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Country Specific Report: Serbia

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

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1. Introduction

After the dissolution of Yugoslavia, the Republic of Serbia's state structure went through several transformations — from federation to a loose confederation with Montenegro. After the secession of Montenegro in 2006 and the adoption of the new Constitution in the same year, it became a fully independent state.¹ The role of Serbia in conflicts on the territory of the former Yugoslavia was multifaceted. The regime in Serbia was one of the main creators and instigators of both the conflicts and their possible resolution: it could influence the intensity of the conflicts and their duration, and had a decisive role in defining their character and nature.

1.1. Chronology of the Conflict

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 had already begun 1974 with the changes in the constitutional position of the federal units, the limitation on the competences of central authorities, the strengthening of the governments of the constituent republics and the creation of “national monism”.² The conflicts in the former Yugoslavia were the results of numerous unsolved questions within the Yugoslav federation, for which the then state ideology (self-managing socialism) was unable to find proper solutions.³

As a system based on such ideology it did not correspond to the realities of growing nationalism as it existed at that time, which swallowed or destroyed the feeble federal institutions of the state community. The cohesive 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 to use this factor 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 of reducing the competences of the Federation while strengthening the power of the republican government in Belgrade. Such legal arrangements were the result of

¹ 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.

² 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.

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

ethnic mobilisation⁴ and the institutionalisation of the dominant nationalist attitudes of the political elite and intellectuals in Serbia.⁵

1.1.2. Made in Serbia — Exporting War (1989-1991)

In the period between May and December 1990, the first multi-party elections were called in the republics of the Yugoslav Federation. The national question and the definition of national interests were the dominant issues in the programs of the 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 with respect to 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 despite its name and irrespective of the strong anti-communist sentiments that prevailed in the whole country.

After the electoral victory in 1990, which was made possible partly by the lack of coordination of the anticommunist forces, including many political parties that were essentially nationalist, Slobodan Milošević took over all levels of power in Serbia, including the armed forces.

The preparations for the armed conflicts in Serbia took place at several levels. On one hand, a media campaign was aimed at the paroxysm of national emotions in Serbia.⁶ On the other, police forces and the units of territorial defence strengthened the Yugoslav People's Army (JNA), which also instrumentalized 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.⁷

At the same time, the issue of the legitimate interests of the members of the Serbian nation in other republics to live in one state with their "mother state" was raised in Serbian public opinion. The decisive contribution in the process of transforming hate-speech into hate-deeds was primarily made by the very influential state media (other media did not exist in the 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 instrumentalize citizens and to separate them into the loyal and the disloyal, 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 signing 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

⁴ 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*.

⁵ 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).

⁶ 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).

⁷ 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, paravojnska*, (Belgrade 2001), 42-56.

political.⁸ One of the main features of these conflicts was the widespread violation of the rules of humanitarian law and the unwillingness of national institutions to prosecute and punish the perpetrators of such violations.

Although no military operations were conducted on the territory of Serbia, the presence of war in the immediate environment, and the participation of members of military, para-military and police forces in these wars led to the suppression of the independent media, the persecution of political opponents and the promotion of conspiracy theories as the main explanations for the conflict.⁹ Aggressive nationalism, a high level of xenophobia and a lack of tolerance were manifested in the treatment of minorities, which took the character of a low-level conflict in Sandžak¹⁰ and attempts at ethnic cleansing in Vojvodina (e.g. the expulsion of some Croats).¹¹

The examination of the nature of these conflicts sheds a new light on the motivation for 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 to 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, the first public demonstrations against Slobodan Milošević¹² developed into an authentic movement of peace activists and independent intellectuals. This coincided with the formation of the first informal groups and non-governmental organisations. These organisations, although few in number, signified the beginning of civil society in Serbia, which had historically been weak, not only in communist times but also before the Second World War. The main feature of these movements was their anti-nationalist and pacifist activity; this would remain an important characteristic of Serbian society until the democratic changes in 2000.¹³

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

After the signing 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.¹⁴

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

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

¹⁰ Human rights in Sandžak in the nineties see Semih Kačar (ed.), *Svjedočenja iz Sandžaka*, (Novi Pazar 2002).

¹¹ 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>

¹² 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.

¹³ 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* (NWV and Belgrade Centre for Human Rights, Belgrade, Vienna, 2006), 185-209.

¹⁴ 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,

In Serbia the grave economic and social crises caused by the cost of war and international sanctions resulted in wide popular dissatisfaction with the rule of Slobodan Milošević. In the local elections held in November 1996, the opposition coalition "Together" (Zajedno)¹⁵ 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 civil society.

Nevertheless, the low intensity conflict that had lasted since 1990 in Kosovo risked escalating. The authorities' unwillingness to negotiate with ethnic Albanians in the province and to offer meaningful concessions, together with 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 took the form of armed actions undertaken by a small number of armed Albanian groups. Due to the unselective use of force and police brutality, this sentiment quickly spread among the Albanians and developed into an armed uprising for the independence of Kosovo. Despite the international community's attempts to intervene,¹⁶ all efforts to prevent the escalation and widening of the conflict were unsuccessful. In response to the events in Kosovo, NATO launched a military campaign against Serbia on 24 March 1999, which took the form of aerial strikes on targets in Serbia. The bombing finished on June 12 of the same year after an agreement was signed mandating 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. Attempts at Post-conflict Democratic Consolidation, 2000-2003

After the military intervention and the state of emergency in Serbia, conditions were right for the consolidation of democratic forces in the country. In the last period of his rule, Slobodan Milosevic could no longer rely on electoral support and did not hesitate to pass legislation, in the form of legislative acts, against various political opponents, such the laws on the University and the media and a draft law on terrorism. The oppression of the regime became evident and was no longer hidden behind formal explanations. This was also accompanied by a number of political assassinations of Milošević's opponents, such as the murder of the editor Slavko Ćuruvija and of the former President of Serbia Ivan Stambolić, as well as the attempted assassination 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 "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 24 September 2000. After this defeat the docile Constitutional Court of Yugoslavia failed to recognise the result and attempted to hold a second 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.

„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.

¹⁵ 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.

¹⁶ 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.

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 over its future policies. The means used to prevent a new conflict in the south of Serbia strengthened the authorities' democratic credibility in the eyes of the international community, but the discrepancy of political options within the DOS became more and more visible. The newly elected president of Yugoslavia, Vojislav Koštunica, exemplified one side of the disagreement. He was in favour of political continuity with the previous regime and tried to stop or postpone necessary personal and legal acts in favour of democratic reforms. On the other side stood 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 society enhanced the enjoyment of human rights and widened the space for liberty. The reintegration of Serbia into the international community was manifested in Serbia's admission to the United Nations, its return to the OSCE and to membership in other international organisations. It assisted in the realisation of human and minority rights in accordance with international standards. Serbia's adherence to European traditions was recognised in 2003 when the country was admitted to the Council of Europe.

1.2. Hypotheses, Methodology, Aims and Structure

During the conflicts on the territory of Yugoslavia, the idea of human and minority rights in Serbia was placed in opposition to the organic understanding of the nation and to its product – nationalism. The lack of acceptance of human and minority rights in Serbia was linked to a general opposition to the notion of the citizen and his/her role in the state, as defined by the traditions of liberal democracy and as is 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 the human rights of all its citizens, left room to the rise of destructive nationalism and made the development of democratic structures impossible during the nineties. The results of this process were devastated democratic institutions, unreformed state agencies and a misguided sense of national identity.

The acceptance of human and minority rights in the reconstruction of Serbian society in the wake of the armed conflicts and the authoritarian regime depended on the democratic power's basis for claiming legitimacy. The weakness of the new authorities that were partially created after October 2000, initially suggested that the ability to construct a complete democratic government, and the new government's supposed devotion to democratic procedures and liberal understanding of the democratic system were under threat. The threat came from the old basis of legitimacy – nationalism as a permanent and exclusive state ideology – which was supported by the armed forces (the army and the police), criminalised state institutions (the judiciary and secret services) and involved strong interference of the Serbian Orthodox Church in the affairs of the state. The latter institution 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 legitimize Serbia on the basis of liberal democracy and human and minority rights and freedoms.

Until society in Serbia comes to terms with its past through transitional justice the democratic structure of society will be unstable. Only with the

legitimization of new values can human and minority rights become a constitutional component of the structure of the state and an independent value – not merely the declarative façade of a new constitution. In order to understand the past of a society in conflict, it is indispensable to uncover several truths:

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 the determine them, they connect in a common discourse of a just society.

For the purpose 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 as a democratic system determined by the rule of law, political pluralism, an independent media, stabile civil society and the separation of powers.

The structure of this report follows the main processes that determined the development of human and minority rights in Serbia. This influence was chronological and thematic. The chronology is important as it encompasses the roots of the conflict, which are essential elements to understanding the conflict and determining its 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 development of the international law of human rights, and particularly the specific discipline of transitional justice, which is concerned with the problems arising from the heritage of an authoritarian and violent past, followed by crimes, state repression and disregard of human rights of citizens, provides instruments which make it possible to determine the problems stemming from the burden of the past as well as possible developments and policies. Many authors advocate using the mechanisms of transitional justice as necessary basis to come to terms with the past.¹⁷ In addition, UN agencies and other international organizations use transitional justice as a policy for providing aid in counties experiencing changes after massive violations of human rights.¹⁸

Is it possible to implement human and minority rights, and if so, under what circumstances? What are the prerequisites for the realisation of such rights?

Today, human rights are a component of the legal systems of most states. The question is to what extent human rights are respected in these states. They are

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

¹⁸ 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>

may be accorded a high place in the supreme legal acts of a state, this does not determine the level to which they are enjoyed and protected or their real level importance in a society. 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 at 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 rights shall be sought in those models that have succeeded in reconciling the rights of minorities and the rights of the majority, have taken into consideration the lessons of the recent conflicts and the characteristics of the region and of the minorities living there as well as the tradition of the communist system in the resolution of this problem. In this sense we shall attempt to apply the model of Will Kymlicka¹⁹ to the minority situation in Serbia, to determine possible positive outcomes of this application, and to be aware of its negative effects.

2. Concepts and Definitions Relevant to 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 outlined at the beginning of this paper. Nevertheless, such a determination will offer limited insight into the problematique of human rights. We shall therefore, depending on the elements and the situation described, also give a wider historical explanation and follow the determinants of these phenomena to their real origins. As an introduction to the historical context, a cursory view of 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.²⁰ Serbian society has accepted the ideas of liberal democracy and the enlightenment expressed in the bourgeois revolutions that took place in the late eighteenth century. Due to political instability, weak democratic institutions and Serbia's participation in frequent military conflicts, these ideas have never been practically implemented in Serbia. They did not develop in an evolutionary way that would lead to the foundations of a modern state.

¹⁹ 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.

²⁰ 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.)

The attitude towards the ethnic and religious minorities

Intolerance of minorities was frequent in Serbia.²¹ Traditional collectivism and the specific understanding of a state as an organic relationship between the ethnically determined individual and the state as an ethnic whole contributed to the creation of a social atmosphere of intolerance, and of the ethnic minorities claims that were not conducive of the realisation of the rights of these minorities.

This period of state building in Serbia would have a very strong influence on the problems facing Serbian society the collapse of communism. This should be borne in mind when considering the prerequisites for enjoying human and minority rights. The second period of importance to this paper is Serbia's communist past. 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, which designated the "working class" as the bearer of state sovereignty and the source of legitimacy,²² ushered in new types of collectivism that had an adverse effect on the understanding of human rights.

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

The fourth period, defined by an attempt at democratic consolidation, covers the time after the 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

Since the beginning of the institutional crisis in Yugoslav society (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, advocates of the freedom of speech, and groups of intellectuals who fought against the "verbal delict".²³

One can state today with a degree of certainty that only a small number of persons were really devoted to the idea of human rights and a liberal political community.²⁴ This is especially visible in the pre-conflict period, when the intellectual elite took an active part in the spread of nationalism and hatred toward citizens of different ethnic origins. The responsibility of the majority of intellectuals for the destructive nationalism that led to military conflict is

²¹ 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.

²² See Nenad Dimitrijević, *op.cit*, note 3, 57.

²³ 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).

²⁴ 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.

enormous. This spans from declarations such as the *Memorandum of the Serbian Academy of Science and Arts*, which is generally taken as a document supporting violent solutions to the conflict in Yugoslavia, to the appearance of Milošević's court intellectuals in the media.²⁵ Inspired by ethnic hatred, this coalition of academic circles in authoritarian power left a very limited space for the actions of rational, responsible and non-nationalistic individuals.

The role of the state and state institutions in the communist and the post-communist period was in opposition 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 state's attitude towards the question of human and minority rights in the post-communist period requires a more detailed description.

The nature of the Serbian state after the collapse of communism was built on nationalism and excluded 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 that could be seen as jeopardizing such power. For this reason, the concept of human rights was directly opposed to such rule and the regime of Slobodan Milošević rightfully saw it as a danger to its unlimited power. The nature of such power in Serbia highlighted several features of the Serbian state in relation to human and minority rights.

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

The state prevented the political participation of minorities through unfavourable electoral laws.

The state developed specific methods of violating human rights and developed a system of state and para-state structures that violated or endangered human rights.

The state system of power reflected in armed forces was dispersive; power was in the hands of the criminal underground, the secret services, para-state military formations, the army, the police and the ruling political parties. They all took part in the common effort to render rights meaningless, to negate human rights and to protect the regime and thereby protect their own position.²⁶

The devolution of the authoritarian system was first reflected in normative neutrality (until mid-nineties), during which time human rights were formally guaranteed but not respected, to the normative negation of basic human rights (1996-2000).²⁷ Democratic changes have altered the nominal relation of the state towards human and minority rights. The policies of the authorities are based on democratic principles, but the problem appears elsewhere; new authorities attempt to become the guarantors of citizens' human rights, 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 liberal legislative acts: the procedure of adopting such laws is slow due to obstructions put in place by non-democratic political parties in the legislature.

The state is not systematically prosecuting the perpetrators of past criminal acts, particularly violators of human and minority rights, because of the large number of cases. This delay is caused by the existence of numerous perpetrators,

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

²⁶ 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

²⁷ 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.

the length of period of violations (destroyed evidence, statute of limitations, etc) and above all by the fragility of the new authorities, which have not succeeded to bring the aforementioned sources of physical power under control or to reform state institutions.

The international community is composed 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 largely coherent and shared by all. It could be simply said that the original role of the international community was to act as an arbiter in situations of ethnic conflict, and this role was played successfully in the early nineties. After the democratic changes in Serbia the new political agenda gave rise to a new type of relationship between Serbia and the international community. This was characterized by the presence of new authorities to open Serbia to the world and who wanted Serbia to join the Euro-Atlantic integrations etc. In this period the role of the international community was collective and rested on assurances of understanding.

The creation, structure, programmatic principles and ideological direction of political parties and minority parties in Serbia indirectly influenced 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 could they exercise some power at the local level, while on the national level in Serbia they only gained real power after 2000.²⁸

Nevertheless, judging from their activity and position, the political parties representing the majority of the 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. These parties' ideological understanding of the state and society was not very different from that of the then ruling elite; in this respect there was not much difference in the understanding of human and minority rights.²⁹

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

Non-governmental organisations played an essential role in securing limited acceptance of human and minority rights in Serbia. These rights represented a component of the democratic political society that Serbia wanted, in principle, to become during its 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.³⁰ Their specific position was reflected in civil

²⁸ Naturally, the 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.

²⁹ 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.

³⁰ 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

society's role of as part of a movement characterised by a civic, antiwar and cosmopolitan orientation, 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 consider 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 on the new authorities' political agenda 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 the mid-nineties. From then on, local authorities and institutions gained additional power as specific oases of freedom within the authoritarian regime as well as when they joined the 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 that included the 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 decided through institutional arrangements and a normative framework affecting human rights and considering the relationship between national and international law as a criterion for the implementation of human rights in practice.

- Preconditions or prerequisites for the enjoyment of human rights in Serbia as relevant social and political processes are important for the position of human rights in the state.
- Special attention was given to determining the historical perspective of position of minorities in the periods before, during and after the conflict.

2.2.1 The Normative Framework of 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 of these 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, nor did it wish to honour most of the obligations originating from the International Covenant of Civil and Political Rights. These provisions conflicted with the socialist country's laws, practices, and prevailing political conditions.

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. After the dissolution of the old federation, it therefore accepted all obligations derived from these instruments. The Constitution of Serbia of 1990, and later the Constitution of the Federal Republic of

Governance in Serbia" in Wolfgang Benedek (ed.), *Civil Society and Good Governance in Societies in Transition* (Vienna 2006), 185.

Yugoslavia of 1992, contained human rights provisions.³¹ Judging from the time these documents were adopted and their applicability, it can be assumed that the citizens of Serbia were “armed” with human rights during the conflict in the territory of the former Yugoslavia. In order to resolve the 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”.³²

In the atmosphere of ethnic mobilisation, human rights do not play a role as constituent parts in the democratic setup of society, despite 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 this. The primary reason was that in this phase of the development of Serbian society, political pluralism, although recognised in all declarations, did not actually exist. Thus 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 groups. They do not recognise any social, economic, professional or other interests and behave as if all members of the ethnic group were in the same social position.³³

Secondly, although some human rights were recognised by the Constitution, as already noted, instruments to ensure respect for these rights did not exist. There was no independent judiciary, free media or developed civil society. The nature of the communist regime rendered the state unable to fulfil the majority of its obligations of the Covenant on Civil and Political Rights. The provisions of this Covenant conflicted with the legislative acts of socialist state and its political practice. Accordingly, the absence 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.

This attitude towards human and minority rights was dominant during the entire period Slobodan Milosevic was in power. Exceptions were made only when there was strong political pressure from the international community and from opposition parties in Serbia.³⁴ The attitude towards human and minority rights changed after the democratic changes in 2000. This period saw the normative framework and relevant institutions begin to be adapted to the concept of human and minority rights. The hallmark of this process was the new authorities’ political will to respect the principles of modern democratic arrangements in developed countries, as manifested in the abrogation of non-democratic laws adopted in the previous period³⁵ and the adoption of instruments protecting human rights. In this period, practice also lagged behind the normative framework because state

³¹ 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

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

³³ *Ibid*, 35.

³⁴ 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.

³⁵ Such as the Public Information Act and the University Act.

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.

2.2.2. The Relationship Between International and National Law

The relationship between international and domestic law is important to determine to what extent national institutions respected international norms and standards of human rights, and followed them in practice. The problem of honouring obligations undertaken by the ratification of international treaties can be understood in 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 that was absolute in the same way that sovereignty was understood under the communist regime. Therefore the Serbian authorities' attitude towards international standards in human rights was marked by a minimisation of these standards. A similar attitude towards the international community accelerated Serbia's isolation and its being "misunderstood" by the rest of the world. Perhaps the best illustration of Serbia's attitude *vis-à-vis* its obligations, was the attitude manifested towards the International Criminal Tribunal for the Former Yugoslavia (ICTY). From total disregard in the first phase of the court's existence in the nineties, to grudging cooperation extracted under the threat of sanctions,³⁶ relations towards this institution indicated Serbia's unwillingness to accept the standards and obligations resulting from Serbia's altered position of in the international community: . It had been an outlaw state until its attempts to regain international credibility after the democratic changes in 2000.³⁷

2.2.3. Preconditions for the Enjoyment of Human Rights

The preconditions for the enjoyment of human rights are very important in the Serbian context. Normative theories have been unable explain the position of human and minority rights in Serbia due to the social and political circumstances prevailing in the country. As the absence of human rights was concealed behind an attractive façade, only the study of some prerequisites for the enjoyment of human rights can provide us with a meaningful whole. One of the prerequisites is the existence of a human rights culture. In Serbia, this is related to the level of the society's democratic culture, its political traditions and the historic movements pushing for the modernisation of society. A human rights culture can be defined as:

[T]he 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.³⁸

³⁶ 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.

³⁷ 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.

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

2.2.4 The Position of Minorities

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

With the dissolution of Yugoslavia and the transformation of the former federal units into 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.⁴⁰

After the constitutional changes in 1989, Albanians in Kosovo were affected by the creation of such a new minority, and this quickly led to inter ethnic conflicts.⁴¹ Though manifested less drastically than in Kosovo, the attitude towards other ethnic groups in the nineties revealed a permanent tension between the dominant ethnic group and “others”. At times this escalated into violence, which the state sponsored or tacitly approved.

After the democratic change, the policy of coercion and discrimination of minorities was abandoned due to a change in 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 integrating or encouraging minority participation in Serbian public life. Instead they manifested a political will to deal with these problems through the adoption of legal instruments to empower of the position of minorities in Serbia.⁴²

2.3. The Main Concepts, Definitions and Ideas Needed to Understand the Problem of the Human and Minority Rights in Post-Conflict Situations and the Reconstruction of a Democratic State

Political pluralism is one of the key ideas used to identify the state establishment in Serbia in this paper. The absence of political pluralism in Serbia was the very reason that regressive processes were implemented to attempt “nation-building” after communism. For the purposes of this paper the definition of the political pluralism by Nenad Dimitrijević 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 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

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

⁴⁰ *Op. cit.*, p. 33 (translation from Serbian).

⁴¹ 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.

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

organically structured society, can be recognised by the separations of the civil society and the state...⁴³

In this respect political pluralism is based on the rights of a free individual and the right of “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 that enables “free competition of particular political projects which compete for power under equal terms”.⁴⁴

The rule of law will be described as an institutional and legal arrangement in a state that, above all, defines a system in which no one is above the law and in which laws have power according to a hierarchical position below the constitution, which is the source of all laws. In the post-conflict society, however, the concept of the 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...⁴⁵

For this reason, 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.⁴⁶

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

For the needs of this paper, civil society will be defined as the 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.⁴⁷

Irrespective of existence of many definitions of social identity it will be understood as a link between an individual and a group sharing the same historical, linguistic and cultural origin, and sometimes geographic area.⁴⁸ National identity is thereby

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

⁴⁴ *Ibid*, 56 (translation from Serbian).

⁴⁵ Ruti G. Teitel, *Transitional Justice*, (Oxford, 2000), 11

⁴⁶ *Ibid*, 12

⁴⁷ *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.

⁴⁸ 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.

defined neutrally in a psychological and anthropological manner, so as to illustrate 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. The analysis offered by Nenad Dimitrijevic can be used to understand the reasons for the reestablishment of national identity in Serbia. He defines this identity as: 1) Primacy of ideas over reality, 2) Voluntarism in the creation of ideas 3) The need to materialise such ideas. He continues, noting:

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 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.⁴⁹

We tend to call nationalism everything that writings refer to as ethno-nationalism, exclusive nationalism, and illiberal nationalism and treat 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.⁵⁰

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 a 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 a return to an authoritarian system.⁵¹ A liberal democratic society has a formal government determined, which is by the existence of a representative government within the constitution and limited by the rule of law and the human rights of the citizens. The institutions of a liberal democracy are free elections, human and minority rights, free media and civil society.

Although there are numerous definitions of multiculturalism, we shall rely on the normative descriptions that provide a socio-cultural definition: that which has become an essential feature of contemporary society.⁵² We shall define the

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>.

⁴⁹ *Op. cit.*, 89 and 90.

⁵⁰ 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, Date accessed 21st October 2007.

⁵¹ 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.

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

concept of nation building in accordance with Kymlicka. He believes that in Central and Eastern-European countries the ruling elites, after suffering an identity crisis under communism, attempt to “build a nation” by developing societal culture through policies relating to the official language, the centralisation of power, a uniform system of national education, drawing borders of administrative units, and the policy of migration and naturalisation.⁵³ 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.”⁵⁴ Nevertheless he does not believe this type of state building to be fallacious *per se* from the standpoint of liberal state building, and provides examples in which both liberal and illiberal democracies “give to the public space a national character.”⁵⁵

2.4. Framework of Approaches

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

In order to gain an insight into the position of minorities in Serbia, the paper 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 to new normative solutions. The paper 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 that will be used to determine whether there are any existing models that define the position of minorities in Serbia will consist of the measure of minorities’ trust in the state. It can be manifested in political participation and peaceful co-existence that results in the lessening tensions and the lack of ethnically motivated violence, the application of the principles of non-discrimination and equality, and the presence of elements that foster the development of a democratic country and strengthen inter-ethnic dialogue.

3. The 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. Nevertheless, according to the old Federal Law on the Freedoms and the Protection of the Rights of National Minorities, which was applied in Serbia after the

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

⁵⁴ *Ibid*, 31.

⁵⁵ *Ibid*, 66.

dissolution of the State Union of Serbia and Montenegro,⁵⁶ 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, 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 further states 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. The 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 – a fact commended by the Council’s Commission on Democracy through Law (the Venice Commission).⁵⁷ The Constitution deals with the question of minorities in the section defining general principles, as well as in the section that defines the catalogue of human rights. A special article of the Constitution prohibits discrimination based on belonging to national minorities (Art. 76, 2). In addition, the Constitution guarantees the right to manifest national belonging (Art. 74, 1), the preservation of minority identity, the right to express, preserve, and develop national, ethnic, cultural and religious belonging, the use of language and script, the right to education, information and the creation of public media (Art. 79), the prohibition of forced assimilation and the artificial change of the structure of the population (Art. 78, 3), and the right to participate in public affairs based on adequate representation of the members of national minorities. It is important to note that the Constitution allows for positive discrimination (affirmative action), with the aim of achieving equality between the majority and minority populations, and that the Constitution enables the creation of National Councils, which possess public powers, as specific institutions of cultural autonomy.

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 that resembles similar constitutions of South-East European countries formed after the collapse of communism. This quality is reflected in the 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,⁵⁸

⁵⁶ *Službeni list SRJ*, 11/02.

⁵⁷ 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)

⁵⁸ 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.

one cannot simply forget that 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.⁵⁹ The Law on the Protection of the Freedoms and Rights of National Minorities remains Serbia's 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.⁶⁰

The law regulates the rights of minorities, the right to the education of members of a national minority, and the right to use minority languages. It also prohibits discrimination on the basis of belonging to a minority and provides for positive discrimination directed towards the Roma population.

Other laws important to the issue of minorities include the Law on Local Self Government and the Law on the Termination of Competences of Vojvodina. The latter closely regulates the protection of minorities at the local level and at the level of the autonomous province. The Law on Local Self-Government regulates *inter alia* the language in official use in municipalities where members of a minority live, and the formation of councils for national affairs and local institutions to address the interests of minorities in those municipalities. In addition, the Law on Churches and Religious Communities, which governs the position of traditional churches and religious communities in Serbia, includes provisions for the position and configuration 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 through a series of provisions that provide for differential treatment of religious communities.⁶¹

The protection of minorities in criminal law is guaranteed and secured through laws covering concrete violations targeting national minorities such as instigations 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 backed by the possible imposition of fines.⁶²

Depending on the structure of these regulations, minorities in Serbia primarily appear as ethnic minorities, formed of citizens who belong to a different ethnic group than the majority Serb population. According to the last census held in 2002, more than a million people belong to ethnic minorities in Serbia (excluding Kosovo).⁶³ These consist of Hungarians, who predominantly live in the territory of Vojvodina, of Albanians in the South of Serbia, of Bosniaks inhabiting Sandzak (the territory on the border between Serbia and Montenegro or Bosnia and Herzegovina), and of Bulgarians and Wallachians in Eastern and South-Eastern Serbia. There are also smaller minorities, which include Germans, Ashkalis, Bunjevci, Ukrainians, Czechs, Jews and Macedonians. The Roma people are not

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

⁶⁰ 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

⁶¹ 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.

⁶² *Službeni glasnik RS*, 50/92.

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

concentrated in a specific part of Serbia. Roma live in almost the entire territory of Serbia. According to the 2002 census, the number of Roma is about 108,000, but the activists working with Roma NGOs believe that their number is several times higher because many have not been properly registered.⁶⁴ The Roma are the most endangered national minority in Serbia due to their difficult social and economic position. The percentage of functionally illiterate Roma is about 80, and only 10% of Roma children go to school. About 90% of Roma are unemployed. Members of the Roma community are also the most frequent victims of incidents of national intolerance.⁶⁵ The national minority institutions in Serbia focus primarily on the minority's right to develop its culture and traditions and on the right to public information. The most numerous institutions belong to a category that includes cultural and artistic societies, publishing houses, houses of culture and associations for the protection of tradition.⁶⁶

The attitude towards national minorities in Serbia has depended on the nature of conflicts occurring on the territory of the former Yugoslavia. Only with the creation of the prerequisites for the democratic development of the minority rights in 2000, have there been gradual advances in the position of minorities in Serbia. Nevertheless, the side effect of democratic changes was also the strengthening of minority nationalism.⁶⁷ Unfortunately, the improvement of the position of the minorities has not been constant and regular. In the past few years, national intolerance and inter-ethnic conflict in Serbia has been on the rise. 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 recognize them as citizens of Serbia, and 73% would not even enter into marital relations with them. Albanians are followed by Croats – 25% of Serbs would not choose to have any social contacts with Croats. The negative image of Croats is followed by that of Bosniaks, Roma and Hungarians.⁶⁸ One can therefore assume that the position of minorities in Serbia is fragile and conditioned by many factors, including those that normally should not be decisive in the solution of minority problems. The implementation of minority rights has not been satisfactory despite the high normative standards. The violations of minorities' human rights of have most frequently been manifested in inter-ethnic incidents and tensions in multi-ethnic communities.⁶⁹ In such situations the reactions of the police and other state organs are considered to have been inadequate.⁷⁰

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

⁶⁵ *Op. cit.*, 196.

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

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

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

⁶⁹ 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).

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

3.3 *Minorities and the State*

With the beginning of the democratic changes in Serbia, the new authorities attempted to draw 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 reduction of conflicts in South 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 inter-ethnic relationships. The Ministry of Human and Minority Rights, established in the new State Community of Serbia and Montenegro, performed a similar role. After the departure of Montenegro and the formation of a new government in Serbia, institutions in charge of human and minority rights ceased to exist. There are several state institutions in Serbia that are largely competent to deal with minority and interethnic problems. The Council of Serbia for National Minorities is an institution charged with the promotion and protection of the national, ethnic, religious and cultural specificity of national minorities. It is composed of the Prime Minister and the Ministers of Justice, Religious Affairs, Education, and Local Self-Government, and the chairpersons 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 Serbia's multi-ethnic communities.

The position of women belonging to national minorities has been neglected. Though several non-governmental organizations deal with this issue (the Centre for Multiculturalists in Novi Sad and the Helsinki Committee for Human Rights in Serbia in Belgrade), state institutions have taken no interest in this problem. The Assembly of Serbia contains a Committee for Gender Equality, and there is also a Council of the Government for Gender Equality. In Vojvodina there is a 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 gender equality.

Minority political parties came into existence after the introduction of a multi-party system in Serbia during the 1990s. The minorities created parties guided mainly by ethnic criteria, so these parties 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 South Serbia and the Bosniaks in Sandzak established political parties immediately after a multiparty system became acceptable. The attitude these parties took towards elections was different: whereas Albanians boycotted all of the elections called after 1990, other minority parties participated with more or less success.

In the meantime, other minorities (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 these 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. Thus a large number of Serbian citizens belonging to national minorities was deprived of political participation for a period at least three years. This discriminatory approach was changed through the adoption of amendments on electoral laws, and as a result, representatives of minority political parties entered Parliament after the January 2007 elections. The Association of Vojvodina Hungarians gained three seats, the Coalition List for Sandzak - Dr. Sulejman Ugljanin gained two; the Coalition of Albanians of the Presevo Valley gained one seat, and two Roma parties - the Roma Union of Serbia and the Roma Party gained one seat each.

4. The International Community and Minorities in Serbia

4.1. *The Definition of External Actors and their Role*

From the beginning of the crisis in Former Yugoslavia, a large number of external actors followed the events and participated in the developments marking the end of the 20th century and the beginning of the 21st century in the Balkans in various ways. It can be generally observed that defining the role of each is difficult, irrespective of the many factors that influenced the course of events. Nevertheless, some actors were more present than others, some left a stronger trace, and the actions of some were more effective. Therefore, when speaking of external actors we shall deal only with those exercising a role in the ethnic conflicts. The post-conflict setup must be taken into account when analyzing the position of human and minority rights.

The European Union (initially: the European Community) began to play 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 internal politics. It invited social reforms, and became one of the most important foreign political aims of the country. The institutions of the European Union guided the extensive reforms Serbia needed, and also secured the necessary programmatic, technical and financial aid. The European Union was able to exert significant influence through the policy of conditionality. It demanded that standards for the protection and promotion of human and minority rights be adopted as a condition for joining the Union.

One of the multiple obligations that resulted from Serbia's admission to the Council of Europe in 2003, was the promotion and improvement of human rights. Various Council instruments, 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 standards in these areas as well as mechanisms of their promotion and protection. For instance, the European Court of Human Rights developed considerable experience in the protection of human rights as well as in specific issues relating to the position of national minorities.⁷¹ The Council of Europe's Commission for Democracy through Law (The Venice Commission) also

⁷¹ See e.g. *Gorzelik v. Poland*, *Belgian Linguistics Case*, etc.

played a role in reforming Serbia with the goal of achieving full implementation and respect of human and minority rights.⁷²

Since 1993, the Council of Europe has also intensified its efforts to improve the status of Roma throughout Europe, through minority protection, the fight against racism and intolerance, and the fight against social exclusion. The Specialist Group on Roma was established with this end in mind. It monitors the position of this large community in Europe and exerts influence to improve this position through various projects. Serbia also has at its disposal many other Council of Europe bodies, which provide guidelines for the creation of a genuinely multicultural society. One of these 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 is an international organisation created 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.

In accordance with its mandate, the United Nations, through agencies and programs such as the UNDP, uses publicity to draw attention to the development of rural areas and to the resolution of social and economic problems. Specifically, the UNDP attracts great attention to providing support to multi-ethnic communities and local forces in South Serbia.

The OSCE launched a number of initiatives aimed at developing a 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. A project involving multiethnic police, carried out in Southern Serbia, in addition to the announcement of a similar project in Vojvodina, probably represents the most successful initiative 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 to integrate the Albanian population into government structures after violence broke out in autumn 2001. The OSCE also provided great support to the training and implementing minorities' electoral rights.

5. Analysis and Conclusion

Because of nation 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 implemented to improve the position of minorities in Serbia can be seen only after the democratic changes of 2000 and during the post-conflict phase of the development of Serbian society. The resolution of the crisis in South Serbia in 2001 illustrated a new approach to resolving ethnic-conflict. This was followed by large number of institutional and normative measures and by the arguably positive definition of the position of minorities. Nevertheless, much has yet to be done to realise these measures and to secure their effects.

In an attempt to measure the effect of activities undertaken to improve the position of minorities in Serbia, a preliminary observation can be made stating that the position of minorities has in recent years not been a priority concern of the

⁷² See 3.1 i 3.2 above.

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 to achieve democratic consolidation (including persons belonging to national minorities), the capital resulting from of this partnership was gambled away in the ensuing years.

First of all it is important that confidence in state institutions be established for both the majority and for persons belonging to minorities. This will be possible only if the injustices of the recent past are corrected and those who have committed criminal offences against members of other ethnicities are punished. If state institutions are developed to include the full participation of minorities, they will result in the common good surpassing ethnic barriers. The institutionalisation of communities within ethnic groups at various levels can be achieved through education (formal and informal). The development of a civic education programme in and outside schools appears a possible way to attain this goal.

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