

**THE SITUATION OF MINORITIES IN  
THE FEDERAL REPUBLIC OF YUGOSLAVIA.  
TOWARDS AN IMPLEMENTATION OF THE  
FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES.**

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**Introduction**

On 11 May 2001 the Federal Republic of Yugoslavia (FRY)<sup>3</sup> acceded to the Council of Europe's FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (FRAMEWORK CONVENTION hereinafter). The new government in Belgrade, in power since the democratic revolution in October 2000, has thereby declared its political intention to improve the situation of minorities by revising its legislation in accordance with the normative standards of the FRAMEWORK CONVENTION. By identifying general patterns of minority treatment in both legal standard-setting and factual practice in the FRY over the past decade, this study contributes to an analysis of primary concerns to be considered in the implementation of the FRAMEWORK CONVENTION.

The first section provides historical background information for understanding the general patterns of minority treatment in the FRY. In particular, it examines the systemic factors which led to the violent dissolution of the former Yugoslavia and have contributed to the deterioration of the situation of minorities in that region. The second section reviews the constitutional and legislative provisions pertaining to minorities in the FRY and analyses to what extent these are implemented in practice.

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<sup>2</sup> The author wishes to acknowledge the assistance of Marie-Janine Calic, François Grin, Hans Koschnick, Marita Lampe, Stefan Troebst, and Marc Weller and thanks them for their comments and suggestions in preparing this paper.

<sup>3</sup> Although there is still some confusion related to the proper names of some successor states of the former Yugoslavia – "Yugoslavia", "Yugoslavia (Serbia and Montenegro)", "Federal Republic of Yugoslavia (Serbia and Montenegro)" being used to refer to the region of Serbia and Montenegro – this paper has adopted official terminology by calling the region in question "Federal Republic of Yugoslavia" ("FRY"). The focus of the study is, however, on the situation of minorities in Serbia.

While addressing some of the recent developments in Kosovo,<sup>4</sup> where the situation of human rights has deteriorated dramatically with the escalation of armed conflict, the focus in this is on the situation of minorities in the FRY and, particularly, in the Republic of Serbia. The third section evaluates both domestic legal provisions and factual practices from the perspective of the standards contained in the FRAMEWORK CONVENTION. The paper concludes with a summary of priorities for a constructive and critical dialogue of the Council of Europe with the FRY on the protection of minorities.

This paper adopts an interdisciplinary perspective, combining social sciences and legal analysis. It is based on archival and documentary research covering up-to-date UN material, government sources, information provided by NGOs and secondary literature on the situation of minorities in the FRY. It should be noted that the paper was originally written before the democratic revolution in Serbia, its aim being to assess the FRY's credibility as a potential signatory state to the FRAMEWORK CONVENTION. It was commissioned in 1999 by the European Centre for Minority Issues (ECMI) with the support of the Council of Europe, which also provided parts of the material on which the analyses presented here are based. As a consequence, this paper predominantly addresses the situation of minorities in the FRY prior to the democratic revolution in October 2000. Obviously, this situation has changed with the removal of the authoritarian regime, the end of international isolation and, not least, with the FRY's accession to the FRAMEWORK CONVENTION. In this paper, these developments could only be taken into account in a very general manner. However, since main patterns of the *de jure* and *de facto* situation of minorities seem to continue in the FRY, the information provided in this paper may be useful in determining critical elements for the implementation of the FRAMEWORK CONVENTION, in particular for the drafting of new legislation on minority rights.

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<sup>4</sup> The name of the administrative unit in the southern part of the Republic of Serbia is subject to controversies as well. In Albanian it has been called "Kosova" or "Kosova dhe Rrafshi i Dukagjinit", while in Serbian language the terms "Kosovo" or, before 1968 and since 1989/90, "Kosovo-Metohija" (abbreviated "Kosmet") have been in use. Throughout the following paper, the term "Kosovo" refers to the administrative unit in question.



## Section I: Minorities in the Federal Republic of Yugoslavia

Both the legal position of minorities in the FRY and patterns of their factual treatment need to be understood in the light of the successive dissolution of the former Yugoslavia and its highly complex constitutional system. Although the scope of this study does not allow for explaining in full detail all systemic factors which led to the violent breakdown of the former Yugoslavia after 1989 and, in particular, to the wars over Bosnia and Kosovo, this section analyses those which have affected the situation of minorities in the region (A.). It furthermore provides a typology that serves to identify patterns of the state's treatment of minorities as well as patterns of social conflicts involving minorities, which are typical for the successor states of the former Yugoslavia, especially for the FRY (B.). To avoid one-sided interpretations of the Yugoslav conflict, only those factors will be considered on which there is a certain consensus in the scholarly literature.<sup>5</sup>

### *A. Historical Background*

There is a prevailing tendency in Western public opinion to regard the Yugoslav conflict as caused by historically rooted ethnic and religious hatred. Thus, it has been claimed that the Balkans with its intermingling of ethnic affiliations as well as of Islamic, Orthodox and Catholic traditions were a “cultural fault line” with an inherent potential for conflict.<sup>6</sup> That the Yugoslav project of constituting a multi-ethnic and multi-confessional state eventually broke down and that it did so under circumstances of extreme violence was, in this view, almost unavoidable. However, this perspective has been rightly criticised for perpetuating a stereotypical discourse on the Balkans as an essentially irrational and violence-prone region.<sup>7</sup> It especially fails to explain why,

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<sup>5</sup> The literature on the dissolution of the former Yugoslavia is abundant. Relevant scholarly monographs on the subject are Ramet, Sabrina Petra 1999, *Balkan Babel. The Disintegration of Yugoslavia from the Death of Tito to the War for Kosovo* (3<sup>rd</sup> ed.), Boulder: Westview Press; Woodward, Susan L. 1995, *Balkan Tragedy. Chaos and Dissolution after the Cold War*, Washington, D.C.: The Brookings Institution. See also Devetak, Silvo 1996, "The dissolution of multi-ethnic states: The case of Yugoslavia", pp. 159-178 in: Rupesinghe, Kamer und Valery A. Tishkov (eds) *Ethnicity and power in the contemporary world*, Tokyo: United Nations University Press and the contributions in Pavkoviæ, Aleksander (ed.) 1997, *The Disintegration of Yugoslavia: Inevitable or Avoidable?* Nationalities Papers (Special Topic Issue): 25 (3).

<sup>6</sup> A prominent version of this view is Huntington, Samuel P. 1993, "The Clash of Civilizations?", *Foreign Affairs* 72 (3): 22-49.

<sup>7</sup> See Todorova, Maria N. 1997, *Imagining the Balkans*, Oxford: Oxford University Press.

after four decades of relative stability, the Yugoslav Republics entered the logic of nationalism precisely in the 1980s with the result of inter-ethnic violence and civil war in the 1990s.<sup>8</sup> After having laid out the constitutional framework of former Yugoslavia (1.), the following subsection therefore analyses the economic, political and geo-strategic factors contributing to the emergence of new nationalism (2.) in order to account for the conflicts involving minorities in the former Yugoslavia (3.).

### **1. Nations and nationalities within the constitutional framework of the Socialist Federal Republic of Yugoslavia**

A major constitutional problem of the second Yugoslavia, which was founded by Marshall Tito in 1946 as the "Federal People's Republic of Yugoslavia" and renamed "Socialist Federal Republic of Yugoslavia" (SFRJ) in 1963, was to find a solution to the nationality question inherited from the Turkish and the Austro-Hungarian Empire. Centuries of Ottoman and Habsburg imperial rule in Central and Southeastern Europe had sustained a multi-ethnic and multi-confessional social space with administrative structures of local government and a high number of mixed communities. Within this social space, the liberation movements against Habsburg and Ottoman rule in the 19th century, which relied on the ideology of nationalism and its claim to the congruency between a sovereign state and a particular nation ("*narod*"/"*Volk*"), necessarily resulted in conflicts over state boundaries and over what had now become "minorities". After the eventual breakdown of the Turkish and the Austro-Hungarian Empire, a political solution to this nationality question was formulated by anchoring the principle of national self-determination in international law and by establishing a regime of international minority protection which consisted of multilateral agreements monitored by the League of Nations and of bilateral treaties between states representing "their" minorities. A unitarist solution was achieved in the "Kingdom of Serbs, Croats and Slovenes", formed in 1918 as a multi-national monarchy in which Serbs, Croats and Slovenes were considered to form one people, although with a clear factual Serbian dominance in the state. Since 1929, King Alexander pursued an even stronger unitarist policy which pretended the unity of the South-Slav people, by renaming the country "Yugoslavia" and by reorganising its administrative structure

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<sup>8</sup> See Woodward 1995, p. 14; Ignatieff, Michael 1993, *Blood and Belonging. Journeys into the New Nationalism*, New York: Farrar, Straus and Giroux, pp. 16-19.

independently of any considerations of ethnic or national composition. Following Nazi occupation in 1941 and the founding of the Ustasa regime in Croatia, the nationality question rose to the fore again in a traumatising civil war between Croatian fascists, Serbian Chetniks and a multinational, communist-led partisan army.

The solution to the nationality question achieved in Tito's post-war Yugoslavia consisted, firstly, in the construction of "Yugoslavhood" as a supranational identity and, secondly, in the establishment of a complex constitutional system guaranteeing equal representation and power-sharing of all national groups.<sup>9</sup> From the beginning, these two elements stood in conflict with each other in the SFRJ. In the course of its political development, however, the second eventually gained prominence. The construction of a supranational identity, which was most forcefully pursued in the "Yugoslavism" campaign of the 1950s, relied on the idea of "brotherhood and unity of nations and nationalities", an idea which was still proclaimed as one of the state's core principles in the preamble of the 1974 constitution. Closely attached to the project of Titoist socialism pursued after the break with Stalinism in 1948, Yugoslavhood emphasised the common interests of the working class over its national cleavages and, therefore, officially condemned and sanctioned any form of nationalism. Under the influence of Vice-President Alexander Rankoviæ, the state even pursued repressive policies against minorities on the grounds of alleged nationalism, most notably against Albanians in Kosovo. In so far as the main carrier groups of this supranational identity were the communist party and the federal state organs, the plausibility of Yugoslavhood as a supra-national identity was highly dependent on the functioning of the federal state.

After the dismissal of Rankoviæ in 1966, which was accompanied by a process of political decentralisation, the concept of a multi-national state was successively institutionalised through the constitutional system of representation and power-

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<sup>9</sup> On the Titoist answer to the nationality question, see Paunoviæ, Milan 1997, "Nationalities and Minorities in the Yugoslav Federation and in Serbia", pp. 145-165 in: Packer, John and Kristian Myntti (eds) *The Protection of Ethnic and Linguistic Minorities in Europe*, Åbo/Turku: Institute for Human Rights, esp. 154-158; Rusinow, Dennison 1994, "Minorities in Domestic Politics: Yugoslavia", pp. 71-79 in: Heuberger, Valeria et al. (eds) *Nationen, Nationalitäten, Minderheiten. Probleme des Nationalismus in Jugoslawien, Ungarn, Rumänien, der Tschechoslowakei, Bulgarien, Polen, der Ukraine, Italien und Österreich 1945-1990*, Wien: Verlag für Geschichte und Politik; Poulton, Hugh 1993, *The Balkans: Minorities and States in Conflict*, London: Minority Rights Publications, pp. 5-13.

sharing as promulgated in several constitutional acts and, especially, in the new constitution of 21 February 1974. Formulated to a large extent by Vice-President Edvard Kardelj who drew on traditions of Leninism and Austro-Marxism, this system of representation and power-sharing consisted in a combination of the principle of territoriality (*Territorialitätsprinzip*) and the principle of personality (*Personalitätsprinzip*) within a federal framework.<sup>10</sup> Thus, the 1974 constitution stipulated in Article 1:

Article 1 The Socialist Federal Republic of Yugoslavia is a federal state having the form of a state community of voluntarily united nations and their Socialist Republics, and of the Socialist Autonomous Provinces of Vojvodina and Kosovo, which are constituent parts of the Socialist Republic of Serbia, based on the power of and self-management by the working class and all working people; it is at the same time a socialist self-management democratic community of working people and citizens of nations and nationalities having equal rights.<sup>11</sup>

The principle of territoriality was realised through the representation of "nations" (*narod*) in "their" republics. The SFRJ consisted of six republics: Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia, in which a particular "nation" constituted a clear numerical majority except for Bosnia-Herzegovina. The republics enjoyed a high degree of internal autonomy in legislation and jurisdiction. Within the federal organs, the equal representation of "nations" was guaranteed through a complicated system of quota, the rotation of cadres and the right of republics to veto federal legislation. While being severely restricted until 1968, the autonomy of the two Socialist Autonomous Provinces (SAP) Kosovo and Vojvodina was later elevated to the degree that in many respects they were *de facto* republics until 1989.

The principle of personality was articulated in the individual's self-declaration as

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<sup>10</sup> The distinction between territoriality and personality principles and an argument for the latter to solve nationality questions was developed by K. Renner and O. Bauer within the Austro-Hungarian Empire; see Hanf, Theodor 1991, "Konfliktminderung durch Kulturautonomie. Karl Renners Beitrag zur Frage der Konfliktregelung in multi-ethnischen Staaten", pp. 61-90 in: Erich Fröschl, Maria Mesner, Uri Ra'anan (eds), *Staat und Nation in multi-ethnischen Gesellschaften*, Wien: Passagen Verlag. On the reception of this idea in the SFRJ, see Neæak, Dušan 1991, "Die 'jugoslawische Frage': historische Elemente zu ihrem Verständnis", pp. 275-292, in: Fröschl/Mesner/Ra'anan *op.cit.*

<sup>11</sup> Documented in Trifunovska, Snezana (ed.) 1994, *Yugoslavia Through Documents. From its Creation to its Dissolution*, Dordrecht et al.: Martinus Nijhoff Publishers, pp. 224-233.

member of either a "nation" (*narod*) or "nationality" (*narodnost*). "Nations" (*narodi*) that were constitutionally recognised on the entire territory of Yugoslavia were Serbs, Croats, Slovenes, Macedonians and Montenegrins (see table 1). In 1968, Muslims in Bosnia, i.e. descendants of Slavs who had converted to Islam, were also granted the status of a "nation" in compensation for the fact that they did not have their own national republic. It is important to note that of all "nations" significant percentages lived as numerical minorities outside their "home" republics, especially in the case of the Serbs. Recognised minorities – or "nationalities" according to official terminology since 1959 – were Albanians, Hungarians, Bulgarians, Czechs, Roma, Italians, Romanians, Ruthenians and Turks. Although they outnumbered other "nations" (see table 1), Albanians, having an external home state, were considered as a "nationality", with the consequence that Kosovo was consistently denied legal status as a republic. All "nations" and "nationalities" were granted equal rights (Art. 245) and enjoyed a considerable cultural autonomy throughout the territory of the SFRJ, including the rights to use their own languages in administration, education and the media (Art. 246-248). "Nationalities" were also considered to realise their sovereign rights in the self-managing and socio-political communities which lay at the basis of the economic system. Compared to the "nations" which were represented equally in state and SKJ organs, proportionally the share of "nationalities" in political power was relatively low.<sup>12</sup> In addition to these two categories, the constitutional system also acknowledged certain rights of "Other Nationalities and Ethnic Groups" comprising small European minorities as well as self-declared "Yugoslavs", people who did not consider themselves to belong to any national "nation" or "nationality" and who often were children of mixed marriages.

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<sup>12</sup> On the numerical breakdown of the involvement of "nations" and "nationalities" in office-holding, party affairs and the armed forces, see Crampton, R. and B. 1997, *Atlas of Eastern Europe in the Twentieth Century*, London: Routledge, pp. 216f.

**Table 1:** National Composition of the SFRJ 1961-1991 (in percent)

| <b>National group</b> | <i>1961</i> | <i>1971</i> | <i>1981</i> | <i>1991</i> |
|-----------------------|-------------|-------------|-------------|-------------|
| Serbs                 | 42.0        | 39.7        | 36.3        | 36.2        |
| Croats                | 12.1        | 22.1        | 19.8        | 19.7        |
| Slovenes              | 8.5         | 8.2         | 7.8         | 7.5         |
| Macedonians           | 5.6         | 5.8         | 6.0         | 5.8         |
| Montenegrins          | 2.8         | 2.5         | 2.6         | 2.3         |
| Muslims               | 5.2         | 8.4         | 8.9         | 10.0        |
| Albanians             | 5.0         | 6.4         | 7.7         | 9.3         |
| Yugoslavs             | 1.7         | 1.3         | 5.4         | 3.0         |
| Other                 | 6.1         | 5.6         | 5.5         | 6.2         |
| Total (absolute)      | 18,549,291  | 20,522,972  | 22,427,585  | 23,528,230  |

*Source:* Official censuses quoted in Woodward 1995, p. 32.

One may conclude that the constitutional framework of the SFRJ, especially after its reform between 1968 and 1974, allowed for a relatively high degree of national autonomy. Judged against international standards, the protection of minorities in the SFRJ was therefore generally considered sufficient. In fact, the SFRJ not only ratified most international legal instruments pertaining to the protection of minorities (see *infra* II.A.1.), it actively promoted the protection of minorities in international organisations, including the UN Commission for Human Rights. However, since the constitutional framework of national representation and power-sharing was the only mode of political pluralism in SFRJ, it was highly vulnerable to political crises at the federal level. Discontent with the federal state as it developed in the 1980s was therefore channelled into nationalist politics and eventually resulted in the dissolution of the state.

## **2. New nationalism in the 1980s and the political breakdown of the former Yugoslavia**

The stability of the constitutional framework of the SFRJ and its economic and political infrastructure depended on three major interrelated conditions: economic growth, political consensus at the federal level and a stable geo-strategic position.<sup>13</sup> The economic and political infrastructure in the SFRJ was characterised by strong

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<sup>13</sup> On the international dimension of the SFRJ's stability, see especially Woodward 1995, p. 22-29.

regional inequalities: since the 1950s economic performance in the northern republics was much higher than in the southern republics as indicated by larger proportions of the GNP and lower unemployment rates. These inequalities were reinforced after decentralisation in the 1960s, in so far as the republics gained more legislative autonomy in pursuing their own economic policy. They reflected the internal division of labour correlated to the SFRJ's involvement in different markets; thus Croatia and Slovenia had export-based economies oriented to Western Europe, while Serbia's economy depended on imports from the Eastern Bloc. This internal division of labour and its corresponding economic cleavages were adapted to the SFRJ's geo-strategic role as a non-aligned country within the international political and economic framework of the Cold War. Only a stable international environment and general economic growth allowed the federal state and party organs to achieve political consensus between the republics over the redistribution of resources and goods and, hence, to maintain the constitutional framework of the SFRJ.

When these three conditions were no longer given in the 1980s, the constituent republics of the SFRJ entered the logic of new nationalism, which resulted in the breakdown of the federal constitutional framework. As a result of several systemic factors, including not least the international debt crisis and new budgetary policies imposed by the IMF, the country experienced a dramatic economic decline.<sup>14</sup> Since the constituent republics – given their inclusion in different market segments of the international system – were affected unequally by decreases of the GNP, rising unemployment rates and high inflation, the economic crisis highlighted the fissures already institutionalised in the framework of representation and power-sharing.<sup>15</sup> The republics successively developed into self-enclosed proto-states and communication between them dropped to a minimum. These regional fissures in turn resulted in the malfunctioning of federal political organs, most notably of the leadership of the “Savez Komunista Jugoslavije” (SKJ) and the Presidency which, after Tito's death in 1980, had been re-organised in two collective organs of nine and 23 members,

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<sup>14</sup> For instance, unemployment figures rose to over 16% in the 1980s; see Woodward 1995, p. 52. On economic figures, see also Statistisches Bundesamt 1990, *Länderbericht Jugoslawien*, Wiesbaden: Statistisches Bundesamt, p. 36; 95-100.

<sup>15</sup> Thus, unemployment rates stabilised at a level of below 10% in Croatia and Slovenia, while in the Autonomous Province of Kosovo they rose to over 50%; see Woodward 1995, p. 53.

respectively. As the malfunctioning of the federal political organs and the contradicting interests of national elites became visible, public confidence in the federation shrank and the supranational identity concept of "Yugoslavhood" lost its plausibility.<sup>16</sup> Within a constitutional framework of the SFRJ emphasising regional autonomy and of a communist one-party-system preventing political pluralism, discontent with federal political organs was most easily mobilised through a politics of new nationalism.

Nationalist unrest in the SAP of Kosovo in March and April 1981, in which Albanian students demonstrated to be granted the status of a *de jure* republic and which was violently suppressed by federal forces, set the stage for new nationalism within Serbia.<sup>17</sup> In reaction to the claims to autonomy made by Albanian nationalist movements, a new discourse developed among Serbian intellectuals, which accused the federal structures of the SFRJ of under-representing Serbs in the state.<sup>18</sup> Thus, for instance, the fact that the proportion of Albanians in Kosovo had, due to high fertility rates, increased from 67% to over 80% between 1961 and the 1980s, while that of Serbs had dropped from 23% to slightly more than 10%, was interpreted as a threat to Serbian interests within the Federation.<sup>19</sup> This new nationalist discourse was most prominently articulated in the *Memorandum* of the Serb Academy of Arts and Sciences in 1986, which expressed a common concern about Serbian history and collective identity among intellectuals of different political convictions in Belgrade.<sup>20</sup> It was this discourse which was successfully exploited by Slobodan Milošević, President of SKJ-Serbia since 1986, when he initiated constitutional amendments in March 1989 severely restricting the autonomy of the SAPs Vojvodina and Kosovo. He similarly pushed through a new constitution of the Republic of Serbia, adopted by the Serbian Parliament on 28 September 1990, in which the territorial autonomy of Vojvodina and Kosovo was almost entirely abolished (see *infra* II.B.1.). The preamble of the new constitution identifies the Republic of Serbia as the "democratic state of

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<sup>16</sup> See Godina, Vesna V. 1998, "The outbreak of nationalism on former Yugoslav Territory: a historical perspective on the problem of supranational identity", *Nations and Nationalism* 4 (3): 409-422.

<sup>17</sup> See Poulton 1993, pp. 61-68.

<sup>18</sup> On the new nationalist discourse among Serb intellectuals, see Pavkoviæ, Aleksander 1998, "From Yugoslavism to Serbism: the Serb national idea 1986-1996", *Nations and Nationalism* 4 (4): 511-528.

<sup>19</sup> On these numbers, see Janjiæ, Dušan, "Some Indicators of the Status of Ethnic Minorities in Federal Republic of Yugoslavia", Beograd: Forum for Ethnic Relations, p. 12; see also Woodward 1995, p. 34.

<sup>20</sup> On this *Memorandum*, see Pavkoviæ 1998, Poulton 1993, pp. 17-19 and Ramet 1999, pp. 18-20.



the Serbian people"; this constitutional nationalism anchored the new nationalist discourse in the legal system.<sup>21</sup>

Triggered by the factors outlined above and in reaction to Serbian nationalism, new nationalism also developed in Slovenia and Croatia where nationalist parties won the first multi-party elections in April 1990. Discontent with the federal institutions in these two republics was politically articulated by introducing new legislation strengthening the republican autonomy and by opting, in the federal organs, for a confederation with enlarged competencies for each republic. When this option was recognised as being unachievable due to the Serbian interests in preserving and controlling federal organs, Slovenia and Croatia – with early sympathy from the Austrian and German governments – unilaterally declared their independence on 25 June 1991. This step together with Serbia's response of deploying Yugoslav People's Army (JNA) troops accelerated the break-down of the federal structure, despite US pressure and attempts at mediation by the EC to preserve the SFRJ. Following a referendum in September 1991, the "Republic Kosova" was proclaimed as an independent and sovereign state (see *infra* II.B.1.), and eventually Macedonia and Bosnia also declared their intention to gain independence.

It can be concluded that during the transitional period of the 1980s in which far-reaching reforms of the economic and political infrastructures would have been necessary owing to a changing international environment, the federal state of the SFRJ was too weak to maintain social order. When this power vacuum was filled by new nationalism and the federal structures finally broke down entirely, the situation of minorities in the SFRJ deteriorated to the level of open inter-ethnic violence.

### **3. New nationalism and the situation of minorities in the 1990s**

The dynamics of new nationalism and the breakdown of federal structures affected the situation of minorities in several ways. To the degree that the constitutional

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<sup>21</sup> "Constitutional Nationalism" has been a common element in the formation of the successor states of the SFRJ; see Hayden, Robert M. 1995, "Constitutional Nationalism and the Logic of the Wars in Yugoslavia", pp. 79-96 in: Janjiæ, Dušan und Stefano Bianchini (eds) *Ethnicity in Postcommunism*, Belgrade: Institute of Social Sciences; Forum for ethnic Relations; International Network Europe and the Balkans.

framework of representation and power-sharing of "nations" within the SFRJ dissolved, groups that had formerly constituted numerical minorities in one of the republics while being majorities in another republic now found themselves legally unprotected and vulnerable to violent hostilities. As such, they became an integral factor in inter-state as well as inter-ethnic conflicts which generally followed the logic of a triadic relation between national minorities, nationalising states and external national homelands.<sup>22</sup> Given the multi-ethnic and multi-confessional space characteristic of the Balkans, this logic necessarily induced involuntary population exchanges and "ethnic cleansing". The nationalising states also restricted the rights of what had formerly been "nationalities", i.e. minorities. In fact, only through pressure from the EC and the UN have the rights of minorities become incorporated into the legal framework of the new states, and their respect has been a particularly sensitive point of the GENERAL FRAMEWORK AGREEMENT FOR PEACE IN BOSNIA AND HERZEGOVINA (Dayton Agreement).<sup>23</sup> Some improvement in political cooperation on minority issues has also been achieved by the AGREEMENT ON THE NORMALIZATION OF RELATIONS BETWEEN THE REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA (23 August 1996), which in Art. 8 guarantees the protection of the rights of the Serb and Croat minorities respectively. It is obvious that, given these general circumstances, any long-term improvement of the situation of minorities in South East Europe requires a regional perspective which de-emphasises claims to national self-determination and stresses cooperation in broader economic, political and legal structures while granting cultural autonomy to persons belonging to minorities.

The aforementioned consequences of new nationalism were particularly visible in the Republic of Serbia. Here, nationalism and chauvinism was embraced by the Socialist Party of Serbia (SPS), the successor party of the SKJ-Serbia led by Milošević. It captured 194 of 250 Assembly seats in the 1990 elections and 123 seats in the December 1993 elections and has, until October 2000, remained in power through a coalition with the Yugoslav Left (JUL) and the New Democracy (ND) holding 110

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<sup>22</sup> See Brubaker, Rogers 1996, "National minorities, nationalizing states, and external national homeland in the New Europe", in: *Nationalism Reframed. Nationhood and the national question in the New Europe*, Cambridge: Cambridge University Press, pp. 55-76. On Croat and Serbian nationalism, see Ramet 1999, pp. 151-173.

<sup>23</sup> It has however been a major shortcoming of the Dayton Peace Agreement not to address the Kosovo question (see *infra* II.B.1.).

seats since the elections in September 1997 (see Appendix, table 2).<sup>24</sup> Some opposition parties such as the Serbian Radical Party (SRS), a temporary partner in the so-called "red-black coalition", promoted even stronger nationalist policies than the government; similar observations were made with regard to Vuk Drašković's Serbian Renewal Movement (SPO), which also temporarily co-operated with the government. In turn, coalitions of opposition parties that demanded a return to the rule of law, respect for human rights and democracy, such the Alliance for Change or the Democratic Opposition of Serbia (DOS), as well as popular protest against the regime, were systematically repressed within the FRY. Furthermore, the state government established some, although not total, control over public media, most prominently over the Belgrade daily *Politika* and about some radio and television channels. It also tightened control over academic life, most notably through the UNIVERSITY LAW of 26 May 1998, which virtually abolished the autonomy of universities.

These conditions have started to change after the democratic revolution in the Republic of Serbia and the removal of Milošević's authoritarian regime. In October 2000, the Democratic Opposition of Serbia, a multi-party coalition, captured 58 of 138 assembly seats in the federal elections and, in December 2000, 176 of 150 seats in the republican election (see Appendix, tables 1 and 2), with Vojislav Koštunica being elected president of the FRY by a majority of 50,24 %. However, as the process of democratic consolidation is far from being achieved, nationalism has still a strong hold on politics in Serbia.<sup>25</sup> Besides the long political isolation, the plausibility of nationalism among some segments of the population is also due to the continuing economic crisis, as caused by the former government's mismanagement, by UN sanctions adopted in 1992, and by the destruction of the country's infrastructure through NATO bombing in the Kosovo war in spring 1999. Since economic hardship, the weakness of social networks and movements that would constitute an active civil society, ill-functioning party politics and a lack of judiciary independence are still

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<sup>24</sup> On this development, see Thomas, Robert 1999, *Serbia under Milosevic. Politics in the 1990s*, London: Hurst & Company.

<sup>25</sup> Thus, the concept of "Serbhood" has allegedly even regained importance; see Helsinki Committee for Human Rights in Serbia, *Annual Report 2000* (<http://www.helsinki.org.yu/hcs/HCSreport2000part1.htm>).

major structural characteristics for the FRY, any long-term improvement of the situation of minorities requires an integrated approach, including economic reconstruction, democratic consolidation and legal reform.

### ***B. Minorities in the FRY***

On the basis of this historical background, one may distinguish different types of minorities and discern specific patterns in their respective treatment in the FRY throughout the 1990s. This subsection outlines such a typology of minorities (1.) and concludes by presenting available data on minorities in the FRY (2.).

#### **1. A typology of minorities in South East Europe**

The SFRJ tried to solve the nationality question by establishing a complex institutional framework of representation and power-sharing which eventually collapsed when the constituent republics entered the logic of nationalism. To what extent and in which ways minorities in South East Europe have become subject to discriminatory practices by the state or in society depends not least on their former *de jure* status within that institutional framework. However, the patterns of conflict involving minorities have also been affected by their *de facto* position as indicated by demographic factors and power relations. The following typology therefore takes a combination of the *de jure* and *de facto* situation of minorities as a basic criterion, thus distinguishing five types of minorities:<sup>26</sup>

- (i) New national minorities: The defining characteristics of new national minorities are that they have become minorities by losing their status as constituent “nations” (*narodi*) of the SFRJ and that, after the collapse of the federal structures, they now rely on one of the successor states of the former Yugoslavia as their external national homeland. Prime examples of this type are Croats in Serbia and Serbs in Croatia. New national minorities have been particularly affected by the dissolution of the former Yugoslavia, in so far as

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<sup>26</sup> Other typologies using the ethnic criterion distinguish between minorities with "home" state (Albanians, Hungarians, Romanians, Bulgarians), emerging minorities with new "home" state (Croats, Macedonians, Slovenians, Muslims), ethnic minorities without home state (Yugoslavs, Muslims), small European minorities (Czechs, Slovaks, Ukrainians, Russians, Germans), and dispersed non-European minorities (Roma, Jews).

they have inevitably been involved in border conflicts between the new states. As a consequence of their involvement in the Yugoslav wars and the corresponding loss of inter-ethnic communication and trust, they have also suffered from post-war discrimination.

(ii) Old national minorities: This type encompasses groups which constituted "nationalities" (*narodnosti*) under the constitution of the SFRJ and were as such characterised by their reliance on an external national homeland. Examples of old national minorities are Hungarians, Bulgarians, Slovaks, Romanians and others, who were protected under the constitution of the SFRJ by being guaranteed minority rights, especially in the cultural domain. The effect of new nationalism in Serbia has been that these rights have been curtailed or have failed to be sufficiently implemented by local authorities (see *infra* II.B.2.).

(iii) Ethnic Minorities: This type of ethnic minorities comprises regionally concentrated groups which were categorised as either "nationality" or "other ethnic groups" without having an external "homeland". The most obvious instance of this category are Muslims in the Sandžak region; in distinction to the Muslims in Bosnia, they were only recognised as a *narodnost* under the constitution of the SFRJ. While not being represented by any other state, they could theoretically enjoy proportional representation at the local level, since they constitute numerical majorities in some localities. As will be shown below, however, proportional representation is neither guaranteed in the constitution nor implemented in practice (see *infra* II.B.3.)

(iv) Dispersed Minorities: Dispersed minorities are those groups which again were categorised as either "nationality" or "other ethnic group", could not rely on any external "homeland" and are not regionally concentrated anywhere. Roma are an example of this type, which is highly vulnerable to nationalist politics and expulsion from both the nationalising state and other nationalising minorities (see *infra* II.B.4.).

(v) A special case is the situation in Kosovo. Although Albanians had never

been recognised *de jure* as a "nation" in the SFRJ, the SAP Kosovo had developed into a *de facto* republic between 1974 and the early 1980s (see *supra* I.A.1.). Therefore, inter-ethnic confrontation between Serbs and Albanians has also taken the form of a conflict over secession, including armed hostilities between Serbian police or military forces and the Albanian UÇK, accompanied by border disputes, population exchanges and "ethnic cleansing". With the status of Kosovo still unresolved (see *infra* II.B.5.), the Albanian minority in Serbia 'proper' has suffered from discrimination, while Serbs in Kosovo have experienced similar patterns of mistreatment after the Kosovo war in spring 1999.

## **2. Data on minorities in the FRY**

It is difficult to obtain reliable demographic data accounting for the multi-ethnic and multi-confessional composition of the population of the FRY. Firstly, the reliability of the last official census, which was carried out under the SFRJ in 1991 and provides the most comprehensive demographic data on the FRY, is rather weak since the census was boycotted by the Albanian population in Kosovo and therefore only displays estimates of relevant segments of the population. Secondly, the wars in Croatia, Bosnia and Kosovo in the 1990s have caused not only a high number of casualties among the civilian population but also one of the largest refugee movements since World War II, which has changed the demographic composition of the entire region. According to UNHCR statistical figures from 1998, there were 502,000 refugees, 6,000 asylum seekers, 1,900 returned refugees, 225,000 internally displaced and 110,000 returned internally displaced, i.e. a total of 844,900 dislocated persons on the territory of the FRY.<sup>27</sup> Thirdly, the discrimination and repression of some minorities has resulted in considerable flows of emigration, especially of Croatians and Hungarians from Vojvodina and Albanians from Kosovo. For these reasons the 1991 census (**table 2**) only gives rough estimates of the current composition of the population of the FRY and its two constituent republics.

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<sup>27</sup> See [http://www.unhcr.ch/statist/98oview/tab1\\_1.htm](http://www.unhcr.ch/statist/98oview/tab1_1.htm).

**Table 2:** Ethnic Composition of FRY and its constituent republics (in percent)

| National group   | FRY        | Serbia    | Montenegro |
|------------------|------------|-----------|------------|
| Serbs            | 62.5       | 65.8      | 9.3        |
| Croats           | 1.1        | 1.1       | 1.0        |
| Macedonians      | 0.5        | 0.5       | 0.1        |
| Montenegrins     | 5.0        | 1.4       | 61.8       |
| Muslims          | 3.2        | 2.4       | 14.6       |
| Albanians        | 16.6       | 17.2      | 6.6        |
| Yugoslavs        | 3.3        | 3.2       | 4.2        |
| Hungarians       | 3.3        | 3.5       | -          |
| Roma             | 1.3        | 1.4       | -          |
| Other            | 3.2        | 3.3       | 2.3        |
| Total (absolute) | 10,383,158 | 9,767,891 | 615,267    |

Sources: Official census data 1991 as reproduced in Janjiæ*op.cit.* (own calculations).<sup>28</sup>

Compared to these figures the number of Serbs within the FRY may be estimated to have increased by about 4-5 % at the time of 1998, since according to UNHCR statistical data there has been an influx of 200,900 refugees from Bosnia and Herzegovina, 296,000 from Croatia, 1,300 refugees from FRY Macedonia and 3,200 refugees from Slovenia.<sup>29</sup>

It is even more difficult to estimate the ethnic composition in the three regions with the highest concentrations of minorities within the Republic of Serbia: Vojvodina, Sandžak, and Kosovo. According to estimates of the Red Cross of the Province and UNHCR, the Vojvodina as an economically advanced region has accepted more than 200,000 refugees, i.e. about 40% of the total refugee influx to Serbia. Among these, there are particularly high numbers of Serbs coming from Croatia and, later, from Kosovo. Compared to the situation in 1991 (see **table 3**), the proportions of ethnic groups may therefore have changed. The influx of Serbs has also negatively affected inter-ethnic relations in certain small localities where Hungarians constitute over 50% of the population (e.g. in Ada, Baèka Topola (= Novi Sad), Beèej, Èoka, Kanjiža,

<sup>28</sup> For summaries of the 1991 census data see also Minority Rights Group (ed.) 1997, *World Directory of Minorities*, London: Minority Rights Group International, p. 250, and the government information contained in the *Report on the state of affairs and the exercise of national minority rights in the FRY*, presented to the UN on 3 July 1996, UN doc. A/51/203, E/1996/86 (10 July 1996).

<sup>29</sup> See [http://www.unhcr.ch/statist/98oview/tab1\\_2.htm](http://www.unhcr.ch/statist/98oview/tab1_2.htm).

Mali Iđos and Senta<sup>30</sup>) to the extent that an estimated number of 35,000 Hungarians emigrated to Hungary.

**Table 3:** Ethnic Composition of the Autonomous Province (AP) of Vojvodina in 1991 (in percent)

| <b>National group</b> | <i>Vojvodina</i> |
|-----------------------|------------------|
| Serbs                 | 56.8             |
| Croats                | 3.7              |
| Muslims               | 0.3              |
| Albanians             | 0.1              |
| Yugoslavs             | 8.7              |
| Hungarians            | 16.9             |
| Slovaks               | 3.2              |
| Romanians             | 1.9              |
| Roma                  | 1.2              |
| Other                 | 5.1              |
| Total (absolute)      | 2,013,889        |

*Source:* National census 1991, quoted in Samardžia 1997, p. 33.

The population of the Sandžak region, administratively divided between the Republic of Serbia and the Republic of Montenegro, totalled 352,475 according to the 1991 census. More than 50% of these are Muslims, who are especially concentrated in Tutin (93%), Sjeniea (75%) and Novi Pazar (74.%), in the Serbian part, and in Rozaje (95%) and Plav (80%) in the Montenegrin part.<sup>31</sup> As a consequence of the outbreak of the war over Bosnia, however, considerable numbers of Muslims have left the region.

With respect to Kosovo, accurate numbers of ethnic composition are hardest to obtain, since this region has been most severely affected by refugee movements, forced expulsion, mass executions and civilian casualties. According to the official census data of 1991, which was boycotted by large parts of the Albanian community, the two largest groups of the population (estimated total 1,956,000) were Albanians (estimated 81.6%), followed by Serbs (estimated 9.9%), of whom significant numbers

<sup>30</sup> On detailed figures of minorities in Vojvodina, see Samardžia, Miroslav 1997, "Izveštaj o Ostvarivanju Prava Pripadnika Nacionalnih Manjina u AP Vojvodini" ("Report on the realisation of national minority rights in Vojvodina"), Belgrade: Centre for Anti-War Action, pp. 9-12.

<sup>31</sup> For these figures, see Janjia, *op.cit.*, p.1.



have left Kosovo since the beginning of NATO-bombing in March 1999. Roma constituted the second largest minority within this region with about 150,000 persons, i.e. about 7% of the inhabitants. Of these, however, some 120,000 have left Kosovo due to discrimination and harassment by both Serbs and Albanians, according to estimates of the Institute for War and Peace Reporting (IWPR), London.<sup>32</sup> The number of Turks in Kosovo who constitute about 1% of the population is equally contested, since some Turks complain they were forced to register as Albanians in the 1991 census.<sup>33</sup>

## **Section II: The Position of Minorities in the FRY**

This section analyses the extent to which the legal system of the FRY respects, protects and promotes the rights of persons belonging to minorities. Throughout the following discussion it should be kept in mind that while Serbia and Montenegro share a common constitutional system, the political climate in both constituent republics evolved in opposite directions until October 2000. As evinced by the introduction of the DM as officially acknowledged currency, the Republic of Montenegro, formally still part of the FRY, has adopted a strong Western political orientation. Even after the federal elections October 2000, in which most Montenegrin political parties did not participate (see Appendix, table 1), and the following democratisation of Serbia, the relation between the two constituent republics remained unresolved. Also, the legal provisions discussed below are implemented in a rather different fashion in both republics. Therefore, while the first subsection reviews the constitutional and legislative provisions pertaining to minority rights in the FRY in general (A.), the second examines how they are implemented in practice in the Republic of Serbia (B.). The analysis shows that in comparison to the SFRJ the legal position of minorities was generally weakened in the FRY and that the implementation of the relevant legal provisions is constrained by the factors outlined above, most notably by the lack of the rule of law and by the fragility of democratisation in Serbia.

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<sup>32</sup> Quoted in *Le Monde Diplomatique* November 1999, p. 9.

<sup>33</sup> Information provided by the Turkish Democratic League (*Türk Demokratik Birliđi Partisi*) in a letter to the Council of Europe, dated 10 February 1999.

## ***A. Constitutional and legislative provisions pertaining to minorities in the FRY***

Despite the constitutional nationalism expressed in the preamble of the 1990 constitution of the Republic of Serbia (see *supra* I.A.3), the constitutions of the FRY and of its two constituent republics Serbia and Montenegro contain several provisions pertaining to the rights of minorities, which are specified through legislative measures at federal and republican level. Information on these provisions has been obtained by an extensive review of material provided, on the one hand, by the Government of the FRY, including periodic State Reports to the UN General Assembly, to the Economic and Social Council and to the Committee on the Elimination of Racial Discrimination (CERD), and, on the other hand, by international organisations such as the reports of the Special Rapporteurs of the UN Commission on Human Rights.<sup>34</sup>

### **1. International obligations**

The FRY claimed to be the legal successor to the SFRJ and to continue automatically the SFRJ's membership in international organisations, including the UN and the OSCE. However, this claim was not generally accepted. Thus, the Arbitration Commission established by the EC in 1991, which interpreted the successive secession of Slovenia, Croatia and Macedonia as "dissolution" of the SFRJ, stated in its Avis N° 10 that the FRY was a new state which could not be regarded as legal successor of the SFRJ.<sup>35</sup> At the Fourth Plenary Meeting of the CSCE Helsinki Summit

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<sup>34</sup> For the most comprehensive State Reports provided by the Government of the FRY, see UN docs. A/51/203, E/1996/86 (10 July 1996); CERD/C/299/Add. 17 (31 July 1997) and CERD/C/364. Balanced information is provided in the periodic reports submitted by the current Special Rapporteur of the UN Commission on Human Rights, Jiri Dienstbier, who was appointed in March 1998 as successor to Elisabeth Rehn. While Elisabeth Rehn's report on the situation of national minorities (UN doc. E/CN.4/1997/8 (25 October 1996)) provides comprehensive information on the general situation in the 1990s, the reports of Jiri Dienstbier cover events of the Kosovo crisis in 1998 and 1999; see UN docs. A/53/322 (11 September 1998); E/CN.4/1999/42 (20 January 1999); A/54/396, S/1999/1000 (24 October 1999); A/54/396/Add.1, S/1999/1000/Add. 1 (3 November 1999). See also Hofmann, Rainer 1995, *Minderheitenschutz in Europa. Völker- und staatsrechtliche Lage im Überblick* (Forschungsergebnisse der Studiengruppe für Politik und Völkerrecht), Berlin: Gebr. Mann Verlag, 1995, pp. 136-141; Marko, Joseph 1994, "Die rechtliche Stellung der Minderheiten in Serbien", S. 286-319 in: Frowein, Jochen Abr. et al. (eds) *Das Minderheitenrecht europäischer Staaten, Teil 2*, Berlin et al.: Springer Verlag; Marko, Joseph 1996, *Der Minderheitenschutz in den jugoslawischen Nachfolgestaaten: Slowenien, Kroatien und Mazedonien sowie die Bundesrepublik Jugoslawien mit Serbien und Montenegro* (Minderheitenschutz im östlichen Europa, Band 5), Bonn, pp. 205-286; Roggemann, Herwig (ed.) 1999, *Die Verfassungen Mittel- und Osteuropas. Einführung und Verfassungstexte mit Übersichten und Schaubildern* (Quellen zur Rechtsvergleichung aus dem Osteuropa-Institut der Freien Universität Berlin, Bd. 45), Berlin: Berlin Verlag A. Spitz.

<sup>35</sup> See Radan, Peter 1997, "The Badinter Commission and the Partition of Yugoslavia", *Nationalities Paper* 25 (3): 337-357, esp. p. 348.

on 10 July 1992, the FRY was suspended from participation in all OSCE activities on the grounds of gross human rights violations and non-adherence to OSCE principles, and in 1998 it was asked to go through the normal application procedure to become a full-participating member state.<sup>36</sup> On recommendations of the UN Security Council, the UN General Assembly similarly decided, at its 47<sup>th</sup> session, that the FRY should formally apply for membership in the UN and should cease to participate in the General Assembly and the Economic and Social Council.<sup>37</sup> After the democratic revolution in Serbia, however, the FRY was re-admitted as member state of the UN<sup>38</sup> (1 November 2000) and of the OSCE (10 November 2000).

Leaving aside the technical questions of legal succession, it may be useful to analyse the FRY's international obligations pertaining to the protection of minorities by summarising those of the SFRJ. In fact, the SFRJ subscribed to most relevant international standards of minority protection, including the rights to equality, non-discrimination and cultural identity (see *infra* III.A.1.). At the universal level, the SFRJ was signatory state *inter alia* to the following conventions:

- Convention on the Prevention and Punishment of the Crime of Genocide, signed by the SFRJ on 11 December 1948 and ratified on 29 August 1950;
- International Convention on the Elimination of all Forms of Racial Discrimination, signed by the SFRJ on 15 April 1966 and ratified on 2 October 1967;
- International Covenant on Economic, Social and Cultural Rights, signed by the SFRJ on 8 Aug 1967 and ratified on 1 June 1971;
- International Covenant on Civil and Political Rights, signed by the SFRJ on 8 August 1967 and ratified on 1 June 1971;
- International Convention on the Suppression and Punishment of the Crime of Apartheid, signed by the SFRJ on 17 December 1974 and ratified on 1 July 1975.

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<sup>36</sup> On the status of the FRY before the OSCE see Valery Perry 1998, "The OSCE suspension of the Federal Republic of Yugoslavia", *Helsinki Monitor* 9 (4): 44-54.

<sup>37</sup> Pursuant to the Security Council resolution on sanctions against the FRY, UN doc. S/RES/757 (30 May 1992), see esp. UN doc. S/RES/777 (19 September 1992); A/RES/47/1 (22 September 1992); S/RES/821 (28 August 1993); and A/RES/47/229 (5 May 1993).

<sup>38</sup> See UN doc. A/RES/55/12 (1 November 2000).

Although the status of the FRY before the UN was unresolved during the 1990s, some of the respective treaty monitoring mechanisms continued informal cooperation with the FRY. Thus, the FRY has resumed participation in the monitoring mechanism of the INTERNATIONAL CONVENTION ON ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION by submitting periodic reports to the Committee on the Elimination of Racial Discrimination (CERD) since 1996.<sup>39</sup> In 1998, it concluded a status agreement with the Office of the High Commissioner for Human Rights (OHCHR), which is the first of its kind in the former Yugoslavia, and it has generally cooperated with the Special Rapporteurs of the UN Commission on Human Rights.<sup>40</sup>

At the regional level, the SFRJ, while not a member state of the Council of Europe, also ratified the Council of Europe's EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND BASIC FREEDOMS (ECHR) and participated actively in the CSCE process ratifying most relevant documents pertaining to the protection of national minorities. In an attempt to overcome the FRY's political isolation and to demonstrate international cooperation in the field of human rights, the Parliamentary Assembly of the FRY ratified the FRAMEWORK CONVENTION on 3 December 1998, yet without any invitation to do so. Only after the democratic revolution, when the FRY was readmitted to the OSCE and was being granted the status of a Special Guest to the Parliamentary Assembly of the Council of Europe (22 January 2001), were all political obstacles to a ratification of the FRAMEWORK CONVENTION removed. The FRY then acceded to that convention on 11 May 2001.

International standards of human rights are incorporated into domestic law through Art. 10 of the federal constitution, which states that "[t]he Federal Republic of Yugoslavia shall recognise and guarantee the rights and freedoms of man and the citizen recognised under international law." Furthermore, Art. 16 states that international treaties and generally accepted rules of international law shall be incorporated into the internal legal order. Thus, with respect to the international

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<sup>39</sup> See UN doc. CERD/C/299/add.17 (31 July 1997) and CERD/C/364 (26 January 1999).

<sup>40</sup> See UN doc. E/CN.4/1999/42 (20 January 1999), para. 82. Occasionally, however, the Special Rapporteurs complained about obstruction of their work by federal and Serbian police and about other problems with State authorities; see e.g. UN doc. A/54/396, S/1999/1000 (24 October 1999), para. 88.

protection of national minorities, the FRY has stated in its State Report submitted to the UN General Assembly and to the Economic and Social Council on 3 July 1996 that "[by] the act of ratification, adoption or approval, all the international legal instruments have become an integral part of our internal legal order".<sup>41</sup> However, until the democratic revolution in October 2000, this could hardly be taken to be actually the case and, therefore, the FRY's signature of the FRAMEWORK CONVENTION has raised a series of questions of how to adapt domestic legislation to international standards pertaining to the protection of minorities.

## **2. General constitutional provisions**

General provisions pertaining to the rights of minorities are basically laid down in the constitutions of the FRY and its two constituent republics Serbia and Montenegro. They comprise state obligations to respect and to protect the rights to equality, to non-discrimination and to cultural identity. The Constitution of the FRY, promulgated on 27 April 1992, clearly obliges the state to respect the individual's right to equality and non-discrimination. While this right is implicitly assumed in Art. 1 and Art. 8 (1.), it is explicitly acknowledged in Art. 20 which stipulates:

Art 20 (1.) Citizens shall be equal irrespective of their nationality, race, sex, language, faith, political or other beliefs, education, social origin, property, or other personal status. (2.) Everyone shall be equal before the law. (...)

The state is, moreover, obliged to protect its citizens' rights to equality and non-discrimination from third-party interference. Thus, Art. 38 (2.), Art. 42 (1.) and Art. 50 of the constitution of the FRY prohibit acts inciting or encouraging national, racial, religious or other inequality, hatred and intolerance and declare them as unconstitutional and punishable.

The constitution of the FRY also obliges the state to respect the right to cultural identity, both in its individual and in its collective dimension. Most pertinent to the rights of members of national minorities is Art. 11 in combination with Art. 45 through Art. 49:

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<sup>41</sup> UN doc. A/51/203 (10 July 1996), p. 5.

Art. 11 The Federal Republic of Yugoslavia shall recognise and guarantee the rights of national minorities to preserve, foster and express their ethnic, cultural, linguistic and other peculiarities, as well as to use their national symbols, in accordance with international law.

While this clause guarantees the general right to cultural identity, Art. 45 through Art. 49 define more specific rights. Thus, Art. 45 (1.) confirms a right to one's own culture by stipulating that "[f]reedom of the expression of national sentiments and culture and the use of one's mother tongue and script shall be guaranteed", and the other four articles address specific issues of language use, media, education, association and contacts to "co-nationals" (see *infra* II.A.3.). It should be pointed out, however, that the constitution, by continuing to use the terminology of the SFRJ, does not contain a clear definition of "nationality" (*narodnost*) or of what in the terminology of international law would be called a minority. From Art. 45 (2.), which stipulates that "[n]o one shall be obliged to declare his nationality", one may infer that the concept of "nationality" includes a subjective dimension which, besides objective criteria, is also crucial for the international legal concept of a minority (see *infra* III.A.2.).

The federal constitution is binding for legislation at the levels of both the federal state and the two constituent republics (Art. 115) and thereby sets minimum standards for the protection of minorities in the FRY. The constitutions of the two member republics basically affirm these provisions of the federal constitution. Thus Art. 11-54 of the Constitution of the Republic of Serbia, adopted on 28 September 1990, lays down human and civil rights enjoyed by all citizens equally. The Constitution of the Republic of Montenegro, adopted on 12 October 1990, goes beyond the minimum standard of the federal constitution by formulating in Art. 67-76 obligations of the state to promote the right to equality and non-discrimination as well as the right to cultural identity enjoyed by persons belonging to minorities. To monitor the protection of the national, ethnic, cultural, linguistic and religious identity of members of "national and ethnic groups", Art. 76 of the Montenegrin constitution establishes a separate organisational body, the Republic Council for the Protection of the Rights of Members of National and Ethnic Groups, which is headed by the President and whose composition and competencies are regulated by the Assembly.

### 3. Specific constitutional and legislative provisions

There are a number of constitutional and legislative provisions specifying the rights of persons belonging to minorities, most notably linguistic rights, educational rights, media rights and religious rights. Compared to the legal position of minorities under the SFRJ's constitution, the new constitutional and legislative provisions which were passed in the political atmosphere of new nationalism in the 1990s in some respects curtailed the rights of persons belonging to minorities, primarily due to the abolishment of territorial autonomy in Vojvodina and Kosovo and to the restriction of participation of minorities in political affairs.

#### *(a) Territorial Autonomy*

As demonstrated by demographic data (see *supra* I.B.2.), the regions with the highest concentration of minorities in the FRY are the Sandžak, the Vojvodina and Kosovo. In the wake of new Serbian nationalism, the *de facto* status as republics enjoyed by the SAPs Vojvodina and Kosovo under the constitutional framework of the SFRJ was successively abolished through amendments to the Serbian constitution and to the constitutions of the two SAPs in March 1989; for instance, Amendment XLVII to the Serbian constitution removed the absolute veto right of the SAPs in decisions on constitutional changes in the Republic of Serbia. These amendments, which required the approval of the Parliamentary Assemblies of the two SAPs, provoked political conflict and were adopted only after massive Serbian pressure against the political representatives in Vojvodina and Kosovo. When the Serbian Parliament passed the LAW ON THE PROCEDURE OF REPUBLICAN ORGANS UNDER SPECIAL CIRCUMSTANCES on 26 June 1990, 114 Albanian members of parliament reacted by declaring the independence of Kosovo within the Yugoslav federation and by promulgating a new constitution of the "Republic Kosova" on 2 July 1990. As a consequence, the government and parliament of the SAP Kosovo were dissolved through a Serbian law on 13 July 1990 and a new administration was established. The constitution of the "Republic Kosova" was in turn confirmed by a referendum among Albanians in September 1991; since then "parallel" institutions of government, administration and education existed on the territory of Kosovo.

The new Serbian constitution adopted on 28 September 1990 grants limited territorial

autonomy to the two Autonomous Provinces (AP) of Vojvodina and of Kosovo-Metohija. Thus, Art. 109 regulates the basic budgetary, legislative, executive and other competencies of the APs; these competencies are to be further specified in the statutes of the APs which are adopted by their respective assemblies (Art. 110). Unlike in Kosovo, the assembly of Vojvodina adopted the STATUTE OF THE AUTONOMOUS PROVINCE OF VOJVODINA on 29 June 1991. According to Art. 111, the organs of the APs are the assembly, the executive council and the administrative organs. The autonomy of the APs is, however, explicitly restricted in Art. 112, which stipulates that republican organs can directly intervene to implement legal decisions of the AP.

*(b) Political Participation*

To the degree that the territorial autonomy of the APs was restricted under the new constitutional framework of the FRY, the political implementation of the general provisions pertaining to the rights of persons belonging to minorities has become increasingly dependent on other forms of participation of minorities in political affairs. The constitution of the FRY guarantees the freedom of political associations (Art. 41) and lays down a system of political representation based on political pluralism. The freedom of political association is also granted in Art. 44 of the Serbian constitution. Minorities are therefore allowed to organise political parties and to participate in general elections at the republican and federal level.<sup>42</sup> Unlike in Kosovo, where Albanians have boycotted all federal and republican elections, the political parties of minorities in Vojvodina have participated in all elections. In the Federal Assembly, the Alliance of Vojvodina Hungarians (SVM) was represented through three seats and has held one seat after the federal elections in October 2000. The Alliance of Vojvodina Hungarians (SVM) and the Democratic Community of Hungarians in Vojvodina (DZVM) have also been represented in the Serbian Parliamentary Assembly and in the Assembly of the AP Vojvodina. Neither federal nor Serbian provisions, however, guarantee the proportional representation in political or administrative organs. In the Republic of Montenegro, on the contrary, members of

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<sup>42</sup> It should be noted that Serbian laws regulate that political organisations may be prohibited for foreign financial income, i.e. that political organisations of minorities may not receive financial support by their external national homeland; see Marko 1996, p. 236.



national or ethnic groups are granted the right to proportional representation in public services, state organs and local administration according to Art. 73 of the constitution.

*(c) Language*

The constitution of the FRY sets forth in Art. 15 (1.) that the official language of the state shall be the Serbian language with Cyrillic and, where provided by the Constitution and law, Latin as official scripts, while Art. 15 (2) makes some provisions for the official use of minority languages.

Art. 15 (1) In the Federal Republic of Yugoslavia, the Serbian language in its ekavian and ijekavian dialects and the Cyrillic script shall be official, while the Latin script shall be in official use as provided for by the Constitution and law.

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

However, the possibility of official use of minority languages in regions inhabited by national minorities is conditional on legislative regulations. The right to the use of minority languages in education and in public proceedings is specified in Art. 46 (1.) and Art. 49. According to Art. 46 (1.), members of national minorities are granted the right to education in their own language, and Art. 49 guarantees the right to use one's own language and to be informed in one's own language in proceedings before a tribunal or other authority or organisation. As of 1996, there was no comprehensive law regulating the use of languages and scripts at the federal level.<sup>43</sup> The constitution of the Republic of Serbia guarantees the right of members of minorities to receive mother-tongue education (Art. 32 (4.)), to use their language in private and public (Art. 49) and in court proceedings (Art. 123). In the Republic of Montenegro, languages of scripts of minorities may be used as official languages in municipalities with a considerable share of the minority in the population (Art. 9). Similar to the federal constitution, the Montenegrin constitution grants the right to use one's own language (Art. 68) and to be informed in it in public proceeding provisions (Art. 72).

New legislative measures have weakened the legal position of linguistic minorities in

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<sup>43</sup> See government information in UN doc. A/51/203, E/1996/86 (10 July 1996), p. 17.

Serbia compared to their protection under the constitution of the SFRJ. The right to the public use of language and script was granted to "nations" and "nationalities" in Art. 171 of the 1974 constitution and was specified not only by legal acts of the Republic of Serbia but also by laws of the two SAPs Vojvodina and Kosovo. These put on equal footing the Serbo-Croatian, Hungarian, Slovakian, Romanian and Ruthenian languages (in Vojvodina) and the Albanian, Serbian and Turkish languages (in Kosovo) in administration and public proceedings at provincial and, to some extent, at local level. Thus, Art. 10 of the respective law of the SAP Vojvodina determined that the language of court proceedings was to be the one used by the party opening the proceedings.<sup>44</sup> The amendments to the Serbian constitution and to the constitutions of the two SAPs of March 1989 restricted these far-reaching linguistic rights by declaring Serbo-Croatian the official language of the entire territory of the Republic of Serbia, including the two SAPs (Amendment XXVII). This regulation was incorporated as Article 8 into the new constitution of the Republic of Serbia of 1990. The Serbian LAW ON THE OFFICIAL USE OF LANGUAGES AND SCRIPTS of 27 July 1991 specifies this provision by regulating the use of minority languages at different administrative levels and in different domains. Thus, the law allows for the possibility of using the Latin script in addition to Cyrillic on signs of public organs (Art. 4), it reiterates the right to use one's own language in any court proceeding (Art. 6) and provides for the use of bilingual topographic signs in public (Art. 19 and 20). Under Art. 6 of the STATUTE OF THE AUTONOMOUS PROVINCE OF VOJVODINA, state agencies in the Vojvodina may in parallel to Serbian languages and Cyrillic script officially use the Hungarian, Slovak, Romanian and Ruthenian languages and their scripts.<sup>45</sup>

The status of minority languages is weakened in two respects by the Serbian LAW ON THE OFFICIAL USE OF LANGUAGES AND SCRIPTS: First, it is only at the local level that minority languages can be declared official languages by statute and used in administrative and court proceedings correspondingly (Art. 11). Second, Serbian is declared the primary official language in all proceedings with the only exception of proceedings in the first instance. Even in this instance a minority language can only be used on the condition that (i) it is one of the official languages of the local

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<sup>44</sup> See Marko 1994, pp. 291-297 and Marko 1996, pp. 224-226.

<sup>45</sup> Government information in UN doc. A/51/203, E/1996/86 (10 July 1996), p. 18; see Marko 1996, p. 227.

administration or is demanded by persons belonging to a minority and that (ii) no other party requires to undertake the proceedings in the Serbian language (Art. 12 (1) and Art. 15).<sup>46</sup> Thus, although the constitutional framework of the FRY guarantees the individual's right to the use of minority languages in private and public, it does therefore not clearly oblige the state to use minority languages.

*(d) Education*

The constitution of the FRY stipulates in Art. 46 (1) that "[m]embers of national minorities shall have the right to education in their own language, in conformity with the law". Under Art. 47, members of national minorities are also granted the right to establish educational organisations for which they may receive assistance from the state. Similarly, the right to receive mother-tongue instruction in conformity with the law is guaranteed by Art. 32 (4) of the constitution of the Republic of Serbia. The constitution of the Republic of Montenegro in Art. 68 grants the right to mother-tongue instruction even unconditionally and, furthermore, requires that the curricula of public educational institutions comprise the history and culture of national and ethnic groups (Art. 71).

The legislation which regulates public education in the Republic of Serbia contains several provisions which specify the use of minority languages in education at various levels. In combination with the curtailment of the autonomy of the two APs, Serbian legislation has generally weakened the position of minorities in the educational system. Under the constitutional framework of the SAP Kosovo, primary as well as secondary and tertiary education had been established in Albanian, Serbian and Turkish equally. In contrast, the new LAW ON ELEMENTARY SCHOOLS declares Serbian as the main language of instruction in primary schools (Art. 4). In Art. 5 it stipulates that at a minimum of 15 children belonging to minorities, and, where there are fewer pupils on approval of the Ministry of Education, mother-tongue instruction or bilingual schooling be provided for these pupils. If they receive mother-tongue instruction, they are obliged to learn the Serbian language; on the other hand, if they do not, they may be taught in their language and receive education on their cultural heritage. Similar provisions are contained in the LAW ON SECONDARY SCHOOLS (Art.

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<sup>46</sup> See Marko 1996, p. 296; Marko 1996, p. 228.

4 and Art. 5). Finally, under the LAW ON HIGHER SCHOOLS and the LAW ON UNIVERSITIES (Art. 10) instruction in a minority language can be organised in tertiary education on the decision of the founder of the school, i.e. the Republic government, after consultation with the university.<sup>47</sup>

*(e) Culture and Media*

There are no constitutional and legislative provisions regulating specific issues in the cultural domain such as art, literature and science, except the Serbian LAW ON THE ESTABLISHMENT OF A MUSEUM ON THE VICTIMS OF GENOCIDE which allows for the documentation of data on the genocide of Jews, Roma and other minorities (Art. 2). Yet, the right of persons belonging to minorities to organise their cultural life in general is guaranteed by Art. 47 of the constitution of the FRY which stipulates:

Art. 47 Members of national minorities shall have the right to establish educational and cultural organisations or associations, in conformity with the law, which are financed on the principle of voluntary contributions, and may also receive assistance from the state.

The basic right to free association is also laid down in Art. 44 of the Serbian constitution and in Art. 70 of the Montenegrin constitution. It is restricted through the Serbian LAW ON ASSOCIATIONS which in Art. 9 prohibits all associations and organisations aimed at overthrowing the constitutional order, at threatening territorial integrity, at disrespecting basic rights or at inciting national, ethnic and religious intolerance and hatred.

With regard to media, the constitution of the FRY guarantees in Art. 46 (2) that "[m]embers of national minorities shall have the right to information media in their own language". While the Serbian constitution guarantees the freedom of press and public information and prohibits any kind of censorship without explicit reference to minorities (Art. 46), the Montenegrin constitution specifically acknowledges the right of members of "national and ethnic groups" to information in their language (Art. 68). The functioning of media is further regulated by the Serbian LAW ON PUBLIC

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<sup>47</sup> Government information in UN doc. A/51/203, E/1996/86 (10 July 1996), p. 7-11; see also Marko 1996, p. 229-231.

INFORMATION, which in Art. 11 prohibits the dissemination of information inciting national, ethnic or religious intolerance and hatred. The Serbian LAW ON RADIO-TELEVISION stipulates that RTV Serbia strengthen the national values of the Serbian people as well as of other peoples and nationalities (Art. 19); it also provides for programming in the Serbo-Croatian language and the languages of minorities by RTV Novi Sad for the territory of AP Vojvodina (Art. 20 (1)), and by RTV Priština for the territory of AP Kosovo-Metohija respectively (Art. 20 (2)). Finally, the STATUTE OF THE AUTONOMOUS PROVINCE OF VOJVODINA guarantees that public information be provided not only in the Serbo-Croatian language but also in Hungarian, Slovak, Romanian and Ruthenian.<sup>48</sup>

*(f) Religion*

The constitution of the FRY contains no article relating specifically to rights of persons belonging to minorities in the religious domain. However, the constitution unconditionally obliges the state in Art. 43 (1.) to respect the freedom of religion, comprising the freedom to publicly or privately profess one's religion as well as to perform religious rites. In addition, it guarantees, in Art. 43 (2.), the freedom not to reveal one's religious beliefs. Church and state are constitutionally separated in the FRY and religious organisations enjoy non-interference from the state (Art. 18). The freedom of conscience and belief is also acknowledged in the constitutions of the Republic of Serbia and the Republic of Montenegro; the Montenegrin constitution goes beyond the right to freedom of religion by stipulating that persons belonging to minorities may receive material support for the establishment of religious organisations (Art. 70). There is no federal or republican legislation regulating the profession and performance of religion in more detail. However, on the initiative of the Serbian Ministry for Religious Affairs such a law was under preparation in the Republic of Serbia in December 1998; although there was no information available regarding the precise content of this law, it was suspected that its aim is to strengthen ties between the State and the Serbian Orthodox Church.<sup>49</sup> It should be noted that such

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<sup>48</sup> Government information in UN doc. A/51/203, E/1996/86 (10 July 1996), p. 12-15; see also Marko 1996, p. 231f.

<sup>49</sup> See Helsinki Committee for Human Rights in Serbia, *Report on the Status of Human Rights in Serbia in 1998*, Vienna: IHF. On the role of the Serbian Orthodox Church in Serbian nationalism see Ramet 1999, pp. 112-114.

trends, which clearly run against the non-establishment principle laid down in the constitution, have become even more visible after the democratic revolution.<sup>50</sup>

### ***B. The factual situation of minorities in the FRY***

This subsection reviews the factual treatment of minorities in the FRY and analyses its concordance with the federal and republican constitutional and legislative provisions outlined above. It especially focuses on Serbia, where the political climate in the 1990s seriously aggravated the situation of minorities. In order to ensure a balanced perspective on this highly controversial political issue, it contains information provided by the government of the FRY, by representatives of minorities and by third parties such as the UN Special Rapporteur of the Commission on Human Rights and NGOs. Although it attempts to cover as many minority groups as possible, its primary aim is to identify general patterns of minority treatment by highlighting an exemplary case for each type of minority, respectively.<sup>51</sup> All information collected in this subsection refers to the factual situation of minorities in the FRY before the democratic revolution and, therefore, does not claim to be up-to-date. However, as far as can be judged from recent NGO reports, it would be a euphemism to assume that after the removal of the authoritarian regime the treatment of minorities has changed immediately; quite to the contrary, some forms of racial discrimination, especially those against Roma and Jews, have become rather rampant.<sup>52</sup> Hence, the following analysis can still be considered as identifying priority concerns for further legislation in the area of minority rights.

#### **1. New national minorities**

The situation of new national minorities is most directly affected by the dissolution of the constitutional framework of the SFRJ and by the ensuing logic of nationalism inherent in the constitution of the FRY; it has become an integral part of the conflict-ridden triadic relation of national minorities, nationalising states and external national homelands (see *supra* I.A.3.). An example of a minority group affected in this way are

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<sup>50</sup> See Helsinki Committee for Human Rights in Serbia, *Annual Report 2000*. Vienna: IHF at <http://www.helsinki.org.yu/hce/HCSreport2000part10.htm>.

<sup>51</sup> For the definition of types of minorities in the FRY see *supra* I, B.1.

<sup>52</sup> See Helsinki Committee for Human Rights in Serbia, 2001, *Report on Racial Discrimination*, Vienna: IHF at <http://www.helsinki.org.yu/hcs/HCSreport20010510.htm>.

the Croats, who under the constitutional framework of the SFRJ were represented in the federal organs as a "nation". Within the legal system of the FRY, Croats are not considered a "nationality" and are therefore denied recognition as a minority in federal and republic and AP legislation. Although Art. 8 of the AGREEMENT ON THE NORMALISATION OF RELATIONS BETWEEN THE REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA of 23 August 1996 contains an implicit acknowledgement of the existence of a Croat minority in the FRY, non-recognition of the Croat minority has been the explicit policy of state authorities. Correspondingly, Croats do not enjoy the rights granted to other "nationalities" in the FRY, most notably linguistic and educational rights. As a consequence, the Bishop Classical Gymnasium "Paulinum" run by the Roman Catholic Church in Subotica is the only institution providing mother-tongue instruction for Croats in the FRY. Similarly, Croats are deprived of the right to programmes in their own language, although local Radio Subotica has recently introduced a daily one-hour programme in Croatian. Political participation of Croats is restricted to the municipal level, and even where Croats constitute a numerical majority, they are under-represented in the respective administrative organs, because the main Croat political organisation, the Democratic Alliance of Croats in the Vojvodina (DSHV), is systematically impeded by the authorities to pursue its activities. Most importantly, Croats from Bosnia who immigrated into regions populated by Croat relatives in the FRY, especially in Vojvodina, in the course of the war over Bosnia, are sometimes denied citizenship with the justification that they enjoy citizenship rights in Croatia.<sup>53</sup>

## **2. Old national minorities**

The government of the FRY claims that, in general, the situation of old national minorities is satisfying and that the constitutional rights are implemented in practice. However, minority associations as well as their external homelands have complained about hostilities of public authorities as well as about increased inter-ethnic tensions in society.

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<sup>53</sup> On the situation of Croats, see the report of the Special Rapporteur of the UN Commission on Human Rights UN doc. E/CN.4/1997/8 (25 October 1996), paras 68-70; see also Humanitarian Law Center 1999. "Human Rights in FR Yugoslavia" (Spotlight Report No. 28), January 1999, Belgrade, p. 44.

It is true that there are few complaints about the situation of Romanians in the FRY, who live primarily in Vojvodina and in the Banat region; according to government information, ten municipalities have established Romanian as a language of instruction at the elementary level, and two at secondary level.<sup>54</sup> Yet, the Vlachs, i.e. Romanians in the Southern Danube area, who are not recognised as a "nationality" by Serb authorities, suffer from restrictions of their cultural autonomy with regard to language use, religious organisation, education, and public media.<sup>55</sup> Turks, who were recognised as a national minority under the 1974 constitution and were put on an equal footing with Albanians and Serbs under the legislation of the SAP Kosovo, have experienced discrimination at various levels since the dissolution of the SFRJ. Not only were their rights curtailed in the process of legal re-organisation of the AP Kosovo and Metohija, but the conditions of the 1991 census also led to a misrepresentation of their factual number in Kosovo.<sup>56</sup> Since the end of the Kosovo war, the Turkish minority has experienced constant pressure from the Albanian majority and, in particular, from the UÇK, which has expropriated social facilities of the Turkish community for their own use.<sup>57</sup> Complaints about mistreatment are also articulated by the Bulgarian minority; thus, it was alleged that local authorities discouraged teachers and pupils from using the Bulgarian language in school.<sup>58</sup> Of particular concern was the compulsory military mobilisation of Bulgarians in the course of the Kosovo war as well as the imprisonment of Dr Marko Shukarev, Chairman of the Democratic Union of the Bulgarians in Yugoslavia.<sup>59</sup>

#### *Case 1: Hungarians in Vojvodina*

The situation of Hungarians in Vojvodina is particularly affected by continuous

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<sup>54</sup> See government information UN doc. A/51/203, E/1996/86 (10 July 1996), p. 19; UN doc. CERD/C/299/Add. 17 (31 July 1997), para 74.

<sup>55</sup> Information provided by the Movement of Romanians and Vlachs from Yugoslavia (*Mi<sup>o</sup>careea Românilor – Valahilor din Iugoslavia*) in a letter to the Council of Europe, dated 4 February 1999.

<sup>56</sup> Information provided by the Turkish Democratic League (*Türk Demokratik Birliđi Partisi*) in a letter to the Council of Europe, dated 10 February 1999.

<sup>57</sup> On this question see the Statement by Ambassador Eralp at the Permanent Council, OSCE doc. PC.DEL/418/99 (2 September 1999). According to the government of the FRY, however, mother-tongue instruction in Turkish was attended in 11 elementary and five secondary schools in Kosovo; see UN doc. CERD/C/364 (26 January 1999), para 13.

<sup>58</sup> UN doc. E/CN.4/1997/8 (25 October 1996), para. 94.

<sup>59</sup> Information provided by the Helsinki Committee Human Rights of Bulgarians in Yugoslavia in a letter to the Council of Europe, dated 11 June 1999. On the situation of Bulgarians, see also Humanitarian Law Center 1999, pp. 44-45.



demographic change caused by the influx of Serbian refugees in the region (see *supra* I.B.2.). As a consequence, majority-minority relations have changed in many municipalities to the disadvantage of the Hungarian community. However, the government of the FRY claims that minority rights are guaranteed in practice. For instance, 29 of the 45 townships in the AP Vojvodina have decided to establish Hungarian as a language of instruction in elementary schools and 27 in secondary schools.<sup>60</sup> Education in Hungarian is correspondingly provided in 83 of 345 elementary schools and 28 of the 112 secondary schools in the province. Yet, the curricula, which are drawn up by the Serbian Ministry of Education without prior consultation with minority representatives, lack sufficient reference to national culture. Similarly, the status of Hungarian as an official language is not appropriately respected in practice, as evidenced by the lack of bilingual topographic signs and obstacles in using the Hungarian language in court proceedings.<sup>61</sup>

In response to this situation, the Alliance of Vojvodina Hungarians (SVM) with support of the Democratic Community of Hungarians in Vojvodina (DZVM) published a proposal for an AGREEMENT OF THE POLITICAL FRAMEWORK OF SELF-RULE IN VOJVODINA in December 1998, which urges the respect of the rights of persons belonging to minorities to preserve their cultural identity, proposes to re-define the constitutional status of the AP Vojvodina and calls for the creation of an ombudsman's office for the protection of minorities.<sup>62</sup> The Canada-based organisation Human Rights for Minorities in Central Europe (Vancouver Society) has gone beyond these claims by calling for a revision of the borders established by the Treaty of Trianon (1920), in order to guarantee the cultural autonomy of Vojvodina Hungarians.<sup>63</sup>

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<sup>60</sup> Government information in UN doc. A/51/203, E/1996/86 (10 July 1996), p. 19; UN doc. CERD/C/299/Add. 17 (31 July 1997), para 74.

<sup>61</sup> See Humanitarian Law Center 1999, pp. 42-43 and Minority Protection Association 1997, "The Minority Rights of the Hungarian National Group in Yugoslavia. Legal Framework and Actual Practice" (Minority Protection Series, No. 3). See also Poulton 1993, pp. 216-218.

<sup>62</sup> See Helsinki Committee for Human Rights in Serbia, *Report on the Status of Human Rights in Serbia in 1998*, Vienna: IHF.

<sup>63</sup> See the "Memorandum on the Situation of the Ethnic Hungarian Minority in the Federal Republic of Yugoslavia", presented to His Excellency Daniel Tarschys, Secretary General of the Council of Europe by the Human Rights for Minorities in Central Europe, Vancouver Society (16 August 1999), p.16. It is obvious that such an option would escalate the conflict over the Hungarian minority to the degree of open inter-state confrontation.

### 3. Ethnic minorities

Ethnic minorities have been affected by Serbian nationalism in a way similar to old national minorities. Additionally, their position is weakened both by the fact that they cannot rely on an external national homeland as defender of their rights and by their non-recognition as a national minority under the new constitutions of the FRY and its constituent republics.

#### *Case 2: Muslims in Sandžak*

As already mentioned, Muslims in the Sandžak region, i.e. in the Serbian Raška District and in northern Montenegro, were not considered a "nation" in the SFRJ. It was only after the dissolution of the SFRJ that the Sandžak Muslims started to call themselves Bosniaks. Despite their *de facto* status as a minority, the government of the FRY explicitly refuses to recognise the Sandžak Muslims as a national minority, since it considers them to be Serbs professing the Islamic faith.<sup>64</sup> As a consequence, the Muslim minority does not enjoy any cultural autonomy which would include, for instance, separate educational institutions. In the political atmosphere of Serbian nationalism, the Sandžak Muslims have also been subject to discrimination in personnel policy and in public media. As consequence of the atrocities committed in the wake of the war over Bosnia between 1992 and 1994 and of the influx of Serbian refugees from Gorazde, UN Special Rapporteur Jiri Dienstbier noted increased inter-ethnic tensions, which led to the emigration of a considerable number of Sandžak Muslims.<sup>65</sup>

Of particular concern is the fate of Dr Sülejman Uglijanin, President of the National Council of Bosniaks in Sandžak and leader of the Muslim political movement for autonomy of the Sandžak, whose parliamentary immunity was removed in the course of the political controversy over the municipality Novi Pazar. In 1997, Serbian authorities ordered the destitution of the Mayor of Novi Pazar and the removal of the municipal council in which the political organisation of Muslims, the "List for

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<sup>64</sup> See government information provided in its "Comments of the Government of the FRY on the parts of the report of the Special Rapporteur E. Rehn on the situation of human rights in the former Yugoslavia and the report on minorities relating to the FRY" (1997), I. G.

<sup>65</sup> UN doc. E/CN.4/1999/42 (20 January 1999), para. 102. See also Poulton 1993, pp. 218f.

Sandžak – Dr Sülejman Ugljanin" had won 33 of the 47 seats in the November 1996 elections.<sup>66</sup> That the interim administration imposed by Serbian authorities was ruled in accordance with the law in a Constitutional Court decision (14 May 1998), shows that legal redress is far from being available for non-Serbian citizens. Correspondingly, the incident was brought to the attention of the CoE's Congress of Local and Regional Authorities of Europe in spring 1997.<sup>67</sup>

#### **4. Dispersed minorities**

Compared to ethnic minorities described above, the situation of dispersed minorities is even worse, since they are not only not recognised as a national minority but are generally not represented in local political bodies.

##### *Case 3: Roma*

Roma, probably the most vulnerable minority in South East Europe in general, are dramatically affected by economic decline in the FRY. Due to massive poverty against which the government has not initiated any kind of affirmative action, some children froze to death in 1998. In the educational domain, there have been attempts to provide for instruction in the Roma language in Obrovac and in Tovariševo, two villages in the Vojvodina, but the concern of public authorities about education of this community is still not very high.<sup>68</sup>

Roma have also been subject to violence by police and private citizens in the FRY, particularly in Kosovo. Whereas there were an estimated number of 150.000 Roma and Ashkali in 1990, in the course of the Kosovo conflict Roma were victims to massive expulsion, first by Serbian forces and later by the UÇK on the pretext that they had collaborated with Serbian police during the war. As a consequence, almost all Roma settlements were destroyed during the war.<sup>69</sup>

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<sup>66</sup> On this event, see Humanitarian Law Center 1999, P. 38.

<sup>67</sup> See CG/BUR (4) 19 (7 August 1997); CG/BUR (4) 19/Addendum Nr. 1 (27 August 1997); CG/BUR (4) 37 (18 September 1997).

<sup>68</sup> See Humanitarian Law Center 1999, p. 40.

<sup>69</sup> This has been concluded by the Fact-Finding Mission of Tilman Zülch in August 1999; see "Until the Very Last 'Gipsy' Has Fled the Country - Mass Expulsion of Roma and Ashkali from Kosovo" in: *Human Rights Report* No. 21, Göttingen: Society for Threatened Peoples International, 1999.

## 5. Kosovo

The scope of this paper does not allow a detailed analysis of the Kosovo conflict as it developed during the 1990s.<sup>70</sup> The aforementioned abolition of territorial autonomy by the Serbian government (see *supra* I.A.2. and II.A.3.(a)) led to a systematic boycott by Albanians of all federal and republic institutions, to which the Serbian government responded by open repression and discrimination. Almost the entire Albanian staff of the public educational system as well as of the administration were dismissed, and mother-tongue instruction was prevented at all levels.<sup>71</sup> The government however argues that the Albanians left the public educational system of their own free will.<sup>72</sup> Despite several attempts to arrive at political compromise, most notably the signing of a Memorandum on Understanding concerning the educational system in Kosovo, signed by Milošević and Rugova on 1 September 1996,<sup>73</sup> the situation aggravated to a degree that several thousands of Kosovo Albanians left the country. It should be noted that, although not comparable to the situation of the Albanian population of Kosovo, the situation of Albanians in southern Serbia has also deteriorated as a consequence of the Kosovo conflict.<sup>74</sup>

From 1996, the Kosovo conflict took on the form of armed confrontation between the so-called Kosovo Liberation Army (UÇK)<sup>75</sup> and Serbian police and military forces, in the course of which casualties and atrocities on both sides were reported. In continuous disregard of international standards as well as domestic law, Serbian state security forces reportedly used excessive force including mass arrest, arbitrary

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<sup>70</sup> For informative analyses in the Kosovo conflict see e.g. Ramet 1999, pp.297-327; Troebst, Stefan 1998, "Conflict in Kosovo: Failure of Prevention? An Analytical Documentation,1992-1998" (ECMI Working Paper #1), Flensburg: European Centre for Minority Issues.

<sup>71</sup> See Humanitarian Law Center 1999, pp. 34-36.

<sup>72</sup> See government information UN doc. CERD/C/364 (26 January 1999), para. 14. According to the same source, public information in Albanian was available; see *ibid.*, paras 16-18.

<sup>73</sup> On this agreement which was brokered by the NGO Comunità di Sant'Egidio, see Troebst 1998a, p. 10 and for the text *ibid.*, p. 77.

<sup>74</sup> See on the Albanians in southern Serbia, esp. Brunnbauer, Ulf 1999, "Die vergessenen Albaner Serbiens. Zur Lage der ethnischen Albaner in Südserbien außerhalb des Kosovo", *Südosteuropa* 48 (7-8): 373-388.

<sup>75</sup> Roots of the UÇK can be found in the underground organisations with nationalistic or communist-nationalistic political goals, especially in the "People's Movement Kosovo" (LPK), which since its foundation in 1982 proclaimed violence as the only means to achieve territorial autonomy and gained popular support in November 1995, when the Dayton Agreement failed to address the Kosovo problem. On the UÇK, see Reuter, Jens 1999, "Wer ist die UCK?", in: *Blätter für deutsche und internationale Politik* März 1999, pp. 281-285.

detention, and pre-trial torture.<sup>76</sup> While the government of the FRY continued to legitimate the use of force as defence against terrorist activities,<sup>77</sup> Western powers increased pressure on Serbia after the Drenica massacre in February 1998. After several failed attempts at mediation – including the Milošević-Holbrooke Agreement (13 October 1998), the Agreement on the OSCE Verification Mission (16 October 1998), the Joint Draft Agreement on the Political Framework of Self-Rule in Kosovo and Metohija (20 November 1998) and the negotiations in Rambouillet (March 1999) – NATO decided to carry out an air campaign, which lasted from March until June 1999.<sup>78</sup> During the war Serbian forces accelerated their operation of expelling Albanian civilians from their villages by violence, while the UÇK continued its counter-attack against Serbian civilians. As a consequence, the human rights situation dramatically deteriorated with the start of the NATO intervention.<sup>79</sup> After the war, human rights violations have by no means ceased to occur in Kosovo. According to the UN Special Rapporteur Jiri Dienstbier, the "ethnic concentration process" in Kosovo has rather continued despite the presence of UNMIK, KFOR and OSCE; thus, he states that since June 1999 there have been 250,000 displaced persons including Serbs, Roma, Bosniaks and Albanians fearful of charges of "collaboration".<sup>80</sup> With the recently established Kosovo Interim Administrative Council not being recognised by

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<sup>76</sup> See e.g. report of the Special Rapporteur of the UN Commission on Human Rights UN doc. A/53/322 (11 September 1998), paras 82-90.

<sup>77</sup> On government charges against Albanian terrorists seeking the establishment of an ethnically pure "Greater Albania" see the "Comments of the Government of the FRY on the parts of the report of the Special Rapporteur E. Rehn on the situation of human rights in the former Yugoslavia and the report on minorities relating to the FRY" (1997), II. C.

UN doc. CERD/C/364 (26 January 1999), para. 25-42.

<sup>78</sup> Western policy in the Kosovo conflict has been subject to much criticism; see for instance Bougarel, Xavier 1999 "Dans les Balkans, dix années d'erreurs et d'arrière-pensées", in: *Le Monde Diplomatique* No 546 (Septembre 1999), p. 10-11. With the end of the Kosovo war it seems possible to develop a more consistent strategy for stability and development in South East Europe; see *infra* IV.

<sup>79</sup> Thus the Special Rapporteur of the UN Commission for Human Rights contends "[...] that NATO air strikes not only failed to prevent a humanitarian catastrophe, as evidenced by the hundreds of thousands of persons who fled the province, but did not prevent the Federal Republic of Yugoslavia and Serbian forces from conducting a systematic campaign of terror that quantitatively differed from the armed activity in the months immediately preceding the war and that began in full ferocity with the start of the NATO campaign", UN doc. A/54/396, S/1999/1000 (24 October 1999), para. 98, a view supported by many human rights activists (see *ibid.*, para 127). He also notes that the war also affected the human rights situation in Serbia by the introduction of martial law, curtailments of the freedom of expression, and the aggravation of the refugee problem within Serbia; see *ibid.*, paras 95 and 100.

<sup>80</sup> UN doc. A/54/396/Add.1 (3 November 1999), para. 26. He concludes by saying that "the spring ethnic cleansing of Albanians accompanied by murder, torture, looting and burning of houses has been replaced by the fall ethnic cleansing of Serbs, Roma, Bosniaks and other non-Albanians accompanied by the same atrocities. "Death to the Serbs!" is the most common wall inscription now. Our problem is that this is now happening in the presence of UNMIK, KFOR and OSCE"; *ibid.*, para. 34.

the Serbian authorities,<sup>81</sup> neither the legal nor the factual position of minorities in Kosovo is foreseeable.

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<sup>81</sup> See RFE/RL Newline Vol. 3, No. 243 Part II (16 December 1999).

### **III. Evaluation of the Situation of Minorities in the FRY**

This section evaluates the domestic legal provisions and factual practices pertaining to the protection of minorities in the FRY from the perspective of the Council of Europe's FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES. It is assumed that such an evaluation, in order to instruct long-term political strategies, should be situated not only within the larger context of social transformations in South East Europe (see *infra* I.A.) but also within the development of normative standards at the international level. Therefore, the first subsection gives an overview of the trends relating to minority protection in international law, within which the FRAMEWORK CONVENTION can be interpreted (A.). The second subsection provides a systematic comparison of the legal standards contained in the FRAMEWORK CONVENTION with the respective domestic legal provisions and factual practices in the FRY (B.).

#### ***A. The normative framework: the protection of minorities through international law***

The Council of Europe's FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES is the first legally binding international instrument devoted to minority protection in general. Since its legal standards are to be interpreted within the wider normative framework of human rights, the following subsection reviews the general evolution of the rights of persons belonging to minorities in international law (1.) and then systematises the legal standards formulated in the FRAMEWORK CONVENTION (2.).

#### **1. The evolution of minority rights in international law**

Early provisions concerning the legal position of minorities can be found in some international treaties in the 19<sup>th</sup> century and, at the end of the First World War, in bilateral minorities treaties overseen by the League of Nations and aimed at protecting national minorities, especially in Eastern and Southeastern Europe. Granting persons belonging to minorities the right to equal treatment and non-discrimination, the right to citizenship and the right to establish schools and other institutions in order to preserve their national peculiarities, these treaties obliged the state to respect and, in some cases, even to promote the identity of minorities. In combination with the right to national

self-determination, however, this system of minority protection contributed to inter-state conflict in the inter-war period and was therefore abandoned after the Second World War. As a consequence, minority rights were conceptualised within the wider normative framework of universal human rights. Thus, the UN General Assembly asked the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to elaborate more specific provisions on the rights of members of minorities as early as 1948. As a result of four decades of debate, the UN General Assembly adopted the DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES (UN DECLARATION) on 18 December 1992.<sup>82</sup> It has been a prevailing trend in international legal standard-setting in the area of minority protection not to regard groups but the individual as subject of the rights in question. At the same time, the object of these rights has successively been extended in so far as the state – their major addressee – is obliged to respect, protect and promote not only the rights to non-discrimination and equality but also the right to cultural identity.

The basic principles of non-discrimination and equality are proclaimed in Art. 2 (1.) of the UNIVERSAL DECLARATION OF HUMAN RIGHTS, adopted by the UN General Assembly in Resolution 217A (III) on 10 December 1948. They are re-stated in Art. 2 (1.) and Art. 26 of the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), adopted by the UN General Assembly on 19 December 1966.<sup>83</sup> Some implications of these two principles for the treatment of minorities are addressed in a number of declarations and conventions. The first international convention addressing *expressis verbis* some of the rights of members of minorities is the UNESCO CONVENTION AGAINST DISCRIMINATION IN EDUCATION, adopted on 14 December 1960, which stipulates in Article 5(1.) that "[i]t is essential to recognise the right of members of national minorities to carry out their own educational activities [...]".<sup>84</sup> Similarly, the INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, on the basis of a broad definition of "racial discrimination",

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<sup>82</sup> UN doc. A/RES/47/135 (18 December 1992). On the development of minority protection under the UN, see e.g. Bloch, Anne-Christine 1995, "Minorities and Indigeous Peoples", pp. 309-231 in: Eide, Asbjorn et al. (eds) *Economic, Social and Cultural Rights. A Textbook*, Dordrecht/Boston/London: Martinus Nijhoff Publishers;

<sup>83</sup> UN doc. A/RES/2200A(XXI) (16 December 1966).

<sup>84</sup> UNTS, vol. 429: p. 93.



confirms the principle of non-discrimination of minorities.<sup>85</sup> The most important legally binding provision referring to minority rights is Art. 27 of the ICCPR, which presupposes the prohibition of any discrimination based on ethnicity, religion and language and obliges the state not to interfere in the affairs of minorities:

Art. 27 In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The prevailing definition of the term "minority" as used in Art. 27 of the ICCPR comprises both objective criteria (numerical inferiority, non-dominant position in society) and subjective criteria, most notably the will of members of the group to express their cultural identity.<sup>86</sup> By means of the principles of non-discrimination and equality, however, states are not clearly obliged to adopt any pro-active measures for the protection of thus-defined minorities. Following the historical events of 1989, international legal discourse has therefore acknowledged the right to cultural identity, thus recognising the necessity to develop more effective means of protecting the identity of minorities and extending the individualist understanding of human rights in so far as the right to cultural identity can only be enjoyed in community with others.<sup>87</sup> The first comprehensive and universal standard-setting international declaration acknowledging the necessity to promote minority identities and explicating the corresponding rights of members of minorities is the aforementioned UN DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES.<sup>88</sup> It goes beyond the principles of non-

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<sup>85</sup> UN doc. A/RES/2106(XX) (21 December 1965).

<sup>86</sup> See especially Capotorti, Francesco 1977, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN doc. E/CN.4/Sub.2/384/Rev.1, paras. 560-568. See also Scherer-Leydecker, Christian 1997, *Minderheiten und sonstige ethnische Gruppen. Eine Studie zur kulturellen Identität im Völkerrecht* (Menschenrechtszentrum der Universität Potsdam, Band 4), Berlin: Arno Spitz Verlag, pp. 227ff.

<sup>87</sup> See Stavenhagen, Rudolfo 1995, "Cultural Rights and Universal Human Rights", pp. 63-77 in: Eide, Asbjorn et al. (eds) *Economic, Social and Cultural Rights. A Textbook*, Dordrecht/Boston/London: Martinus Nijhoff Publishers; Beetham, David 1998, "Democracy and Human Rights: Civil, Political, Economic, Social and Cultural", pp. 71-97 in Symonides, Janusz (ed.) *Human Rights: New Dimensions and Challenges*, Aldershot: Ashgate/UNESCO; Symonides, Janusz 1998, "Cultural rights: a neglected category of human rights", in: *International Social Science Journal* 158: pp. 559-573.

<sup>88</sup> See Thornberry, Patrick 1995, "The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, and an Update", pp. 13-76 in: A. Philipps and A. Rosas (eds) *Universal Minority Rights*, Turku/Abo: Abo Akademi University. Institute

discrimination and equality by obliging the state to pro-actively respect, protect and promote the identity of minorities. As a programmatic provision, this declaration states in Article 1(1.):

Art. 1 (1) States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.

The concern for the promotion of the identity of minorities as expressed in this declaration is reformulated in other recent international human rights provisions, such as paragraph 19 of the VIENNA DECLARATION AND PROGRAMME OF ACTION, adopted by the World Conference on Human Rights on 25 June 1993.<sup>89</sup> A similar understanding of the rights of members of minorities to preserve their cultural identity has emerged at the European level during the past decade. For instance, the DOCUMENT OF THE COPENHAGEN MEETING ON THE HUMAN DIMENSION OF THE CONFERENCE FOR SECURITY AND CO-OPERATION IN EUROPE, adopted on 29 June 1990, urges member States to protect and promote the identity of minorities on their respective territory on the basis of the principles of non-discrimination and equality.

This general development of formulating state obligations pertaining to the respect, the protection and the promotion of rights to non-discrimination, equality and cultural identity demonstrates that the classical concept of the nation-state with its assumption of a neat congruency between territorial sovereignty and national identity is increasingly de-legitimised at the international level. The creation of culturally homogenous societies through exclusion or assimilation is no longer a legitimate project of the modern democratic state. Obligated to respect, protect and promote not only the individual's civil and political rights but also his or her cultural rights, states are rather expected to create an institutional framework for achieving what Asbjørn Eide has called "pluralism in togetherness".<sup>90</sup> As far as minorities are concerned, this

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for Human Rights.

<sup>89</sup>UN doc. A/CONF.157/24.

<sup>90</sup> Eide, Asbjørn 1994, *Peaceful and Constructive Resolution of Situations Involving Minorities*, Oslo: Norwegian Institute of Human Rights; Eide, Asbjørn 1995, "Cultural Rights as Individual Human Rights", pp. 229-240 in: A. Eide, C. Krause, and A. Rosas (eds) *Economic, Social and Cultural Rights. A Textbook*, Dordrecht/Boston/London: Martinus Nijhoff Publishers. See similarly Beetham 1998, p.

idea of a multicultural democratic state implies a preference for forms of cultural autonomy that are based on the principle of personality (*Personalitätsprinzip*) rather than on claims to territorial autonomy. It is in this wider normative framework that the Council of Europe has adopted the EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES (2 December 1992) and the FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (10 November 1994).

## **2. The FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

As early as in 1973 the Committee of Government Experts of the Council of Europe considered a draft additional protocol to the ECHR pertaining to the rights of persons belonging to minorities. Yet it was only after the historical events in 1989 that this long-standing concern for the rights of persons belonging to minorities was taken up again by the Council of Europe. In 1990, the Parliamentary Assembly prepared a list of principles of minority protection and called for an additional protocol to the ECHR, which should be devoted to the protection of minorities.<sup>91</sup> At the Vienna Summit on 8/9 October 1993, however, the Heads of State and Government of the Council of Europe decided to draft a framework convention instead of elaborating an additional protocol to the ECHR. The Committee of Ministers then established an Ad-Hoc-Committee for the Protection of National Minorities (CAHMIN) which carried out the drafting work in 1994. The FRAMEWORK CONVENTION was adopted by the Committee of Ministers on 10 November 1994 and opened for signature on 11 February 1995. It entered into force on 1 February 1998 after the required number of 12 member states had ratified the convention.<sup>92</sup>

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93 and König, Matthias 1999, "Cultural diversity and language policy", in: *International Social Science Journal* 161: pp. 401-408.

<sup>91</sup> See Council of Europe Parliamentary Assembly Resolution 1134 (1990), Resolution 1177 (1992) and Resolution 1201 (1993).

<sup>92</sup> On the history and content of the Council of Europe's FRAMEWORK CONVENTION see Benoît-Rohmer, Florence 1998, "Le Conseil de l'Europe et Les Minorités Nationales", pp. 128-148 in: K. Malfliet and R. Laenen (eds) *Minority Policy in Central and Eastern Europe: The Link Between Domestic Policy, Foreign Policy and European Integration*, Leuven: The Institute for European Policy; Estébanez, María Amor Martín and Kinga Gál 1998, "Implementing the Framework Convention for the Protection of National Minorities" (ECMI Report #3), Flensburg: European Centre for Minority Issues, pp. 8-10; and Troebst, Stefan 1998, "The Council of Europe's Framework Convention for the Protection of National Minorities Revisited" (ECMI Working Paper #2), Flensburg: European Centre for Minority Issues.

The content of the FRAMEWORK CONVENTION is divided into four major sections. Section I sets out some introductory provisions which emphasise the individualistic approach to minority rights by placing them in the context of international human rights protection (Art. 1) and guarantee the individual's right to be treated as a member of a minority or not (Art. 3). Section II as operative part of the convention lays down the detailed provisions pertaining to the protection of minorities, including general provisions on the rights to non-discrimination, to equality and to cultural identity (Art. 4-6) as well as more specific provisions such as the right to assembly and association (Art. 7), freedom of religion (Art. 8), rights to access to and use of media (Art. 9), linguistic rights (Art. 10 and 11), educational rights (Art. 12-14), rights to participation in cultural life (Art. 15), the prohibition of altering the proportions of the population (Art. 16), rights to cross-border contact (Art. 17), international cooperation (Art. 18) and the conditions for restricting these rights (Art. 19). Section III highlights some principles guiding the interpretation of the convention such as e.g. the respect for territorial integrity (Art. 21), and Section IV lays down the mechanism of implementing the convention.

It is one of the characteristics of the FRAMEWORK CONVENTION that it includes only programme-type provisions which leave the State Parties a measure of discretion in interpreting and implementing the standards contained in Section II of the convention.<sup>93</sup> Of particular importance in this respect is that the FRAMEWORK CONVENTION contains no definition of the term "national minority", which leaves governments the power of imposing their own definitions of the term.<sup>94</sup> As a consequence, the monitoring process, which under the rules of the Committee of Ministers Resolution (97) 10 is monitored by the Committee of Ministers with the support of an Advisory Committee, has been regarded as a crucial element of the

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<sup>93</sup> On the following criticisms of the FRAMEWORK CONVENTION see Troebst 1998b, pp. 6-11. On the basis of such criticism, some authors even argue that minority protection should remain under the competency of the OSCE; see Gilbert, Geoff 1999, "Minority Rights Under the Council of Europe", pp. 53-70 in: P. Cumper and S. Wheatley (eds) *Minority Rights in the "New" Europe*, The Hague et al.: Martinus Nijhoff Publishers.

<sup>94</sup> Austria, Denmark, Estonia, Germany, Slovenia and The former Yugoslav Republic of Macedonia, for instance, have formulated interpretative declarations in addition to their ratification, in which minorities are listed to which the term "national minority" is to be applied. It should be mentioned that the Russian Federation has, however, explicitly criticised this practice of unilateral interpretative declarations or reservations; see Troebst 1998b, p.7f.

implementation of the FRAMEWORK CONVENTION.<sup>95</sup> Furthermore, the wording of the convention has been criticised for being too vague and weak; in fact, several provisions contain a number of escape clauses and thereby prevent the clear formulation of state obligations.<sup>96</sup>

Despite these shortcomings the Council of Europe's FRAMEWORK CONVENTION, if interpreted within the larger normative framework of international minority protection, is an important political step in institutionalising a model of democracy which embraces cultural diversity, de-legitimises the classical concept of the nation-state with its assumptions of territorial sovereignty and cultural homogeneity and thereby provides a framework in which persons belonging to minorities may enjoy rights to cultural autonomy.

#### ***B. Evaluating the situation of minorities in the FRY from the perspective of the FRAMEWORK CONVENTION***

The following chart (**table 4**) systematises the results of the detailed analyses of the *de jure* and *de facto* situation of minorities in the FRY in Section II by comparing their constitutional position, the state's general policy and the factual situation with the respective legal provisions contained in the FRAMEWORK CONVENTION. In this chart, the term "minority" is used as an umbrella term to encompass what is called "national minority" in the FRAMEWORK CONVENTION and "nationality" or "ethnic group" in the constitutions of the FRY and its constituent republics. In addition to the three categories of international co-operation, the definition of the term "(national) minority" and general provisions, it distinguishes six specific objects of minority rights (territory, political participation, language, education, media/culture, religion), which are analysed with respect to the nature of state obligations they involve (i.e. respect, protection, or promotion).

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<sup>95</sup> See Estébanez/Gál 1998, pp. 26-54; Weckerling, Matthias 1997, "Der Durchführungsmechanismus des Rahmenübereinkommens des Europarates zum Schutz nationaler Minderheiten", in: *Europäische Grundrechte-Zeitschrift* 24: pp. 605-608.

<sup>96</sup> See especially the criticism of the Council of Europe's Parliamentary Assembly in Recommendation 1255 (1995).

**Table 4:** Systematisation of the constitutional, legislative and factual situation of minorities in the FRY, compared to the standards of the FRAMEWORK CONVENTION

|                                  | FRAMEWORK CONVENTION  | Constitutions FRY, Republic of Serbia and Republic of Montenegro  | Infrastructure and general policy in FRY  | Factual situation in FRY   |
|----------------------------------|---|---|---|--|
| <i>International cooperation</i> | # minority protection as integral part of international cooperation (Art. 1)  | # recognition of international human rights (FRY Art. 10) or international minority rights (Montenegro Art. 67); incorporation of international law into internal legal order (FRY Art. 16)   | # attempts at international cooperation (CERD, UN Special Rapporteur); ratification of Framework Convention   | # member of UN; member of OSCE; Special Guest to the Parliamentary Assembly CoE  |
| <i>Definition of "minority"</i>  | # no definition<br><br># respect for right to be treated as member of minority or not (Art. 3.1)  | # no definition<br><br># respect for right not to be treated as member of minority (FRY Art. 45 (2.))   | # state policy based on definitions of "nationality" in SFRJ  | # non-recognition of some new national minorities (e.g. Croats) and certain old national minorities (e.g. Vlachs), and ethnic groups (Serb Muslims)  |
| <i>General provisions</i>        | # respect for minority members' right to equality and non-discrimination (Art. 4 (1.))<br><br># promotion of right to equality (Art. 4 (2.))<br><br># promotion of right to cultural identity (Art. 5)<br><br># protection of right to equality, non-discrimination and cultural identity from acts of intolerance (Art. 6) | # respect for citizens' right to equality (FRY Art. 20)<br><br>/<br><br># respect for right to cultural identity (FRY Art. 11)<br><br># protection of right to equality, non-discrimination and cultural identity from acts of intolerance (FRY Art. 38 (2.), 42 (1.), Art. 50) | /<br><br>/<br><br># Republic Council for the Protection of the Rights of Members of National and Ethnic Groups (Montenegro Art. 76)<br><br># implemented through several Serbian laws with the effect of restricted freedom of expression | # harsh discrimination of some groups, most notably new national minorities (Croats) and dispersed minorities (Roma).<br><br># general trend after dissolution of the SFRY: restrictions of cultural autonomy<br><br># insufficient protection of minorities from social pressure by Serb refugees |
| <i>Territorial provisions</i>    | # respect for proportions of minority populations (Art. 16)   | /<br><br># limited territorial autonomy of Autonomous Provinces Kosovo-Metohija and Vojvodina (Serbia Art. 109-112)   | /<br><br># in AP Kosovo and Metohija application of Serbian LAW ON THE PROCEDURE OF REPUBLICAN ORGANS UNDER SPECIAL CIRCUMSTANCES; in Vojvodina STATUTE OF THE AUTONOMOUS PROVINCE OF VOJVODINA   | # alteration of ethnic proportions in Vojvodina and Sandžak due to refugees<br><br># territorial conflict over Kosovo; repression of secessionist movement   |

|   |  |   |  |  |
|---|--|---|--|--|
| <p style="text-align: center;"><i>Political Participation</i></p> | <p># respect for right to freedom of assembly and association (Art.7)</p> <p># respect for right to cross-border contact (Art.17)</p>  | <p># respect for right to freedom of assembly and association (FRY Art. 41; Serbia Art. 44); respect for right to proportional representation in administration (Montenegro, Art. 73)</p> <p># respect for right to cross-border contact (FRY Art. 48)</p>  | <p># representation of Alliance of Vojvodina Hungarians (SVM) and "List of Sandžak" in federal and republican parliaments</p> <p># prohibition of external financial support of political organisations of minorities in Serbia</p>  | <p># restricted political representation of certain minorities (e.g. Croats, Roma); repression of Albanian political organisations in AP Kosovo-Metohija; removal of Muslim-led Municipal Council in Novi Pazar</p> <p>/</p>   |
| <p style="text-align: center;"><i>Language</i></p>                | <p># respect for right to use minority language in private and public (Art. 10 (1.); Art. 11 (2.))</p> <p># respect for right to use minority language in relation with administrative authorities (Art. 10 (2.))</p> <p># respect for right to be informed in one's own language in public proceedings (Art. 10 (3.))</p> <p># respect for right to use surname and first name in minority language (Art. 11 (1.))</p> <p># promotion of right to use of minority language through bilingual signs (Art. 11 (3.))</p> | <p># respect for right to use minority language in private and public (FRY Art. 45 (1.); Serbia Art. 49; Montenegro Art. 68)</p> <p># establishment of additional official languages in regions inhabited by minorities (FRY Art. 15 (2.); Montenegro Art. 9); Hungarian, Slovak, Romanian and Ruthenian as official languages in Vojvodina (STATUTE OF THE AUTONOMOUS PROVINCE OF VOJVODINA Art. 6)</p> <p># respect for right to be informed in one's own language in public proceedings (FRY Art. 49; Serbia Art. 123)</p> <p>/</p> <p>/</p> | <p># implemented through Serbian LAW ON THE OFFICIAL USE OF LANGUAGES AND SCRIPTS</p> <p># minority languages can only be declared official languages at local level (Serbian LAW Art. 11); Serbian always primary official language in public proceedings except in the first instance (Serbian LAW Art. 12 (1.) and 15)</p> <p># implemented through Serbian LAW (Art. 6)</p> <p>/</p> <p># implemented through Serbian LAW (Art. 19 and 20)</p> | <p># basically no restrictions</p> <p># in AP Kosovo and Metohija unequal status of Serbian, Albanian and Turkish language</p> <p># lack of interpreters in some courts in Vojvodina</p> <p>/</p> <p># lack of bilingual signs in some municipalities in Vojvodina</p> |

|                   |   |   |   |  |
|-------------------|---|---|---|--|
| Education         | <p># respect for right to equal access to education of minorities (Art. 12 (3.))</p> <p># promotion of knowledge about minority culture (Art. 12 (1.) and (2.))</p> <p># respect for right of members of minorities to establish separate educational institutions, without financial obligations of the state (Art. 13)</p> <p># respect for right of members of minorities to learn minority language (Art. 14 (1.)); respect for right of members of minorities to receive education in minority language or mother-tongue instruction (Art. 14 (2.) and (3.))</p> | <p># respect for right to equality (see <i>supra</i>)</p> <p># promotion of knowledge about minority culture through curricula (Montenegro Art. 71)</p> <p># respect for right of members of minorities to establish separate educational institutions, with possibility of financial support from the state (FRY Art. 47), with financial support (Montenegro Art. 70)</p> <p># respect for right to use minority language in education (FRY Art. 46 (1.)); respect for right to receive mother-tongue education (Serbia Art. 32 (4.); Montenegro Art. 68)</p> | <p>/</p> <p># curricula drawn by Serbian Ministry of Education without prior consultation with minority</p> <p>/</p> <p># Serbian language established as primary language of instruction (provisions in Serbian LAW ON ELEMENTARY SCHOOLS, LAW ON SECONDARY SCHOOLS, LAW ON HIGHER SCHOOLS, LAW ON UNIVERSITIES); mother-tongue or bilingual instruction at a minimum of 15 pupils or on approval of Ministry of Education (provisions in Serbian LAWS see <i>supra</i>)</p> | <p># "parallel" educational institutions in AP Kosovo-Metohija</p> <p># insufficient reference to national culture of Hungarians in Vojvodina</p> <p>/</p> <p># no mother-tongue instruction for Croats in public schools; use of Bulgarian discouraged by local authorities; no language education for Vlachs</p> |
| Culture and Media | <p># respect for right to receive and import information in minority language (Art. 9 (1.) and (4.))</p> <p># respect for right of members of minorities to create and use own media (Art. 9 (3.))</p>  | <p># respect for right to receive information in minority language (FRY Art. 46 (2.), Montenegro Art. 68); guarantee of public information in Hungarian, Slovak, Romanian and Ruthenian language in AP Vojvodina (STATUTE OF THE AUTONOMOUS PROVINCE OF VOJVODINA)</p> <p>/</p>   | <p># prohibition of information inciting intolerance (Serbian LAW ON PUBLIC INFORMATION Art. 11); media used to strengthen Serbian national values (Serbian LAW ON RADIO-TELEVISION Art. 19); programming in minority languages in AP Vojvodina and AP Kosovo-Metohija (Serbian LAW ON RADIO-TELEVISION Art. 20)</p> <p># general control of media by means of Serbian LAW ON PUBLIC INFORMATION</p>  | <p># virtually no programmes in Croat in public media</p> <p># several newspapers in minority languages, yet restrictions as part of general control of media</p>  |
| Religion          | <p># respect for right to freedom of religion of minorities (Art. 8)</p>  | <p># respect for right to freedom of religion (FRY Art. 43)</p> <p># promotion of right to religious identity of minorities through material support (Montenegro Art. 70)</p>   | <p>/</p>  | <p># official separation of Church and State; rapprochement of Serbian Orthodox Church and Serbian nationalist movement</p>  |

Interpreted against the historical background of social transformations in the former



Yugoslavia and within the context of the wider normative framework of international human rights law, this systematic analysis may be summarised as follows:

(i) Constitutional provisions: Compared to the legal standards of the FRAMEWORK CONVENTION, the constitutional provisions of the FRY and its constituent republics may be considered as more or less sufficient, with the exception that there is no prohibition of alteration of demographic composition and forced assimilation as stipulated in the FRAMEWORK CONVENTION (Art. 16). Although the constitutions restrict some of the rights by making them conditional on the *ordre public* and legislative measures, they do not fall beyond the FRAMEWORK CONVENTION, in which similar escape clauses are contained. The constitution of the Republic of Montenegro even guarantees more extensive rights to persons belonging to minorities, for instance by obliging the state to provide financial support for their educational and religious organisations (Art. 70).

However, the constitutions of the FRY and the Republic of Serbia, adopted in the political atmosphere of new nationalism, clearly limit the rights of persons belonging to minorities if compared to their legal position in the SFRJ. In particular, they curtail the territorial autonomy granted to the SAPs Vojvodina and Kosovo under the institutional framework of the SFRJ (see *supra* II.A.3.(a)). Although the FRAMEWORK CONVENTION does not address the issue of territorial autonomy, constitutional nationalism as displayed especially in these restrictions of former autonomy goes against the general trend in international law.

(ii) Infrastructure and state policy: The legislation through which the constitutional provisions are regulated in more detail appears more ambivalent in comparison with the standards of the FRAMEWORK CONVENTION. Several legislative measures, including those which establish minority languages as official languages in administration and public proceedings in some regions (especially in the AP Vojvodina) or which implement the right to education in minority language, actually demonstrate a certain degree of pro-active minority protection in the FRY.

On the other hand, these legislative measures not only fall below the standards

of minority legislation in the SFRJ, thus creating a high potential for conflict, they also indicate that minority protection is absent from the priority list of state policy, despite the urgency of such policies within the multi-ethnic and multi-confessional social space of the FRY. Even to the contrary, recent legislation openly restricts the participation of persons belonging to minorities in politics, education, culture and media. Some minorities, including the Croats, Muslims in the Sandžak and the Vlachs are not even recognised by the authorities, and others suffer from restrictive policy by state and local authorities. The most obvious example of this general pattern is, of course, the repressive state policy against Albanians in the AP Kosovo and Metohija in the 1990s (see *supra* II.A.3.(a) and II.B.1).

(iii) Factual situation: Evaluated in the light of the standards of the FRAMEWORK CONVENTION, the factual situation of minorities in the FRY is clearly inadequate and, in some cases, even alarming. It is unsatisfactory, since the implementation of those constitutional and legislative provisions on minority rights that do exist is affected by the aforementioned factors, most notably the lack of a firmly-anchored rule of law, the weakness of democratic institutions and of civil society (see *supra* I.A.3.); the cultural autonomy of many minorities is thereby drastically curtailed in the domains of language, education and media, most obviously in the Vojvodina, Sandžak and Kosovo regions. The factual situation is even alarming in those cases in which minorities rely on external states and thereby might become involved in the conflict-prone triadic relation of national minorities, nationalising states and national external homelands (see *supra* I.A.3.); the situation of Serbs and Albanians in Kosovo and Serbia, respectively, clearly has the potential to develop along these lines, if the interim administration of KFOR and UNMIK does not succeed in gaining legitimacy among the entire population in Kosovo, including the Serbs. Equally alarming is the situation of dispersed minorities, such as the Roma, who suffer from systematic exclusion from almost all areas of social life, most notably from the economic sector (see *supra* II.B.4.).

## **IV. Conclusions**

By way of conclusion of the analysis of the situation of minorities in the FRY evaluated from the perspective of the FRAMEWORK CONVENTION, the remaining subsections of this paper highlight some priorities for a critical and constructive dialogue of the Council of Europe with the FRY on the protection of minorities. It should be noted that it is the Serbian-dominated federal administration which is the critical partner for such a dialogue. As indicated above, the Republic of Montenegro, formally still part of the FRY, has adopted a strong Western political orientation, which has led to a latent, and unresolved, conflict between the two constituent republics. While this problem certainly merits reflection of its own, the following remarks focus on minority protection in Serbia as a major area of concern for the Council of Europe's dialogue with the FRY.

### **1. Implementing the FRAMEWORK CONVENTION in the FRY**

In late 1999 and early 2000, within the context of international attempts at conflict resolution in South East Europe, the Council of Europe faced the question whether to invite the FRY to sign the FRAMEWORK CONVENTION or not. It was actually confronted with the FRY's explicit desire to sign the FRAMEWORK CONVENTION, since the Parliamentary Assembly of the FRY already adopted a law ratifying the FRAMEWORK CONVENTION on 3 December 1998, which the FRY's government repeatedly highlighted as an expression of adherence to international legal standards.<sup>97</sup> Since the FRY was not a member state of the Council of Europe and was not invited by the Committee of Ministers to accede to the FRAMEWORK CONVENTION before its entry into force on 1 February 1998, the FRY's potential signature of the FRAMEWORK CONVENTION was legally regulated by its Art. 29 (1.). This article stipulates that, after the convention entered into force, the Committee of Ministers may invite non-member states to accession by a decision requiring a two-thirds majority of the representatives casting a vote and a simple majority of the representatives entitled to sit on the Committee, according to Art. 20 (d.) of the STATUTE OF THE COUNCIL OF EUROPE. The question whether the FRY might accede to the FRAMEWORK CONVENTION under Art. 29(1.) was legally complicated by the fact

that the Explanatory Report specifies in para. 99 that "other States", to which Art. 29(1.) may apply, are only those states that participate in the CSCE, from which the FRY was excluded until November 2000 (see *supra* II.A.1.).<sup>98</sup>

Not unlike the OSCE in its decision regarding the status of the FRY,<sup>99</sup> the Council of Europe theoretically had three active political options in this situation, with the passive option being the *status quo*. The first active option was an explicit refusal to invite the FRY to accede to the FRAMEWORK CONVENTION for a determined period of time. A second active option, contrary to the first one, was to offer either full membership or a special guest status in the Council of Europe which would automatically have included accession to the FRAMEWORK CONVENTION. It is clear that, given the FRY's non-adherence to the Council of Europe's basic principles of democracy, the rule of law and respect for human rights in the 1990s, this was, by that time, a mere theoretical option. A third active option, effectively a compromise between the other two, was to invite the FRY as a non-member state to accede to the FRAMEWORK CONVENTION under Art. 29(1.). In fact, this study has provided a number of arguments that would have justified this short-term political option, especially, if regarded as a strategic element of a long-term political attempt at contributing to stability in South East Europe (see *infra*).

After the democratic revolution in October 2000, however, the political situation changed entirely, with the FRY being readmitted to the UN and to the OSCE. In the wake of international recognition of the FRY's new government, the Council of Europe offered the FRY the status of a Special Guest to the Parliamentary Assembly for the FRY (22 January 2001), with the consequence that the FRY signed the FRAMEWORK CONVENTION on 11 May 2001. The FRY's international obligations under the FRAMEWORK CONVENTION will enter into force on 1 September 2001. It should therefore be a major short-term priority of the Council of Europe to provide legal assistance to the FRY in helping to draft legislation on minority rights. In this process, the above analysis of the *de jure* and *de facto* situation of minorities in Serbia (see *supra* IV.B.) may help to single out sensitive issues at the level of constitutional

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<sup>97</sup> See e.g. UN doc. CERD/C/364, para. 7.

<sup>98</sup> Explanatory Report, para. 99.

<sup>99</sup> For the debate within the OSCE, see Perry 1998, p. 51-54.

provisions, infrastructure and state policy, and factual treatment.

## **2. Institutionalising democracy in a multi-ethnic context: a long-term perspective**

In order to contribute to an actual improvement of the situation of minorities, the implementation of the FRAMEWORK CONVENTION should be situated in the long-term perspective of institutionalising democracy in Southeastern Europe. In fact, one of the major structural challenges faced by the post-communist societies in that region has been their transition to democracy, the rule of law and respect for human rights. Given the complex multi-ethnic and multi-confessional composition of the region's population, the improvement of minority-majority relations is an integral part of this transition process and requires the institutionalisation of a multi-layered system of membership in which each community may enjoy cultural autonomy while sharing a common political sphere. Any attempt at institutionalisation of the classical concept of the nation-state with its assumptions of a congruency between territorial sovereignty and national identity has, in turn, the potential of inducing inter-ethnic conflict.<sup>100</sup> Resulting from a combination of conditioning factors, most notably the institutional framework of the SFRJ with its intermingling of cultural autonomy of "nations" and territorial quasi-sovereignty of the republics, and triggering factors such as a changed geo-strategic environment and economic decline, the dissolution of the SFRJ was accompanied precisely by such an attempt at establishing new nation-states with the result of violent inter-ethnic conflict (see *supra* I.A.). In the Republic of Serbia, new nationalism permeated public discourse as well as the legal and political system and may be seen as a major factor of the deterioration of the *de jure* and *de facto* situation of minorities in the FRY (see *supra* II. and III.).

In the long term, the resolution of inter-ethnic conflict and hence stabilisation of the southeastern European region will therefore require re-directing the post-communist transition process from new nationalism towards the path of institutionalising a multi-layered model of membership capable of providing a democratic framework for the peaceful coexistence of ethnic and confessional groups. Currently, such a form of

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<sup>100</sup> The southeastern European region is therefore one of the primary examples for the causal nexus between structural features of the nation-state and inter-ethnic conflict; see Stavenhagen, Rudolfo 1996, *Ethnic Conflicts and the Nation-State*, London: UNRISD/Macmillan.

state organisation is envisioned in international law, particularly in those provisions which oblige states to respect, protect and promote the rights to non-discrimination, equality and cultural identity (see *supra* III.A.1.). The model of a multicultural democratic state based on the principle of personality (*Personalitätsprinzip*) in fact provides a major source of legitimacy for social movements which strive for more inclusive forms of political representation and participation, e.g. the Serbian dissident movement, minority organisations and international NGOs.<sup>101</sup> Given that integration into the international legal and political mechanisms regularly creates new opportunity structures for democratic forces, it should be a long-term priority of the Council of Europe to firmly include the FRY in its evolving system of minority protection.<sup>102</sup> The ratification and implementation of the FRAMEWORK CONVENTION may therefore be seen as an appropriate mid-term strategy in that direction.

### **3. Including the FRY in the Stability Programme: a mid-term strategy**

One of the core elements of a mid-term strategy designed to achieve the aforementioned long-term goals is the implementation of the FRAMEWORK CONVENTION in the FRY. The Council of Europe's contribution to the EU's Stability Pact, inaugurated at the Sarajevo Summit of 30 July 1999 and offering a perspective of membership in the EU to the countries in South East Europe, provides a basic starting-point for such a mid-term strategy. Thus, the Committee of Ministers' communication "Stability Programme for Southeast Europe" confirms as a long-term goal "[...] to bring each and every country in Europe into accepting and living up to the principles of pluralist democracy, human rights and the rule of law which constitute the basis for membership of the Organisation".<sup>103</sup> The FRAMEWORK CONVENTION is explicitly mentioned as one of the instruments to be mobilised as a

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<sup>101</sup> It should be noted that the Serbian opposition movement, in an address to the Western states, explicitly called for an end of international diplomatic isolation of the FRY and for cooperation of the OSCE and other international organisation with the FRY; see RFE/RL Newline Vol. 4, No. 7, Part II (11 January 2000).

<sup>102</sup> With a similar argument, the Council of Europe's Parliamentary Assembly, addressing the Kosovo crisis in 1996, invited the OSCE to allow the FRY to resume participation in its work so as to foster dialogue between the conflicting parties; see Parliamentary Assembly Resolution Re 1077 (1996), para 6 (vi.). For a general analysis of the impact of international law on domestic political development in the area of human rights see Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds), 1999, *The Power of Human Rights. International Norms and Domestic Change* (Cambridge Studies in International Relations ; 66). Cambridge: Cambridge University Press.

<sup>103</sup> Council of Europe CM (99)79, I.

contribution to the stabilisation of the region.<sup>104</sup> One may ask whether the exclusion of the FRY from the Stability Pact and Stability Programme before October 2000 was a wise political decision.<sup>105</sup> In any event, the inclusion of the FRY in both programmes after the removal of the authoritarian regime has opened the way for a constructive political cooperation at the regional level.

In fact, the implementation of the FRAMEWORK CONVENTION in the FRY will not immediately improve the situation of minorities without the adoption of accompanying several measures aimed at tempering new nationalism in Serbia. Since economic decline is one of the major factors contributing to the success of nationalist politics (see *supra* I.A.3), an economic component of the Stability Programme is quite crucial; this is particularly relevant for an improvement of the situation of the Roma in the FRY (see *supra* II.B.4.). Moreover, any improvement of the situation of minorities will require concerted efforts at solving the refugee problem in Serbia, by which the ethnic composition in Vojvodina and in the Sandžak is particularly affected. These efforts would need to include regional cooperation between the countries of the former Yugoslavia, with a view to arriving at a consensus on citizenship regulations and on the recognition of new national minorities.<sup>106</sup> A further priority in a coherent mid-term strategy is to strengthen the local administration, so as to counter the measures of centralisation adopted by the Serbian government in the 1990s; inter-ethnic relations in mixed communities would certainly improve, if democratic organs at the local level were granted a higher degree of autonomy. The Congress of Local and Regional Authorities of Europe of the Council of Europe could assist in the creation of local conditions for implementing legal standards of minority protection.

It can be concluded that, if situated within an integrated mid-term strategy for stability in South East Europe, the implementation of FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES in the FRY could be a major political step in achieving the long-term goal of institutionalising democracy in the multi-ethnic and

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<sup>104</sup> Council of Europe CM (99)79, II. and III. (2.).

<sup>105</sup> Isolation has actually perpetuated the power of the ruling regime in Belgrade; see for a similar argument Steil, Benn and Susan L. Woodward 1999, "A European 'New Deal' for the Balkans" in: *Foreign Affairs* 78(6): pp. 95-105, here p. 103f.

<sup>106</sup> This point is highlighted by UN Special Rapporteur Jiri Dienstbier in one of his recent report; see UN doc. A/54/396/Add. 1, para. 118.

multi-confessional social space of the Balkans.



## Appendix: Political parties in the FRY

**Table 1**

| <i>Federal Republic of Yugoslavia</i>  | Election results (number of seats) |              |
|--|------------------------------------|--------------|
|  | November 1996                      | October 2000 |
| Socialist Party of Serbia (SPS)<br>Yugoslav Left (JUL)<br>New Democracy (ND) | 64                                 | 44           |
| Serbian Radical Party (SRS)  | 16                                 | 5            |
| Serbian People's Party (SNS)   | -                                  | 2            |
| Democratic Opposition of Serbia (DOS)*                                       | -                                  | 58           |
| ZAJEDNO  | 22                                 | -            |
| Alliance of Vojvodina Hungarians   | 3                                  | 1            |
| Vojvodina Coalition  | 2                                  | -            |
| Coalition "List of Sandžak", S. Ugljanin, D Sc.                              | 1                                  | -            |
| Socialist People's Party (SNP) of Montenegro                                 | 8                                  | 28           |
| DPS of Montenegro  | 20                                 | ._**         |
| SDP Montenegro   | 1                                  | ._**         |
| DAP of Montenegro  | 1                                  | ._**         |
| <i>Total number of seats</i>   | 138                                | 138          |

\* Coalition comprised of: see Table 2.

\*\* No participation in October 2000 federal elections.

**Table 2**

| <i>Republic of Serbia</i>  | Election results (number of seats) |               |
|--|------------------------------------|---------------|
|  | September 1997                     | December 2000 |
| Socialist Party of Serbia (SPS)<br>Yugoslav Left (JUL)<br>New Democracy (ND) | 110                                | 37            |
| Serbian Radical Party (SRS)  | 82                                 | 23            |
| Serbian Renewal Movement (SPO)   | 45                                 | -             |
| Party of Serbian Unity   | -                                  | 14            |
| Democratic Opposition of Serbia (DOS)*                                       | -                                  | 176           |
| Coalition "Vojvodina"  | 4                                  | -             |
| Alliance of Vojvodina Hungarians   | 4                                  | -             |
| Coalition "List of Sandžak", S. Ugljanin, D Sc.                              | 3                                  | -             |
| Democratic Coalition Presevo - Bujanovac                                     | 1                                  | -             |
| Democratic Alternative   | 1                                  | -             |
| <i>Total number of seats</i>   | 250                                | 250           |

\* Coalition comprised of: Democratic Party of Serbia, Democratic Alternative, Democratic Party, New Democracy (ND), Movement for Democratic Serbia, Alliance of Vojvodina Hungarians, League of Vojvodina Social-Democrats, Civil Alliance of Serbia, Social-Democracy, Christian Democratic Party of Serbia, Reform Democratic Party of Vojvodina, Association of Free and Independent Trade Unions, New Serbia, League for Sumadija,

Democratic Centre, Social-Democratic Union, Coalition Vojvodina, Sandžak Democratic Party.

**Table 3**

| <i>Republic of Montenegro</i>  | Election results of May 1998<br>(number of seats) |
|--|---|
| Democratic Party of Socialists (DPS)<br>People's Party (NP)<br>Social Democratic Party (SDP) | 42  |
| Socialist People's Party (SNP)   | 29  |
| Liberal Alliance in Montenegro (LSCG)  | 5   |
| Democratic Alliance in Montenegro (DSCG)   | 1   |
| Democratic League of Kosovo (LDK)  | 1   |
| <i>Total number of seats</i>   | 78  |

## Abbreviations

|        |   |
|--------|---|
| AP     | Autonomous Province   |
| CERD   | Commission for the Elimination of Racial Equality   |
| CSCE   | Conference for Security and Co-operation in Europe  |
| DOS    | Demokratska Opozicijy Srbije (Democratic Opposition of Serbia)                                |
| DSHV   | Demokratska savez Hrvatska vojvodjanskih (Democratic Alliance of Croats in the Vojvodina)     |
| DZVM   | Demokratska zajednica vojvodjanskih Madjara (Democratic Community of Hungarians in Vojvodina) |
| EC     | European Community  |
| ECHR   | EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND BASIC FREEDOMS                      |
| EU     | European Union  |
| FRY    | Federal Republic of Yugoslavia  |
| ICCPR  | INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS  |
| IMF    | International Monetary Fund   |
| JNA    | Jugoslovenska Narodna Armija (Yugoslav People's Army)   |
| JUL    | Jugoslovenska levica (Yugoslav Left)  |
| KFOR   | Kosovo Force  |
| LDK    | Lidhja Demokratike e Kosoves (Democratic League of Kosovo)                                    |
| NATO   | North Atlantic Treaty Organisation  |
| NGO    | Non-Governmental Organisation   |
| OSCE   | Organisation for Security and Co-operation in Europe  |
| RFE/RL | Radio Free Europe/Radio Liberty   |
| SAP    | Socialist Autonomous Province   |
| SDS    | Srpska Demokratska Stranka (Serbian Democratic Party)   |
| SFRJ   | Socijalistièka Federativna Republika Jugoslavija (Socialist Federal Republic of Yugoslavia)   |
| SKJ    | Savez Komunista Jugoslavije (League of Communists of Yugoslavia)                              |
| SPO    | Serbian Renewal Movement  |

|       |   |
|-------|---|
| SPS   | Socijalistièka Partija Srbije (Socialist Party of Serbia) |
| SRS   | Srpska Radikalna Stranka (Serbian Radical Party)          |
| UN    | United Nations  |
| UNHCR | United Nations High Commissioner for Refugees             |
| UNMIK | United Nations Mission in Kosovo                          |
| UNTS  | United Nations Treaty Series                              |
| US    | United States   |

## Bibliography

- Beetham, David 1998. "Democracy and Human Rights: Civil, Political, Economic, Social and Cultural", pp. 71-97 in: Symonides, Janusz (ed.) *Human Rights: New Dimensions and Challenges*. Aldershot: Ashgate/UNESCO.
- Benoît-Rohmer, Florence 1998. "Le Conseil de l'Europe et Les Minorités Nationales", pp. 128-148 in: K. Malfliet and R. Laenen (eds) *Minority Policy in Central and Eastern Europe: The Link Between Domestic Policy, Foreign Policy and European Integration*. Leuven: The Institute for European Policy.
- Bloch, Anne-Christine 1995. "Minorities and Indigeous Peoples", pp. 309-231 in: Eide, Asbjorn et al. (eds) *Economic, Social and Cultural Rights. A Textbook*. Dordrecht/Boston/London: Martinus Nijhoff Publishers.
- Brubaker, Rogers 1996. "National minorities, nationalizing states, and external national homeland in the New Europe", pp. 55-76 in: *Nationalism Reframed. Nationhood and the national question in the New Europe*, Cambridge: Cambridge University Press.
- Brunnbauer, Ulf 1999. "Die vergessenen Albaner Serbiens. Zur Lage der ethnischen Albaner in Südserbien außerhalb des Kosovo", *Südosteuropa* 48 (7-8): 373-388.
- Crampton, Richard and Ben. 1997. *Atlas of Eastern Europe in the Twentieth Century*. London: Routledge.
- Devetak, Silvo 1996. "The dissolution of multi-ethnic states: The case of Yugoslavia", pp. 159-178 in: Rupesinghe, Kamber und Valery A. Tishkov (eds) *Ethnicity and power in the contemporary world*. Tokyo: United Nations University Press.
- Eide, Asbjørn 1994. *Peaceful and Constructive Resolution of Situations Involving Minorities*. Oslo: Norwegian Institute of Human Rights.
- Eide, Asbjørn. 1995. "Cultural Rights as Individual Human Rights", pp. 229-240 in: A. Eide, C. Krause, and A. Rosas (eds) *Economic, Social and Cultural Rights. A Textbook*. Dordrecht/Boston/London: Martinus Nijhoff Publishers.
- Estébanez, María Amor Martín and Kinga Gál 1998. "Implementing the Framework Convention for the Protection of National Minorities" (ECMI Report #3). Flensburg: European Centre for Minority Issues.
- Gilbert, Geoff 1999. "Minority Rights Under the Council of Europe", pp. 53-70 in: P. Cumper and S. Wheatley (eds) *Minority Rights in the "New" Europe*. The Hague et al.: Martinus Nijhoff Publishers.
- Godina, Vesna V. 1998. "The outbreak of nationalism on former Yugoslav Territory: a historical perspective on the problem of supranational identity", *Nations and Nationalism* 4 (3): 409-422.
- Hanf, Theodor 1991. "Konfliktminderung durch Kulturautonomie. Karl Renners Beitrag zur Frage der Konfliktregelung in multi-ethnischen Staaten", pp. 61-90 in: Erich Fröschl, Maria Mesner, Uri Ra'anan (eds), *Staat und Nation in multi-ethnischen Gesellschaften*. Wien: Passagen Verlag.
- Hayden, Robert M. 1995. "Constitutional Nationalism and the Logic of the Wars in

- Yugoslavia", pp. 79-96 in: Janjiæ, Dušan und Stefano Bianchini (eds) *Ethnicity in Postcommunism*. Belgrade: Institute of Social Sciences; Forum for ethnic Relations; International Network Europe and the Balkans.
- Helsinki Committee for Human Rights in Serbia. *Report on the Status of Human Rights in Serbia in 1998*, Vienna: IHF.
- Hofmann, Rainer 1995. *Minderheitenschutz in Europa. Völker- und staatsrechtliche Lage im Überblick* (Forschungsergebnisse der Studiengruppe für Politik und Völkerrecht). Berlin: Gebr. Mann Verlag.
- Humanitarian Law Center 1999. "Human Rights in FR Yugoslavia" (Spotlight Report No. 28), January 1999, Belgrade.
- Huntington, Samuel P. 1993. "The Clash of Civilizations?", *Foreign Affairs* 72 (3): pp. 22-49.
- Ignatieff, Michael 1993. *Blood and Belonging. Journeys into the New Nationalism*. New York: Farrar, Straus and Giroux.
- Janjiæ, Dušan, "Some Indicators of the Status of Ethnic Minorities in the Federal Republic of Yugoslavia", Beograd: Forum for Ethnic Relations.
- König, Matthias 1999. "Cultural diversity and language policy", in: *International Social Science Journal* 161: pp. 401-408.
- Minority Rights Group (eds) 1997. *World Directory of Minorities*. London: Minority Rights Group International.
- Marko, Joseph 1994. "Die rechtliche Stellung der Minderheiten in Serbien", S. 286-319 in: Frowein, Jochen Abr. et al. (ed.) *Das Minderheitenrecht europäischer Staaten, Teil 2*. Berlin et al.: Springer Verlag.
- Marko, Joseph 1996. *Der Minderheitenschutz in den jugoslawischen Nachfolgestaaten: Slowenien, Kroatien und Mazedonien sowie die Bundesrepublik Jugoslawien mit Serbien und Montenegro* (Minderheitenschutz im östlichen Europa, Band 5). Bonn. pp. 205-286.
- Minority Protection Association 1997. "The Minority Rights of the Hungarian National Group in Yugoslavia. Legal Framework and Actual Practice" (Minority Protection Series, No. 3).
- Neæak, Dušan 1991. "Die 'jugoslawische Frage': historische Elemente zu ihrem Verständnis", pp. 275-292, in: Fröschl/Mesner/Ra'anan (eds), *Staat und Nation in multi-ethnischen Gesellschaften*. Wien: Passagen Verlag.
- Paunoviæ, Milan 1997. "Nationalities and Minorities in the Yugoslav Federation and in Serbia", pp. 145-165 in: Packer, John and Kristian Myntti (eds) *The Protection of Ethnic and Linguistic Minorities in Europe*. Åbo/Turku: Institute for Human Rights.
- Pavkoviæ, Aleksander (ed.) 1997. *The Disintegration of Yugoslavia: Inevitable or Avoidable?* Nationalities Paper (Special Topic Issue): 25 (3).
- Pavkoviæ, Aleksander 1998. "From Yugoslavism to Serbism: the Serb national idea 1986-1996", *Nations and Nationalism* 4 (4): 511-528.
- Valery Perry 1998. "The OSCE suspension of the Federal Republic of Yugoslavia", *Helsinki Monitor* 9 (4): pp. 44-54.
- Poulton, Hugh 1993. *The Balkans: Minorities and States in Conflict*. London: Minority Rights Publications.
- Radan, Peter 1997. "The Badinter Commission and the Partition of Yugoslavia", *Nationalities Paper* 25 (3): 337-357.
- Ramet, Sabrina Petra 1999. *Balkan Babel. The Disintegration of Yugoslavia from the Death of Tito to the War for Kosovo* (3<sup>rd</sup> ed.). Boulder: Westview Press.
- Reuter, Jens 1999. "Wer ist die UCK?", in: *Blätter für deutsche und internationale Politik* März 1999, pp. 281-285.
- Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds) 1999. *The Power of Human Rights. International Norms and Domestic Change* (Cambridge Studies in International Relations ; 66). Cambridge: Cambridge University Press.
- Roggemann, Herwig (ed.) 1999. *Die Verfassungen Mittel- und Osteuropas. Einführung und Verfassungstexte mit Übersichten und Schaubildern* (Quellen zur Rechtsvergleichung aus dem Osteuropa-Institut der Freien Universität Berlin, Bd. 45). Berlin: Berlin

- Verlag A. Spitz.
- Rusinow, Dennison 1994. "Minorities in Domestic Politics: Yugoslavia", pp. 71-79 in: Heuberger, Valeria et al. (eds) *Nationen, Nationalitäten, Minderheiten. Probleme des Nationalismus in Jugoslawien, Ungarn, Rumänien, der Tschechoslowakei, Bulgarien, Polen, der Ukraine, Italien und Österreich 1945-1990*. Wien: Verlag für Geschichte und Politik.
- Samardžić, Miroslav 1997. *Izveštaj o Ostvarivanju Prava Pripadnika Nacionalnih Manjina u AP Vojvodini* ("Report on the realisation of national minority rights in the Autonomous Province Vojvodina"). Belgrade: Centre for Anti-War Action.
- Scherer-Leydecker, Christian 1997. *Minderheiten und sonstige ethnische Gruppen. Eine Studie zur kulturellen Identität im Völkerrecht* (Menschenrechtszentrum der Universität Potsdam, Band 4) . Berlin: Arno Spitz Verlag.
- Statistisches Bundesamt 1990. *Länderbericht Jugoslawien*. Wiesbaden: Statistisches Bundesamt.
- Stavenhagen, Rudolfo 1995. "Cultural Rights and Universal Human Rights", pp. 63-77 in: Eide, Asbjorn et al. (eds) *Economic, Social and Cultural Rights. A Textbook*. Dordrecht/Boston/London: Martinus Nijhoff Publishers.
- Stavenhagen, Rudolfo 1996. *Ethnic Conflicts and the Nation-State*. London: UNRISD/Macmillan.
- Steil, Benn and Susan L. Woodward 1999. "A European 'New Deal' for the Balkans" in: *Foreign Affairs* 78(6): pp. 95-105.
- Symonides, Janusz 1998. "Cultural rights: a neglected category of human rights", in: *International Social Science Journal* 158: pp. 559-573.
- Thomas, Robert 1999. *Serbia under Milosevic. Politics in the 1990s*. London: Hurst & Company.
- Thornberry, Patrick 1995. "The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, and an Update", pp. 13-76 in: A. Philipps and A. Rosas (eds) *Universal Minority Rights*. Turku/Abo: Abo Akademi University. Institute for Human Rights.
- Todorova, Maria N. 1997. *Imagining the Balkans*. Oxford: Oxford University Press.
- Trifunovska, Snezana (ed.) 1994. *Yugoslavia Through Documents. From its Creation to its Dissolution*. Dordrecht et al.: Martinus Nijhoff Publishers.
- Troebst, Stefan 1998a. *Conflict in Kosovo: Failure or Prevention? An Analytical Documentation, 1992-1998* (ECMI Working Paper #1). Flensburg: European Centre for Minority Issues.
- Troebst, Stefan 1998b. *The Council of Europe's Framework Convention for the Protection of National Minorities Revisited* (ECMI Working Paper #2). Flensburg: European Centre for Minority Issues.
- Weckerling, Matthias 1997. "Der Durchführungsmechanismus des Rahmenübereinkommens des Europarates zum Schutz nationaler Minderheiten", in: *Europäische Grundrechte-Zeitschrift* 24: pp. 605-608.
- Woodward, Susan L. 1995. *Balkan Tragedy. Chaos and Dissolution after the Cold War*. Washington, D.C.: The Brookings Institution.
- Zülch, Tilman 1999. "Until the Very Last 'Gipsy' Has Fled the Country - Mass Expulsion of Roma and Ashkali from Kosovo" in: *Human Rights Report* No. 21, Göttingen: Society for Threatened Peoples International, 1999.