Series
Reports
3

Series
Reports

HUMAN RIGHTS IN YUGOSLAVIA 1999.
LEGAL PROVISIONS AND PRACTICE IN THE
FEDERAL REPUBLIC OF YUGOSLAVIA COMPARED
TO INTERNATIONAL HUMAN RIGHTS STANDARDS

Editor
Vojin Dimitrijević

Publisher
The Belgrade Centre for Human Rights
Mlatišumina 26, Belgrade, FRY (http://www.bgcentar.org.yu)

For the publisher
Vladan Joksimović

Proof-reading
Tea Gorjanc

Photograph
Milan Aleksić

Layout
Mirko Milićević

ISBN 86–7202–030–8

Print run
500

Printed by
Dosije, Belgrade

HUMAN RIGHTS IN YUGOSLAVIA 1999

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

Belgrade Centre for Human Rights

Belgrade, 2000

Contents

Abbreviations

A19	Article 19
AI	Amnesty International
ANEM	Association of the Independent Electronic Media
CAA	Centre for Anti-War Action
ICESCR	International Covenant on Economic, Social and Cultural Rights of 16 December, 1966
CoE	Council of Europe
CPA	Criminal Procedure Act
ECHR	European Convention on Human Rights and Fundamental Freedoms of 4 November, 1950
FCC	Federal Constitutional Court
FRY	Federal Republic of Yugoslavia
FRY Constitution	Constitution of the Federal Republic of Yugoslavia of 27 April 1992
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
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILO	International Labour Organisation
KFOR	Kosovo Forces
KLA	Kosovo Liberation Army
KVM	Kosovo Verification Mission
LAP	Administrative Procedure Act
LBLR	Bases of Labour Relations Act

LCEMP	Election of Members of Parliament Act
LCHR	Lawyers Committee for Human Rights
LMFR	Marriage and Family Relations Act of Serbia
LF	Families Act of Montenegro
LE	Expropriation Act
LGAP	General Administrative Procedure Act
LSCSIP	Act on the Special Conditions of Sales of Immovable Property
Montenegro	Republic of Montenegro
MUP	Ministry of Internal Affairs
NATO	North Atlantic Treaty Organisation
OSCE	Organisation for Security and Co-operation in Europe
PC	Penal Code
PSEA	Penal Sanctions Enforcement Act
RM Constitution	Constitution of the Republic of Montenegro of 13 October, 1992
RS Constitution	Constitution of the Republic of Serbia of 28 September, 1990
RTS	Radio Television of Serbia
SCSP	Serbian Act on the Special Conditions of the Sales of Property
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 CG	*Službeni list Republike Crne Gore* (Official Gazette of the Republic of Montenegro)
Sl. list SRJ	*Službeni list Savezne Republike Jugoslavije* (Official Gazette of the Federal Republic of Yugoslavia)
SRM	Socialist Republic of Montenegro
SRS	Socialist Republic of Serbia

UN	United Nations
UN doc.	United Nations document
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
Universal Declaration	Universal Declaration of Human Rights, UN General Assembly resolution 217 A (III) of 10 December, 1948
UNMIK	United Nations Interim Administration Mission in Kosovo
VJ	Army of Yugoslavia
YCRC	Yugoslav Child Rights Centre
YUCOM	Yugoslav Lawyers Committee for Human Rights
ZPPSL	Receivership, Bankruptcy and Liquidation Act

Preface

The aim of this Report [by the Belgrade Centre for Human Rights] is to provide readers, both in Yugoslavia and abroad, with relevant and up to date information on the protection of internationally guaranteed human rights in the FRY. The Report thoroughly examines the human rights situation in the FRY from a practical and legal standpoint, with a special focus on restrictions and violations that curtailed the true enjoyment of human rights in 1999.

The Report is divided into three parts.

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

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

A report on the human rights situation in the FRY would not be comprehensive if it failed to take note of several issues that had a direct bearing on respect for human rights in 1999. The third part of the Report briefly covers topics which appeared to be of special relevance: NATO military intervention in the FRY, the situation in Kosovo before and after that intervention, the position of refugees and

displaced persons, the media in Yugoslavia and the International Criminal Tribunal for the former Yugoslavia. We recommend that other parts of the Report be read in conjunction with the relevant portion of the third part.

Work on this Report started on 1 January 1999 and was completed on 20 January 2000. Relevant data for 1999 that was not available before the cut-off date was substituted with information from the preceding year.

The Centre would like to thank all those who helped prepare this Report, in particular friends and colleagues from other organisations and institutions for their support, perseverance and patience.

The publication of this Report was made possible by a donation from the Embassy of Finland in Yugoslavia and by individual friends of the Centre who prefer to remain anonymous. The Centre expresses its gratitude to them.

Introduction

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

Irrespective of 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 when a court or another organ of the SFRY applied them in practice, although this was possible under its constitutions.

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

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.

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

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

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

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 SFRY obligations under the International Covenant on Civil and Political Rights, which it had ratified in 1971.

As a founding member of the Non-Aligned Movement, a group of states playing at the time an important role in international relations, the SFRY had more influence in the United Nations and other universal organisations than suggested by its size and power. Yugoslavia's relations with the "capitalist" West, the "socialist" East and the "non-aligned" South were in the last period of its existence equally good, which enabled it to play an active diplomatic role. One of the favourable consequences for its citizens 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, but allowed them a share in the decision-making at the place of work.

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

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

Nonconformist statements by ordinary "workers", even when they were directed at their superiors appointed by the League of Communists, did not as a rule result in severe consequences or criminal prosecution. However, the system strongly controlled the activity of the intellectual elite, which was also limited through state ownership of the media, publishing houses, film companies, theatres, universities and research institutions. Resistance by the intellectuals was suppressed by police measures and other drastic means, such as the dismissal of university lecturers after the student protests in 1968. The effects of the infamous Article 133 of the Penal Code, making any statement which could "disturb the public" a punishable offence, were partially reduced only in 1988.[5]

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. With the 1974 Constitution elections lost their formal meaning and ceased to be direct: a system of balloting for intermediate delegations was introduced instead, with the ordinary "working people and citizens" participating only at the lowest level. The names of prime ministers and other high elected officials were announced before the cumbersome electoral procedure had even started.

A description of the crisis which emerged in the SFRY and led to its disappearance is not a part of this Report. Nevertheless, the reader should bear in mind that in the twilight of the former Yugoslavia, and especially during the armed conflicts which erupted in 1991,

5 For its residues, see I.4.8.4.

fundamental human rights were seriously violated by all political actors, from those who alleged to be state organs to sundry criminal groups attempting to ennoble their deeds by posturing as fighters for the national interest or the liberation of some of the ethnic groups. Although rules of international humanitarian law had been faithfully reproduced in the SFRY Penal Code and in the field manuals of the army, no person suspected to have committed war crimes or crimes against humanity 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 initial removal of many officers belonging to non-Serbian and non-Montenegrin nations and of some high ranking officers who fell into political disgrace.

The first signs of serious disagreements among former communists became visible only in 1996 in Montenegro and led to an open rupture in the ruling DPS. Its reformist wing, led by Milo Đukanović, emerged victorious: it gained power in Montenegro and entered into a coalition with Montenegrin opposition parties with a similar orientation. The disgruntled opponents of the new course established a new political party, the Socialist People's Party (SNP). The outcome of this conflict, and the resulting political changes in Montenegro, led quickly to a clash between the government of Montenegro, on the one side, and the government of Serbia and the federal government (which in

1999 still remained under the control of Slobodan Milošević and the parties supporting him), on the other. Most recently, the voices demanding a referendum in Montenegro on its becoming an independent state have become louder. In 1998 and 1999 the representatives of the federal and Serbian authorities, all close to Milošević, have threatened with countermeasures amounting to declaring a state of emergency in Montenegro.

The power at the federal and the Serbian level are in the hands of a coalition of three Serbian political parties. Two of them (the Socialist Party of Serbia — SPS and the Yugoslav Left — JUL) claim to be on the political Left, while the third (the Serb Radical Party — SRS) speaks and acts as a party of the extreme right wing. At the federal level, these parties are joined by the Montenegrin SNP, which even provides the prime minister, Momir Bulatović, although it lost the 1997 parliamentary elections in Montenegro. The governing coalition in Montenegro does not recognise the federal government.

Municipal assemblies in most cities in Serbia are controlled by Serbian opposition parties, members of the former coalition *Zajedno* (Together). Their victory at the 1996 local elections was finally acknowledged after the three months long (winter 1996/1997) protests in Belgrade and other major cities against the attempts to change their outcome by the courts loyal to the regime. After stubborn resistance and use of violence against the demonstrators, the Serbian authorities indirectly admitted the tampering through the adoption of a special bill, by which the Parliament recognised as final the initial results. Such conduct reinforced doubts as to the regularity of all previous elections in the FRY, except those in Montenegro in 1997, which were favourably assessed by both domestic and international observers.

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 their nation have been paramount in their considerations: their attainment has been

treated as the prerequisite for the enjoyment of the individual rights of its members. This applies also to the political parties of national minorities. Their main aim has been the right to self-determination, which should lead to independence (Albanian parties) or to broad autonomy, territorial or personal (parties of other minorities). As in other European countries in transition, the inability of most political parties to recruit members belonging to both majority or minority ethnic groups has impoverished political life: 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 Serb nationalist rhetoric has alienated a third of the population of the FRY and has weakened their civic motivation, which in turn has led the authorities and the ruling parties to express their strong doubts in the loyalty of citizens belonging to national minorities. The vicious circle of mistrust has thus been completed.

The respect for human rights, and especially of economic and social rights, has been eroded by the difficult economic situation in the country. By decision of the UN Security Council the FRY was struck by economic sanctions almost immediately after its creation. This measure was justified by the involvement of the organs of the Yugoslav state in the war in Bosnia and Herzegovina. As all international sanctions of this kind they have strengthened the solidarity of 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.

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 in 1998, which eventually developed in armed action by Serbian police and the Yugoslav army against the "Kosovo Liberation Army" (KLA) and other ethnic Albanians suspected of terrorism and secessionism. Incitement to national hatred has been a consistent feature of the media owned by the state or by private persons favoured by the regime. Although such propaganda has always

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.

constituted a criminal offence under Yugoslav law, no criminal proceedings have ever been instituted against persons suspected of advocating national hatred or intolerance.

A new shock for the population and the authorities in Yugoslavia came on 24 March 1999, when the threat of NATO to intervene by arms against targets in FRY because of the situation in Kosovo materialised. Military intervention lasted until 10 June. It resulted in heavy casualties and significant material damage. It also contributed to the deterioration of the human rights situation, especially in Serbia.[7] The practice to enact laws openly flouting the federal constitution, the constitution of Serbia and international commitments of FRY, started in 1998, has continued with more intensity during and after the state of war proclaimed after the NATO attack.

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 legal and can be established easier than in the former SFRY. However, if they do not reflect official attitudes or are critical of the authorities they have incessantly been subjected to accusations for alleged lack of patriotism 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, and especially after the 1999 NATO intervention. In spite of this, non-governmental organisations have multiplied. At the beginning of 1999, at least 600 non-governmental organisations were registered in the FRY — the majority of them have been mainly or occasionally involved in human rights issues. Their activity and their reports have made this Report possible.

7 See in more detail: III.1.

I
LEGAL PROVISIONS RELATED TO HUMAN RIGHTS[8]

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

1.1. Introduction

This report mainly discusses FRY legislation in relation to the standards for the protection of civil and political rights guaranteed by the international treaties binding the FRY. The analysis is primarily focused on the compatibility of FRY legislation with the rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), as the most important relevant international instrument. 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. To a certain extent, the standards contained in the European Convention on Human Rights and Fundamental Freedoms (ECHR) also served as a criterion. This was appropriate although FRY is not a member of the Council of Europe and hence could not ratify the European Convention on Human Rights. The Belgrade Centre for Human Rights believes that the FR Yugoslavia should, like most European countries,

8 For the general development of Yugoslav law since 1945 see *Human Rights in Yugoslavia 1998*, Belgrade Centre for Human Rights, 1999.

become a member of the Council of Europe and ratify the European Convention. However, it should harmonise its legislation and practice with the ECHR standards beforehand, as was done by other candidates for admission.

The Report deals with all Yugoslav legislation (federal and republic) relevant to each right under review. It went beyond the actual legislative texts to also include 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 is positive, what is the actual legislative formulation and does it differ from that contained in ICCPR;

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

d) whether restrictions of the right envisaged by Yugoslav legislation correspond to those allowed by ICCPR;

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

The report was prepared in the course of 1999. It is based on legislation that was in force on 31 December 1999.

1.2. Constitutional Provisions on Human Rights

According to its 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 FRY Constitution). 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 civil and political rights, FRY Constitution also provides guarantees for 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 its Constitution FRY "shall recognise and guarantee rights and freedoms recognised by 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).

Some laws inherited from the Socialist Federal Republic of Yugoslavia (SFRY), which remain 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 applied as of the date of its promulgation, unless the said Act provides otherwise in specific cases (Art. 1). According to the Constitutional Act, all federal statutes that have not been explicitly abolished shall continue to be in force "until they are harmonised with the Constitution, within the time frame determined by the present Act" (Art. 12). Deadlines for the harmonisation of these laws have been extended several times and many laws had not been harmonised in 1999 (seven years after the proclamation of the Constitution). This can have grave consequences in the field of human rights, since the laws of the former SFRY indirectly restrict the later proclaimed constitutional rights. In fact, in many areas relevant to human rights, the FRY Constitution's guarantees have not been implemented. The most drastic example concerns the provisions on detention in the Criminal Procedure Act; (for more details see I.4.4). Accordingly provisions of the communist SFRY Constitution of 1974 still govern some areas affecting the respect for and protection of human rights.

1.3. International Human Rights and the FR Yugoslavia

International human rights treaties that the Socialist Federal Republic of Yugoslavia (SFRY) had ratified are binding on FRY. The Preamble of the FRY Constitution speaks about the "unbroken continuity of Yugoslavia". The Federal Assembly made a statement that FRY would honour international commitments of SFRY. According to the interpretation by the Human Rights Committee, all states created after the break-up of SFRY would in any case be bound by ICCPR, 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[9].

According to the FRY Constitution international treaties ratified by FRY form an integral part of the internal legal system and as such are part of federal law. In the legislative hierarchy, international treaties are on a higher level than both the federal and the republic laws[10]. Hence the conclusion that only the provisions of the FRY Constitution are of a higher legal force than international treaties. In addition to international treaties, customary international law is also part of the Yugoslav legal system (Art. 16 FRY Constitution). However, in reality state authorities and courts pay little attention to provisions of international human rights treaties.

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

10 According to 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).

SFRY had ratified all major international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the rights of the Child (CRC), 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 (CAT), etc. (see Appendix 1).

SFRY had signed, but never ratified, the Optional Protocol to ICCPR. There are no indications that the FRY would ratify the Protocol in the foreseeable future. However, 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 CAT. It should be noted that the Constitution of the Republic of Montenegro 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 on the readiness of the federal state to ratify the Optional Protocol.

FRY 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 to accept all human rights obligations related to the membership of this organisation. However, the Committee of Ministers of the Council of Europe found this request to be insufficiently serious and had decided to suspend further deliberation on the issue, setting a "radical change of policy on behalf of Belgrade" as the condition for consideration of the Yugoslav request.[11]

11 See the decision of the Council of Europe Committee of Ministers, 639 Session, 7–9 September 1998, item 2.4. For the FRY request, see Council of Europe Doc. CM (98) 45, 23 March 1998 and the statement of the FRY Federal Ministry for Foreign Affairs, *Naša borba*, 20 March 1998, p. 1.

2. Right to Effective Remedy for Human Rights Violations

Article 2, para. 3 ICCPR:

Each State Party to the present Covenant undertakes:

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

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

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

2.1. Ordinary Legal Remedies

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

In judicial proceedings both parties concerned and courts have seldom directly invoked international treaties. However, the right to effective remedy does not necessarily require that "victims of violati-

ons of human rights guaranteed by an international treaty can directly invoke such a treaty before domestic courts. It is enough that the victim's claim in essence corresponds to a right guaranteed by an international treaty".[12]

In cases of human rights violations, protection can be exercised either in civil or in criminal judicial proceedings, or in 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 the victim pursue the matter on his/her own initiative (Art. 60 of the Criminal Procedure Act — CPA). Non-governmental organisations have claimed that public prosecutors have often simply failed to initiate criminal proceedings for human rights violations committed by state authorities, so as to prevent action by victims. This is particularly 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 the 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).

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

The effectiveness of legal remedies for human rights violations in the FRY 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; 2) the judiciary is under the strong influence of the executive branch and courts are very seldom ready to deliver judgements 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

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 man and 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 violation of constitutionally guaranteed human rights. The only way to challenge such legislation is to initiate proceedings for the examination 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 ratified by FRY 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.

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, a restrictive approach in interpreting their right to file constitutional appeals. 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 right 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 choose to remain anonymous.

The most controversial is the provision stating that a constitutional appeal can be filed only "when other legal remedies are not available" (Art. 128 of 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 a theoretical legal remedy, since the Yugoslav legal system formally provides remedies for the protection against almost all types of human rights violations.

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: constitutional appeal can be filed only when no other judicial 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).

It should be emphasised that the Federal Constitutional Court and the Constitutional Court of Montenegro have not considered 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 as 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 had

failed to act was disregarded (see decision No. Už 21/95, *Odluke i rešenja SUS*, 1995, p. 265).

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 Yugoslav constitutions, the general basis for the restrictions of human and civil rights are the rights and freedoms of others (Art. 9, para. 4 of the FRY Constitution; Art. 11 RS Constitu-

tion; Art. 16, para. 2 RM Constitution), and the prohibition to abuse such rights (Art. 67, para. 3 of the FRY Constitution; Art. 12, para. 3 RS Constitution, Art. 16, para. 3 RM Constitution). Constitutions do not provide more details on this issue.

All constitutions in the FRY contain similar general provisions dealing with the "exercise" of human rights (Art. 67, para. 2 of the FRY Constitution; Art. 12, para. 1 and para. 2 RS Constitution; Art. 12, para. 1, line 1 RM Constitution). According to Article 67, para. 2 of the FRY Constitution 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 the possibility to limit the scope of application of the right 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 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 refers to 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 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 not. This provision may be in collision with 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. The Constitution of Serbia explicitly states that human rights may also be restricted when "the Constitution determines" (Art. 11 RS Constitution). Although the constitutions of the FRY and Montenegro do not contain general provisions concerning restrictions, both documents prescribe certain human rights restrictions in articles dealing with specific rights. For example, 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 have not even published in the official gazette (*Službeni list*) (see e.g. III.1.2.5).

As far as human rights restrictions are concerned, the Yugoslav legal system does not recognise the principle of proportionality. Yugoslav jurisprudence also ignores it. 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 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. How can some rights be derogated pursuant to the Serbian Constitution when the proclamation of a state of war is, according to the FRY 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). Since the Federal Constitution contains a complete list of human rights, derogation based on the Serbian Constitution would not make any sense in view of the fact that those rights would anyway be guaranteed by the Federal Constitution. However, it should be remembered 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 Serbian Constitution as a justification for human rights derogation during the state of war.

3.2.2. Derogation during State of War

According to the FRY Constitution, it is within the jurisdiction of the Federal Assembly to proclaim a state of war, a state of imminent threat of war and state of emergency (Art. 78, para. 3). When the Federal Assembly cannot be convened, the Federal Government is authorised to approve 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 a 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). President of Serbia can issue acts, *proprio motu* 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 a state of war, imminent threat of war and state of emergency is exclusively within the federal jurisdiction.

Provisions in both FRY and 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 OSCE standards in this field (*Documents of the Moscow Meeting of CSCE on Human Dimension*, 1991, p. 28.2).[13]

Derogation of certain human rights during a state of war, as prescribed by the Federal and the Serbian constitutions, is in accordance with the obligation under Article 4 ICCPR, which states that a

13 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 can be declared "in time of public emergency which threatens the life of the nation". However, the constitutional provisions are even more liberal since they limit the authority to proclaim a derogation to a state of war only, while Article 4 of the Covenant allows a derogation to be declared in other emergency situations as well. It is clear from the Constitution that a state of war must be officially declared, which is also in accordance with the Covenant.

Neither constitution prescribes that derogation measures in 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). Accordingly federal and republic authorities may use this to fully suspend certain human rights during war time, whether or not that would be justified and commensurate to the actual danger to the state.

The Constitution of Serbia does not contain any provision enumerating the rights that may not be derogated during a 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 a state of war in Serbia.

On the other hand, the Federal Constitution states that some rights may not be derogated. However, the rights in question (Art. 99 the FRY Constitution) are not exactly the same as those listed in the Covenant. In accordance with the Covenant, the Federal Constitution prescribes that derogation measures must not invalidate the prohibition of discrimination based on race, sex, language, religion or social origin. The FRY Constitution prohibits 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 prohibition of the derogation of the right to life is not mentioned at all. (Art. 6 ICCRP, Art. 21 the FRY Constitution). 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 treats some other rights not listed in the Covenant as non-derogable, 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 a state of war, acts that restrict rights and freedoms (Art. 83, line 7 RS Constitution). On the other hand, during a state of emergency the President can issue acts "in order to take measures required by such circumstances state of emergency, in accordance with the Constitution and law". Restrictions of human rights are not mentioned. If an explicit constitutional authorisation is necessary to restrict human rights at the time of the

ultimate threat to the nation — the state of war — it is then impossible to interpret the lack of such authorisation at the time when the threat is less imminent — during a state of emergency — as an authorisation for decisions to restrict human rights. Therefore, the provision of Article 6, paragraph 1 of the State of Emergency Act of the Republic of Serbia is probably unconstitutional. The State of Emergency Act is contrary to the Constitution of Serbia, which itself is, as far as that part is concerned, 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 a 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.

3.2.4. Derogation of Human Rights during the State of War in FRY in 1999

The FRY Government declared the state of war on 24 March 1999, at the very outset of NATO air campaign in Yugoslavia (*Sl. list SRJ*, No. 15/1999). The day before, on 23 March, the state of imminent threat of war had been already announced (*Sl. list SRJ*, No. 14/1999). During the state of war, numerous regulations had been promulgated, which derogated human rights and freedoms. For example, the right to personal freedom was derogated by the introduction of measures

such as prolonged police detention and deportation; the right to privacy through the authority given to the police to search homes and open mail even without a specific court warrant; the freedom of expression by the introduction of censorship, as well as the freedom of assembly and the freedom of movement. The Federal Assembly terminated the state of war on 26 June 1999; it confirmed and subsequently abolished all measures proclaimed by the Federal Government during that period (*Sl. list SRJ,* No. 44/1999). Measures declared during the state of war in Serbia were confirmed and then abolished on 16 July 1999 (*Sl. glasnik RS,* No. 33/1999–530). No measures derogating human rights were adopted in Montenegro.

During the state of war human rights were in most cases derogated by decrees of the President of Serbia. He acted on the basis of authority vested in this office by the Constitution of Serbia for the state of war situations, which is inconsistent with the Federal Constitution (see I.3.2.2). According to the FRY Constitution, only the Federal Assembly or the Federal Government, if the Assembly cannot meet, can derogate the rights guaranteed by the Constitution. Hence, from the legal point of view it is clear that the President of Serbia could not during the state of war derogate by his acts rights guaranteed by the Federal Constitution for the whole FRY territory. However, the fact that the majority of measures which restricted human rights were adopted at the republic level and in flagrant violation of the Federal Constitution is not only an indication of the non-compliance with the principle of the rule of law in FRY. It is also an illustration of the way in which the Federal Constitution is being implemented and of the character of guaranties in that Constitution. These guarantees obviously have more theoretical then practical significance. Unfortunately, this is also a confirmation of a remark from the previous report of the Belgrade Centre for Human Rights that

> ... 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 Consti-

tution as a justification for human rights derogation during the state of war (see I.3.2.1)

Measures introduced during the state of war should be judged both from the point of view of the ICCPR and the FRY Constitution. In terms of the procedure envisaged by the FRY Constitution, the Federal Government and the Federal Assembly violated article 99, paragraph 11 of the Constitution. This provision mandates that the Federal Government submit for approval of the Assembly acts promulgated during the state of war "as soon as the Assembly is able to convene". Both Federal Assembly chambers met in a joint session on 12 April 1999 and adopted the Decision on the Accession of the FR Yugoslavia to the Alliance of Russia and Belorussia.[14] However, on this occasion the chambers did not discuss measures adopted during the state of war!

As far as ICCPR is concerned, according to article 4, states may derogate rights guaranteed under the Covenant in time of "public emergency which threatens the life of the nation". The NATO — FRY conflict certainly falls into this category. According to ICCPR, such "emergency" should be "officially proclaimed". Decisions on the imminent threat of war and on the state of war were indeed officially proclaimed.

The state which avails itself of the right to derogation is under the obligation to inform other states parties to the ICCPR of that fact and of the termination of the derogation, through the intermediary of the UN Secretary-General. FRY did not notify the Secretary-General of its derogation measures, nor of the their termination.[15] Accordingly,

14 *Sl. list SRJ,* No. 25/1999.

15 Professor Rodoljub Etinski, the legal counsellor of the Federal Foreign Ministry confirmed to collaborators of the Belgrade Centre for Human Rights on 10 November 1999 that FRY had not notified the UN Secretary-General of its derogation measures. UN records on the FRY status concerning ICCPR also do not contain information that derogation took place. See www.unhcr.c/tbs/doc.nsf. The Secretary-General was notified when in 1989 and 1990 the then SFR Yugoslavia derogated some rights in connection with riots in Kosovo. For the notification text see Nowak, *U.N. Covenant on Civil and Political Rights — CCPR Commentary*, Kehl am Rhein, 1993, p. 813.

FRY violated its strict obligation under ICCPR. The state which failed to notify the derogation would not be entitled to invoke the derogation in the international supervision procedures, for example before the Human Rights Committee.[16] Hence, all measures proclaimed in FRY during the state of war could be understood not as a derogation, but as a common restriction of rights guaranteed under the ICCPR, which would result in a number of violations of FRY international obligations.

The ICCPR further stipulates that measures derogating rights under this treaty can be undertaken "to the extent strictly required by the exigencies of the situation ...", i.e. be proportionate. Also, derogation measures should not be inconsistent with other international obligations of the state concerned and should not introduce prohibited discrimination. Finally, ICCPR stipulates that some rights shall not be derogated under any circumstances. The part of this report dealing specifically with NATO intervention and the situation of human rights during that intervention discusses the compliance with the requirements of article 4 of the ICCPR for each individual derogation measure. The general conclusion is that derogation measures were excessively wide in scope and that they had not provided for adequate protection against abuse (see III.1.2.8).

Nevertheless, even without a detailed analysis of the derogation measures adopted in FRY during the state of war it is clear that they are *prima facie* inconsistent with the FRY Constitution and Yugoslavia's international obligations under ICCPR. Most derogation measures were proclaimed by the President of Serbia in flagrant violation of the Federal Constitution. Federal authorities also violated the Federal Constitution since the Federal Assembly did not, when its session was convened, confirm measures adopted by the Federal Government, but discussed other issues instead. Finally, FRY authorities violated ICCPR because they failed to notify the UN Secretary-General of derogation measures.

16 See e.g. in the deliberations Human Rights Committee concerning the report of Sri Lanka (statement of Mr. Opsahl), UN doc. CCPR/C/SR.473 (1983).

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 ICCPR, FRY 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. 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 ICCPR. The right to equal protection of the law has two aspects: the prohibition of discrimination through laws and other regulations and the obligation to provide equal and effective legal protection against every form of discrimination. A literal interpretation of Article 20 of the FRY Constitution leads to the conclusion that foreigners, refugees and persons without nationality who find themselves on the territory of Yugoslavia can be subjected to discrimination through law. In this connection it is also worth noting the provision of the FRY Constitution stipulating that "Aliens in the FRY shall enjoy the freedoms and the rights and duties laid down in the Constitution, federal law, and international treaties" (Art. 66, para. 1). Hence, foreigners in the FRY can only invoke the provisions of the Covenant and other international treaties that are binding on the FRY in order to seek protection against discrimination. Although international treaties are, according to Article 16 of the Constitution, higher in the FRY legal hierarchy than domestic laws, the Yugoslav courts have not taken into account international treaties, especially not human rights treaties.

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

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 Constitutional Court of Montenegro has yet not had, 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 only about "citizens". Discrimination is prohibited only if originating from state organs or other authorities. Such an interpretation may lead 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 CERD, according to which all States Parties should "prohibit racial discrimination carried out by persons groups or organisations ", has been fulfilled. Also, the FRY PC, in accordance with Article 4 of CERD, prohibits the incitement of racial hatred and intolerance (Art. 134 the FRY PC; see I.4.8.5).

4.1.2. Examples of Discrimination in FRY Legislation

4.1.2.1. Real estate transactions. — The Special Conditions of the Sales of Property Act (*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 local 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

since 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) The application of this Act was suspended for the territory of Kosovo by the Regulation on the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property, promulgated by the Special Representative of the UN Secretary-General in Kosovo on 13 October 1999.[17]

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. The same applies to forced intercourse and intercourse with an infirm person. Thus, 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 "depraved 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 an infirm person, as well as intercourse based on abuse of authority (envisaged only in the RS PC, Art. 107).

4.1.2.3. Refugees and citizenship. — The situation and the 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

17 See Regulation No. 1999/10, UNMIK/REG/1999/10.

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. According to the Refugee Act of Serbia (Art. 1) refugees are:

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

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

Article 6 ICCPR:

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

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

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

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

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

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

4.2.1. General

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

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

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

a crime, and can only be carried out pursuant to a final judgement rendered by a competent court.

The state has special obligations towards persons who have been deprived of liberty or whose freedom has been restricted. Failure to provide medical assistance or food, as well as torture or failure to prevent suicide of persons deprived of liberty, can represent a violation of Article 6, paragraph 1 of ICCPR. 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; 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).

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 ICCPR 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 (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 provisions concerning criminal offences against life of the two republics are 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 (Art. 6 of the Serbian Act, Art. 2 of the Montenegro Act).

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), defendants in cases that carry capital punishment must have defence counsel. If 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 death sentence was pronounced, or 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 the pardon procedure prescribe that the request for pardon has to be submitted *ex officio* if the convicted person fails 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 ICCPR, 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 (Art. 9, para.2).

This provision recognises the interpretation of ICCPR, 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 lethal weapons in case of 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 ECHR. First, in such a case the loss of life would not correspond to any of the exceptions envisaged therein. 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 ICCPR, Yugoslavia is bound by the Convention on the Prohibition of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by the SFRY. At the time of ratification, the SFRY recognised the jurisdiction of the Committee Against Torture regarding the receipt of interstate (Art. 21, para. 1 of the Convention against Torture) or individual petitions (Art. 22, para. 1).

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

> The inviolability of physical and psychological integrity of the individual, his privacy and personal rights shall be guaranteed.
>
> The personal dignity and security of individuals shall be guaranteed (Art. 22).
>
> Respect for the human personality and dignity in criminal and all other proceedings in the event of detention or restriction of freedom, as well as during the serving of a prison sentence, shall be guaranteed.
>
> Use of force against a suspect who has been detained or whose freedom has been restricted, as well as any forcible extrac-

> tion 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 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.

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).

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.3.2.2).

4.3.2. Criminal Legislation

CAT 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. 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 CAT (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 FRY for the fact that Yugoslav penal codes did not contain the provision incriminating torture *per se*, in accordance with Article 1 of CAT. The Committee recommended that the FRY should abide by the definition of torture in the Convention.[18]

Although the FRY PC is silent on 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.

CAT 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 some provisions of the FRY PC could be applied, depending on circumstances; such as 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 CAT. Nevertheless, some omissions should be mentioned. It appears that the punishment for the act of abuse in the exercise of official duties (Art.

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

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

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 CAT (Art. 1), has been omitted. Serbian 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 allow 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.[19]

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 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 in police custody, 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.*

19 *Ibid.*, p. 12 and 17.

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 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.

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 Internal Affairs 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. Right to Liberty 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. Signatory states must precisely define the cases where arrest is allowed and 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).

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 detention in criminal proceedings, but also all cases of deprivation of liberty, e.g. because of mental disease, vagrancy, alcohol and drug addiction, etc. Yugoslav constitutions use the terms "deprivation of liberty" and "confinement", where the term "confinement" concerns criminal cases only[20], while "deprivation of liberty" includes all cases of detention, and not only the criminal ones. 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. 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

20 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".

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. 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 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 before the competent investigation judge ..." (Art. 195, para. 1), but it can occur that due to "unavoidable hindrances it is not possible to bring 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[21], "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, four days, and in normal conditions should be much shorter (the European Court of Human Rights in *Brogan vs. the United Kingdom*, A 145, p. 33). The expression "other officer authorised by law to exercise judicial power" means that such an organ must be independent and impartial; independent, first and foremost of the executive and of the public prosecutor, who is authorised to detain or free an arrested

21 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).

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 (see I.4.4.1.1)

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" (Decision No. Kž II 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 by 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. 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 judicial re-examination of the lawfulness of detention. True, the Constitution guarantees to everyone "the right to ... legal remedies 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). The republic acts 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 internal affairs (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. 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.

The procedure of compensation consists of two phases, the administrative and the judicial. 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 or held in custody "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. — All restrictions which are not inherent in the very nature of the deprivation of liberty, and of life in a closed environment, are prohibited. 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 under 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. 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 of the convicted persons to complain 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 a response to such grievances, or if they are not satisfied with them, they can submit written petitions to the Director of the Directorate (para. 3). 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 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.

4.5. Right to Fair Trial

Art. 14 ICCPR:

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

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

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

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

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

c) To be tried without undue delay;

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

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

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

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

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

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

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

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

4.5.1. Independence and Impartiality of Courts

The Constitution of Serbia (Art. 96, para. 1) and the Constitution of Montenegro (Art. 100) proclaim the courts to be autonomous and independent and bound only by the Constitution and by other general acts; the federal Constitution does not contain such provisions. All three constitutions proclaim the principle of separation of powers (Art. 12 of the FRY Constitution; Art. 9 of the Constitution of Serbia; Art. 5 of the Constitution of Montenegro). However, the integrity of the judiciary does not depend so much on constitutional provisions, but rather on how courts act. The general impression is that the courts in FRY are not fully independent. 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.

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 by a lower, 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 and 2).

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 evaluated 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.

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 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 pieces of evidence (Art. 131, para. 5); can be present at the performance of certain investigative actions and to participate actively in such actions; 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 clarification 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.

According to the CPA, the decision of the court cannot be based on minutes and 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 obtained 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 upholding 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 criminal proceedings are bound to ... ascertain, truthfully and thoroughly 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. 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 may attend the hearings (Art. 287 of the CPA; Art. 306 of the Contentious Procedure Act, *Sl. list SFRJ*, No. 4/77). 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 inte-

rests 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.

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).

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 revelation of the identity of the minor" cannot be published (Art. 461, para. 2).

4.5.3. Guarantees to Defendants in Criminal Cases

4.5.3.1. Presumption of innocence. — According to Yugoslav law, everyone has the right "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 presu-

med 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 supported by evidence, although 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 the possibility, 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 ... when sending notice about the session of the chamber ... allow 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).

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 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. 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. 144, para 1 and 3, Art. 175, Art. 181, Art. 279, para. 2, Art. 292, Art. 336, para. 1). The CPA requires, in proceedings against minors, special expedience (Art. 462, 479 and 484).

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 retain counsel: 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; if the defendant is accused of a crime, for which

a sentence of more than ten years imprisonment may be pronounced; if the defendant is tried in absence (Art. 70). Instead of an officially appointed attorney, 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, 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. 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. Right to assistance of interpreter. — Article 49 of the FRY Constitution prescribes that everyone "has the right to use ... in 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 members of national and ethnic groups (Art. 72), but does not prescribe the right of every person to an interpreter.

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. 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 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 hear other evidence, even when the defendant accepts quilt 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 (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 appeal, nor desist from an already filed appeal.

4.5.3.10. Right to appeal. — The FRY Constitution (Art. 26, para. 2 and Art. 119) "guarantees to everyone the right to appeal or to other legal remedies 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 (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).

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 CPA).

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

4.5.3.12. Ne bis in idem. — International standards (Art. 14, para. 7 ICCPR and Protocol 7 para. 4 line 1 ECHR) prescribe that "one shall be liable to be tried and punished again for an offence for which he has already been finally convicted or acquitted ...". The ECHR, unlike the ICCPR, allows a deviation from that principle — the procedure may be repeated "if there is evidence of new or newly discovered facts or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case" (Art. 4, para. 2 of the Protocol No. 7, with the ECHR).

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 has been duly terminated. The solution in the Constitution of Montenegro is better: "none can be held responsible twice for one and the same criminal act" (Art. 27). 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. 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 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. — FRY law does not prohibit voluntary sexual relations between adult homosexuals (above 18 years of age). 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

According to FRY Constitution home is inviolable and officials may enter and search homes only with court warrant (Art. 31, para. 1 and 2). Search must be performed in the presence of two witnesses (Art. 31, para. 3).

> An official may enter and search without warrant without the presence of witnesses if that is necessary for the 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 (Art. 206–210 of the CPA).

In exceptional cases, the police may perform searches without warrants (Art. 210, para. 3). When the police perform a search without a court order, they are bound to immediately report to the investigative judge or to the public prosecutor (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.

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 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 (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 (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 home has been 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 home.

4.6.3. Correspondence

The notion of correspondence include letters, and all means of communication at distance (telephone, cable, telex, facsimile, and other mechanical and electronic means of communication). 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, limitations can be based on court decision if it is necessary for criminal procedure or for the defence of the FRY (Art. 32, para. 2). Both republic constitutions contain similar provisions (Art. 30 of the Constitution of Montenegro; Art. 19 of the Constitution of Serbia).

CPA covers in more detail deviations from the right to the secrecy of letters. An investigative judge may order the post, cable and other operators to surrender (with a receipt), letters, cables and other pieces of mail sent to the defendant or by the defendant (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. A protocol on the opening must be made (Art. 214, para. 3).

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 be delivered only after inspection, 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.

The status of convicted persons is regulated by the Execution 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 Internal Affairs, 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 departure from the principle of the inviolability of the secrecy of letters in regard to some individuals or organisations ..." (Art. 13, para. 3). It must be stressed that this Act is not in compliance with the Constitution of Serbia and of the FRY, since it envisages the "security" of the Republic of Serbia as one of the grounds for the opening of correspondence; this ground does not exist in any constitution.

The penal codes in the FRY punish 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 (Art. 194 of the PC of the FRY; Art. 72 of the PC of Serbia; Art. 52 of the PC of Montenegro) and unauthorised wiretapping and recording (Art. 195 of the PC of the FRY; Art. 70 of the PC of Serbia; Art. 54 of the PC of Montenegro).

4.6.4. Honour and Reputation

In accordance with Art. 17 ICCPR, 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 defined as a criminal offence (Art. 94 of the PC of Serbia; Art. 78 of the PC of Montenegro).

4.7. 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. 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. FRY Constitution (Art. 137, para. 2) accepts conscientious objection.

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 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[22] it can be concluded that parents have the right to establish private schools to educate children in accordance with their religious beliefs. However, in 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[23]:

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

23 See Resolution 1989/59 of the UN Commission of Human Rights and the recommendation of the Council of Ministers of the European Union R (87)8 of 9 April 1987. See also the *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.

> A citizen who for religious or other reasons of conscience does not want to fulfil his military obligations under arms will be given the opportunity to fulfil this obligation in the Army of Yugoslavia without 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. The double duration of service can be regarded as punitive. This Act allows the recruit 15 days to request in written form to 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. 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 welcome to do so (Art. 297, para. 2).

4.8. 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;

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 ...".

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 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* to it. "Incitement" is a wider term than "provocation", which means that the Serbian Constitution offers more possibility for restrictions;

— 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.[24]

24 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. 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. 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).

Three groups of provisions of the Act have caused major concern. Their objections relate to administrative proceedings against the media (Articles 72–74), misdemeanours and their punishment (Art. 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,[25] have only 48 hours at their disposal to decide on the guilt and liability of the media and of their responsible editors. After receiving a complaint against a medium, the magistrate must set a hearing within 24 hours and announce a decision within the next 24 hours. In the proceedings, which are criminal in nature, there is a presumption of guilt of the accused, who is not allowed to prove the veracity of the statements he or she has published. If the magistrate imposes a fine, the convicted person is left only 24 hours to pay — after that the property of the convicted medium or the responsible person will be impounded and auctioned within 7 days (Art. 73–74)

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

Taking into account that fines prescribed by the Act are generally very high 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).[26] 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.[27] Furthermore, the appeal does not stay the enforcement of the magistrate's decision.

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. The Serbian Parliament attempted to circumvent this discrepancy by adopting si-

26 For the amount of fines and a reasonable relationship of proportionality to the legitimate aim pursuedby such penalties, see the judgement of the European Court for Human Rights in the case of *Tolstoy Miloslavsky v. the United Kingdom* (A 323, 1995).

27 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.

multaneously 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.

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). This provision violates t 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). 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, 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),[28] and the Instruction on the Entry of Organisations for Radio Diffusion into the Register of Media of Public Information.

28 This condition is also provided by Article 17 of the new Serbian Public Information Act (*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 competitions 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. 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.

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 frequency. Courts have found support for this attitude in Art. 3 of the Radio-Television Act.

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.

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:

— the 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)

— the 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 administrative provisions.

4.8.3.4. Establishing a public media (radio and 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 SFRY Basis of the System of Public Information Act (*Sl. list SFRJ*, 84/1990–2353).

4.8.3.5. Registration of a public media. — 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.[29] Entry into the registry is a constitutive act: only properly registered media can operate legally. According to the Public Information Act (Art. 7) and the Instruction for the Entry of Radio Broadcasting Organisations into the Registry of Media[30] the application must be accompanied by the following:

— 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);[31]

— 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.4.8.3.3).

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

29 The same according to the new Serbian Public Information Act (Art. 17).
30 The Instruction is an internal act of the Serbian Ministry of Information, not published in the Official Gazette.
31 This submission is not required by the new Serbian Public Information Act.

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. 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 quoted to in Art. 19 para. 3 ICCPR. Some restrictions have been imposed by executive provisions below the level of legislative acts. 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).

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 (italics added).

As already suggested, some offences are defined in Yugoslav law 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 up to three years (italics added).

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, are unreasonably restricted.

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

The offence of circulating false information "with the intention to obstruct the *enforcement of* decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures" is defined in such a manner to facilitate the prosecution of political opponents. 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 (Art. 219):

> 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 of up to one year. An offender under para. 1 of this Art., making public or circulating false information or statements which have caused or *could have caused* disquietude of citizens or a threat to public order or peace, will be punished by three months to three years of imprisonment.
>
> If the criminal offence contains the elements 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 (italics added).

This is a very severe incrimination in view of the legal impossibility of obtaining the permission to own and operate a radio station (I.4.8.3.3). 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 defined 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 the conflicts in the territory of the former SFRY and after 1991, when military operations at larger scale started.

The constitutions in FRY 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 (italics added).

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 of and instigation to national, racial and religious intolerance and hatred". The first corresponding reference is related to the prohibition of political, trade union and other organising and activity (Art. 44). For the second time it is mentioned as a reason for the banning on the distribution of articles in the press and the dissemination of other information (Art. 46). Articles 37 and 42 of the Montenegrin Constitution are worded in a similar manner. The provisions of the Federal Constitution correspond to the nature to the obligation undertaken by Yugoslavia under Art. 20 ICCPR; this is not the case with the Constitution of Serbia, which links the prohibition of the instigation to 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 to or inflaming national, racial or religious hatred or intolerance among the nations and national minorities living in the FRY will be punished by imprisonment from one to five years. If an act defined in para. 1 of this Article was committed by coercion, ill-treatment, endangering of security, defamation of national, ethnic or religious symbols, causing damage to the property of others, desecration of monuments, memorials or tombs, the perpetrator will be punished by imprisonment from one to eight years.
>
> Anyone committing 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.

Paragraph 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. Article 100 declares punishable the derision of peoples, national minorities and ethnic groups, but again only of those living in Yugoslavia. Article 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. 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 regulate 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 of assembly, stipulating that it may be temporarily limited by the decisions of the competent authorities, in order to prevent endangering of health and morals and 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 is a general weakness of the Yugoslav legal system.

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

The Yugoslav constitutions guarantee the right to the freedom of assembly to "citizens" only, and not to "everyone", as in internati-

onal 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; police permission is necessary for the appearance of a foreigner at a meeting (Art. 7).

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

Now, in order to hold a public meeting in a certain area, such a meeting must not *inter alia* provoke "disturbances of public traffic". This reason for restriction is already found in 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). "Disturbance of public traffic" appears to be an excessively restrictive basis for the restriction of the freedom of assembly, and that is incompatible with international standards.

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, *Odluke i rešenja SUS*, 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). The greatest shortcoming of this provision lies in the fact that it does not determine specific criteria for the prohibition of public meetings; it only copies the restrictions prescribed by the Constitution of Serbia. The police are given *carte blanche* to prohibit public meetings.

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). A temporary prohibition may become permanent only by the decision of a 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 are reasons to temporarily or permanent by prohibit a meeting that already takes place police may do so (Art. 12, para. 1).

In Montenegro, a public meeting may be prohibited or interrupted for similar reasons as in Serbia Art. 7 of the Public Meetings Act of RM). Furthermore, a meeting is interrupted if riots take place, and if situation which may endanger public order and peace, security of traffic, etc. occurs (Art. 6, para. 1, juncto 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. 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 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 Monte-

negro). 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 description of the function of the trade unions corresponds to Art. 8, para. 1(a) ICESCR, but is narrower than the wordings in the ICCPR and in the ICESCR (Art. 11). According to ICCPR and ICESCR, 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. The 1982 Social Organisations and Citizens Associations Act was adopted, in the time of the one-party system.

All those 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.

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

The constitutions of the FRY and of Serbia guarantee the freedom of association without preliminary permission, by simple registration with the competent authority (Art. 41 of the FRY Constitution and Art. 4 of the RS Constitution). The registration itself is a formal condition for an association to start its activities, but the constitutions do not prescribe any previous permission. Association cannot be prohibited, except for the cases prescribed by the constitutions (Art. 42 of the FRY Constitution; Art. 44 of RS Constitution). Political organisations register with the competent ministry of justice (Art. 11 of the Association of the FRY Citizens Act; Art. 7 of the Political Organisations of Serbia Act), and trade union organisations register with the competent ministry of labour (Art. 4 of the Regulation on the Registration of Trade Union Organisations, *Sl. glasnik RS*, No. 6/97, 33/97). On the day of the registration, the organisation acquires the status of a legal person and may start its activities. The procedure of registration starts with the submission of an application to the competent authority, obligated to register the organisation within 15 days (30 days for the establishment of political parties in Serbia), (Art. 13 of the Association of the FRY Citizens Act; Art. 10 of the Political Organisations of Serbia Act).

Associations of citizens in Serbia are registered with the Ministry of Internal Affairs of RS, according to the procedure prescribed by the Social Organisations and Associations of Citizens Act. The Ministry of Internal Affairs is obligated to take the decision on the registration within 30 days upon the submission of the application, and the association acquires the status of a legal person and starts its activities on the day of the registration (Art. 34 and 35).

However, the Act, adopted in the time of the socialist system, prescribes activities which can be the purpose of an association: "aimed at the development of personal affinities and creativity in social, humanitarian, economic, technical, scientific, cultural, sports, educational and other activities". This provision is in disharmony with constitutions of FRY and Serbia, which do not prescribe any restriction with regard to aims of the establishment of an association. The constitutions only prohibit an activity of organisations aimed at the violent overthrow of the constitutional order, the violation of human rights or the instigation of certain forms of hatred and intolerance (see below 4.10.4.1). In practice, this unconstitutional provision of the Social Organisations of Serbia Act enables the Ministry of Internal Affairs to deny registration often misusing this broad arbitrary decision-making. A typical example is the denial of the registration of the Association of Judges of Serbia, the organisation that has never been favourable with the authorities. Regrettably, this unconstitutional practice was sustained by the Supreme Court of Serbia which decided against the appeal of the Association of Judges of Serbia on the decision of the Ministry of Internal Affairs to deny them registration.[32] The Court reasoned unconvincingly that the Social Organisations and Associations of Citizens Act is a regulation according to which applications for registration of associations are decided upon; therefore, the disharmony of this regulation with the Constitution does not impose the implementation of the Constitution. The Court did not deem it necessary to reason why it favours law over constitution in cases of their collision.

The question of the cessation of the activities of political and trade union organisations, i.e. of the basis for their striking from the registry is very important for the enjoyment of the right to free

32 The Association of Judges of Serbia submitted the application for the registration in the registry of citizens' association on 29 May 1998. The registration was denied by the Serbian Ministry of Internal Affairs on 7 September 1998. A complaint was filed against the first-instance court decision on the denial of the application, and it was denied as well. The complaint was submitted against the final decision to the municipal court in the administrative dispute. The Supreme Court of Serbia denied the complaint on 17 September 1999.

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 ILO Convention No. 87 prescribes, in its Art. 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 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 ICESCR, which guarantee the freedom of association to "everyone", the federal and Montenegrin constitutions guarantee that right only to "citizens". The Constitution of Serbia does not make a difference between citizens and 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 SF*RJ, 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, e right to the freedom of association of aliens 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 if they prohibit an association, a complaint can be submitted to the government. However, it is not allowed to start judicial proceedings against 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 (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 codes. The requirements of ICCPR and ICESCR 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. The Yugoslav laws also prescribe that trade union or political organising may be prohibited if directed at the achievement of legally prohibited objectives.

The Yugoslav legal system does not accept the principle of proportionality in the restrictions of human rights, and does not require that all restrictions must be "necessary in a democratic society".

Existing law expands in an inadmissible way the scope of the prohibition of the activities of organisations and associations. Thus the Association of the Citizens Act of the FRY prescribes that political and trade union organisations may be prohibited not only if they act in a way which is not in accordance with the law, but also if they do not act in accordance "with the objectives for which they were established, or with a certain programme orientation, or programme of a political organisation" (Art. 20). According to that provision, a political organisation might be prohibited if it declares in its programme that it is e.g. royalist, and does not act, according to the assessment of the competent body, in accordance with its royalist orientation. Such a provision allows the authorities to assess what is the meaning of a

programme of a political organisation, and whether it behaves in accordance with it.

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 (see II.15.5).

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". 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, 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. The FRY Associations of Citizens Act prescribes the confiscation of the funds acquired abroad and fine (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 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.

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. 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.

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

The ICCPR and the ICESCR authorise states to restrict the right to free association of the members of the armed forces or of the police, and, according to the ICESCR, 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 ICESCR 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 be considered acceptable. 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 its 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". Unlike that general prohibition, para. 2 of the same article prescribes that "soldiers, when serving military service, and members of the reserve, while in service in the army, may not participate in the activities of political parties".

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 prohibition for professional members of the army and police to be members of political parties is rather controversial, since it practically unables an important segment of the population to take part in the political life. In this respect it represents the grave restriction of the freedom of association and freedom of expression. In the last year's Report on human rights in Yugoslavia, the Belgrade Centre for Human Rights took the stand that this absolute prohibition is in disharmony with ICCPR and ECHR.[33] However, the European Court for

33 See *Human Rights in Yugoslavia 1998*, part I.4.10.5.

Human Rights in its decision *Rekvényi vs. Hungary* on 20 May 1999 took the stand that the prohibition for the police to join political parties and take part in political activities is not contrary to Art. 10 (the freedom of expression) and 11 (the freedom of association) of ECHR.[34] In Court's opinion, the legitimate goal of a democratic society is to provide the political neutrality of the police. This is particularly significant bearing in mind the historic heritage of the totalitarian regime in Hungary, which heavily relied on the police, for whom the party membership was practically obligatory. In that context the Court decided that the given restrictions of the political activities of police members were necessary in a democratic society and in harmony with ECHR.[35]

Considering this decision of the European Court, it may be concluded that the Yugoslav constitutional prohibition for professional members of the army and police to be members of political parties is in principle an admissible restriction. However, one needs to bear in mind that in practice the army and the police in FRY are not politically neutral and that they continue to be identified with the ruling coalition of political parties as one of their main power pillars.

Regarding the constitutional prohibition of trade union association to the professional members of the army and the police, it appears that this general prohibition presents a non-admissible restriction of the freedom of association and of the freedom of expression. The grounds given in terms of restricting the freedom of political association for reasons of protecting the politically neutral position of the state security forces, could not apply to the trade union association. Complete prohibition for the professional members of the army and the police to establish a union or to become part of it, leaves no opportunity for these people to protect their labour interests and therefore cannot be considered "necessary in a democratic society".

34 European Court for Human Rights, *Rekvényi vs. Hungary*, decision of 20 May 1999.

35 *Ibid*., p. 44–48.

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 "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 represents an exceedingly radical 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, not allowing these persons to perform political functions. More precise solution is found in the Constitution of Montenegro, where Art. 41, para. 3 prescribes that "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 ICESCR, 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 for restricting the freedom to association. Concerning those persons, the prohibition is personally too broad, for "persons employed in the state administration" include translators, typists, librarians, etc. There is no important social interest, "necessary in a democratic society", to prevent 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 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. Right to Strike

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

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 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 states that "employees have the right to strike, in accordance with law" (Art. 37 of the Constitution of Serbia).

ICESCR 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 reference to its lawful objectives, i.e. the protection of professional and economic interests.

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).

There is certainly 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 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.

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 persons employed in the republic state organs and to members of the republic police. According to Art. 8, para. 2 of the ICESCR, the national legislation may establish restrictions of the right to strike for 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 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. 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 can be deprived of ownership, and such ownership cannot be limited, except when it is required by the general interest determined in accordance with the law, and for compensation which must not be lower 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 property relations, while other areas are within the competence of 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 is not possible to analyse in detail all provisions on various kinds of ownership, attention will be given only to the fields where there is discrepancy with international standards.

4.11.2. Expropriation

The Serbian 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.

The EA still 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 is not 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 provide protection against arbitrariness in the decision-making of the state agencies.

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 also be required for restrictions of lesser intensity (*Sporrong and Lonnroth vs. Sweden*, A 52, 1982). Expropriation Act offers no adequate possibility to establish the balance.

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 been disregarded in practice.

Individual interests are endangered in the practice of the municipal institutions which decide 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. 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 extended 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 payment of compensation.

A similar situation occurs in cases when a decision on expropriation is adopted while 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 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 Serbian Act on the Special Conditions of the Sales of Property (SCSP — *Sl. glasnik RS*, No. 30/1989–1139) prescribes that the approval of the Ministry of Finance is necessary for every sale of immovable property in the territory of the Central Serbia and of

Kosovo and Metohija.[36] Such an approval shall be given if the change of ownership does not alter the national structure of the population or result in the exodus of members of a given nation or nationality, and if the sale does not provoke uneasiness or uncertainty among, or inequality of citizens of another nation or nationality (Art. 3). If the Ministry of Finance does not approve the sale, a Commission of the National Assembly of Serbia decides in the second instance upon the complaint of the interested person. 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 or fined.

Article 3 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 potential sellers in a situation of complete uncertainty. That provision is not sufficiently foreseeable and allows arbitrariness and therefore does not conform to the condition of legality according to the European standards.

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 provide for compensation for the damage incurred.

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

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 deceased, is considered unworthy of inheritance (Art. 4, para. 5). Since FRY 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. 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 refers to minorities in the general guarantees of human rights. 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 and comprehensively than in the constitutions of 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 in 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), not in the Constitution of Serbia. 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 minorities, minority 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.[37]

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

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

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

37 See in more detail, M. Samardžić, *Položaj manjina u Vojvodini*, Centre for Anti-War Action, Belgrade, 1998.

the members of minorities, especially since traditional names were freely used in the previous period (e.g. Szabadka — Subotica, Ujvidék — Novi Sad).

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

According to the Montenegrin Act on Primary Schools (*Sl. list RCG*, No. 34/1991–574), 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 more precisely: if more than fifteen pupils apply, teaching must take place in the minority language (Primary Schools Act of Serbia, *Sl. glasnik RS*, No. 50/1992–1726). If there are less than fifteen pupils, teaching may take place in the minority language with the approval of the Minister of Education (Art. 5). Teaching can be conducted in the languages of the minorities only, or in two languages. If teaching is in the language of the minority, then the pupils are bound to attend lessons of the Serbian language.

The FRY Constitution and the Constitution of Montenegro, provide that 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). 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 is guaranteed to members of national minorities 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.

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

The Council for the Protection of the Rights of the Members of National and Ethnic Groups, was established in Montenegro 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; members of the Council are representatives of minority groups. The FRY Constitution (Art. 47), 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 contained in 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 provide for the possibility to restrict of the freedom of expression and of the right to the freedom of association, if the use of such liberties is aimed

at "... instigation of national, racial or religious hatred and intolerance" (see I.4.8.5. and I.4.10.4.1).

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.

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). Political parties are freely established and act freely in the FRY (see

I.4.10). In Montenegro and Serbia coalitions of parties are now in power, the dominant role in both of them belonging to parties originating in 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.[38]

The annulment of some results of local elections in 1996 caused mass protests in all larger cities in Serbia, and lasted nearly three months. The crisis was resolved after the report of the Special Representative of the OSCE Chairman-in-Office, Felipe Gonzalez. The 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.[39] 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.[40]

Some opposition parties boycotted the latest parliamentary and presidential elections (1997); OSCE observers in Serbia also expressed

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

39 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.

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

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.[41]

4.13.2. 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 Serbian Elections for People's Deputies Act — *Sl. glasnik RS*, 79/1992; Art. 122 of the new Serbian Local Self-Government Act — *Sl. glasnik RS*, 49/1999; Art. 11 of the Montenegrin 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 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 since both citizens of Montenegro and Serbia residing in Serbia have been enrolled in the electoral register.

The factual possibility to participate in elections and be elected depends on whether a person has been registered in electoral rolls. Timely adjustment of these rolls 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. The Montenegrin Electoral Rolls Act (*Sl. list RCG*, 4/1998) 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:

41 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.

political parties participating in the election have the right to receive diskettes containing full registers within 48 hours.

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.[42] Unlike the analogous Montenegrin Act, laws in Serbia do not allow access to 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. 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 addition to provisions of relevant legislative acts, 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 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.

42 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).

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; the rest of the 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 electoral lists have been made public in 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 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 Admi-

nistrative 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 based on uncorroborated assertions of interested parties.[43]

All electoral laws provide for a right to appeal against the decision of the electoral commission to a competent court — to a municipal court, in case of municipal elections in Serbia (Art. 156 of the new Local Self-Government Act, *Sl. glasnik RS*, 49/1999), to the Supreme Court of Serbia, in case of republican parliamentary and presidential elections (Art. 111 of the Election of People's Deputies Act of Serbia), to the Constitutional Court of Montenegro, in case of elections on all levels in Montenegro (Art. 110 of the Montenegrin Election of Deputies Act) and to the Federal Constitutional Court in case of federal elections (Art. 105 of the Act on Elections for Federal Deputies in the Council of Citizens of the Federal Assembly).

43 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*).

The electoral laws of Serbia provide that the Administrative Disputes Act should govern the consideration of the appeal, but explicitly exclude the further use of irregular remedies, which this Act otherwise allows (Art. 156, para. 6, Local Self-Government Act; Art. 111, para. 6, the Election of People's Deputies Act). Therefore, in the local elections, for example, the municipal courts will decide in the final instance on the regularity of the elections. Such a limitation with regard to available legal remedies is of considerable importance, bearing in mind the manipulations conducted by the municipal courts in the electoral disputes following the last 1996 local elections in Serbia.

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.

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.

Yugoslav law does not define the legal concept of the family. Most provisions of family law, however, concern the nuclear family (parents and children), while some (e. g. those concerning the obligation of alimony or kinship as an obstacle for marriages) govern relations among a broader circle of relatives.

Yugoslav law prescribes the obligation of mutual 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 LMFR of Serbia; Art. 9 LF of Montenegro). The non-observance of the duty of support is sanctioned by the penal codes of the republics (Art. 119 PC of Serbia and Art. 102 PC of Montenegro). Likewise, the penal codes punish the offences which violate family obligations — (Art. 120 PC of Serbia; Art. 101 PC of Montenegro).

4.14.2. Marriage

FRY Constitution mentions marriage only in the context of the assurance of the equality of children born in and out wedlock (Art. 62, para. 2). According to the Constitution of Serbia, marriage and marital relations are regulated by the law (Art. 29, para. 2), while the Constitution of Montenegro emphasises that 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 republic laws (LMFR of Serbia and LF of Montenegro).

According to Yugoslav laws, spouses are equal in marriage. Marriage may not be concluded if there are legal obstacles. Some of them concern the 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 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. 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.

Divorce can be pronounced either by the agreement of the spouses (Art. 84, para. 1 LMFR; Art. 56 LF of Montenegro) or at the request of one of them in cases when 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 LMFR; Art. 55 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 LMFR of Serbia; Art. 57 LF of Montenegro). Still the court may refuse to pronounce divorce based on mutual agreement if it is against the interest of minor children (Art. 84 LMFR of Serbia; Art. 56 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 (Art. 70 LMFR of Serbia; Art. 279 LF of Montenegro). Separate property may also be acquired during the marriage, e.g. by inheritance or gift. Spouses dispose jointly of their common property (Art. 234 LMFR of Serbia and Art. 284 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) provides (Art. 61, para. 2) that children born out of wedlock 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 LF of Montenegro and Art. 7 LMFR of Serbia).

Parents have the right and duty to care about the personalities, rights and interests of their children. 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 LMFR of Serbia, and Art. 58–61 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 (Art. 123 and 124 LMFR of Serbia, and Art. 66–74 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. 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 Art. 125–131 LMFR of Serbia, and Art. 66–74 LF of Montenegro).

The basic forms of protection of children without parental care are adoption and placing in another family (Art. 148 and 149 LMFR of Serbia). Adoption is permitted if it is beneficial to the adopted child (Art. 152 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 LMFR of Serbia, Art. 217 LF of Montenegro).

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

4.14.3.2. 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 PC 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 Art. 72 — 75 PC 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 CPA).

Criminal procedure against children is subject to the provisions of a separate chapter of the CPA (chapter XXVII, Art. 452–492), while other provisions of the Act are applied to children. Since penal sanctions cannot be applied, according to the FRY Penal Code, on children under 14 years of age, CPA prescribes that criminal procedure against children under the age of 14 at the time of the commitment of the criminal act shall suspended, and that the organ of guardianship shall be informed about that (Art. 453 CPA). 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 the child (Art. 454 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. (Art. 455 CPA)

The public prosecutor is bound to inform the organ of guardianship about initiating procedure against children (Art. 459 CPA). 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 CPA). The public shall always be excluded from trials of children (Art. 482 CPA).

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

4.14.3.3. Name. — 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 enter the name into birth registers within two months of the birth.

4.14.3.4. Nationality. — 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 proclaims the right of every individual to nationality and prohibits arbitrary deprivation of citizenship and of the denial of the right to change nationality (Art.

15). 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 its 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 new born children.

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 FRY adopted a new Citizenship Act. In spite of the old Citizenship Act of the SFRY being in force until the adoption of the new citizenship law in 1996, state organs did not apply that law. Thus, many citizens of the former SFRY who found themselves 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), were in a situation of extreme legal insecurity. They were exposed to discrimination, for they could not enjoy certain rights (e.g., the right to education, the right to employment) or could not get documents (passports, identity cards) because they were not considered Yugoslav citizens.

According to the new FRY Citizenship Act citizens of the former SFRY who possessed, on the day of the promulgation of the FRY Constitution (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 FRY 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 provided they do not have foreign citizenship. This provision applies also to 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, provided 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. (Art. 47, para. 4).

The Citizenship Act provided for another way of acquiring of FRY citizenship — "acceptance into Yugoslav citizenship" (Art. 48). This manner of naturalisation is limited to the citizens of the former SFRY who emigrated into the territory of the FRY because of their religion or nationality, or because of their struggle for human rights and liberties (para. 1), or who 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 Internal Affairs, which examines it and takes into account, the interests of "security, defence and international position of Yugoslavia" (para. 3). The person submitting a request must add a statement that he/she has no other nationality or that it renounced it (Art. 5). Also, persons who were granted asylum as citizens of the former SFRY must include a statement about the persecutions they suffered (Art. 6).

4.15.3. Acquisition of Yugoslav Nationality

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

Yugoslav citizenship by origin is acquired, according to the law (*ex lege*) by 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 otherwise remain stateless.

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*). Children born or found in the territory of the FRY get Yugoslav citizenship if their parents are unknown or stateless.

4.16. Freedom of Movement

Article 12 ICCPR:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.

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

4.16.1. General

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

> The freedom of movement and residence and the right to leave the FRY and to return to the FRY is guaranteed to the citizens.
>
> The freedom of movement and of settlement 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 settlement, there is no mention of the freedom to leave freely Montenegro and to return to Montenegro.

4.16.2. Restrictions

The restrictions of the freedom of movement contained in the Yugoslav constitutions are formulated in accordance with international standards. A restriction must be established by law and necessary for the attainment of a legitimate goal. Reasons for restrictions mentioned in the Yugoslav constitutions, 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; thus a regime is created which in fact limits the rights contained in Art. 12 ICCPR.

4.16.2.1. Special tax for exiting 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.

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 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 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 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 are 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.
>
> According to the view of the Federal Constitutional Court, the obligation to pay the 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 FRY.

4.17. Economic and Social Rights

4.17.1. Right to Work

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

The Constitution of the FRY and the Constitution of Serbia guarantee, to a certain degree, the safety of jobs by stipulating that employed persons may lose their employment against their will only under the conditions and in the cases prescribed by 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, 51/99). 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 employment must be delivered to the employee in written form, with instruction about the legal

remedy. The employee may complain to the competent court within 15 days after receiving the decision. Labour lawsuits are urgently. 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 is a criminal act (see Art. 91 of the Penal Code of the RS, and Art. 75 of the Penal Code of Montenegro).

The compulsory notice term, 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, last amendment 21/96 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.

The law defines the special rights of employees which belong to the so-called technological surplus. These are persons who become redundant 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 demands cannot be met, labour relation 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).

The right to work includes the right to free assistance at the labour market. There are labour exchanges in the republics, with the task to implement employment programmes and to harmonise labour demand and supply. They offer information 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, prepare persons for employment, through re-training, additional qualification and the innovation of knowledge.

4.17.2. Right to Just and Favourable Conditions of Work

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

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 collective agreement. Earnings are paid at least once a month (see Art. 48 of the Labour Relations Act). Employees have the right to remuneration for holidays, during their annual holidays, during paid leaves, military exercises and in other cases determined by law and collective agreements. The Act guarantees to employees the right to increased earnings for 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, 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, law secures the right of employees to minimal guaranteed wages. 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 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 RS Constitution, and Art. 53, para. 2 of the RM Constitution).

Full working time amounts to 40 hours weekly. The law prescribes the obligation to introduce 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 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. The guaranteed rest time between two workdays is least twelve hours without interruption, except during seasonal works, when this minimum is ten hours; the right to weekly rest at least 24 hours without interruption. The employed have the right to annual holidays of at least eighteen days. The employed may not be deprived of the right to any of these rests. The employees have also the right to paid and unpaid leaves in 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 RS Constitution and Art. 53, para. 3 and 4 of the RM Constitution).

The Bases of Labour Relations Act prescribes the obligation of the employer to assure the necessary conditions for 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 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, 48/94, 42/98) and the reduction of the working hours for such persons, and their right to longer annual holidays, up to 40 workdays (see Art. 56, para. 2 of the Labour Relations Act of the RS).

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

4.17.3. Right to Social Welfare

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

In the Yugoslav constitutions, the right to social security is prescribed as the institution of compulsory insurance of employees, which guarantees to them and to their families many forms of social security (see Art. 58 of the FRY Constitution and Art. 55 of the RM Constitution). The Constitution of Serbia enters in a more specific way into the content of this right, and prescribes that employees, in accordance with law, acquire 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 RS Constitution).

Social security includes retirement, disability health and unemployment benefits, and health insurance.

Compulsory insurance covers all employed and self-employed persons and farmers. There is also the possibility of voluntary insurance (see Art. 16 of the Act on the Bases of Retirement and Disabled Persons Insurance, *Sl. list SRJ*, No. 30/96, 58/98).

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. 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, 48/98). The amount of the pension is determined as a percentage of the pension base, depending on the number of years of insurance. The

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

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

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

Unemployment benefits are regulated at the republic level, by the Act on Employment and on the Rights of Unemployed Persons in Serbia, and by the Employment Act in Montenegro. All 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 RS Constitution, and Art. 53, para. 1 of the RM Constitution).

The right 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, last amendment 52/96 and Art. 28 of the Employment Act, *Sl. list RCG*, No. 29/90, last amendment 22/95). 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 (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.

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 RM Constitution, Art. 58 of the FRY Constitution and Art. 39 para. 2 of the RS Constitution). 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). The law foresees a series of additional individual conditions (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 (*Sl. list RCG*, 45/93, 27/94, 16/95) .

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

The relevant social welfare institutions decide upon all these rights.

4.17.4. Right to the Protection of the Family

The right to the protection of mothers, children and families is comprehensively protected by the republic constitutions. The FRY Constitution only guarantees special protection for families, children and mothers; children born out of wedlock have the same rights and duties as legitimate children. The republic constitutions guarantee some other rights and prescribe some other obligations. 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 RS Constitution and Art. 58 and 59 of the RM Constitution).

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 RS Constitution, and Art. 53, para. 4 of the RM Constitution). The major part of these rights, and of the rights based on the special protection of youth are prescribed by the Bases of Labour Relations Act. Labour Relations Act of Serbia reproduces all the provisions of the federal law, and contains some more precise supplementary rules, as a difference from the Labour Relations Act of Montenegro, which has few provisions on the special protection of women and youth.

The Bases of Labour Relations Act provides that employed women may not perform hard physical work, work underground and underwater, or which otherwise could be detrimental to and hazardous

for their health and lives (see Art. 35, para. 1). 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, with their consent. Single parents with children up to seven years of age or with heavily disabled children may work overtime or by night with their consent (see Art. 36 of the Bases of Labour Relations Act). Also, night work is prohibited for women in industry and construction, while possible deviation from that rule is allowed only in exceptional circumstances (see Art. 40 of the Bases of Labour Relations Act and Art. 75, para. 1 of the Labour Relations Act of Serbia, which contains the prohibition of night work for women and those aged under 18 employed also in transport).

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 expiration 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 enjoy 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, that unemployed women who give birth and are registered in the Labour Exchange have the right to monetary compensation amounting to 50% of the lowest salary in the Republic in the month when the compensation is paid, for 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 (see Art. 37, para. 4 of the Bases of Labour Relations Act). In Serbia, such women have the right to be absent from work 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 childbirth (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 the mother, or if she abandons her child, or if she is prevented from enjoying those rights, they may be enjoyed by the father, if employed (see Art. 38, para. 1 of the Bases of Labour Relations Act).

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 income 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 (see Art. 21–29 of the Social Protection of Children Act of the RS). Similar rules exist in Montenegro; however, in Montenegro the right to allowance does not depend on the income 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 employment of children and minors on jobs detrimental to their health and development (see Art. 61 of the RM Constitution).

The constitutions extend to youth 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); 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 full working hours, while the collective agreements, or the general acts of employers, may prescribe shorter working hours. For persons under 18 years of age employed in industry, construction and transport, night work is prohibited (see Art. 41 of the Bases of Labour Relations Act). The Bases of Labour Relations Act also prescribes the right to longer annual leave for such persons. (see Art. 56 of the Labour Relations Act of the RS).

4.17.5. Right to Health

The Yugoslav constitutions guarantee the right to the protection of health to all. Furthermore, the constitutions prescribe that health protection must be assured from public revenue, if there is no health protection of other origin (see Art. 60 of the FRY Constitution, Art. 30 of the RS Constitution and Art. 57 of the RM Constitution). 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. The right to health insurance is also enjoyed by the members of their families.

Indigenous, persons if not insured, enjoy health protection from public means. The republic laws regulate that matter in somewhat different ways. In Serbia, the Health Protection Act defines 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 elimina-

tion 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 define 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 grave 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, 48/91, 17/92, 27/94, 23/96).

The basic rights of health insurance are the rights to health protection, compensation during temporary inability to work, for travel expenses incurred by with treatment and 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 borne by health insurance, to the extend prescribed by those acts. Costs in excess are borne 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, 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, last amendment 54/99).

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 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; it amounts to not less than 75% and not over 85% of the base. If temporary impossibility to work is caused by 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 by stipulating that compensation may not be lower than the guaranteed monthly net wages determined by the republic government.

Compulsory health insurance covers also the transport costs for travel for treatment or check-ups, and the funeral costs.

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 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, impose the conclusion that the Yugoslav legal system as a whole does not adequately protect of human rights. Rule of law does not exist in FR Yugoslavia: many contradictory rules are in force. Laws that restrict the constitutionally guaranteed human rights are nevertheless enforced. 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 rule of law. However, a significant number of federal and republic laws and regulations have not been adopted to the federal constitution for more than seven 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. This is a reason for particular concern because most federal laws are enforced by the authorities in the republics, who in case of conflict obey the legislation of the given republic.

3. It is particularly significant that the federal Criminal Procedure Act (CPA) has not been harmonised with the federal constitution. As a consequence, enforcement of CPA virtually 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 secure effective legal remedies for the protection of human rights. Despite constitutional pronouncements that courts are independent, this principle has not been implemented in law and in practice. For instance, courts cannot control the work of court administration, which is supervised by the justice ministry. Courts have no budgetary independence, which makes them dependent on the executive and legislature. 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." According to the jurisprudence of the Supreme Court of Serbia judges are denied the right to organise and form professional associations (see I.4.10.2).

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 as to render it only a theoretical remedy.

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 restricted 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. This was amply demonstrated

during the state of war, declared after NATO intervention in March, 1999 (see I.3.2.4).

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.

9. Conscientious objection is allowed by the federal constitution but it has no content 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 alternative service. Once a person has joined military service, there is no further 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; they have never had a chance to express their convictions.

10. Most difficulties related to the freedom of expression and of the media are related to the establishment and operation of electronic media (radio and TV); 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 FRY, and particularly in Serbia, state-owned radio and television have been given wide competencies, especially in regard to the telecommunications frequencies, which form the basis of the state's broadcasting monopoly.

11. The very restrictive 1998 Public Information Act in Serbia is still in force. The law provides for extremely high penalties which are directed at financial destruction of the independent media. Penalties are pronounced in a procedure which does not ensure fair hearing. The law also prohibits transmissions of Serbian-language programmes of foreign radio and television stations, which is contrary to both the federal and Serbian constitutions.

12. Several provisions of criminal law provide a basis for possible violations of the 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 scope may be used persecute political opponents and restrict the freedom of the press.

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 manipulation of electoral results. Electoral legislation in Serbia has not been reformed in accordance with the report's recommendations.

14. Prohibition of an organisation is allowed 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 to strike for all state employees, professional soldiers and police officers.

15. 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 minority protection below the minimum provided by the federal constitution. 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.

16. The existence and application of the Special Conditions of the Sales of Property Act in Serbia violates the prohibition of discrimination and the right to peaceful enjoyment of property.

II
HUMAN RIGHTS IN PRACTICE

1. Introductory Note

Reporting on fundamental human rights violations in the territory of the Federal Republic of Yugoslavia in 1999 is rendered extremely difficult due to the scale of their gravity and variety of forms. The aim of the Belgrade Centre for Human Rights in this Report has been to give an overview of violations of those individual rights that are guaranteed by the most important international documents. The reader should, however, bear in mind that some of the human rights violations fall under different categories.

The conflict in Kosovo, which had been smouldering for years, had broken out in 1998 and had reached its most dramatic phase in 1999, was characterised by mass expulsions, summary executions, torture, abductions and many other forms of ethnically based ill-treatment. The OSCE's latest detailed report justifiably points out that massive human rights violations were both the cause and consequence of the conflict (ODIHR, 1999, *Kosovo/Kosova: As Seen, As Told*).

It is this Report's point of view that NATO military intervention against the FRY, which was launched because of Kosovo and lasted from 24 March to 10 June, was a singularly important event. The intervention which aimed at improving the human rights situation in Kosovo became a topic of numerous debates as to its justifiability, the way in which it had been undertaken and the effect it had. As noted by the UN Special Rapporteur on Human Rights for the FRY, Jiri Dienstbier, it contributed to a further deterioration of the situation with

respect to the rule of law and freedom of expression (A/54/396, S/1999/1000, paras: 100, 101).

Finally, in the second half of 1999, following numerous demands for the resignation of the President of the FRY, Slobodan Milošević, political tensions in the FRY increased in both the Serbia-Montenegro relations and in Serbia itself. These tensions in turn led to intensified repression of politically dissenting voices which are becoming increasingly diversified and harsh.

1.1. Sources. — The Report is based on research covering three main groups of sources. The first group includes national press releases and statements by state agencies on issues this Report deals with. The second group includes reports on the human rights situation in the FRY prepared by national non-governmental organisations working on human rights protection. The third group includes reports by international governmental and non-governmental organisations.

1.2. Domestic press. — In Serbia and Montenegro, the two Yugoslav republics, there are six relevant political dailies and three weeklies that are published regularly and distributed in the entire territory of the federation. The already difficult financial situation of privately owned newspapers and magazines that are critical of the authorities deteriorated when the government imposed restrictions during NATO military intervention. Due to a poor network of correspondents, this press has to rely considerably on information provided by the private agency *Beta*. For the purposes of this Report, relevant articles in 1999 published in the following newspapers and magazines were covered: *Politika* — the most important pro-government Belgrade-based daily, *Danas*, *Glas javnosti* and *Blic* — private daily newspapers, and *Vreme* — the private Belgrade-based weekly. The report also covers press releases of the state news agency *Tanjug* and the largest independent news agency *Beta*.

In the newspapers analysed by the associates of the Belgrade Centre from 1 March until the end of December 1999, 29,423 articles were registered covering human rights issues:

	Politika	*Blic*	*Glas javnosti*	*Danas*	*Vreme*
March	813	1,272	1,311	1,168	40
April	1,109	1,141	1,205	1,005	29
May	1,243	787	770	980	60
June	1,085	354	988	621	46
July	412	501	819	575	32
August	474	382	467	494	25
September	553	499	579	612	33
October	496	475	501	370	42
November	1,076	595	535	781	42
December	634	369	360	628	35
TOTAL:	7,895	6,375	7,535	7,234	384

Two periods may be distinguished in the writing of the press. During the first one, at the time of NATO intervention (March–June), 99% of information were devoted to the intervention and its consequences. During that time, almost no difference existed between the coverage of *Politika* and the privately owned newspapers, except for occasional and short information on the closing down of private radio and TV stations in Serbia, which were published by the private newspapers. Even the private media did not criticise the policy of the authorities and the violation of the rights of Albanians in Kosovo, primarily due to severe although not officially pronounced censorship, which had been seriously jeopardising the very existence of those media.

With regard to the privately owned press, the situation distinctively changed during the second (July — December) period. About 64% of the articles in those newspapers was devoted to the status and rights of Serbs and other non-Albanians in Kosovo. Numerous writings criticised the attitude of the Serbian authorities towards the displaced people from Kosovo, the Serbs who had remained there and some of the actions taken by the international military force (KFOR) and UN mission (UNMIK) in this province. Among other articles, the most numerous are those covering the freedom of expression (18%) and freedom of assembly (15%), with reports on the police brutality during the civic protests (July — October) and thorough reports on the authorities' accusations of the opposition and private media for being "traitors", "NATO ground forces" and "servants of the West". Due to such publications, private media was prosecuted and severely fined under the restrictive Serbian Public Information Act on the course of numerous trials in the second half of 1999. The private media also thoroughly reported on those proceedings, as well as on the wave of prosecuting the Kosovo Albanians, reporting also on the criticism of the magistrate courts and judges by national professional and non-governmental organisations.

The pro-government daily *Politika*, published an average of 600 articles monthly on the human rights issues. The largest percentage of those articles (around 70%) dealt with the violation of the rights of Serbs and other non-Albanians in Kosovo. The common string was the criticism of KFOR and UNMIK and glorification of all acts of the Serbian authorities. The articles on the minorities — up to 3% of all human rights related writings — always praised the policy of the regime bearing the same conclusion that the status of minorities in Serbia was in accordance with the "highest European and international standards".

Freedom of expression was dealt with in up to 15% of articles during the second term. As a rule, they contained criticism of the opposition parties and the private media, which allegedly abuse this right to the detriment of the national security and to the benefit of the

foreign occupation of the country. In this period, and especially during civic protests, there was an increase in the writings of *Politika* on the freedom of assembly (up to 14%), which was assessed in light of the opposition's alleged abuse of the right in order to obstruct the public order, assault the government and destabilise the State. The same line of reporting — good will and the correctness of the regime and the ill will and wicked intentions of all its critics and opponents — *Politika* uses also in the articles on the proceedings against the private media and Kosovo Albanians.

1.3. Reports by Domestic Non-Governmental Organisations

Below is a list of the national NGO's reports used in the Report:

a) "Nestali pripadnici nealbanskih etničkih zajednica na Kosovu od 24. marta do 10. avgusta 1999. godine" (*Missing Persons of Non-Albanian Ethnic Communities in Kosovo from 24 March to 10 August 1999*), Humanitarian Law Center, 1999;

b) "Zloupotreba i nasilje nad kosovskim Romima, 24. mart — 1. septembar 1999. godine" (*Abuses and Violence Committed Against Kosovo Roma, 24 March — 1 September 1999*), Humanitarian Law Center, 1999;

c) "Položaj Albanaca u Srbiji za vreme i posle intervencije NATO" *(The Position of Albanians in Serbia During and After NATO's Intervention*), Helsinki Committee for Human Rights in Serbia, 1999;

d) "Izveštaj o pojačanoj represiji u Srbiji" (*Report on Intensified Repression in Serbia*), Helsinki Committee for Human Rights in Serbia, 1999;

e) *Helsinška povelja, brojevi 14, 15, 16, 17, 18, 19* (*Helsinki Charter, No.14, 15, 16, 17, 18, 19*), Helsinki Committee for Human Rights in Serbia, 1999;

f) *Analysis of the State of the Rights and Freedoms of the Bulgarian National Minority in Serbia,* April-May 1999,

Helsinki Committee for the Protection of the Rights and Freedoms of Bulgarians in Yugoslavia, 1999.

g) Contributions and announcements, Yugoslav Child Rights Centre, 1999;

g) *Glas*, br. 20, Centre for Anti-War Action, 1999;

h) "Tranzicija u Crnoj Gori, Izvještaj br. 1, februar-april 1999. godine" (*Transition in Montenegro, Report No.1, February-April 1999),* Centre for Human Rights and Democracy, 1999;

i) *Izveštaj o aktivnostima Matice muslimanske Crne Gore na ostvarivanju i zaštiti kulturnog, vjerskog i nacionalnog indentiteta muslimanskog naroda, kao i ljudskih prava* (*Report on the Activities of the Montenegro Association of Moslems in Implementing and Protecting Cultural, Religious, National Identity, and Human Rights of the Moslem Nation*), Moslem League of Montenegro 1999;

j) Contributions and statements, Women in Black, 1999;

k) Contributions and statements, Group 484, 1999;

1.4. Reports by International Organisations. — The OSCE report entitled *Kosovo/Kosova, As Seen, As Told — An analysis of the human rights findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999* is an important and most detailed report on the human rights situation in Kosovo. This group of sources also contains material published by the United Nations and its agencies such as the UNHCR and in particular the reports prepared by the UN Special Rapporteur on Human Rights for Bosnia and Herzegovina, Croatia and the FRY, Jiri Dienstbier. Finally, reference is made to numerous reports by international non-governmental organisations such as Amnesty International (AI), the Human Rights Watch (HRW), Article 19 (Art. 19), the International Freedom of Expression exchange/International Federation of Journalists (IFEX/IFJ), and the Lawyers Committee for Human Rights (LCHR). These reports are referenced

with the respective organisation's acronym followed by the date of publication.

2. Individual Rights

2.1. Prohibition of discrimination

2.1.1. Mass expulsion and other forms of discrimination based on ethnicity.— Ethnic discrimination, which had a history of different forms with respect to members of certain national minorities and ethnic groups, in particular Kosovo Albanians, in the last several years has been the most frequent form of discrimination in the FRY. During 1999 this form of discrimination took on massive proportions and frightening features in the forced expulsion of Kosovo Albanians after the withdrawal of the OSCE Kosovo Verification Mission (KVM) and at the beginning of NATO military intervention against the FRY at the end of March.

According to the OSCE report *Kosovo/Kosova: As Seen, as Told* (hereinafter: OSCE report) 863,000 Albanians were forcibly expelled from Kosovo in the period March-June. The greatest number of refugees stayed in the Balkans, primarily in Albania and Macedonia, while an estimated number of 80,000 was resettled in some forty non-Balkan, mainly western countries. At the same time, there were several hundreds of thousands internally displaced persons in Kosovo. According to the OSCE report, the number of internally displaced Kosovo Albanians who were forced to leave their homes because of their nationality totalled up to around 1,4 million. The number of refugees and displaced persons increased with the outbreak of the armed conflict in Kosovo in the spring of 1998. This trend was halted at the end of that same year with the deployment of the KVM whose presence in the field improved the situation to some extent. However, not long after NATO action against the FRY began, the mass expulsion of Kosovo Albanians took on an incredible scale.

Mass expulsions were, as a rule, accompanied by other grave human rights violations as deliberate destruction of houses and other private property, looting, threats to life and rape, torture, beatings, and ill-treatment. Expulsion as such is a violation of Article 17 of Protocol II Additional to the 1949 Fourth Geneva Convention, of which the FRY is a signatory, which prohibits forced mass expulsion of populations from the territory on which they live. The gravity of the violation was exacerbated by the fact that the deportations violated a fundamental principle of human rights protection, that is the prohibition of discrimination based on nationality. While for the period preceding the withdrawal of the KVM and before NATO bombing it could be said that the refugees and displaced persons were the consequence of war activities by the Army of the FRY and the Serbian police which had as its aim to break the resistance of the Kosovo Liberation Army (KLA), it was obvious that in the period March-June this was a consequence, as stated in the OSCE report, of a "well rehearsed" and brutally executed expulsion of members of an ethnic group.

The OSCE report identifies three possible aims of this operation — the expulsion of all Albanians from Kosovo, the drastic reduction of their numbers in the province and/or the cleansing of those regions in which the KLA enjoyed a significant support of the local population. On the basis of a large number of statements by Albanian refugees, the report reconstructs a basic pattern according to which the majority of deportations were carried out. Villages were first shelled, after which the Serbian forces would group the local people and, under threat to life, would give them a very short period within which to leave in the direction of the border. As the perpetrators of these acts the refugees identified members of the Army of Yugoslavia, of the Serb police, armed Serb civilians and/or paramilitaries. The pressure and threats, as well as the method of expulsion, were somewhat different in towns. The OSCE report also claims that, in regions controlled by the Kosovo Liberation Army, the ethnic Albanian population was forced to leave the zone of military operations by this military force too.

It appears that in the Kosovo Albanian population certain categories of persons were subjected to additional discrimination, that is were victims of particularly cruel treatment. Such was the case of younger men of fighting age who were detained or killed in greater numbers than others, of women who were often sexually abused, and also of children, the elderly and handicapped persons. Finally, well known personalities belonging to the Albanian national community in Kosovo such as politicians, physicians, journalists, teachers, human rights activists, wealthy persons, and those who worked for the KVM before it withdrew from Kosovo were all in a particularly dangerous situation. The position of other ethnic Albanians who were expelled from their homes was particularly precarious as long as they were on Kosovo territory since they lacked food, water and basic hygienic conditions.

Ethnic Albanians living in Serbia were exposed to various forms of discrimination both before and after the NATO intervention. According to the report of the Helsinki Committee for Human Rights in Serbia, entitled *Položaj Albanaca u Srbiji za vreme i posle intervencije NATO* (*The Position of Albanians in Serbia During and After the NATO Intervention*), during the first days of air strikes, in several towns in Vojvodina unidentified assailants destroyed a number of shops of Albanian craftsmen. The report also states that there were fewer incidents of the kind in towns where the local government was in the hands of opposition parties, as was the case in Novi Sad and Subotica. If such incidents occurred, the police would react promptly and professionally. In Belgrade, during and after NATO intervention there were reports that a large number of Albanian workers were sacked. Four hundred people were laid off from the Yugoslav Public Works — City Sanitation Service, and a number from construction firms such as *Rad*, *Ratko Mitrović*, *IMT*, *Hidrotehnika* and *Luka Beograd*. Even though the official explanation claimed the layoffs were due to unauthorised absence from work or to labour surplus, there is reason to believe that it was ethnically motivated.

In its report the Helsinki Committee for Human Rights estimates that during NATO intervention as many as 25,000 ethnic Albanians

living in the municipalities of Preševo, Bujanovac and Medveđa were forcibly expelled from their homes. For these three southern municipalities of the Republic of Serbia which border Kosovo, the 1981 population census, the last census in which the ethnic Albanians participated, registered around 60,000 ethnic Albanians while today they claim that they are about 100,000. As for the region of Preševski Karadak, which underwent particular pressure, the report states that the population was expelled by threat of conscription, killings of civilians, pillage of public facilities, limitations to freedom of movement and intimidation. According to the report, those most responsible for these forms of repression are the Army of Yugoslavia (VJ) Niš Corps units.

The June withdrawal of Serbian forces from Kosovo and the deployment of KFOR led to a massive return of Albanian refugees to the province. This was soon followed by retaliation and numerous forms of ethnically based abuses, which forced a great number of non-Albanians, in particular Serbs and Roma, to flee the province for personal security reasons. Although the highest representatives of the KLA denied involvement in acts of ethnic violence, the OSCE report leaves open the question as to their responsibility for the mass exodus of Serbs, Roma and other non-Albanians in Kosovo.

The Red Cross of Serbia reports that 215,000 persons fled from Kosovo to Serbia (*Beta,* 21 October). According to the UNHCR data for December more than 200,000 non-Albanians, mainly Serbs and Roma, left Kosovo. A *Beta* press release of 16 November quoted Maki Shinohara, UNHCR Belgrade Office spokesperson, as saying that of the total number of displaced persons from Kosovo, roughly 50,000 to 60,000 fled the province during NATO air strikes while the rest left with the deployment of international peacekeeping forces. Different methods of forced expulsion of Kosovo non-Albanians are exercised: from physical force to ill-treatment, to attempts at fictitiously legal ways of property appropriation. A number of cases of local Serbs being forced to sign documents transferring property rights to ethnic Albanians were registered.

The Albanian writer Shkëlzen Maliqi believes that Kosovo has practically lost its multiethnic character since not more than 4 to 5 %

of the population is non-Albanian. Maliqi claims that: "Serbs in Kosovo are vulnerable to getting lynched as there is an overwhelming and dangerous Albanian nationalist chauvinism that can now fully voice itself. NATO is here, so, we can now take our revenge. All one needs to do to have serious problems in Priština today is to speak Serbian" (*Blic*, 18 October, p. 9).

The fate of Kosovo Roma is particularly telling of the general situation in the province and confirms the gravity of this ethnic group's position as one of persistent discrimination in many societies. During NATO military intervention the Serbian side exploited Roma as forced labour. Roma were forced to assist in looting, in the destruction of property, and in burying Albanians who were killed. According to the Humanitarian Law Center, *Abuses and Violence Committed Against Kosovo Roma, 24 March — 1 September 1999*, a significant number of Roma performed these tasks against their own will either because they were afraid of reprisals or because they had been offered rewards for themselves or their family members.

Upon the signing of the peace agreement, beside members of the Serbian police, the Yugoslav Army and paramilitary, Roma who had committed crimes against ethnic Albanians left Kosovo. However, according to the HLC report, Roma who stayed on in Kosovo, believing they had no reason to fear the return of Albanian refugees, have become victims of reprisals and violence carried out by the KLA. They are attacked under the excuse that all Roma collaborated with the Serbian police in the repression and expulsion of Kosovo Albanians. The Roma have become victims of the same forms of violence perpetrated against Kosovo Serbs — physical maltreatment, detention, abduction, murder, sexual abuses, plundering, forced labour and expulsion from Kosovo. Not more than several thousands of Roma remained in Kosovo at the end of 1999.

The national press reported several cases of discrimination against Roma living in Serbia, where their number is around 140,000 (last 1991 population census data). Roma, who represent the largest number of workers in the City Sanitation Service and other communal services, are often assaulted simply because of their ethnicity.

"On Thursday, 11 November, in the vicinity of the Belgrade railway station, Marjan Nikolić, a Roma working in the City Sanitation Service, was attacked and injured by a group of skinheads. Nikolić's work tools were also taken. On 3 November, several skinheads stoned Blagoje Stefanović, a Roma. Only two days earlier they had attacked another Roma, Šema Jašarević, in a bus as he was returning from work. The City Sanitation Service manager requested the police to prevent this daily ill-treatment and verbal abuses of Roma by skinheads in the area close to the Belgrade railway station. He recalled that on 18 October 1997, Dušan Jovanović, a 14-year old Roma, had been battered to death by skinheads." (*Beta,* 15 November).

The Roma Congress Party (RCP) demanded of the Minister of the Interior of the Republic of Serbia, Vlajko Stoiljković, to inform the public on what he had undertaken to prevent skinhead attacks on Roma which have been going on for six years. It concluded that the "support of the authorities in the prevention of abuses against Roma was mainly of a declarative nature" (*Beta*, 16 November). Following these protests the police decided to "offer greater protection to the City Sanitation Service workers from skinhead attacks" (*Blic*, 18 November, p. 6).

The ethnic discrimination of Roma in Serbia can be seen from the example of a primary school where a large number of Roma children are enrolled. Jovan Cerović, principal of the "Petar Tasić" primary school in Leskovac, claims that Serb pupils avoid this school because of the large number of Roma pupils attending it: "This school has been labelled a 'gypsy' school and so Serb children go elsewhere. This is no fault of the Roma. The only ones to be blamed for this are the Serbs who enrol their children in other schools" (*Glas javnosti*, 25 August, p. 20).

2.1.2. Discrimination on other grounds. — Out of the many forms of discrimination, the most frequent one is politically motivated discrimination. As a rule, this form of discrimination occurs together with other forms of human rights violations, such as those of the right to work or the right to freedom of expression.

On 9 November, the National Assembly of the Republic of Serbia relieved from duties Milorad Marjanović, judge of the Municipal Court in Leskovac, for acting in "breach of his office as judge". The proposal for the removal was submitted by the Judiciary and Administrative Committee of the National Assembly even though, as is required by the Constitution and law, the Supreme Court had not convened a general assembly to establish the justifiability of such a motion. Marjanović is one of the co-ordinators of the opposition Alliance for Changes (SZP) in Leskovac. At the meetings of this group of opposition parties held in Leskovac on 21 September and 5 October, Marjanović criticised the president of the FRY, Slobodan Milošević, and the Head of the Yugoslav Army General Staff, Dragoljub Ojdanić. Marjanović is also a very active member of the Association of Judges of Serbia, an occupational organisation which militates for the respect of the principles of rule of law and the independence of the judiciary. It is more than likely that it is these activities of judge Marjanović that incited the resolve of the Assembly Committee to initiate proceedings for the judge's removal. At the same time, the Court Martial of Honour in Niš withdrew his rank of Captain First Class in Reserve (*Vreme*, 4 December, p. 10).

On the same day, in the same manner and on the same legal grounds, the Serbian National Assembly had also removed Murat Baltić, Sjenica Municipal Court judge (see, *Sl. glasnik RS*, No. 48/99). Vladimir Cucić, judge of the Supreme Court of Serbia and a member of the Association of Judges, was also removed on the grounds of retirement, a month before the expiration of his term and without a general assembly of the Supreme Court being convened. Unlike judges who have proven as being independent and who are being "regularly" retired, there are those who maintain their offices years after fulfilling conditions for retirement. (judges Prelević and Vučetić in an interview given to the *Radio B292*, 22 December)

The authorities are obviously particularly irritated by the membership of judges in the Association of Judges of Serbia, an independent occupational organisation founded in response to judiciary abuse

in the 1996 local elections aimed at falsifying the election results. On 21 December, the National Assembly of Serbia had similarly removed from office three highly esteemed judges. These were: Slobodan Vučetić — judge of the Constitutional Court of the Republic of Serbia, Zoran Ivošević — judge of the Supreme Court of Serbia, and Božo Prelević — judge of the Fifth Municipal Court of Belgrade. All three were removed from office because of their membership in the Association of Judges of Serbia. The official rationale was based on the provisions of the Constitution of Serbia according to which a judge of the Constitutional Court may not hold another public office or perform professional activity.

It is not only judges that lost their jobs for what could be qualified as political motives. The press reported the case of Relja Petković, a renowned physician, founder of the orthopaedic ward in the hospital in Požarevac, who used to be the physician of the Yugoslav national handball team, and who was the vice-chairman of the Democratic Party (DS) County Committee. Petković received a letter informing him of the cessation of his work contract apparently due to a grave infraction of his working duties. The DS Committee in Požarevac was of the opinion that this was a political case and noted that Petković was removed from his position as Head of the Orthopaedic Ward only because he gave statements to the press on the injuries sustained in a car accident by Marko Milošević, son of the President of the FRY, Slobodan Milošević. A petition signed by nearly 400 of his patients, the entire personnel of the Požarevac Hospital's Orthopaedic Ward and by the physicians of the Rehabilitation Ward, as well as some of the employees of the Out-patient Clinic in Kostolac, demanded that Petković be reinstated (*Beta*, 25 November).

The privately owned Belgrade daily *Blic* inquired into possible Yugoslav Army politically motivated discrimination in reserve unit draft policies by trying to establish the number of members of the different parties that went to war. Ivan Kovačević, spokesman of the Serbian Renewal Movement, claimed that several thousand members of this party were drafted among whom there was a number of chair-

men and secretaries of municipal committees in Serbian towns, two MPs and three chairmen of municipal committees from Belgrade. One of the leaders of the Democratic Party of Serbia, Dragan Maršićanin, stated that out of 120 members of the DSS Main Board some 40 were drafted, 17 municipal committee chairmen and many other party members. The Democratic Party press service stated that 1,800 party members were drafted among whom there were 30 municipal committee chairmen, for example in Niš, Zrenjanin, Vršac, Vranje, Kuršumlija, while in Bajina Bašta roughly 15% of party members was drafted. Maja Tasić of the Civic Alliance of Serbia reported that Goran Svilanović, this party's president, was drafted on the first day of NATO intervention, together with members of the Presidency, the highest and municipal boards, as well as other party members. The press services of the SPS, JUL and the SRS did not have data on the number of members drafted (*Blic*, 30 July).

The legislation in force enables a form of discrimination of army recruits. Namely, an army recruit who has fled the country to circumvent the draft is excluded from the inheritance order as "unworthy" unless he returns to the country before the decease of the testator. In October 1999 the Constitutional Court of the FRY halted the proceedings aimed at establishing the constitutionality of the respective articles in the laws of the republics. The statement said: "At the meeting of the Court it was agreed that the respective provisions are not in contradiction with the Constitutions of the FR of Yugoslavia" (*Tanjug*, 25 October).

In 1999 there was a first time court hearing in Serbia where a homosexual brought charges against one other person for threat to personal security and aggressive homophobic behaviour: "On 17 November the Municipal Court in Pančevo will hear a case on homophobic motivated aggression. Dejan Nebrigić, a homosexual rights activist, brought charges against Vlastimir Lazarov for homophobic motivated aggression and for incurring severe injuries" *(Beta*, 11 September). Nebrigić, who brought these charges against Vlastimir Lazarov, was killed on 29 December by the latter's son, Milan Lazarov (*Blic*, 5 January 2000).

2.2. Right to Life

2.2.1. Right to life in armed conflicts. — The right to life in 1999 was severely jeopardised, in particular in the territory of Kosovo, as a result of the armed conflict in Kosovo between the Serbian forces and the KLA, NATO military intervention in the FRY and the forced mass expulsions of ethnic Albanians. The OSCE report enumerates several forms of threat to the right to life in this province. The period from the beginning of the year to the evacuation of the OSCE mission is characterised by several insufficiently clarified killings of both Albanians and Serbs. There is also reasonable doubt as to Albanian deaths in police custody. In that same period, on 15 January, there was a mass killing of 45 ethnic Albanians in the village of Račak (see III.2.2). The right to life was increasingly jeopardised after 20 March, when beside individual killings of civilians there was a growing number of arbitrary and summary executions as part of an overall strategy of Kosovo Albanian expulsion.

According to the reports of international non-governmental organisations for human rights protection gross violations of the right to life occurred after NATO intervention commenced. In the early hours of 25 March 1999, the very first night of NATO air strikes, the police in Priština broke into the house of Bajram Kelmendi, a prominent ethnic Albanian lawyer and human rights activist, and took him and his two sons, Kushtrim (16) and Kastriot (30), away. Their bodies were found at a petrol station on the Priština-Kosovo Polje road (AI, 25 March; AI, 26 March; HRW, 26 March). The massacre in Bela Crkva, where more than 60 ethnic Albanian men were killed occurred soon after NATO attacks commenced (HRW, 16 April). At least 40 ethnic Albanians were killed on 26 March in the massacre of Velika Kruša on the Peć-Prizren road. According to the relevant reports by non-governmental organisations, Serbian forces rounded up men from a refugee convoy and executed them on the spot (HRW, 2 April; HRW, 16 April).

There were also massacres in Pusto Selo, in the Drenica region, and Meja, near Đakovica. The arbitrary and summary execution of the

villagers of Pusto Selo, where at least 106 people were killed, is an illustrative example of similar massive right to life violations throughout Kosovo in the period from March to June. On the morning of 31 March a large armed unit attacked the village. The villagers fled to the nearby field but returned on the same day to surrender. The offenders separated adult men from the women and children, searched the women and took their money and jewellery, and forcibly expelled them from the village. The Serbian forces then took money and documents form the men, after which the first group of seven to eight younger men were interrogated, beaten, and then lined up and shot at with machine guns. They then divided the men into groups of 25–30, made them stand on the edge of a pit and killed them (HRW, 2 July).

According to witness statements, in the villages around Izbica (the region of Drenica), some 150–200 bodies were found. Although there were bodies of members of the KLA who died in combat, there are strong indications that others were killed in indiscriminate attacks, or were executed without trial (AI, 30 April; AI, 26 May; HRW, 19 May). The exact number of people killed in Meja is not known, but it appears that more than 100 people were killed. Among them were men aged between 16 to 60, who were separated from an Albanian refugee column and then killed (HRW, 18 June). Witnesses reported seeing a great number of bodies on the streets of Đakovica, and nearly all families witnessed at least one execution in their home. At least 47 people were killed between 1 and 4 April, but it is feared that the number of people killed is higher (HRW, 3 April).

The exact number of Albanians who were killed has not yet been established. Estimates go up to 10,000. The Kosovo Human Rights Committee report of 2 November states: "During the Kosovo conflict at least 9,500 persons were killed, and 4,109 are believed to be missing. It is feared that the number of persons killed is not final and that it could go up to 13,000". The Committee also claims that 430 mass graves were discovered after the deployment of foreign troops in Kosovo. In its first official report on its several months long investigation in Kosovo submitted on 10 November, the International

Criminal Tribunal for the Former Yugoslavia (ICTY) stated that investigators had received reports on the killing of 11,334 ethnic Albanians. So far, however, the investigators have discovered 2,108 bodies in the 195 investigated out of 520 reported mass graves. The Tribunal's Main Prosecutor, Carla Del Ponte, claims that western intelligence services and witness statements estimated the number of bodies in the 195 sites to be 4,256 but that so far this has not been confirmed.

The Yugoslav authorities have been denying accusations of security forces involvement in the mass killing of civilians. Nevertheless, according to press releases, Serbian courts initiated a number of proceedings against policemen and soldiers for crimes committed in Kosovo: "Ivan Nikolić (27), an unemployed locksmith from Prokuplje, has been charged with the murder of two Albanians on 24 May. The indictment states that on that day Nikolić, who was a soldier, killed with premeditation Vllaznim and Bahri Emini in the surrounding area of the village Penduh on the Podujevo-Priština road." Nikolić, who was in an army column, tried forcibly to obtain ID cards from two Albanians who had, as ordered, moved off the road. As they tried to flee he shot them with an automatic rifle. (*Blic*, 20 July, p. 6).

"The County Public Prosecutor's Office charged Boban Petković (32), an active policeman, from Velika Hoča, and Đorđe Simić (21), a reserve policeman, from Orahovac, respectively with the murder of and complicity in the murder of three ethnic Albanians: Ismajl Dërguti, Xhezair and Shefki Muftari from Orahovac" (*Beta*, 15 November). "These murders were committed on 9 May during KLA separatists armed attacks in the vicinity of Orahovac, near Rija. Petković had asked Simić for an official TT gun with which he shot Ismajl Dërguti in the head who had first been hurled onto the floor and kicked by Yugoslav Army members. The indictment states that on his return to Orahovac, Petković saw Shefki and Xhezair Muftari at the entrance to a house in 111 Cara Dušana street and thinking they were terrorists, as he claimed, killed them with an automatic rifle. The Deputy County Public Persecutor established that both policemen were able to tell they were dealing with civilians and not terrorists and said that Dërguti was an old man" (*Beta*, 25 November).

In their statements released during NATO intervention, international organisations occasionally expressed their concern that NATO was violating relevant humanitarian law provisions and that it was not taking adequate precautions with respect to civilian lives. In its statement of 23 April, Amnesty International condemned the bombing of the RTV of Serbia building in Belgrade when 16 civilians were killed. Human Rights Watch issued a statement when NATO accidentally bombed a residential area in Aleksinac killing five civilians. In its statement of 18 May, Amnesty International pointed out that at least 79 civilians died when Koriša was bombed. Although NATO representatives claimed they bombed a legitimate military target, the number of civilian casualties raised serious doubts as to the importance of the target given the risk the bombing represented to civilian lives. The said statement quotes several other instances of air raids which resulted in civilian deaths (AI, 18 May). The use of cluster bombs in the air strikes was also condemned (HRW, 11 May).

In his report as UN Special Rapporteur, Jiri Dienstbier quotes the following instances where NATO air strikes resulted in civilian casualties: on 12 April, 55 civilians were killed in a passenger train in the Grdelička canyon; on 1 May, there were 60 casualties when a bus was hit as it was crossing the bridge near Lužani; on 3 May, 20 people died when a bus on the Peć-Rožaje road was hit, and there were 87 casualties when two columns of Albanian refugees in Koriša and 75 casualties on the Đakovica-Prizren road were hit. Dienstbier also points out that because of the bombings large regions in the country were deprived of water and electricity. The number of casualties as a result of NATO bombing has not yet been ascertained. In its annual report the Human Rights Watch compares American Defence Ministry and the FRY government data and concludes that the former underestimates while the latter overestimates the number of casualties. HRW estimates that the total number of bombing casualties is around 700.

After Serbian forces withdrew from Kosovo, the number of Serbian civilian victims in Kosovo increased. Human Rights Watch points out that tens of Serbs were killed as of mid-June. It cites as an

example the killing of Marica Stamenković and Panta Filipović from Prizren who decided to stay in their homes although they had been threatened by members of the KLA a week before they were killed (HRW, 25 June and 3 August). The most massive killing of Serbs occurred on 23 July in the village of Gracko when 14 villagers were killed (AI, 26 July; HRW, 3 August). According to KFOR data quoted by Jiri Dienstbier in his report (A/54/396, S/1999/1000, para. 113), from 15 June to 14 August, 280 persons were killed in Kosovo which means 30 to 40 people a week. Dienstbier lists several categories of persons of Serb nationality that he believes are being targeted in these attacks: university professors, medical personnel, persons who had replaced ethnic Albanians laid off in 1991/92, lower ranking Serb politicians, and businessmen.

Among the mass graves found in Kosovo at least one has so far been identified as being Serbian. This was the grave in the village of Ugljare near Gnjilane where, according to KFOR data, 11 bodies were found and four other not far away: "The exhumation of the bodies on 27 July showed that all those killed were Serbs. By not divulging the findings of OSCE experts that there were no circumcised persons among the victims, KFOR representatives refused to acknowledge that the victims were Serbs, claimed the Gnjilane National Church Assembly" (*Blic*, 29 August, p. 4).

There has already been mention of the difficulties encountered in establishing the perpetrators of these and similar grave violations of Kosovo Serb human rights. KLA members, armed Albanian civilians and criminals from Albania have been identified. For the period before the withdrawal of Serbian forces from Kosovo, the Ministry of the Interior of the Republic of Serbia reported the following: "in the first six months of 1999, terrorists killed 189 citizens and 153 policemen, and wounded 735 persons" *(Blic*, 31 July, p. 9). In the period after the deployment of KFOR in Kosovo a specific pattern of violence and killing was taken up where the perpetrators are Albanian teenagers and the victims elderly Serb men and women living alone in towns in Kosovo.

2.2.2. Politically motivated killings. — The well-known Belgrade journalist, editor, and owner of the daily *Dnevni telegraf* and weekly *Evropljanin*, Slavko Ćuvurija, was killed on 11 April in the very centre of Belgrade at the entrance to his home. According to eyewitnesses, as quoted in the daily *Politika*, he was shot at by two men dressed in black with black ski-caps (*Danas*, 13 April, p. 8). Until end 1999 the Serbian police had no new facts related to this murder. During 1999 there were many other cases where public figures and politicians in the country were victims or found themselves in life-threatening situations. Since to date official inquiries have not made public any results, and since the cases in question obviously have a political background, the public is beginning to believe that these were political assassinations or attempts at politically motivated assassinations.

Ćuruvija's assassination was preceded by a comment in the pro-government daily *Politika ekspres* that was also voiced in the peak-time RTS news, where Ćuruvija was declared a traitor for allegedly supporting the bombing of Serbia. There have been various speculations circulating among the public as to the motives of this murder. Since no conclusions of the investigation have been made public, there has been a growing feeling that the main motives for the murder lie in Ćuruvija's journalistic and editorial activity, his public statements and open confrontation with the authorities because of the drastic limitations of the freedom of the press as a result of the enforcement at the end of 1998 of the NATO Armed Attack Threat Extraordinary Measures Decree.

There is similar public interest in the car accident which occurred around noon on 3 October near Lazarevac when four prominent members of the Serbian Renewal Movement (SPO) were killed. One of them was Veselin Bošković, Head of the City Office for Construction Sites in Belgrade and brother of Danica Drašković, the influential spouse of the president of the said party. Vuk Drašković, SPO president, escaped with only minor injuries. A lorry loaded with sand had suddenly and without any evident reason swerved at full speed into the opposite lane and crashed into two of the three cars carrying the

SPO officials. Although the police was quick to get to the spot, the lorry driver managed to escape. By the end of 1999 there was still no trace of him. The proceedings undertaken are where they were at the outset. Vuk Drašković stated that the incident in question was an assassination attempt aimed at eliminating him from Serbia's political scene (statement given to TV *Studio B*, 3 October).

Two weeks after this accident a Montenegrin daily received a statement by a so far unknown Serbian Liberation Army (OSA) which claimed that "on 3 October the OSA carried out an assassination attempt against the leader of the Serbian Renewal Movement Vuk Drašković" (*Glas javnosti*, 19 October, p. 20).

Several weeks after the accident, the SPO stated that the "lorry which caused the accident near Lazarevac on 3 October is owned by the State Security Service" and it accused the Service of: "'covering up information on the lorry in question which has been registered in a special registrar of vehicles kept by the police. The day after the accident, state security officials forced their way into the archives, took the keys and the entire set of documents on these vehicles so as to erase all traces of the lorry registered with the plate number 994–704,' runs the statement of the SPO" (*Glas javnosti*, 21 November, p. 7). Setting aside the question of the veracity of the results of the investigation carried out by the SPO, there are many suspicions as to the inefficiency of the official investigation of this case. It seems strange that even though the number of the chassis and motor are known and can be obtained from the Ministry of Internal Affairs, it has not yet been established who the lorry owner is. The technical check-up of the lorry established that it was in order which eliminates the possibility that the accident was caused by a malfunction of the steering mechanism.

The SPO also "accused the State Security Service of the killing of Petar Rajić, head of a department in the Federal Customs Administration, who was killed on 21 November in a car accident on the Ibar highway. The SPO claims that Rajić was a key witness in the car accident near Lazarevac having been charged in 1996 with the customs

proceedings of retention of the lorry which caused the accident when it was being imported from Germany. The document he signed handed over the lorry to the State Security Service for registration in the special register for vehicles" (*Beta*, 25 November). As a response to these claims, the investigative judge of the Municipal Court in Lazarevac gave an official statement where it was pointed out that Rajić's death was "one of the many typical car accidents so frequent in the area of the Lazarevac municipality where the Ibar highway stretches for more than 30 km" (*Tanjug*, 28 November).

While, following the accident near Lazarevac, the SPO intensified its party statements and showed concern on the "growing state terrorism", the First Municipal Public Prosecutor's Office in Belgrade demanded of the police to bring in for interrogation three of the party's leaders. (*Glas javnosti*, 10 December, p. 7)

The threat to life of yet another opposition politician also drew attention. On Sunday, 17 October, in Valjevo, an explosive device was planted in front of the door of Nebojša Andrić, chairman of the Democratic Party Municipal Committee, correspondent of the weekly *Danas* and *Radio Free Europe* and one of the leaders of the Valjevo protests. There were no casualties (Helsinki Committee for Human Rights in Serbia: *Report on Intensified Repression in Serbia*).

Branislav Vasiljević, a Democratic Party member in charge of the security of Zoran Đinđić and a one-time Municipal Assembly of Belgrade deputy secretary, was found dead on 4 November in his flat with a gun in his hand and a bullet wound in his head. Belgrade political circles claim that considering that Vasiljević was a model sportsman, was freshly married with a small baby, would all make it difficult to imagine him as being suicidal (*Glas javnosti*, 9 November, p. 7).

Bogdan Bojat, the bodyguard of Vladan Batić, leader of the Serbian Demo-Christian Party, was shot with 7 bullets on 24 December by an unidentified assailant. At the end of December the Belgrade police still had no reports to release on the case (*Glas javnosti*, 24 December, p. 7).

2.3. Prohibition of Torture

2.3.1. The Kosovo conflict. — Prohibition of torture and degrading and inhuman treatment have been grossly violated in the Kosovo conflict, both before and when NATO military intervention commenced. The OSCE report contains detailed information on these violations and classifies them by the method applied. The majority of cases of torture before the KVM withdrew were reported as having taken place in police stations and other detention facilities.

When NATO intervention started, torture took on many different forms. Beside police stations, Albanian homes were often used as places of torture during police raids. Nearly all the cases of forcible expulsion, which in itself is a form of inhuman and degrading treatment, were accompanied with torture and ill-treatment. There are witness statements of torture in medical institutions for the purpose of obtaining confession by injured persons thought to be linked to the KLA. According to the OSCE report, one other form of inhuman treatment was the denial of medical assistance.

Detainees held in Smrekovnica, Priština and Lipljan prisons were crammed into unheated cells without blankets or beds. They would be given only bread and insufficient water (UNHCHR, 7 July). The Human Rights Watch news release of 26 May carries a statement by an Albanian detained in Smrekovnica prison. Until 22 May, when a first group of detainees was released, there had allegedly been some 3000 prisoners in Smrekovnica. The prison cells in Smrekovnica were crammed, detainees were given neither enough food nor water, and men believed to be members of the KLA were, without exception, interrogated on their connections with the KLA and were tortured.

According to the United Nations High Commissioner for Human Rights, 250 inhabitants of Vučitrn were lined up in a square and then taken to sports facility where they were detained for 3 days with no food or water, or if given water it would be diluted with diesel fuel. The report quotes statements by a number of refugees who said they were detained in Priština in a building known as “Building 92”, where

they were physically ill-treated. Some were allegedly shut in a room filled with knee-high cold water. The detainees would then be taken to different places for interrogation during which they would be tortured (UNHCHR, 7 September). Some of the worst cases of torture took place in Uroševac in a private house that used to be a café where young Albanian men were detained in the cellar and occasionally taken to the first floor for interrogation on KLA activities. During the interrogation they were beaten with wooden bats and some allegedly underwent electrical shocks. Beside physical torture they were also submitted to psychological torture. It was reported that some were taken to mock executions.

Among the forms of torture were rape and other forms of sexual violence. Amnesty International reported a case of multiple rape in the village of Dragačin, in the Suva Reka municipality. On 21 April 1999 Serbian forces took as hostages women and raped them during the three days of detention. Some 300 women and children were detained in three houses in the village. Several younger women would occasionally be led away. Five women gave a detailed statement on how they were raped. (AI, 27 May; HRW, 28 April).

The OSCE report concludes that the systematic rape of Albanian women by members of the Serbian security forces and paramilitaries was used as a means of war to hurt and humiliate an entire national community to which the women belonged. The report lists cases of individual abduction of women from public places to be raped, as well as the rape of women in their homes prior to NATO military intervention. The report states that after 20 March Albanian women were potential rape victims indiscriminately as to time or place. Younger women would be separated from refugee convoys and, as confirmed by witness statements, they would be detained and forced to work during the day for the army and police and would be raped at night. There were cases of rape in front of other persons, as well as rape before execution. It appears that rape was often used as a threat if potential victims or their family members did not have the money demanded of them by members of Serbian security forces or paramilitaries.

According to the reports of quite a number of international organisations, KLA members were also responsible for the torture of detainees held in places under their control. The Human Rights Watch news release of 25 June accused some KLA members of kidnapping, abduction and the beating of Serb civilians but also of Albanians who were accused of collaborating with Serbs. Human Rights Watch interviewed 14 abducted persons, most of them Serbs. Twelve victims, including four women, described how they had been beaten, and two showed wounds on their legs caused by stabbing. According to the Humanitarian Law Center, a number of Serbs from Orahovac and the surrounding area was detained and tortured in mid-June by the KLA.

Representatives of international humanitarian organisations who offered medical assistance to the victims in Prizren stated that they had treated about 25 persons of similar wounds for which the victims claimed were induced by men in KLA uniforms. German soldiers with the KFOR liberated on 18 June some 15 people from the police station in Prizren, among whom there were several Kosovo Albanians. Some of them described how they were ill treated by the KLA. The body of a severely beaten man was found in the building. In its news release of 18 June, Human Rights Watch quotes a statement by a seventeen-year-old Serb who was abducted by KLA members and was detained for 6 hours during which they tied him up and beat him severely. The HRW cites a case of a young Albanian woman who was raped by five masked KLA members. The victim and her cousin, a woman, who was present believe that the rape was a revenge on the victim's relative who worked as a policeman for the Serbian authorities (HRW, 25 June).

2.3.2. Other cases of torture. — The Serbian police practice of extorting confessions from detainees by torture for alleged acts is being pursued this year as well. It is exercised in particular in court proceedings against Kosovo Albanians. The OSCE report states that very often detained Albanians were forced by torture to sign statements confessing membership in a terrorist organisation. The extortion of confessions occurred in other situations as well. Such claims were made by the Australian Steve Pratt who worked for the Australian

humanitarian organisation "Care" and who was convicted in April to several years of imprisonment for espionage (*Glas javnosti*, 14 September, p. 6). "Dragomir Puzavac (20), from Ljubljana, Branko Proroković (42), from Cetinje, and Duško Ostojić (22), from Belgrade, convicted for murder and looting, denied the charges against them during the court hearing claiming that they were beaten by the police after they had been arrested so as to confess" (*Glas javnosti*, 15 September, p. 13).

One case of police torture and flagrant ill-treatment of a person in custody which attracted much public attention was that of the painter Bogoljub Arsenijević Maki who organised the several week long anti-government protests in Valjevo. Arsenijević was arrested on 17 August in Belgrade in front of the headquarters of the Democratic Movement for Serbia. The Municipal Public Prosecutor's Office in Valjevo charged him with having committed the following crimes on 12 July at the "Meeting against the authorities": participation at a gathering obstructing officers in carrying out their official duties, incitement to resistance and obstruction of officers in carrying out their official duties, which falls under the criminal act of obstruction of public order and peace. The sentence for these violations is from one to ten years of imprisonment. The judge pronounced a one month detention for Arsenijević and on 15 November he was sentenced to a three year imprisonment in a first instance decision which is a maximum for the offence he was charged with (Helsinki Committee for Human Rights in Serbia, *Report on Intensified Repression in Serbia*).

Here is how Arsenijević describes his arrest: "As I left the building I noticed several civilians in particular clothes. All were dressed in black. Two were to my left, two to my right and two several metres in front of me. As I stepped onto the last stair of the corridor, with no warning, questions, orders, and with the speed of lightning they were on me with their guns out and they started hitting me all over with their feet, fists, gun butts. As they hurled me on the floor and held me down, one of them got hold of my hair and pulled my head up while another one hit my face and broke my jaw. I heard them

scream at the civilian passers-by not to approach as they were the police...” (*Vreme*, 11 September).

Arsenijević also complained on the conditions in detention in the building of the Belgrade city police. After that he was transferred to Valjevo. Although his broken jaw was acknowledged he was given medical treatment at the Belgrade maxilla-facial clinic only after several days.

2.4. Right to Liberty and Security of Person and Treatment of Persons in Custody

2.4.1. Police and judicial abuses of detention. — During 1999 the right to liberty and security of persons was legally limited by provisions which entered into force with the declaration of the state of war which provided, among other, an extension of the duration of police custody (see III.1.2.2)

Arbitrary and unlawful arrests occurred throughout the year in Kosovo in particular. The OSCE report states that in the period January-March several hundreds of persons were arrested in contravention of legal proceedings. Often, the arrested would not be informed on the reasons for their arrest. For an arrest to take place it sufficed that a person did not have an ID card, to have allegedly been a sympathiser of the KLA, or to have been of a fighting age. According to the OSCE report, the Serbian police often resorted to the so-called method of informative talks that enabled it to detain a person in a police station with no formal arrest warrant. Such “talks” would often turn into interrogations combined with threats and ill-treatment.

Dragiša Krsmanović, the Republic State Prosecutor, stated that at the beginning of the year, for criminal acts of terrorism, for threat to the territorial integrity of the state and for association for hostile activities, 2,007 persons were suspected, 1,060 persons were detained and legal action was brought against 824 persons (*Politika*, 11 February, p. 15).

According to the OSCE report, in the period of the KVM's presence till 20 March there had not been reports of mass arrests. The report also notes that, during its deployment in Kosovo, the KVM succeeded in eliminating one form of unlawful deprivation of liberty which was quite frequent in 1998. This was the arrest of Albanians at checkpoints the Serbian police had set up along the Kosovo roads.

After the withdrawal of the KVM, the situation of the right to liberty and security of person dramatically deteriorated and mass, arbitrary and unlawful detention became a regular practice. Albanian intellectuals, politicians, and human rights lawyers and activists were arbitrarily arrested and detained. There was also mass arrests of civilians in refugee convoys.

Mopping up operations were carried out simultaneously with the government's offensive; adult men would be separated from their families and then detained. This was the method by which paramilitaries and members of special police units deprived of liberty a great number of men during their operations in the villages of Vrbovac, Baks, Gladno Selo, Donje and Gornje Prekaze in the Glogovac and Srbica municipalities. Those arrested were taken to a local mosque, were then transferred to Glogovac at the end of April, and from there to the Priština police station known as "Building 92". From there they were transferred to Lipljan prison after which some were deported to Macedonia (UNHCHR, 7 September).

When the Serbian forces withdrew from Kosovo, the fate of detained ethnic Albanians who, regardless of the phase of their court proceedings, had been transferred to Serbian prisons surfaced. It is not possible to establish the exact number of these persons. In July the Serbian government released a list with 2,071 names of Kosovo Albanians as being detained in Serbian prisons. Albanian sources, however, claim the number is much greater. The list gives only the name of the detainee and the place of detention but does not give the legal basis for arrest (UNHCHR, 7 July; HRW, 6 August; AI, 6 August). In the report of the Special Rapporteur for Human Rights in the territory of the FRY there is mention that a delegation of the International Committee of the Red Cross visited around 2,000 detainees on the list.

The Minister of Justice of the Republic of Serbia, Dragoljub Janković, stated in September that in Serbian prisons there were 2,050 prisoners and detainees who had been transferred from Kosovo for security reasons, and he added that among them, beside Albanians, there was a number of Serbs, Montenegrins and members of other nationalities living in Kosovo. "It can frequently be heard that the number of Albanians transferred goes up to as far as 5,000 which is entirely false,' Janković claimed" (*Blic*, 7 September, p. 2). In mid-November the same Minister stated that 73 persons from Zaječar and Leskovac prisons had been or were to be released and handed over to KFOR. He added that those persons for whom there had been no evidence presented at the court hearings of having committed a criminal offence were released. In the meantime, another 416 persons were released on different legal bases (*Blic*, 18 November, p. 9). According to a news release of the Information Centre of Kosovo Albanians, on 30 November another 17 Albanians, who had traces of physical and mental ill-treatment, were released from Serbian prisons (*Beta*, 30 November).

A specific form of violation of the right to security of person during the Kosovo conflict was the use of civilian population as a human shield in the armed conflicts. The UNHCHR report of 7 September states that Serbian forces used Albanians as human shields in the Uroševac municipality, in the village of Stutica near Glogovac, while other reports stated that in some villages of the Vitina municipality people were detained in house arrest as a way of protecting Serbian army vehicles.

2.4.2. Abductions. — Kosovo Serbs were also victims of gross right to liberty and security of persons violations. Practically during the entire duration of the Kosovo conflict and especially after the Serbian forces withdrew from the province, they were victims of abduction mainly carried out by the KLA.

In its news release of 12 January, Amnesty International, among other, states that more than one hundred persons, mainly Serbs and Montenegrins, disappeared from regions under KLA control. The KLA

hardly ever confessed to holding prisoners. At the beginning of the year KLA members confessed detaining eight Yugoslav soldiers taken as hostages near Stari Trg and demanded in exchange nine KLA members arrested in a conflict with the Yugoslav Army in December 1998 on the Albanian border.

The Humanitarian Law Center report *Missing Persons of Non-Albanian Ethnic Communities in Kosovo from 24 March to 10 August 1999* states that in this period in Kosovo 318 non-Albanians were missing and that their fate was not yet known. Except for a few cases of disappearance up to end of May, all other cases of abduction occurred after the deployment of KFOR in Kosovo. In July and August ten Serbs who were abducted by armed ethnic Albanians were freed, while nine abducted Serbs were killed. Their bodies were found. Among the persons reported to have been abducted by the KLA there was a number of Moslems, Albanians and Roma. Among them there was quite a number of refugees from Croatia who were temporarily settled in Priština and Orahovac. There were also fifty reservists from Prokuplje, Prizren and Peć and seven members of the Yugoslav Army who were on the missing persons list.

In his latest report, the Special Rapporteur on Human Rights in the FRY, Jiri Dienstbier, states that in the direct talks held with a KLA commanding officer, the latter refuted the existence of detention centres under KLA control. However Dienstbier also reports that, according to KFOR information, there are at least two such centres in Prizren and Gnjilane where torture of detainees was quite a common practice. The Special Rapporteur reproached KFOR for not having sufficiently invested itself in resolving this problem.

2.5. Right to Fair Trial

Cases of violations of the right to a fair trial can be classified according to several most frequent types of trials. The first group covers trials of Kosovo Albanians who, against the backdrop of the Kosovo armed conflict, were accused of terrorism or association for

hostile activities. The second group covers trials of Kosovo Serbs who had stayed in Kosovo after the withdrawal of Serbian forces from the territory of the province. The third group covers trials before military courts for conscription evasion. The fourth group covers the numerous trials of persons who participated in anti-government demonstrations in the second half of the year. One important aspect of the right to a fair trial is that of the independence and impartiality of the judiciary (see I.4.5.1. and II.2.10).

2.5.1. Trials of Kosovo Albanians. — On the basis of KVM's field work till 20 March and Kosovo refugee statements, the OSCE report points out several types of violations. Confessions extracted under torture that are later used at court hearings were a very frequent practice. Judges would be quick to reject suggestions of the defence. Defence lawyers would be obstructed in their communication with clients or in the assembly of evidence. Some phases of the proceedings would not be translated into Albanian. Having analysed the various judgements, the OSCE concludes that Serbian judges in Kosovo had a very broad interpretation of a criminal act. In support of this conclusion the OSCE gives as an example sentences pronounced for the delivery of blankets as humanitarian aid and for offering medical assistance to terrorists.

This report also states that the presence of KVM officials and their monitoring of trials had a positive effect in several cases and points out in particular the good co-operation they had with judges in Prizren. However, it goes on to state, after 20 March, due both to the overall situation and the declaration of state of war, legal provisions which entered into force in the meantime further deteriorated the already low standards of fair trial.

At the end of May in Belgrade, a group of five ethnic Albanians — students of Belgrade University — were arrested for, as claimed by the pro-government daily *Politika*, "collecting financial aid, collecting and transporting medicine and weapons for the KLA, and for gathering information on the movement of army and police units. This group had also, as confirmed by the investigation, planned acts of sabotage

at the Republic Square during protest concerts attended daily by Belgrade citizens as a form of spite to NATO aggression" (*Politika*, 30 May, p. 11). This group was put on trial on 23 November.

Petrit Berisha, the main defendant, later also indicted for the murder of two police officers during the Kosovo conflict, stated that he was not guilty on any of the charges and added that all his confessions in the pre-trial procedure were extracted under duress. Driton Berisha declared that the RTS news according to which he had confessed his crime was not true and that he was ordered by the police what to say (*Beta*, 25 November). Ivan Janković, Petrit Berisha's lawyer, stated to the press that "some of the judge's questions to the defendant were based on material from the pre-trial procedure which', he claimed, "is unlawful since information from that phase of a trial cannot be regarded as evidence" (*Beta*, 23 November).

From June to the end of the year the national press reported many court sentences indicting Kosovo Albanians who had been transferred to prisons in Serbia proper during the withdrawal of Serbian forces from Kosovo. The courts in Prokuplje, Kraljevo, Niš and Belgrade would indict them for criminal acts of terrorism or for association for hostile activities and their sentences would go from 1,5 to 15 years of prison. Nataša Kandić, Director of the Humanitarian Law Center, claimed that "in Serbia there were ongoing trials of some hundreds of ethnic Albanians arrested during NATO bombing who were accused of criminal acts against the security of the state. In October and November some 150 ethnic Albanians had been convicted to several years of prison sentences, and on 17 and 18 November in Leskovac 128 ethnic Albanians from Đakovica had been tried for terrorist actions. On the basis of statements by witnesses and the defendants, the Center claimed that the accused were civilians who had been arrested in May either in their homes, in the street or had been separated from refugee convoys that were being deported to Albania. Kandić demanded that these civilians be freed" (*Beta*, 22 November). A farmer, Hasan Ferati, near Prizren, was convicted to a 14 year prison sentence by the District Court of Prokuplje for being a member of the KLA (*Glas javnosti*, 24 December, p. 7).

The Yugoslav Lawyers Committee for Human Rights (YUCOM) was of the opinion that this wave of trials of ethnic Albanians in Serbia was a political manipulation of the judiciary, the public and citizens of Serbia. "YUCOM invoked the trial in Prokuplje when the President of the Court, Branislav Đukić, pronounced a blanket 14 year prison sentence in a trial where not one of the charges had been confirmed nor any of the defence rights respected including the right to defence in the mother tongue. YUCOM called upon all judges to voice their discontent with the regime's abuse of the judiciary and appealed to the media to report impartially on these trials and so help unveil their real nature, something 'we will all be ashamed of one day'" (*Beta*, 11 November). The Serbian Bar Association also raised its voice on this occasion and demanded of the authorities to submit relevant documentation on the persons who were transferred from Kosovo to Serbian prisons. "Many of them have no bills of detention or prolongation of detention nor have they been properly registered, which creates difficulties for lawyers in contacting them" (*Beta*, 4 October).

The case of this nature best known to the international and national public is that of Flora Brovina, a paediatrician, poet and founder of the League of Albanian Women. She was arrested in front of her flat in Priština on 20 April and accused that the League she had founded was engaged in organising hostile demonstrations, of collecting food and medicine for the KLA and of planning acts of terrorism. She was charged with holding the office of Minister of Health in the Kosovo Albanian parallel government and with maintaining contacts with higher commanding KLA officers. She spent the first part of her detention in the prison in Lipljan and on 10 June, at the time the Yugoslav security forces were withdrawing from Kosovo, together with other prisoners she was transferred to the prison in Požarevac. From there, as the Supreme Court had relegated to the District Court in Niš the cases conducted by the Court in Priština, Brovina was transferred to Niš prison on 10 November. The Court in Niš convicted Dr. Brovina on 9 December to a twelve year prison sentence for "the criminal act of association for purposes of hostile activities of terrorism in time of immediate threat of war and state of war" (*Vreme*, 18 December, p. 12).

According to her defence lawyer Husnia Bitiqui, the indictment does not stand as it relies exclusively on a photocopy of Brovina's signed confession which she had allegedly given to the police while held in custody in Lipljan prison after exhausting interrogations. She had denied the contents of this confession at the main court hearing. Bitiqui claimed that all the charges of contacts with the KLA and on giving medical assistance to terrorists were successfully refuted in court and he announced he would appeal to the Supreme Court. Commenting on other court proceedings against Kosovo Albanians, Bitiqui stressed in particular the violations of the right to a fair trial by Branislav Niketić, a judge from Prokuplje, who he claimed did not permit the defendants to use their mother tongue in the courtroom and who had once ordered a defence lawyer to leave the courtroom and asked for a new, state appointed, defence counsel (*Vreme*, 18 December, p. 13).

In April, during NATO military intervention there was one other alleged case of extraction of confession under duress. Three employees of the Australian humanitarian organisation CARE were tried for espionage and sentenced to several years imprisonment. At the beginning of September, the two Australians, Steve Pratt and Peter Wallace, were pardoned by the President of the FRY Slobodan Milošević, while the third convicted person, a Yugoslav citizen, Branko Jelen, remained in prison. Once in Canberra, Pratt "stated that the video tape diffused by the RTV of Serbia where it appeared that he had confessed to his crime was construed and that the statement he gave was dictated to him sentence by sentence" (*Glas javnosti*, 14 September, p. 6). Branko Jelen was released by the Yugoslav authorities from further serving his sentence on 31 December.

2.5.2. Trials of Kosovo Serbs. — The Serbian Bar Association pointed out that the right to a fair trial of Serbs who stayed in Kosovo was jeopardised. The Association appealed to the UN and the international professional to jointly with the UN Kosovo civil mission (UNMIK) enable lawyers from Serbia to represent those accused before the Kosovo courts. One set of the laws of the FRY and Serbia is applied in Kosovo, but not the law on courts and public prosecutors.

Judges and prosecutors are appointed by Bernard Kouchner, head of UNMIK (*Beta*, 4 October).

Jovica Jovanović, member of the Provisional Executive Council of Kosovo set up by the Serbian government, stated that UNMIK had neither protected nor offered any security guarantees to several of the Serbian and Montenegrin judges and prosecutors who were appointed, as could be seen from the fact that after their appointment their flats were broken in and looted whereby KLA uniformed members forced them to leave Kosmet. 'One of them, Dušan Cvetković, who decided to stay in Kosovo, was killed in Gnjilane,' said Jovica Jovanović" (*Blic*, 25 September, p. 6).

The Serbian Minister of Justice, Dragoljub Janković, qualified the trials in Kosovo and Metohija after the deployment of UNMIK a "plain farce" (*Politika*, 24 September, p. 13). Kosovo Serbs reacted strongly to the first moves made by the judiciary in Priština and Prizren were they were first established. Judge Aziz Rexha's indictment of three Serbs from Kosovska Mitrovica "for premeditated murder of 26 Albanians in April this year" was qualified by the Serbian Council of this city as "political, with no tangible evidence and aimed at intimidating Kosovo Serbs" (*Blic*, 30 August, p. 9).

2.5.3. Trials before military courts. — During 1999, for either conscription evasion or negligence of military duty, a significant number of FRY citizens, in Serbia and in Montenegro alike, came under military court jurisdiction. According to the Helsinki Committee for Human Rights in Serbia (*Report on Intensified Repression in Serbia*), for criminal offences related to military service, 20,000 court proceedings are underway or have taken place in Serbia and 14,000 in Montenegro. In the Military Court in Belgrade court proceedings related to 2,300 indictments and 1,900 demands for indictment are underway.

The Helsinki Committee for Human Rights in Montenegro states that many of the men drafted had openly voiced their opposition to Slobodan Milošević's regime, which meant that many journalists, among whom the founder of the weekly *Monitor* Miodrag Perović and

the editor of *Radio Free Montenegro* Nebojša Redžić, came under attack (*Blic*, 9 July, p. 6). In mid-November, Montenegro adopted the Law on Amnesty for Citizens of Montenegro. According to this Law persons who evaded conscription shall not be charged with committing a criminal offence. The Federal Minister of Justice, Petar Jojić, stated that amnesty for such acts can be pronounced only by the Federal Assembly (*Tanjug*, 19 November). The Yugoslav Minister of Defence, Pavle Bulatović qualified Montenegro's Law on Amnesty as a "gross violation of the Constitution of the FRY, the Defence Act, the Army of Yugoslavia Act and the Constitution of the Republic of Montenegro" (*Tanjug*, 18 November). It is still not quite clear how this law is to be applied.

During and after NATO intervention, many army reservists were convicted by military courts in Serbia. On 5 June the Military Court in Niš convicted a deserter to imprisonment for four years and another four to one year each (*Politika*, 6 June, p. 15), and a day later five deserters to three year prison sentences each (*Politika*, 21 June, p. 15). A day later the same court convicted for theft Mile Stanković (43), a reservist from Belgrade, to one and a half year term of imprisonment (*Politika*, 23 June, p. 15), and the Military Court in Užice sentenced twelve reservists to one to four year imprisonment "for disobedience to superior officers, that is for arbitrarily abandoning their units" (*Blic*, 19 June, p. 6). The reservists had actually refused to go to Kosovo. The same court also convicted to a 14 month prison term Rado Klinc (28), an active officer, for "ill-treatment of and for offending the dignity of subordinates" (*Blic*, 14 July, p. 7).

According to the above report of the Helsinki Committee for Human Rights in Serbia, the minimal sentence for refusal to report for military duty was a two year prison term. Persons *in absentia* were sentenced to longer terms. Trials for refusal to report for military duty, conscription evasion and similar criminal offences were extremely short while the sentences pronounced were several year long terms of imprisonment. This led to a paradox whereby long prison sentences were pronounced in extremely short court proceedings. Such short

court proceedings were enabled by the Decree on the Application of the Criminal Procedure Act in Time of War.

The Helsinki Committee report gives two illustrative examples. Zoltan Ric, a twenty-five year old ethnic Hungarian from Zrenjanin, was convicted by the Military Court attached to the command of the Novi Sad corps to a three year term for two "self-initiated absences from the unit" (nine hours altogether) and for "spreading defeatism and weakening the fighting morale". According to military authorities, in his statements Ric spread fear and defeatism and incited soldiers to surrender to the enemy by claiming that the Yugoslav Army could not withstand the aggression because it was badly armed and poorly trained, and that if NATO was to come they should surrender. In his statement for *Danas* of 24–25 July Ric said: "I was convinced of NATO's technical superiority and that this would make it difficult to halt their progress. I guess that those who made it possible for NATO to intervene in the first place thought as I did, the only difference being that I have to pay for my opinion with prison and they will not pay for their signatures".

Goran Vesić, representative of the Democratic Party in the City Assembly of Belgrade, was also convicted for refusal to report for military duty. The indictment against him was laid down on 17 April by the command of the Military Department in Kraljevo. The Military Court of the Užice district took the decision to try the accused *in absentia* and convicted him to a two year prison sentence.

The Yugoslav Lawyers Committee for Human Rights (YUCOM) proposed that a federal amnesty law be adopted being convinced that such a law would help overcome the war psychosis. Momčilo Grubač, former Yugoslav Minister of Human Rights, was of the opinion that there were pragmatic reasons for adopting such a law as it would free from responsibility many young and educated persons (*Beta*, 15 November). So far, the Yugoslav authorities have not reacted to this proposal.

2.5.4. Trials of participants in opposition protests. — At the end of the summer and throughout autumn a significant number of trials was initiated against citizens who had participated in peaceful demonstrations demanding the resignation of the President of the FRY Slo-

bodan Milošević. This seriously endangered the freedom of peaceful gatherings and the options of the opposition for political action. Domestic non-governmental organisations refer to cases of right to a fair trial violations.

Ivan Novković, organiser of the protest meeting in Leskovac, was convicted to 30 days imprisonment for organising an unannounced gathering (*Blic*, 9 July, p. 7). YUCOM accused the judges in this process for "fundamental violations of the rights of the accused since the court proceedings were held *in camera* with no witnesses or defence. Novković did not have the possibility even to defend himself, nor were the two police officers who were allegedly the prosecution witnesses present in the courtroom, nor were their statements made known to the accused" (*Blic*, 13 July, p. 6).

The organiser of the several week long protest in Valjevo, the painter Bogoljub Arsenijević Maki, who was beaten by the police at the time of his arrest and who was detained for more than two months, was convicted to a 3 year prison term in November for "the anti-government protest he organised on 12 July, for obstructing authorised persons in carrying out their official duty and for having on that occasion severely injured one police officer and lightly two other officers". The Humanitarian Law Center claims that the sentence was pronounced on the basis of legally irrelevant evidence which was contradictory and illogical. The Center also points out that the President of the Court, Mitar Đenišić, acknowledged that the testimonies of the police officers was contradictory, but that he had taken them into account bearing in mind the circumstances under which the witnesses found themselves in on that critical night (*Beta*, 16 November).

2.6. Right to Protection of Privacy, Family, Home and Correspondence

Of all the forms of the right to privacy, the one the media and national non-governmental organisations gave most attention to was the right to the inviolability of the home. The reason for this is to be

found in the controversial decision of the Ministry of the Interior of Serbia that entered into force on 27 September and called for the control of residence permits. This decision authorised the police to check out identity cards in order to establish the validity of residence permits. At the end of September the police in Serbia proceeded with its inquiry by approaching citizens in their homes, an act many jurists deemed unconstitutional and unlawful and as a violation of the right to the inviolability of the home.

The pro-government daily *Politika* justified the action as follows: "'Uniformed police shall approach citizens in their homes and check their identity documents and all those who have not registered properly will be informed on how to proceed. The aim of this action is to foster security and to assist citizens in fulfilling their duty and so avoid being penalised'. At the press conference in the Secretariat of Internal Affairs of Belgrade, Obrad Stevanović, police lieutenant general, further explained that 'What is particularly important is that the citizens and their local police will get to know each other better, which should enable a better contact between them, the end result being an exchange of information on security matters'" (*Politika*, 25 September, p. 13).

The opposition parties called this move one of terror, intimidation and as instilling a sense of insecurity and urged citizens to keep their doors shut to the police. YUCOM reminded that the police could enter a citizen's property only with a warrant or if persecuting a person accused of committing a criminal act. The action authorised by the decision of the Ministry of the Interior represents an aggressive encroachment of the privacy of citizens and is unsettling. YUCOM is of the opinion that it creates in citizens a feeling of restlessness and guilt and encroaches on human rights contained in the Constitution of Serbia (*Blic*, 28 September, p. 6).

With this decision of the Ministry of the Interior of Serbia in mind, officials of the "Bratstvo i jedinstvo" New Belgrade local community, probably the biggest one in Serbia, adopted an "order" whereby the residents were to control thoroughly all residents in their respective buildings and if they were to come across suspicious per-

sons or foreigners without resident permits to inform the Secretariat of Internal Affairs. The residents were also ordered to make sure that no unknown persons were throwing garbage into street containers, to check out all suspicious vehicles near their buildings, and, in particular, the homes of those Albanians who were absent during the war and to keep an eye on the male members of their families.

Aleksa Božović (70), president of this local city council (which, of course, has no legal power to adopt such orders), was convinced that "the control of suspicious persons, residence permits, and of Albanians who were absent during the war, was the patriotic duty of every citizen and a very normal human concern". YUCOM denounced Božović saying that with this binding order he had indiscriminately and unfoundedly suggested that all members of a people were terrorists. This has caused or could lead to a feeling of restlessness or insecurity in the members of this people who live in Belgrade and other parts of Serbia, which means that Božović committed a criminal offence of incitement to national, racial and religious hatred, discord and discrimination as stipulated in Article 134 of the Criminal Code of the FRY (*Vreme*, 23 October, p. 12). Božović responded by saying that the times were such that professional police officers needed to be assisted by amateur policemen in singling out suspicious persons and in exchanging information relevant to security. No charges were laid down up to the end of the year.

2.7. Right to Freedom of Thought, Conscience and Religion

According to the OSCE report, during the conflict in Kosovo and particularly after the evacuation of the KVM on 20 March, a great number of privately owned houses and public property was destroyed, out of which 200 mosques were either destroyed or damaged. "'Since the deployment of KFOR to date, 70 Orthodox churches and monasteries built in Kosovo and Metohija between the 10th and 16th century have been destroyed or plundered. Some of them are on the world

cultural heritage list', claimed the Serbian Orthodox Church" (*Beta*, 29 October).

Slobodan Franović, President of the Helsinki Committee for Human Rights in Montenegro, stated that the Montenegrin authorities were responsible for a specific form of violation of the freedom of religion having given the Serbian Orthodox Church (SPC) a privileged position with respect to the Montenegrin Orthodox Church. Franović demanded of the Ministry in charge to register the Montenegrin Church and, following the statement of a representative of the Montenegro government that the SPC was recognised canonically, concluded that the state was not authorised to interpret church canons (*Beta*, 24 November).

There still exists a strong distrust, even animosity, in the public toward all religious sects. The Serbian Orthodox Church statements greatly contribute to this general feeling. For example, its cleric Lazar Milin stated: "We are being suffocated by sects from all sides like in an avalanche. There are hundreds of them. They are all man's and not God's creations, and some of them come directly from Satan. All the miseries we are going through today, sects included, have mainly come from the West" (*Glas javnosti*, 27 August). At a round table on sects held in Pirot at the end of the year, Slađan Mialjević, an Orthodox journalist, said that "sects have been part of the special war waged against our country for over 25 years". At the round table it was also claimed that more than 500,000 citizens of Serbia were members of different sects and that Satanists were using sly methods, including cartoons and TV series. Most of them are shown on *TV Pink* and typical examples are *The Adams Family*, *Batman* and others, whose message is that one can live contrary to God's ten commandments (*Tanjug*, 14 December).

Seats of several religious communities were targets of not yet clarified bomb attacks. A bomb was thrown into the courtyard of the Moslem community's Council Office in Belgrade. According to Belgrade's mufti Hamdija Jusufspahić nobody was injured and there was only material damage (*Glas javnosti*, 7 April, p. 8). In mid-September,

a strong explosion was heard in the premises of the "Free Church of God" sect in Belgrade. Nobody was killed or injured but the roof of the building was destroyed and the windows of the surrounding buildings were shattered (*Glas javnosti*, 15 September, p. 8).

Thousands of law suits were filed for refusal to serve in the army (see II.2.5.3). According to Amnesty International's report of October 1999, several thousands of men who refused to report for military service were presently living outside the country. Being aware of the fact that if they were to return to the country they would be convicted to several year long prison terms they have not been returning to the territory of Serbia and continue living a precarious life in exile.

2.8. Freedom of Expression

2.8.1. Implementation of the 1998 Serbian Public Information Act. — The draconian Public Information Act of 20 October 1998 that provides for extremely high media fines which could be levied summarily leaving no possibility for an appropriate defence, was in force throughout 1999 in spite of the numerous demands for it to be lifted as soon as possible. In mid-October the Government of the Republic of Serbia rejected the proposal submitted to the National Assembly by the Vojvodina Coalition to repeal the Act.

From the date the Act was enforced to the beginning of NATO intervention on 24 March, 18 daily newspapers and weeklies were fined a total of 14,515,000 dinars (equivalent to 1,800,000 DEM) (*Danas*, 24 March, p. 5). From the date the Public Information Act was enforced to 1 November, 30 fines totalling over 18 million dinars were pronounced. According to data in the Helsinki Committee for Human Rights in Serbia's report on *Intensified Repression in Serbia* in the first nine months of 1999, 24 fines from 10,000 to 1,650,00 dinars, based on this law were pronounced. Independent print media were usually the victims.

No.	Media name	Date	Amounts of fines in YUD
1.	*Evropljanin*	24 October 1998	2,400,000
2.	*Dnevni telegraf*	09 November 1998	1,200,000
3.	*Politika*	12 November 1998	150,000
4.	*Glas javnosti*	12 November 1998	50,000
5.	*Glas javnosti*	21 November 1998	380,000
6.	*Politika*	21 November 1998	150,000
7.	*Monitor*	22 November 1998	2,800,000
8.	*Dnevni telegraf*	09 December 1998	450,000
9.	*Naša borba*	13 December 1998	150,000
10.	*Svet*	05 January 1999	150,000
11.	*Prava čoveka*	21 January 1999	220,000
12.	*Pančevac*	05 February 1999	61,500
13.	*Večernje novosti*	26 February 1999	260,000
14.	*Somborske novine*	10 March 1999	40,000
15.	*Kosova sot*	12 March 1999	1,600,000
16.	*Glas javnosti*	13 March 1999	150,000
17.	*Blic*	13 March 1999	220,000
18.	*Danas*	13 March 1999	400,000

19.	*Gazete shqiptare*	16 March 1999	1,600,000
20.	*Kombi*	21 March 1999	1,600,000
21.	*Koha ditore*	21 March 1999	520,000
22.	*TV Studio B*	23 March 1999	150,000
23.	*Glas javnosti*	24 March 1999	10,000
24.	*Parlament*	05 July 1999	65,000
25.	*Profil*	15 August 1999	150,000
26.	*Čačanski glas*	11 September 1999	350,000
27.	*Politika*	17 September 1999	70,000
28.	*Glas javnosti*	29 September 1999	200,000
29.	*Kikindske novine*	09 October 1999	200,000
30.	*Glas javnosti*	12 October 1999	270,000
31.	*Narodne novine*	19 October 1999	200,000
32.	*Danas*	26 October 1999	280,000
33.	*Promene*	October 1999	320,000
34.	*ABC grafika*	November 1999	3,039,000
35.	*Nedeljni telegraf*	23 November 1999	160,000
36.	*Blic*	08 December 1999	310,000
37.	*Danas*	08 December 1999	360,000

38.	*TV Studio B*	08 December 1999	300,000
39.	*Kikindske novine*	20 December 1999	200,000
40.	*Vranjske novine*	23 December 1999	800,000
41.	*RTS*	02 December 1999	160,000
		TOTAL:	21,785,500

The total amount of fines, calculated on the basis of the black market rate on 31 December 1999, was DEM 2,022,870, or 1,075,994 USD[44].

It should be noted that the Serbian authorities had more than once seized the equipment of the *ABC grafika* printing house, which prints most of the independent dailies in Serbia, for allegedly not having paid their contributions and taxes.

The first fine based on this Act was pronounced in January 1999 by a judge for misdemeanours in Leskovac. A law suit was filed against *Prava čoveka*, a bulletin of the Committee for Human Rights in Leskovac, by *Radio Leskovac* upon the publication of a text where the author, commenting on the Public Information Act, concluded that the local radio station, that is *Radio Leskovac*, "merits to be positively graded by the ruling party for not deviating from the tragicomic mess, hush ups, fog pulling and primitivism". First the bulletin was fined, and then its editor-in-chief, but a week later the fine was altered since the *Prava čoveka* bulletin was not a public medium and therefore did not have the status of a legal person meaning that the Public Information Act could not be applied to it. Hence, it was the Committee for Human Rights, its President Dobrosav Nešić, and Bojan Tončić, the bulletin editor, that were fined. This was the first case where a non-governmental human rights organisation was fined (*Helsinki Charter*, No. 14, January 1999).

44 If calculated by the official rate the total would be at least three times higher.

In February *Pančevac* was fined twice in three days for articles blaming the municipal authorities for illegal construction. In March, *Somborske novine*, another local paper, was fined, on the eve of NATO military action against the FRY. The following papers in Kosovo published in Albanian were heavily fined: *Kosova sot, Gazeta shqiptare*, *Kombi*, and *Koha ditore*. *Koha ditore* was fined on 21 March for publishing the statements of the negotiating team of Kosovo Albanians on their return from Paris and the statement of the head of the team, Hashim Thaqi (Helsinki Committee for Human Rights in Serbia, *Report on Intensified Repression in Serbia*).

After the end of NATO military intervention and the termination of the state of war, print media which reported critically on the authorities continued being fined. The weekly *Čačanski glas* was fined with 350,000 dinars for publishing a report on a conference held by the Serbian Renewal Movement's City Committee (*Glas javnosti*, 10 September, p. 20). The daily *Glas javnosti* was fined with 200,000 dinars for criticising the work of the municipal humanitarian aid headquarters in Valjevo (*Glas javnosti*, 30 September, p. 20). The *Narodne Novine* in Niš was fined with 150,000 dinars for publishing a statement by the Niš city authorities criticising the Niš officials of the Socialist Party of Serbia and the managing board of the *Niš Tobacco Industry* (*Glas javnosti*, 20 October, p. 4). This was followed by the fining of *Danas* with 280,000 dinars following the deposition Vojislav Šešelj, vice-president of the Serbian government (*Blic*, 27 October, p. 6).

The *ABC grafika* printing house was fined an astronomical sum of 1,650,000 dinars for printing a bulletin of the opposition Alliance for Change. Also, all 36,000 copies of the bulletin were seized. It was argued that the bulletin was not registered as a public media even though the *ABC* manager Slavoljub Kačarević confirmed that the printing house had already printed a number of similar bulletins of political parties and other groups which were not classified as public media either (*Vreme*, 18 December, p. 11). At the same time, Čedomir Jovanović, the bulletin's editor-in-chief, was fined with 320,000 dinars

(*Glas javnosti*, 29 October, p. 5). On 23 November the *Nedeljni telegraf* was fined for having criticised the director general of the Yugoslav River Shipping Line and the business management in this firm (*Blic*, 24 November, p. 6).

2.8.2. Freedom of the press during NATO intervention. — Particularly severe forms of restrictions of the freedom of information occurred from 24 March to 10 June during NATO intervention against the FRY. On the basis of the Decision of the Government of the Republic of Serbia on the eve of the bombing, on 23 March, relating to the work of state organs in state of war and imminent threat of war, the Ministry of Information of the Republic of Serbia issued its "Instruction on the work of the media in time of threat of war". This "Instruction", which required of the media in time of an armed conflict to protect state interests and to fight against defeatism, was not given the form of a legal text but was submitted directly to editorial staffs (see III.1.2.5). While the media in Serbia had to abide by these instructions, the situation in Montenegro was different.

According to *Report No.1* of the Centre for Democracy and Human Rights (CEDEM) in Podgorica the situation in the Montenegro media had changed for the better in the last two years. State television had significantly cut the number of political commentaries and had opened up to all political options in the Republic, even though it favoured the ruling coalition. The growing number of private electronic media had set solid foundations for media pluralism. During the conflict with NATO, the Montenegrin authorities did not introduce war censorship thus rendering the media vulnerable to attacks from the military authorities. The Yugoslav Army first ordered the private electronic media to stop broadcasting foreign radio stations, which the former refused to do. Some time later, all men working in these media were summoned for mobilisation. Dissatisfied with the editorial policy of the daily *Vijesti* during the conflict, VJ representatives came twice to its office to announce that the newspaper could be shut down. According to the said report, bills of criminal indictment were laid down by military courts against several journalists of independent papers for sabotage of the country's military preparedness.

A heavy blow to the freedom of press during NATO intervention was the assassination on 11 April of the owner and editor-in-chief of the magazine *Evropljanin* and daily *Dnevni telegraf,* Slavko Ćuruvija. Up to the end of the year there was still no clarification as to the circumstances of the murder (see II.2.2.2). During NATO intervention, Nebojša Ristić, the editor-in-chief of TV channel *Soko* in Soko Banja, was on 23 April sentenced to one year in prison for allegedly disseminating misinformation. Ristić was actually indicted for having pasted on the window of his office a sign saying: *Free press made in Serbia*. None of the appeals and petitions for the liberation of Ristić had any success.

According to a *Beta* agency chronology, from 27 April to 19 June, the federal and Serbian ministries of information, as well as the Federal Ministry of Telecommunications, interrupted programme broadcasting of the following: *Radio 021* in Novi Sad, *Radio Jasenica* in Smederevska Palanka, *Radio Ozon* and *Radio Džoker* in Čačak, *TV Soko* in Soko Banja, *TV Čačak*, *TV Mladenovac* and *TV Dević* in Smederevska Palanka. Apart from that, at the end of April the Ministry of Information of Serbia ordered electronic media to place their capacity and programmes at the disposition of *RTV Serbia* (RTS).

During NATO intervention, foreign journalists reporting from the FRY had additional difficulties. At the very outset of NATO air raids, the Dutch journalist Nynke Laporte and her Hungarian cameraman Lajos Galanos were arrested while they were shooting the damage caused by the bombing. They were indicted for espionage but were set free the next day (HRW, 26 March). The majority of journalists from NATO member states were either expelled or they left for fear for their personal security (AI, 26 March). Among those who were detained were the TV crews of the American channel *CNN*, the German *ZDF* and British *BBC*. "The four-member *ZDF* TV crew that was arrested by the Yugoslav Army for allegedly trespassing in an off-bounds zone near Podgorica, and the five-member *BBC* TV crew that was arrested in Nikšić have been set free. According to the Secretariat for Information of Montenegro all crew members stated that they had not been

ill-treated by Yugoslav Army members and that they were feeling fine" (*Danas*, 10–12 April, p. 16). Anton Masle, journalist of the Croatia weekly *Globus*, was arrested on charges of espionage. He escaped from a hospital in Podgorica (*Politika*, 19 May, p. 16; *Blic*, 9 June, p. 8). According to the reports of the Montenegrin government, in mid-May, the Yugoslav Army authorities had seized from foreign journalists in Podgorica equipment worth around 3 million DEM (*Glas javnosti*, 28 October, p. 20).

2.8.3. State electronic media. — During its military intervention, NATO systematically targeted TV transmitters throughout Serbia and damaged heavily the state RTS television buildings in Belgrade and Novi Sad. Sixteen RTS employees in Belgrade were killed when the building was bombed on 23 April. According to a statement made by the Minister of Information of the Republic of Serbia, the damage caused by NATO bombing of the installations of the electronic media in Serbia amounts to roughly 1,5 billion USD (*Beta*, 11 July). The strikes were justified by the need to destroy the regime propaganda machinery but this was criticised by many national and foreign associations of journalists.

Yugoslav authorities condemned the neighbouring countries and NATO member states for "an aggression on electronic signals". The pro-government daily *Politika* reported: "KFOR, by having the French contingent destroy the transmitter on Mokra Gora in Kosovo, has joined the 'Circle around Serbia' project, meaning a systematic jamming of radio and TV signals of Yugoslav stations from neighbouring countries. This is an attempted information blockade which is contrary to the rules of the International Telecommunications Union" (*Politika*, 19 August, p. 14).

RTS was suspended on 26 May from the *Eutelsat* satellite for allegedly broadcasting programmes inciting to genocide and racial hatred, stated the British government. This move was criticised by organisations for freedom of expression protection since it was not clear what was the legal basis for it nor whether the required procedure was respected, that is whether RTS was given the possibility to res-

pond to the accusations, whether the charges were properly laid down or who actually did so, and whether RTS was given the possibility to appeal (*Article 19*, 28 May).

For several years now state media has been in the service of pro-regime propaganda and has been used as a vehicle for discrediting the regime's critics (Helsinki Committee for Human Rights in Serbia, *Report on Intensified Repression in Serbia*), but it seems that, in the second half of the year, this tendency has become even more explicit. This is confirmed in a statement by Zoran Rakić, news editor of TV Leskovac, who resigned recently: "I don't want to be dictated texts that I have to sign, I don't want to keep my eyes shut when I'm ordered, I don't want to watch as they employ their relatives and protégés who, as rule, don't have the right qualifications, I don't want to be bossed around by party bosses who perform poorly and to be a witness to the party's taking over of the TV station as part of the announced changes... For as far as the camera eye reaches — we have official openings, great work achievements, warm hearted human stories, praise for local officials and spitting at 'traitors', 'foreign mercenaries' and at 'psychopaths who roam the city at night and make noise'... I'm being stopped in the street and asked if I am ashamed. Yes, I am ashamed. That is why I refuse to edit the news programme and why I handed in my irrevocable resignation", declared Rakić in a letter addressed to the TV management and the public" (*Blic*, 28 October, p. 6).

2.8.4. Obstruction of privately owned media. — The work of privately owned electronic media is still being interfered with or obstructed in many different ways (see I.4.8.3).

At the beginning of the year, Nikola Čurić, editor-in-chief of *City Radio* in Niš went on trial for unauthorised broadcasting (HRW, 13 January). Čurić was condemned to a two month prison term, and one year on parole. *City Radio* had deposited an official request at the latest frequency attribution tender but had no response even after a year had passed. There had been no legal or technical reasons for not attributing a frequency to this radio station. Officials in the Ministry of Telecommunications had on several occasions claimed that all radio

stations could continue broadcasting until a final frequency attribution. In August 1998 they nevertheless banned *City Radio*, seized its broadcasting equipment and filed a criminal charge against Čurić.

The day after NATO air strikes began, the authorities in Serbia seized the opportunity to ban the best known and most influential electronic media in the country. Claiming that the transmitter of the independent Belgrade radio station *B92* was more powerful than authorised, they interrupted this radio station's broadcasting. The police had taken into custody for an informative talk Veran Matić, the station's editor-in-chief. Two officials of the Ministry of Telecommunications accompanied by several police officers entered the station's premises and ordered the immediate suspension of the broadcasts. Matić claims that reasons given for the banning of the programme do not stand since the transmitter was 190 watts and the authorised power was 300 watts. Matić was then taken to the police station where he was detained for eight hours without a warrant or any explanation (*Glas javnosti*, 25 March, p. 10). *B92*, its frequency, transmitter and the largest part of its equipment was taken over by the Belgrade Youth Council, a pro-government student organisation. After several months the station resumed its broadcasts as *B292* using the local Belgrade station *Studio B* frequency.

The student *Radio Index* had a similar fate at the end of 1998. In 1999 *Radio Index* broadcast first from Montenegro, then, like the newly launched *Radio B292*, on the frequency of *Studio B* (*Beta*, 4 November). On 25 March, immediately after NATO bombing began and at a moment when the air raid alert was on, federal communications inspectors shut down *Radio 021* in Novi Sad, seized its transmitter, claiming that the radio station had not paid its broadcasting fees for February 1999 amounting to around 6,000 (Helsinki Committee for Human Rights in Serbia).

A method of obstruction of the work of electronic media by the authorities would be to seize the station's equipment for not having paid up their high frequency fees. According to the press, this method was used to seize the equipment of 18 electronic media. The average

worth of the equipment was from 10,000 to 15,000 German marks. "'Although the seizure of equipment is a temporary measure, this equipment has never been returned to their owners', said Slobodan Đorić, Secretary General of the association for the development of private radio broadcasting *Spektar*", (*Glas javnosti*, 23 September, p. 5).

Other means were also resorted to in order to put pressure on certain electronic media. For example, TV *Košava*, managed by Marija Milošević, daughter of the President of the FRY Slobodan Milošević, had practically completely obstructed the broadcasts of TV *K–27* in Zaječar with its powerful signal transmitted on a frequency attributed to the latter (*Blic*, 31 August, p. 6).

Print media journalists critical of the authorities were often charged with the criminal act of perjury and/or of dissemination of misinformation. One of the cases which had greatly attracted the public's attention was that of the editor of *Dnevni telegraf*, Slavko Ćuruvija, and journalists Zoran Luković and Srđan Janković, who on 8 March were convicted to five month prison terms each for "disseminating false information and public disturbance", by publishing in their paper on 5 December 1998, on the occasion of the murder of Aleksandar Popović, a physician, the article entitled "The Murdered Physician criticised Bojić".

The Municipal Public Prosecutor's Office in Belgrade filed a law suit on the basis of charges brought against the above journalists by Milovan Bojić, Deputy Serbian Prime Minister, a high ranking official of JUL and director of the cardio-vascular clinic *Dedinje*. The reasoning of the court verdict was the following: "the insinuation that Bojić, a public figure, was responsible for the murder could lead to public disturbance and it is only an efficient prison sentence that can achieve the aim of the conviction". What was disputed was that part of the article where the two authors claimed that the murder was executed professionally and that Popović was one of a group of physicians who had blamed the director of the clinic, that is Bojić, for shady deals and "inflated" bills amounting to about 20 million DEM

(Helsinki Committee for Human Rights in Serbia, *Report on Intensified Repression in Serbia*).

Court verdicts as above, based either on the Criminal Code or the Public Information Act, greatly affect a journalist's freedom in exercising his/her profession. Some statements of high ranking state officials have a similar effect. For example, while commenting the police intervention against the opposition on 30 September when several journalists were beaten, the President of the Serbian Radical Party and Deputy Prime Minister of Serbia, Vojislav Šešelj, said that that was part of the risk of the profession and that a certain number of journalists simply "yearns for the club", and added that "the *Beta* reporter, Aleksandra Ranković, was certainly not hit by accident but because she was behaving like a hooligan. I am surprised that she did not get a police beating ten years ago" (*Glas*, 1 October).

Other forms of violations of the right to exercise the journalistic profession were intensified, such as chicanery, wage cuts, transfers to inappropriate jobs or dismissals. According to the data of the Independent Association of Journalists of Serbia, out of 1,100 registered members, in the period after the Public Information Act was enforced 70% have been left without a job.

Under this section could be considered the ban to bring into the FRY copies of the privately owned political weekly *Reporter* from Banja Luka, in Republika Srpska. This ban was pronounced on 15 October by the Ministry of Interior Affairs of the FRY. The weekly had gained in popularity during NATO intervention when all the other media in Serbia were under war censorship. The Ministry of the Internal Affairs had transmitted its decision to *Data pres*, the weekly's distributor for the FRY. Prior to the MIA's November ban, the police had seized 8,500 copies of a previous issue for "reasonable doubt as to the infraction of the symbol of the republic referred to in Article 157 of the Criminal Code of the FRY" (Helsinki Committee of Human Rights in Serbia, *Report on Intensified Repression in Serbia*).

In his new year's interview to *Politika*, the President of the FRY Slobodan Milošević stated that "all means of information have an

absolute freedom of activity", and, at the same time, condemned some of the media for "instigating the destabilisation of Yugoslavia, an activity controlled by western governments... There is no state control of the media in our country. A fairly large number of TV and radio stations and of the press is, however, financially and politically controlled by some western governments or their institutions which go under the name of non-governmental organisations and their task is to destabilise Yugoslavia". Milošević also added that "in recent times the implementation of the Public Information Act is fairly weak and, in practice, we are close to the situation of media irresponsibility in which we were during the past ten years" (*Beta*, 30 December).

2.8.5. Academic freedom. — The University Act of 26 May 1998 was still in force in 1999. As this Act completely abolished the autonomy of the university, at the beginning of the year, the European Rectors Conference suspended from its membership all the universities in Serbia and informed thereof the president of Serbia Milan Milutinović. The Yugoslav public was informed of this at the end of October. The Conference pointed out that the suspension "will be lifted when there is sufficient evidence that the universities enjoy a degree of autonomy in the election and nomination of its main officials (deans) which is a key feature of a European university" (*Blic*, 28 October, p. 6).

The dismissal of university teachers from the University was pursued throughout 1999. "With the implementation of the University Act and the appointment of the Dean Vlada Teodosić, the Faculty of Electric Engineering in Belgrade is left without twelve professors and teachers while several others are in the process of leaving. Slavoljub Marjanović, a professor at this Faculty, is of the opinion that the dismissal of professor Srbijanka Turajlić, while she was on authorised sick leave, is telling enough of the absolute arrogance of the university authorities" (*Blic*, 20 July, p. 6). The academician Branko Popović, even though he legally had another two years of teaching at this Faculty, was retired for protesting against this law (*Blic*, 20 September, p. 6), and professor Marjanović's personal belongings in his office

were searched and he was later dismissed (*Blic*, 28 September, p. 6). For the irony to be greater, this happened at a faculty that as of the coming in force of the Act up to 25 March 1999 had paid 727,000 dinars for security purposes, a sum that would have covered a month's salary of all those employed (*Blic*, 31 July, p. 6).

"Professor Slobodan Petković of the Faculty of Forestry in Belgrade was dismissed and re-appointed twice by court decisions, but his case, which remains a precedent, has not yet reached the Supreme Court. Petković pointed out that the court decisions were not respected because the University Act gave broad powers to the deans. He was dismissed for having raised his voice against the illegal exploitation of the forest on Mountain Goč, a legacy of Belgrade University" (*Blic*, 15 September, p. 6).

As of the enforcement of the University Act, 117 teachers and 8 associates from 13 faculties have either been dismissed or have left. Out of this number 97 are in full working capacity. The salaries of those who have remained vary from 1,600 to 2,500 dinars (equivalent to 80 to 125 DEM), stated Marija Bogdanović, professor of sociology at the Belgrade Faculty of Philosophy (*Blic*, 27 November, p. 11).

That the Serbian authorities are not fully content with the results of the implementation of the University Act can be seen from the statement made by Mirjana Marković, director of the JUL Head Office and wife of President Milošević. At the end of the year, speaking of the situation at the University, she said: "These days, at the universities in our country, we have noticed that certain individuals have been trying to explain to Yugoslav students the events in our country and the world. Often these interpreters have never studied anything whatsoever. Some have, but abroad where they took upon themselves the obligation to one day, when the need arose, they repay those who financed them". The JUL leader claimed that these contacts were secret and that "instead of theoretical, scientific and philosophic dialogues they offer students foreign currency and drugs". All this ha been done "under a foreign banner", with money and instructions "received from some foreign embassies and foreign secret services" (*Vreme*, 25 December, p. 24).

2.9. Freedom of Peaceful Assembly

2.9.1. Restrictions during the state of war. — The freedom of peaceful assembly was extremely restricted during the state of war by the Decree on Assembly of Citizens in the State of War (see III.1). This led to the indictment of two Serbs, refugees from Kosovo, who had organised a public protest on 21 June in Belgrade blaming the authorities for having abandoned the Kosovo Serbs (AI, 23 June, 1999). Both men were sentenced to 20 days in prison for not having had the necessary authorisation for the assembly.

For the same offence, that is for holding an assembly not authorised by the police, and invoking the above Decree, a magistrate in Čačak fined Svetlana Erić, Alliance of chairwoman of the Municipal Committee of the Civic Alliance of Serbia and member of the Čačak Citizens' Parliament, with 3,200 dinars for having participated "as a founder and member of the Citizens' Parliament at several public assemblies in Čačak during the state of war". At these assemblies, together with other citizens of Čačak, she had demanded the cessation of the air campaign on the FR of Yugoslavia, as well as the engagement of all relevant bodies and personalities, starting with the President of the FRY to the UN Secretary General, to establish peace in the country and to protect the lives of citizens" (*Danas*, 26–27 June 1999).

2.9.2. Opposition protests after the cessation of the air campaign. — There were frequent violations of the right to peaceful assembly throughout the summer and autumn of 1999, when peaceful manifestations were held throughout Serbia demanding the resignation of the President of the FRY Slobodan Milošević. A month after the bombardments ended a petition demanding Milošević's resignation was launched. Consequently, the police arrested three opposition parties officials in Kraljevo (*Blic*, 27 July, p. 2), opposition activists and passers-by in Paraćin (*Glas javnosti*, 2 August, p. 2), held in detention for informative talks opposition activists in Belgrade (*Blic*, 13 July, p. 2) and Vranje *(Blic*, 17 July, p. 7). The independent press also reported that two unidentified persons beat up eight opposition activists (*Blic*,

16 July, p. 8) and trade union members in Belgrade (*Blic*, 17 July, p. 8).

In Prokuplje, during an opposition meeting, the head of the local SPS, fired his pistol into the air while members of his party threw eggs and bottles at the opposition leaders (*Blic*, 5 July, p. 3). On a similar occasion in Valjevo, when protesters tried to occupy the city hall, ten citizens and four police officers were injured and 13 protesters were arrested (*Blic*, 13 July, p. 2).

Other forms of violations occurred during the huge opposition meeting held on 19 August in Belgrade. On the day the meeting was being held, trains heading for Belgrade were held up at Valjevo "due to repairs on the railway tracks", scheduled coaches from Pirot and Bor were cancelled for no reason, and many coaches with opposition supporters from around the country were held up by the police for technical check ups. All this prevented the protesters from reaching Belgrade on time. During the demonstration itself seven persons suffered severe injuries from tear gas sprayed at the crowd (*Glas javnosti*, 20 August, p. 9).

A series of meetings that followed organised by the opposition Alliance for Changes (SZP) and the youth opposition organisation *Otpor* (*Resistance*) were banned, like the one in Bor (*Glas javnosti*, 22 September, p. 4), and often activists of these organisations would be arrested as, for example, in Zaječar (*Blic*, 8 September, p. 3), Kragujevac (*Glas javnosti*, 20 September, p. 7), Smederevo (*Beta*, 24 November), Belgrade (*Beta*, 14 October), Bor (*Blic* 24 July, p.. 6; 27 September, p. 3), Novi Sad (*Beta*, 14 October) and Šabac (*Blic*, 25 September, p. 3). Several protesters in Belgrade were arrested for "not possessing residence registration documents" (*Tanjug*, 28 September). During these protests, on two occasions, some cars ran into the mass of protesters. This happened in Belgrade (*Blic*, 31 October, p. 5) and Šabac (*Blic*, 25 September, p. 3), when a young girl was seriously injured.

On several occasions during the two months of protests in Belgrade, the police intervened extremely roughly by beating the participants and journalists who covered these events. On 28 Septem-

ber, at least, 30 citizens were severely beaten, among them five journalists (whose cameras were destroyed). Five police officers were injured and eleven members of the opposition *Socijaldemokratija* party were arrested (*Blic*, 30 September, p. 3).[45] On 12 October in New Belgrade a number of civilians armed with baseball bats, who it is believed were activists of the ruling JUL party, beat at least 5 citizens. The police did not arrest these armed civilians but arrested at least two protesters (*Beta*, 13 October). During the protests held on 2 November, the police beat up at least 7 students.

On 30 September in Belgrade, at the meeting on Branko's bridge, held by the Alliance for Changes, the police beat some thirty protesters, among whom Zoran Đinđić, president of the Democratic Party, Ljubomir Madžar and Gorana Milićević, professors at the Faculty of Economics, and the journalists Julijana Mojsilović (*Reuters*), Slaviša Lekić (*Reporter*), Aleksandra Ranković (*Beta*), Imre Szabo (*Danas*), as well as the *CNN* and *SKY* TV crews.

The authorities in Vrnjačka Banja devised a unique method of restricting opposition assemblies. On 5 November SPS and JUL members in the Municipal Assembly imposed a decision whereby SZP had to pay into the republican treasury 10,000 dinars prior to a protest meeting. The decision was taken in the absence of the coalition *Together* representatives, who walked from the Municipal Assembly session because it was decided it would be closed to the public (statement by the vice-chairman of the DS of Vrnjačka Banja, *Blic*, 6 November).

2.9.3. Non-political assembly. — The police intervened in the strike of the *Slavija* (Belgrade meat industry) workers who demanded their long overdue salaries. It arrested those thought to be the leaders and those who chanted "Velja — thief, our children are starving" were threatened with arrest for "attacks on the dignity of the Director General Velibor Tomašević" (*Glas javnosti*, 7 and 11 August, p. 8).

45 During protests, Ms. Anika Krstić was very badly injured by the police. HLC filed a demand with the office of the Municipal Public Prosecutor to institue criminal proceedings. No proceedings were instituted by the end of 1999.

When strikers of the Belgrade motor and tractor factory showed clearly their disapproval at being asked by uniformed police to indicate the president of the Independent Trade Union the latter retreated (*Blic*, 28 September, p. 3).

The music-theatre-dance performance organised by the revived radio station *B292* was banned for "disturbance of public order and peace" even though the event was announced as required (*Blic*, 20 September, p. 15).

2.10. Freedom of Association

Among all those in the territory of the FRY who in 1999 wanted to enjoy the right to freedom of association, the Association of Judges of Serbia suffered most. The Association is a professional and non-political organisation dedicated to the respect of the principles of the rule of law and independence of the judiciary. It was created in reaction to the manipulations of the judiciary aimed at circumventing the November 1996 local election results. It is believed that about one fourth of the total number of judges in Serbia are members of the Association.

On 17 February, the Supreme Court of Serbia rejected the appeal of the Association of Judges of Serbia relating to the decision of the Secretariat for Internal Affairs not to permit the Association to register as an association of citizens. This meant the Association could not attain the status of a legal person. The reasoning of the Supreme Court was that judges did not have the right to civil association. However, the ICCPR, to which Yugoslavia is a contracting party, provides for restrictions on the exercise of the right to freedom of association only on the armed and police forces.

At a press conference in February, Vojislav Šešelj, one of the Serbian deputy prime ministers, claimed that some judges were bribed and that they were members of the so-called independent association of judges and obviously working for the CIA. In a television programme he accused Slobodan Vučetić, a Constitutional Court judge, and Zoran Ivošević, a Supreme Court judge, that they were acting against

Serbia by working with marginal political parties that were instruments in the hands of the West (*Danas*, 10 February, p. 7). The Association of Judges reacted by filing a criminal charge against Vojislav Šešelj.

At the beginning of October, the President of the Supreme Court of Serbia Balša Govedarica stated that he would demand the removal from office of all judges who were members of the Association of Judges. According to Govedarica the Association was being used to voice the "political demands of some parties although it is not legally authorised to do so since the Supreme Court of Serbia did not approve its registration" (*Beta*, 13 October). The Association reacted by reminding Govedarica that it had been registered in the spring of 1997 as a "voluntary, professional, non-party and specialised society within the Association of Jurists of Serbia". It referred to the Constitution of Serbia which guarantees the freedom of political, trade union, and other forms of association and activity of citizens and which stipulates that assemblies need be announced to and need not be authorised by the relevant authorities (*Blic*, 20 October, p. 6).

Dragoljub Janković, the Serbian Minister of Justice, and Govedarica together demanded court presidents to see to it that at court staff meetings all judges state publicly whether they were members of the Association of Judges. Those who confirmed their membership would be removed from office for being politically active which was allegedly incompatible with their function. At the same time, nobody reproached Minister Janković for being a member of the JUL Main Board or the President of the Supreme Court of Serbia Balša Govedarica for being in the SPS.

Meetings at which judges were called upon to acknowledge their membership in the Association of Judges with threat of dismissal if confirmed, were held at the end of the year. Thirty judges from Novi Pazar admitted to being members of the Association, while the judges from Niš invoked the constitutional guarantee of right to privacy which prohibits all forms of interrogation of civilians aimed at divulging their membership to whatever kind of association. On 21 December the National Assembly of Serbia dismissed three prominent members of the Association of Judges: Slobodan Vučetić, judge of the Constituti-

onal Court of Serbia, Zoran Ivošević, judge of the Supreme Court, and Božo Prelević, judge of the Fifth Municipal Court in Belgrade (see II.2.1.2).

Telling enough of the position of judges and the situation in the judiciary is the action undertaken by Saša Obradović, judge of the Municipal Court in Valjevo, who on 6 October submitted to the National Assembly of the Republic of Serbia a request for removal from office in compliance with Article 45 of the Courts Act. Obradović explained that he decided to do so because of the "total collapse of morals and basis social values and the subjection of the court to narrow party interests" which had, first of all, "placed the judiciary into an absurd situation and had left criminal courts without any legitimacy, which they should have by the nature of their mission, in a situation where the legal protection of life has been rendered worthless..." (Helsinki Committee for Human Rights, *Report on Intensified Repression in Serbia*).

2.11. Right to Peaceful Enjoyment of Property

2.11.1. The Kosovo conflict. — Most violations of the right the enjoyment of property occurred, together with violations of the right to privacy and right to residence, during the massive forced expulsion of Kosovo Albanians after NATO intervention. In many Kosovo villages and towns the Serbian police and Yugoslav Army went from one house to another ordering people to leave within hours and forcing them into columns heading to the border.

During the Kosovo conflict the police assisted by paramilitaries would often loot deserted houses but also those Albanian homes still inhabited (UNHCHR, 7 September). One such incident took place in Peć where N. L.'s house was broken into. N. L.'s money and many other things, car included, were taken. N. L. and his family were then forced to take a coach to Prizren and later to the Albanian border (HRW, 2 April). In Glogovac, the police and paramilitaries broke into houses, flats, and shops, demanding money, gold, mobile phones,

television sets and other valuables. Cars and tractors were taken to be used by the police and paramilitaries (HRW, 7 July).

According to LCHR, 70,000 houses in Kosovo have been destroyed or badly damaged. UNHCR's figures go from 40–50 thousand houses (UNHCR, 28 August).

The Serbian police and paramilitary groups intercepted convoys of displaced persons too and forced them to hand over money, jewellery, cars, tractors and other valuables. People would also get killed if they could not collect the sum demanded by the paramilitaries. There were cases of money extortion at border crossings as well. Before crossing the border, refugees often had to leave their cars (UNHCHR, 7 September).

An important fact established by the OSCE in its report is that all the perpetrators of the most violent basic human rights violations during the expulsion of Kosovo Albanians significantly benefited from doing so both materially and financially. In order to extort money from them, victims would be threatened by death, raped or physically ill-treated. The same source states that often the perpetrators of these acts were convicts who had been freed and then made to join paramilitary units after NATO air campaign commenced. According to Albanian witness statements, when the paramilitaries reached a town they would first ask the local Serbs for the names of wealthy Albanians.

2.11.2. State appropriation of private property. — The Serbian state appropriated one of the most important pharmaceutical firms in Yugoslavia — the joint venture ICN Yugoslavia company in Belgrade. The way in which this was done suggests strongly that a grave violation of the right to peaceful enjoyment of property took place.

In February the state took over 24 % of the shares, that is the percentage of shares vested into this joint venture firm by Galenika in Zemun which is also one of the two biggest shareholders of ICN. The state office then revised its estimate of ICN's capital value and devalued the capital of the American partner from 74 % to 35 %. Thus the share of the state rose to 64,3 % and the state was able to take over the management of this company. After the take-over, the Health Care

Administration of the Republic of Serbia, which was ICN's largest debtor for imported medicine, became the majority company owner (*Vreme*, 13 February, pp. 12–15).

The ICN sued Serbia and they went to court in mid–1998. ICN demanded that the state honour its debt. The court was unimpressed and in response ICN's medicaments were removed from state owned pharmacies. In the mean time, Milan Panić, director of ICN's American partner and former Prime Minister of the FRY, returned to Serbia's political life and openly gave his support to the opposition Alliance for Changes.

2.12. Minority Rights

There has already been mention of the position of several national groups in the sections of the report dealing with the prohibition of discrimination, right to life, freedom from torture and the right to freedom and security. A more detailed analysis of the situation of members of national minorities in the FRY in the last several years can be found in the report of the Belgrade Centre on *Human Rights in Yugoslavia in 1998*. This section shall therefore cover only some of the most important events in 1999 relating to the members of minorities in the FRY.

2.12.1. The Kosovo conflict. — This Report has already referred to the fate of Kosovo Albanians prior to the withdrawal of Serbian forces from the province and to that of Kosovo Serbs and Roma after 10 June. Moslems living in Kosovo have also become an endangered ethnic group, in particular after the deployment of KFOR. One of their political representatives stated that "Milošević was nothing compared to the KLA" and claimed that armed Albanians were forcing Moslems from their homes. He claimed that some mostly Bosnian-Moslem villages in the Prizren region had been emptied. "In some settlements, out of 200 Moslem houses only some ten or so remain. As soon as they realise that we are not Albanians, that we don't actually speak Albanian, the KLA attacks. It is useless us telling them that we are not

Serbs. They answer that this is Albania and whoever isn't Albanian must leave Kosovo". Moslems had unsuccessfully tried to resolve this problem with the representatives of Albanian parties and the international forces. Estimates as to the number of Moslems in Kosovo went from 50,000 to 150,*000 (Helsinki Charter*, No. 8, July 1999).

2.12.2. Moslems in Sandžak. — According to the Committee for Human Rights in Sandžak, during NATO air campaign on the territory of the FRY 30,000 Moslems sought refuge in Bosnia and Herzegovina. Bosnia and Herzegovina did not take them in permanently, so they had to return to Sandžak. This will be particularly difficult for those who have to return to places where they will be a minority. The Committee for Human Rights in Sandžak reported that firms and institutions in Priboj dismissed 500 Bosnian-Moslems who went into exile for unauthorised absence from the workplace.

Due to the mass departure of Moslems from Montenegro, the Montenegro Association of Moslems in Podgorica appealed on 24 April to "all citizens of Moslem nationality not to leave their homes, not to be influenced by this special, psychological war, and to persist as they are on their hearth together with the Montenegrin and other peoples in Montenegro" (*Pobjeda*, 25 April, p. 2).

"The National Bosniak Council of Sandžak adopted a Memorandum on the autonomy of Sandžak, which provides for specific relations with Bosnia and Herzegovina such as those maintained by the Republic of Srpska and the FRY. Rasim Ljajić, a moderate Moslem leader in Sandžak, stated that claims for autonomy would continue growing in number as long as democracy in Serbia was restricted. He is of the opinion, however, that the only solution is the resignation of all those in power today and to have Sandžak, as a region, functioning on the civic principle of local management with full respect for the cultural and educational identity of minority groups" (*Blic*, 7 July, p. 7, and 19 July, p. 6).

Invoking Article 70 of the Serbian Public Information Act the Municipal Court in Novi Pazar fined on 23 June the local bi-weekly *Parlament* with 65,000 dinars. This was because the periodical had not

in its latest issue listed as editor-in-chief a personal name as required by law but a group designation ("edited by the editorial board"). Alija Halilović, chairman of the Civil Forum, the founder of the periodical, believes that "apart from this formal justification there are other of a more political nature" (*Helsinki Charter*, No. 17, June).

2.12.3. Bulgarians. — The report of the Helsinki Committee for Human Rights of Bulgarians in Yugoslavia covering the first three months of 1999 states that the human rights and freedom situation of the Bulgarian minority in Serbia has deteriorated. From January to March more than 500 members of Bulgarian nationality were conscripted. At the beginning of April practically all the leaders of the only Bulgarian political organisation in Serbia, the Democratic Union of Bulgarians in Yugoslavia, as well as their president Marko Šukarev, were drafted.

After his conscription, no information on Šukarev could be had from 18 May to 4 June. On 5 June his family was informed that he was arrested and taken to the Military Court in Niš. For almost three weeks he was not allowed to phone his family. While in detention he was not given medicine, he would rarely be allowed to go outside into the open air, his water was rationed. At night army officials would go to his cell to force him to renounce his Bulgarian nationality, give information on the members of his party and on Yugoslav citizens of Bulgarian ethnicity studying in Bulgaria. The charge against Šukarev was brought on 28 May for abandoning his army unit without leave although he was absent for only a few hours, after which he returned at his own will to the unit. On 17 June Šukarev was sentenced to an 8 month prison term (*Analysis of the State of the Rights and Freedoms of the Bulgarians National Minority in Serbia April–May 1999*, Helsinki Committee for the Protection of the Rights and Freedoms of Bulgarians in Yugoslavia).

2.12.4. Vlachs. — This ethnic group has not been recognised as a national minority in Yugoslavia. The Vlachs (Vallachians) themselves claim that their number is somewhere between 300,000 to 500,000. Last year they founded a party and announced they would Struggle for

their rights. “'The founding assembly of the Democratic Union of Vlachs was held, in the open, under a clear blue sky in the town of Šabanovac near Bor'. The party president Slobodan Đorđević said that 'the local socialist authorities refused to rent us a hall in the city for the occasion. The socialists rented halls to anyone, even to Jehovah's Witnesses, but not to us', he claimed” (*Blic*, 31 August, p. 2).

2.12.5. Minorities in Vojvodina. — A relatively large number of pupils belonging to ethnic minority groups in Vojvodina is not offered curricula in their respective mother tongues. The present legislation of the Republic of Serbia provides for classes in ethnic minority languages when 15 or more pupils to a school request such instruction. It is extremely difficult to meet this requirement since the schooling system offers a great variety of highly streamlined secondary vocational schools. In those regions where there are many different minorities it is difficult to put together a sufficient number of pupils of the same minority in, for example, a highly specialised secondary school. Hence, many ethnic minority pupils attend primary and secondary schools taught in Serbian. As a result the minorities' cultural identity is being imperilled, middle class of a minority community is being diluted and increasingly ruralised (*Helsinki Charter*, No. 15).

During 1999 *Magyar szo,* the only paper of the most numerous minority in Vojvodina, found itself in difficulties. In March its employees went on strike because of the paper's bad financial situation. They were getting minimal salaries with months of delay. The founder of this daily is the Assembly of Vojvodina while *Magyar szo* is part of the holding corporation *Forum*. The editorial board addressed itself to *Forum* for assistance but the Director General, Geza Bordas, replied that *Forum* was in an even worse situation than *Magyar szo*. In spite of this, the Assembly of Vojvodina rejected the editorial board's request to pull out of *Forum* and set itself up as a legal person with a separate account. The board believed this would enable *Magyar szo* to survive since its losses were not incurred by the paper itself but by the fact that it had to share *Forum*'s overall financial fate. This daily was neither allowed either to become independent nor to be privatised

(Helsinki Committee for Human Rights in Serbia, *Report on Intensified Repression in Serbia*).

Hungarian national minority representatives founded in August a National Council as a "political platform for Hungarian parties for a dialogue with the authorities. Such a channel of dialogue with the authorities would help initiate measures aimed at enhancing the situation in the different social domains of a minority community" (*Blic*, 22 August, p. 4). The relevant authorities reacted negatively. "'The human rights guarantees provided by the Constitution of Yugoslavia are of the highest international standard', said Ivan Sedlak, Minister for Human Rights and Rights of National Minorities in the government of Serbia. He claimed that the West was making some neighbouring countries exert pressure on us which they are doing through their national communities and political parties that are demanding different forms of autonomy, even autonomy within autonomy. The Minister supported his claim by giving the example of the approach the Hungarian political parties and Hungarian state were taking on a three-tier autonomy they were demanding in Vojvodina" (*Blic*, 9 August, p. 3).

"The Rumanian Community of Yugoslavia is exclusively for the economic autonomy of Vojvodina and not for the territorial autonomy of its ethnic communities", stated Ion Cizmas, president of the organisation of Vojvodina Rumanians. He pointed out that ethnic territorial autonomy would lead to interethnic conflicts and announced that this organisation would fight for the community's economic rights such as, for example, the return of buildings nationalised during communist rule. "'The building in Vršac which is the seat of our organisation used to be ours while now we are tenants', said Cizmas" (*Beta*, 16 November).

2.13. Political Rights

From a formal point of view, election rights were not an issue in 1999 as no local, republican or federal elections took place in the FR of Yugoslavia. Nevertheless, the second half of the year was

characterised by grave political tensions due to the demand of the opposition for the holding of early elections. This opened up a series of questions relating to political rights — more specifically on the right to peaceful assembly and freedom of expression and less on election rights.

The demands of the opposition for early elections were waved aside by the Serbian authorities claiming that such a demand was never formally submitted. When the Serbian Renewal Movement (SPO), following the "Round Table of Democratic Opposition Conclusions" adopted on 14 October, formally submitted a "Demand for early democratic elections on all levels in Serbia" at the 9 to 10 October session of the Republican Parliament, the debate was shifted to the Assembly Judiciary Committee, after which it was constantly rescheduled. "At this Committee's session, Stevo Dragišić, MP of the SRS, said: 'Elections are held when there is a parliamentary crisis, and there is no such crisis'" (*Beta*, 25 November). This stance is shared by the representatives of the other ruling coalition parties.

At that same session of the Republican Parliament, the ruling coalition nevertheless adopted a new Local Self-Government Act replacing the two-round proportional system, which in 1996 enabled the opposition to come into power in the majority of municipalities in Serbia, by a one-round majority system which suited better the ruling coalition. This change in the elections system, without prior consent of all relevant political forces, indirectly favours the election rights of the electorate supporting the ruling coalition.

In mid–1999 the Serbian and Federal Assembly passed a decision directly related to the last republican elections. The mandate of the MPs of the New Democracy Party, initially in the SPS-JUL coalition, turned critical of the ruling coalition policy, was revoked in both the Serbian and Federal Parliaments. Following the information of the Republican Election Commission "that the relevant SPS and JUL bodies had suspended the New Democracy from the coalition for acting against aims envisaged in the programme and for advocating

early elections", the Assembly of Serbia revoked the mandates of five MPs of this party. The Assembly ruling was based on Art. 102, para. 1, item 1 of the Election of Members of Parliament Act, according to which a mandate may be revoked if an MP's membership in the party he represents has terminated (*Blic*, 16 July, p. 3).

Three New Democracy MPs in the Yugoslav Parliament had a similar fate. "Miroslav Stefanović, until recently an MP of the New Democracy, said that at yesterday's session of the Yugoslav Parliament he learned that he had resigned. 'We had handed in no resignations. The regime in its habitual Bolshevik fashion falsified them', concluded Stefanović" (*Blic*, 18 August, p. 3). On 15 December the Federal Constitutional Court rejected the appeal of the New Democracy on the revocation of the mandate of its five representatives to the Serbian Parliament stating that the Court was not mandated to review the appeal since such "legal protection was assured by regular courts" (*Tanjug*, 15 December).

Furthermore, in October the Federal Constitutional Court declared unconstitutional the Republic of Serbia's Law on the Election of Members of Parliament to the Council of the Republics (the Council being this parliament's upper chamber). "'The provisions of the Law are not in compliance with the Constitution of the FRY since they do not guarantee a member republic that kind of representation which a republic had voted for', Branislav Tomković, the Judge Rapporteur, declared" (*Blic*, 21 October, p. 6). Considering the fact that the Federal Constitutional Court had also declared unconstitutional the Montenegro Law on the Election of Members of Parliament to the Council of the Republics this raises the question of the legitimacy of the said Council as well as of the legality of all the decisions this Council took in the last six months.

Political activity in Serbia was revived after the termination of NATO intervention. While the opposition immediately blamed the authorities for its wrong policy which led to the air campaign and brought about economic difficulties, the authorities replied by accusing

opposition leaders for national treason and through its media intensified more than ever before its disdainful political rhetoric. To this aim, in an article entitled "Đukanović and Đinđić sold their souls", the pro-government daily *Politika* gave the following analysis: "It was only a question of days when from the modest arsenal of domestic moral dwarfs there would surface persons who would exploit for their own political recycling the grief and misery and unheard of suffering of their people at the hands of NATO criminals and — with their help — stab a knife in the back of a leadership concerned with the defence of the fatherland" (*Politika*, 13 May, p. 14).

When the opposition Alliance for Changes began with its daily protests in Serbia, accusations of treason and collaboration with NATO became constant. The Serbian Deputy Prime Minister Vojislav Šešelj accused the SZP that its meetings in Belgrade where actually in "celebration of Clinton's birthday" (*Blic*, 11 August, p. 2), while the SPS claimed that the opposition parties helped NATO "do what it could not achieve with its air campaign, that is to occupy Yugoslavia" (*Blic*, 11 August, p. 3). Serbian Prime Minister Mirko Marjanović called the SZP "a terrorist organisation calling for fights and the murder of people with different opinions" (*Blic*, 16 August, p. 2). On 5 October, the Minister of Internal Affairs of Serbia Vlajko Stojiljković stated that "It is obvious the Alliance for Changes is supporting terrorists who commit crimes against Serbs and this is where the destructiveness and responsibility of the opposition forces for the fate of the country lie" (*Glas javnosti*, 6 October). The Federal Minister of Information Goran Matić called the opposition the "fifth column" (*Blic*, 27 September, p. 3) and the Director of the JUL Directorate Mirjana Marković stated that the President of the Democratic Party Zoran Đinđić "helped NATO in planning air raid targets". During the opposition demonstrations, the commander of the 3rd Army, General Nebojša Pavković, challenged those who "are a threat to the constitutional order" and warned that the "Yugoslav Army sided with the President, the Supreme Commander, in the defence of the country" (*Politika*, 24 July).

2.14. Special Protection of the Family and of the Child

Recent UNICEF studies show that children in the FRY are the most endangered children in Europe. The Deputy Head of the UNICEF Office in Belgrade told journalists that the rate of risk the children of the FRY are exposed to is 29 on a 100 scale. He explained that a new method was applied in calculating the rate which takes into account such factors as exposure to armed conflict, spread of the HIV virus, malnutrition of children, ratio of children completing primary school and the death rate of children up to 5 years of age (*Blic*, 24 July, p. 6).

The press recorded a growing number of infanticide and abandonment of children. "In the last five months in Belgrade, three mothers attacked their own children. Five children got killed. Two survived. One mother stabbed her children with a knife, and the other with knitting needles and then choked them. The third suffocated her child. All three tried to commit suicide after that. Miodrag Mitić, a specialist in medical psychology believes that there are several factors which can explain such acts, among them being "the overall environment, poverty, insecurity, helplessness, lack of life prospects" (*Blic*, 19 July, p. 8). "According to data of the Centre for Infant Protection, in the last six months 1229 babies were abandoned of whom only 375 were ... returned to their parents" (*Glas javnosti*, 13 September, p. 9).

2.14.1. Right to social security. — As to the financial situation of families with children telling enough is data that the state is 20 months overdue with child benefits payments. "On 8 June of this year, the Government of Serbia paid out December 1997 child benefits to the amount of 124 dinars for the first child, 155 for the second, and 186 for the third. Single self-supporting mothers and children without parents received as much as 30 dinars more". The government proposed that parents deduct unpaid child benefits from their taxes. Boško Mijatović, an economist, sees this proposal as "downright swindling since the taxes parents have to pay to the state amount only to a few hundred dinars, while the sum total of not unpaid child benefits average around 6,000 dinars a year" (*Glas javnosti*, 19 October, p. 5).

The Yugoslav Child Rights Centre (YCRC) states that child benefits in Serbia have been 21 months overdue. In the meantime the basis on which the benefit is calculated has devalued by 36 %. According to the Secretariat for Social and Child Protection in Belgrade, the Ministry for Family Care of the Republic of Serbia owes 42,000 Belgrade families with a right to child benefits 3,000 dinars each. The situation is more or less the same with respect to maternity and unemployed maternity allowances and lump sum benefits for newly-borns. November 1998 allowances were received in October 1999.

2.14.2. Right to primary education. — The Constitution of the FRY and the Convention on the Rights of the Child provide for obligatory and free-of-charge primary education for all children. The Primary Schools Act covers this right and mandates fines for parents who refuse to send their children to primary school.

The YCRC claims that in the Republic of Serbia this punitive measure was not being implemented probably because in the case of strict enforcement many other social issues would surface. It is difficult to expect parents to pay such fines if they themselves are unemployed or are moonlighting and use children to help them out or force them to beg to supplement the family budget. Most of such children in Serbia are Roma or children, mostly girls, living in villages. The situation in Montenegro is different. According to the responsible bodies in this republic, 103 fines for this school year were imposed on parents, and 90 of them were paid. This mostly concerned girls in the North of the Montenegro.

During the month of June, the population of Kosovo, mostly Serbs, Roma and other non-Albanians, fled the province in masses. This coincided with the enrolment in primary and secondary schools. School principals were given internal orders (there was no other legal basis for this), not to allow Kosovo displaced children to enrol in schools in places where they were living temporarily but to direct them to enrol in their former schools in Kosovo, that is in those places in Kosovo the authorities considered to be secure. All this was done as part of the campaign of an organised return of Serbs and other non-

Albanians to Kosovo. It is only after the YCRC and independent media exerted pressure that the school authorities accepted to allow the children from Kosovo to enrol in those schools where they were living temporarily. In spite of this a number of children has not managed to enrol.

In of Montenegro, where the number of refugees and displaced persons reaches 12% of the total population of the Republic, there were no such violations of the right to education: all child refugees were enrolled in primary and secondary schools, and alternative or supplementary education was organised where necessary.

2.14.3. Right to freedom of thought, conscience and religion. — According to the daily *Večernje novosti* (16 May), during NATO air campaign, in *Jefimija,* the Home for Children without Parental Guidance in Kruševac, the Deputy Minister of Labour, Veteran and Social Affairs of the Republic of Serbia, organised a group Orthodox baptism of 58 children of the Home. The YCRC claims that this is a violation of the right of a child to freedom of thought, conscience and religion. The relevant article in the Convention guarantees the right and obligation of parents and, in certain cases the legal guardian, to guide the child in a way that is appropriate to the child's developmental capabilities. It seems that in this case there was no respect for the individual wishes of each individual child, even of those closer to maturity.

2.14.4. Treatment of the HIV positive child. — In the school year 1997/98 an HIV positive boy was enrolled in a Belgrade school. At the beginning of the school year, the principal and an official from the Ministry of Health of the Republic of Serbia informed the parents of this boy's peers about the case. What followed was a brutal campaign by the parents of the other children in the class to have either the HIV positive boy expelled from school or they would take their children out. For a time the media covered this case but, at the request of the boy's guardians, stopped doing so. In co-operation with the Ministry of Education of the Republic of Serbia the boy was given individual instruction in that same school. The representatives of YCRC visited the school, talked to the principal and were assured that

the right of the child to education was secured and that the child's guardian consented to the said form of instruction.

At the beginning of this school year, the boy's grandmother, who is his legal guardian (the mother had died several years ago and the father has no contact with the child), approached, for the first time, YCRC with a request that it help the boy attend class-group instruction having already done three years of individual instruction. She pointed out that the instruction took place in an inappropriate room (not even a classroom but a room with railings on the windows, with no blackboard or any kind of teaching tools). Apart from that the boy had been completely stigmatised by his peers — during break they called him names and insulted him. The boy was otherwise healthy, intellectually above average but the type of instruction he was getting was not stimulating enough for his capabilities.

The YCRC contacted the Ministries of Education and of Health of the Republic of Serbia demanding that an urgent solution be found, that is to transfer the child to another school in Belgrade and to secure the respect for a child's right to privacy. The Centre argued that the following rights of the Convention on the Rights of the Child were being violated: the right to non-discrimination (Art. 2), right to do the best in interest of the child (Art. 3), right to privacy and right to legal protection of such infringements, right to education and its aims (Articles 28 and 29). It also referred to the Recommendations of the Committee on the Rights of the Child (October 1998) and the part referring to children living in AIDS environments, where the main principle was that "prevention and protection measures shall not stigmatise the child" (Principle 9). The Ministry of Education reviewed YCRC's initiative. With this case in mind, a meeting of all regional representatives of the Ministry was held with the aim of articulating some principles for future cases.

2.14.5. Participation of child volunteers in the Yugoslav Army. — At the beginning of October *Glas javnosti* carried an article on a 12 year old boy who volunteered, during NATO bombardments of Yugoslavia, to be the personal messenger of lieutenant Ćurčić of the

Bar navy unit. It is said that for this gesture the boy received a watch as a present from the Chief of Staff, General Dragoljub Ojdanić, and was promoted to the honorary rank of junior sergeant.

The YCRC reacted to this information interpreting it not only as a violation of the Convention but also of national regulations which, in this domain, are above the Convention's standards. The Yugoslav Army Act stipulates that a recruit may be admitted at his own request in the calendar year in which he will turn 17. According to the Defence Act a person can take part in civil protection, that is may be engaged in the protection of and assistance to civilians and in the salvaging of material goods from war activity or natural disasters, only as of 15 years of age.

2.15. Nationality

In the territory of the FRY, a major legal novelty in 1999 with respect to the right to citizenship was the coming into force of the Citizenship Act of the Republic of Montenegro (*Sl. list RCG*, No. 41/99). This undertaking by the Assembly of Montenegro was interpreted as a step toward an independent Montenegro state. It also raised a series of questions relating to the right to citizenship of many categories of persons who were on the territory of Montenegro and Serbia (*AIM*, 29 July). This affected in particular refugees or displaced persons whose number in Montenegro had rapidly grown as a consequence of the Kosovo conflict. Till the end of the year, however, it was not very clear what the practical consequences of this Act would be with respect to these and other categories of persons (such as non-Montenegrin spouses of Montenegrin citizens, Montenegrins living in Serbia or Serbs who had in recent years moved to Montenegro).

During the mass expulsion of Kosovo Albanians in the period March-June there had been a specific violation of the right to citizenship. According to numerous witness statements given by ethnic Albanian refugees, Serbian security forces on the border seized from a great

number of ethnic Albanians their personal documentation, particularly identity cards, drivers licences and passports. It was not too clear what the motive behind this was but it would certainly cause difficulties in the future for the expelled Albanians in proving that they used to have a Yugoslav citizenship, that is that they had once lived in Kosovo.

2.16. Freedom of Movement

During the state of war declared in connection with NATO intervention, persons of military age, that is men from 18 to 60, were prohibited from leaving the country (see III.1.2.7). Throughout the year the Decision of the Federal Government whereby special taxes for leaving the country were paid remained in force.

The armed conflict in Kosovo had undoubtedly restricted the freedom of movement in that part of the country. At the same time, there were ever greater problems in the free flow of people, goods and services between Serbia and Montenegro. According to *Glas javnosti* (27–30 November, p. 6) "on the border with Montenegro there are daily lines of around 20 to 30 lorries loaded mostly with food products. Nobody has yet seen any kind of formal decision which would prohibit the delivery of food from Serbia to Montenegro. The lorry drivers say that the police has been asking for additional papers but that the police officers themselves were not quite sure which in particular".

In 1999 the European Union and the United States of America declared some Yugoslav citizens *personae non gratae* in the territory of the EU member states and the USA. Lists with the names of these persons, more than 300, that were periodically reviewed, were published in the independent press (for example, *Danas*, 6 and 7 December) but not in the pro-government media, although the latter carried statements on the unlawfulness of these measures. The lists carried names of high ranking officials of the state and of the ruling parties but also of persons who held no particular office but were considered by foreign governments to be closely connected with the regime. Some

of those to whom this measure applied declared that they would appeal to international courts, although it remains unclear from their statements or the statements of their lawyers which courts they had in mind or which of their rights they believed were being violated (one of them was the writer Milovan Vitezović — *Vreme*, 11 November).

2.17. Economic and Social Rights

Even before the armed conflict in Kosovo and NATO intervention, the FRY was one of the poorest European countries with a huge number of unemployed. "'The Kosovo conflicts cost Yugoslavia USD 60 billion as a result of which its inhabitants have become even poorer than the Albanians, that is the poorest in Europe', claims in its study the London based *Economist Intelligence Unit*. The gross per capita product of USD 75 a month (USD 900 a year) will be the lowest in Europe. Half a decade of wars in Slovenia, Croatia, Bosnia and Herzegovina and Kosovo, Yugoslavia will pay with a sad record — the most spectacular drop in the GNP in Eastern Europe, is the conclusion of this study " (*Blic*, 23 August, p. 7). "In Yugoslavia, 3,4 million people need basic aid in food, just for the maintenance of bare existence, was the conclusion from the talks held between the delegations of the World Food Program and UNHCR and the representatives of the responsible federal ministries" (*Blic*, 10 July, p. 6).

Official Yugoslav sources claim that the number of unemployed in August was 771,000 (*Beta*, 25 November), while the figures of the independent trade unions go up to 1,600,000 unemployed in August and 1,733,000 in December (*Glas javnosti*, 26 December, p. 5). According to official statistics, the average net salary in October was 1,512 dinars, which was then the equivalent of USD 45 (*Beta*, 23 November) and an average consumer basket, covering only food for a family of four, was 3,672 dinars, which means roughly USD 110 (*Glas javnosti*, 27–30 November, p. 7).

The Serbian Government owes money to almost all categories of persons who depend on the state budget — children, pensioners,

employees in education and schooling, medical services. "'Since 1990 the state owes pensioners twelve pensions', says Milan Đurić, President of the Independent Trade Union of Pensioners" (*Glas javnosti*, 17 September, p. 5). According to official data "more than half the pensioners receive around 1,000 dinars while the minimal cost of living for a family of two pensioners is 2,700 dinars" (*Blic*, 27 September, p. 6).

"The salaries of employees in education in Serbia are more than three months overdue, just like retirement benefits, which means that the state owes 850 million dinars or 68 million DEM" (*Blic*, 2 September, p. 6). "The average salary of a university professor is 2,500 dinars, and an assistant's is half that sum" (*Beta*, 14 October). According to estimates given by the Association of Professors and Researchers of Serbia, around 15,000 former and present university professors have been impoverished to such a degree that they are in need of humanitarian aid (*Blic*, 20 September, p. 20). In co-operation with international organisations, this Association distributed packages with food and hygiene products to professors, and it is preparing to distribute medicine to sick and retired professors (*Blic*, 26 October, p. 6).

The health service does not have enough funds to secure even the basic health protection of the population. "The Administration for Health Insurance of Serbia concluded the first half of the year with a deficit of 1,7 billion dinars, out of which 30 % is for unpaid medicine, while the debt for overdue salaries is 375 million dinars" (*Blic*, 27 September, p. 7).

The state treasury did not have sufficient funds to pay out the *per diems* of Yugoslav Army reservists who were drafted during NATO intervention. Only two weeks after the bombardment ended, VJ reservists protested and blocked traffic for not having been paid by the state. The reservists blocked the roads in the regions of Kragujevac (*Blic*, 20 June, p. 4), Kraljevo (*Blic*, 25 June, p. 6), Velika Plana, Požarevac and Vrbas since "the state owes each of them for their stay in Kosovo between 6,000 and 8,000 dinars" (*Blic*, 27 June, p. 4). The protests by the reservists were obstructed by the police in Niš, Proku-

plje and Knjaževac; Zoran Nikolić was arrested (Blic, 19 July, p. 8). "The Federal Government decided to pay out the war *per diems* to VJ soldiers and reservists in six monthly instalments as of 1 August. It was estimated that a military who was in the territory of Kosovo and Metohija during the war was to receive around 1,800 dinars a month, and those who were outside that region around 1,200 dinars (*Blic*, 22 July, p. 6). The reservists were dissatisfied with this decision and so went on a hunger strike as well (*Glas javnosti*, 15 August, p. 9). "When the protests lost in intensity in autumn, the authorities brought charges for misdemeanour against those reservists who blocked roads, as was the case of the reservists in Blace" (*Blic*, 27 October, p. 8).

In the second half of September, the Serbian authorities violated the right of pensioners to retirement benefits by handing them out, instead of their pensions, coupons with which they could pay their May, June and July electricity bills. "Pensioners may cover only one electricity metre with the coupons they received instead of their pensions, and if the postman does not succeed to deliver these coupons within ten days they shall be returned to the pension fund, while pensions will be paid out when there will be money for this" (*Glas javnosti*, 19 September, p. 5). The average three-month pension for that period was 8,100 dinars and the average monthly electricity bill was more than 350 dinars. Given the fact that inflation in Yugoslavia is at least 50% annually, this means that one half of the overdue pensions will be lost to the pensioners.

III
MAIN ISSUES — 1999

1. Armed Intervention by the North Atlantic Treaty Organisation (NATO)

1.1. Introduction

NATO military intervention against the Federal Republic of Yugoslavia consisting of daily and increasingly intensive air strikes, lasted from 24 March to 10 June, 1999. During the eleven weeks, the NATO aviation kept enlarging the list of targets to be hit. At the outset, it included the Yugoslav Army's anti-aircraft systems and military storage sites. Soon, NATO turned its attention to the country's communications infrastructure, such as bridges, roads, relay stations and transmitters and to fuel depots. In the following phase, the list of targets was further extended to incorporate major government buildings such as the ministries of the army and police, industrial plants and mass media establishments. The longer the intervention lasted the greater was the number of strikes against districts inhabited by the civilian population, hospitals, schools and cultural monuments. All the while, the number of aircraft involved in the operation had been growing steadily so that the initial figure of 300 had finally exceeded one thousand.

The most significant immediate effect of the bombing campaign against the FRY in Kosovo was the worsening position of the ethnic Albanian population and the intensification of clashes between the

Yugoslav Army and the KLA. A few days after the beginning of the air strikes, the Serbian police and the paramilitary formations launched a process of organised expulsion of the Albanian population from Kosovo. Prior to the bombing, about 230,000 Kosovo Albanians were gone from their homes as refugees or displaced persons whereas, following this intervention, almost 1,4 million were forced to leave their homes, of whom 870,000 sought shelter in Albania, Macedonia and other countries.

While the intervention was still ongoing, it was difficult to establish the number of Kosovo Albanians killed during the expulsion campaign, though it was generally assessed to be of the order of 10,000 dead. According to Carla Del Ponte, Chief Prosecutor of the International Tribunal for War Crimes Committed on the Territory of the Former Yugoslavia, until November 1999, investigators of the Tribunal, after several months of work on the ground and after having covered about a third of the reported mass grave sites, discovered 2,108 bodies.[46] The exact number of victims among the civilian population will probably be known in spring 2000, when the investigators are expected to carry on with their investigations of sites designated as mass graves. The Chief Prosecutor also indicated that in some places where bodies have been buried the precise number of victims could not be determined.[47]

NATO justified its intervention in different ways. At the very outset, the main intention seemed to be to force the Serbian side to accept the proposals at Rambouillet and to weaken it in the military sense. Another reason quoted was the need to strengthen regional security. The expulsion of Albanians from Kosovo resulted in NATO formulating its goals as "putting an end to genocide and ethnic clean-

46 "Prosecutor for former Yugoslavia, Rwanda briefs Security Council", Press Release SC/6749, .

47 The U.S. Administration estimates the number of dead to be in the vicinity of 10,000. See U.S. State Department Report, "Ethnic Cleansing at Kosovo: An Accounting", December 10, 1999. (http://www.state.gov/www/human rights/kosovoii/homepage.html).

sing". Yet, while justification for the intervention tended to vary, its goals were fairly constant. Official Belgrade was asked to end its military action and repression in Kosovo, to pull out all of its military, police and paramilitary troops from the Province, to accept the presence of international military forces in Kosovo, guarantee the safe return of all refugees and displaced persons and to pledge it would work towards a final political settlement for the Kosovo crisis within the frameworks set in the Rambouillet Accord.

The intervention has given rise to numerous legal issues such as, the legality of the use of force against a sovereign country, the role of the United Nations in preserving world peace and security, the means and methods of protecting the rights of national minorities, the distinction between military and civilian targets in the conduct of an air campaign, responsibility for war crimes or the dangers confronting the human environment in the case of military conflicts.

There are serious indications that NATO, during its operations, had violated many provisions of humanitarian law relating to the obligation to protect, to the largest possible extent, the lives of the civilian population. The most frequently quoted evidence of this was the mass destruction of so-called dual-purpose facilities (bridges, power stations, heating plants, transmitters, etc.) which, under the provisions of the Protocol Additional I to the Geneva Conventions, could be the object of an attack only if by their nature, location or goal, they contribute effectively to military action and the total or partial destruction, conquest or neutralisation of which, under circumstances prevailing during the attack, could constitute a definite military advantage. Often, NATO assaults on these dual-purpose facilities failed to meet the above standards as well as demands regarding maximum protection of civilians. Moreover, the use of cluster bombs and depleted uranium seriously questions the consistency between military action and the requirements of humanitarian law.

The overall damage caused by the bombing campaign is hard to assess. According to official sources on the Yugoslav side, the total number of casualties is of the order of "several thousand civilians", of

whom 30% children and six thousand injured (4O% children).[48] The same source is more precise in referring to killed soldiers and members of the police. It has been reported that 462 soldiers and 114 members of the Ministry of Internal Affairs of the Republic of Serbia had been killed. Information regarding material damages has been published in two volumes by the Ministry of Foreign Affairs.[49]

1.2. Derogation of human rights in the FRY during NATO military intervention

1.2.1. Introduction — Criteria for the Assessment of Derogation Measures. — During NATO intervention in the FRY, the authorities had introduced numerous measures which derogated constitutionally guaranteed human rights. The derogation came partly as a result of the Federal Government action, but the President of Serbia was responsible for most of the measures, which were in force only on the territory of that republic. There is no doubt that circumstances under which the measures were adopted fall in the category of "public emergency which threatens the life of the nation", as required by the ICCPR. Nevertheless, relevant decisions on derogation contain a number of deficiencies which represent violations of the FRY Constitution and ICCPR. The Federal Government failed to notify the UN Secretary-General of the derogation, as required by the ICCPR. The Federal Assembly failed to confirm acts proclaiming the derogation of human rights during the state of war at its first subsequent session as required by the FRY Constitution. Finally, the President of Serbia proclaimed most of the derogation measures in flagrant violation of the Federal Constitution. The conclusion is that the derogation measures were

48 The document of the FRY, "Provisional Assessment of Destruction and Damages Caused by the NATO Aggression on the Federal Republic of Yugoslavia", of July, 1999, quoted in the report of the UN Special Rapporteur on the state of human rights on the territory of the former Yugoslavia, Jiri Dienstbier, published in autumn,1999, UN Doc. A/54/396,S/1999/1000, p. 94.

49 *NATO Crimes in Yugoslavia: Documentary Evidence I and II*, May-July 1999, http://www.mfa.gov.yu/.

prima facie inconsistent with the Constitution and the international human rights guarantees that are binding on Yugoslavia (see I.3.2.4).

It is difficult in war and other extraordinary circumstances to assess the pertinence of the measures that authorities apply. However, there are criteria that those measures should meet. As for their content, the key element is whether they were adopted "to the extent strictly required by the exigencies of the situation ...", as stipulated by the ICCPR. It should be noted that the FRY Constitution does not call for the measures applied during the state of war to be proportionate to the danger facing the nation.

The necessity of derogation measures should be determined having in mind all elements of the situation.[50] The derogation measure in question should be a necessary response to the problem that caused it. In other words, there must be some reason rendering other less drastically restrictive actions inadequate, i.e. without much chance of solving the problem.[51] Parallel to the derogation the effective safeguards for the prevention of its abuse should exist, especially to the extent they can jeopardise non-derogative rights.[52]

1.2.2. Right to Liberty and Security of Person. — Measures introduced during the state of war significantly derogated the right to personal freedom by means of prolonged detention on various bases. According to the FRY Criminal Procedure Act, an investigating judge decides as a rule on detention, which is in line with international standards (for unconstitutional exceptions see I.4.4.1.1). However, according to the Federal Decree on the Application of the Criminal Procedure Act during the Sate of War (*Sl. list SRJ,* No. 21/1999), the police and the public prosecutor can also order detention for a period not exceeding 30 days (Art. 8). This provision derogated Article 24 of

50 See for example the European Court of Human Rights judgement in *Askoy vs. Turkey* (18 December 1996, *Reports 1996-VI*), p. 68.

51 See the European Court of Human Rights in *Barnnigan and McBride vs. the United Kingdom* (26 May 1993, A 258-B), p. 51.

52 See *Barnnigan and McBride vs. the United Kingdom, Ibid.* p. 63, and *Askoy vs. Turkey, Ibid.* p. 82–83.

the Federal Constitution, according to which only the competent court can order detention, and Article 9 ICCPR, which states that anyone arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power. Even if the issue of the justification of such a long police detention is disregarded, this measure failed to provide for any control of the prosecutor's or police decisions. For example, the measure does not envisage an appeal procedure. Also, Yugoslav legislation does not ensure (contrary to the FRY Constitution) the right to legal counsel immediately after arrest, but only before the first hearing before the investigating judge (Art. 74, para. 1 of the CPA). Thus, the prosecutor and the police have an opportunity to keep a person in custody without an access to counsel for up to 30 days and furthermore to keep a person *incommunicado*. Experience shows that during the 72 hours of the so-called police detention allowed by the Yugoslav legislation most cases of torture and ill-treatment occur (see I.4.3.3). The powers given to the police or the prosecutor to order detention up to 30 days during the state of war, without an effective protection for detainees, is inconsistent with international human rights standards.

The Serbian Decree on Internal Affairs during the Sate of War amended the Internal Affairs Act (*Sl. glasnik RS,* No. 17/1999). It stipulated that the police were entitled to restrict movement for a period exceeding 24 hours to a person who violates public order and peace, speculates on the market during the state of war, withdraws commodities from the market, creates stock by means of purchase of large quantities of goods for the purpose of the black-marketeering, increases prices without authorisation, sells basic food products under conditions to buy other products or to pay in foreign currency, or disrupts in other way regular channels of supply of basic food products and commodities that fall under special regime of sale, and in other cases when security of citizens or defence and security of the Republic are endangered (Art. 2).

The Decree also authorised the Minister of the Interior to issue confinement orders ("protective measure of confinement to a determined location") for persons who may be deemed a security risk for the

Republic. Confinement could have been ordered for the period of up to 60 days. The person in question would be subsequently placed under court jurisdiction (Art. 3).

This measure represents a violation of Articles 23 and 24 of the FRY Constitution, which stipulate that the deprivation of liberty may occur only in cases envisaged by the federal law and on the basis of a decision of a competent court. As already mentioned, the derogation measures in Serbia were inconsistent with the Federal Constitution and they have to be understood as "common human rights restrictions". Even if it would be taken as derogation, the Decree on the Internal Affairs of Serbia was not in line with the requirements of the international standards.

Detention in excess of 24 hours was based on very broad terms. That left room for arbitrary police decisions, without any legal control, particularly "in other cases when security of citizens or defence and security of the Republic are endangered". It was not clear what was the maximum period of detention. The Decree only stated that the 24-hour period could be prolonged, but stopped short of saying for how long. One possibility was that the upper limit was 30 days, as provided by the Federal Decree on the Application of the CPA. Nevertheless, the fact that the maximum extension of this period was not specifically established represented a flagrant case of violation of the principle of legal security.

The 30-day detention introduced by the Federal Decree on the Application of the CPA did not provide for any legal safeguards against possible abuse. Measures declared by the President of Serbia also failed to do so. Detention for a period exceeding 24 hours as well as confinement for up to 60 days left room for gross abuse and human rights violations. No possibility was envisaged for judicial review. The police were provided with the possibility to keep detainees *incommunicado*, even precluding contacts with their families and lawyers.

Consequently, these measures, and in particular deportation, were not only introduced in violation of the FRY Constitution, but also represented serious infringements of international standards.

1.2.3. Right to Fair Trail. — The Federal Government Decree on the Application of the CPA during the State of War introduced substantial derogations in this field. The provision on the disqualification of a judge in criminal proceedings because of a possible prejudice (Art. 39, para. 6 CPA) was suspended. According to CPA, this reason for disqualification cannot be invoked *ex lege*, but on the basis of court's assessment. The legitimacy of this measure in war circumstances could be founded in the fact that a large number of judges were subjected to military call-up. The Decree at the same time authorised an individual judge to decide in trial proceedings for criminal offences for which a fine or a sentence of up to five years of imprisonment apply (Art. 5). Such a provision opened even more room for unfair trials because under normal circumstances, a chamber would try such cases.

1.2.4. Right to Protection of Privacy, Family, Home and Correspondence. —According to the Decree on the Application of the CPA during the State of War, search of premises or persons could have been carried out even without a written court order and consent of a person concerned, if there was reasonable doubt that a person had committed offences punishable by at least 5 years of imprisonment, war crimes, crimes against humanity or genocide, offences against the constitutional order, security or the Yugoslav Army (Art. 7). This provision derogated article 31 of the FRY Constitution, according to which a court order is always required for police search of private premises, except if absolutely necessary to apprehend the offender or to protect persons or property. However, such wide police authority was not balanced with appropriate means to prevent possible abuses. A court order to conduct a search was not necessary while at the same time due to the derogation it was not possible to invoke legislation which guarantees inviolability of home. Even in regular circumstances, in time of peace, CPA provisions dealing with home search are inconsistent with the FRY Constitution (see I.4.6.2).

Still more drastic measures were adopted in Serbia. The police were authorised to search, without a court warrant, persons, premises

and vehicles in order to verify whether the person in question possessed weapons, ammunition, explosives, other objects that can be used for assaults or diversions, commodities subjected to special regime during the state of war, as well as enemy propaganda material (Art. 4). The police were also authorised to open, without a court warrant, letters and other parcels, when security and defence of the country required so, and in case reasonable grounds existed to believe that criminal acts had been committed (Art. 5).

As other derogation measures introduced in Serbia, the above provisions were also inconstant with the Federal Constitution. As for their consistency with ICCPR, it appears that wider police authority with regard to search can be justified by the increased security concerns during the state of war. However, again, no means were secured to prevent the abuse of such wide authority. Police were authorised to open mail and conduct search without any control, since there was no way to question their authority or to ensure protection from their abuse and harassment.

1.2.5. Freedom of Expression. — On the day before the war started, on 23 March, 1999, the Government of the Republic of Serbia drastically restricted the freedom of information and work of the media, and practically introduced censorship (see II.2.8.2). The precise legal basis for such a measure is impossible to clearly identify. The Decision of the Government of Serbia, which regulated the work and behaviour of various state bodies in time of imminent threat of war (*Sl. glasnik RS,* No. 12/1999) is relevant in that sense, but certainly not sufficient to provide the legal basis for censorship. According to that decision, "organs and organisations in the field of information shall direct their activities towards the provision of timely, continuos and objective information to the domestic and international public about the aims and interests of our country in the situation which the country is currently facing, in order to achieve optimal propaganda results, effectively counter all forms of hostile activities, and especially to act preventively in suppressing misinformation". (Chapter VI)

Immediately after the adoption of this Decision, the Ministry of Information of the Republic of Serbia prepared the Instruction on the work of the media in time of imminent threat of war, which was in force during the entire period of NATO intervention.[53] According to the instructions, every journalist has to commit him/herself to the service of the immediate state interest and participation in the information system, and no information, which may contribute to spreading defeatism is to be made public. It further prohibits reporting on the losses of the Yugoslav Army and the Ministry of Internal Affairs. A special terminology was introduced, imperative for the media (for example, the actions of the army and the police are "defence activities" or "fight for protection and defence of the country"; NATO is the "aggressor", etc.).

These acts largely resemble the Decree on Special Measures in the Situation of Threats to our Country by NATO Armed Attacks (*Sl. glasnik RS,* No. 35/1998–881), which prepared the ground for the adoption of the draconian Public Information Act of Serbia. That Decree prescribed that the media had a duty to act in accordance with the obligation to preserve the territorial integrity, sovereignty and independence of Serbia and Yugoslavia. The media were prohibited to spread defeatism.[54]

Measures undertaken by the Serbian government were in fundamental contradiction with both the FRY and Serbian Constitutions since they had been adopted before the declaration of the state of war. Also, even during the state of war the Federal Government had not derogated the freedom of the press guaranteed by Article 36 of the FRY Constitution. Not even the Constitution of Serbia gives the powers to the Government of Serbia to adopt such measures — it can only propose to the President of the Republic to proclaim measures restricting human rights during the state of war (Art. 83, para. 7 of RS Constitution). Finally, the "Instruction" of the Ministry of Information

53 This "Instruction" was never published in the Official Gazette (*Sl. glasnik*), but was sent directly to the media editors. For the text, see http://www.freeb92.net .

54 See *Human Rights in Yugoslavia* 1998, I.4.8.2.

was never officially published and could not have, therefore, presented a binding legal act.

However, under conditions of the state of war, disrespect for the measures introduced by the Government of Serbia could have resulted in grave consequences. The media editors-in-chief were daily summoned for briefings by the Ministry of Information, while Veran Matić, editor-in-chief of the Belgrade radio station *B92* and Stevan Nikšić, editor-in-chief of the weekly *NIN,* were even detained by the police.

Serbian authorities did not even deem it necessary to formalise the abolition of the freedom of the press during NATO intervention and had, therefore, completely ignored the principle of the rule of law. It is true that the media were of strategic importance during the war. Nevertheless, this cannot justify official lawlessness and complete elimination of the right to expression, which is of crucial importance for the democratic society.

1.2.6. Right to Freedom of Peaceful Assembly. — The President of Serbia restricted during the state of war the right to peaceful assembly (*Sl. glasnik RS,* No. 17/1999). A public gathering, regardless of its character (political or some other) could have been held, indoors or outdoors, only if previously approved by the police (Art. 2). The organiser who did not obtain police permission and any speaker at such a gathering could be fined or punished by up to 60 days of imprisonment (Art. 3). Thus, the right guaranteed by Article 40 of the Federal Constitution, which declares the freedom of meeting and other peaceful assembly, without permission, with previous notification to authorities, was restricted. The right to freedom of speech and public expression of opinion guaranteed by Article 39 of the Constitution was also restricted.

As already mentioned, only the federal authorities can derogate these rights during the state of war. The freedom of assembly can in other cases be only temporarily restricted "by decisions of competent authorities, in order to prevent dangers to health and morals to protect persons and property". Of course, the decree of the President of Serbia cannot be understood as a temporary restriction, since its effects were

unlimited, i.e. it was in force for the duration of the state of war and until it was revoked. The freedom of speech and public expression of opinion cannot be subject to any restrictions, except derogation.

In view of the temporary character of the derogation during the state of emergency, the key question relates to the justification of the provision stating that a gathering can be held only if previously approved by the police. Namely, even in time of peace it is necessary to notify the police of a gathering, which then can prohibit it, permanently or temporarily, if there are reasons to do so envisaged by law (see I.4.9.2). Presumably, there is a legitimate interest to introduce restrictions, and even to completely abolish the freedom of assembly in a war situation. However, it is not clear what legitimate state interest called for the additional restriction — of prior permission. There is another evidence of the lack of a legitimate state interest to require public gatherings to be approved in advance. Namely, the Decree at the same time stipulated that state agencies were not required to obtain permission to organise public gatherings (Art. 2, para. 2). The Decree unjustifiably limited the exercise of the right to freedom of assembly. It introduced privileges for state agencies in comparison to other organisers of public gatherings, i.e. opposition political parties and others with different opinions.[55] The fact that stiff penalties were prescribed, both fines and prison sentences, not only for organisers of unauthorised gatherings, but for speakers as well, is a further proof that the objective of this measure was to restrict the freedom of political activity.

1.2.7. Freedom of Movement. — Among the first measures of the Federal Government after the declaration of the state of war was the prohibition to travel abroad for all persons subject to military service aged between 18 and 60 (*Sl. list SRJ,* No. 16/1999 and

55 This decree was used to punish the organisers of the protest of Kosovo Serbs in Belgrade on 21 June 1999 for not having a permission to hold the gathering. They were also punished for the violation of the Decree on Permanent and Temporary Residence, so that the cumulative sentence was imprisonment for 30 days. (The Helsinki Committee in Serbia — *Report on Increased Repression*, p. 20).

36/1999). The issuance and extension of their passports was suspended, except in cases when interests of the defence of the country and other justified reasons require otherwise, and with the permission of the competent department of the Yugoslav Army General Staff (Art. 1–3). However, persons from this category who had permanent residence abroad were allowed to leave the country. At first this exception was made in practice without formal basis but was later formalised (*Sl. list SRJ,* No. 36/1999). This measure derogated the right to freedom of movement guaranteed by Article 30 of the FRY Constitution. There are strong arguments to justify the prohibition to travel abroad in war circumstances. The FRY Constitution stipulates that even in time of peace this right can be restricted by federal law in the interest of the defence of the country.

The Decree on the Permanent and Temporary Residence of Citizens was proclaimed in Serbia during the war (*Sl. glasnik RS,* No. 17/1999). The Decree broadened the category persons under obligation to notify authorities of their permanent and temporary residences and address, as well as all other relevant changes, to include all above 14 years of age. On the other hand, according to the Permanent and Temporary Residence Act of Serbia (*Sl. glasnik RS,* No. 51/71, last amendments 48/94) only persons of legal age (18 and older) had this obligation. At the same time, the Decree on Personal Identification Card During the State of War (*Sl. glasnik RS,* No. 17/1999) was issued, introducing the obligation for all persons above 14 to carry an ID card.[56] Also, the period of notification of change was reduced from 8 days (Art. 8 of the Act) to only 24 hours upon the arrival to a new residence. As far as the change of a temporary residence is concerned, notification had to be immediate, at the latest 12 hours after the arrival (the Act does not provide for any specific period of notification, Art. 12). Violations of these provisions or submission of incorrect informa-

56 According to the Personal Identification Card Act, this obligation applies to persons above 18, *Sl. glasnik RS,* No. 15/1974, last amendments 48/1994.

tion was punishable by 30 days of imprisonment, unlike the fine prescribed by the Act.

Although these measures were obviously aimed at more efficient mobilisation and prevention of draft evasion, which are issues that fall within the federal jurisdiction, Serbia is clearly entitled to regulate matters such as residence and personal identification documents, that are under the republic jurisdiction. However, these measures did not apply only to persons subject to military service, but to the population at large. Hence, the restrictions were, compared to their purpose, broader then required. Moreover, in war circumstances, when many government services changed their locations or were not functioning regularly, it was practically impossible to respect the prescribed time frame for notification of permanent or temporary residences. A clear example was movement from one place to another during the weekend, when government offices are closed. Also, it is difficult to presume that internally displaced persons were able to respect these provisions in circumstances of ongoing hostilities. This enabled arbitrary enforcement. The case of organisers of the protest of Kosovo Serbs in Belgrade, on 21 June 1999, who were sentenced to 10 days in prison for violation of the Decree on the Permanent and Temporary Residence (additionally, they were fined with 20 days imprisonment for violating the Decree on the Assembly), testifies to that end. The overall conclusion is, therefore, that these measures had drastically restricted, if not potentially altogether abolished, the freedom of movement within the country for the entire population.

1.2.8. Conclusion. — Derogation measures, applied by Yugoslav and Serbian authorities during the war were formally incompatible with the FRY Constitution and the ICCPR. Also, in many instances the substance of these measures was not in line with international human rights standards, in particular with the requirement that derogation measures should strictly correspond to the exigencies of the situation. As a rule, these measures granted immense powers to state agencies, primarily to the police, while no chance was provided to challenged decisions or protect citizens from abuses. This applies

especially to provisions on police detention and internment. The freedom of the press was drastically restricted and censorship introduced without the authorities even bothering to quote legal provisions supporting these measures.

The general conclusion is that the already weak human rights guarantees that exist in the Yugoslav legal system were completely rendered meaningless during the state of war. The broad derogation of important rights, which derogations were both formally and in terms of their substance incompatible with constitutional and international standards, not only gave to the regime a free hand to settle accounts with those of different opinion, but also suspended constitutionality and the rule of law.

1.3. The Media on NATO Intervention

1.3.1. Serbia. — The media in Serbia and the media in NATO member countries waged a propaganda war during the intervention in an effort to suppress information casting an unfavourable light on one's own side.

In Serbia, the pro-government daily *Politika* found reasons for NATO intervention solely in the Alliance's supposed plans to "conquer Yugoslavia". President Slobodan Milošević said in his address to the nation on 24 March that "Kosovo is only a pretext for the attack aimed at stripping Yugoslavia of its independence and freedom" (*Glas javnosti*, 25 March, p. 3); foreign minister Živadin Jovanović said that "the illegal aggression has been accompanied by shocking lies" (*Danas*, 27 March, p. 5); and the commander of the 3rd Army Group, Gen. Nebojša Pavković, said that "we can't defeat NATO, but we shall defend our country" (*Danas*, 27 March, p. 2).

The headlines in *Politika* — "NATO assassins want to devastate Serbia and destroy the Serbian people" (4 April, p. 16); "NATO kills children" (1 May, p. 12); "A war not approved by a single nation of the world" (2 May, p. 1); "Air strikes against civilians — a continuing war crime" (27 May, p. 1) — painted a black-and-white picture in which responsibility for the intervention was attributed to NATO,

while claiming that Yugoslavia enjoyed broad support throughout the world and that it could be at least the moral winner in this war. *Politika* presented the people's patriotic feelings and justified anger at the bombing as support for the state leadership and Slobodan Milošević personally.

When Slobodan Milošević was indicted by the International Criminal Tribunal in The Hague, *Politika* described it as a political move without any legal grounds — "Pulling the public's leg from The Hague" (29 May, p. 12), "The Hague indictment — a part of NATO campaign" (28 May, p. 14), and "No one can try those defending their country" (28 May, p. 16).

During the intervention *Politika* ran articles with headlines such as "Is Blair in love with Clinton?" (4 April, p. 5) and "Monica's Gulp" (4 April, p. 21), which questioned the mental and sexual health of the leaders of NATO countries — in particular, that of US president Bill Clinton.

What Serbia's private newspapers wrote in that period was not much different from *Politika*'s articles because of the censorship and direct government control. They wrote next to nothing about the violations of human rights in Kosovo and other parts of Serbia. They reported exhaustively on what was happening during the intervention, but mostly in the form of news and communiqués by state bodies and political parties and with hardly any commentaries — "The Serbian Radio Television building hit" (*Danas*, 24–25 April, p. 1), "A massacre of civilians in the centre of the city" (*Vreme*, 15 May, p. 5), "The governments of the FRY and Serbia declare a cease-fire" (*Glas Javnosti*, 7 April, p. 1), "Young people now reject all things American" (*Glas Javnosti*, 5 April, p. 5), "Milošević: we haven't given up Kosovo" (*Blic*, 11 June, p. 3).

However, as early as the second half of April the private newspapers reported briefly on the closing down of private radio and TV stations, on the arrests of citizens who had criticised Milošević's policy and on attempts at organising anti-regime protests. After the intervention, these media outlets once again started examining the regime' actions critically, which resulted in numerous legal proceedings being

instituted against them under the Information Act. This, in turn, confirmed the view that the regime saw them as its dangerous opponents.

1.3.2. Montenegro. — During NATO intervention, all of the media in Montenegro — with the exception of the daily *Dan*, which is the mouthpiece of the Socialist People's Party, led by federal prime minister Momir Bulatović and the private TV station *Elmag* — reported in a similar vein. They did not recognise the state of war declared by the Yugoslav government and carried reports by foreign news agencies, claiming that the Belgrade regime was the cause of the intervention. No media outlet in Montenegro used the term "aggression" as this was the policy of the Montenegrin state leadership. They supported the young Montenegrins who refused to report to their Army units, and they endorsed the Montenegrin leadership's demand that the Yugoslav Army not provoke NATO into bombing targets in Montenegro.

The daily *Dan* demanded "total resistance to the aggressor" and fully supported the Belgrade regime, relying almost entirely on war reports by the Yugoslav state news agency *Tanjug*.

The private TV station *Elmag* from Podgorica made an effort at achieving maximum objectivity by carrying reports by both foreign TV networks and the Serbian state television (RTS), which reports were not being carried by Montenegro's state television.

2. Kosovo and Metohija[57]

2.1. The OSCE Verification Mission in Kosovo

The Agreement between the Government of the FR of Yugoslavia and the OSCE signed on 16 October, 1998 and backed by the Security Council Resolution 1203 of 24 October, 1998 provided for

57 For the reasons to adhere to the official style *Kosovo and Metohija*, instead of the more popular *Kosovo* (*Kosova* in Albanian), see *Human Rights in Yugoslavia 1998*, Belgrade Centre for Human Rights 1999, p. 357.

the deployment of the Kosovo Verification Mission (KVM). The mandate of this mission consisted in the following: to oversee compliance with provisions of the Security Council Resolutions 1160 and 1199 and to verify the observance of the cease-fire, to supervise the movement of military forces, provide assistance for the return of refugees and displaced persons, prepare the electoral procedure and monitor the state of human rights in Kosovo. The mission was to be composed of 2,000 unarmed verifiers, but until the end of December 1998, the total number of the mission members hardly exceeded 1,000. As time went by, this figure increased to approximately 1,300.

The KVM was to report to the OSCE Permanent Council. Within the frameworks of the Mission, a special Human Rights Division was set up with the task of preparing several kinds of reports.[58] All the reports were confidential and therefore not made public. Nevertheless, the observations of KVM in relation to the situation in Kosovo were published in conjunction with the findings of the UNHCR and the UN High Commissioner for Human Rights in the monthly reports submitted by UN Secretary General, in conformity with UN Security Council Resolution 1160. In the course of 1999, two such reports were submitted: the first on 30 January and the second on 17 March, both containing a very detailed survey of the daily developments on the ground.

The first of the two reports speaks of a decrease and gradual return home of internally displaced persons from the deployment of KVM until January, 1999. The same report further stresses that there were still 180,000 displaced persons in the Province, about 60,000 refugees and displaced persons were outside of Kosovo and that 110,000 displaced persons had returned to their homes. Yet, the report also indicates that in place of the wide-spread military operations that had been in progress in 1998, frequent and calculated acts of violence

58 OSCE Report "Kosovo/Kosova: As seen, as told I-An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission from October 1998 to June 1999," ODIHR, December 1999. Information regarding the work of the Human Rights Division can be found in Chapter 2 "The OSCE Kosovo Verification Mission-Human rights operation". See: (http://www.osce.org/kosovo/reports/hr).

and revenge were commonplace for which both sides bore responsibility.[59] The second report describes a similar matrix of conflicts defined as "an excessive use of force by the Yugoslav authorities in retaliation for provocation by the Kosovar Albanian paramilitary formations".[60]

2.2. The Račak Case

The most important event marking this period was, without any doubt, the case of the village Račak near Štimlje where 45 ethnic Albanians were killed.[61] The Serb authorities claimed that the police had intervened against a terrorist group and that KVM had been informed of that action. According to Albanian sources, it was a case of the police using brutal force against the civilian population.

The armed attack on the Račak village was, presumably, the result of previous ambushes of the KLA against police patrols in the Štimlje area. The Yugoslav Army surrounded the area as the KLA had a stronghold in its proximity. The residents of Račak told foreign journalists and *Human Rights Watch* (HRW) activists that the police had entered the village and started searching the households. The villagers further stated that the police had separated women and children from the men and that soon after they had had heard shots.[62] Ambassador William Walker, head of KVM, stated, on the very same day, at the site of the crime, that what had taken place was a massacre of the civilian population and, as such, represented a crime against humanity, adding that he did not hesitate to accuse government forces of that crime."[63] The Yugoslav authorities stuck to their claim that all

59 Report of the Secretary General pursuant to Resolutions 1160 (1998), 1199 (1998) and 1203 (1998) of the Security Council, UN doc. S/1999/99, 30 January, 1999, p. 3 and 4.

60 Report of the Secretary General prepared pursuant to Resolution 1160(1998), 1199(1998) and 1203(1998) of the Security Council UN doc. S/1999/293, 17 March, 1999, p. 33.

61 Report of the OSCE "As seen as told I," *op cit.,* chapter on Štimlje.

62 Human Rights Watch — Report on Račak, January 1999.

of the 40 ethnic Albanians had died in the fighting on the side of the illegal KLA and that the uniforms on the bodies had been exchanged overnight for civilian attire.

The case received much publicity in the media and triggered numerous political consequences. Ambassador Walker and the then OSCE Chairman-in-office, the Norwegian Minister Knut Vollebæck demanded the Yugoslav authorities to enable representatives of the International Criminal Tribunal for the Former Yugoslavia to conduct an on-site investigation. However, the Yugoslav authorities refused to allow the Chief Prosecutor of the Tribunal, Louise Arbour to enter the territory of Kosovo. Moreover, they had proclaimed Ambassador William Walker a *persona non grata* although that decision was subsequently "frozen."

The autopsy of the persons killed in the Račak village was at first conducted by a team of Yugoslav experts who were later joined by Belorussian and Finnish pathologists. Each of the three teams presented their respective views about each individual corpse. The Finnish team examined 24 bodies, five having been immediately taken over by the members of their families while the remaining sixteen had been moved to Priština by the Serbian investigating bodies. It appears that the conclusion reached by all three teams was that the wounds found on the bodies were causes by firearms that were not used at close range and that none of the injuries found on the bodies had been inflicted following death.[64] The teams did not agree on whether or not the victims themselves had used firearms. Referring to the results obtained on the basis of paraffin tests, the Belorussian and Yugoslav teams maintained that practically all of the persons killed had traces of gunpowder on their hands, indicating that they had fired firearms prior to their death. The Finnish team declared that this method was not a reliable one but did not use some other method to prove or disprove these findings.[65] The Head of the Institute for Forensic Me-

63 *Vreme,* 23 January, 1999, p.6.
64 "Our Man in Kosovo", *Vreme,* 6 November, 1999, p. 15.

dicine in Priština, Dr. Slaviša Dobričanin stated that the autopsy had shown that there were no signs of torture on the bodies. Dr. Helena Ranta, who headed the team of Finnish pathologists, distanced herself from such claims and expressed concern that some evidence might have been destroyed while the autopsies were being performed (HRW). Until the end of 1999, the findings of the Finnish commission have not been brought to light.

2.3. Negotiations

The events relating to the Račak case bore witness to the existence of a dangerous spiral of violence susceptible of leading to a large-scale confrontation as well as to the lack of progress in achieving a mutually acceptable political settlement. As violence in the Province increased, views on who should represent the Albanian side in the negotiations underwent a visible change. The Kosovo Liberation Army (KLA), with whom the Serbian side refused to negotiate, was becoming increasingly influential while the moderate currents centring around Ibrahim Rugova's Kosovo Democratic Alliance (LDK) were losing ground.

The Contact Group for the Former Yugoslavia organised two rounds of talks in Rambouillet, France. It is not easy to find out how these talks went. Those representing the Serbian side stress that what they had been offered was an ultimatum, that they were threatened with a bombing campaign if the document were not signed in the form in which it was proposed.[66] The international mediators emphasised that all the available possibilities for a diplomatic and political settle-

65 *Ibid*.

66 After the first phase of talks in Rambouillet, the Serbian side considered that the settlement proposed represented "a dictate for (sic!) an international protectorate involving a series of substantial demands that naturally our delegation could not agree to." See "Priprema državne delegacije za nastavak pregovora," *Tanjug,* 5 March, 1999.

ment of the conflict had bee exhausted because of the exclusive stance of the Serbian negotiators.[67]

The first round of talks lasted from 6 to 23 February, and during that entire period the negotiators on both sides had not even initiated a mutual dialogue as the mediators insisted on separate talks with the representatives of both sides. This round ended with the submission of a proposal for an "Interim Agreement for Peace and Self-Government in Kosovo" (the so-called Rambouillet Accord), which both parties were invited to sign.[68] As neither side found the document acceptable, a three-week pause had been agreed on. The second round looked even less like negotiations. Under strong US pressure and with the conviction that their acceptance along with Serbian refusal to sign would result in a bombing campaign against Serbian forces, the Albanian negotiating team agreed to sign the proposed document on 18 March, 1999. On the same day, the Serbian side put its signature on the "Political Agreement on Self-Government in Kosmet," which was, in fact, a counter— proposal to the agreement.[69]

Following the failure of talks in Rambouillet it became plain that Serbia's refusal to sign the agreement that the international negotiators offered would lead to NATO bombardment of the Federal Republic of Yugoslavia. It was for that reason that the OSCE Chairman-in-Office decided without further ado to withdraw KVM from Kosovo on 20 March. The reasons given for the withdrawal were problems regarding co-operation with the Yugoslav authorities and threats to the safety of KVM members. The NATO military intervention began on 24 March, 1999.

67 Elaine Sciolino, Ethan Bronner, "The Road to War: A Special Report," *New York Times,* 18 April, 1999.

68 "Prelazni sporazum za mir i samoupravu na Kosovu" (*Interim Agreement for Peace and Self-Government in Kosovo),* 23 February, 1999, See: (http//www.balkanaction.org).

69 See "Naša delegacija uručila Kontakt grupi potpisan Politički sporazum", (*Our Delegation Submitted the Signed Political Document to the Contact Group*) *Tanjug,* 18 March, 1999.

2.4. The Proposal for the "Rambouillet Accord" and Proposals by the Serbian Authorities

The fundamental issue addressed in the political part of the Interim Agreement for Peace and Self-Government in Kosovo (the so-called Rambouillet Accord) focussed on the establishment of a new constitutional and legal status for the Province capable of guaranteeing the right to democratic self-government for all citizens in Kosovo and additional rights for all national communities living there. To ensure compliance with the Agreement a broad international military presence led by NATO would be needed.

The Agreement envisaged a totally different constitutional status for Kosovo from that existing under the 1990 Constitution of the Republic of Serbia and the 1992 FRY Constitution. That status featured, one might say, on the one hand, a combination of the position Kosovo used to have under the 1974 SFRY Constitution and under its own Constitution adopted in conformity with the former and, on the other, the conceptions embodied in the Constitution of Bosnia and Herzegovina that was adopted on the basis of the Dayton-Paris Peace Accords of 1995, and which called for a substantial international presence in the country's internal legal and political development.

The Rambouillet Accord did not question the territorial integrity of the Federal Republic of Yugoslavia by opting for an independent Kosovo and left to the jurisdiction of the Federal bodies questions such as maintaining a common market, monetary policies, defence, foreign policy, customs, federal taxation and federal elections. However, it would provide for the establishment of the principal legislative, executive and judicial organs of the Province with a view to ensuring democratic self-government incorporating many elements of de facto statehood.

Under the Agreement there was to be a unicameral Assembly comprised of 120 members of whom 80 would be directly elected while the remaining 40 seats would be occupied by members of the national communities in proportion with their numerical strength. The Assembly was to have a broad scope of competence, and the decisions

it made were not subject to changes in the parliaments of Serbia or Yugoslavia. In order to avoid decision-making that would go against the interests of a national community, procedure was provided according to which a representative could veto a decision taken by majority. Moreover, under the Agreement, the President of the Assembly could not be from the same national community as the President of Kosovo.

The President of Kosovo who would be elected by Assembly on the basis of a majority vote would have a fairly wide scope of competence. The executive power would be in the hands of the government and the administrative bodies. The Constitutional Court would play an important role in resolving all possible controversies in the implementation of the single Constitution. The Court would comprise nine judges — four from Kosovo and five selected from a list proposed by the President of the European Court for Human Rights. In Kosovo, the judiciary would guarantee the respect of laws enacted by the Kosovo parliament as well as those adopted at the Yugoslav level. However, in the latter case it would be possible to appeal to federal courts.

The link with the federal bodies would be reflected in the right of the Kosovo population to elect at least ten of their representatives to the Federal Assembly of the FRY and at least twenty to the Assembly of the Republic of Serbia. The Kosovo Assembly would also be able to delegate one member to serve in the federal government and one member to serve in the government of the Republic of Serbia and one judge from Kosovo on the Federal Constitutional Court and one on the Constitutional Court of the Republic of Serbia. The OSCE would be in charge of the future elections in Kosovo.

One of the chapters of the Constitution proposed at Rambouillet referred to the additional rights of the members of national communities in Kosovo. The collective rights guaranteed include the right to inscribe local names of towns, villages and other topographic places, the right to education in their own language and their own educational institutions, the right to enjoy unhindered contact with the representatives of their own national communities within the FRY and abroad as well as to employ national symbols or to the preservation of religious

sites. The members of national communities shall also be individually guaranteed *inter alia* the following rights: equal access to employment in public services at all levels or the right to establish cultural and religious associations.

As concerns the question of public security and the police service, virtually all authority was vested in the chief of the future international civil mission in Kosovo who would have the power to issue binding directives to all parties on matters pertaining to this area. The Agreement provided for the creation of a joint police force faithfully reflecting the multinational structure of Kosovo. The Serbian police in Kosovo which was to withdraw from the Province would have authority only in exceptional cases.

Two additional elements of the Rambouillet document proved extremely significant at the negotiation stage. The first element related to the disarming of the KLA. This military organisation was not clearly termed in the text of the Agreement though it stated that all "other forces" must publicly commit themselves to demilitarise.[70] The second element concerned the future fate of Kosovo. It was envisaged that after three years an international meeting would be convened to determine the mechanisms for a final settlement of Kosovo on the basis of the will of the people, opinions of the relevant authorities, each party's efforts regarding the implementation of the Agreement and the Helsinki Final Act.[71]

In the eyes of the Serbian negotiators in Rambouillet the proposed agreement was disputable in that it provided for the presence of foreign military troops (NATO) for its implementation,[72] as well as because it introduced elements of statehood for Kosovo which was

70 "Interim Agreement for Peace and Self-Government in Kosovo", *op. cit,* Chapter 7, Article 5.

71 *Ibid,* Chapter 8, Article 1.3.

72 "The substance of this whole game with the negotiators was troops and troops alone. Pressure in respect of the troops discloses the true aims — i.e. the attempt to get a foothold on this strategically important part of the European continent under the transparent pretext of imposing peace although it is abundantly apparent to everyone that there is no and never has been any "military confrontation". "Preparations of the state delegation for the continuation of talks," *Tanjug,* 5 March, 1999.

unacceptable to the Serbian side. The main contentious provisions were that Kosovo would have a president, a constitution, legislative power, a separate judicial system as well as that Kosovo would have to agree to the introduction of the state of emergence on its territory and to changes of the Province's borders. Moreover, the Serbian side refused to agree to the provision calling for negotiations regarding the final settlement of Kosovo within a period of three years.[73]

Since November 1998, the Serbian authorities had been offering their own solution for self-government in Kosovo, as a demonstration of their co-operation and willingness to negotiate. The first of these proposals was made public in November 1998 but failed to offer any substantive change in the status of Kosovo as compared to its position under the Constitution of Serbia, save the introduction of an ombudsman, of courts of the national communities whose jurisdiction covered matters relating to inheritance and family law as well as to local police, the authority of which could always be taken over by the Serbian police.[74] The second proposal was the document that the Serbian delegation had signed in Rambouillet, immediately after the Albanians had signed the text submitted by the international mediators.[75] Although the second proposal submitted by the Serbian side offered far greater powers for Kosovo than the previous one, it was nevertheless a far cry from what the Albanian side and the international community would have been willing to accept at that point in time.

The Serbian side proposed the establishment of a Kosovo parliament which would enjoy a fairly wide authority (e.g. the budget, taxation, administration, education, health, the appointment of judges and prosecutors). Although the acts that the Kosovo parliament passed would not be called laws but "regulations" they would be regarded as laws in every respect except in title. The only limitation to legislative

73 *Ibid*.

74 See "The Political Framework of Self-Government in Kosovo and Metohija", *Beta*, 21 November,1998.

75 "The Political Agreement on Self-Government in Kosmet". The proposal was published in *Politika* on 20 March, 1999, for the English version see (http://jurist.law.pitt.edu/kosovo.htm#Rambouillet).

autonomy would be the supremacy of federal laws as well as the application of the laws of the republic if a legal entity or a citizen chose to apply them according to the "personal principle". The proposal provides for a special mechanism of harmonisation for decision-making in areas that could be sensitive for representatives of individual national communities. On the other hand, it does not envisage the existence of a Constitutional Court nor the post of President of Kosovo though considerable power was vested in the Ministerial Council (the Government) and in the courts of Kosovo. Much like the Rambouillet document, the proposal of the Serbian side covered the question of amnesty for perpetrators of crimes related to the conflict in Kosovo with the exception of persons charged with crimes against humanity. Both speak of the possibility of Kosovo citizens being represented in the Assembly of the Republic of Serbia and the Federal Assembly. Both documents refer to the crucial role of the OSCE in organising future elections, although the document presented by the Serbian government also speaks of the need for organising a population census with the assistance of the OSCE.

While the proposal of the Serbian government went in terms of Kosovo's legislative and judicial power far beyond that which the Serbian side had earlier been prepared to accept and was far more than the provisions of the Serbian Constitution had to offer, there were indeed no changes in attitude regarding the part dealing with the authority of the Serbian police, the enactment of Serbian and federal laws, as well as in respect of the implementation of the Agreement itself. According to the proposal there was to be a local police although the Serbian police would continue to be in charge of conducting investigations in the case of more serious criminal acts, on matters of state security, arms control, foreigners and passports. Federal laws would be applied directly by the Federation through its regional bodies, while Serbian laws, by the organs of the Republic in the case of the personal principle. The Serbian side did not give up its rigid position in respect of the deployment of foreign troops in Kosovo to guarantee the implementation of the Agreement.

Although, in terms of its substance, it had distanced itself from the conceptions that had been laid down for Kosovo in the Serbian Constitution and although it had moved closer to the Rambouillet text, this Serbian counter-proposal obviously came too late to be taken seriously and to have any political and diplomatic impact. The text was not discussed and thus the talks were interrupted as the Serbian negotiators were unwilling to sign the integral text of the proposed Agreement. The difference between the political section of the Agreement submitted by the Contact Group and the one proposed by the Serbian side remained huge. The biggest difference were in respect of the guarantees for the implementation of a possible agreement. To wit, the Serbian delegation refused to agree to a foreign military presence while the West, given its experience with the wars in Croatia and Bosnia, adopted an opposite view.

Subsequently, the military annex to the Agreement proved to be its focal point in that the Serbian Party considered it unacceptable, arguing that this would virtually mean the country's occupation by NATO troops.[76] The military annex[77] establishes the obligation of the withdrawal of Yugoslav military and police forces from the territory of Kosovo. The section concerned with the status of the multinational forces, including provisions in respect of the complete immunity of the NATO troops from all criminal, civil or administrative offences or of the free of cost use of practically all roads or other facilities required for the execution of their mission. The most serious obstacle for the Serbian party were the provisions under which NATO troops would have "a free and unrestricted passage and unhindered access to the entire territory of the FRY" in order to accomplish the broadest goals of this operation.[78] Unquestionably, the Serbian side viewed this as a condition it was unable to accept.

76 "This section dealt the final blow to the diplomatic process." Eric Rouleau, "French diplomacy adrift in Kosovo", *Le Monde Diplomatique* (English internet edition), December 1999, .

77 "Interim Agreement for Peace and Self-Government in Kosovo", *op. cit,* Annex B: Status of Multi-National Military Implementation Force.

78 *Ibid,* Art. 8.

Affirming and backing by propaganda the deep-rooted myth according to which the Serbian nation has traditionally rejected ultimatums imposed by the major powers (Austria — Hungary in 1914, Hitler's Germany in 1941 and Stalin's Soviet Union in 1948), but also doubting NATO's resolve to undertake wide-scale military action, the FRY authorities chose to refuse to sign the proposed document.

2.5. Human Rights Violations in Kosovo During NATO military intervention

Reports by international governmental and non-governmental organisations reveal human rights abuses in Kosovo occurring in the period March-June 1999. For this reason, here shall merely be emphasised the salient points of the matrix of human rights violations committed by Serbian and Yugoslav authorities in Kosovo during NATO intervention.

The fact that during NATO intervention the representatives of international organisations and independent journalists were absent from Kosovo, has made data collecting and asserting the responsibility for crimes against humanity committed in Kosovo an extremely difficult task. Hence, the reports mainly draw on interviews with witnesses, survivors or family members of victims.

According to assessments made by UNHCR covering the period from March to June, over 800,000 people were driven from Kosovo. The bulk of the refugees were placed in the Stenkovac and Blace camps in Macedonia, Kukes in Albania, while some 60,000 refugees were taken in by the Republic of Montenegro.[79] Although coming from different parts of Kosovo, the testimonies of the witnesses essentially coincided regarding modes of intimidation and expulsion they had been subjected to. In the towns, the MUP units were instrumental in forcibly expelling the population. Armed and often masked men

79 "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo" (S/1999/779), 12 July 1999.

would barge into Albanian homes and would, by means of threat and intimidation, give them a deadline of often less than a few minutes to leave their homes. In the case of the villages, some VJ forces came to the assistance of the MUP units. Albanians as well as VJ soldiers stated that the MUP and paramilitary formations were responsible for committing crimes and spreading terror. Following the cleansing operations carried out in villages and towns, VJ would establish control and life would more or less return to normal.[80]

Peć and its surroundings were the main target of attack by the security forces. Non-governmental organisations for the protection of human rights, such as HRW and the Center for Humanitarian Law, along with the investigation teams of foreign press establishments (the weekly *Time* and *National Public Radio*) reported on this event.[81]

During the first days of the intervention Bajram Kelmendi, a renowned lawyer from Priština and of his two sons — Kastriot and Kushtrim were murdered. Their bodies were found near a gasoline station south-west of Priština on the road to Kosovo Polje.[82] The prominent ethnic Albanian politician Fehmi Agani, Vice-President of the Democratic Alliance of Kosovo (LDK) and participant at the Rambouillet negotiations, was also murdered during the intervention.

2.6. The Peace Plan, International Administration, Disarmament

Slobodan Milošević, President of the FRY agreed to the plan, which Martti Ahtisaari, international representative on behalf of the EU, and Viktor Chernomyrdin, special envoy of Russian President Boris Yeltsin, had brought to Belgrade on 3 June.[83] On the very same

80 *Helsinki Charter,* No. 17, June 1999.
81 *Helsinki Charter,* No. 17, June 1999.
82 *Human Rights Flash No. 4,* HRW, 26 March, quoting from a report of the Humanitarian Law Center (CHP).
83 For the text of the G8 Group Peace Plan, see (http://jurist.law.pitt.edu/peace.htm#plan).

day, the Assembly of Serbia approved this plan, which *inter alia* provided for "the withdrawal from Kosovo of military, police and paramilitary forces, the arrival of a robust international civil and security presence in Kosovo, supported and approved by the UN, capable of guaranteeing the achievement of common goals; the establishment of an interim administration for Kosovo to be decided by the UN Security Council with a view to ensuring the conditions for a peaceful and normal life for all citizens of Kosovo; a political process aimed at establishing a provisional framework agreement capable of providing Kosovo with a meaningful self-administration, taking account of the Rambouillet Accords and the principles of sovereignty and territorial integrity of the FRY and of other countries in the region and the demilitarisation of the KLA."[84]

At the same time, representatives of the VJ and NATO concluded talks at the NATO military base in Kumanovo and on 9 June, 1999 the so-called Military-Technical Agreement was signed. The latter provided for an 11-day time-table for the withdrawal of the Yugoslav security forces.[85] Under the Agreement, a certain number of members of the Yugoslav security forces would return to Kosovo (reference is made to hundreds and not thousands) but no timeframe for this had been set. The forces would be deployed at border crossings, around historical monuments and would be assigned mine sweeping operations.

On 10 June, 1999, the UN Security Council passed Resolution 1244, which regulates the international civil and military presence in Kosovo as well as the work of the provisional administration under the auspices of the UN.[86] The Mission was to be headed by a special representative of the UN Secretary General. The acting special repre-

84 Decision of the National Assembly of the Republic of Serbia of 3 June, 1999, *Sl. Glasnik RS,* No. 25/1999.

85 "Military-Technical Agreement between the International Security Forces ('KFOR') and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia", for text see:(http://www.nato.int/kosovo/decu/a9990609a.htm).

86 S/RES/1244 (10 June, 1999).

sentative for a brief period of time was the Brazilian Sergio Vieira de Mello who was later replaced by Bernard Kouchner from France.

As political leader of the KLA, Hashim Thaqi signed, on 21 June, 1999, with the KFOR Commander, an agreement on the demilitarisation of the KLA and its transformation into a political organisation.[87] The final date set for the conclusion of the disarmament process was postponed twice. The KLA formally demilitarised on 21 September, three months following the signing of the Agreement. However, at the end of 1999, more than three months after the official deadline for the surrender of arms, KFOR members and the international police went on discovering and seizing weapons from the citizens of Kosovo almost on a daily basis.

The final date for demilitarisation was postponed as a result of pressures exerted by the KLA leaders for UNMIK to allow the formation of a Kosovo Protection Corps. The Corps was set up as an organisation for civil protection, and its members were permitted to carry light weapons. Under UNMIK Regulation on the Establishment of the Kosovo Protection Corps,[88] the corps could number at the most 3000 active members, 2000 reservists, while at least 10% out of that number had to members of the minorities. Yet, radical political currents in Kosovo, including the President of the self-proclaimed government of Kosovo, Hashim Thaqi, have remained hopeful that the Kosovo Protection Corps will constitute the future army of independent Kosovo in embryo. The Serbs refused to participate in the Corps, considering it an extended arm of the KLA.

2.7. Authority in Kosovo

The United Nations Interim Administration Mission in Kosovo (UNMIK), established under Resolution 1244 of the Security Council,

87 For text see: http://jurist.law.pitt.edu/peace.htm.

88 See UNMIK Regulation No. 1999/8 (UNMIK/REG/1999/8), of 20 September, 1999.

incorporates both military and civil character and rests on four mainstays of administration. It includes the UN (civil administration), the UNHCR (humanitarian questions), the OSCE (the building of democratic institutions) and the EU (renewal and reconstruction); together they make up UNMIK. With the consent of the FRY President Slobodan Milošević and of the Serbian Parliament, and pursuant to Resolution 1244, military forces have been deployed in Kosovo, almost all coming from NATO member States.[89] Currently in Kosovo in addition to UNMIK, there is a large number of foreign humanitarian organisations and organisations for the protection of human rights and the building and strengthening of civil society institutions.

Under Resolution 1244, the UN Special Representative shall have supreme legislative and administrative authority in Kosovo. He shall exercise that authority in conjunction with the Transitional Council in Kosovo but will retain the power vested in him. According to an agreement signed between the Special Representative and the representatives of the Kosovo Albanians (Serb representatives refused) the Kosovo Transitional Council was set up in mid-December 1999. In addition, "a common administrative structure" was formed comprising 14 departments corresponding to classical ministries. Each department was to be headed by one UNMIK representative and one representative of the citizens. The Council shall decide about policies to be implemented by the departments of the "joint administrative structure" and shall propose new regulations. Its members decide by consensus but if this is not possible the final decision lies with the Special Representative. The Council should be composed of 8 members, four UNMIK representatives, three representatives of the Albanians and a representative of the Serbs.[90] By the end of 1999, the Serbs refused to take part in the work of the Council.

With the signing of this agreement, the institutions of the transitional government and the institution of president of the republic of

89 Resolution 1244, Annex No. 2, p. 4.

90 See "Local Political Leaders to Share the Administration of Kosovo with the UN", 15 December, 1999 (http://www.org/peace/kosovo/pages/kosovo1.htm).

Kosovo — the structures of informal power of the Kosovo Albanians have ceased to exist and are transformed into the above-mentioned administrative structure. This applies, in particular, to the parallel system of government, especially at the local level, that the KLA had formed following the withdrawal of the Yugoslav Army and the Serbian police from Kosovo and which proved to be an obstacle for UNMIK's work. For example, while the Kosovo Protection Corps neither enjoys a police or a judicial mandate, OSCE reports mention that there exists evidence that "the KPC members or (or persons claiming to be members) tend to assume the role of police in some areas. For instance in Peć and in Prizren, there is sound proof that they operate in 'police stations' and call people in for questioning."[91]

There is no reliable system to ensure the security of the inhabitants of Kosovo chiefly because the number of policemen is not sufficient and courts do not exist. Until November, 1999, when police patrols were formed, the forces of KFOR were in charge of public security. However, the full number of KFOR members had not been deployed in Kosovo at the time and, what is more, it has a manifold mandate: ranging from control over public security to monitoring disarmament agreements as well as securing sites marked as mass graves. At present, there are about 1800 policemen coming from some 40 countries in Kosovo. They also include Kosovo Albanians and very few Serbs who received police training under UNMIK auspices.

The Deputy Superintendent of UNMIK, Peter Steininger stated that the greatest problem lay in the fact that the judicial bodies were not as yet operational in Kosovo.[92] Since the arrival of KFOR until the beginning of November, 400 persons were arrested in Kosovo of whom 300 were soon released from custody without trial as courts have not been established, stressed Steininger. Sven Frederiksson, Police Superintendent of UNMIK, stated that only those charged with the most serious crimes, such as murder, are held in custody while the

91 "Kosovo/Kosova: As Seen, As Told", OSCE Report on Human Rights Violations from June to October, 1999.

92 AFP (6 November,1999).

others have been released. As things stand now, the courts are only able to determine an extension of custody, as genuine trials have not yet started. The fact that the Yugoslav forces had destroyed or seized the personal documents of a great many Kosovo Albanians has further aggravated the work of the judiciary.

To illustrate this point, may it be said that until December there were merely 35 trials, all of which were held in Prizren.[93] Until the middle of November, UNMIK appointed 41 judges and 14 prosecutors for five district courts in Kosovo and one court of appeals. All seven of the appointed judges of Serb nationality turned in their resignation out of protest so that among the judges and prosecutors figure 42 Albanians, 4 Moslem Bosniaks, one Roma and one Turk; for the sake of comparison, before the war a total of 650 judges and prosecutors were employed in Kosovo.[94] Despite this, the Special Representative claims that with the start of the year 2000 courts will work under normal conditions and that shortly an extra 400 judges and prosecutors would be employed.[95]

In the light of numerous criticism regarding the lawlessness in Kosovo, Bernard Kouchner announced at NATO headquarters in Brussels that he "absolutely rejected" all criticism for the lack of law and order in Kosovo until such time as the UN members send a sufficient number of policemen and money to pay the public services to do their work.[96]

As for the law applicable in Kosovo, initially the Special Representative opted for the laws that were in force on 24 March, 1999, unless they were contrary to international standards governing human rights, to the accomplishment of UNMIK mandate as well as to the UNMIK regulations that were in force.[97] Yet, for the judges of Alba-

93 "Kouchner announces measures to strengthen law and order in Kosovo", 13 December, 1999, *op. cit*.
94 Fred Abrahams, "Justice Delayed In Kosovo", IWRP, No. 96, 26 November, 1999.
95 "Kouchner announces measures to strengthen law and order in Kosovo", *op.cit*.
96 Radio *B292*, 16 December, 1999.
97 "On the authority of the interim administration in Kosovo", UNMIK/REG/1999/1, 25 July, 1999.

nian origin, this solution was unacceptable as it invoked laws enacted following the abolishment of the autonomy, which reminded them of the period of repression.[98] Since the appointed prosecutors and judges who were of Albanian origin refused to work on the basis of such laws, Bernard Kouchner issued a regulation proclaiming that in addition to its earlier regulations, laws that were in force on 22 March, 1989. i.e. before the Province had been deprived of its autonomy guaranteed under the 1974 Constitution, would be applicable.[99] However, then the Serbian judges refused to abide by that decision: "We decided that none of us would take part in this kind of judiciary designed by Kouchner and we suspend all talks on the subject of the judiciary as long as such regulations are changed," declared judge Nikola Kabasić.[100]

Moreover, there exists no official bulletin in which the new rules and regulations would be published and, therefore, made accessible to the judicial bodies.

The Special Representative passed individual regulations by which, indirectly, some Yugoslav and Serbian regulations ceased to apply on the territory of Kosovo. A case in point is the Regulation on establishing customs and similar services in Kosovo (UNMIK/REG/1999/3, 31 August, 1999), the Regulation on Currency (UNMIK/REG/1999/4, 2 September, 1999) and the Regulation on the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property, (UNMIK/REG/1999/10, 13 October, 1999).

2.8. The State of Human Rights after June 10, 1999.

Although the withdrawal of Yugoslav forces and the deployment of KFOR troops occurred simultaneously, a security vacuum appeared in Kosovo which enabled the KLA members and armed

98 Fred Abrahams, "Justice Delayed In Kosovo", IWRP No. 96, 26 November, 1999.
99 "Kouchner announces measures to strengthen law and order in Kosovo", 13 December, 1999, see: (http://www.un.org/peace/kosovo/pages/kosovo1.htm).
100 Radio *B292*, 18 December, 1999.

bands to establish control in certain areas prior to KFOR's arrival. As confirmed by the UNMIK report (S/1999/779), members of the KLA were rapidly returning to most areas in Kosovo, particularly in the south-west of the country (Peć and its surroundings), and it was from there that the first columns of Serb refugees began moving out. While fear from retaliation gave rise to the first wave of refugees, the second wave was reportedly occasioned by a series of incidents involving Albanians. Even those Serbs who, prior to the war, had lived in peace with their Albanian neighbours, started moving out as they were becoming the object of attack by persons claiming to be members of the KLA. Other non-Albanian communities in Kosovo, particularly the Roma, were also the target of persecution and acts of revenge.

Despite the claims of NATO and UNMIK officials that the situation was becoming more stable, tensions remained unabated until the end of 1999. The violation of minority[101] rights in Kosovo has assumed worrying proportions. The latest reports have registered a decline in the number of crimes committed against members of minorities, the likely reason being the ever-shrinking number of non-Albanian inhabitants in Kosovo during the last few months. Serbs, Roma, Turks and other minorities are frequently the object of threats and harassment, exclusively on account of their ethnic background. Consequently, the non-Albanian population is continuing to move out of Kosovo. On 15 October, 1999, the Yugoslav Red Cross reported that 230,884 displaced persons from Kosovo had been registered in Serbia and Montenegro.

According to the UNMIK reports, from June when the international administration was set up into place, until December 1999, 414 persons had been killed in Kosovo. UNMIK, KFOR and the UN High Commissioner for Refugees jointly report that from 12 June to 4

101 The term "minority" in this case implies an ethnic group which, in terms of its numerical strength, constitutes a minority in the territory of Kosovo. Reference is not made to a status conferred to it under any specific official document and regardless of their number in other parts of the country. In other words, reference will be made here of the non-Albanian population in Kosovo.

December, 150 Albanians and 140 Serbs had been killed in Kosovo. To these figures we must add the 124 members of other ethnic communities, that is to say persons whose identity has not been established. According to other sources, during the same period 153 persons were kidnapped out of whom 83 were Albanians, 43 Serbs and 27 members of other ethnic communities.[102]

As a result of this situation, there are hardly anymore Serbs living in Peć and Prizren, whereas Kosovska Mitrovica and Orahovac have been divided along ethnic lines. International sources maintain that between 400 and 600 Serbs have remained in the broader centre of Priština but as the tendency to move out has been continuing and their number dropped even more by the end of 1999. In addition to open pressures and physical violence to which the minorities have been exposed, other reasons for their departure are believed to include restricted freedom of movement and limited access to educational and medical institutions. The representatives of the international community have noted that Albanian shop owners and bakers who serve Serbs are being punished; this being a further means of pressurising the minority population to move out. Although no mention is made of the political groups involved in charging such actions, the international media claim that this is the work of the more radical KLA members. The political representatives of the KLA, however, deny such allegations.

The Roma community in Kosovo has also been the victim of violence. Like the Serbs, many Roma left Kosovo while the Yugoslav Army, the Serbian police and paramilitary formations were still withdrawing. Some of them had taken part in the repression against Albanians.[103] Those that felt they had no reason to fear for their security remained. Even so, Roma in Kosovo have been driven out of their apartments and homes, their property looted and torched and

102 Radio *B292*, 10 December, 1999.

103 On Employing Roma for forced labour, looting and destroying the property of the Kosovo Albanians, see the Report of the Humanitarian Law Center "Abuses and Violence Against the Kosovo Roma, 24 March — 1 September".

some have been killed. Acts of violence were being committed under the pretext that the Roma, as a community, had been involved, during the NATO intervention, in crimes against Albanians, that they had looted deserted homes and buried bodies in mass graves. KFOR has not managed to protect the Roma remaining in Kosovo from the arbitrary treatment by armed Albanian individuals and groups. The fact that the judiciary is deficient makes the finding and punishing of culprits increasingly difficult. The exact number of Roma killed remains unknown while most of the killings have taken place in Priština, Peć, Obilić, Prizren and Podujevo. For the sake of illustration, the entire Roma settlement in Kosovska Mitrovica (Radnička Street), a town with a large Roma community, has been torched and looted and the Roma have been forced to become refugees. The persecution of Roma from Mitrovica took place in early July, when the town had already come under the control of the French contingent of KFOR. Roma witnesses claim that the members of KFOR did not even attempt to prevent this crime.[104]

The Roma who decided to remain in Kosovo have sought refuge in Leposavić, Zvečan or the northern part of Kosovska Mitrovica, where the majority population is Serb. Currently there are hardly a few thousand left in Kosovo. Roma that inhabit communes where there is a majority Albanian population live in fear and practically have no access to markets, public transportation nor medical institutions. Even the children of Roma whose mother tongue is Albanian (the so-called Ashkalia) are not able to continue their schooling. Šefko Alomerović, President of the Helsinki Human Rights Committee in Sandžak declared that the "Moslem-Bosniaks in Kosovo, while not having taken part in the Serbo-Albanian conflict, were the victims of both sides alike." Alomerović has reported that some 40,000 Moslems had left the Kosovo area in 1998 and 1999, and that the first who attempted to return to Kosovo after KFOR arrived were killed. "Out of the 11,000 Moslem-Bosniaks only 70 families have remained in Priština. Since the arrival of KFOR, 51 Moslem-Bosniaks have been killed, of whom

104 *Helsinki Charter*, No. 18, July 1999.

11 women. 92 homes in the Bosniak quarter of Kosovska Mitrovica have been burnt down. In the Vitomirici village, the same fate has befallen 60 Bosniak homes," stated Alomerović. In his view, no pressure is being exerted on the Moslem-Bosniaks in the southern parts of Kosovo to move out but they are being forcibly assimilated.[105]

Recently, pressure has spread to Albanians suspected of having co-operated with the Serbian authorities. A further target of the Albanian extremists are the Albanian intellectuals who have denounced the violence against the non-Albanian population. After publishing in the daily *Koha Ditore* a commentary in which he compares the violence against the minorities with fascist excesses, its publisher Veton Surroi was verbally attacked by Hashim Thaqi, former KLA leader, and the *Kosovapress* news agency, which is close to the latter.[106]

3. Status of Refugees and Displaced Persons

3.1. Introduction

As NATO air strikes and the conflict in Kosovo were drawing to an end, conditions became ripe for the return of Kosovo Albanians who had fled to the Republic of Albania and the FYR of Macedonia. There ensued a mass return of Albanian refugees to the territory of Kosovo and Metohija.[107] The withdrawal of Yugoslav Army units and of the police force, slackness in setting up the UN civil administration and its inefficiency, as well as the vacuum in the organisation of power that followed were all factors contributing to an explosion of violence and lawlessness in Kosovo and Metohija. As a result, the Serbian and

105 *Beta*, 17 December, 1999.

106 UNHCR/OSCE Overview of the Situation of Ethnic Minorities in Kosovo (November, 1999). Anthony Borden, "Hate Speech in Pristina — The Kosovo Media Wars Could Start Here", IWPR, 8 October, 1999.

107 According to UNHCR as many as 90% of Albanian refugees returned, a fact that deviates significantly from the customary 30% until then reported in the world.

other non-Albanian population hastened to leave the Province. From then until the end of November 1999, about 300,000 persons sought refuge in the FRY.[108] Most of them now live on the remaining territory of the Republic of Serbia, while a smaller number has found accommodation on the territory of Montenegro.

The legal and real status of refugees from Croatia and Bosnia and Herzegovina in the FRY did not substantially change in 1999.

3.2. Refugees[109]

3.2.1. Legal Status of Refugees — Although experts and competent State institutions (particularly the Commissioner for Refugees of the Republic of Serbia) reiterated the need of proposing two amendments to the 1992 Refugees Act,[110] whereby 1) the provision on military service would be deleted; 2) refugees would be able acquire and register immovable property even prior to acquiring Yugoslav citizenship, nothing came of this. The Decree on Amendments and Additions to the Decree on the Establishment of Federal Ministries and Other Federal Bodies and Organisations[111] gave birth to the Federal Ministry for Refugees, Displaced Persons and Humanitarian Aid. Proceeding from the Refugees Act, the Commissioner for Refugees of the Republic of Serbia carried on activities as a separate organisation.

3.2.2. Integration — The FRY Citizenship Act came into force on 1 January, 1997 but given organisational problems within the frameworks of the Federal Ministry of Internal Affairs, the Act, regarding Article 48 (acceptance into Yugoslav citizenship) — became applicable only in May of this year. According to UNHCR reports

108 According to the UNHCR and the Federal Ministry for Refugees (*Displaced Persons and Humanitarian Aid*), the number of registered displaced persons in the FRY amounted to 247,391, whereas another 50.000 unregistered were at present in Serbia.

109 For more details see: *Human Rights in Yugoslavia 1998,* p. 381.

110 *Sl. glasnik RS,* No. 18/1992.

111 *Sl. list SRJ*, No. 36/1999.

covering the period from May 1997 to November 1998, the number of applications for Yugoslav citizenship by refugees equalled 82,977 (for over 100,000 persons). 23,483 applications for citizenship involving 42,053 persons were accepted. The Federal Ministry of Internal Affairs did not make any negative decisions in that respect but returned applications that did not comply with Article 48 of the Citizenship Act so that the applicants could procure the additional documents required.

3.2.3. Repatriation — Conditions for a more substantial return of refugees to the Republic of Croatia and Bosnia and Herzegovina were not met even in 1999. The Croatian authorities' lack of co-operation, the impossibility to recover tenancy rights, a limited access to funds for the reconstruction of destroyed and damaged homes, as well as overall political, social and economic circumstances, have accounted for the low figure of 1,634 refugees returning voluntarily to Croatia in 1999, through the UNHCR.[112] In the same period, 581 refugees returned to Bosnia and Herzegovina. According to UNHCR estimates, 20,000 refugees are believed to have spontaneously and individually returned to Croatia and another 18,000 refugees to Bosnia and Herzegovina.[113] It must, however, be emphasised that the bulk of those returning to Croatia have come to the FRY after having received Croatian documents and having settled pension and property issues. Many of them have been granted anew the status of refugee on the territory of the FRY, a rather interesting phenomenon, raising numerous questions regarding their status and residence conditions in the FRY.

3.2.4. Resettlement — An average of some 400 refugees weekly have applied for resettlement in third countries through the UNHCR for the following reasons: local integration is impossible, i.e. a significant number of refugees cannot acquire Yugoslav citizenship and repatriation, as we have seen earlier on, constitutes a problem. In 1999, the UNHCR organised resettlement for 1,933 refugees from Croatia

112 UNHCR data for the period 1 January to 31 October, 1999.
113 UNHCR data for the period 1992 to 31 October, 1999.

and 620 from Bosnia and Herzegovina.[114] From 1992 to October 1999, about 15,000 refugees are estimated to have resettled in third countries through direct contacts with consulates, without seeking UNHCR mediation.

3.3. Displaced Persons

3.3.1. Legal Status of Displaced Persons — All persons having left Kosovo and Metohija in the latter part of 1999 to seek refuge on the territory of Serbia and Montenegro have no defined personal status. The question of legally categorising such persons is not merely of a formal character. Until the end of 1999, not a single regulation was passed defining the legal status of these persons. The mass media refer to them as "internally displaced persons" or "temporarily internally displaced persons." The Yugoslav legislation ignores the above-mentioned formulations. The Refugees Act makes no mention at all of the term "displaced person", whereas the Decree on the Care for Displaced Persons of Montenegro[115] does not use the terms "temporarily" or "internally." No reference day (date) has been fixed for recognition of a displaced person's status.[116] This categorisation of the above persons is, insofar as the terms used, contradictory, vague and reflects political considerations rather than legal substance. Displaced persons from Kosovo and Metohija do not have the status of refugees and consequently do not enjoy any of the rights recognised to refugees under FRY legislation and the norms of international law. Moreover, they do not even have the same rights that are guaranteed to citizens of the Republic of Serbia under the Constitution.

In addition to their precarious financial situation, displaced persons are confronted by practically insurmountable legal problems. A

114 Data relevant to October 1999.

115 *Sl. list RCG,* No. 37/1992.

116 It remains unclear whether it is the moment when the state of war was declared, the day UN Security Council Resolution 1244 was adopted and implemented or the day when the KFOR forces entered the territory of Kosovo and Metohija.

crucial issue deriving from status law is the question of residence. Persons from Kosovo and Metohija are not able to apply for residency on the remaining part of the territory of the Republic of Serbia. The maximum they are able to achieve in that respect is to apply for residence. The organisational units of the Ministry of Internal Affairs confirm applications for residence. Residence applications are renewable every 90 days.[117] Even in cases when all subjective and objective legal conditions for residency application are met (ownership of real estate, employment, a person's intention to take up permanent residence in a particular place), displaced persons cannot apply for residence, while the units of the Ministry of Internal Affairs do not provide any legal explanation, either written or oral, why this is so.[118]

Displaced persons, moreover, do not have access to other rights deriving from residency application or have considerable difficulties in exercising them. Unless one has a proper notification of residence in the Republic of Serbia it is virtually impossible to register a motor vehicle, open an account in a bank, register a company and the like.

Until the end of November 1999, displaced persons were unable to obtain public documents pertaining to their personal status. The Ministry of Justice of the Republic of Serbia issued, on 20 November, a public statement as to the location of temporary headquarters where registers of births, marriages and deaths as well as the citizens' register of Kosovo and Metohija could be found.[119] The registers have been distributed in the following manner: the Municipal Court in Niš for the town of Priština, the municipalities of Podujevo, Glogovac, Obilić, Kosovo Polje and Lipljan; the Municipal Court in Leskovac for the municipalities of Uroševac, Kačanik, Štimlje and Štrpce; the Municipal Court of Jagodina for the municipalities of Đakovica and Dečani; the Municipal Magistrate in Kraljevo for the municipalities of Kosovska Mitrovica, Zubin Potok, Zvečan, Leposavić, Srbica and Vučitrn; the

117 The procedure upheld by the Ministry of Internal Affairs has no legal backing.
118 Data obtained from the Legal Clinic of the Centre for Advanced Legal Studies, Belgrade.
119 *Danas,* 20 November, 1955, p. 10.

Municipal Court in Bujanovac for the municipalities of Gnjilane, Vitina, Kosovska Kamenica and Novo Brdo; the Municipal court in Kragujevac for the municipalities of Istok, Peć and Klina; the Municipal Court in Kruševac for a part of the registers from the area of the Prizren and Orahovac municipalities. Since then, it has become much easier to obtain certificates relevant to one's personal status.

Displaced persons who have proper residence documents enjoy all the rights pertaining to employment, including the right to a pension, social and health welfare.

3.3.2. The Fate of Displaced Persons — It was not possible to obtain from the Ministry for Refugees, Displaced Persons and Humanitarian Aid information as to the number of persons in collective centres and the number in private accommodations.[120]

According to reports of the Montenegrin Commissioner for Refugees, the total number of displaced persons that have found accommodations in Montenegro is of the order of 31,000. The majority has been accommodated in Herceg Novi, over 8,000. All the displaced persons receive monthly food rations, products for personal hygiene and they have been given also some footwear and clothes. The Secretary of the Montenegrin Red Cross has stated that all the refugees from Kosovo and Metohija are entitled to medical care, education in elementary and secondary schools and may also attend the higher establishments of learning in Montenegro, the same as the citizens of Montenegro. In addition, there are no obstacles to obtaining employment, except for jobs requiring Montenegrin citizenship.[121]

Over 200,000 displaced persons are located in Serbia. Their status is anything but enviable. Besides the above mentioned legal problems they have to grapple with, this category of the population lives below any subsistence level.

120 A certain number of Kosovo Serbs owned immovables outside the territory of the Province even prior to the outbreak of the conflict or sought lodgings with relatives living in the remaining parts of Serbia and Montenegro.

121 *Blic,* 25 July, 1999, p. 10.

A case in point is the municipality of Kraljevo in which 123,000 people are at present living (the town itself has a population of 70,000). The unemployment figure for the municipality revolves around 11,000 (25% of the work able population), while some 10,000 are on forced leave.

According to statements by the Municipal Commissioner for Refugees, the municipality of Kraljevo now counts over 20,000 registered refugees and displaced persons. Unofficial data, however, indicate that their number exceeds 30,000.

Of the 17,000 displaced persons from Kosovo (out of whom 4,000 children of pre-school and school age), registered with the Municipal Commissioner for Refugees, nearly 16,000 have found private accommodations. Until the beginning of the school year, i.e. 1 September, about 1,200 persons were living in 13 collective centres — village schools, cultural centres and prefabricated shacks — located in the suburbs and surrounding villages. Living conditions in these centres were extremely poor (shortage of toilets, beds, mattresses, blankets, products for personal hygiene, medicines and adequate medical care, insufficient food).

On 30 August, the District Civil Defence Headquarters issued a verbal order that schools in the municipality of Kraljevo had to be emptied because the school year was about to begin. The displaced persons were offered alternative lodgings where living conditions were worse still — prefabricated huts and dilapidated cultural centres with no toilets, electricity, water and heating, with broken windows and leaky roofs. During the month of September, a certain number of groups of displaced persons slept for several days in the municipal parks of Kraljevo rather than accept such accommodations. While they were there, none of the bodies in charge visited them nor offered them help in any way, except for the NGO Forum in Kraljevo. When they tried to move to Belgrade the police stopped them. Meanwhile, the peasants who lived in the villages where the displaced persons had found shelter blocked the roads, giving them a deadline to move out of the schools. A number of groups of displaced persons were sent to

other towns (Svilajnac, Užice, Gornji Milanovac, Požega, Jagodina and Paraćin), where they were promised better accommodation.

UNHCR aid did not go beyond providing one hot meal daily handed out by the Red Cross. The UNHCR is prepared to build a centre for refugees including the necessary infrastructure but neither the municipal nor the Serbian authorities are willing to set aside a plot of land so that building can start.

Despite the arduous conditions, the office of the Municipal Commissioner for Refugees reported that there have been an increasing number of requests for accommodation in collective centres. Presumably, a large number of displaced persons that used to have private lodgings are no longer able to afford the rent or to pay for food. By the end of 1999, 11 collective centres sheltered 704 displaced persons.[122]

The situation is no different in other towns, particularly in the southern parts of Serbia.

3.3.3. Public Opinion and the Position of the Government of the Republic of Serbia. — Once the conflict in Kosovo and Metohija had ended and NATO air strikes ceased, the authorities of the Republic of Serbia and the FRY propagated, through the media, "victory over an incomparably superior aggressor" and "the preservation of the country's territorial integrity", including the territory of Kosovo and Metohija. In this sense, it was no easy task to reasonably explain the fact that Serbs and other non-Albanians were moving out of the Province. The State-controlled media attempted to conceal this. Yet, as it proved impossible, the government redirected its efforts towards the campaign for the return to Kosovo. However, pressures and obstacles directed against those people were part of the campaign in favour of their return. The authorities did their very best to thwart any attempt on the part of the displaced people to reach Belgrade and other towns in the north, trying to keep them in the parts of the Republic near the border with Kosovo. In late August and early September, children were not

122 Data obtained from the NGO Forum of Kraljevo.

allowed to enrol in elementary and secondary schools in towns other than those located in the "bordering municipalities" (Bujanovac, Vranje, Leskovac, Kuršumlija etc.).[123] During the months of October and November, such obstacles were removed and, thus, displaced persons were permitted to choose where they wanted to live and in which schools they wished to enrol their children. To further relax pressures, young people were allowed to study at universities without having to take an entrance exam.

A part from this, the desire was to conjure up, in the media, the image that Serbs and other non-Albanians from Kosovo and Metohija were returning to their homes. Consequently, in a public announcement broadcast by the RTS in June, 1999, the Deputy Prime Minister of the Republic of Serbia, Milovan Bojić appealed to the displaced Serbs to return to their homes, stating that the "Serbian ministers would lead them". Bojić further mentioned that the "golden period" for the return of Serbs were the coming 48 hours and that "thanks to the tremendous efforts invested by the State leadership, conditions of total security had been created", for the return of refugees to Kosovo.[124]

The then Minister in the government of Serbia, Bogoljub Karić, on behalf of the Karić family and the BK group, called upon "all Serbs, Albanians, Montenegrins, Moslems and Roma — who had been employed in the BK factories and companies — to return to their jobs..."[125]

The State-run media took part in that campaign, focusing on the organised return of Serbs to Kosovo and Metohija while turning a blind eye to the fact that Serbs were actually leaving Kosovo. Thus, *Politika* reported that approximately five thousand had returned to their homes from Leposavić alone, a town to which some 15,000 displaced persons had moved.[126]

123 *Blic,* 27 August,1999, p. 6.
124 *Blic,* 20 June, 1999, p. 20.
125 *Politika,* 24 July, 1999, p. 17.
126 *Politika,* 25 June, 1999, p. 14.

Conversely, most of the media not financed through the State budget reported on the ordeal of displaced persons and the indifference of the Republic of Serbia in respect of their true fate.[127]

3.4. Conclusion

Regrettably, there is no instant remedy for the disastrous financial circumstances in which displaced persons now find themselves or for the inferior status of refugees from Croatia and Bosnia and Herzegovina.

In real terms, conditions for the return of Serbs and other non-Albanians to Kosovo and Metohija are non-existent. Physical violence, the burning down of houses and other forms of pressure exerted on Serbs and non-Albanians are continuing in the Province.

The refugees from Croatia and Bosnia and Herzegovina have managed, up to a certain point, to integrate. As already indicated, only a small number of refugees have returned to their homes and, therefore, in all probability, the bulk of the population will continue to live in the FRY.

For the above reasons, the FRY, and, more especially, the Serbian government will have to accept the fact that the majority of the refugees and displaced persons will remain, for some time to come, in the FRY and out of Kosovo. It is, therefore, essential that every possible measure be taken to put all refugees and displaced persons on an equal footing with the other citizens of the FRY, both in law and practice. There will be no meaningful improvement without the aid of international organisations and without lasting and comprehensive settlement for South-Eastern Europe.

4. International Criminal Tribunal for the Former Yugoslavia (Hague Tribunal)[128]

127 See, for example, "Hostages in their own country", *Blic*, 25 July, 1999.

4.1. Personnel Changes in 1999

The Chief Prosecutor of the Tribunal for the Former Yugoslavia and the Tribunal for Rwanda, Justice Louise Arbour, resigned from office and took up the post of Judge of the Supreme Court of Canada on 15 September. Carla Del Ponte of Switzerland was unanimously elected by the members of the Security Council as new Chief Prosecutor in early August. The President of the Tribunal, Judge Gabrielle Kirk McDonald, resigned halfway through her presidential term of office. She was succeeded by the French judge Claude Jorda, who was elected on 16 November President for the coming two-year term. Florence Mumba, a judge from Zambia, was elected Vice-President for a two-year term. The first President of the Tribunal, Antonio Cassese, announced his departure from the Tribunal in February 2000 in order to pursue his academic career.

By the end of 1999, the Tribunal employed about 900 persons.

4.2. Indictments

The Tribunal's public list includes 66 indicted persons, of whom 33 were in custody by the end of 1999 (19 Serbs, 11 Croats and 3 Moslems). The number of sealed indictments has not been made public. In the course of 1999, eight indicted persons arrived at the Hague. Seven Bosnian Serbs were arrested by SFOR while one Bosnian Croat was handed over by the Croatian authorities. According to the Prosecutor, most of the remaining indicted persons are residing on the territory of Bosnia and Herzegovina whereas nine are known to be in Serbia.

On 30 March, the Tribunal issued an international warrant of arrest thus making it publicly known that there exists an indictment against Željko Ražnatović "Arkan". The indictment against Ražnato-

128 For the basic information about the Tribunal see *Human Rights in Yugoslavia 1998*.

vić, the leader of the paramilitary units named "Tigers", was confirmed as early as in 30 September, 1997. According to the Tribunal, the contents of the indictment will not be published until the moment the indicted person is arrested, primarily for the sake of protecting witnesses. The published warrant of arrest charges Ražnatović with grave breaches of the Geneva Conventions, violations of the laws and customs of war and with crimes against humanity.

Although the government of the FRY has refused to accept the warrant for Ražnatović's arrest, the Prosecution informed that his lawyer had already contacted them.

The indictment and the international arrest warrants against FRY President Slobodan Milošević, President of Serbia Milan Milutinović, FRY Deputy Prime Minister, Nikola Šainović, Chief of the General Staff of the Yugoslav Army, Dragoljub Ojdanić and Serbian Minister of Internal Affairs, Vlajko Stojiljković, were issued on 27 May.[129] Judge David Hunt, who confirmed the indictments, also approved additional warrants making it incumbent on UN member States and Switzerland to ascertain whether the accused possess material or financial assets on their respective territories, and, if so, to adopt provisional measures to freeze such assets until the accused are taken into custody in the Hague. Moreover, in order to ensure the safety of the witnesses for the prosecution, all evidence contained in the indictment is not to be disclosed until all the accused have been arrested.

According to Chief Prosecutor Arbour, this indictment was the first in the history of the Tribunal to be brought against an acting head of state, charging him with grave breaches of international humanitarian law during an on-going armed conflict.[130] Arbour claimed that in late March she had addressed a letter to president Milošević and other senior officials in the FRY and Serbia, reminding them of their inter-

129 For the full text of the indictment, see www.un.org/icty/milosevic/tce37.htm.

130 Chief Prosecutor, Louise Arbour, in a motion filed on 24 May,1999 by which the indictment and accompanying warrants were submitted for approval to Judge Hunt, see http://www.un.org/icty.

national commitments and informing them of her intention to "investigate all serious violations of international humanitarian law that merit prosecution in the international forum, particularly those involving attacks on the civilian population".[131] She continued by appealing to the recipients to use their authority to deter the commission of future crimes, as well as to take all the necessary measures to punish any of their subordinates who commit crimes.

The indictment alleges that between 1 January and late May 1999, military, police and paramilitary forces under the control of the five accused had been systematically persecuting the Albanian civilian population in Kosovo. It purports that over 740,000 Kosovo Albanians had been forcibly expelled from the region through a series of offensives against predominantly Albanian towns and villages during which the population was made to leave their homes, either by use of force or by threats of death. It further claims that the property they left behind was looted while homes were destroyed or torched. Some of the Albanian villages had been previously shelled and citizens were killed during such attacks. Those who survived were driven out in columns or transported in an organised fashion to the borders of Kosovo and neighbouring countries. It is alleged that during such actions the Albanian population was subjected to humiliation and physical harassment, that in many cases men were separated from women and children and killed. It is further stated that the authorities at the border crossings systematically looted the property the Albanians had with them, including motor vehicles, that they took identification papers from them and destroyed them on the spot. The accused are further charged with the murder of about 340 persons identified by name in the annex to the indictment. It is alleged that the forces of the FRY and Serbia have repeatedly resorted to the mass and wilful murder of unarmed Kosovo Albanians, including women and children.

Each of the accused is charged with three counts of crimes against humanity and one count of violation of the laws or customs of

131 This letter was made public given that the Embassy of the FRY in the Hague refused to receive it. Tribunal Update 119, 29 March — 3 April.

war i.e. for *murder*, as a crime against humanity (Article 5(a) of the Statute of the Tribunal), violation of the laws or customs of war (Art. 3 of the Statute); *persecutions on political*, *racial and religious grounds*, a crime against humanity (Art. 5(h) of the Statute), and *deportation* (Art. 5(d) of the Statute).

All the accused are charged with individual criminal responsibility as persons who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or the execution of the above-mentioned crimes.[132] By virtue of their high positions of power, the accused President Milošević, President Milutinović, Colonel General Ojdanić and Minister Stojiljković (not Vice-President Nikola Šainović) are also charged on the grounds of command responsibility because "they knew or had reason to know that their subordinates were about to commit criminal acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."[133] The case against them is based on proving the existence of the so-called chain of command responsibility involving both their legal *de iure* and real *de facto*, relationship of superiority with regard to military, police and paramilitary forces who were directly responsible for executing the above criminal acts.

As things stood at the end of 1999, the indictment is based primarily on the *de iure* command responsibility of the five accused deriving from their constitutional and legal authority. As President of the FRY, Slobodan Milošević discharges the function of President of the Supreme Council of Defence of the FRY, is empowered to order the execution of the national defence plan and commands the Army of Yugoslavia (VJ) in times of war and peace and, as supreme military commander, has command responsibility of the police units of the Federation and of the Republic who are at times of immediate danger of war or of state of war subordinated to the VJ. The indictment further states that, besides legal authority, President Milošević has a broad *de*

132 Article 7 (2) of the Statute of the Tribunal.
133 Article 7 (3) of the Statute of the Tribunal.

facto control of numerous federal and republic institutions, including the police forces of Serbia, which played a crucial part in the perpetration of criminal acts mentioned in the indictment.

Milan Milutinović, as President of Serbia and member of the Supreme Council of Defence and given his influence on numerous institutions that have contributed to or taken part in the perpetration of crimes, including the police forces of Serbia, is charged with crimes committed by all those subordinated to him within the VJ and the police forces.

Dragoljub Ojdanić, Chief of Staff of the Yugoslav Army, was indicted on the basis of his command responsibility for the 3rd Army, and, by the same token, for the Priština Corps (52nd Corps) that directly carried out offensives against several dozens of predominantly Albanian villages and towns beginning in late February and early March 1999. He is also charged with responsibility for police forces which, under the Armed Forces of the FRY Act, are at times of war or immediate danger of war, subordinated to VJ command.

As Minister of Internal Affairs of Serbia, Vlajko Stojiljković who was duty-bound, according to the indictment, to provide for the maintenance of order and peace in Serbia, is held accountable for acts which his subordinates among the police forces of the Ministry of Internal Affairs of Serbia perpetrated in the Province of Kosovo since January 1999.

Deputy Prime Minister of the FRY, Nikola Šainović, as envoy of the President of the FRY for the Kosovo question, signed the Clark-Naumann Agreement in October 1998. The latter provided for the partial withdrawal of the FRY and Serb forces from Kosovo, the limited dispatch of new forces and the deployment of unarmed OSCE observers. As opposed to the others, Šainović is exclusively charged with individual criminal responsibility stemming from his position of Deputy Prime Minister and special envoy.

In concluding her statement relating to the publication of the indictment, Prosecutor Arbour said that the victims of the crimes in

Kosovo had the right to expect protection from each one of the accused individually.[134]

The indictment does not represent the final range of the charges against those indicted nor does it represent the final position of the Prosecution on the accountability of others for crimes committed in Kosovo. In June 1999, the Prosecution declared that it was considering an enlargement of the existing indictment to include charges for genocide. The investigation in Kosovo, which lasted from June to the end of November, is to continue in the year 2000.

4.3. Proceedings and Judgements

In the course of 1999, three judgements were pronounced, two by the Trial Chamber, against Zlatko Aleksovski and Goran Jelisić, and one by the Appeals Chamber, in the case of Duško Tadić.

On 7 May, Zlatko Aleksovski, a Bosnian Croat, one of the five in the case of "Kordić and Others", as commander of the Kaonik prison in Central Bosnia was sentenced to two and a half years of imprisonment for violation of the customs and laws of war. He was acquitted on charges of grave breaches of the Geneva Conventions because the prosecution was unable to prove the international character of the armed conflict between Croats and Moslems in Central Bosnia in 1993. Aleksovski was sentenced on the grounds of individual responsibility for ordering, aiding and abetting the physical and mental mistreatment of Moslem prisoners in Kaonik. Following the pronouncement of the verdict, Aleksovski was released from prison as he had been in custody more than two and a half years, the period for which he was sentenced. The prosecution filed an appeal against this judgement.

Duško Tadić, a Bosnian Serb from Prijedor, was sentenced to 25 years of prison by the judgement rendered by the Appeals Chamber

134 Press statement of 27 May, 1999 (http://www.un.org/icty/pressreal/p404e.htm).

of the Tribunal on 11 November. Thus ended the trial of the first accused to arrive in the Hague and the first person to be tried for war crimes before an international court since the Nuremberg trials.

The final judgement pronounced in the Tadić case will mostly be remembered for the precise criteria established in determining the international character of an armed conflict and in defining the status of victims as protected persons under the Geneva Conventions. The prosecution had appealed against the part of the Trial Chamber's judgement that the armed conflict between Bosnian Serbs and Moslems in Prijedor following the official withdrawal of the Yugoslav Army from Bosnia and Herzegovina could not be considered an international conflict because it was not proven that the then armed forces of Republika Srpska had been acting as a *de facto* organ or agent of the FRY. As a result of that decision, which implied there were not sufficient grounds for violating the Geneva Conventions, the Trial Chamber acquitted Tadić of five charges in his indictment.Taking an opposite view from that of the Trial Chamber, the Appeals Chamber established the existence of international conflict in the Prijedor region, lasting from May to December 1992, and asserted that its victims were entitled to the status of "protected persons" under the Geneva Conventions. The final position of the Tribunal was that following the official departure of the Yugoslav Army from the territory of Bosnia and Herzegovina on 19 May, 1992, the authorities in the FRY continued to aid the armed forces of the Bosnian Serbs and to take part in planning their military operations. In the opinion of the Appeals Chamber FRY authorities exerted control over the political and military authorities of Republika Srpska in the period between 1992 and 1995.

Bosnian Croats Vinko Martinović "Štela" and Mladen Naletilić "Tuta", have also been accused of grave breaches of the Geneva Conventions. It would seem, in their case too, that the intention of the prosecution is to prove, that the Croatian authorities controlled units involved in the conflict in Bosnia and Herzegovina, in other words,

the existence of an international conflict in the Mostar area, where the indicted had operated.

The Trial Chamber in the case of Goran Jelisić, a Bosnian Serb, rendered a judgement on 19 October, and sentenced him to 40 years of imprisonment on 14 December. Having pleaded guilty to all charges in the indictment, except the charge for genocide, Jelisić was convicted on 31 counts for crimes against humanity and the violation of customs or laws of war. The only charge on which he was acquitted relates to genocide, where the Trial Chamber established that the Prosecutor had not proven the existence of "genocidal intent", as an essential subjective element of responsibility for this sort of crime. In addition to assessing Jelisić's behaviour as being "discriminatory and repugnant", the Trial Chamber judged it to be "opportune and inconsistent." Thus the final view was that he did not act as a person who consciously intended to destroy, in whole or in part, a national, ethnic, racial or religious group as such. In this case, the Tribunal imposed a prison sentence so far unprecedented in terms of its severity as far as the Tribunal's jurisprudence is concerned (the most severe possible penalty is life imprisonment). The defence has appealed the decision on the grounds that it was excessively severe.

The proceedings against the Bosnian Croats Dario Kordić and Mario Čerkez (crimes committed in the Lašva River Valley) and Zoran Kupreškić and others (crimes committed in the village of Ahmići) were still in progress at the end of 1999, while General Tihomir Blaškić is awaiting judgement by the Trial Chamber. Appeals have also been lodged in the cases of Bosnian Moslems sentenced for committing crimes in the Čelebići camp and of Ante Furundžija (crimes in the Lašva River Valley).

Proceedings for contempt of court have been initiated against the former defence attorney of Duško Tadić, Milan Vujin from Belgrade, and against his defence attorney, Branislav Avramović.[135]

135 Tadić claims that Vujin defended him in a way detrimental to the defendant, called

Other persons arrested in 1998 and 1999 have had their initial appearances before the judges of the Tribunal and their trials are expected to start in 2000. The Tribunal has decided, for the sake of increasing the effectiveness of the proceedings (repeated testimonies are a particular problem), that all those who have been indicted on the basis of a joint indictment will in future be tried of joint proceedings. How long the detainees will have to wait for the arrest of those who are still at large is hard to tell.

In the case of Stevan Todorović, who was, according to the official version of the event, arrested on 27 September, 1998 in a SFOR operation in northern Bosnia, a court determination as to the request for a review of the legal grounds for his arrest is still pending. Todorović claimed that four armed persons had kidnapped him in Zlatibor, Serbia, that he had been taken to Bosnia over the Drina River and handed over to the SFOR troops, who subsequently surrendered him to the Tribunal. If the truth of Todorović's allegations is proven, the Tribunal's determination, though still not pronounced by the end of 1999, will be of an essential importance for future practice.

4.4. Requests for the Instituting of Proceedings

In May 1999, the prosecution of the Tribunal has been seized by three motions for instituting proceedings against NATO for breaches of international humanitarian law while intervening in Yugoslavia: one by a delegation of the *European Committee for the Protection of Yugoslavia and the Serb National Interests,* based in Paris, the second by a group of lawyers from several countries, headed by the professors of the *Osgood Hall Law School of York University* from Toronto (the school where Arbour had taught before becoming judge) and third the independent request of the Greek lawyer Alexander Lykourezos.

Prosecutor Arbour did not comment on those motions nor on the numerous accusations against NATO for violations of international humanitarian law during the NATO intervention in the FRY. On one

upon witnesses to give false testimonies and not to testify about circumstances susceptible of pointing to the responsibility of other persons. Simić and Avramović are also charged with inadmissible influence on witnesses (threats and bribery).

occasion she had reminded NATO leaders of their obligations under international law, and particularly of their command responsibility to prevent and punish violations of law. She stated that the NATO member States had voluntarily subjected themselves to the Tribunal's jurisdiction when launching military operations in the FRY. According to the ICTY Deputy Prosecutor Blewitt, "the Tribunal had taken over jurisdiction over NATO from the moment when the first bomb was dropped on Yugoslav territory."[136] Until the end of 1999, it was not known whether any investigation had been undertaken in that direction.

The new Chief Prosecutor Carla Del Ponte claimed that she would ask the Security Council to take more resolute action against FRY and Croatia for refusing to co-operate with the Tribunal. The Security Council has already been informed on four occasions of FRY's refusal to hand over indicted persons residing on its territory, particularly Mrkšić, Šljivančanin and Radić, whereas Croatia was cited for refusing the Tribunal's jurisdiction for operations "Flash" and "Storm". As opposed to these two countries, Del Ponte stressed that the authorities of Republika Srpska were showing "encouraging signs of co-operation with the Tribunal."[137] She also announced that the investigations in progress in Kosovo were also to include an investigation of the KLA's responsibility for the commission of crimes against Serbs and Roma.[138]

4.5. Reactions in the FR of Yugoslavia

The conflict in Kosovo and Metohija, along with the ensuing NATO intervention and the indictment of the FRY President and four senior officials, have only deepened official Yugoslavia's and Serbia's existing negative attitude *vis a vis* the Tribunal. Dragoljub Janković, Minister of Justice of the Republic of Serbia, "reminded the public of the FRY's well-known position in relation to the Hague Tribunal, which had been illegally established by a Security Council Resolution,

136 *Tribunal Update* 124, 3–8 May, 1999.
137 *Danas,* 23 December 1999, or http://www.un.org/icty/pressreal/.
138 *Ibid*.

stressing that the practice upheld by that institution to-date has made it abundantly clear that it was set up to act against the Serbs and Serbia."[139]

According to that logic, the NATO intervention in Yugoslavia was but further confirmation of Western hostility to the Serb people and strengthened the official theory of the role of Serbs as victims in the struggle against the "new world order".[140] Mirjana Marković, the spouse of the FRY President and Director of the JUL Directorate, also adopted an extreme position, attributing to the Tribunal a special place among the aggressors:

> "The strategists of colonisation manifested their wrath in setting up the Tribunal in the Hague, which is a form of legalising and institutionalising retaliation against all those who oppose colonisation and the humiliation of man at the end of the 20th century. The Tribunal in the Hague is the same as was the Gestapo in the forties, while their prisons are sophisticated substitutes for crematoriums and concentration camps, in which the superfluous nations, races and classes were finished off. Once again, the representatives of the superfluous, disobedient part of the world are to meet their end in the same way."[141]

The official objections to the Tribunal boil down to three basic views:

1) The Hague Tribunal is exclusively a political institution;
2) The Tribunal has been established for bringing charges against Serbs alone;
3) A patriot defending his country cannot be held accountable for crimes.

---

139 *Politika,* 25 May 1999.

140 "The Hague Tribunal is a means for establishing a new global order to which end old legal norms are being deregulated and destroyed", Milorad Ekmečić (Member of the Serbian Academy of Sciences and Arts), "Civilizovano ukidanje Srba", (Civilised Abolishment of Serbs), *Politika,* 21 May, 1999.

141 *Politika*, 21 December 1999.

The Government of the FRY stated:

> "The Hague Tribunal is in no way an institution of law and justice but is merely an instrument for executing orders coming from Brussels and Washington... It is but the continuation and intensification of the well-known policy of satanising and accusing our entire nation. It is an attempt to proclaim victims as culprits and conceal the responsibility of the NATO leaders for committing genocide against the people of our country."[142]

The mass media in Serbia have failed to publicise or comment on the substance of the Tribunal's indictment which has been rendered public and transmitted, among others, to the Ministry of Justice of the FRY. In Montenegro, the independent daily *Vijesti* published on 30 May the indictment in its integral form. In Serbia, the indictment has not been published even in its abbreviated form. This was hardly to be expected given the Public Information Act.

The participants in the international symposium on the legal aspects of the aggression against the FRY, organised by the Bar Association of Serbia and the Association for Criminal Law and Criminology of Yugoslavia under the auspices of the Ministry of Justice of the Republic of Serbia, jointly concluded to "resolutely reject, as legally groundless, the indictment brought by the *ad hoc* Tribunal in the Hague against senior officials in the FRY and RS."[143] On that occasion, Zoran Knežević, Minister of Justice of the FRY, referred to the Tribunal as being "a legal inadequacy that has always been nothing more than an instrument by which the designers of the new world order wish to attain their goals".[144]

---

142 *Politika,* 28 May 1999.

143 The presence of representatives of the Greek lawyers to the meeting lent to it an international character. Milan Vujin, President of the Bar Association, opened the gathering. As former defence attorney of Duško Tadić, Vujin was at that being tried before the Tribunal for contempt of court (*Politika*, 29 May, 1999).

144 *Politika,* 29 May, 1999.

According to a statement by Goran Matić, Federal Minister of Information, "Yugoslavia agrees that the International Criminal (sic!) Court in the Hague[145] should decide about the situation in Yugoslavia but America does not recognise that court but insists on the Hague Tribunal, which is in fact Madeleine Albright's, James Rubin's and Wesley Clark's private court for all those who do not share their views... The Hague Tribunal is a form of US inquisition against those who are in its disfavour and whose sovereignty and legal order it wishes to destroy."[146]

However, the refusal by official circles to accept the jurisdiction of the Hague Tribunal did not prevent the FRY Governmental Committee for the Collection of Data about Crimes Committed against Humanity and International Law, from addressing, in April, a letter to the Chief Prosecutor expressing "its surprise that so far nothing had been undertaken to prosecute the perpetrators of crimes committed by the NATO aggressor during the continued military action against Yugoslavia".[147]

The mood of the government media changes when it comes to covering the trials of Croats and Moslems.[148] They report, on a regular basis and in detail, about developments in the relationship between Croatia and the Tribunal, which is hardly an indication of the FRY's failure to recognise that institution.[149] Along with the news item on the preparation of indictments against three generals of the Croatian Army for crimes committed against Serb civilians during the "Storm" operation, published by the *New York Times* on the basis of unpublis-

145 The Minister probably refers to the International Court of Justice before which the FRY has accused NATO members of genocide and other acts related to the intervention against the Yugoslavia.

146 *Politika* and *Vreme,* 29 May, 1999.

147 *Politika,* 3 April, 1999 .

148 Deputy Chief Prosecutor Graham Blewitt's statement that the prosecution intended to appeal in the case of the previously acquitted Zejnil Delalić is presented under the title of "Makeup Exam of Justice for Serbs." (*Politika,* 30 May, 1999).

149 "The Hague Tribunal is also interested in Tuđman", *Politika,* 19 February, 1999, "Croat Shilly-shallying about Crimes against the Serbs — the truth has surfaced", *Politika,* 30 May, 1999.

hed Tribunal documents and reported by all the Yugoslav media,[150] *Politika* printed the following titles "140 witnesses questioned in the Hague", "Indictments expected against a large number of Croat generals", "Will the allegations of Canadian officers as to the unselective shelling of Knin be acknowledged". Given the guarantees offered by the Croatian authorities that Mladen Naletilić "Tuta" will be handed over to The Hague it would appear that the Croatian State leadership has finally "come to its senses" and agreed to co-operate with the Tribunal.[151]

Unlike the regime in Serbia, the Montenegrin authorities have expressed their readiness to fully co-operate with the Tribunal. In December 1999, the Montenegrin State Prosecutor Božidar Vukčević started an investigation against Veselin Vlahović, a FRY citizen from Nikšić, on the grounds that he had committed war crimes against the civilian population in Sarajevo in 1992–93, punishable under Article 142 of the FRY Penal Code. Vlahović was at the time serving a prison sentence for robbery and violent conduct. Prior to that he had been charged by a court in Sarajevo on the basis of charges brought against him by the "Children's Embassy" for crimes committed during the war.[152] On 15 November, the government of Bosnia and Herzegovina demanded from FRY Vlahović's extradition.[153] Dragan Soć, Montenegrin Minister of Justice, stated his readiness to surrender Vlahović if such a request is made by the Tribunal. At the end of 1999, it still remained uncertain where and when Veselin Vlahović's trial would begin.

Independent media have reported regularly on all statements emanating from the Tribunal, but as a rule have not commented on them. Thus, the independent press reproduced in its headlines parts of the first official statement to the press by the newly appointed Chief Prosecutor, Carla Del Ponte. The latter drew much attention, *inter alia*

150 *Beta,* 28 March, 1999.
151 *Politika,* 5 September, 1999.
152 *Glas javnosti,* 10 December, 1999.
153 *Monitor,* 26 November, 1999.

on account of Mirjana Marković's comments and the announcement that new investigations would be undertaken in relation to high officials of the warring sides in the wars in Bosnia and Herzegovina and Croatia, as well as against the KLA.

All Yugoslav media reported in 1999 on the capture of accused. Local politicians were embittered at the fact that out of the eight persons who arrived this year in the ICTY prison in Scheveningen, as many as seven were Serbs from Republika Srpska. The independent media have covered such reactions without any comment while the official media predictably reacted in a very radical fashion. Their attacks focused in particular on the sealed indictments since they "solely concern Serbs" and on the mode of making arrests, especially in the case of General Talić.[154] There were similar reactions to the arrest of General Galić.[155]

The charges of contempt of court brought against Milan Vujin, president of the Serbian Bar Association and Dušan Tadić's former defence counsel, caused a public debate as to Vujin's defence counselling, the fees paid to lawyers in the Hague, and the existence of an official list of "acceptable" defence attorneys drawn up under the auspices of the FRY Ministry of Foreign Affairs and allegedly imposed on indicted Serbs following their arrest.[156] The independent media reported statements of several Belgrade lawyers who claim that such a list does in fact exist, as well as that "the first to go to the Hague were attorneys who did not fulfil the conditions prescribed by the Bar Association of Serbia as they had no international experience and had no knowledge of foreign languages."[157]

154 In respect of this, *Politika* for several days running described reactions as the "Twilight of International Law" (27 August, 1999), "An Act of Lawlessness and of the Absurd Persecution of the Serb Nation", "An Attack on RS, its Army and People (28 August, 1999).

155 "General Stanislav Galić Arrested By Classical Terrorist Methods", *Politika,* 21 December, 1999.

156 *Blic,* 27–28 February, 1999.

157 *Blic,* 13–14, 16 and 27–28 February, 1999.

The average citizen in Serbia does not dispose with basic information about on-going cases at the Hague Tribunal and has no notion of the proceedings conducted there. The situation is different in Montenegro where the state television, the dailies *Vijesti* and *Pobijeda* the weekly *Monitor* provide detailed information on the work of the Tribunal.

At one point, the citizens of Belgrade were able to watch filmed material and inform themselves of the proceedings before the Tribunal, hear the testimonies of witnesses etc. This possibility was offered by *Studio B*, a local TV station which used to broadcast this news late at night. However, this is no longer the case. The difficult situation in which the independent media in Serbia find themselves has also affected coverage of the Tribunal's work.

Unlike the non-governmental organisations, some of which have done their utmost to inform the public and experts of the work of the Tribunal, the opposition political parties are inclined to feel that the issue of the Hague Tribunal is slippery ground for them to tread. On the other hand, during numerous demonstrations staged by the opposition Alliance for Change in the latter part of 1999, some speakers stressed the need for co-operation with the Tribunal; such statements were met with applause by those attending.

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, *Sl. 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, 58/98.

— 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 Decree on the Implementation of the Criminal Procedure Act during the Sate of War, *Sl. list SRJ,* No. 21/99.

— The Decree on Travel Restriction of all persons subject to military service, *Sl. list SRJ,* No. 16/99, 36/99

— 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

— 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 Alphabet, *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 Decision Determining Areas for the Assembly of Citizens of Belgrade, *Sl. list Grada Beograda*, No. 17/92.

— The Decree on Internal Affairs during the Sate of War, *Sl. glasnik RS,* No. 17/1999.

— The Decree on Personal Identification Card During the State of War (*Sl. glasnik RS,* No. 17/1999.

— The Decree on the Assembly of Citizens during the State of War, *Sl. glasnik RS,* No. 17/1999.

— The Decree on the Permanent and Temporary Residence of Citizens, *Sl. glasnik RS,* No. 17/1999.

— 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 Health Insurance Act, *Sl. glasnik RS*, No. 18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 48/98, 54/99.

— The Health Protection Act, *Sl. glasnik RS*, No. 17/92, 26/92, 50/92, 53/93, 67/93, 48/94, 25/96.

— 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 Local Self-Government Act, *Sl. glasnik RS*, No. 48/99.

— 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 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.

— 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 Regulation on the Conditions and Way of Use of Means of Coercion, *Sl. glasnik RS*, No. 40/1995.

— The Regulation on the Registration of Trade Union Organisations in the Register, *Sl. glasnik RS*, No. 6/97–115, 33/97.

— The Retirement and Disabled Persons Insurance Act, *Sl. glasnik RS*, No. 52/96, 48/98.

— 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 Unique Registration Numbers of Citizens Act, *Sl. glasnik RS*, No. 48/94.

— The University Act, *Sl. glasnik RS*, No. 20/98.

Republic of Montenegro

— The Act on Montenegrin Citizenship, Sl. list RCG, No. 41/99.

— The Act on Social Welfare and Protection of Children, *Sl. list RCG,* No. 45/93, 27/94, 16/95.

— 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 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.

— The Decree on the Care for Displaced Persons, *Sl. list RCG,* No. 37/92.

— The Decree on the Register of Political Organisations, *Sl. list RCG,* No.25/90, 46/90.

— The Decree on the Registration of Trade Union Organisations, *Sl. list RCG,* No. 20/91.

— 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, 27/91, 28/91, 48/91, 8/92, 17/92, 3/94, 27/94, 16/95, 22/95.

— The Enforcement of Penal Sanctions Act, *Sl. list RCG,* No. 25/94, 29/94.

— The Family Law, *Sl. list SRCG,* No. 7/89.

— The Health Protection and Health Insurance Act, *Sl. list RCG*, No. 39/90, 21/91, 48/91, 17/92, 30/92, 58/92, 6/94, 27/94, 30/94, 16/95, 22/95, 23/96.

— The Internal Affairs Act, *Sl. list RCG,* No. 24/94.

— The Labour Relations Act, *Sl. list RCG,* No. 29/90, 42/92, 28/91, 16/95, 21/96.

— The Pardon Act, *Sl. list RCG,* No. 16/95.

— The Penal Code, *Sl. list RCG,* No. 42/93, 14/94, 27/94.

— 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.

Appendix 3

Regulations of the UN Mission in Kosovo

— Regulation on the Authority of the Interim Administration in Kosovo, UNMIK/REG/1999/1, 25 July 1999.

— Regulation on the Currency Permitted to be Used in Kosovo, UNMIK/REG/1999/4, 2 September 1999.

— Regulation on the Establishment of the Customs and Other Related Services in Kosovo, UNMIK/REG/1999/3, 31 August 1999.

— Regulation on the Establishment of the Kosovo Protection Corps, UNMIK/REG/1999/8, 20 September 1999.

— Regulation on the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property, UNMIK/REG/1999/10, 13 October 1999.

CIP — Каталогизација у публикацији
Народна библиотека Србије, Београд
341.231.14(497.1)"1999"

HUMAN Rights in Yugoslavia 1999 : Legal Provisions and Practice in Federal Republic of Yugoslavia Compared to International Human Rights Standards / [editor Vojin Dimitrijević]. – Belgrade : Belgrade Centre for Human Rights, 2000 (Belgrade : Dosije). – 351 str. ; 20 cm. – (Series Reports / [Belgrade Centre for Human Rights] ; 3)

Tiraž 500.
ISBN 86–7202–030–8
1. Dimitrijević, Vojin
a) Prava čoveka – Jugoslavija (SR) – 1999
ID=82658060