

Human and Minority Rights in the Life-Cycle of Ethnic Conflicts

The Role of Human and Minority Rights in the Process of  
Reconstruction and Consolidation for State and Nation-Building  
- the Case of Serbia

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# 1. Introduction

The Republic of Serbia went, after the dissolution of Yugoslavia, through several transformations of its State set-up, from federation to the loose confederation with Montenegro. After the secession of Montenegro in 2006 and in the adoption of the new Constitution in the same year it became a fully independent state.<sup>1</sup> The role of Serbia in conflicts on the territory in former Yugoslavia was multiple. The regime in Serbia was one of the main creators and inspirators of conflicts, as well as of its possible solutions: it could influence the intensity of the conflicts, their duration and had a decisive role in defining of their character and nature.

## 1.1.1 The Eve of the Conflict - the Events in the Communist Party of Serbia - Constitutional Changes (1974-1989)

The institutional crisis in Yugoslavia started already in 1974 with the changes in the constitutional position of the federal units, the limitation of the competences of central authorities, the strengthening of the governments of the constituent republics and the creation of "national monism".<sup>2</sup> The conflicts in the former Yugoslavia were the results of numerous unsolved questions of the Yugoslav federation, for which the then state ideology (self-managing socialism) was unable to find proper solutions.<sup>3</sup>

As a system based on such ideology it did not correspond to the realities of the strengthening of nationalism, which swallowed or destroyed the feeble federal institutions of the state community, as it existed at that time. The

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<sup>1</sup> The new Constitution of Serbia was adopted and confirmed at the referendum held on 28 and 29 October 2006. For the constitutional arrangements in Serbia and other post-Yugoslav states see Dragan Đukanović, *Institucionalni modeli, demokratizacija post - jugoslovenskih država*, (Belgrade 2007), 65.

<sup>2</sup> The term used by Nenad Dimitrijević to describe the specificity of systemic arrangements in the 1974 constitution of Yugoslavia which paved the way for the strengthening of nationalisms in a communist country like the Socialist Federal Republic of Yugoslavia, Nenad Dimitrijević, *Slučaj Jugoslavija, socijalizam, nacionalizam, posledice*, (Belgrade 2001), 61.

<sup>3</sup> See Nenad Dimitrijević "Samoupravljanje kao utopija u nacionalističkom ključu: Jugoslovenski socijalizam" in *Slučaj Jugoslavija, socijalizam, nacionalizam, posledice*, (Belgrade 2001), 51-66.

cohesive factor of the national identity of ethnic communities in Yugoslavia - nationalist populism - started to replace the hollow ideal of the socialist community and thus provided space for nationalist leaders who used it to grab power. The constitutional changes in Serbia in 1989 and the adoption of the new Constitution in 1990 had the double aim of abolishing the constitutional autonomy of Vojvodina and Kosovo and aimed to reduce the competences of the Federation, as well as to strengthen the power of the republican government in Belgrade. Such legal arrangements were the result of ethnic mobilisation<sup>4</sup> and the institutionalisation of the dominant nationalist attitudes of the political elite and intellectuals in Serbia at that time.<sup>5</sup>

### 1.1.2 War Export Made in Serbia (1989-1991)

In the period between May and December 1990 the first multi-party elections in the republics of the Yugoslav Federation were called. The national question and the definition of national interests was the dominant issue in the program of political parties, including the self-styled communists. The voters primarily voted for national parties in all republics, irrespective of their name. Slobodan Milošević changed the name of the League of the Communists of Serbia into the Socialist Party of Yugoslavia and won the December 1990 election easily, especially in his personal capacity as a presidential candidate. The best illustration of the prevailing attitudes was the success of the League of Communists in Montenegro, which reverted to nationalism and won the election in spite its name, irrespective of the strong anti-communist sentiments that prevailed in the whole country.

After the electoral victory in 1990, which was partly made possible by the lack of coordination of the anticommunist forces, including many political

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<sup>4</sup> On ethnic mobilisation in Serbia and its causes, character and effects see in the MIRICO, W. P. 3 report of Vesna Pešić: *Ethnic mobilisation in Serbia*.

<sup>5</sup> On the role of intellectuals in Serbia during the Yugoslav crisis see Jasna Dragović - Soso, *"Spasioci nacije" -intelektualna opozicija Srbije i oživljavanja nacionalizma*, (Belgrade 2006).

parties that were essentially nationalist, Slobodan Milošević took over all levels of power in Serbia, including armed forces.

The preparations for armed conflicts in Serbia took place at several levels. On the one hand, it was the media campaign aimed at the paroxysm of national emotions in Serbia.<sup>6</sup> On the other hand police forces and the units of territorial defence strengthened the Yugoslav People's Army (JNA), which instrumentalised, as well as the state security services of Serbia: their aim was to provoke micro-conflicts in the area inhabited by members of the Serbian ethnic corps, including organised diversions, logistical assistance, etc.<sup>7</sup>

At the same time, in the Serbian public opinion the question was raised of the protection of the legitimate interests of the members of the Serbian nation in other republics to live in one state with the "mother state", the Republic of Serbia. In the process of transforming hate-speech into hate-deeds the decisive contribution was above all given by the very influential state media (other media did not exist in a socialist state). The beginning of the war was accompanied by the strengthening of xenophobia and ethnic intolerance in Serbia proper. The propaganda of war and hate-speech intended to instrumentalise citizens and to separate them into loyal and un-loyal ones, into patriots and traitors, Serbs and non-Serbs or bad Serbs, etc.

### 1.1.3 "Get Rich or Die Trying" and the Right to Non-violence (1991-1996)

Between 1991 and the signature of the Dayton-Paris agreement Serbia took part in two wars: one on the territory of Croatia and the other on the territory of Bosnia and Herzegovina. The role of Serbia in these wars was military, financial and political.<sup>8</sup> One of the main features of these conflicts was the widespread violation of the rules of humanitarian law and the lack

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<sup>6</sup> There are many publications on the role of the media in the wars in the former Yugoslavia. One of them is an early book by Mark Thomson, *Forging the War: Media in Serbia, Croatia, Bosnia and Herzegovina*, (University Of Luton Press; Rev. edition 2003).

<sup>7</sup> On the roll of the secret services in provoking conflicts in area of the former Yugoslavia see Miloš Vasić - Filip Švarn, "Zadah zločina, paravojne formacije 1989-2000" in Sonja Biserko (ed.), *U trouglu državne sile-vojska, policija, paravojska*, (Belgrade 2001), 42-56.

<sup>8</sup> On the role of Serbia in the wars in Croatia and Bosnia and Herzegovina see Sonja Biserko (ed.), *Milosevic vs. Yugoslavia* (Belgrade 2004).

of readiness of national institutions to prosecute and punish the perpetrators of such violations.

Although there were no military operations on the territory of Serbia, the presence of war in the immediate environment, the participation of members of military, para-military and police forces in these wars led to a situation characterised by the suppression of the independent media, the persecution of political opponents and the promotion of conspiracy theories as the main explanations for the conflict.<sup>9</sup> Aggressive nationalism and the high level of xenophobia and lack of tolerance were manifested in the treatment of minorities - the attitude toward the latter had the character of low-level conflict in Sandžak<sup>10</sup> or attempts at ethnic cleansing in Vojvodina (e.g. the expulsion of some Croats).<sup>11</sup>

The examination of the nature of these conflicts sheds a new light on the motivation for the participation in this war. Behind the slogans of the defence of Serb inhabitants in other republics there was in reality a widespread system of plunder, unlawful acquisition of immense natural resources, arms and oil deals among all parties in the conflict. This led to the enrichment of criminals close to the Serbian secret services, of the police and army generals and the political leadership of Serbia. At the same time, as a response to aggressive nationalism in the first public demonstrations against Slobodan Milošević<sup>12</sup> developed into an authentic movement of peace activists and independent intellectuals, which coincided with the formation of first informal groups and non-governmental organisations. These organisations, although few in number, signified the beginning of the civil society in Serbia, which was heretofore too weak, not only in communist times but also before the Second World War. The main feature of these movements was their anti-nationalism and their pacifist

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<sup>9</sup> For the predominance of conspiracy theories in Serbia see Jovan Bajford, *Teorije zavere*, (Belgrade 2006).

<sup>10</sup> Human rights in Sandžak in the nineties see Semiha Kačar (ed.), *Svjedočenja iz Sandžaka*, (Novi Pazar 2002).

<sup>11</sup> See the indictment of Vojislav Šešelj (IT-03-67), before the International Criminal Tribunal for the Former Yugoslavia (ICTY) at <http://www.un.org/icty/indictment/english/ses-ind070625.pdf>

<sup>12</sup> The first massive opposition gathering against Milošević took place on 9 March 1991. It was followed by protests of students and opposition parties in 1992.

activity; this will remain an important characteristic of the Serbia society until the democratic changes in 2000.<sup>13</sup>

#### 1.1.4 The War Comes Home to Roost (1996-1999)

After the signature of the Dayton-Paris agreement, which signified the end of the war in Bosnia and Herzegovina, there have been no large conflicts involving post-Yugoslav actors.<sup>14</sup>

In Serbia the grave economic and social crises caused by the expenses of war and damage originating in international sanctions resulted in wide dissatisfaction of the population with the rule of Slobodan Milošević. At the local elections, held in November 1996 the opposition coalition "Together" (Zajedno)<sup>15</sup> gained power in more than 30 cities in Serbia. The acquisition of power on the local level symbolically represented a great victory of the democratic opposition and was an impetus for the strengthening of local democratic institutions and the civil society. However, the low intensity conflict which had lasted in Kosovo since 1990 threatened with an escalation. The lack of readiness of the authorities to negotiate with ethnic Albanians in the province and to offer the latter meaningful concessions, together with political threats of political violence manifested by the massive presence of the army and the police, made a military conflict unavoidable. In 1997 and 1998 the conflict was manifested by armed actions of a small number of armed groups of Albanians, but because of the

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<sup>13</sup> On the formation and character of non-governmental organisations in Serbia see Igor Bandović, "The Role of Non-governmental Organisations and their Impact on Good Governance in Serbia" in Wolfgang Benedek (ed.), *Civil Society and Good Governance in Societies in Transition* (NWW and Belgrade Centre for Human Rights, Belgrade, Vienna, 2006), 185-209.

<sup>14</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement was reached in November 1995, at the Wright-Patterson Air Force Base near Dayton, Ohio in November 1995, and formally signed in Paris on 14 December, 1995. It was an arrangement to cease hostilities in Bosnia and Herzegovina and was guaranteed by the presidents of Bosnia and Herzegovina, Croatia and Serbia. For more about the topic and the role of Serbia in this process see Vidan Vidanović, Bojan Đurić, „Conflict settlement in the Former Yugoslavia: The Role of Serbia in the Peace Building Process“, MIRICO, Serbia Report, paper presented at the Sarajevo workshop on 12 July 2007, 23.

<sup>15</sup> This coalition consisted of three different political parties: The Serbian Renewal Movement (Srpski pokret obnove) belonging to the political rights, the moderately nationalist Democratic Party (Demokratska stranka) and The Civic Alliance of Serbia (Građanski savez Srbije) an anti-nationalist and civically oriented political group.

unselective use of force and police brutality it quickly spread among the Albanians and developed into an armed uprising for the independence of Kosovo. In spite of the attempts of the international community to intervene<sup>16</sup> all efforts to prevent the escalation and widening of the conflict were unsuccessful. As a response to the events in Kosovo, NATO started a military campaign against Serbia on 24 March 1999, manifested mainly in aerial strikes on targets in Serbia. The bombing finished on the 12 June of the same year after the signature of the agreement for the withdrawal of the Serbian army and police from Kosovo and the deployment of NATO forces on the territory of the province.

#### 1.1.5. The Attempts at Post-conflict Democratic Consolidation 2000-2003

After the military intervention and the state of emergency of Serbia conditions were right for the consolidation of democratic forces in Serbia. In the last period of his rule, Slobodan Milosevic could not rely any more on electoral support and did not hesitate to pass legislation against all sorts of his political opponents, manifested in legislative acts, such the laws on the University and the media and a draft law on terrorism. The oppression of the regime became naked and not hidden behind formal reasons. It was also accompanied by a number of political assassinations of Milošević's opponents, such as the murder of the editor Slavko Ćuruvija and the former President of Serbia Ivan Stambolić, and the attempt on life of Vuk Drašković, one of the main opposition leaders in the early times of Milošević's rule. The united opposition, assembled in a coalition under the name of the "Democratic Opposition of Serbia" (Demokratska opozicija Srbije- DOS), together with non-governmental organisations and with the support of some non-state media, defeated Slobodan Milošević in the elections for the President of the Federal Republic of Yugoslavia, held on the 24 September 2000. After this defeat the docile Constitutional Court of Yugoslavia failed to recognise the result and attempted to hold a second

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<sup>16</sup> The talks in Rambouillet began on February 6, with the then NATO Secretary General Javier Solana negotiating with both sides. They were finished on 19 March 1999 with no agreement reached.

round of elections. This caused a wide wave of civil disobedience and resulted in massive demonstrations of 5 October 2000, when the crowd took over some of the most important state institutions.

After the riots in October and the elections in December 2000, which resulted in the defeat of the parties supporting Milošević, the Democratic Opposition of Serbia was affected by disagreements on future policies. The way a new conflict was prevented in the south of Serbia strengthened the democratic credibility of the authorities in Serbia in the eyes of the international community but the discrepancy of political options within DOS became more and more visible. One side was exemplified by the newly elected president of Yugoslavia, Vojislav Koštunica, who was on the side of political continuity with the previous regime and tried to stop or postpone the necessary personal and legal acts in favour of democratic reforms. On the other side was the new government of Serbia and its prime minister Zoran Đinđić, who advocated quick reforms. These differences blew into an open conflict after the arrest and surrender of Slobodan Milošević to ICTY on 28 June 2001.

The regime change and the democratic atmosphere in the society brought a new quality to the enjoyment of human rights and widened the space for liberty. The reintegration of Serbia into international community was manifested in the admission to the United Nations, return to the OSCE and the membership in other international organisations. It assisted in the realisation of human and minority rights in accordance with international standards. The adherence of Serbia to European traditions was recognised in 2003 when the country was admitted to the Council of Europe.

### *1.2. Hypotheses, Methodology, Aims and Structure*

The idea of human and minority rights in Serbia was during the conflicts on the territory of Yugoslavia opposed to the organic understanding of the nation and with nationalism as its product. The explanation of the lack of acceptance of the human and minority rights in Serbia was linked with the general opposition to the notion of a citizen and his/her role in the state, as

defined in accordance with traditions of liberal democracy and predominant in modern democratic societies. The inability of the communist regime in Serbia to transform itself into a modern political community, based on the rule of law and the respect of human rights of all its citizens, freed the space for the strengthening of destructive nationalism and the impossibility to develop democratic structures during the nineties. The victims of this process were devastated democratic institutions, unreformed state agencies and a wrong national identity.

The acceptance of human and minority rights in the reconstruction of the Serbian society in the aftermath of the armed conflicts and the authoritarian regime depended on the bases of legitimacy of the democratic power. The weakness of the new authorities, which were partly constituted after October 2000, suggested initially that the inability to completely constitute democratic government, its supposed devotion to democratic procedures and its liberal understanding of the democratic system were threatened by the old bases of legitimacy, which were nationalism as a permanent and exclusive state ideology that found its support in the armed forces (the army and the police), criminalised state institutions (the judiciary and secret services) and the strong interference of the Serbian Orthodox Church in the affairs of the state. The latter institutions offered strong resistance to all reformist attempts to profoundly change the understanding of the state and the citizen, the system of values guaranteed and protected by the state and efforts to legitimise Serbia on the basis of liberal democracy and human and minority rights and freedoms.

Until the society in Serbia does not come to terms with its past through transitional justice the democratic setup the society will be unstable. Only with the legitimization of new values human and minority rights can become the constitutional component of the structure of the state and an independent value - not only the declarative façade of a new constitution. In order to understand the past of a society in conflict several truths are indispensable.

1. The judicial truth
2. The political truth

### 3. The moral truth

These truths permeate one another and, irrespective of different social actors recruited to determine them, they connect in a common discourse of a just society.

For the needs of this report, the methodological approach of the authors is based on the assumption that the materialisation of human and minority rights is possible in a society organised in a democratic system determined by the rule of law, political pluralism, the independent media, stable civil society and the separation of powers.

The structure of this report follows the main processes which determined the development of human and minority rights in Serbia. This influence was chronological and thematic. The chronology was important in order to encompass the roots of the conflict, the essential element for the understanding of the conflict and to determine their consequences. Thematically, it was necessary to interpret the conflict from the specific angle of understanding human and minority rights during the conflict and after its cessation.

#### *1.3. The Theoretical Framework*

The theoretical framework of this work was determined by the political, legal and sociological theories which offer answers to the following questions:

How to organise a post-conflict society when the conflict is over?

The new development of the international law of human rights and especially its specific discipline of transitional justice, which is concerned with specific problems of the heritage of the authoritarian and violent past, followed by crimes, state repression and disregard of human rights of citizens, provides instruments with the help of which it is possible to determine the problems of the burden of the past, but also to determine possible developments and the policies to serve the former. In addition to many authors advocating the use of the mechanisms of transitional justice

as necessary bases for the coming to terms with the past, <sup>17</sup> the use of transitional justice in countries experiencing changes after massive violations of human rights has become the policy of providing aid by UN agencies and other international organizations.<sup>18</sup>

Is it possible, and under which circumstances, to implement human and minority rights? What are the prerequisites for the realisation of such rights? Human rights are nowadays a component part of the legal systems of the majority of states. The question is to which extent human rights are respected in these states. The fact is that is still accorded a high place in a supreme legal acts of states, but it is also true that this fact does not determine the level of their enjoyment and protection and the level of their real importance in societies. There are conditions and prerequisites for the enjoyment of human and minority rights in a society. We believe that the topic of human and minority rights can only be raised in a democratic political system, determined by the rule of law, the separation of powers, political pluralism a certain level of democratic culture, the existence of free media, and a stable and mature civil society.

What is the ideal balance in which the rights of the majority and the rights of the minority will contribute to the achievement of a functional community?

The theoretical framework for the enjoyment of minority right shall be sought in those models which had succeeded in reconciling the rights of minorities and the rights of majority, taken in consideration the lessons of the recent conflicts, characteristics of the region and of the minorities living there and the tradition of the communist system in the treatment of this problem. In this sense we shall attempt to apply the model of Will Kymlicka<sup>19</sup> to the minority situation in Serbia and to determine possible

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<sup>17</sup> E.g. Neil Kritz, Juan Mendes, Jon Elster, Helmut Dubiel and Nenad Dimitrijević.

<sup>18</sup> Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies *The rule of law and transitional justice in conflict and post-conflict societies*, 3 August 2004,

<http://daccessdds.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>

<sup>19</sup> This model has been elaborated in his study "Zapadna politička teorija i etnički odnosi u Istočnoj Evropi" in Vil Kimlika- Magda Opalski (eds.), *Može li se izvoziti liberalni kapitalizam*, (Belgrade 2002), 27-108.

positive outcomes of this application and to be aware of its negative effects.

## 2. Concepts and Definitions Relevant for Human and Minority Rights Considering Reconstruction, Reconciliation, State and Nation-building

The development of the idea of human rights in Serbian society will be placed in a context determined by the normative framework for the protection of human and minority rights in Serbia in the phases of conflict which were determined at the beginning of this paper. Nevertheless, such determination will offer a limited insight into the problematique of human rights: We shall therefore, depending on the elements and the situation described, give also a wider historical explanation and follow the determinants of these phenomena to their real origins, as we see the latter. As an introduction to the historical context a cursory view on the events determining the formation of the Serbian state is helpful, including the character of that state, its relation to its citizens and the processes of modernisation taking place in that state.<sup>20</sup> The society in Serbia has accepted the ideas of liberal democracy and the enlightenment, contained in the bourgeois revolutions taking place in late eighteenth century. Owing to political instability, weak democratic institutions and frequent military conflicts in which Serbia took part, these ideas have never practically been implemented in Serbia; they did not have an evolutionary way of development leading to the foundations of a modern state.

The attitude towards the ethnic and religious minorities.- Intolerance of minorities was frequent in Serbia.<sup>21</sup> Traditional collectivism and the specific

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<sup>20</sup> A detailed overview of the historical events related to the modernisation in Serbia is contained in Latinka Perović, *Između anarhije i autokratije - srpsko društvo na prelazima vekova*, (Belgrade 2006.)

<sup>21</sup> One of the conditions for the recognition in Serbia as an independent state by the 1878 Berlin Congress was contained in the guarantees of the freedom of religion on its territory, which was necessitated by the presence of inter-religious violence. See more in Ženi Lebl, *Do „konačnog rešenja“ - istorija Jevreja u Beogradu 1521-1942*(Belgrade 2001), 134.

understanding of a state as an organic relation between the ethnically determined individual and the state as an ethnic whole contributed to the creation of a social atmosphere of intolerance, of the claims of ethnic minorities which was not conducive of the realisation of the rights of the minorities.

This period of the building of the state in Serbia will have a very strong influence on the problems facing the society in Serbia after the collapse of communism, which should be borne in mind when considering the prerequisites for enjoying the human and minority rights. The second period important for the topic of this paper is the communist past of Serbia. Namely, after the Second World War and the communist revolution, human rights as a protected and autonomous sphere belonging to each individual became factually impossible to realise. The new character of the state and its political system designing the "working class" as the bearer of the state sovereignty and the source of the legitimisation,<sup>22</sup> we got new types of collectivism that had an adverse effect on the understanding of human rights.

The third period was an attempt to create a nationalist state covering the periods before and after the conflict.

The fourth period defined as an attempt at democratic consolidation covers the time after democratic change in 2000 until recent developments concerning relevant topics of this research.

### *2.1. Identification and Definition of Actors in the Attempts to Advance Human and Minority Rights*

With the beginning of the institutional crisis of the society in Yugoslavia (see the phase of conflict and its duration) the main actors for the promotion of human rights have been dissidents in the communist regime, groups of intellectuals who advocated political pluralism and advocates of the

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<sup>22</sup> See Nenad Dimitrijević, *op.cit*, note 3, 57.

freedom of speech, groups of intellectuals who fought against the “verbal delict”.<sup>23</sup>

One can state today with a certain amount of certainty that only a small number of persons were really devoted to the idea of human rights and liberal political community.<sup>24</sup> This is especially visible in the pre-conflict period, when the intellectual elite took active part with the spread of nationalism and the hatred toward citizens of different ethnic origin. The responsibility of the majority of intellectuals for destructive nationalism leading to military conflicts is enormous. From the *Memorandum of the Serbian Academy of Science and Arts*, which is generally taken as a document of support for violent solutions of the conflict in Yugoslavia, to the appearance in media of the court intellectuals of Milošević.<sup>25</sup> Inspired by ethnic hatred, this coalition of academic circles in authoritarian power left a very limited space for action to rational, responsible and non-nationalist individuals.

The role of the state and state institutions was in the communist and the post-communist period adverse to the idea of human and minority rights. Whereas the reasons for such attitude in the communist period were evident and do not require wider explanations, the post-communist period requires a better description of the attitude of the state towards the question of human and minority rights.

The nature of the state in Serbia after the collapse of communism was built on nationalism, excluding all elements of liberalism. It was destructive, exclusive and aggressive. The authoritarian regime on which it was based stifled or tethered all forms of freedom which could be taken to jeopardise

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<sup>23</sup> The verbal delict is a specific criminal offence punishing speech and opinion which could “disturb the public”: see Vladan Vasilijević, Nebojša Popov (eds.), *Misao, reč, kazna* (Belgrade 1989).

<sup>24</sup> Nenad Dimitrijević mentions three important dissident groups: “Radical Marxism of the “Praxis” as a group of philosophers reposed on principle on the same premises with the communist party advocated as its own (self management of workers, world democracy and wide decentralisation, all of them expounded in Marx’s “early works”) another, numerically weaker, group was that of liberal intellectuals assembles around some artistic projects. Dimitrijević labels the third group as moderate nationalists where moderation was the care with which the members of this group dodged a conflict with the party. Nenad Dimitrijević “Reč i smrt - nacionalistička konstrukcija stvarnosti” in *Slučaj Jugoslavija, socijalizam, nacionalizam, posledice* (Belgrade 2001), 78.

<sup>25</sup> Such as Dobrica Ćosić, Brana Crnčević, Smilja Avramov, Mihajlo Marković and many others.

such power. Because of that, the concept of human rights was directly opposed to such rule and the regime of Slobodan Milosevic rightfully saw it as a danger to its unlimited power. The nature of such power in Serbia pointed out to several features of the Serbian state in relation to human and minority rights.

The state is not a guarantor of human rights: it is the main violator of rights of its citizens.

The state prevents political participations of minorities through unfavourable electoral laws.

The state developed specific methods of violating human rights and developed system of state and para-state structure which violate or endanger human rights.

The system of power of the state reflected in armed forces is dispersive, the power is possessed by the criminal underground, secret services, para-state military formations, army, police and the ruling political parties. They all take part in the common effort to render the rights meaningless, to negate human rights and to protect the regime and thereby protect their own position.<sup>26</sup>

The devolution of the authoritarian system was reflected in normative neutrality in the first part (until mid-nineties) when human rights are formally guaranteed but not respected to the normative negation of basic human rights (1996-2000).<sup>27</sup> Democratic changes have altered the nominal relation of the state toward human and minority rights. The policies of the powers is based on democratic principles, but the problem appears elsewhere - new authorities attempt to become the guarantor of human rights of citizens but the state institutions are devastated: many civil servants who violated human rights still work in these institutions.

The state undertakes affirmative normative action in the field of human rights through the abrogation of undemocratic laws and the adoption of new

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<sup>26</sup> More on the specific character of the state of Serbia as a para-state cartel in Nenad Dimitrijević, "Srbija kao nedovršena država", *Reč*, 69, 2003, 5-21

<sup>27</sup> The refusal to respect the electorate by the instrumentalisation of courts (1996) the Law on the University (1998) and the Information Act (1998) and the draft Act on terrorism.

liberal legislative acts: the procedure of adoption of such laws is slow owing to the obstruction of non-democratic political parties in the legislature.

The state is not systematically prosecuting the perpetrators of the criminal acts in the past and especially the violators of human and minority rights because of the large number of cases. This is due to numerous perpetrators and the length of period of violations (destroyed evidence, statute of limitations, etc) but above all due to fragility of the new power which has not succeeded to bring under control the formerly quoted sources of physical power and to reform state institutions.

Under the international community we think of various international actors which include universal and regional organisations, international non-governmental organisations, and foreign states. These actors played an important role during and after the conflict the position of the international community was mainly coherent and shared by everybody. It could be simply said that the original part of international community was to act as an arbiter in ethnic conflict and this role was played successfully in the early nineties. After the democratic changes in Serbia a new type of relation between Serbia and the international community was conditioned by the new political agenda: new authorities to open Serbia to the world. They wanted Serbia to join the Euro-Atlantic integrations etc. In this period the role of the international community was collective and reposed on assurances of understanding.

The coming to existence and the structure and programmatic principles and the ideological direction of political parties in Serbia and the parties of minorities influenced indirectly the importance of human and minority rights in Serbia in the early nineties. The activity of the majority of such parties was considerably limited by the authoritarian regime of Slobodan Milošević. Only after 1996 they could exercise some power at the local level, and in Serbia it happened only after 2000.<sup>28</sup>

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<sup>28</sup> Naturally, we think only of the relevant political parties in Serbia, which had the relevant infrastructure and membership and which took part in the elections, and, alone or in coalition with other parties, could determine issues in the political life of Serbia, and not the Socialist Party of Serbia, The Serbian Radical Party and the Yugoslav Left which in this period were in power.

Nevertheless, judging from their activity and the position the political parties representing the majority of population in Serbia endorsed nationalism as one of their basic principles. In the early period of the multi-party system in Serbia these parties even competed with the ruling party in fostering nationalism. The ideological understanding of the state and the society of these parties was not very different from the understanding of the then ruling elite; in this respect there was not much difference in understanding the human and minority rights.<sup>29</sup>

The structure of political parties in Serbia has been pronouncedly non-democratic. The parties had been centralised around one unconditional leader, who has been in fact irreplaceable. Internal democracy of political parties has been limited by the nature of their decisions, coming from one centre. The situation was similar with the political parties representing ethnic minorities.

The role of non-governmental organisations in Serbia was essential for the limited acceptance of human and minority rights as a component part of a democratic political society which Serbia wanted in principle to become during the attempts to remove the authoritarian regime. Non-governmental organisations in the modern sense were established in Serbia as a response to aggressive nationalism and war.<sup>30</sup> Their specific position was reflected in the role of the civil society as a part of the movement characterised by its civic, antiwar and cosmopolitan orientation, which they performed through civic solidarity education and civic activism. The most active non-governmental organisations in Serbia are based on strong convictions related to human and minority rights and a refusal to take ethnic belonging as a determining factor for political existence. This is how non-governmental organisations managed to put the question of human and minority rights to

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<sup>29</sup> A good example is the attitude of the majority of the political parties towards the Kosovo Albanians: it was in the nineties very similar to the attitude of the ruling political elite. In this respect the only different political actor was the Civic Alliance of Serbia a political party which promoted a state as an assembly of citizens, advocated human rights and fought for the respect of the minority rights.

<sup>30</sup> On the emergence, nature, and structure of non-governmental organisations in Serbia see Igor Bandović, "The Role of Non-governmental Organisations and their Impact on Good Governance in Serbia" in Wolfgang Benedek (ed.), *Civil Society and Good Governance in Societies in Transition* (Vienna 2006), 185.

the political agenda of the new power of new authorities in the period of post conflict consolidation.

The development of local institutions became important in the promotion of human and minority rights when the local institution gained importance in the struggle against the authoritarian regime of Slobodan Milošević in mid-nineties. From then on, local authorities and institutions gained additional power as specific oases of freedom within the authoritarian regime and when they joined in this respect media and opposition parties. After the democratic changes the role of local authorities became very important in the attempts to establish functional multi-ethnic communities including political representation of ethnic minorities.

## *2.2. The Main Processes Determining the Role of Human and Minority Rights in Serbia*

The main processes determining the role of human and minority rights in Serbia were determined through institutional arrangements and normative framework affecting human rights, the relationship between national and international law as criteria for implementation of human rights in practice.

- Preconditions or prerequisites for the enjoyment of human rights in Serbia as relevant social and political processes important for the position of human rights in the state.

- Special attention was given to the determination of the position of minorities in the historical perspective in the period before the conflict, during and after the conflict.

### 2.2.1 The Normative Framework on Human and Minority Rights

The normative framework of human rights in Serbia has a basis in the international instruments for the protection of human rights which the Socialist Federal Republic of Yugoslavia (SFRY) ratified in the seventies. The most important were the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Due

to the nature of communist Yugoslavia, the government was not in the position, neither it wished, to honour most of the obligations originating in the International Covenant of Civil and Political Rights. These provisions were in disaccord with the laws and the practice of the socialist character of the country and the political conditions prevailing in it.

The Federal Republic of Yugoslavia, which was composed of the Republic of Serbia and the Republic of Montenegro, acted in accordance with its belief that it was the sole successor of the SFRY and accepted, after the dissolution of the old federation, all obligations which were derived from these instruments. The Constitution of Serbia of 1990, and later the Constitution of Federal Republic of Yugoslavia of 1992, contained provisions of human rights.<sup>31</sup> As it is to be assumed judging from the time of the adoption of these documents and their applicability, the citizens of Serbia were "armed" with human rights during the conflict in the territory of the former Yugoslavia. In order to resolve this discrepancy between the normative and factual situation we can use the following words of Vojin Dimitrijević: "Nationalism is more reflected in what is done than in what is enacted, and, when it comes to implementing law, in the atmosphere in which the legal provisions are put into practice".<sup>32</sup> In the atmosphere of ethnic mobilisation human rights as a constituent part of the democratic setup of the society do not play a role, in spite of their formal acceptance. The sphere of influence of human rights in the modern political community was not covered by instruments of realisation. There are many reasons for that. The main one was that in this phase of the development of the society in Serbia political pluralism, although recognised in all declarations, did not actually exist so that one of the main elements of the modern democratic state was absent from the very beginning. The contrary was true: "Political alliances and voting based exclusively on ethnic lines contradict political pluralism in civil societies. Individuals are pushed not to act primarily as citizens but as members of ethnic group. They do not recognise any social,

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<sup>31</sup> For a detailed analysis of human rights in the legal provisions of the Federal Republic of Yugoslavia and Serbia see the reports on human rights in Yugoslavia (Serbia and Montenegro) since 1998 on [www.bgcentar.org.yu](http://www.bgcentar.org.yu)

<sup>32</sup> Vojin Dimitrijević, *The Insecurity of Human Rights after Communism*, (Norwegian Institute of Human Rights, Oslo, Publication No. 11, 1993), 34.

economic, professional or other interests and behave as if all members of the ethnic group were in the same social position".<sup>33</sup>

Secondly, although some human rights were, as already noted, recognised by the Constitution, instruments for the respect thereof did not exist. There was no independent judiciary, there were no free media and a developed civil society was lacking. It was in accordance with the nature of the communist regime for the state not to be able to fulfil the majority of obligations of the Covenant on civil and political rights. The provisions of this covenant were indeed conflict with the legislative acts of socialist state and its political practice. Accordingly the inexistence of solid institutional arrangements for the protection of human rights determined the general position of human and minority rights in Serbia in this period: they were merely declaratory constitutional statements without any practical effects. Such an attitude towards human and minority rights was dominant during the whole period of the rule of Slobodan Milosevic. Exceptions were made only when there was strong political pressure from the international community and from opposition parties in Serbia.<sup>34</sup> The attitude towards human and minority rights changed after the democratic changes in 2000. It symbolised the begging of the adaptation of the normative framework and relevant institutions to the concept of human and minority rights. The abrogation of non-democratic laws adopted in the previous period<sup>35</sup> and the adoption of instrument protecting human rights as an expression of political will of the new authorities to respect the principles of modern democratic arrangements in developed countries was a hallmark of this process. In this period also the practice was behind the normative framework because state institutions responsible for monitoring, observation and the protection of human rights were devastated. Underdeveloped and dysfunctional institutional arrangements would prove to be the main obstacle for the improvement of the position of human and minority rights in Serbia.

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<sup>33</sup> *Ibid*, 35.

<sup>34</sup> The struggle for the respect of the results of the elections in 1996 is a good example: the results were recognised only after massive three-months long demonstrations of citizens and students in Serbia and international pressure symbolised in the OEEC mission led by the former Spanish prime minister Felipe Gonzalez as a personal representative of the acting president of OEEC.

<sup>35</sup> Such as the Public Information Act and the University Act.

### 2.2.2 The Relationship Between International and National Law

The relationship of international and internal law is important to determine to what extent international norms and standards of human rights were respected by national institutions and followed in practice. The problem of honouring obligations undertaken by the ratification of the international treaties can be understood in the light of the understanding of the state sovereignty prevalent in Serbia in the last twenty years. The Serbian authorities, to put it briefly, had an understanding of state sovereignty which was absolute in the same way as the sovereignty was understood in the communist regime. Therefore the attitude towards the international standards in human rights was marked by their minimisation and a similar attitude towards the international community accelerated the “misunderstanding” of Serbia and the world in the isolation of the former. Perhaps the best illustration of that attitude towards obligations was the attitude of Serbia *vis-à-vis* the International Criminal Tribunal for the Former Yugoslavia (ICTY). From total disregard in the first phase of the existence of this court in the nineties, up to grudging cooperation extracted under the threat of sanctions,<sup>36</sup> the relations towards this institution indicated the (un)willingness of Serbia to accept the standards and obligations emanating from the changed position of Serbia in the international community: from an outlaw state until the attempt to regain international credibility after the democratic changes in 2000.<sup>37</sup>

### 2.2.3 The Preconditions of the Enjoyment of Human Rights

The preconditions of the enjoyment of human rights are very important in the Serbian context, because of the inability of normative theories to

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<sup>36</sup> The punishment was generally reflected in the denial of financial aid from international institutions, as the International Monetary Fund and the World Bank, from groups of states, such as the European Union, and from states, such as the United States.

<sup>37</sup> On the position of Serbia in the international community and the attitude of the latter towards Serbia see Gerry Simpson, *Velike sile i odmetničke države, neravnopravni suvereni u međunarodnom pravnom poretku*, (Belgrade 2006) 297.

explain the position of human and minority rights in Serbia due to the nature of social and political circumstances prevailing in the former. With the non-existence of human rights behind an attractive façade, only the study of some prerequisites of the enjoyment of human rights can provide us with a meaningful whole. One of the prerequisites is the existence or non-existence of human rights culture. It is in Serbia related to the level of the democratic culture of the society, political tradition and the historic movements for the modernisation of the society. Human rights culture can be defined „the sort of behaviour based on the view that every human being has his/her dignity and rights that are innate and have not been bestowed upon him/her by the state. The ideal is that such behaviour should be autonomous and not under duress, that is brought about by the treat of punishment” .<sup>38</sup>

#### 2.2.4 The Position of Minorities

The position of minorities in the former Yugoslavia was influenced by the multi-national composition of the Yugoslav society the federal structure of the state and communist ideology which did not favour ethnic groups and did not practice discrimination based on ethnic belonging to put it shortly, the attitude of the state towards ethnical matters was neutral.<sup>39</sup>

With the dissolution of Yugoslavia and the transformation of the former federal units in to national states the question of minorities reemerges:

With the collapse of the federation and its transformation from a multi-national to a typical post-communist national state a large number of new minorities emerged, composed of persons totally unaccustomed to the status of a minority. Suddenly they found themselves surrounded by their co-citizens of yesterday which overnight have become superior.<sup>40</sup>

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<sup>38</sup> Vojin Dimitrijević, "The Culture of Human Rights in Yugoslavia", in Mirjana Todorović (ed.), *Culture of Human Rights*, (Belgrade 2002), 122.

<sup>39</sup> See Vojin Dimitrijević, "Rani jadi zakasnelih nacija - Manjine u postkomunističkim državama", in *Silaženje s uma*, (Belgrade 2006), 30.

<sup>40</sup> *Op. cit.*, p. 33 (translation from Serbian).

In Serbia such a position of a new minority established after the constitutional changes in 1989 affected Albanians in Kosovo and this led quickly to inter ethnic conflicts.<sup>41</sup> However - in a manner less drastic than in Kosovo - the attitude towards other ethnic groups in the nineties revealed a permanent tension between the dominant ethnic group and "others", which at certain moment escalated into violence approved tacitly or sponsored by the state.

After the democratic change the policy of coercion and discrimination in the regard of minorities was abandoned due to the change of the nature of authorities, the attitude of the international community and the freedom of the media. In this period the authorities did not conduct an active policy of integration and participation of minorities in the public life in Serbia, but manifested a political will to deal with these problems through the adoption of legal instruments for the empowerment of the position of the minorities in Serbia.<sup>42</sup>

### *2.3. The Main Concepts, Definitions and Notions Needed for the Understanding of the Problematique of the Human and Minority Rights in Post-conflict Situation and the Reconstruction of a Democratic State*

Political pluralism is one of the key notions used to identify the state setup in Serbia in this paper. The non-existence of political pluralism in Serbia was the very reason for regressive processes in the attempt at "nation-building" after communism. For the purposes of this paper the definition of the political pluralism by Nenad Dimitrijevic can be used:

Political pluralism is a segment of a historical type of the society. It is meaningful and possible only as a component part of a whole resting on certain social, political and ideological preconditions and it is

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<sup>41</sup> The very change of the Constitution did not affect the position of Albanians so much as did other discriminatory and cohesive policies introduced by the state, which lasted until the end of military conflicts in 1999.

<sup>42</sup> Such as the Act on the Protection of Rights and Freedoms of National Minorities, *Službeni list SRJ*, 11/02.

reproduced in accordance with certain laws. It concerns such type of communal living which is labelled as a modern society and which, emerging on the ruins of an organically structured society, can be recognised by the separations of the civil society and the state...<sup>43</sup>

In this respect political pluralism is based on the rights of a free individual and its right to "organising into groups, unions, political parties in order to participate in public life in an organised manner". According to Dimitrijević, this can be accomplished only in an open society which enables "free competition of particular political projects which compete for power under equal terms".<sup>44</sup>

The rule of law will be described as an institutional and legal arrangement in a state which above all defines a system where no one is above the law and where laws have power according to this hierarchical position below the constitution which is the source of all laws. However, in the post-conflict society the concept of rule of law is tested on different levels: "...By their very definitions, these are often times of massive paradigm shifts in understandings of justice. Societies are struggling with how to transform their political, legal, and economic systems. If ordinarily the rule of law means regularity, stability, and adherence to settled law, to what extent are periods of transformation compatible with commitment to the rule of law? In such periods, what does the rule of law mean..."<sup>45</sup>, that is why the scope and the usage of the concept of rule of law has limited value and can be questioned from different perspectives: "...In transformative periods, however, the value of legal continuity is severely tested. The question of the normative limits on legitimate political and legal change for regimes in the midst of transformation is frequently framed in terms of a series of antinomies. The law as written is compared to the law as right, positive law to natural law, procedural to substantive justice, and so forth".<sup>46</sup>

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<sup>43</sup> Nenad Dimitrijević "Samoupravljanje kao utopija u nacionalističkom ključu: Jugoslovenski socijalizam", in *Slučaj Jugoslavija, socijalizam, nacionalizam, posledice*, (Belgrade 2001), 54 (translation from Serbian).

<sup>44</sup> *Ibid*, 56 (translation from Serbian).

<sup>45</sup> Ruti G. Teitel, *Transitional Justice*, (Oxford, 2000), 11

<sup>46</sup> *Ibid*, 12

Democratic institutions are in the basis of the practice of liberal democracy institutions of civic participation and decision making. Such institutions are the parliament, governments, political parties, the media, civil society and public opinion.

For the needs of this paper civil society will be defined as a form of organising of individuals in formal groups, registered organisations, and social movements independent of the state and supporting the ideas of liberal democracy and human and minority rights.

„Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups“ .<sup>47</sup>

Irrespective of existence of many definitions of social identity it will be understood as a link of the individual with a group sharing the same historical, linguistic and cultural origin, and some times geographic area.<sup>48</sup>

National identity is there by defined neutrally in a psychological and anthropological manner as to see the difference between national identity and nationalism which is to be condemned. The concept of national identity developed in post-communist Serbia cannot be defined so simply. In order to understand the reasons for the reestablishment of national identity in Serbia, the analysis offered by Nenad Dimitrijevic can be used. This is how he defines this identity 1) Primacy of ideas over reality, 2) Voluntarism in the creation of ideas 3) The need to materialise such ideas he then continues:

The first step in the creation of a Nation understood in such manner is equal to the destruction of individual identity. Directed towards the population already disoriented by the long term crisis of identity, the methodological idea of nation offered a ready

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<sup>47</sup> *What is civil society?* Centre for Civil Society, London School of Economics, at [http://www.lse.ac.uk/collections/CCS/what\\_is\\_civil\\_society.htm](http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm).

<sup>48</sup> In this sense Trimble, J. E. & Dickson, R. „What is Ethnic Identity?“, in C. B. Fisher & R. M. (eds.), *Encyclopaedia of Applied Developmental Science*, (Vol. I. Thousand Oaks: Sage), p. 415-420. For other definitions of national identity see Kanchan Chandra in „What Is Ethnic Identity and Does it Matter?“, at <http://www.nyu.edu/gsas/dept/politics/faculty/chandra/ars2005.pdf>.

alternative: you all belong to a great whole. You individual identities exist only as particle of the National Identity. Your place in the world is your nation ... only national identity provides human life with a meaning and dignity; only unconditional obedience to the Nation guarantees security and protection from foreign threats.<sup>49</sup>

We tend to call nationalism everything that is in the writings called ethno nationalism exclusive nationalism and illiberal nationalism and treated as a negative value.

Nationalism „as a movement for self-determination for an ethno-culturally and pre-politically defined group, is often interpreted as being highly distinct from the 'benign' nationalism which evolved in polities with already sedimented collective identities. Ethnic nationalism is deemed exclusionary, integral, and the definition of collective autonomy and self-determination that it contains is seen as being distorted and exclusionary towards non-members, as opposed to civic, emancipatory nationalism which promulgates the 'benign' forms of inclusion, national belonging and political community building".<sup>50</sup>

The process of democratic consolidation will be described as a process of reinstalling democracy after an authoritarian regime. Democratic consolidation means that democracy, once installed, is not threatened by the return to new authoritarianism. In this respect we speak of attempted democratic consolidation because it has never been accomplished and because partial consolidation is always endangered by return to authoritarian system.<sup>51</sup> A liberal democratic society has a formal government determined by the existence of representative government within the constitution and limited by the rule of law and the human rights

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<sup>49</sup> *Op. cit.*, 89 and 90.

<sup>50</sup> Paul Blokker, „Populist Nationalism, Anti-Europeanism, Post-Nationalism, and the East-West Distinction“, *German Law Journal* No. 2/2005 at [http://www.germanlawjournal.com/article.php?id=562#\\_ftn7](http://www.germanlawjournal.com/article.php?id=562#_ftn7), Date accessed 21<sup>st</sup> October 2007.

<sup>51</sup> For writings on democratic consolidation see: Guillermo O'Donnell, „Illusions About Consolidation“, *Journal of Democracy*, 1996, 7.2, Apr, 34-51; Juan J. Linz and Alfred Stepan, „Toward Consolidated Democracies“, *Journal of Democracy* 7.2 (1996) 14-33.

of the citizens. The institutions of liberal democracy are free elections, human and minority rights, the free media and the civil society. Although there are numerous definitions of multi-culturalism we shall repose on the normative descriptions describing multi-culturalism as a socio-cultural definition: which has become an essential feature of the contemporary society.<sup>52</sup> We shall define the concept of nation building as Kymlicka who believes that in Central and Eastern-European countries this is a process where the ruling elites after the identity crisis of communism attempt to “build a nation” by developing the societal culture through the policy of the official language, centralisation of power, the uniformed system of national education, drawing of borders of administrative units, and the policy of migration and naturalisation.<sup>53</sup> Kymlicka defines social culture as „a territorially concentrated type of culture, assembled around the common language used in a wide spectrum of societal institutions, both in public and private life“.<sup>54</sup> Nevertheless he does not believe this type of state building to be fallacious *per se* from the standpoint of liberal state building providing examples where both liberal and illiberal democracies „give to the public space a national character.“<sup>55</sup>

#### 2.4. Framework of Approaches

The approach we should use to explain the position of minorities in Serbia will be based on normative regulation of the position of minorities and of minority rights in relation to international and national standards of human rights.

In order to gain an insight to the position of minorities in Serbia we shall attempt to establish the most frequent violations of minority rights, their causes and their possible consequences. In this respect, practical life is an indicator of the success of normative solutions and possibly acts as a corrective element and supplement of new normative solutions. In that part

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<sup>52</sup> Brian Berry as quoted by Modrag Jovanović in Mirjana Todorović (ed.) *Kultura Ijudskih prava*, (Belgrade 2002), 65 (translated from Serbian).

<sup>53</sup> Vil Kimlika, *Može li se izvoziti liberalni pluralizam*, (Belgrade 2002), 65.

<sup>54</sup> *Ibid*, 31.

<sup>55</sup> *Ibid*, 66.

we shall suggest settlements that could satisfy the minorities and the majority in Serbia, and affirm Serbia as a functional political community surrounded by a democratic society.

### *2.5. Indicators and Criteria*

The indicators and the criteria which will be used to determine whether there are existing models to define the functioning of the position of minorities in Serbia will be the trust of minorities in the state. It can be manifested in political participation and peaceful co-existence resulting in the lessening of the tensions and the lack of ethnically motivated violence, the applications of the principles of non-discrimination and equality and the presence of elements of democratic country fostering and straightening the inter-ethnic dialog.

## **3. Situation, Role and Performance of Minorities and their Organisations and Institutions**

### *3.1. Definition of Minorities*

The Constitution of Serbia does not contain a definition of an ethnic minority. However according to the old federal Law on the freedoms and the protection of rights of national minorities, which is applied in Serbia after the dissolution of the state community of Serbia and Montenegro.<sup>56</sup> A national minority is defined as

Any group of citizens ... numerically sufficiently represented, although being a minority on the territory ... which belongs to a group of a population in a long lasting and firm relationship with the territory ... and possessing features such as language, culture, national and ethnic belonging, origin or religion,

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<sup>56</sup> *Službeni list SRJ*, 11/02.

different from those of the majority of the population, whose members share the concerns to jointly maintain their joint identity including culture, tradition, language or religion.

The law continues by providing that national minorities are „also groups of citizens which call themselves nations, national, and ethnic communities, groups, nationalities and peoples (Art.2,2)“.

### *3.2. Legal Status, Situation, Relations and Institutions of Minorities in Serbia*

Serbia has ratified or inherited all relevant international treaties dealing with the position of national minorities, including the major regional instrument for the protection of minorities, the Framework Convention for the Protection of National Minorities of the Council of Europe. The Constitution of Serbia accords particular attention to the position of minorities - in this respect it was also commended by the Council's Commission on Democracy through Law (the Venice Commission).<sup>57</sup> The Constitution is dealing with the question of minorities in its part defining the general principles, but also in the part defining the catalogue of human rights. In a special article the Constitution prohibits the discrimination based on belonging to national minorities (Art. 76, 2). In addition to this the Constitution guarantees the right to manifest national belonging (Art. 74, 1) the preservation of identity of minorities, the right to express, preserve, and develop national, ethnic, cultural and religious belonging, the use of language and script, right to education, information and the creation of public media (Art. 79) the prohibition of forced assimilation and artificial change of the structure of the population (Art. 78, 3) and the right to participation in public affairs dependant on the adequate representation of the members of national minorities. It is important to note that the Constitution allows for the positive discrimination (affirmative action), with the aim to achieve equality of the majority and minority population and

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<sup>57</sup> The Opinion on the Constitution of Serbia was adopted at the 70th plenary session of the Commission on 18 March 2007, [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)004-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)004-e.asp)

that the Constitution enables the creation of Nationals Councils as specific institutions of cultural autonomy, possessing public powers.

Although it regulates minority rights and approaches the question of national minorities in an exhaustive way, the Constitution of Serbia still retains a normative character which resembles similar constitutions of South-East European countries formed after the collapse of communism. This quality is reflected in a very definition of the state as a state of the Serbian nation. This definition indicates that the Constitution accepts, not the civic, but the ethnic definition of the state. Although the attitude of the Venice Commission appears to be neutral,<sup>58</sup> one cannot simply forget that the comparative constitutional practice has indicated that such an appropriation of the state by the majority nation was most frequently manifested by the attitude towards minorities and that it revealed the character of nation-building.<sup>59</sup> The Law on the protection of freedoms and rights of national minorities remains in Serbia as a basic set of provisions regarding the position of minorities. In the view of the Advisory Committee of the Council of Europe the above definition of national minorities limits its scope only on nationals, which in the opinion of the Committee is one of the defects of this law.<sup>60</sup>

The law regulated the rights of minorities, the right to education of its members and the rights to the use of minority languages and prohibits discrimination on the bases on the belonging to minority and provides for positive discrimination on the Roma population.

Other laws of importance for the question of minorities are the Law on local self government and the Law on the termination of competences of Vojvodina which regulates more closely the role of the protection of minorities at the local level and the level of the autonomous province. The

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<sup>58</sup> See I, Art. 1, one can not simply forget that the comparative constitutional practice has indicated that such an appropriation of the state by the majority nation was most frequently manifested by the attitude towards minorities and that it revealed the character of nation building.

<sup>59</sup> More in Nenad Dimitrijević, „Konstitucionalizam i privatizovane države“, *REČ*, No 63, (Belgrade 2001), 39-59.

<sup>60</sup> The opinion ACFC-/OP/I(2004)002 was adopted on 27 November 2003, see at [http://www.coe.int/t/e/human\\_rights/minorities/2.\\_framework\\_convention\\_%28monitoring%29/2.\\_monitoring\\_mechanism/4.\\_opinions\\_of\\_the\\_advisory\\_committee/1.\\_country\\_specific\\_opinions/1.\\_first\\_cycle/PDF\\_1st\\_OP\\_SAM\\_Serbian.pdf](http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_%28monitoring%29/2._monitoring_mechanism/4._opinions_of_the_advisory_committee/1._country_specific_opinions/1._first_cycle/PDF_1st_OP_SAM_Serbian.pdf)

law on local self-government regulates *inter alia* the language in official use in municipalities where the members of minority live, the formation of councils for national affairs and of local institutions for the realization of the interest of minorities in municipalities where they live. In addition to this the Law on churches and religious communities which governs the position of traditional churches and religious communities in Serbia provides for the position and setup of minority churches and religious communities. Although it professes the equality of religious confessions in the territory of Serbia, this law violates the principle of equality in a series of provisions providing for a different treatment of religious communities.<sup>61</sup>

The protection of minorities through criminal law is guaranteed and secured through laws covering the concrete violations of national minorities such as the investigation to national, racial and religious hatred, discord or intolerance and the violation of the equality of citizens. The Law on elementary and high schools prohibits school activities endangering or assaulting groups and individuals on the basis of their racial, national, linguistic, religious, and gender qualities and of their political orientation: such prohibitions are sustained by possible fines.<sup>62</sup>

Depending on the structure of regulations, minorities in Serbia can primarily appear as ethnic minorities and be formed of citizens having a different ethnical belonging in the majority population, consisting of Serbs. According to the last census held in 2002, in Serbia outside Kosovo there are more than a million people belonging to ethnic minorities.<sup>63</sup> They are Hungarians, mostly living in the territory of Vojvodina, Albanians in the South of Serbia, Bosniaks inhabiting Sandzak (the territory on the border between Serbia and Montenegro or Bosnia and Herzegovina), Bulgarians and Wallachians populated in Eastern and South-Eastern Serbia. There are also smaller minorities consisting of Germans, Ashkalis, Bunjevci, Ukrainians, Czechs, Jews and Macedonians. The Roma people are not concentrated on a specific part of Serbia. Roma live in almost all the territory of Serbia. According to

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<sup>61</sup> This law was criticised by many national and international organisations. See the report *Human Rights in Serbia 2006*, Belgrade Centre for Human Rights 2007, 109.

<sup>62</sup> *Službeni glasnik RS*, 50/92.

<sup>63</sup> For more detail see the web site of the Statistical Office of Serbia at <http://webrzs.statserb.sr.gov.yu/axd/Zip/NEP1.pdf>

the 2002 census, the number of Romas is about 108,000 but the activists of Roma NGOs believe that their number is several times higher because of the of their not being properly registered.<sup>64</sup> Owing to their difficult social and economic position, the Roma are the most endangered national minority in Serbia. The percentage of factually illiterate Roma is about 80 and only 10% of Roma children go to school. About 90% of Romas are unemployed. Members of the Roma community are also the most frequent victims in incidents caused by national intolerance.<sup>65</sup> The institutions of national minorities in Serbia are mostly concentrated on the right of the minority to develop their culture and tradition and the right to public information. The most numerous institutions belonging to the category of cultural and artistic societies to publishing houses, houses of culture and associations for the protection of tradition.<sup>66</sup>

The attitude towards national minorities in Serbia has depended on the nature of conflicts in the territory of the former Yugoslavia. Only with the creation of the prerequisites for the democratic development of the minority rights in 2000, there have been gradual advances in the position of minorities in Serbia. However the side effect of democratic changes was also the strengthening of minority nationalism.<sup>67</sup> Unfortunately, the improvement of the position of the minorities has not been constant and regular. In the last years national intolerance and inter-ethnic conflict in Serbia has been in the increase. Judging from the study of ethnic distances recently conducted in Serbia members of the Serb majority experience the strongest distance in relation to Albanians (42%); they do not even recognize them as citizens of Serbia and 73% would not even enter with them in marital relations. Albanians are followed by Croats 25% of Serbs would not choose to have any social contacts. The negative image of Croats are followed by Bosniaks, Roma and Hungarians.<sup>68</sup> One is therefore allowed to

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<sup>64</sup> *Human Rights in Serbia 2006*, report of the Belgrade Centre for Human Rights, Belgrade 2007, 195.

<sup>65</sup> *Op. cit.*, 196.

<sup>66</sup> See Jan Vida et al., *Nacionalne manjine i pravo* (Belgrade 2002).

<sup>67</sup> See Miroslav Samardžić, „Zaštita nacionalnih manjina”, in Miroslav Samardžić (ed.), *Tranzicija i manjine u Vojvodini* (Belgrade 2002), 125.

<sup>68</sup> *Human Rights in Serbia 2006*, report of the Belgrade Centre for Human Rights, (Belgrade 2007), 195.

assume that the position of minorities in Serbia is fragile and condition by many factors, including those which should normally not be decisive for the solution of minority problems. The implementation of minority rights has not been satisfactory despite of the high normative standards. The effects of violations of human rights of minorities have most frequently been manifested in inter-ethnic incidents and tensions in multi-ethnic communities.<sup>69</sup> In such situations the reactions of the police and other state organs are considered to have been inadequate.<sup>70</sup>

### 3.3 *The State and the Minorities*

With the beginning of the democratic change in Serbia the new authorities have attempted to attach particular attention to human and minority rights. This can be derived from the normative and factual attitude of the state toward minorities. The creation of a special Ministry for National Communities at the federal level of the then Federal Republic of Yugoslavia and its active role in the promotion of tolerance and the reducing of conflicts in the South of Serbia in 2001 contributed to the impression that minority rights ranked very highly on the list of priorities of the new democratic government. The fact that the function of the minority minister was performed by the president of a Bosniak minority party in Serbia was encouraging and contributed to the improvement of the inter-ethnic relationships. A similar role was performed by the ministry of the human and minority rights established in the new State Community of Serbia and Montenegro. After the departure of Montenegro and the formation of new government in Serbia, institutions in charge of human and minority rights cease to exist. There are several state institutions in Serbia predominantly competent to deal with minority and interethnic problems. The Council of Serbia for National Minorities is an institution in charged with the promotion and protection of national, ethnic, religious and cultural specificity of

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<sup>69</sup> A survey of recent incidents can be found in the reports of the Belgrade Centre for Human Rights for 2004, 2005 and 2006, *Human Rights in Serbia and Montenegro and Human Rights in Serbia 2006* (Belgrade 2005, 2006 and 2007).

<sup>70</sup> They have been dealt in a majority of cases in administrative and not criminal proceedings see *Human Rights in Serbia 2006*, (Belgrade 2007), 195.

national minorities. It is composed of the prime minister and the ministers of justice religious affairs, education, and local self-governments, and the chair persons of all national minority councils on the local level. The Council was established on 16 September 2004. There is also a Parliamentary Committee for Inter-national Relations of the assembly of Serbia, which has been in existence since the convocation of the new assembly in 2007. This committee calls sessions in cooperation with the local council for national relations at the municipal level in multi-ethnic communities in Serbia.

The position of women belonging to national minorities has been neglected. Apart from several non-governmental organizations dealing with this issue (the Centre for Multiculturalists in Novi Sad and the Helsinki Committee for Human Rights in Serbia in Belgrade), there has been no interest of state institution for this problem. In the Assembly of Serbia there is Committee for Gender Equality and there is a Council of the Government for Gender Equality and there are in Vojvodina the Provincial Secretariat for Labour, Employment and Gender Equality, a Council for Gender Equality and a Committee for Gender Equality of the Assembly of the Autonomous Province of Vojvodina. The regional Ombudsperson for Vojvodina has a deputy for gender equality and there is also a provincial institution for the gender equality.

The minority political parties came into existence after the introduction of a multi-party system in Serbia during 1990. The minorities created their parties guided mainly by the ethnic criteria so that they had a pronounced national character: members of these parties were persons belonging to the minority in the framework of which the new party was born. Such an approach to political organising was caused by nationalism, the most attractive political programme in Serbia at the time. The Vojvodina Hungarians, the Albanians from Kosovo and the South of Serbia and the Bosniaks in Sandzak established political parties immediately after the multiparty system was acceptable. However the attitude of these parties toward elections was different: whereas Albanians boycotted all of the elections called after 1990, other minority parties participated with more or less success. In the meanwhile other minorities (the Roma, Wallachians,

Bunjevci and Slovaks) established their own political parties. The largest political party of Vojvodina Hungarians, the Association of Vojvodina Hungarians, and the Bosniak Sandzak Democratic Party played an important role in the victory of the Democratic Party of Serbia in the September 2000 elections. The coalition reached the most convincing victories in the areas where the latter parties were active and where their voters lived. Thus for the first time after the communist period representatives of the largest minority parties were represented in the parliament. However, immediately after the assassination of prime minister Zoran Đinđić and the calling of parliamentary elections in December 2003 the discrimination of minority parties through electoral laws (a high electoral census) resulted in the absence of minority parties from the Assembly of Serbia. In such a manner a large number of Serbian citizens belonging to national minorities was deprived of political participation for a period at least three years. Such a discriminatory approach was changed through the adoption of amendments on electoral laws so that the representatives of minority political parties entered the Parliament after the January 2007 elections. Three seats were gained by the Association of Vojvodina Hungarians, two seats by the Coalition List for Sandzak - Dr. Sulejman Ugljanin; the Coalition of Albanians of the Presevo Valley gained one seat, and one seat each came to two Roma parties - the Roma Union of Serbia and the Roma Party.

## **4. The International Community and Minorities in Serbia**

### *4.1. The Definition of External Actors and Their Role*

From the beginning of the crisis on the territory of Former Yugoslavia a large number of the external actors followed the events and in various manners participated in the developments marking the end of the 20<sup>th</sup> century and the beginning of the 21<sup>st</sup> century in the Balkans. It can be generally observed that defining the role of each of them is difficult irrespective of the many factors which influenced the course of events. Nevertheless, some actors were more present than the others, some of

them left a stronger trace and the actions of some were more effective. Because of that, when speaking of external actors we shall deal only with those exercising a role in ethnic conflicts and a post-conflict setup must be taken into account when analyzing the position of human and minority rights.

The European Union (initially: The European Community) started playing a more significant role in the promotion of human and minority rights in Serbia after the changes affected by the elections in 2000. The process of European integration became an important issue in the internal politics, inviting social reforms, and became one of the most important foreign political aims of the country. Extensive reform necessitated by Serbia was guided by the institutions of the European Union, who also secured the necessary programmatic, technical and financial aid. One of the significant ways enabling the European Union to influence the topic under examination was the policy of conditionality and the demand for the adoption of standards of protection and promotion of human and minority rights as a condition for joining the Union.

After the admission of Serbia in the Council of Europe in 2003, among the multiple obligations resulting from this membership was the promotion and improvement of human rights. Various instruments of the Council such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities and the European Charter on Regional and Minority Languages provide for standards in these areas and for the mechanisms of their promotion and protection. For instance the European Court of Human Rights developed a rich practice in the area of protecting human rights and covering specific question related to the position of national minorities.<sup>71</sup> The Council of Europe Commission for Democracy through Law (The Venice Commission) is another body created by the Council of Europe which played a role in the reform of Serbia leading to the full implementation and the respect of human and minority rights.<sup>72</sup>

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<sup>71</sup> See e.g. *Gorzelik v. Poland*, Belgian Linguistics Case, etc.

<sup>72</sup> See 3.1 i 3.2 above.

Since 1993, the Council of Europe has also intensified its efforts towards improving the status of the Roma in the entire territory of Europe, through the protection of minorities, fight against racism and intolerance, as well as the fight against their social exclusion. To that end, the Specialist Group on Roma has been established. It monitors the position of this large community in the territory of Europe and, through various projects, exerts influence on its improvement. Serbia also has at its disposal numerous other bodies within the Council of Europe, which provide guidelines for the creation of a genuinely multicultural society. One of them is the European Commission against Racism and Intolerance, whose basic task is to protect and improve human rights in the context of the fight against racism, xenophobia, anti-Semitism and intolerance.

The Stability Pact for South-eastern Europe was one of international organisations created in order to secure the long term security of the region. The Stability Pact assembles states and international institutions and coordinates their activities through regional tables and working tables.

Through their propaganda their agencies and programs such as UNDP the United Nations following the mandate attach great attention to the development of rural areas and to the solution of social and economic programs. Specifically, UNDP attracts great attention to the support for multi-ethnic communities and local forces in the south of Serbia.

The OSCE launched a number of initiatives towards the development of democratic society. Its mission cooperated actively with the State Union Ministry of Human and Minority Rights in the implementation of the Law on the Protection of Rights and Freedoms of National Minorities. The project of multiethnic police, which is carried out in southern Serbia, in addition to the announcement of a similar project in Vojvodina, represents probably the most successful project realized in cooperation with the OSCE. The project has been implemented in the municipalities of Preševo, Bujanovac and Medveđa, where there was a great need for the integration of the Albanian population into government structures after the violence that broke out in autumn of 2001. The OSCE also provided great support to the training and implementation of the electoral rights of minorities.

## 5. Analysis and Conclusion

Because of national building in the post-communist period (during the phases of conflict described above), it can be said that nation building in Serbia has rested on illiberal nationalism.

The policies and the measures for the improvement of the position of minorities in Serbia can be traced only after democratic changes of 2000 and during the post conflict phase of the development of the Serbian society. A new approach to the solution of ethnic-conflict was manifested in the solution of the crisis in the South of Serbia in 2001 and was followed by large number of institutional and normative measures and at defining the position of minorities which could be labelled as positive. However, much has yet to be done to realise these measures and to secure their effects.

An attempt to measure the effect of activities undertaken to improve the position of minorities in Serbia, the preliminary observation is in place stating that the position of minorities has in recent years not been a priority concern of the Government and that this problem has not been approached in a systematic manner. Although political partnership between the majority population and an important group of minority parties was established in 2000 and manifested by the will of the citizens of Serbia, including persons belonging to national minorities to achieve democratic consolidation, the capital from of this partnership was gambled away in the ensuing years.

First of all it is important to establish confidence in state institution both by members of the majority and persons belonging to minorities. This will be possible only if injustices done in the recent past are corrected and persons which have committed criminal offences against the ethnically different are punished. The development of state institutions to full participation of minorities will provide a state institution with a quality leading to a common

good overarching ethnic barriers. The institutionalisation of communities among ethnic groups at various levels can be achieved through education (formal and informal). In this respect the development of the programme of civic education in schools and outside schools appears as a possible way to attain this goal.