusing to give an explanation for his decision. The procedure for Vodinelić's election had begun under the previous law, according to which full professors were elected by their colleagues of the same rank. Following instructions from the Minister of Education, this procedure was halted and the decision on this appointment came, by the new law, under the exclusive jurisdiction of the dean. The Dean of the Faculty of Law interpreted his rejection of Vodinelić's appointment as termination of employment and dismissed him. In consequence, sixteen of his colleagues from the same faculty staged a protest and, in their public statement of 2 September, described the dean's act as "illegal, immoral, arbitrary, irresponsible and scandalous". The same group of teachers had already in June publicly declared that they would not sign the contract of employment prescribed by Article 165.

Vodinelić's colleagues declared a halt to teaching activities. They were joined by another ten teachers and fellows, so that 25 teachers and fellows, a quarter of the teaching staff altogether, became liable to the reprisals the new Dean of the Faculty of Law had threatened to impose. The dean subsequently dismissed, forcibly retired, suspended or fined all except two of the teachers and fellows who had declared that they would not sign the new contract of employment, or had voiced their disagreement with the dismissal of Vodinelić. In all these circumstances, the Dean invoked the employer's right to fire any employee who failed to appear at work for five consecutive days: however, even though all the teachers in the protest had "fulfilled" this condition, he dismissed only six of them by the end of 1998, suspended or imposed the payment of a fine on others, and

against some had failed to take any course of action. One can only speculate on what standards he applied.

The Dean of the Faculty of Law suspended Marija Rudić, a student who had completed all course requirements pending graduation from university, launched disciplinary procedure against her, banned her from taking examinations, and forbade her to quit the faculty and enrol in another one. Following vociferous public protest, and in the absence of the dean, the disciplinary commission pronounced instead a (mild) punishment as a warning. Rudić commented that the "procedure had been confusing and unworthy" of the Faculty of Law and that the pronounced measure had been a matter of prejudice and not law" (*Blic*, 11 December, p. 6).

The fate of the professors at the Faculty of Law was also shared by some teachers at the Faculty of Philology, at the Teachers' Training Faculty for Special Education, the Faculty of Electrical Engineering, and of Political Sciences. By the end of 1998, 15 teachers and fellows had been removed from the Belgrade University, 20 had resigned of their own will, and at least 40 had been suspended because of disagreement with the new Act.

Seventy-five of the staff at the Faculty of Philosophy in Belgrade did not sign the contract of employment but none of them received notice of dismissal by the end of 1998. The reasons for this were the existence of a trade union of which the majority of the faculty staff were members, and the behaviour of the dean. "The dean merited our diploma for his excellent conduct towards his superiors, from the minister and the rector to similar officials of the regime, and for not dismissing the professors who were reluctant to sign the contract of loyalty to this regime of thieves ... thus, he gave an example to his students of how to resist the introduction of fascism in Serbia, simply by a humane and cultured approach," were words giving the reasons for the diploma which the students of the Faculty of Philosophy presented to their dean (*Blic*, 23 December, p. 6).

A large number of employees at the Faculty of Philology did not sign the contract of employment, either. There, a person was appointed dean who believes his mission is to completely adapt this educational establishment to his own worldview. In June, the new dean ordered the teaching staff not to leave Belgrade without his approval during the summer holidays, intending to make them sign the contract of employment. At the beginning of September, by means of a series of decisions, the dean changed the position of the staff who did not sign the contract. He sent one teacher into retirement, despite legal decisions of an earlier date that prolonged his employment. He transferred the others to fictitious working posts, barred them from lecturing, or handed them their notice.[189]

The Dean of the Faculty of Philology used his powers to re-organise the faculty in his fashion. He abolished the faculty department of comparative literature and attached its students to the department for librarians. The departments for Hungarian and Albanian languages and literature were incorporated into the department for oriental languages, and he introduced Russian, which he teaches, as an obligatory course for all post-graduate students. He brought in private security-guards, assigned to allow students into the faculty premises only if they show their student cards, and to prevent access to reporters. These expenses of the faculty for this kind of protection amounted to 50,000 dinars per day, which is the equivalent of twenty monthly professorial salaries (*Blic*, 18 December, p. 6). The dean explained all these steps with the need "to fight against all ideology, especially the ideology of the so-called new world order, which has numerous proponents in his faculty" (*Dnevni telegraf*, 18 July, p. 13.).

The Faculty of Philology's staff went on strike in November, demanding the reinstatement of their dismissed colleagues, the removal of the security guards and the resignation of the dean. The strike

189 Twenty-two professors and fellows were relieved of lecturing and appointed to non-existent positions, seven of them were dismissed due to disagreement with the dean's policy, and 11 resigned and left their faculties of their own accord because they did not agree with the dean's policy.

was joined by the students who also boycotted lectures. In the second half of December, the faculty's Board of Administrators agreed to some of the students' demands and requested that 13 of the 22 dismissed and suspended professors return to work. The President of the Board of Administrators, Živorad Djordjević, hastened to declare that anyone who continued "to obstruct teaching should know that he will be responsible for several thousand students losing a year at university. Only those who have the need to politicise so as to destabilise this faculty and place this above the needs of the students and professors ... can be against the regular holding of lectures and classes" (*Politika*, 14 December, p. 13). Until the end of 1998 the strike did not end because the students and professors insisted on the fulfilment of their demands, among them the removal of the dean.

The staff at the Faculty of Electrical Engineering also put up tremendous resistance to the new law. The new dean removed 11 teachers from their teaching posts. A para-police unit was posted to secure the faculty entrance and use force to prevent the teachers who had not signed the contract of employment from holding lectures. Therefore, they continued to hold their lectures in the street and the staff trade union went on a warning strike, calling for the reinstatement of their colleagues. Veljko Janjić and Stevan Koprivica, officials in one of the student organisations at this faculty, were accused by the dean of breaches of discipline and barred from entry into the building. The dean notified them of this *in a telegram* (*Blic*, 2 December, p. 6).

As soon as he took office, the new dean unlawfully appointed Dr. Miloš Laban to the post of associate professor. His re-election as senior lecturer had previously been refused by the science and teaching council.

There was less resistance at the universities in the interior of Serbia owing to the strong pressure exerted by the authorities. In Niš, nine teachers and fellows faced dismissal as they had not signed the contract of employment and had not complied with the order to do so by 22 December. In Kragujevac, about 200 students of the Serbian Language and Literature branch department of the Belgrade Faculty of

Philology, began to boycott lectures and classes in mid-December as a mark of solidarity with their colleagues in Belgrade.

On the 4 November, the students Nikola Vasiljević (19), Dragana Milinković (22), Marina Glišić (22) and Teodora Tabački (22), were sentenced in summary proceedings to 10 days in prison, because, in the opinion of the magistrate "they had expressed civic resistance to the authorities, and with their inappropriate and insolent behaviour had threatened the peace and security of the citizens and public law and order". Their offence had consisted of writing graffiti in support of the student organisation "Otpor", which was organising peaceful resistance to the new University Act. On 29 December the "Otpor" activist Boris Karajičić, who has completed the required courses at the Faculty of Philology pending graduation, was beaten up by unknown persons at the entrance to the building where he lives. "When they had beaten me up they vanished quickly after telling me to say hello to my colleagues in "Otpor", stated Karajičić at a press conference (*Blic*, 31 December, p. 6).

Some teachers who had been dismissed took their cases to court. It soon became clear that the courts, unable to stand up to political pressure, were not disposed to defend the autonomy of the university. The majority of the prosecuting parties called for the adoption of temporary injunctions, which is permitted under Yugoslav law when irreparable damage has been done to the prosecuting party. On several occasions, the courts rejected the proposal for injunctions[190]. The Federal Constitutional Court upheld the same view. For example, the Belgrade Centre for Human Rights and the Council for Co-operation of Non-Governmental Organisations initiated proceedings before the Federal Constitutional Court, to assess whether the clauses of Article 10, paragraphs 2 and 5, and Articles 18, 94, 108, 123, 128 and 131 of the University Act were in conformity with Article 5, para. 2 ICCPR, Article 15, para. 3 of the International Covenant on Economic, Social

190 The court adopted a ruling on temporary injunctions only in three cases, and this only due to the absence of the representatives of the respondents.

and Cultural Rights and the Constitution of the FRY, as well as to assess whether Articles 94 and 164 of the same law were in accord with the provisions of Articles 64 and 80 of the Bases of Labour Relations Act. This court rejected the request for halting the application of the said provisions and halting the execution of all the individual documents issued on the basis of enforcing them, on 25 November 1998.

The latest interpretation of the law was given by the Serbian Minister of Education, Dr. Jovo Todorović, when he ordered the Rector of the University in Belgrade " to notify the teachers and fellows who did not sign the contract of employment in written form, that they can sign the said document within 15 days" (Memorandum from the Ministry of Education of the Republic of Serbia, No. 011–00–23/98–04, 24 November 1998). This unusual communication indicates that the minister believes he can issue orders to the rector, which he cannot, even under the new law, although nowhere in the law is it envisaged that the minister, as an official of the executive, is empowered to issue legally binding orders to rectors. It is apparent from the minister's memorandum that he considers that those teachers and fellows who do not sign the contract of employment should lose their jobs ("immediately advertise a competition to fill the vacated working posts"). This is a different position — although the law is unchanged — for prior to this, Todorović had ordered the removal of such teachers from the teaching process, but not their dismissal. In item 3 of the new memorandum, the minister went a step further and ordered the rector to give preference "to the existing teachers and fellows", if they applied to compete for working posts. The new law, however, does not contain any rules on "preference" in regard of candidates. It emerged that in his short memorandum, the Minister of Education not only violated the law proposed by the government of which he was a member, but also incited the rector to violate it.

"One of the goals of the new law was to banish politics and partisanship from the faculties and universities, because some parties which were, otherwise, marginal in societal life, gained a foothold at

some faculties and propagated their views among the students," the new Rector of Belgrade University, Jagoš Purić, said (*Politika*, 12 October, p. 13). In founding the aforementioned KUL, Professor Mirjana Marković, Director of the Directorate of JUL, declared that, first and foremost, the students should be protected from the bad influences of the modern world. "The contemporary betrayal of national and state interests in small, poorly-developed, East European countries is most often explained with the need to respect the world, keep abreast of it, endeavour to resemble it", she said on that occasion (*Politika*, 13 November, p. 14).

The law did not "banish politics" from the university, rather it installed officials of the ruling party as its administrators.[191]

5. The International Criminal Tribunal for the Former Yugoslavia (The Hague Tribunal)

5.1. Overview of the Activity of the Tribunal

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1 January 1991 was established by UN Security Council Resolution 827 on May 25, 1993. The Tribunal, which uses the shorter version of its name,

191 Thus, among others, Serbian Vice-Premier and Chairman of the Serbian Radical Party, Vojislav Šešelj, became members of one or more of the university and faculty boards of administrators; similarly, his party colleague, Serbian Informat ion Minister, Aleksandar Vučić; Goran Perčević, a high-ranking official in the Socialist Party of Serbia; Živorad Djordjević, editor of the federal state newspaper *Borba* and a Yugoslav Left official; Leposava Milićević, Serbian Minister for Health; Borislav Milačić, Serbian Finance Minister; Goran Matić, Federal Secretary for Information; Branislav Ivković, Serbian Minister for Science and Tehnology; Ser - bian Vice-Premier, Dragomir Tomić; Serbian Justice Minister, Dragoljub Janković; Tomica Raičević, a parliament member from the Socialist Party of Serbia; Željko Simić, Serbian Minister for Culture, etc.

i.e. the International Criminal Tribunal for the Former Yugoslavia (ICTY), is an *ad hoc* tribunal established under Chapter VII of the United Nations Charter as a measure to protect international peace and security.

The jurisdiction of the International Criminal Tribunal for the Former Yugoslavia includes grave breaches of the Geneva Conventions, violations of the laws and customs of war and crimes against humanity.

The Tribunal consists of three parts: the Chambers, the Independent Prosecutor (with an investigation department) and the Secretariat. Of late, the Tribunal has 14 instead of 11 judges, elected by the UN General Assembly. The judges are assigned to two three-member Trial Chambers and a five-member Appeals Chamber. The latter, as well as the Prosecutor, have a common responsibility for both the tribunals for the former Yugoslavia and for Rwanda. With the election of three new judges, a third Trial Chamber has been established so that with the three courtrooms that are now in place, several simultaneous trials will be possible and the work of the Tribunal will gain in expeditiousness.

The first judges made their solemn declaration in November 1993, while the Deputy Prosecutor, Graham Blewitt, who established the prosecutors office, assumed his duties in mid-February 1994.

The Tribunal employs a total of 625 persons of 57 different nationalities. The budget for 1998 amounted to 64.8 million US dollars, while expenditures for 1999 are estimated at 94.1 million US dollars.

In October 1994 the UN detention unit was built and made available. It is a part of the prison located in Scheveningen, a suburb of the Hague. In November 1998, work on extending the detention unit was completed.

The judges have several times amended and supplemented the Rules of Procedure and Evidence so as to evolve a procedure reflecting

a balance between Continental and Anglo-Saxon Law. The duty of states to co-operate with the Tribunal has been elucidated in the Rules of Procedure and Evidence. Rule 58 stipulates that the obligations under article 29 of the Statute shall prevail over any legal impediment to the surrender of the accused or of a witness to the Tribunal that may exist under the national law or extradition treaties. The Rules further specify that if a State, within a reasonable time, takes no action to execute a warrant of arrest against the accused, the Tribunal, through the President, may notify the Security Council accordingly.

The first public hearing was held on 8 November 1994 and addressed the request to Germany for deferral to the competence of the Tribunal for prosecution against Dušan Tadić, who had been arrested in Germany on the charge of crimes committed in the Prijedor area. Tadić was transferred to the Scheveningen detention unit on 24 April 1995 and thus became the first person accused of war crimes committed on the territory of the former Yugoslavia to be handed over to the Tribunal. He was also the first person to be tried and the first to be convicted, though his defence has lodged an appeal. At the beginning of the proceedings, Tadić had raised objections as to the Tribunals jurisdiction, which were rejected by the Appeals Chamber.

From May 7th 1996, when the first trial began until 10 December 1998, the Tribunal pronounced four judgements following three trials and a plea of guilty. Five of the accused have been convicted, and one has been acquitted.

Four trials were in progress at the end of 1998. The most recent one had begun on 30 November 1998, the charge being genocide. Six more trials are expected soon.

Since the Tribunal's establishment, 24 indictments have been made, involving 84 persons. The Prosecutor has withdrawn indictments against 18 persons. One accused was acquitted and one is serving his sentence. Six have died (two in detention, of whom one committed suicide). At the end of 1998 the 22 indictments published involve 57 persons.

In 1998 twenty-six indicted persons were in custody, and one has been temporarily released to go to *Republika Srpska*, for health reasons. The detainees include 12 Serbs, one of whom has been temporarily released, 12 Croats and two Moslems.

In early December 1998, Radisav Krstić, General of the *Republika Srpska* Army, was arrested after having been previously accused in a sealed indictment for genocide in Srebrenica. By the same act, two more persons were indicted whose names were deleted following publication. It is the strategy of the Chief Prosecutor, the Canadian Justice Louise Arbour, to have some indictments remain "secret" (they are not made public until they are served on the accused) for the purpose of facilitating arrest. This method has been strongly criticised in Yugoslavia.

Until the end of 1998 eight international arrest warrants were issued following the procedure envisaged in Rule 61. Among the eight wanted persons are the former President of "Republika Srpska Krajina (RSK)", Milan Martić, the political leader and former President of *Republika Srpska*, Radovan Karadžić, and the former Commander of the *Republika Srpska* Army, General Ratko Mladić.

By 8 December 1998, SFOR, the international force in Bosnia and Herzegovina, had arrested 11 accused. Incidents occurred in the process of arrest. One of these was the killing of Simo Drljača, a Serb from Prijedor.

The Tribunal has not been able to meet expectations primarily because states emerging on the territory of the former Yugoslavia have been reluctant to co-operate. The FRY refuses to fulfil its obligations *vis-à-vis* the Tribunal such as they have been laid down in the UN Security Council Resolution and confirmed by the Dayton-Paris Peace Accord for Bosnia, signed by the then President of the Republic of Serbia, Slobodan Milošević, President of Croatia, Franjo Tudjman and President of the Presidency of Bosnia and Herzegovina, Alija Izetbegović.

The presidents of the Tribunal have informed the UN Security Council no less than four times that the FRY authorities had declined to surrender accused persons residing on the territory of the FRY. Yugoslav authorities have also refused to recognise the jurisdiction of the Tribunal for possible crimes committed in Kosovo and have not allowed the Chief Prosecutor and her team of investigators to go to Kosovo and Metohija and conduct investigations there. The President of the Tribunal, Gabrielle Kirk MacDonald, requested the Security Council on 6 November 1998 to take effective measures in order to make the FRY comply with its obligations under international law.

5.2. Reactions in the Federal Republic of Yugoslavia

The Federal organs and the authorities in the Republic of Serbia have strongly disapproved of the Tribunal ever since its establishment. State officials and establishment jurists claim that the Tribunal was established by an incompetent organ, i.e. the Security Council in violation of international law, and was an illegal and illegitimate political instrument designed to put pressure on the Serbs, the aim being to declare the latter solely responsible for the crimes committed during the conflicts in the territory of the former Yugoslavia.[192]

The position of official Belgrade is that the Statute of the Tribunal cannot have primacy over national law. The refusal of the FRY to execute the warrant for the arrest of Mile Mrkšić, Veselin Šljivančanin and Miroslav Radić and to surrender these three officers of the former JNA who are indicted for the killing of at least 200 non-Serbs in 1991 in Vukovar was justified by reference to the FRY Constitution, which does not allow the extradition of FRY nationals. Occasionally, the authorities claim that war criminals are to be tried

192 Another objection to the Statute is that is does not provide for the prosecution of crimes against peace. The drafters of the Statute have allegedly done this so as to protect officials in the other federal units of the former SFRY; according to the official version in Serbia, the latter were solely responsible for the outbreak of hostilities in the SFRY.

in the domestic courts. However, until 1999 only one trial took place and was adjourned *sine die*.

Major Miloš Gojović, President of the Supreme Military Court, declared on 9 December 1998 that the military prosecutor had reviewed the indictment of the Hague Tribunal against the three above officers and "was satisfied that the indictment was groundless, dismissed it and ordered the military court in Belgrade to institute proceedings against persons unknown believed to have committed crimes in Vukovar" (*Politika*, 10 December, p. 24). Mrkšić, Šljivančanin and Radić were summoned to attend the hearing on 17 December as witnesses. The Supreme Military Court officially confirmed that they had testified "about all the circumstances surrounding the event and responded to all questions asked" (*Dnevni telegraf*, 18 December, p. 5). The Prosecutor of the Tribunal expressed the view that the proceedings before the military court had for objective to shield the officers from international criminal responsibility and demanded that the Yugoslav authorities defer the case to the Tribunal (*Blic*, 8 December, p. 7).

The Humanitarian Law Center, which has dealt with the most serious human rights violations committed during the wars waged from 1991 to 1995, concluded that the Yugoslav authorities have not shown any serious intention to punish or assist in the punishment of those accused of the gravest crimes committed during the armed conflicts in the territory of the former Yugoslavia (FHP-8).

The authorities in Montenegro, none of whose citizens are on the published list of indictees, have a different view of the Tribunal. "Montenegro considers that the Hague Tribunal is legal and legitimate and ... and the State authorities are prepared to make their contribution towards shedding light on every case containing elements of a criminal offence against humanity and international law", stated State Prosecutor Božidar Vukčević (*Pobjeda*, 28 April, p. 3)

The Yugoslav public knows very little about the Tribunal. The average citizen is almost completely ignorant of the reasons why it was established, of its organisation and of the rules governing its

activities. The prevailing view is that the Tribunal is a political rather than a judicial body, established with the aim of casting a slur on the Serbs. The average citizen reasons along these lines due to the endless harping of the state-owned media.

In the press supporting the regime in Serbia no attempts have been made to recall that Yugoslavia is under the obligation to co-operate with the Tribunal. Moreover, no mention has been made of the critical views of the Tribunal officials *vis-à-vis* Yugoslavia. On the other hand, pro-regime papers regularly convey statements by Yugoslav officials against the Tribunal. "The International Criminal Tribunal for the former Yugoslavia constitutes a framework for the political goals of the most powerful states, members of the Security Council, while its activities unnecessarily interfere in war conflict or involve siding with one of the warring parties ... such tribunals — it would seem — are designed to mete special punishment to pariahs of the international community, while the permanent members of the Security Council can do whatever they please, without any responsibility involved." This statement was made by Zoran Stojanović, Professor of Law, Belgrade University School of Law, whom *Politika* styles "President of the FRY Committee for Collecting Data on Crimes" (11 November, p. 2).

The campaign against the Hague Tribunal gained momentum in September 1998, following the death of Milan Kovačević, a Bosnian Serb accused of war crimes in Prijedor, whose demise was attributed to neglect by the doctors in the Hague detention unit. Under the heading "Perfidious Euthanasia by the Hague Doctors", *Politika* reported on the opinions expressed by Milan Kovačević's psychiatrist and medical expert for the defence: "We had warned them officially (the prison doctors) that Kovačević's state of health was such as to necessitate hospitalisation in an appropriate medical institution rather than being placed in a prison cell. However, the doctors in the Hague paid no heed to our warning but perfidiously administered euthanasia ..." (10 September, p. 21). Four days later the same daily stated that "the initial idea according to which all those responsible for the

commission of crimes in the conflicts on the territory of the former Yugoslavia should answer to the Tribunal has turned into a stick used primarily against Serbs. A confirmation of this is that 90% of the indictments have been brought against Serbs." (14 September, p. 16).

Following the proceedings against three Bosnian Moslems and one Bosnian Croat for crimes against Serbs, which ended in November with the acquittal of one of the accused, *Politika* published articles such as: "Judgement — a Direct Insult to the Serbs" (17 November, p. 19) and "Different Yardsticks of the Hague Judges" (18 November, p. 18). It was argued that this was only further confirmation that the "Tribunal is a instrument to blame the Serbs as the main culprits for the conflicts in the territory of the former Yugoslavia."[193]

The arrest by SFOR of General Radisav Krstić of the Army of *Republika Srpska* had a strong impact on public opinion. For several consecutive days, *Politika* dedicated a whole page to the event. "A Planned and Deliberate Action by SFOR", "The Hague Tribunal — An Instrument of Political Pressure on RS", " Brutal Kidnapping of a General" (4 December, p. 18), "SFOR Is Capable of Using Any

193 The prevalent view in Croatia is that the Tribunal's activities are directed against Croats. The arguments resorted to are similar to those in Serbia, though the direction is different. At least, this is the official position. Ivić Pašalić, Vice-President of the Croatian Democratic Community (HDZ), Croatian President Franjo Tudjman's party, and his advisor, at the very end of 1998, reiterated Croatian disappointment in the Tribunal. According to the HINA agency reports, "Pašalić emphasised ... We could not even imagine that criminals who were responsible for aggression and who have committed crimes against Croats in Croatia and in Bosnia and Herzegovina would remain unpunished and that there would be no wish to bring to justice those who were responsible for the war ... So far, 13 Croats have been indicted and we therefore ask ourselves whether they are being tried in accordance with the international conventions or according to political criteria." According to the same source, "The Croatian Helsinki Committee (HHO) expressed its concern because of the increasingly strong and ever more violent attacks by the Croatian authorities against the Hague Tribunal ... The Committee underlines that the Secretary General of the HDZ, Drago Krpina, and the President's Advisor Ivić Pašalić and echoing the wishes of President Tudjman compete in their public statements in lambasting the Hague Tribunal." (HINA bulletins 3031 and 3044 of 30 December 1998).

Means", "Secret Lists Activated Anew", "The Russian Brigade of SFOR Was Not Informed About the Arrest", (5 December, p. 18).

The independent press has addressed the issue of the Tribunal in calmer tones. It has endeavoured to explain the reasons for its establishment and how it functions. These papers alone publish statements made by the Hague Tribunal officials explaining their moves and responding to criticism. Moreover, independent newspapers remind the public that the FRY has undertaken the obligation to co-operate with the Hague Tribunal, emphasising that such co-operation is necessary in order to lift the burden of collective responsibility from the Serbs, to make it possible for those having committed crimes against Serbs to be brought to trial and to improve the image of Serbs in the world. The independent press recalls that "the Serbs are bound by rules governing war, which are older than the Hague" (*Demokratija,* 6 January, p. 5) that the Hague Tribunal constitutes a stage in "in the century and a half long resistance to unscrupulousness and crime" and a preparation for a permanent international criminal court (*Naša borba,* 14 September, p. 7), and that "refusal to co-operate with The Hague" is "detrimental" to Yugoslavia's interests (*Blic,* 13 November, p. 8). All the same, the independent media have not been successful in their efforts since the authorities tend to restrict their visibility, audibility and circulation.

Towards the end of the year, the government of the FRY worsened its otherwise bad relations with the Hague Tribunal on account of Kosovo and Metohija. It refused to allow Prosecutor Arbour and her associates access to the Province and to conduct on-site investigations.

The Humanitarian Law Center organised an international conference on war crimes trials on 7 and 8 November in Belgrade, attended by some 70 experts from Yugoslavia and abroad. The President of the Tribunal Gabrielle Kirk MacDonald, Chief Prosecutor Arbour and her deputy Graham Blewitt, who were to take part in the debate, refused to come because the Yugoslav Consulate had issued them visas which excluded access to Kosovo and Metohija.

Serbian State Television (RTS) covered the first day of the Conference but only broadcast the statements of those participants from the FRY who claimed that the Tribunal was illegal and illegitimate and that the Tribunal and its Prosecutor were politically motivated and biased. RTS, in its television and radio programmes, did not cover any presentation or contribution in favour of the Tribunal and did not at all report on the second day of the Conference, nor on the fact that the Tribunal representatives had failed to come and on the reasons for their absence.

As the independent press also tends to print unfavourable comments about the work of the Tribunal and publish the views of Yugoslav jurists who deem that the establishment of the Tribunal under a Security Council resolution was illegitimate and wrong, the impression the Yugoslav public opinion has of the Tribunal is predictably unfavourable. The question is whether its existence and activities have achieved the goals of every criminal prosecution to discourage any potential perpetrators of such crimes. Clearly, the attitude of both conflicting parties in Kosovo has not confirmed that this was the case.

V
HUMAN RIGHTS IN THE SFRY/FRY FROM 1983 TO 1998

On the basis of the research findings set out in chapters I — III, a comparison can be made of the respect of human rights in the former Socialist Federal Republic of Yugoslavia (SFRY) and the status of human rights in the Federal Republic of Yugoslavia. Relevant data on the SFRY can be found in the reports of Charles Humana, based on research conducted world-wide in the field of human rights in 1983, 1986 and 1991. A special feature of this research effort was its quantitative data-processing[194] approach, thus enabling an exact determination of the state of human rights in each country and a comparison with the situation in other countries, as well as with the global state of affairs in this respect. The research carried out by the Belgrade Centre for Human Rights yielded data using Humana's methodology (though this time the data base was incomparably richer, better systematised and more reliable than in 1983, 1986 and 1991.)

Humana's methodology in researching the observance of human rights essentially consists in the following. First of all, out of the body

194 Charles Humana: *World Human Rights Guide,* 1st ed., London, Hutchinson, 1983, p. 7–12; *World Human Rights Guide,* 2nd ed. London, Economist Publications, 1986, p. 1–7; *World Human Rights Guide,* 3rd ed., New York — Oxford, Oxford University Press, 1992, p. 3–10.

of guaranteed human rights 17 were selected as being the most important and then made operational through 40 concrete forms (Table 1). Secondly, out of the 40 rights, 7 rights were chosen whose violation entailed infliction of physical pain (rights 7–13 in Tables 2 and 3),[195] so that this could be weighted by a factor 3.0. Based on information collected for each country, an evaluation of the respect of each right was made on four assessments, graded as follows:

0 — consistent pattern of human rights violations

1 — frequent human rights violations

2 — generally satisfactory respect of human rights with occasional violations

3 — excellent respect of human rights

According to this method of evaluation the total number of points which a country can score is 162 or $(33 \times 3 = 99) + (7 \times 3 \times 3 = 63)$, or 100%. Generally, if a country scores over 75% it may be said that its record of observance of fundamental human rights is satisfactory. A country that scores between 41% and 75% is considered to respect basic human rights poorly, whereas in a country that scores 40% or less points, basic human rights are more or less systematically violated.

In order to apply this methodology to the research findings of the Belgrade Centre it was first necessary to calculate the number of points for each right for each of the three areas of research (legislation, implementation and consciousness). Once this was done, the average number of points for all 40 rights had to be calculated, after which the total was presented in absolute numbers and percentages (Table 2).

195 The exception was the right to equal opportunity in employment (right No. 10) the violation of which does not necessarily involve inflicting pain.

Table 1:

Human right	Concrete form of right*
1. Prohibition of discrimination	a) Right of women to political and legal equality (21) b) Right of women to social and economic equality (22) c) Right of women to equality in marriage and at its dissolution (37) d) The entitlement of minorities to social and economic equality (23) e) The right of homosexuals to equality (40)
2. Right to life	a) Freedom from extra-judicial executions and "disappearance" (8) b) Freedom from the death penalty (11)
3. Prohibition of torture	a) Freedom from torture and reprisals by the State (9) b) Freedom from extra-judicial corporal punishment (12)
4. Right to freedom and security of person	a) Right to limited duration of custody (until indictment) (13)
5. Right to a fair trial	a) Independent judiciary (27) b) Presumption of innocence and possibility to defend oneself (30) c) Right to legal assistance and counsel of own choice (31) d) Right to a public hearing (32) e) *Habeas corpus* (33)
6. Right to privacy	a) Freedom from interference with correspondence and tapping of telephone conversations (18) b) Freedom from police searches of home without search warrant (34)
7. Right to freedom of thought, conscience and religion	a) Freedom from state ideology in schools (15) b) Right to practice one's religions (38)

Human right	Concrete form of right*
8. Freedom of expression	a) Right to spread information (4) b) Freedom of monitoring of the respect of fundamental human rights (5) c) Freedom of artistic creative work (16) d) Freedom from censorship (17) e) Freedom of the press (24) f) Freedom to publish (25) g) Freedom of radio and TV broadcasting (26)
9. Freedom of peaceful assembly	a) Freedom of peaceful assembly (3)
10. Freedom of association	a) Freedom from compulsory membership in state organisations (14) b) Freedom to independent trade unions (28)
11. Freedom to peaceful enjoyment of property	a) Freedom of private ownership (35)
12. Rights of persons belonging to minorities	a) Right to publishing activity and education in languages of minorities (6)
13. Political rights	a) Right to non-violent political opposition (19) b) Right of vote (20)
14. Special protection of family and child	a) Freedom to conclude mixed marriages (36)
15. Right to nationality	a) Right to nationality (29)
16. Freedom of movement	a) Freedom of movement in one's own country (1) b) Freedom to leave one's own country (2)
17. Social, economic and cultural rights	a) Right to equal opportunities for employment(10) b) Freedom from slavery, forced or child labour (7) c) Freedom to use means of contraception (39)

* — Numbers in the brackets refer to the numerical order of rights in Tables 2 and 3

Table 2: State of Human Rights in the FRY in 1998

Human Rights	Legislation	Implementation	Consciousness	Average
1. Freedom of movement in one's own country	3.0	2.0	2.0	2.3
2. Freedom to leave one's own country	1.0	1.0	1.0	1.0
3. Freedom of peaceful assembly	2.0	1.0	1.0	1.3
4. Right to spread information	0.0	0.0	1.0	0.3
5. Free monitoring of respect of fundamental human rights	1.0	1.0	1.0	1.0
6. Right to publishing and education in minority languages	2.0	1.0	2.0	1.7
7. Freedom from slavery, forced and child labour	6.0	3.0	3.0	4.0
8. Freedom from extra-judicial executions and “disappearance”	9.0	3.0	6.0	6.0
9. Freedom from torture and reprisals by the State	6.0	3.0	3.0	4.0
10. Right to equal opportunities for employment	9.0	3.0	3.0	5.0
11. Freedom from the death penalty	6.0	6.0	0.0	4.0
12. Freedom from judicial corporal punishment	9.0	9.0	3.0	7.0
13. Right to limited time of custody (until indictment)	6.0	3.0	3.0	4.0

Human Rights	Legislation	Implementation	Consciousness	Average
14. Freedom from compulsory state organisations.	3.0	1.0	1.0	1.7
15. Freedom from state ideology in schools	3.0	1.0	1.0	1.7
16. Freedom of artistic creative work	3.0	2.0	2.0	2.3
17. Freedom from censorship	0.0	1.0	2.0	1.0
18. Freedom from interference with correspondence and tapping of telephone conversations	2.0	0.0	1.0	1.0
19. Right to non— violent political opposition	2.0	1.0	1.0	1.3
20. Right to vote	2.0	0.0	2.0	1.3
21. Right of women to political equality and equality before the law	3.0	2.0	1.0	2.0
22. Right of women to social and economic equality	2.0	1.0	1.0	1.3
23. Minority rights to social and economic equality	2.0	1.0	2.0	1.7
24. Freedom of the press	0.0	1.0	2.0	1.0
25. Freedom to publish	2.0	2.0	2.0	2.0
26. Freedom of radio and TV broadcasting	0.0	0.0	2.0	0.7
27. Right to an independent judge	1.0	0.0	3.0	1.3

Human Rights	Legislation	Implementation	Consciousness	Average
28. Right to an independent trade union	1.0	1.0	2.0	1.3
29. Right to nationality	2.0	1.0	2.0	1.7
30. The presumption of innocence and possibility of defence	2.0	1.0	1.0	1.3
31. Right to legal assistance and counsel of choice	2.0	2.0	2.0	2.0
32. Right to public trial	2.0	2.0	0.0	1.3
33. *Habeas corpus***	2.0	1.0	0.0	1.0
34. Freedom from search of home without warrant	3.0	1.0	1.0	1.7
35. Freedom of private ownership	2.0	2.0	2.0	2.0
36. Freedom to conclude mixed marriages	3.0	2.0	1.0	2.0
37. Right of women to equality in marriage and at it dissolution	3.0	2.0	1.0	2.0
38. Right to practice own religion	3.0	1.0	1.0	1.7
39. Right to use contraceptives	3.0	3.0	1.0	2.3
40. Right of homosexuals to equality	3.0	2.0	0.0	1.7
Total (in absolute figures)	116.0	70.0	66.0	84.0
Total (in percentages)	71.6	43.2	38.3	51.9

° — Fundamental rights 7–13 are weighted with factor 3.0

Scoring was based on an analysis of results involving participation by the whole research team. The greatest difficulties arose when appraising citizens' consciousness of human rights: depending on the question's wording, one was either able to evaluate the extent of knowledge about a certain law and how it is regulated or judge the implementation of that right in the FRY. For example, in the case of corporal punishment sentenced by a court, points were awarded on the basis of data about the extent to which respondents were familiar (unfamiliar) with the relevant legal norms. As for the right to an independent judge, points were calculated on the respondent's assessment of judges in the FRY today. The reasons for this methodological inconsistency have already been explained in Chapter III and, therefore, we shall not dwell on this here. Another major problem was the lack of regional uniformity: on the one hand, the status of human rights in Montenegro was better than in Serbia, while, on the other, the status in Kosovo was worse than in Vojvodina and in Central Serbia (in 1998, the political crisis in that Province degenerated into a higher-intensity armed conflict in the broader region). These are relevant circumstances which the reader must be aware of though they are not strong enough to question the possibility of a synthetic survey of the status of human rights in the FRY. At any rate, the state of affairs in the SFRY in 1991, when Humana collected material for his third research of the state of human rights in the world, had not been very different.

As for the comparability of data obtained through our research and data established by Humana in his three surveys some reservations need to be voiced. While, it is true, the subject of investigation was in all four researches the same rights (with the exception of the first research in 1983 where 9 questions were about the police and criminal policies), there is a considerable variance in sources and scope of material that served as a basis for conclusions. Humana conducted his research work in virtually all the countries in the world, making use of available data (particularly those provided by international organisations, rather than information obtained through a targeted collection

of empirical data in the territory of each state, such as was the case with our Centre). Moreover, he did not take account of the qualitative diversity of data relevant to legislation and its implementation (while he did not and indeed could not take into consideration the question of legal consciousness). Consequently, he was not able to arrive at differentiated and complex assessments of the realities underlying human rights (*inter alia*) in the FRY. Nevertheless, irrespective of all these reservations, the data can serve for fairly valid comparison between the human rights situation in the SFRY (1983–1991) and in the FRY (1998), as well as for conclusions about the fate of human rights in the process of post-socialist transition in this region.

If we look at data figuring in Table 3, we can see no truly substantive changes in the situation of human rights in the territories of the SFRY/FRY over a time span covering a quarter of a century and involving two political systems. In the field of human rights, the continued rule of former communists (later socialists) in Serbia and in Montenegro is clearly reflected. Particularly noticeable is the unchanged situation as regards political rights and freedom of expression: like in the days of socialism, under the existing (especially Serbian) regime one is able to identify the same trend towards the repression of critical thought, as well as of cultural and political opposition. In addition, although a change of the economic system has been proclaimed, transition has proved to be an extremely slow process; private property can hardly count on equal treatment with the predominantly social form of ownership. It is also worth noting that the changes in the status of individual rights, either for the better (i.e. the right to an independent judge or freedom from extra-judicial execution or "disappearance"), or for the worse (e.g. freedom from judicial corporal punishment or freedom from compulsory state organisations), have essentially been the result including the citizens opinions of the citizens registered in the survey (also compare with relevant data from Table 2). The views of citizens on human rights exhibit a certain logic not to be disregarded in reports such as these.

Table 3: The Situation of Individual Human Rights in the SFRY and the FRY in the period 1983–1998

Human Rights	1983	1986	1991	1998
1. Freedom of movement in one's own country	3.0	3.0	3.0	2.3
2. Freedom to leave one's own country	2.0	3.0	2.0	1.0
3. Freedom of peaceful assembly	1.0	0.0	1.0	1.3
4. Right to spread information	0.0	1.0	2.0^{+}	0.3
5. Free monitoring of respect of fundamental human rights	2.0*	1.0	2.0	1.0
6. Right to publishing and education in minority languages	3.0	2.0	1.0^{+}	1.7
7. Freedom from slavery, forced and child labour	9.0	9.0	9.0	4.0
8. Freedom from extra-judicial executions and “disappearance”	0.0*	6.0	0.0	6.0
9. Freedom from torture and reprisals by the state	6.0	3.0	0.0^{+}	4.0
10. Right to equal opportunity for employment	3.0	3.0	3.0	5.0
11. Freedom from the death penalty	0.0	0.0	0.0	4.0
12. Freedom from judicial corporal punishment	9.0	9.0	9.0	7.0
13. Right to limited time of custody until indictment	3.0	3.0	3.0^{+}	4.0
14. Freedom from compulsory state organisations	2.0*	2.0	3.0	1.7
15. Freedom from state ideology in schools	0.0	0.0	1.0^{+}	1.7

16. Freedom of artistic and creative work	3.0	3.0	2.0^{+}	2.3
17. Freedom from censorship	1.0	1.0	2.0	1.0
18. Freedom from interference with correspondence and tapping of telephone conversations	1.0	1.0	1.0^{+}	1.0
19. Right to non-violent political opposition	1.0	0.0	1.0	1.3
20. Right to vote	0.0*	0.0	1.0^{+}	1.3
21. Rights of women to political equality and equality before the law	3.0	2.0	2.0	2.0
22. Rights of women to social and economic equality	3.0*	2.0	2.0	1.3
23. Minority rights to social and economic equality	2.0*	2.0	2.0^{+}	1.7
24. Freedom of the press	1.0*	1.0	1.0^{+}	1.0
25. Freedom to publish	2.0	2.0	2.0^{+}	2.0
26. Freedom of radio and TV—broadcasting	0.0	0.0	2.0^{+}	0.7
27. Right to an independent judge	0.0	0.0	1.0	1.3
28. Right to an independent trade union	1.0	1.0	2.0^{+}	1.3
29. Right to nationality	3.0	2.0	3.0	1.7
30. The presumption of innocence and possibility of defence	2.0	2.0	2.0^{+}	1.3
31. Right to legal assistance and counsel of choice	3.0*	2.0	2.0	2.0
32. Right to public trial	0.0	0.0	2.0	1.3
33. *Habeas corpus*	2.0	2.0	2.0	1.0

34.Freedom from search of home without warrant	1.0	0.0	2.0^{+}	1.7
35. Freedom of private ownership	0.0*	0.0	2.0	2.0
36. Freedom to conclude mixed marriages	3.0	3.0	3.0	2.0
37. Right of women to equality in marriage and at its dissolution	3.0	3.0	3.0	2.0
38. Right to practice own religion	3.0	2.0	3.0	1.7
39. Right to use contraceptives	3.0	3.0	3.0	2.3
40. Right of homosexuals to equality	2.0	1.0	2.0$^{+\#}$	1.7
Total (in absolute figures)	86.0	80.0	89.0	84.0
Total (in percentages)	53.1	49.4	54.9	51.9

^{o} — Rights 7–13 are weighted by a factor of 3.0 (also for 1983 when they were originally not weighted)

* — Points do not refer to the above fundamental rights, but to data on police and criminal policies

$^{+}$ — Alleged violations have been particularly attributed to the Republic of Serbia

$^{\#}$ — In the research of 1991 a broader formula " interfering in privacy" was used

The picture of the human rights status in the FRY gives cause for concern. The stagnation that has been noted in relation to the former common State (the SFRY) has taken the shape of regression, especially if we compare the FRY with other countries world-wide or with the Eastern European region. Although there are no recent studies on the situation of human rights in the world, one can realistically expect that the upward trend recorded in 1991 will continue (see Table 4) and that it will mark the beginning of the 21st Century. The new wave of democratisation following 1989 cannot be set apart from the increasing importance human rights play in the contemporary world. Against such a background, the FRY with its conservative human rights policies will soon find itself in the very rear.

Table 4: Situation of Fundamental Human Rights in the SFRY and FRY in the period 1983–1998

Year	SFRY/ FRY	World average	Yugoslavia's place in the world
1983	53.1%	64%	47th (out of 76 countries reviewed
1986	49.4%	60%	56th (out of 90 countries reviewed)
1991	54.9%	62%	66th (out of 104 countries reviewed)
1998	51.9%	—	—

Appendix 1

The Most Important Human Rights Treaties Binding the Federal Republic of Yugoslavia

Convention against Discrimination in Education, 4/1964.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Međunarodni ugovori)*, 9/1991.

Convention for the Suppression on the Traffic in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, 2/1951.

Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, *Sl. list FNRJ (Dodatak)*, 3/1961.

Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ*, 8/1958.

Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ*, 11/1958.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatak)*, 13/1964.

Convention on Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, 7/1960.

Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ*, 11/1981.

Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, 7/1958.

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, *Sl. list SFRJ (Međunarodni ugovori)*, 50/1970.

Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, 7/1954.

Convention on the Prevention and Punishment of the Crime of the Genocide, *Sl. vesnik Prezidijuma Narodne skupštine FNRJ*, 2/1950.

Convention on the Rights of the Child, *Službeni list SFRJ (Međunarodni ugovori)*, 15/1990; *Službeni list SRJ (Međunarodni ugovori)*, 4/1996; *Službeni list SRJ*, 2/1997.

Convention Relating to the Status of Stateless Persons and Final Act of the UN Conference Relating to the Status of Stateless Persons, *Sl. list FNRJ*, 9/1959, *Sl. list SFRJ — (Dodatak)*, 2/1964, *Sl. list FNRJ (Dodatak)*, 7/1960.

International Convention on the Elimination of All Forms of Racial Discrimination, *Sl. list SFRJ (Međunarodni ugovori)*, 6/1967.

International Convention on the Suppression and Punishment of the Crime of *Apartheid*, .0*Sl. list SRFJ,* 14/1975

International Covenant on Civil and Political Rights, 7/1971.

International Covenant on Economic, Social and Cultural Rights, *Sl. list SFRJ*, 7/1971.

Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Dodatak)*, 6/1955.

Protocol on Relating to the Status of Refugees, *Sl. list SFRJ (Dodatak)*, 15/1967.

Slavery Convention, *Sl. novine Kraljevine Jugoslavije,* god. XI-1929, 234.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak),* 7/1958.

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 Montenegro, *Sl. list RCG,* No. 48/92.

The Constitution of the Republic of Serbia, *Sl. glasnik RS*, No. 1/90.

Federal Legislation

The Act on Bases of the Retirement and Disabled Persons Insurance, *Sl. list SRJ* No. 30/96.

The Act on Classification of the Activities and on the Register of Units of Classification, *Sl. list SRJ*, No. 31/96, 34/96

The Act on Election of Federal Deputies in the House of Citizens of the Federal Assembly, *Sl. list SRJ*, No. 57/93.

The Act on the Association of Citizens into Associations, Social Organisations and Political Organisations Established for the Territory of the SFRY, *Sl. list SFRJ*, No. 42/90.

The Army of Yugoslavia Act, *Sl. list SRJ*, No. 67/93, 43/94.

The Bases of Labour Relations Act, *Sl. list SRJ*, No. 29/96.

The Bases of Ownership Relations Act, *Sl. list SFRJ,* No. 6/80, 36/90, *Sl. list SRJ*, No. 29/96.

The Bases of the System of Public Information Act, *Sl. list SFRJ*, No. 84/90.

The Bonds Act, *Sl. list SFRJ*, No. 29/78.

The Citizenship Act, *Sl. list SRJ*, No. 33/96.

The Communication Systems Act, *Sl. list SFRJ*, No. 41/88.

The Criminal Procedure Act, *Sl. list SFRJ*, No. 4/77, 36/77, 14/85, 26/86, 74/87, 57/89, 3/90, *Sl. list SRJ*, No. 27/92, 24/94.

The Decision on the Payment of Special Tax When Leaving the Federal Republic of Yugoslavia, *Sl. list SRJ*, No. 55/94, 83/94, 13/95, 24/95, 40/95, 16/95, 32/96.

The Enterprises Act, *Sl. list SRJ*, No. 29/96.

The Federal Budget Act, *Sl. list SRJ*, No. 24/94.

The General Administrative Procedure Act, *Sl. list SRJ.* No. 33/97.

The Introduction of the Register Numbers of the Citizens Act, *Sl. list SFRJ*, No. 58/76.

The Movement and Sojourn of Foreigners Act, *Sl. list SFRJ*, No. 56/80, 53/85, 30/89, 26/90, 53/91, *Sl. list SRJ*, No. 42/94, 28/96.

The Penal Code, *Sl. list SFRJ*, No. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90, 54/90, *Sl. list SRJ*, No. 35/92, 37/93, 24/94.

The Procedure for the Registration in the Court Register Act, *Sl. list SRJ*, No. 80/94.

The Protection of Data on Persons Act, *Sl. list*, No. 24/98.

The Regulation on the Change of Personal Names, *Sl. list SFRJ*, No. 6/83.

The Regulation on the Data and Documentation to be Submitted With the Request for the License for a Radio Station, *Sl. list SFRJ*, No. 44/76, 22/91, *Sl. list SRJ*, No. 46/96.

The Strikes Act, *Sl. list SRJ*, No. 29/96.

The Travel Documents of Yugoslav Citizens Act, *Sl. list SRJ*, No. 33/96, 46/96.

Republic of Serbia

Decision Determining Areas for the Assemblies of Citizens of Belgrade, *Sl. list Grada Beograda*, No. 17/92.

Instruction on the Updating of Electoral Lists, *Sl. glasnik RS*, No.37/97.

Penal Code, *Sl. glasnik SRS*, No. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90; *Sl. glasnik RS*, No. 16/90, 49/92, 23/93, 67/93, 47/94, 17/95.

Regulation on the Conditions and Way of Use of Means of Coercion, *Sl. glasnik RS*, No. 40/1995.

Regulation on the Registration of Trade Union Organisations in the Register, *Sl. glasnik RS*, No. 6/97, 33/97.

The Act on Employment and on the Rights of Unemployed Persons, *Sl. glasnik RS*, No. 22/92, 73/93, 82/92.

The Act on Social Care of Children, *Sl. glasnik RS*, No. 49/92, 23/93, 53/93, 67/93, 28/94, 47/94, 25/96.

The Act on Social Organisations and Citizens Associations, *Sl. glasnik SRS*, No. 24/82.

The Act on Social Welfare Protection and on the Provision for Social Security of Citizens, *Sl. glasnik RS*, No. 36/91.

The Act on the Official Use of Languages and Alphabets, *Sl. glasnik RS*, No. 45/91.

The Building Lots Act, *Sl. glasnik RS*, No. 44/95, 16/97.

The Communication Systems Act, *Sl. glasnik RS*, No. 38/91.

The Constituencies for the Election of Members of Parliament Act, *Sl. glasnik RS*, No. 32/97.

The Courts Act, *Sl. glasnik RS*, No. 46/91, 60/91, 18/92, 71/92.

The Decree on Special Measures in the Situation of Threats to our Country of NATO Armed Attacks, *Sl. glasnik RS,* No. 35/98.

The Election of the Members of Parliament Act, *Sl. glasnik RS*, No. 79/92, 83/92, 53/93, 67/93, 90/93, 107/93, 48/94, 32/97.

The Elections of the President of the Republic Act, *Sl. glasnik RS*, No. 1/90, 79/92.

The Enforcement of Penal Sanctions Act, *Sl. glasnik RS*, No.16/97.

The Expropriation Act, *Sl. glasnik SRS*, No. 40/84, 53/87, 22/89, 15/90, *Sl. glasnik RS*, No. 6/90, 53/95.

The Financing of Political Organisations Act, *Sl. glasnik RS*, No. 32/97.

The Inheritance Act, *Sl. glasnik RS*, No. 46/95.

The Internal Affairs Act, *Sl. glasnik RS*, No. 44/91, 79/91, 54/96.

The Labour Relations Act, *Sl. glasnik RS*, No. 55/96.

The Labour Relations in Special Situations Act, *Sl. glasnik RS*, No. 40/90.

The Labour Relations in State Agencies Act, *Sl. glasnik RS*, No. 48/91.

The Legal Status of Religious Communities Act, *Sl. glasnik SRS*, No. 44/77.

The Marriage and Family Relations Act, *Sl. glasnik SRS*, No. 22/80, *Sl. glasnik RS,* No. 22/93, 25/93, 35/94.

The Pardon Act, *Sl. glasnik RS*, No. 49/95, 50/95.

The Political Organisations Act, *Sl. glasnik RS*, No. 37/90, 30/92, 53/93, 67/93, 48/94.

The Primary Schools Act, *Sl. glasnik RS*, No. 50/92.

The Procedure for the Interruption of Pregnancy in Medical Institutions Act, *Sl. glasnik RS*, No. 16/95.

The Protection at Work Act, *Sl. glasnik RS*, No. 42/91, 53/93, 67/93.

The Public Assemblies of Citizens Act, *Sl. glasnik RS*, No. 51/92.

The Public Information Act, *Sl. glasnik RS*, No. 19/91, 36/98.

The Public Prosecutors Office Act, *Sl. glasnik RS*, No. 43/91, 71/92.

The Radio and Television Act, *Sl. glasnik RS*, No. 48/91.

The Refugees Act, *Sl. glasnik RS*, No. 18/92.

The Retirement and Disabled Persons Insurance Act, *Sl. glasnik RS*, No. 52/96.

The Special Conditions of Sales of Immovable Property Act, *Sl. glasnik SRS*, No. 30/89, 42/89, *Sl. glasnik RS,* No. 55/90, 22/91, 53/93, 67/93, 48/94.

The State Administration Act, *Sl. glasnik RS*, No. 20/92, 48/93, 48/94.

The State of Emergency Act, *Sl. glasnik RS*, No. 19/91.

The Territorial Organisation and Local Self-Government Act, *Sl. glasnik RS*, No. 4/91, 79/92, 82/92, 47/94.

The Unique Registration Numbers of Citizens Act, *Sl. glasnik RS*, No. 48/94.

The University Act, *Sl. glasnik RS*, No. 20/98.

Republic of Montenegro

Decision on the Competencies and Composition of the Republic Council for the Protection of the Rights of the Members of the National and Ethnic Groups, *Sl. list RCG,* No.32/93.

Decree on the Care for Displaced Persons, *Sl. list RCG,* No. 37/92.

Decree on the Register of Political Organisations, *Sl. list RCG,* No.25/90, 46/90.

Decree on the Registration of Trade Union Organisations, *Sl. list RCG,* No. 20/91.

Penal Code, *Sl. list RCG,* No. 42/93, 14/94, 27/94.

The Act on the Election of the Members of Parliament and of Committee Members, *Sl. list RCG,* No.4/98.

The Citizens Associations Act, *Sl. list RCG,* No. 23/90, 26/90, 13/91, 48/91, 17/92, 21/93, 27/94.

The Communication Systems Act, *Sl. list SRCG,* No.28/77–389.

The Conditions and Procedures for Interruption of Pregnancy Act, *Sl. list RCG,* No. 29/79.

The Constitutional Court Act, *Sl. list RCG,* No. 44/95.

The Election of the President of the Republic Act, *Sl. list RCG,* No.49/1992.

The Electoral Lists Act, *Sl. list RCG,* No.4/98.

The Employment Act, *Sl. list RCG,* No. 29/90.

The Enforcement of Penal Sanctions Act, *Sl. list RCG,* No. 25/94, 29/94.

The Family Law, *Sl. list SRCG,* No.7/89.

The Internal Affairs Act, *Sl. list RCG,* No. 24/94.

The Labour Relations Act, *Sl. list RCG,* No. 29/90, 42/92, 28/9.

The Pardon Act, *Sl. list RCG,* No. 16/95.

The Personal Names Act, *Sl. list RCG,* No. 20–83

The Primary Schools Act, *Sl. list RCG,* No.50/92

The Public Information Act, *Sl. list RCG,* No. 4/98.

The Public Meetings Act, *Sl. list RCG,* No. 57/92.

The Retirement and Disabled Persons Insurance Act, *Sl. list RCG,* No. 23/85, 3/86, 14/89.

The Secondary Schools Act, *Sl. list RCG,* No. 50/92.

The Unique Registration Numbers of Citizens Act, *Sl. list RCG,* No. 45/93.

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