

DEMOKRATIJA I MULTIKULTURALNOST U JUGOISTOČNOJ EVROPI

DEMOCRACY AND MULTICULTURALISM IN SOUTH EAST EUROPE

Centar za istraživanje etniciteta
Ethnicity Research Center

BIBLIOTEKA

E T N O S

Izdavač/Published by
Centar za istraživanje etniciteta, Beograd, 2003.
Ethnicity Research Center, Belgrade, 2003.

Za izdavača/For publisher
Prof. dr Vojislav Stanovčić

Urednik/Editor
mr Goran Bašić

Kompjuterska priprema/Computer printset by
Zoran Gajić

Štampa/Printed by
Čigoja štampa

ISBN 8684481-02-X

Tiraž: 500 primeraka

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P R E D G O V O R

Krajem 2000. godine Centar za istraživanje etniciteta je počeo sa radom na projektu *Razvoj demokratije, ljudskih prava i zaštite nacionalnih i etničkih manjina u jugoistočnoj Evropi*. Cilj ovog projekta je da prati i proučava stanje u vezi sa položajem nacionalnih i etničkih manjina u regionu, da ukazuje na dobra rešenja, ali i na probleme u vezi sa ostvarivanjem njihovih prava, te da podstiče regionalnu i prekograničnu saradnju kao osnovni vid jačanja stabilnosti u regionu.

Prva aktivnost koja je realizovana neposredno po uspostavljanju demokratskih promena u Srbiji, u novembru 2000. godine, bila je posvećena položaju nacionalnih manjina u tadašnjoj Saveznoj Republici Jugoslaviji. U saradnji sa Jugoslovenskim udruženjem za političke nauke, Društvom dobre akcije iz Niša, a na inicijativu i uz pomoć Međunarodne naučne konferencije za manjine u Evropi budućnosti (ISCOMET), Maribor, organizovan je okrugli sto *Međuetnički odnosi i položaj manjina u SR Jugoslaviji*, na kome su učestvovali stručnjaci, predstavnici nacionalnih manjina i predstavnici tek formiranih državnih vlasti. Sa okruglog stola je potekla inicijativa, osmišljena u formi *Deklaracije o novom demokratskom sistemu zaštite i unapređenja prava manjina u SRJ*, čiji duh i principi su kasnije implementirani u procesu uređivanja položaja nacionalnih manjina u zemlji.

Rad na projektu je nastavljen komparativnom analizom položaja manjina u državama u jugoistočnoj Evropi, a posebna pažnja je bila posvećena implementaciji standarda zaštite prava nacionalnih manjina sadržanih u Okvirnoj konvenciji za zaštitu nacionalnih manjina, Evropskoj povelji o regionalnim i manjinskim jezicima i drugim dokumentima Saveta Evrope i OEBS-a u pravnim sistemima država u regionu. Rad na projektu podrazumevao je analizu stanja u vezi sa normativnim i faktičkim položajem manjina na osnovu metodologije koju je utvrdio istraživački tim. Već 2002. godine objavljen je zbornik *Demokratija i nacionalne manjine* posvećen položaju nacionalnih manjina u državama nastalim na prostoru SFRJ i organizovan okrugli sto na ovu temu. Ovaj deo projekta imao je za cilj da, na osnovu činjenica i sagledavanja realnog stanja u vezi sa položajem ljudi čiji se život bitno izmenio nakon raspada bivše države južnoslovenskih naroda, doprinese saradnji regionalnih, lokalnih i centralnih vlasti u regionu po pitanjima zaštite prava i unapređivanja uslova za održavanje identiteta i kulture nacionalnih manjina.

Tokom 2002. godine nastavili smo sa praćenjem položaja nacionalnih manjina u JIE. Rezultati tog rada saopšteni su u zborniku koji je pred Vama. Promene u vezi sa normativnom zaštitom manjina koje su se dogodile u poslednjih godinu dana potvrđuju potrebu za permanentnim i celovitim praćenjem stanja u ovoj oblasti. Naime, sa istorijske scene je nestala SRJ, a sa njom i ideja povezivanja južnoslovenskih naroda u jedinstven nacionalni korpus. Formirana je nova državna zajednica čije članice su suverene države Srbija i Crna Gora. Organi Državne Zajednice su uz pomoć Evropske unije doneli Ustavnu povelju i Povelju o ljudskim i manjinskim pravima i gradanskim slobodama, a resorno ministarstvo zaduženo za prava nacionalnih manjina je savetu Evrope podnело prvi izveštaj o implementaciji standarda zaštite manjina. U međuvremenu, Bosna i Hercegovina je donela Zakon o zaštiti pripadnika nacionalnih manjina, hrvatski Sabor je krajem 2002. godine usvojio novi Ustavni zakon o nacionalnim manjinama, a Vlada Crne Gore je ustanovila ekspertsku grupu za izradu Zakona o pravima etničkih grupa. Takođe, u Srbiji su uz dosta problema izabrani nacionalni saveti nacionalnih manjina, a u Hrvatskoj su u toku izbori za manjinska nacionalna vijeća i predstavništvo u Saboru. Dakle, za nešto više od godinu dana, samo u državama nastalim na bivšem jugoslovenskom prostoru dogodile su se značajne promene o čijim domašajima će biti reči u ovom zborniku.

U državama u regionu koje su sa demokratskom tranzicijom počele znatno ranije praksa u vezi sa položajem nacionalnih manjina se pomera sa zaštite političkih prava ka unapredenu uslova i razvijanju mehanizama za očuvanje njihovog identiteta i kulture i na zaštitu baštine kao dela evropskog kulturnog nasledja. Primeri dobre prakse i rešenja trebalo bi da budu motiv regionalnim i lokalnim vlastima u traganju za uređenjem međuetničkih odnosa u svojim sredinama. Potrebe za takvim pristupom su evidentne sve dok u regionu opstaju otvoreni problemi poput statusa Kosova i položaja albanske nacionalne manjine na jugu Srbije i u Makedoniji, teškog socijalno-ekonomskog i kulturnog položaja Roma u regionu, napetosti koje su u vezi sa međuetničkim odnosima prisutne u Sandžaku, Bosni i Hercegovini i Hrvatskoj ili postojanje manje izraženog, ali veoma bolnih pitanja asimilacije i buđenja identiteta brojnih skrivenih manjina u regionu. Pored ovih, otvorena su i druga pitanja koja zaslužuju dalju analizu i istraživanja.

Na kraju, ali ne na poslednjem mestu, želim da se zahvalim prof. dr Silvu Devetaku, predsedniku ISCOMET-a koji je svojim savetima i idejama posredno doprineo da se projekat razvija u ovom smeru. Zahvalnost dugujemo i međunarodnim organizacijama Freedom House i Friedrich Ebert Stiftung koje su podržale projekat u svim fazama realizacije.

Goran Bašić

P R E F A C E

At the end of the year 2000, Center for Ethnicity Research started the project "Development of democracy, human rights and protection of national and ethnic minorities in the SEE". The aim of the project was to study and follow up situation relating to the of national and ethnic minorities in the region, to emphasize good solutions, to point out problems relating to materialization of their rights, to foster the cooperation in the region and beyond it, this being the basic form for strengthening stability in the region.

The very first activity in this regard was realized in November 2000, immediately after the democratic changes took place in Serbia. It was dedicated to the position of national minorities in, at the time, the FR of Yugoslavia. At the initiative and support of the International scientific conference on minorities in Europe of tomorrow (ISCOMET), from Maribor and, in cooperation with the Yugoslav Association for political sciences and the Association of good actions from Nis, the Round table , under the title of " Interethnic relations and position of minorities in the FR of Yugoslavia was organized. The participants were experts, representatives of national minorities and those of newly set up state authorities. The Round table discussions ended up by passing a Declaration on new democratic system of protection and promotion of minority rights in the FR of Yugoslavia. Its spirits and principles have been implemented ever since in the process of regulating national minority rights in the country.

The work on the project has continued by comparative analyses of national minorities position in the SEE states, with a particular emphasize on the implementation of standards of the protection of national minority rights contained in the framework of " Conference for nation minorities protection ", European Chart on regional and minority languages and other documents of the Council of Europe and the OSCE and legal systems of the states in the region. On the basis of methodology laid by research teams, an analysis was made to determine the situation and position of minorities. The Compendium named "Democracy and national minorities" was published in 2002, its contents dealing with national minorities position in the states founded on the territory of ex SFR of Yugoslavia. It was followed by a Round table on the same topic. The aim was to envisage the real position of those people whose lives have been substantially changed upon disintegration of the ex-state and to improve the cooperation among regional, local and central authorities, relating to protection of rights and enhancement of environment for preservation of identity and culture of national minorities.

We continued to follow up national minorities' position in the SEE. The results obtained are contained in the Compendium that you have in front of you. The changes relating to normative protection of minorities which took place in the course of the year, clearly acknowledge the need for permanent and overall follow up of the situation in this sphere.

Namely, the FR of Yugoslavia disappeared from the historical scene and along with it the idea of linking south Slovene peoples in one unique national body. A new State union was formed, its members being sovereign states of Serbia and Montenegro. Supported by the European Union, the authorities of State union passed the Constitutional Chart and the Chart on human and minority rights and civil freedom. The Ministry in charge for national minority rights submitted to the Council of Europe its first report on the implementation of standards for protection of minorities. In the meantime, Bosnia and Herzegovina passed the law on protection of national minority citizens; at the end of 2002, the Parliament (Sabor) of Croatia adopted a new constitutional law on national minorities; the Government of Montenegro set up an experts' group entrusted with the task to work out the Law on the rights of ethnic groups. After some difficulties, the council of national minorities was elected in Serbia; elections for minority national council and their representation in Sabor are on going in Croatia. To conclude, substantial changes have taken place in the new states founded on the Yugoslav territories for a period over one year. Their scope and results are covered in this Compendium.

As for the states of this region that had entered democratic transition processes, the focus has moved from protection of political rights to the improvement of conditions and development of mechanisms aimed towards protection of their cultural identity and heritage, being a part of European cultural tradition. Examples of good practices and respective solutions should serve as a motive to regional and local authorities in search for arrangements of interethnic relations and their environment. There will be evidently need for such approaches as long as there exist open issues like status of Kosovo and the position of Albanian national minority in the south of Serbia and in Macedonia; difficult socio-economic and cultural position of Roma in the region, existing interethnic tensions in Sandzak, Bosnia and Herzegovina and Croatia, and painful issues of assimilation and revival of identity of many hidden minorities in the region. Besides the mentioned issues, there exist some other, requiring and deserving further analyses and research.

And last but not the least, I wish to thank Professor Dr Silvo Devetak, Chairman of ISCOMET, for his valuable advice and ideas which contributed to the development of the project in this direction.

We extend our thanks to the international organization Freedom House and Frederich Ebert Stiftung for their support to the project in all its stages.

Goran Bašić

DEMOCRACY IN MULTI-ETHNIC SOCIETIES

Problems and Principles of Consociation:

How To Live Together?

VOJISLAV STANOVČIĆ

*Diversities without Unity - that's Anarchy,
and Unity without Diversities - that's Tyranny*
Blaise Pascal, *Pensées*, 1670)

I PROBLEMS OF FORGING UNITY OUT OF DIVERSITIES

1. Ethnicity and Multiculturalism in Frames of Territorially Bound States

The most of states have groups of population which differ between themselves on the ground of religions, national or ethnic belonging, language, origin and similar characteristics. In such states it is very important to look for and to find social, political, constitutional and other modalities for the peaceful and fruitful common life and cooperation. From the fact that mixed population is not an exception, but a rule, something spread all over the world, one can comprehend the importance of common life and cooperation in such conditions. To demonstrate to what degree and how many of contemporary states are multiethnic, and how important it is to search for appropriate institutional (constitutional, legal and political) arrangements to reduce tensions and conflicts between ethnic groups, it suffices to point to some facts. The first set of facts is that only about a dozen of states in the whole world can be regarded as monoethnic. And less than one half of one percent of the population of the world lives in such, i.e. monoethnic states.¹ Further, there are less than 200

¹ See: Ivo D. Duchacek, "Antagonistic Cooperation: Territorial and Ethnic Communities", in *Publius*, vol. 7, no. 4 (1977), p.12. In this article, Duchacek commented one of Walker Connor's articles in which fourteen states were treated as monoethnic: West Germany, East Germany, Iceland, Ireland, North Korea, South Korea, Luxembourg, Portugal, Lesotho, Austria, Denmark, Japan, Netherlands, and Norway. Out of fourteen that were listed, Duchacek deleted five: Austria (because of Slovenian minority), Denmark (because of Schleswig, and German and Frisian groups), Japan (because of its Korean minority, the aboriginal Ainu and the outcast Eta people), the Netherlands (because of people from South Molucca Islands and other Indonesians) and Norway (because of the Lapp minority). Some years ago Ellis Katz rightly stressed that multi-ethnicity in the world is the rule, not the exception (see: Ellis Katz, "Pluralism and Federalism in the United States", in *American and Yugoslav Views on the 1990s*,

states in the world, and there are several thousand "politically relevant" ethnic groups or "national minorities" (there are no reliable figures, and we will explain why).² From these facts, it is easy to comprehend that states and ethnics boundaries do not coincide. There are many political and socio-cultural and even economic and other consequences of these facts.

The further important facts are those related to the "ethnic revival",³ phenomena which influence relations between ethnic groups, and can cause inter-ethnic tensions and conflicts, as well as between states.⁴ To all these, we have to add some consequences of "religious revival". Amid and on the ground of these facts, processes of state-building, nation-building, nation-state building, constitution-making are going on and in the vast region of post-communist countries and many others which have to replace authoritarian types of government by democratic ones, and "command-economy" by market economy, etc. Some of these processes are named "transition to democracy and market-economy". These complex processes have already had some tragic consequences in forms of civil wars, ethnic purges or ethnic cleansing⁵, or 'soft

Belgrade, Center for North American Studies, 1990, p.15). For the meanings of "ethnic" and some related terms, see bellow. The total number of people living in their own self-contained mono-ethnic national states is less than one half of one percent of the world's population" (Duchacek, *Ibid*).

² For the meaning and importance of "politically relevant" and why we use the term "ethnic" see further in the text.

³ A term which we use after A. D. Smith's, *The Ethnic Revival*, Cambridge, Cambridge - New York, Cambridge University Press, 1981.

⁴ These processes have been subject of a number of studies, some of which we will mention: *The Annals of the American Academy of Political and Social Sciences*, vol. 433 (1977), ed. by Martin O. Heisler, and dedicated to "The Ethnic Conflict in the World Today"; Milton J. Esman (ed.), *Ethnic Conflict in the Western World*, Ithaca, Cornell University Press, 1977; Robert Levin and Donald Campbell, *Ethnocentrism: Theories of Conflict*, New York, John Wiley and Sons, 1972; Donald L. Horowitz, *Ethnic Groups in Conflict*, Berkeley, University of California Press, 1985; William Pfaff, *The Wrath of Nations: Civilization and the Furies of Nationalism*, New York – London, Simon & Schuster, 1993; Patrick Daniel Moynihan, *Pandæmonium: Ethnicity in International Politics*, New York, Oxford University Press, 1993; *Unfinished Peace: Report of the International Commission on the Balkans*. The report (book of 200 pages) was prepared by Leo Tindemans, Lloyd Cutler, Bronislaw Geremek, John Roper, Theo Sommer, Simone Veil and David Anderson, and published by Aspen Institute, Berlin and Carnegie Endowment for International Peace, 1996.

⁵ For the role of nations and nationalism in modern history, and particularly of Eastern Europe, see: Ernest Gellner, *Nations and Nationalism*, Ithaca, Cornell University Press, 1983; and E. Hobsbawm, *Nations and Nationalism Since 1780*, Cambridge, Cambridge University Press, 1990. For a short and incomplete history of "ethnic cleansing" see Andrew Bell-Fialkoff, "A Brief History of Ethnic Cleansing", in *Foreign Affairs*, vol. 72, no. 3, 1993; and Robert Hayden, "Schindler's Fate: Genocide, Cleansing, and

'ethnic cleansing', forceful mass-migrations, brutalities, genocide, or in milder but sometimes just preceding forms (or consequences) of ethnic isolationism, separatism, apartheid, assimilation, deprivations of some groups of their real estates and property, and many of them of families and lives.

It is assumed in social and political theory that the multi-ethnicity and multiculturalism as features of the most countries imply richness of traditions, histories, languages, variety of religious and cultural experiences and ways of life, which contribute to diversities and hopefully to potentials of societies. On the other side, these elements play an important role in raising tensions which can lead to conflicts, though diversities do not lead automatically to conflicts (see below).

Combinations of elements (power, domination, occupation, states, churches, wealth or poverty etc.) used to determine in the past which group(s) would be dominant and which one(s) would be subdued. In some areas "model" of domination prevailed, though the group(s) would change their positions of being the dominant and dominated. Beside the variety of diversities, most of groups also share some common values and basic civilization achievements, mutually acquired from each other as a necessity of everyday life during centuries, treasure some valuable experience concerning "mutual aid" at some difficult times, but in several cases also preserve and treat almost as sacred memories of suffering at hands of neighbors in turbulent times of conflicts. In some cases it was difficult to avoid tensions and conflicts even when all ethnic groups were equal concerning their constitutional and political position (status).

There are many cases that a group which is a minority in a larger political unit, makes a majority in certain smaller political units, as well as cases that a group makes majority in a political unit, e.g. state, but is in position of tiny minority in a particular region, province or federal unit. Ethnic consciousness and self-perception, prides and prejudices, are always important when ethnic, national, religious features of a group are concerned. Very frequently some elements of ethnic consciousness permeate members with prejudices, misconceptions, stereotypes, mythical and irrational sentiments, one-sidedness of views etc. That makes it complex and usually not easy to deal with situations where groups confront each other. Similar cases we can observe in many parts of the world, though our concern here is primarily related to East European and Balkan regions and countries. Such situations make fertile ground for authoritarian populism (Caesarism, Bonapartism) which is sometimes hidden behind ideologies and disguised by some appearance of a constitutional government.⁶

Population Transfers", in *Slavic Review*, vol. 55, no. 4, 1996 (Winter) as well as his reply to several other contributions (Carol Lilly, Susan Woodward, Paul Wallace) to this topic, provoked and critical about Hayden's statements.

⁶ See our paper on "Democracy in Multi-Ethnic Societies: Populism, Bonapartism, Majority Rule, or Constitutional Polyarchy?" submitted to the XVIth IPSA Congress

Multiethnicity (i.e. multiculturalism) implies different value systems and different ways of pursuing realization of those values. Historians and other social scholars know that it can also lead to tensions and conflicts, and that conflicts over interests can be reconciled much easier than conflicts over identity and value systems. Multi-nationalism, multiculturalism, multi-religiousness, or better for the purpose of our topic to stay with one term that covers that all - *multi-ethnicity* - can be a fruitful ground for ideologies and movements which, under some conditions, can become an obstacle to democracy, threat to peace, and can evolve into ethnic conflicts. These are problems of Balkan region which were noticed in the 19th century when new independent states were established and that continued till our time.⁷

To grasp tensions and conflicts between ethnic groups, one has to deal with nationalism, which has different forms depending on whether it is nationalism of a large or of a small nation, whether it is a concern for fellow-nationals or an aggressive nationalism motivated by hatred or revenge or struggle for power, acquisition of territories, etc. According to Carl J. Friedrich - "it is well known that nationalism is probably the most powerful force in the contemporary world"⁸. Most frequently it is an irrational force, too.

When Ivo Duchacek was dealing with political man as territorial animal and related issues (1970s) he wrote that "the dominant characteristic of the

(Berlin, August 1994), and published in Serbian, in *Zbornik za društvene nauke Matice srpske*, No. 100, Novi Sad, 1997.

⁷ In the recent time the attention is frequently turned to John Stuart Mill's work *On Representative Government* in which the author said that in a country which consists of several nationalities, free institutions of a representative government are "next to impossible" (see: John Stuart Mill, *Representative Government*, J.M. Dent and Sons, London, 1951, p. 361). Lord Acton criticized Mill and argued that multinationalism can be successfully managed, and as good examples to prove that, he quoted British Empire and Austro-Hungarian Empire. Pierre van den Berghe has reached a conclusion that perspectives of democracy in [ethnically] plural societies are directly proportional to the degree of consensus regarding the basic values, and so reverse proportional to the degree of cultural pluralism. And "in cases of maximal cultural pluralism - he says - chances of democracy are severely reduced" (Cf. Pierre L. Van den Berghe, *The Ethnic Phenomenon*, New York and Amsterdam, Elsevier, 1981; and his "Pluralism in Africa: A Theoretical Exploration," in Leo Kuper and M.G. Smith (eds.), *Pluralism in Africa*, Berkeley, University of California Press, 1969). Robert Dahl also thought that multinational states are less stable than mononational and he wrote on that in his *Dilemmas of Pluralist Democracy*, New Haven, Yale University Press, 1982. Some authors today turn our attention to the fact that former communist states of eastern Europe which are mononational (Poland, Hungary, Slovenia, Czech Republic) are more stable and fit more to EU membership than multinational ones.

⁸ Carl J. Friedrich, *Trends of Federalism in Theory and Practice*, New York, Praeger, 1968, p. 30.

organization of political authority everywhere can best be described as territorially-bound: political power is primarily exercised, sought, and opposed within geographically determined areas.... Ideally, the human race is one and indivisible as we like to say. In fact, however, it lives herded into over 150 separate corrals which endow each segment of mankind with a separate identity and separate collective purpose. In politics man still remains basically territorial animal."⁹ In an earlier of his studies Duchacek turns our attention to measures usually used to achieve ethnic homogeneity, which range "from barbaric cruelty to mild inhumanity", or from genocide to assimilation.¹⁰ Quite a different inquiry was undertaken in an American comparative study of eight countries (with different situations, as it included the USA, former Yugoslavia, Spain, Belgium, Malaysia, Switzerland, etc.) but with an effort to study possibilities of implementing constitutional and legal devices in a process of forging unity out of diversity.¹¹ As a matter of fact, some amicable institutional accommodation is necessary to meet reasonable and justified demands and expectations of "others", and in the context we are dealing with here it means expectations and reasonable demands of ethnic minorities. There are several studies which treat from this point of view cases of Switzerland and the Netherlands.

There are also studies that reach conclusions that many ethnic groups feel threatened in regard to their identity, and aspire to some sort of autonomy or, many of them, to a nation-state, and so we have "the resurgence of regional separatist movements".¹² There were more than six hundred secessionist movements¹³ at the end of 1980s, questioning the legitimacy of existing states, endangering many of them. To satisfy aspirations of hundreds or even thousands of ethnic groups and their political elites and leaders, many new independent states should have to be established. It would certainly require the reshaping thoroughly the world order and almost inevitably it would be a challenge which would most likely continuously disturb the world peace - leading to the Hobbesian "state of nature" among small ethnic-nation-states.

⁹ Ivo D. Duchacek, Op. cit.

¹⁰ See: Ivo D. Duchacek, *Comparative Federalism: The territorial Dimension of Politics*, New York, Holt, Rinehart and Winston, 1970.

¹¹ See: Robert A. Goldwin et all (eds.), *Forging Unity Out Of Diversity*, Washington, American Enterprise Institute for Public Policy Research, 1989. Our contribution was on "How Political and Constitutional Institutions deal with a People of Ethnic Diversity: the Yugoslav Experience", pp. 369-410.

¹² See: Ted Robert Gurr, *Why Men Rebel*, Princeton: Princeton University Press, 1970, p.222; quoted from a paper of Stuart Hill and Donald Rothchild, "The Contagion of Political Conflict in Africa and the World", submitted to International. Sociol. Assoc. Colloquium on "Marxist Perspectives on Ethnicity and Nationalism", Belgrade, September 2-3, 1985.

¹³ At an International Conference organized by the US Institute for Peace in June 1991, American scholars reported 640 secessionist movements in the world at that time.

Mere facts and specific local histories demonstrate the importance of searching for political and constitutional designs, that can provide institutional and legal frames for accommodation of many groups to live peacefully together and to cooperate. The *consociation* (in simplified terms meaning "living together", but for the origin and scope of meanings see below) of populations of different ethnic affiliations (language, religion and etc.) is very important. A number of scholars are searching for forms of political and constitutional institutions which could reduce tensions and provide a permanent basis for solving some of problems in inter-ethnic relations. One way or the other, reasonable guarantees of survival, and different kinds of autonomies and power-sharing arrangements are very important elements in such designs. In our view, such considerations should be a part of the state-building process in multi-national countries.

The fact that thousands of ethnic groups have to live mixed together at the same territories all over the world, gives an importance to the studying conditions under which consociation can be fruitful and successful, constitutional and institutional arrangements that have to be established in order to achieve such an aim, and what have to be the characteristics of structures and processes of the consociation. Ethno-national consciousness and self-perception are always important when ethnic, national, religious features of a group are concerned.

Historical circumstances led to different customs, religions etc., and so different nationalities or ethnicities had been made out of the same stock. In our view, it is important to note that this process is still going on, i.e. new nationalities are being formed out of the same stock due to specific historical conditions under which people live. And to sharp this problem further: it suffices to have just one single element different and under favorable conditions (which before all means different political frames and different religions) two or more distinct nationalities could be formed out of one "ethnic" stock.¹⁴ Of course, it takes time, but some factors (particularly, as we already said, religion and different political frames under which these people live) make new national and ethnic groups to emerge. This is particularly important to keep in mind for situations where new nations are in a process of being formed, like in Africa, but also in other regions. Ethnic-linguistic fractionalization is an important process which affects homogeneity or heterogeneity of a country, and also of a group which is fragmented. *World Handbook of Political and Social Indicators* gives even a formula in order to find out probable fragmentation over a certain

¹⁴ Max Weber has taken Serbs and Croats as an example how different rites of the same religion became basis for differentiation. See his *Wirtschaft und Gesellschaft*, translated as *Privreda i društvo*, Beograd, Prosveta, 1976, vol. I, p.334. If Weber lived long enough he could add that another nationality evolved from the same ethnic stock - first under the name of Moslems, and later as Bosniacs.

period as a function of the time, number of total population and the number of members of a certain group. In former Yugoslavia, for example, a process of fragmentation of the Serbian nationality could be easily detected. Partly it was a historical and ethno-demographic process, partly result of intentional political acts taken from the top in order to gain support of regional elites, to frighten them by propaganda from made up dangers and fears, and then assure them against such "dangers", to play with rivalries and envies, and to fragment a large group to reduce resistance and to manipulate easier. Some arguments were borrowed from different ideologies. And some other from the federal theory according to which the lack of balance in size and influence between federal units can weaken the federation (A slogan "the weak Serbia, the strong Yugoslavia" was sometimes heard, but never officially supported, while in practice this view was shared by many non-Serbs. The opposite slogan "strong Serbia, strong Yugoslavia" was launched on the eve of the WW II, and then again in 1970 and 1980, but again just a private view). Some American scholars at the beginning of the 1960s, realized that fragmentation of the state and society (by self-management) in Yugoslavia was a device to avoid conflicts of large blocks of interests like federal units and to manage (manipulate) easier.¹⁵

In some articles and papers from 1950s, dealing with ethnicity problems, authors used to mention that somewhat less than one thousand distinct ethnic groups existed in the world and that many of them aspired to some sort of autonomy or, many of them, to a nation-state ("the resurgence of regional separatist movements"). Today we are aware about the existence of several thousands of ethnic groups with similar aspirations. If patterns of the past would make affect in the future, then on the ground of present-day circumstances we could say, that the number of requests will increase in the future, though processes are going in opposite ways: there are tendencies of integrations and unifications, and at the same time to secessions and dissolutions. We can expect new "ethnic" groups to emerge over time. An author writes about "identity explosion".¹⁶

At an International Conference organized in June 1991 by the U.S. Institute for Peace, dealing among other things with problems of self-determination, it was said that 640 secessionist movements were registered in the world. A year later at a Conference in Moscow (September 1992) dealing with

¹⁵ See: Jack C. Fisher, *Yugoslavia - A Multinational State: Regional Differences and Administrative Responses*, San Francisco, Chandler Publishing Co., 1966; and William Dunn, "Communal Federalism: Dialectics of Decentralization in Yugoslavia", *Publius*, Vol.5, no 2, Spring 1975.

¹⁶ Ali A. Mazrui, *Post Imperial Fragmentation: the Legacy of Ethnic and Racial Conflict*, Denver: University of Denver Studies in Race and Nations, I, 2, 1969-1970. He says: "The identity explosion is the one which is helping to sharpen world-wide ethnic self-consciousness."

nationality problems in the Russian Federation, Dr. David Hamburg, President of the Carnegie Corporation of New York, said that a wide interpretation of the right to self-determination could lead to one thousand new states. And less than six months later new American Secretary of State, Warren Christopher expressed his worries (reported in *The New York Times* by David Binder) that new trends, if continued, could result into five thousand new states. At the same time readers of that newspaper were reminded that Secretary of the State at the end of the World War I, Robert Lensing said *a propos* the idea of "self-determination of peoples" that such an idea will cause thousands of deaths.

A very important feature of ethnicity phenomenon is that it is, and so we have to locate it inside "territorially-bound" states. We also have to have in mind that all over the world ethnic and political (states') boundaries do not coincide. Many states today are in search for ways and forms of political and constitutional institutions and solutions that could be instrumental in providing a permanent ground for settling the problems emanating from ethnic, national, religious, language and other differences between the groups within their populations. These problems became particularly prominent in Eastern European countries after the implosion of communism and the revival of ethnicity and nationalism as well as their striving to establish independent "national states" and cherish their declared specific characteristics.

"National question" was permanently a big problem in most of former communist countries. But the genuine study of nationalism was discouraged or suppressed, and ethnicity was examined in its folklore or historical aspects and in prevailing ideological frames. "National question" was officially treated as a solved problem, and so forbidden as a part of any genuine political discourse, and consequently suppressed by official policy, propaganda and police actions (many "nationalists" of all kinds were imprisoned or ousted from public life at one time or the other).

"Mixed" population is the general characteristic of the wider area of Central, Eastern and South Eastern Europe, and particularly of the Balkans. But the State Union of Serbia and Montenegro (S&M¹⁷) has so obviously and to

¹⁷ As an acronym for this State Union of Serbia and Montenegro, the media in both entities use "SCG", where S stands for Serbia and CG for Crna Gora, *i.e.* Montenegro. Hereinafter S&M will refer to this State Union, and this acronym is just a convenient English equivalent of 'SCG' in Serbian. In the course of February and March 2003, the State Union (S&M) was established instead of the former Federal Republic of Yugoslavia (FRY), which itself had been proclaimed in April 1992, as a federal state consisting of two equal member republics – the Republic of Serbia and the Republic of Montenegro – of which Serbia comprises two autonomous provinces (APs): AP Vojvodina and AP Kosovo and Metohija established in 1945 as autonomous units with an aim to accommodate territorial-political organization of the state to some of ethnic diversities.

such a degree “mixed population” that in regard to other former communist countries it is comparable only with some of former Soviet Republics.¹⁸ The State Union (S&M), which under such name exists since March 2003, has to be treated as the multicultural entity regardless of which one of current meanings or “definitions” of the term “multiculturalism” we would follow. Namely, in both constituent units - Serbia and Montenegro - diversities that characterize different groups of population in terms such as names of groups, language, religion, cultural tradition, customs, and other traits (like folk songs, costumes, specific foods, myths, symbols, even superstitions, prejudices and stereotypes etc.) make an important part of the past history and of the present features of the population. And minority groups taken together make about one third of the population of the country as a whole, or in absolute numbers (including Kosovo and Metohija) about 3.4 millions, and both Serbia and Montenegro have almost equally diverse ethnic population composition. In this country the situation was additionally complicated due to wrong policy, conflicts taking place at the former Yugoslav territory and a whole series of regrettable and criminal actions against the minorities. Present-day authorities (in power since 2000) have announced another, i.e. democratic policy that would make a turning-point in country's history in many important respects, including the treatment and the protection of minorities. However, it is not easy to solve problems related to these phenomena.

We will mention cases from the Balkans area and former Yugoslavia very often, as well as from Eastern Europe in general, but to illustrate how complex it can be in some other areas, it suffices to give here basic characteristics of the Russian Federation and some other former Soviet republics after the disintegration of the USSR. The Russian Federation is one of the most complex countries concerning the number and territorial disposition of ethnic groups with different types of political arrangements and degrees of autonomy in frames of what used to be treated as a highly centralist system with a facade federalism.¹⁹ After the dissolution of the Soviet Union (with the population in 1991 of 293 millions) the population of Russian Federation was about 147 millions of which 82 per cent were Russians.²⁰ This is a very high percentage of

¹⁸ Kyrgyzstan, Kazakhstan and Latvia belong to a group of states that have the percentage of minorities between 40-50%, while Serbia and Montenegro (FR Yugoslavia) in the group (of 30-40%) with Estonia, Moldova and Tajikistan.

¹⁹ Comp.: Carl J. Friedrich, *Op. cit.*

²⁰ Valery A. Tishkov, *Nationalities and Conflicting Ethnicity in Post-Communist Russia*, Cambridge (Mass.), 1993. Dr. Tishkov is the Director of the Ethnographic Institute of the Russian Academy of Sciences, and former minister for nationalities in the government of Russian Federation. In this report he gives many figures on the distribution of over one hundred of ethnic groups totalling to 27 million people. Tishov's view is very optimistic about the outcomes inside Russian Federation, but situation that develops all around is warning.

the largest group, and many other formerly Soviet republics are less homogeneous in ethnic terms. Of those 27 millions non-Russians who live in Russian Federation, half live in their national republics and autonomous provinces (oblasti) and regions (okruga). Namely, the Russian Federation consists of 21 autonomous republics and 68 autonomous provinces and regions. More than ten millions non-Russians are dispersed throughout Russia and have no nation-state formation. Among them are 4.3 million Ukrainians, 1.2 million Byelorussians, 700.000 Germans, 600.000 Kazakhs, 500.000 Armenians, and 100.000 each of Koreans, Gypsies, Poles, Greeks. All ethno-nationalist and secessionist programs are formulated on behalf of so called "titular" nationalities living on territories of republics bearing their names. Though that comprises relatively small part (8 millions) of the total number of non-Russians, it creates many problems and disturbances (like in Tatarstan that declared independence though the republic is encircled inside Russian Federation, Bashkiria, or Chechen-Ingushetia, the republic at Northern Caucasus, and there were problems even at some territories inhabited by Russians like in the vast Tumen Region, the richest area with raw-oil, but all others mentioned here also have rich oil fields).²¹

However, from the point of individual human rights, even larger problems can arise for ethnic Russians who after the collapse of the Soviet Union remained outside of Russia, in other formerly Soviet republics. There are more than 25 million Russians in other former republics, now independent states, and their status in some of these states is a matter of controversy between Russian Federation and these states. This is one of great concerns for Russia, and easily exploited by nationalists. Recently Russian Federation in its policy gave to this issue a very high priority. Especially important are such cases in Baltic states, Kazakhstan, Ukraine and Moldova.²²

²¹ The total population of Tatar Republic (capital is Kazan) is somewhat over 3. 6 millions, half of whom are Russians; Chechen-Ingushetia's population is about 1.27 millions, and Russians make 23% (see Tishkov). Bashkiria, which is part of Volga-Ural oil basin, has the population of 3.3 millions who are Russians, Bashkirs (who call themselves Bashkort) and Tatars. Capital of Bashkiria is Ufa, and Trans-Siberian and South-Siberian Railroads cross this territory, which means that it has somewhat strategic position.

²² In Baltic states the percentage of Russians goes from 9 % in Lithuania, to 30% in Estonia, and 33% in Latvia. Controversial was the status of Russians, particularly their citizenship and of the Russian language. Russian government treated the solving of these issues as a condition for evacuating their troops from territories of these states. Governments of these states, which suffered after they were annexed by Soviets after the pact with Nazi Germany in 1939, wish to "renationalize" their respective states. In Kazakhstan, out of the total population of about 17 millions, Russians make up to 41%. The journal *Moscow News* (in Russian) no 40, October 6, 1991. *World Almanac* for 2002, published by *New York Times* gives figures that Kazakhs make 46%, Russians

All over former soviet republics at Caucasus and Central Asia ethnic problems are of very high priority without any easy and democratic solution in sight. Wars in Georgia (population of 5.5 millions is 70% Georgian) with Abkhazians, Adzharians and South Osethians (who live in two autonomous republics within Georgia, and their fellow-nationals in similar autonomies which are parts of Russian Federation). Armenia (population of Armenia is about 3.3 millions) is in war with Azerbaijan (population 7.7 millions in 2002, though it was 3.7 in 1968) over the region of Nagorno-Kharabakh (inhabited by Armenians, located in the middle of Azerbaijan and belonged to this state, but in 1988 was put under Armenian control with Armenian armed forces there). However, Nakhichevan Autonomous Republic, with Azerbaijan population, and part of the Republic of Azerbaijan is territorially separated from Azerbaijan and frequently treated as part of Armenia. So, at different levels problems of majority and minority are always repeated.

35%, and Ukrainians 5% of the population of Kazakhstan. The case of this country was "a little bit more complicated" because this state had nuclear arm which remained after former Soviet Union.

Quite complicated and serious problems can appear between Russia and Ukraine unless they reach agreements and find solutions. There are about 11 million Russians in Ukraine (some sources quote 12,5 millions). This is not the only problem between two countries. Ukraine agreed with Russian Federation and the USA to transport to Russia some 1.800 nuclear war-heads to be dismantled. In view of power games, tensions between two countries, and growing nationalisms in both of them, Ukrainian Parliament was reluctant to ratify the mentioned agreement. Another big problem was Crimea which could be a source of tensions between Russian Federation and Ukraine. Russian population makes majority at Crimea, which was given to Ukraine in 1954 by Khrushchev who himself was a Ukrainian (in 1943-1944 Tatars were forced to leave Crimea, where they settled in the 13th century, and where after 1921 they had their autonomous republic, though they made only about 25% of its population). They were deported to Uzbekistan and Kyrgyzstan from where they try to return for some time already). Sebastopol at Crimea used to be one of main Russian navy ports. This city is now rented by Ukraine to Russia. The joint command over the fleet was another delicate problem, as it seemed that in reality Russian government controlled the fleet and other forces at Crimea. As the majority of Crimea population are Russians, at elections majority voted for a leader whose program is to integrate Crimea into Russian Federation. A referendum which was scheduled at which people would vote about their preference which was not much doubted, specially in situation when Ukrainian economy was in poorer shape than Russian, country was in debts, and the state depended on Russian deliveries of gas, fuel etc. The situation fueled nationalism, but two states reached some agreements over issues that used to cause tensions. One of causes is connected with conflicts between churches. And strategic importance of Crimea once was coming from its position to control the Kerch Strait and so the entrance into Azov Sea.

In the Republic of Moldova (part of which was taken from Russia by Romania after 1917²³, and then again returned by the Soviet Union in 1940 and 1944), the population of 4.3 millions (Moldovan/Romanian 64.5%, Ukrainian 13.8% and Russian 13%), waves today between political parties which favor unification with Romania and keeping the status of an independent state (at elections majority supported such orientation and a referendum was held in March 1994 and voters decided to support independence without uniting with Romania). This is not all, because in the eastern parts of Moldova, inhabited by Russians and Ukrainians, people favor not to remain in Moldova, but to join Ukraine, and fighting was taking place there in March 1992 between Moldovan security forces and Slav population, i.e. Ukrainians and Russians. In the Dniester region legislative elections were held in December 1995, and the Constitution was approved, and a peace was signed in Moscow on May 8, 1997.

So, situations are similarly complex in some other regions like in former Yugoslavia, and the tragic situation in this country demonstrated to others what consequences could be, some lessons had been drawn, and the search for peaceful solutions gave results in some regions, but not in some others. Comparing these mentioned regions of the former Soviet Union and former Yugoslavia there are not much differences concerning those that spring from divisions which took place in the distant past. For example, in former Yugoslavia some seeds of differences come even since times before the ancestors of present-day population inhabited the region. The separation of Western and Eastern Roman Empire happened before, and then along the same lines Christianity split on the Eastern and Western rite, which played a decisive role in putting parts of the country under either Eastern or Western cultural and political influence. A Croatian 19th century historian, Vatroslav Jagić, wrote that in this region "the West fights with the East for predominance". Being at a cross-road between the East and West and to adapt themselves to surrounding diversities the Serbs, for example, adopted both Alphabets which are now in use in Serbia and Montenegro - Cyrillic and Latin.

Very tragic experience of this country and the whole surrounding area in the course of the 20th century attracted the international attention since the time of Balkan Wars (1912-13) when the area was labeled as "powder-keg of Europe" and Carnegie Endowment sent a Commission of Inquiry to find out the truth about atrocities committed. The Report was republished after 80 years, in 1993, having in view current conflicts taking place at near the end of the 20th

²³ In 1918 Romania had annexed all of Bessarabia that Russia had acquired from Turkey in 1812 by the Treaty of Bucharest, but Russia (RSFSR) did not accept that act. In 1924 the Soviet Union on the left side of Dniester River has established Moldavian Autonomous Soviet Republic, to which in 1940 and 1944 part of Bessarabia was rejoined.

century.²⁴ It is attributed to Sir Winston Churchill that he said about this area that produces more history than can be locally consumed. Indeed, history has to be taken into account to understand the causes of some contradictions and tensions. For a number of years, since 1960s, many authors dealing with Yugoslavia were pointing to existing contradictions and inadequate responses including federalism, and were warning about an imminent destruction with possibly tragic consequences. The term "Lebanonization" was used, and an older one - "Balkanization", related to the struggle of Balkan nation-states over disputed territorial and other issues at the beginning of the twentieth century when the Balkans was labeled as the "powder-keg of Europe".²⁵ What we call "nationalism" or "ethno-nationalism" - or in another sense "minorities issues" issues - contributed enormously to conflicts in this area since the time when new Balkan "nation-states" gained independence.²⁶ Nowadays, the Balkans is

²⁴ *The Other Balkan Wars, A 1913 Carnegie Endowment Inquiry in Retrospect*, Washington, Carnegie Endowment Book, 1993. See also: *Unfinished Peace: Report of the International Commission on the Balkans*, Report prepared by Leo Tindemans, Lloyd Cutler, Bronislaw Geremek, John Roper, Theo Sommer, Simone Veil and David Anderson (former American Ambassador to Yugoslavia, Professor of Political Science at Simons College, Boston, and Director of Aspen Institute, Berlin), published by Aspen Institute, Berlin and Carnegie Endowment for International Peace, 1996.

²⁵ Some scholars of good reputation take an effort to liberate the Balkans from labels attributed to this area neglecting at the same time even worse things that were happening in other parts of the globe. Among these, see: Stevan K. Pavlowitch, "Who is 'Balkanizing' Whom?", *Daedalus*, vol. 123, no. 2, Spring 1994; and Maria N. Todorova, *Imagining the Balkans*, Oxford University Press, 1997; and some other works of Todorova, who wrote several critical articles on the meaning of "Balkanization".

²⁶ We will mention just a couple from among many books which deal with this area concentrating on nationalism or "ethnicity" as a source of problems: For problems of nationalism and nationalistic conflicts in the Balkans region see studies: R. W. Seaton-Watson, *The Southern Slav Question and the Habsburg Monarchy*, London, Constable and Son, 1911; Charles and Barbara Jelavich, *The Establishment of the Balkans National States, 1804-1920*, Seattle, University of Washington Press, 1977. The relationships of nationalism, communism and federalism were subject of many studies since Yugoslavia became communist and federal: Elisabeth Barker, *Macedonia and its Place in Balkan Power Politics*, Chatham House, London, 1950; Paul Shoup, *Communism and the Yugoslav National Question*, New York, Columbia University Press, 1968; Robert R. King, *Minorities under Communism: Nationalities as a Source of Tension Among Balkan Communist States*, Cambridge (Mass), Harvard University Press, 1973; Stella Alexander, *Church and State in Yugoslavia since 1945*, Cambridge, Cambridge University Press, 1979; Steven Burg, *Conflict and Cohesion in Socialist Yugoslavia*, Princeton, Princeton University Press, 1983; Vojislav Stanovcic, "History and Status of Ethnic Conflicts", in Dennison Rusinow (ed.), *Yugoslavia: Fractured Federalism*, Wilson Center Press, Washington, 1988; and Vojislav Stanovcic, "How Political and Constitutional Institutions Deal with a People of Ethnic Diversities", in Robert A.

frequently included in the area where civilizations clash with each other. But some scholars also with good arguments treated this area as the meeting-point of cooperation between different civilizations.

Former Yugoslavia inherited and had in a figurative sense her own East and West, and also more developed North and underdeveloped South. In 1980s, between Slovenia, the most developed federal unit of the former SFRY, and the least developed AP Province of Kosovo and Metohija - the ratio of national income per capita was 7 : 1 (with the gap continuously widening, as at the end of WWII it was 4.5:1). But, the birth rates in the two cases were in reverse proportion to their level of development. In the period between 1955 and 1983 the number of inhabitants of Slovenia has increased for 25%, to a great extent through immigration of labor force from other parts of Yugoslavia, particularly from Bosnia and Herzegovina, and in Kosovo region the population increased for 99%.²⁷ The rest of the Moslem population, as well as Roma people, also had very high birth rate, but lower than Albanians. Some scholars and theoreticians in the past used to discuss problems of the “demographic pressure” as causes of conflicts, migrations, conversions.

In the process of disintegration of the former “second Yugoslavia” (under the name of the Socialist Federal Republic Yugoslavia, SFRY) in 1991-1992, five states have been created, heterogeneous in ethnic terms. And the Federal Republic of Yugoslavia FRY), called also “the third Yugoslavia” was one of five states created in the mentioned disintegration. This one later evolved into the present-day State Union of Serbia and Montenegro. Changes of the form of state and regimes, of course, left an imprint on diversities, but these had independent origins, histories, characteristics and roles. Events are caused or influenced by wider historical, cultural, religious and civilization developments or lags behind such development, and by ethnic diversities which are inter-linked with former ones. That characterized the former FRY, and present-day Serbia and Montenegro, and their constituent parts.

Namely, the former federal state FRY, and now State Union consist of republics Serbia and Montenegro of which Serbia comprises two autonomous provinces (APs): AP Vojvodina and AP Kosovo and Metohija. Two autono-

Goldwin et al. (eds.), *Forging Unity Out of Diversity*, American Enterprise Institute, Washington, 1989; Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia, 1962-1991*, Bloomington, Indiana University Press, 1992 (second edition); Vojislav Stanovic, "Problems and Options in Institutionalizing Ethnic Relations", in *International Political Science Review*, Vol. 13, No. 4, October, 1992; Leonard J. Cohen, *Broken Bonds: The Disintegration of the Yugoslav State*, Bolder (Col), Westview Press, 1993; Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War*, Washington, The Brookings Institution, 1995; Michael Freeman et al. (eds.) *Nationalism and Minorities*, Institute of Social Sciences, Belgrade - University of Essex, 1995.

²⁷ See: *Yugoslavia's Statistical Yearbook*, 1984.

mous units were established as parts of Serbia in 1945 with an aim to accommodate territorial-political organization of the state to some of ethnic (national) diversities. Central Serbia was not constitutionally established as a separate political and administrative unit, but “Serbia without two APs” was sometimes in literature called “Serbia Proper”. For the purpose of statistics, as well as in different researches and studies, it is designated with a more appropriate term “Central Serbia”. Institute uses this name for Statistics and in statistical Yearbooks.

This country alone can be taken as an illustrative example of the outstanding diversities which are expressions of multiculturalism, but it is not easy even to decide which ones to put at the first place, and it is not necessary to cover all details to comprehend the type, scope and presumed role and importance of diversities. Here, we will mention some of those “visible diversities”, that a visitor can see at the first sight traveling across the country. It is easy to notice at least two physically evident differences in diversities among regions - those that refer to religions (perhaps “diversities of symbols”) and those regarding the level of economic and industrial development, which also in some way reflect and influence cultural habits and ways in which diversities are manifested. But some of these diversities can also be located and treated as regional, i.e. they give specific features to whole regions.

There are many controversies over the issue whether regional (under) development is in any way connected with religious denomination of the population inhabiting a given region. Though it is some kind of natural process, and perhaps should not be mentioned under “diversities”, but quite obvious and permanently different natural birth rates of ethnic groups affect some aspects of their social life and relations between them. This is frequently an issue in media, but also connected with different status of women in different groups. Some areas are depopulated, while some others are overpopulated.

There are three main religions in both republics of S&M - Serbian Eastern Orthodox, Roman Catholic, and Muslim; several protestant churches all over the country, but specially concentrated in AP Vojvodina and among some minorities (Hungarians, Slovaks, Czechs, Germans and some others including population of Slav background); there is of course a Jewish community; and some other religions.

Regional concentration of population and of minorities gives specific forms and features to local places characterizing them by different temples, churches, mosques, i.e. places of worship and symbols of cultures²⁸, monu-

²⁸ Nobel-prize winner Ivo Andrić, Serbian novelist, of Croatian family background, born in Bosnia, wrote a letter (in 1919) describing his native Bosnia. Concerning diversities, among other things he was describing some late hours in Sarajevo when clocks from the Orthodox Church, Catholic Cathedral and Muslim Mosque would beat hours, but with some difference in time, because each one had its own distant and

ments, graveyards, and architecture in general, as well as dresses (this was more case in the past and it is now replaced by modern types of suits) and some customs in public communication. In this respect five regions of Serbia are of particular interests regarding cultural diversities – Central Serbia; northern Autonomous Province Vojvodina; southern Autonomous Province of Kosovo and Metohija; a part of Central Serbia called Sandžak, which is located between Serbia and Montenegro; and Preševska dolina (Preševo Valley) at the border of Central Serbia with Macedonia and Kosovo and Metohija.

The Republic of Serbia, with so different situations in her two autonomous provinces, Vojvodina and Kosovo, and two other above mentioned regions can be taken as an example of complex (multi)cultural diversities. Different situations in different parts of this Republic also demonstrate how important and beneficial it may be if there were even in some parts of the country some seeds of the civil society and some elements of the rule of law, be it even in the limited form of the "Rechtsstaat" encumbered with bureaucracy. Some of elements of Serbian culture and civil society after the Great Migration (1690) were developed in Vojvodina, where they enjoyed some kind of autonomy given by Habsburgs, and later Austria-Hungary, which was preserved during the Kingdom of Yugoslavia, and have left patterns and manners that preserve and promote multiculturalism. Thanks to these facts and to the high concentration of ethnic diversities living together for a longer period of time - Vojvodina may be seen as in practice a successful "consociation", a community where multi-culturalism indeed means the society's valuable treasure.

Quite different from Vojvodina - Kosovo and Metohija, from the Ottoman times to the present, has never experienced either the process of developing civil society or of the rule of law. Here various models of authoritarian domination were replacing each other. Kosovo and Metohija for Serbs is their Holly Land, the cradle of their state, region where important Serbian Orthodox Church monasteries and sacred places are located, and where the seat of the Church was (in Peć) before Serbs were forced to emigrate collectively in 1690 after the war between Austria and Turkey in which they supported Austria. This emigration had left the region almost without Serbs, and deep scars in their memory, so after the region was liberated from the Ottoman rule early in the 20th century (1912), the very liberal regime in Serbia as a whole at that time was not extended to Kosovo and Metohija and this region lacked the rule of law, and did not develop into a multi-cultural community. One could say it "developed" on the principles of apartheid, two groups, and two "communities" living

different standard of the exact time that was persistently observed in adjusting clocks (due to technological development and importance of time tables, international standards of time are perhaps observed more today than in the past, but standards of measures are not yet).

separate lives with different social and religious organizations.²⁹ Occupational forces during both World Wars treated Albanians as allies and Serbs and Montenegrins as real or potential enemies and most of them were expelled from Kosovo and Metohija in 1941 and the communist government in 1945 had forbidden them to return to their homes and lands. A distinguished Yugoslav lawyer and defender of dissidents under communist government, Srdja Popović, on behalf of the Forum for Human Rights was asked in 1989 to head an Independent Commission on Kosovo and to prepare a Report on the situation there. His Commission analyzed and stressed how different attempts to impose "solution" were tried in frames of a "domination" model. The Report raised a question which was then asked everyday: who is going to be "minority" - Serbs at Kosovo (reduced to less than 15 percent of the population in the AP) or Albanians in Serbia (who made 13.9 percent of the population of Serbia according to 1981 census).³⁰ From the point of the topic we are treating here, some form of the institutionalized consociation is a way to replace the domination model by some "model of partnership", but it is practically more difficult today than it was in 1989.³¹

²⁹ See an interesting literary description, or better say a diary of Dragiša Vasić, "Two Months in Yugoslav Siberia [1921]; Dimitrije Bogdanović, *Knjiga o Kosovu (A Book on Kosovo)*, Beograd, SANU, 1985; and *Kosovo - Past and Present*, Beograd, *Review of International Affairs*, s.a. [1990?].

³⁰ Srdja Popović, *Kosovski čvor: drešiti ili seći? (Kosovo Knot: To Untie or to Cut?)*, Beograd, Chronos, 1990.

³¹ Since 1999 the international forces are deployed in the AP Kosovo and Metohija on the basis of the UN Security Council Resolution No. 1244. When we try to map diversities we have to include that area, too. Not only because the quoted Resolution of the Security Council confirmed the sovereignty of FRY over this Province, but because one can not neglect effects of the situation in the AP Kosovo and Metohija on multiculturalism and general prospects of the wider region. Significant non-Albanian minorities from Kosovo and Metohija (about a quarter of a million treated as "displaced persons") have no real chance of safe return to their homes. Such situation contributes to instability in the whole region, hinders prospects of democracy and the rule of law, and presents a real obstacle for implementation of the Law on Protection of Rights and Freedoms of National Minorities (2002). And the discontent with the status of Serbian and other minorities in the Province (Serbian, Muslim/Bosniacs, Roma, Egyptians and Hashkalis minorities; Hashkalis are Roma people whose native language is Albanian). In the Constitutional Charter of Serbia and Montenegro, which is signed with mediation of representatives of the European Union, and which serves as basis for the transformation of the former FR Yugoslavia, it is provided that in the event if Montenegro secedes from the State Union of Serbia and Montenegro, Serbia would be automatically a member of the UN, the World Bank, International Monetary Fund and other international organizations. Among other things, it was agreed that all the rights and duties of FRY on the basis of the UN Security Council Resolution 1244 will be transferred to Serbia. Albanian authorities in the AP Kosovo and Metohija protested against this provision.

Central Serbia in terms of minorities is characterized with two mentioned sub-regions which have no separate regional government entity; and by the fact that overwhelming majority of Roma live in Central Serbia.

Region which is unofficially called Sandžak is a part of historical Novopazarski sandžak³² (part of which is also called Stara Raška – Old Raška), which was liberated by Serbian and Montenegrin troops in the I Balkan War and at the London Peace Conference in 1913 it was divided so that three districts (present-day municipalities)³³ belong to Montenegro, and six to Serbia. Since 1918 (when Serbia and Montenegro united as former independent states) all the people of Sandžak lived in the same state. That is a region where Moslems who are living in Serbia are concentrated, and they make roughly over half of the population there, but in such a way that out of six municipalities they make majority in three and Serbs in three. Moslems of Sandžak are of Slav origin. On the ground of historical evidence and family histories, overwhelming majority of them are of Serbian and Montenegrin background. But, on several occasions in the past (particularly during WWII) they were victims of religious hatred, and in recent conflicts that followed the disintegration of the SFRY they became very politically agitated, concerned and worried because of events in Bosnia and Herzegovina. Quite many of them were maltreated by police (with the pretense that they were arming themselves, they would be requested by police to surrender arms and were tortured, though most of them did not have arms at all; some of them were prosecuted, but trials which started were given

³² Sandžak used to be a territorial-administrative unit in Ottoman Empire. There were as many as about 300 of them in the 19th century in Ottoman Empire, and one around the town of Novi Pazar was under Turkish rule (with some Austrian supervision after 1878) until 1912, when after Turkey lost the Balkan War against Balkan states, and Novopazarski sandžak was divided between Serbia and Montenegro. The part in Montenegro consists of three present-day municipalities (Pljevlja, Bijelo Polje and Berane), and the part in Serbia of six municipalities (Novi Pazar, Nova Varoš, Priboj, Prijepolje, Sjenica, Tutin). The population of the whole Sandžak in 1912 was about 150.000 inhabitants, and in 1981 – about 400.000. During WWII communist led antifascist movement, similar as in other parts of former Yugoslavia, established an Antifascist Council as a Political-Administrative body for Sandžak in November 1943, but it was abolished in March 1945 in the process of creating new federal structure of the country.

³³ As an official translation of »opština« the word “commune” was used earlier. It was also called community, borough, municipality, and we will use this term – municipality. Though it is lowest unit of government and self-government, it is usually relatively large unit with up to 200 settlements (like villages) and some towns. And there no territories which are not part of one opština (municipality) or another. Montenegro is divided into 21 such units. Central Serbia has 115 (of which Belgrade with the close neighborhood has 16); AP Vojvodina 45, and AP Kosovo and Metohija has 29. So, S&M as a whole is divided into 210 municipalities (opštine).

up because of lack of evidence for charges).³⁴ In three cases several dozens of them were abducted by paramilitary units³⁵ and some facts confirm assumption that they were killed. Some participants in these criminal actions are known, and some of them even arrested and brought to trial in Montenegro and in Serbia, but the appropriate judicial processes were not accomplished yet. At a Conference in Sarajevo in 1993 representatives of Moslems of Sandžak accepted to be named – Bosniacs.³⁶ They are quite concerned today to preserve the State Union of Serbia and Montenegro; otherwise they would be split to live into two states.

The Preševo Valley is a small region of three municipalities (Bujanovac, Preševo, and Medvedja) which are inhabited by overwhelming Albanian majority. There where terrorist actions and guerilla warfare there, but were stopped in 2001 through negotiations between representatives of the Serbian government and local Albanian leaders with mediation of West European and American diplomats. This is an underdeveloped region where many problems that characterize the whole country, like unemployment, upset the population and from time to time tensions grow here, probably incited from nearby Kosovo and Metohija.

Mentioned and many other characteristics, the historical circumstances of the migrations, the overlapping of cultures and ethnos, the multicultural and multi-confessional nature of the society of former Yugoslavia, can just confirm that no national community in that area is an island, but a part with its distinctive place based on its ethnic origin, tradition, language and other specific features. This short outline of some complex cases of ethnicity and multiculturalism in frames of states boundaries has an aim to point to some features, not to give a full description of them. Situations one can find all over the wider region of the Balkans and Eastern Europe, perhaps differ only in the degree, size or methods implemented to deal with problems, but in essence problems are similar. That's why we think that this short overview can help to comprehend the nature of problems.

³⁴ Their stories are later recorded and published as *Svedočenja iz Sandžaka* [Witnesses from Sandžak], edited by Semiha Kačar, and published by Helsinki Committee for Sandžak (Novi Pazar, 2002).

³⁵ Largest group of 25 in March 1993 was taken from a train, which on the relation Belgrade - Bar was stopped while crossing a small strip of land at the territory of Republika Srpska in Bosnia and Herzegovina.

³⁶ At the Congress of Bosniacs Intellectuals held in 1993 in Sarajevo, they reached agreement on the common name of the people - Bosniacs - which Sandžak parties and associations accepted in 1996. However, the perception of Bosnia as the Bosniacs' kin state has its opponents both in the states formed in the space of the former Yugoslavia and among a part of the Bosniacs population in Yugoslavia. Persons belonging to this people, rallied around the Muslim Homeland Society in Montenegro, insist on the earlier name of the people - Muslims - whereas a part of mostly urban population of the Islamic faith in Montenegro define themselves as Montenegrins of the Islamic faith.

2. Some terminological and conceptual issues and ambiguities

Terms used to expose or explain phenomena, situations and problems, or even just to describe diversities, require to be mentioned in order to understand some considerations, or, at least to avoid unnecessary misunderstandings. It is important to grasp some elements that are part of public attitudes and consciousness. The ethnic kaleidoscope is very much affected by recent changes of borders and political structures that make the area susceptible for further fragmentation. Many situations, inherited or recently produced, processes and events make the region very sensitive to any further breaks and fragmentations. That also seems to be a matter of great concern for representatives of the European Union. It is understandable and important considering e.g. the development of events in Macedonia after its independence, when what seemed like a good beginning, because of problems in inter-ethnic relations brought the country to the brink of the civil war. It is important to have in mind that expected democratic transformation and constitution making, as well as the protection of rights and freedoms of national minorities, require and represent favorable conditions for the peace and stability in the region. One has to rely on hypothesis of some scholars that diversities *per se* do not lead automatically to conflicts, but under some circumstances and through intentional activities of messengers (leaders, politicians, priests, teachers, intellectuals, preachers etc.), that can increase/decrease or induce animosities and tensions between ethnic groups which easily lead to conflicts, because it is the easiest way to mobilize and obtain support on national and/or religious grounds.³⁷

The terms “nation”, “nation-state”, “ethnic-nation”, “ethnicity” and “ethnic group” in most Western countries have different meanings than in East-European countries, and as a matter of fact different than in most of Asian and African countries. So, the meaning (notion) of «nation», and consequently «nation-state» (in some sense even “national minority”) in Eastern Europe and the Balkans (and mentioned wider area) is different than in Western Europe and North America. In the West, the notion of nation-state is political, and in the East, an ethnic notion of the nation and nation-state is deeply rooted. Namely, in the West “nation” can be a synonym for the country, for population, for citizens of a state.³⁸ So, there is the American Nation, Swiss Nation, Belgian Nation, etc. In Eastern Europe “nation” means, an *ethnic nation*. Dennison Rusinow also appropriately used the term “ethnic nations” when he referred to former

³⁷ See above quoted works of Dov Ronen.

³⁸ Comp.: Walker Connor, "A Nation is a nation, is a state, is an ethnic group, is a ...", in *Ethnic and Racial Studies*, Vol. I, No 4 (October, 1978); See also: J. Rothschild, *Ethnopolitics: A Conceptual Framework*, New York, Columbia University Press, 1981.

“Yugoslav” “nations”³⁹ This term quite adequately denotes the meaning of “nation” not only in former Yugoslavia, but in Eastern Europe, too, and at territories of the former Soviet Union.

Thus, in Western countries, the whole people, i.e. citizens of many ethnic groups may be called and treated as one nation. In the area of Central, and South-Eastern and Eastern Europe, including the space of the former Soviet Union, the word “nation” (and “national”) is not related to the state, but to one of nations, i.e. “ethnic nations” that live in a given state. In this sense, some of these countries are composed, constituted from several nations (illustrative was the example of former Yugoslavia, which was unable to develop a common identity for all her “ethnic nations”, but was composed from several “nations”). This perception of “nation(s)” is based more or less on an assumption of blood relationships, though more visible signs of identity are the language, religion, and regarding individuals the dress or other folklore features can also express the belonging. Such a notion and accompanying assumption still play an enormous role in many constitutional and institutional arrangements and has significant consequences for the status of groups, minorities, and for laws on citizenship.

The word “ethnic” is frequently used as an attributive adjective to describe (and prescribe) some features to usually smaller groups, called alternatively national minorities, living in a state with a larger ethnic group or groups, component parts of the state or society. Many groups assume that the word “ethnic” has or implies a pejorative meaning when it is used to refer to social, demographic or legal status of minority groups or communities. However, “ethnic” is a very old term⁴⁰ with a wide range of meanings, which cover many diversities among people concerning their origin, race, religion, language, but also history, myths etc., and it has no pejorative meaning, and can be appropriately used as an alternative to more frequently used “national minority” which, of course, has specific meaning and significance in the international law and in legal systems of many countries where such groups exist.

There are two basically different systems of ascribing a status to a person. These systems are sometimes marked by terms which derive from Roman Law and they are expressed by Latin words - *ius soli* (the principle of land) and *ius*

³⁹ Dennison Rusinow, *Yugoslavia: Fractured Federalism*, Washington, Wilson Center Press, 1988. The term “ethnic nation” expresses the meaning of “nation” in Eastern Europe. See, also: Ernest Gellner, “Ethnicity and Faith in Eastern Europe”, in Stephen R. Graubard (ed.), *Eastern Europe...Central Europe...Europe*, Westview Press, 1991, pp. 267-282.

⁴⁰ “Ethnic” comes from Greek “*ethnikos*”, which means both “national” and “foreign”; and “*ethnos*” which means a group, company, herd, tribe, people, nation, but also, heathen (old Christian writers called all non-Christians *ethnea* with the same meaning as Latin *gentes* and *gentilis*).

sanguinis (the principle of blood). The first one is implemented e.g. in the United States and in the United Kingdom, and implication of this principle is that any child born at the territory of these states acquires citizenship of the given state by the fact of being born at its territory. For that reason many pregnant mothers go to give birth in a hospital in these countries on order to obtain citizenship for the child. This rule is obeyed and very liberally interpreted by administration of these countries.

The other principle, *ius sanguinis*, is implemented in different forms by different states as a part of their care for their fellow-nationals living in other states. It is widely interpreted and usually turned into a legal provision that a child gets the citizenship of his parents (regardless of the place of birth). Many of east and central European countries have constitutional provisions obliging the state (government) to take care and to protect their fellow-nationals on other countries. Hungarian so called Status Law favoring Hungarian fellow-nationals in other states, particularly where they make numerically significant minority, like in Romania, Slovakia and Serbia, stirred some protests from Romanian and Slovakian governments (not any from Serbia & Montenegro) and also some criticism from Venetian Commission and some other bodies.

To understand the role and some consequences of *ius sanguinis* system, and just for the sake of illustrating effects, we will mention some cases. For instance, until some years ago Germany had the law on citizenship enacted in 1913, according to which any person of German origin was entitled to acquire German citizenship by a very simple procedure if such a person would apply for. So, in practice, a person from among Volga Germans whose descendants settled there in the 18th century, even if such a person could not speak German at all, and could have a Russified name, or Germans from Carinthia and from some East European countries (Romania) could acquire German Citizenship upon application with very simple procedure, while a child of Turkish parents, even if these parents themselves were born in Germany could not acquire citizenship. This kind of concern, but not to the described degree, was practiced in former communist states including former Yugoslavia (and now State Union of Serbia & Montenegro). In these states the origin (of parents) was taken as an important element which facilitated acquiring citizenship. However, in Montenegro a woman of e.g. Serbian origin from Bosnia and Herzegovina, married to a Montenegrin in Montenegro, need to spend five years in marriage to get the citizenship, and similar practice is widespread (there is no automatic acquiring of citizenship by marriage). But, there is an additional element of the status which has to be treated as discrimination. Namely, if the married woman would take a job before she acquires citizenship, she has to pay an additional fixed *per diem* tax for every day being employed in Montenegro. On the principle of *ius sanguinis* the Republic of Croatia gives citizenship to any Roman-catholic born in Serbia and Montenegro and citizen of that State Union; and also a number of seats in the Sabor (Parliament) of Croatia are allotted to

Croats from diaspora, and especially from Western Herzegovina (Herzeg-Bosna). There were some West-European critiques concerning such constitutional provision.

In the mentioned frames of reference, former Yugoslavia was a multinational state. It never became a nation because its main component parts have never achieved a common identity. It consisted of several (ethnic) “nations” – 3-5-6 or more. When, under such circumstances, or prevailing perceptions, ideas of “national state” or “nation-state” were advocated in former Yugoslavia, that would imply denying federalism. Namely, two different concepts of nation-state were possible, and both of them have been advocated in former Yugoslavia at different times and by different political factions. Earlier, the idea of an all-Yugoslav nation-state or supranational state has been advocated. Such a solution would inevitably lead to an administrative centralism instead of federalism. Such ideas were an expression of ideological dogmatism and political authoritarianism. The opposite idea favored several nation-states as completely sovereign. This was an expression of nationalism which at first turned federalism into confederalism and later into several independent states. But, neither of them, except to a very high degree Slovenia was homogenous in “ethnic nation terms”. All other are multi-religious, multinational and multicultural or in other words, represent “divided societies”. And all of these face problems how to protect diversities (if there is a political will to do so) and how to accommodate constitutional and legal systems and arrangements to these diversities.

Some specific terms and their meanings can not be explained and understood without a reference to constitutional provisions and their changes in the course of time, which means that willy-nilly we have to give the shortest possible historical review of the process in the course of which among other complex things the people or nations that were officially treated as the titular of the state (sovereignty) have advanced from “one people with three names” (1918) to three (1920s and 1930s), then five (1940s and 1950s), then six nations (1970s) and finally to eight territorial-political entities (after 1974). These accommodations, accompanied by too many “innovations” unknown to the history of political and legal institutions, as well as results of wrong ideological assumptions and wishful thinking were subversive and instrumental⁴¹ in

⁴¹ See: Valerie Bunce, "The Yugoslav Experience in Comparative Perspective", in Melissa Bokovoy at. al. (eds.), *State-Society Relations in Yugoslavia 1945-1992*, New York, St. Martin-s Press, 1997; and Valerie Bunce, *Subversive Institutions: The Design and the Destruction of Socialism and the State*, Cambridge, Cambridge University Press, 1999. Analyzing experience, the structure and the way of functioning of federalism, and causes of disintegration of former communist federations (Yugoslav, Soviet, and Czecho-Slovak), among other causes and elements V. Bunce concentrates on the federal structure which in her opinion was the main cause. The disintegration took place because political-administrative structure of these states was based on units which were constituted and determined in ethno-territorial categories.

destroying the country in which a peace between “nations and nationalities” lasted for some forty years under basically authoritarian communist one-party regime, which over time started to respect human rights more and more, but never to a level which would guarantee freedom of speech, association and of changing government by free elections. In the 1970s a joke has been told. Somebody asks – How many states there will be in Europe in the year 2000? The answer “Ten” surprises one who asked and he asks for an explanation. And explanation was: there will be one in the West, one in the East and eight states in Yugoslavia. Some parts of the joke are becoming true. Still the present-day there are very strong forces of further fragmentations and disintegrations. Concerning the treatment of diversities, i.e. minorities (religious, national, ethnic etc.) there were and there are also “diversities” which hinder the introduction of the rule of law.

The attempts had failed in former Yugoslavia between two world wars to neglect diversities and to make “a melting pot” by a centralistic and unitary state. To this we can add quite a different approach and similar failure with so called ethnic federalism, instituted by communist governments along soviet type of federalism and the other devices and ideologies of solving “national question”. Under the influence of that doctrine and earlier nationalistic ideologies from 1920s to 1960s beside earlier three nations (Serbs, Croats, Slovenes) another three nations were recognized (Macedonians, Montenegrins and Moslems, who later in the beginning of 1990s changed the name into Bosniacs, but many persons belonging to that nation, particularly in Montenegro, stick to earlier name “Moslems”, which was not meant in religious but in ethnic or national sense). After the communist came in power at the end of the WW II, constitutions and basic institutional forms of the State were changed several times during 45 years. This “system” in reality, particularly after Tito died, was some kind of ethnic confederation in which power was shifted from federal government (and communist party) to governments (and communist parties) of six republics which also were developing six “national economies”. Six republics and two autonomous provinces had decisive role in decisions at federal level because for all important decisions unanimous vote was required of six republics (presumed to represent six “nations”) and two autonomous provinces (also assumed to represent “nationalities”, particularly so Kosovo and Metohija in which due to the very high birth rate, Albanian population became overwhelming majority in this Province). Here we come to a terminological problem related to the concepts of “nations and nationalities” which we already touched.

In the former processes, among other things, many terminological “innovations” were introduced, and just some relevant for our topic have to be explained. One was the syntagma “nations and nationalities” - a specificity of Yugoslav system and terminology, which is even difficult to translate into

English or any other language, but it played an important role. “Nations” were also called “constituent nations” and that referred to six groups of Slav origin (Serbs, Croats, Moslems, Slovenes, Macedonians, Montenegrins), and other “ethnic” groups different from those six, to avoid the term “national minority” (which Albanians particularly opposed because they disliked to be treated as minority and not to have republic of their own even at the moment when their population reached the number larger than Montenegrins and Macedonians). One of basic arguments against Albanian republic inside Yugoslavia was that there is already the Albanian state, and state interests and political reasons of Yugoslav leaders were influenced by the knowledge that quite many Albanians from Kosovo and Metohija had been organized in Marxist-Leninist groups and worked systematically to unite with Albania those parts of former Yugoslavia which were inhabited by Albanian minority. Their short term aim was to achieve the status of the republic (the state) and later to claim the right of self-determination and secession in accordance with Leninist ideology. When Lenin died in 1924, the Albanian Parliament in Tirana was the only one in Europe that had a Commemorative Session dedicated to Lenin (in his ideas they had found a promise for Great Albania).

Having in mind not only diversities inside former Yugoslavia and similar ones in Serbia and Montenegro, but all changes and accommodations tried over decades, and also a mixture of political and ideological influences and ideas, from monarchist to communist, it will be no surprise that three constitutions “in force” in recent years till March 2003 in the FR Yugoslavia, predecessor of the State Union of Serbia and Montenegro (two of these still in force) had three different approaches to ethnic diversities, and each constitution used different terms for groups that we talk here about. There was not (and there is no) standard in the country how to treat these groups concerning their “generic” character. Constitution of Serbia (1990) used terms “nations and nationalities” as they were employed in the former SFRY; Constitution of FR Yugoslavia (1992) had “returned” to the terminology of international law - “national minorities” - but with an aim not to implement international law, but probably to limit what provisions were earlier guaranteeing to “nations and nationalities”; and the Constitution of Montenegro (1992) introduced the terms “national and ethnic groups” so leaving wide option for groups to be included, and avoiding tensions with such groups inside Montenegro. And, when in the year 2000, after the electoral victory of democratic opposition, the FRY federal ministry was established in charge of protecting rights of minorities, its name was “the Federal Ministry of National and Ethnic Communities”. After the March 2003 the name also changed into the Ministry for Human and Minority Rights.

There were many not only terminological confusions and inconsistencies between three constitutions in force in the FRY concerning the status of minority and ethnic groups and their protection. The inconsistency was very

serious between the FRY Constitution (1992) and the Constitution of Serbia (1990). The Constitution of Serbia was enacted during former SFRY, and had to be adjusted to the federal Constitution of the new federal state of Serbia and Montenegro, FRY. But it did not happen in the course of 10 years during which these constitutions were in force. It's easy to conclude that constitutions were not respected (that is true for the past time, and in principle even today in many respects).

From plethora of diversities and even more diverse self-perceptions and self-styled roles and names for (of) different groups, we have to realize that it was not easy to define and to find a general name which would fit to all groups that are subject of legal protection and to gain their approval. That protection was the obligation of the former federal state and now State Union on the ground of the ratified [European] Framework Convention (1995) and on the ground of the federal Law on Protection of Rights and Freedoms of National Minorities (2002).

As a result of the civil war and the process of disintegration of former Yugoslavia, “new national minorities” had appeared, and the number of refugees and internally displaced persons has increased in many regions, and their future status will depend on the further political development and not only on their rights, but also on their economic and social opportunities to survive. As “new minorities” were treated all those who belonged to “constituent nations” of former Yugoslavia and lived at territories which are not their “mother country” (“matična zemlja” or “matična država”). One has to bear in mind that these terms tacitly (or perhaps unconsciously) imply discrimination between those whose mother-country one state is, and those whose it is not. But, in given situation these groups were eager to be recognized and to get a status of “nationally minority” and to enjoy the protection according to international standards. So “new” minority communities, were Croats, Muslims/Bosniacs, Slovenes, Macedonians, parts of the constituent nations (people) from the former Yugoslav states.

There is another kind of new ethnic communities which emerged in Kosovo and Metohija in the course of the last decade of the 20th century. This is the Hashkalis/Egyptians population, that inhabited Kosovo and Metohija, parts of Macedonia, and of Albania. Experts in ethnology and history are trying to solve some hypotheses concerning the identity and origin of these ethnic group, which for a long time were identified with the Roma or with the Albanians. With the disintegration of former Yugoslavia, the representatives of the Hashkalis/Egyptians demanded the recognition of their national identity and the promotion of their national rights.

We have to explain the meaning of the term “ethnic groups political entities” (at some places we earlier used the syntagma - “politically relevant ethnic groups”) which we use to encompass the real political status and

situation of some groups. More than a decade ago an *Encyclopedia of Languages* registered about 6 000 languages in the world, and it was estimated that quite a high percentage of those languages could disappear before the turn of the century - 2000 /2001. Some of described languages are dead, some spoken by very small groups (in some cases spoken only by hundred people, and in one case reported by the media independently from the mentioned *Encyclopedia*, there was in Africa a language spoken by one person only, who died before the language was recorded).

But, the number of politically relevant “ethnic groups” or those that rise demands concerning their status in a given political, constitutional or legal systems, can be much larger than the number of ethnic groups taken in a usual manner. For example, all Russians make one ethnic group. But in practical political, constitutional, legal sense, Russians in Ukraine are one political entity or politically relevant group, and in the same sense Russians in each Baltic republics, Kazakhstan etc. - so Russians make several politically relevant groups or ethnic political entities. It is similar with most other groups. The number of such ethnic entities is growing.

The term “national minorities” is widely used in international law, including the Framework Convention of the Council of Europe for the Protection of Minorities, which was recently joined by the FRY. The term “national and ethnic communities” (or a somewhat less appropriate term “groups”) might be the most appropriate in denoting the social substratum embodied in the protagonists of multiculturalism and multiethnicity intended to be protected and fostered by law. We do believe that in a couple of decades this term would prevail over the one of “national minorities”. However, the view of international law experts is in favor of the term “national minorities”. We have to be aware of the fact that some minorities, including the most numerous one in Serbia, are not satisfied with such a categorization. However, one among the less numerous minorities (which suffered much in the recent past) is not willing, for instance, to be listed as a minority, but should be pleased to be registered as ethnic community or ethnic minority.

3. Concerning Requests of Ethnic Groups: Rights to Existence & Identity, Share in Power and Share in Resources

In the atmosphere of “ethnic revival” and or growing nationalism, political life in multinational (multiethnic) states is characterized by some claims and expectations of ethnic groups concerning their status and prospects. These groups vary in size, political and economic position and potential influence. They also differ on the ground how reasonable and moderate are their requests. Situations are different, but almost everywhere a common feature is

the discontent of different intensity in cases when an ethnic group is discriminated, dominated by other groups, excluded from sharing on power. There are cases that largest group has political power, while another ethnic, religious or race minority possesses economic wealth but is politically discriminated. The picture of discrimination can be mitigated in favor of one who discriminates others, by rationalizations like "positive discrimination" in favor of a group which keeps power of which was deprived in the past. being renamed by an euphemism like). In a different case, a thin ethnic minority can be politically over represented, and though economically insignificant can still achieve a veto power over majority, particularly if majority is politically fragmented. There are very complex cases. Malaysia is an interesting case to study, but "solutions" should not be taken as a model. That country (part of which for a while was Singapore) has population of three different and distinct races and cultures - native, Chinese and Hundu; four basic religions; the state is organized as federal with thirteen states and two federal territories. Despite diversities that this mixture of races, cultures, religions and federal arrangements imply, the native group claims privileges as an "entitled group" and exercises strong political control over others.

In Southeastern Europe cases are frequent that an ethnic minority inhabits a territory (part of a given country) where it makes majority. And, in such cases a minority, using power in local or provincial government units, discriminates or oppresses other ethnic minorities which otherwise make majority in the country as a whole. In the opposite cases "local minorities" that belong to the group which is the majority of the state as a whole, impose their "minority rule". Mentioned cases are of opposite character, but both cases are contrary to the spirit of consociation, partnership and cooperation. Having in views cases like those just mentioned, some authors have written about "ethnic engineering". That can mean different things, but in such cases inter-ethnic relations usually suffer and problems come. Minority and majority is of course always relative, and a lot depends on the level where the "counting" is done. For that purpose, some kind of "political geometry" is applied. That can be a twin of "electoral geometry", particularly notorious as "garry-mandering". Such "devices" are politically unfair, but by them it would be possible that members of smaller part of local population rules over the larger one whose potential power is fragmented and so reduced. The application of sheer majority rule is unacceptable not only for smaller groups, but also for larger ones because a coalition of smaller groups could outvote them.

Political systems of multinational (multiethnic) states, and "consociational" relationships inside respective societies, involve many problems, and the experience of such states demonstrates that particularly important are those related to:

- a) survival and existence of ethnic groups, i.e. concerning basic elements of their identity;
- b) safeguards for human rights without discrimination, and some collective ethnic groups' rights;
- c) participation of ethnic groups in sharing power of the community, i.e. their participation in electing, constituting, distributing and exercising power; and
- d) the position of such groups in controlling natural resources and of the distribution of social wealth or "national" income.

The mentioned groups of problems imply corresponding requests and claims by minorities.

Issues related to the identity may include a set of items from personal names and names and symbols of such a separate identity to requests for a "national state", and usually include flags, coats of arms, hymns, but even more important - ethnic cultural and educational institutions from elementary schools to many others depending on the size and tradition, and the way of life of the group. In many cases, attempts to satisfy some historical popular wishes, and at the same time actual leaders' ambitions, faced a number of difficulties if it happens that the population is mixed. The experience of many states shows that when the leaders pretend to create "national state" in an ethnic sense, and behave consequently with such aims, that causes concern, and worries, opposition and resistance, which could be non-violent resistance, but can also take a form of an uprising of a considerable part of population. There is a lot of evidence that the prevailing trends of public opinion very frequently, or usually favor to be done just the contrary to what would be wise and what could lead to a consociation.⁴²

The experience of many countries shows that in order to create and improve conditions for living together, signs or elements of identity of a certain group should not be forcibly changed or imposed by the state or another group, contrary to the will of the respective ethnic group, nor forbidden unless there are strong and rational reasons against such signs (like in cases of Nazi symbols, or other expressions of the "language of hatred" which genuinely disturb public opinion). So, elements of identity (name of the group, personal names of members, flags, coats of arms, hymns, costumes) should be freely used unless it seriously offends another group or internationally recognized standards. The flag and other symbols of the state should contain traditional symbols of constituent nations or symbols proposed by their representatives as a part of general agreement, constitution or contract concerning constitutional arrangements. It is also practiced that an ethnic group displaying its symbols, displays at the same

⁴² For a specific experience (1970-71) relevant for this problem, cf.: Steven L. Burg, *Conflicts and Cohesion in Socialist Yugoslavia: Political Decision Making since 1966*, Princeton, Princeton University Press, 1983.

time symbols of the state that the group lives in, recognizing in that way the territorial integrity and sovereignty of the respective state.

For any democratic body politic, and particularly for a consociation, it is of vital importance to safeguard individual human rights and freedoms. These have, indeed, to be taken as a starting point in solving problems of ethnic groups. Low standard of these rights and their implementation and safeguarding is one of elements which helps to explain why so many individuals in communist and other countries tried to find a harbor under the umbrella of their ethnic fellows. The over-stressed role of the state versus individual, makes ethnic groups so eager to achieve their own, independent state. The individual rights do not solve all problems of ethnic identity but help to express and to achieve the recognition of such rights connected with identity. If minority members as individuals do not enjoy civil and political rights, then their subjugation and eventual assimilation is faster and almost imminent. While some minorities persisted and survived under very difficult conditions, some others, under similar circumstances, usually weaker or dispersed, changed the elements of their identity, or disappeared i.e. were assimilated over a relatively short period of time because usually different and systematic measures were undertaken by governments which did not respect any kind of human rights at all. Such a process of forceful or "voluntary" assimilation has usually been facilitated by transfers and dispersions of population, as well as by different processes which affected concentration and homogeneity of minorities (processes like urbanization, industrialization, collectivization of farms, annexation of small homogeneous ethnic settlements to larger ones inhabited by majority group, abolishing ethnic schools on different grounds, persecuting the church, etc.)

Talking about rights in a multiethnic society today, beside individual rights, some "collective rights" have to be treated and guaranteed as a minimum.⁴³ Individual rights, particularly the freedom of association, of the

⁴³ Concerning the minimum of collective rights of ethnic groups it is usually taken that it includes the right to existence (survival), legal equality of all groups, the right to proportional participation in political decision-making, the right to use own language and script, the right on some (ethnic) institutions. A wider and more elaborated conception deals with details of the content and procedure as well as positive discrimination in favor of some underprivileged minorities. This includes, among other things, minorities' schools, political representation, the use of language and script, symbols and flags, self-administration (by minority concerned) of its own proportional financial contribution (in form of taxes or other contributions on the ground of legal obligations) to educational, cultural and similar institutions and activities, like minority TV programs, press etc; free contacts with "mother country". Procedural guarantees are also elaborated (see: Tibor Varady, in *Borba*, September 7-8 and 14-15, 1991). See below about new European standards in this field. These standards are included in the (FR Yugoslavia) federal Law on Protection of Rights and Freedoms of National Minorities (Official Gazette of FRY No. 11 of 27 February 2002).

press, election, information and other civil and political rights are significant and instrumental for achieving and exercising many ethnic groups rights, too. Ethnic groups rights, sometimes called minorities rights, today have to be taken as supplemental to individual rights, instead of being denied, underestimated or neglected. Of course, some balance between individual and collective rights has to be established. Collective rights can be achieved and exercised on account of somebody's else or everybody's individual rights because some groups, very much alike nationalistic governments established in pursuing collective ethnic rights, can be very oppressive and authoritarian regarding individual rights, particularly of individuals belonging to other ethnic groups.

For the time being many international (UN) and the OSCE (former Conference, now Organization on Security and Cooperation in Europe) documents take "persons" belonging to ethnic groups as subjects of the protection. Even states that initiate discussions and regulations of human rights issues are reluctant to treat them as collective rights.

The political participation of ethnic groups in constituting authorities and exercising the power at different levels of the common state organization includes an appropriate electoral system,⁴⁴ type of representation, composition and jurisdiction of different decision-making bodies, distribution of power between different territorial and functional units, etc. Options which are usually offered or considered in literature are based on different types and degrees of autonomy; decentralization and the delegation of authority to lower levels in the traditional state hierarchy; self-administration of local affairs (which offers opportunities to minorities to manage their own educational, cultural and similar affairs wherever any minority is numerous enough as a group in local community); cultural autonomy; cantonal or regional autonomy. This decentralization should give equal opportunities and benefits to all citizens and so should not be at anybody's disadvantage. However, there good reasons to implement here, too, positive discrimination in some cases (for instance, if there is a school with minority language of instruction, but the number of school children drops below the number prescribed by the general rule of the law as a condition for opening the school in specific language - there are strong reasons to recommend the continuation of such school, because it can be in a direct function of preserving the identity of that minority). All these forms and cases can be easier implemented in traditional regions and in frames of historical autonomies which could strengthen mutual understanding and cooperation. But if all options and possibilities are exhausted and fail because of the intensity of conflicts or mutual animosities turned into hostilities which make a long term peaceful life

⁴⁴ An Englishman, David Chapman, proposed one "Electoral and Constitutional Models for Ethnically Divided Countries" in David Chapman, *Can Civil Wars be Avoided?*, London, The Institute for Social Inventions, 1991.

difficult or impossible, then despite all problems and difficulties (see below) separation has to be considered as a possibility which again can take different modalities.

There are among politicians and politically relevant subjects many reservations and suspicions regarding ideas and institutions of autonomies, because they take them as a potential danger for integrity and sovereignty of existing states. In the already mentioned Report of the International Commission on the Balkans, its authors find: "The 'ethnic cleansing' or forced assimilation that has prevailed in much of the Balkans since the 19th century has been a response to the notion that one state should correspond to one nation, one culture, one religion. Some argue that ethno-nationalism can be defused politically by granting minorities cultural rights (language, religion, etc.) so that cultural autonomy will preempt demands for territorial autonomy. This is unlikely to work in the Balkans: Minorities will not trust legal guarantees if they are not accompanied by territorial autonomy, while the major national groups fear that granting collective rights and autonomy will encourage disintegration and irredentism."⁴⁵

Regarding the use of natural and social resources, participation in creating and in the distribution of social wealth, we have to say that it plays enormous role in causing conflicts (after Congo became independent in 1960, its Province Katanga, very rich with natural resources and diamonds, proclaimed secession from Congo; more recent cases are Chechen-Ingushetia and Tatarstan, Baskhirian AR, and even Tumen region in Siberia inhabited by Russians: all these territories are parts of Russian Federation, but rich in oil and other mineral resources). We shall not elaborate these aspects in details, just to point that these concerns and requests also sometimes include the policy of balanced social, economic, cultural, demographic development, as well as the necessity and task of creating favorable frames for meeting the reasonable needs of population based on the civilization achievement without any discrimination on ethnic, religious etc. grounds.⁴⁶ However, requests of ethnic groups to have

⁴⁵ See *Unfinished Peace* pp. XVII - XVIII.

⁴⁶ Except in cases of so called positive discrimination, i.e. when discrimination is practiced in order to support underprivileged groups and to make them to develop faster. In many European, and particularly East-European countries today the Roma population is seen as being discriminated in the past and still today, and that their faster educational and economic development requires the positive discrimination. But, even the idea of "positive discrimination" or the aid to develop less developed regions (and so ethnic groups) can be a subject of severe criticism from more developed regions (and ethnic groups). The economic and financial aid to the Province of Kosovo and Metohija over decades in the former Yugoslavia, can be taken as an illustration of how extremely important and controversial problems and relations between the more developed and less developed republics and regions can be. These controversies contributed signifi-

control over natural resources at territories they inhabit, is contrary to basic principles of market economy, particularly if such claims are pursued and practiced regardless of acquired property rights.

If constituent units of a state are regions with particular traditions or forms of self-government, it can provide channels and methods of managing local affairs, and if the population is of a different nationality (ethnicity) or religion than majority, or there are more groups that speak different languages, then a number of problems can be solved easier. But, if the good will is missing then many problems can arise for the central government and the governments of the component units. Again, the very sensitive area is control of resources, not only material, but human resources, too, or in somewhat different sense – who manages the economy. The joint government (even when federal, and much more when the state is unitary) decides on and allocates part of the national resources (national income, social wealth). No matter how carefully the joint or central government tries to act in accordance with the general interest, by the time passing, the feeling will emerge that government's actions, which, indeed, do redistribute national income, are unjust and/or on account of one or more groups, and favoring one or more other groups. Namely, it can always be assumed or argued that some constituent units are benefiting at the expense of others. Thus the conviction emerges that some regions, i.e. nationalities, are systematically exploiting others. This leads to growing tendencies toward political and economic sovereignty under the guise of national sovereignty (or some other label) in the constituent units. While satisfying the political ambitions of a minority, this tendency has grave economic consequences for the majority. When the political and economic systems in general are etatistic, i.e. based on extensive or totalitarian state interference in the economy, and the role of private property and investments minimal or abolished - then the mentioned complaints will grow faster and be intensified with disintegrating effects.

Not only the former communist states, but also most developing countries of the so called third world, were based on strong government role in planning, managing, controlling and investing in the economy, and a reaction to these etatistic systems found an expression in nationalism, ethnic separatism and tendencies toward new ethnic nation-states. The European Union will sooner or later face complaints against central decisions-making body, which allocates part of wealth and income.

One of legacies of the failed former communist federations affects the identity, rights and everyday life of millions of people who, after the disinte-

cantly to the destruction of Yugoslavia. On complexities of Yugoslavia's policy of developing underdeveloped regions, problems of regional economic development, inequalities that existed and political controversies over economic policies, see: Dijana Plestina, *Regional Development in Communist Yugoslavia: Success, Failure and Consequences*, Boulder, Westview Press, 1992.

gration of these federations, remained without "valid" citizenship and so without possibilities of having many of basic rights. Such persons were deprived not only of the right to vote and to travel (in many cases they have no travel documents, their identity cards and even birth certificates are not treated as valid), but of rights to enjoy their acquired real estate properties, pensions (retirement), and in many cases these persons are separated from family members, and deprived of the possibility of family union, because members have different citizenship statuses (or have none). This situation refers to parts of former Yugoslavia and former Soviet Union (former Czechoslovak Republic being an exception in good sense in regard to many issues). New rightless "minorities" (in terms of numbers quite numerous) are created. Different reasons - political, ethnic, religious, and linguistic - some options suggested by constitutional law and political science scholars, as well as obstacles, have to be carefully analyzed.

Mentioned claims and expectations, some of alternative proposals, drafts and suggestions as they are considered in scholarly literature or constitutional projects, deserve a due attention, and we will pay a great attention to them. We will see that institutional arrangements will depend in different countries on different factors, including the type of political system and regime, tradition, political culture, disposition of ethnic groups (minorities) etc.

4. Concerning Conflicts: *Inter arma silent leges* or *Inter arma: Caritas* ?

It is not only multi-ethnicity, but ethnic conflicts also are world-wide phenomena, and different approaches and attempts to reduce, mitigate tensions and to solve these problems are taken. To grasp real problems of conflicts between ethnic groups, one has to deal with nationalism, which has different forms depending on whether it is nationalism of a large or a small nation, whether it is a concern for fellow-nationals or an aggressive nationalism motivated by hatred or revenge or struggle for power, acquisition of territories, etc. According to Carl J. Friedrich - "it is well known that nationalism is probably the most powerful force in the contemporary world".⁴⁷ And we could add: most frequently it is irrational force, too. And these problems are not unique for the region of former communist countries, but have some common causes and expressions, which some authors attribute to human nature.

These processes are subject of a number of studies.⁴⁸ If we would take (and we have to) that many expressions of nationalism and most conflicts

⁴⁷ Carl J. Friedrich, *Op. cit.*, p. 30.

⁴⁸ These processes have been subject of a number of studies, some of which we will

between nations in an ethnic sense belongs to the same genre of phenomena, it would give us a more complete picture of the scope and importance of conflicts among "nations" as ethnic groups. There is a terminological and conceptual confusion in this field and not so clear or purely formal *differentia specifica* between wars of nations and other conflicts between them on one side and inter-ethnic struggles on the other, and also about the meaning of many terms used in this field of studies. If we, for the purpose of taking into account a wider set of causes and consequences, and treating conflicts as social phenomena, and so look at inter-ethnic struggle as inter-related with nationalism - which permeates wars between nations - then we are reaching an approach that main causes of conflict are interrelated. This is assumed by some studies dominated by hypothesis which takes the struggle for power as a feature of human nature. A well-known work of Hans Morgenthau⁴⁹ is not the first one which supplies hypothesis that the struggle for power is an ultimate determinant of all other relations among "nations", whatever rationale been given (ideological, economic, territorial, religious, ethnic etc.). Morgenthau takes "nations" in the sense of states, not ethnic groups, but, anyhow, nationalism is an important ingredient of the essence of these conflicts. We are not going to consider the logical consequences drawn already by Kant that a world government on federal principles could end wars between nations. Motifs to create the League of Nations, and then the United Nations are basically in accordance with such ideas of preserving world peace on some moral grounds, and concerning political organization, on confederative grounds. There are other studies that take power, and the struggle for power, as the essence of politics and relations among all human groups including ethnic. Some studies of power, frequently depressing when describing deplorable facts, are very relevant for studying ethnic relationships (studies like Charles Merriam's, Bertrand Russel's, Bertrand de Jouvenel's and others). It is interesting to notice how under different

mention: R. Schermerhorn, *Comparative Ethnic Relations*, New York: Random House, 1970; *The Annals of the American Academy of Political and Social Sciences*, vol. 433 (1977), ed. by Martin O. Heisler, and dedicated to "The Ethnic Conflict in the World Today"; Milton J. Esman (ed.), *Ethnic Conflict in the Western World*, Ithaca: Cornell University Press, 1977; Robert Levin and Donald Campbell, *Ethnocentrism: Theories of Conflict*, New York: John Wiley and Sons, 1972; Donald L. Horowitz, *Ethnic Groups in Conflict*, Berkeley, University of California Press, 1985; Karl Deutsch, *Nationalism and Its Alternatives*, New York, A. A. Knopf, 1969; William Pfaff, *The Wrath of Nations: Civilization and the Furies of Nationalism*, New York - London: Simon & Schuster, 1993; Gidon Gottlieb, *Nation against State: A New Approach to Ethnic Conflicts and Decline of Sovereignty*, New York: Council of Foreign Relations, 1993; Patrick Daniel Moynihan, *Pandaemonium: Ethnicity in International Politics*, New York: Oxford University Press, 1993.

⁴⁹ Hans Morgenthau, *Politics among Nations*, New York, A. A. Knopf, 1960.

circumstances one or the other view prevails in regard to some important aspects of conflicts. Quincy Wright in his famous *A Study of War*⁵⁰ quotes that in 1932 members of the American Psychological Association were asked for a professional opinion whether there is or not in human nature an unchangeable, instinctive factor which wars between states makes inevitable. Out of 528 members 346 answered that there is no such a factor, 150 did not answer, 22 answers were vague, and only 10 answered that in their opinion there is such a factor. The same year The Institute of International Cooperation of the League of Nations proposed that Albert Einstein should invite a person, according to his choice, to a frank exchange of views on any problem that he might select. So Einstein addressed Sigmund Freud with the question: "Is there any way of delivering mankind from the menace of war? [We could rephrase the question today by inserting "ethnic conflicts" instead of "war"]. Freud's celebrated letter offered an answer: an international rule of law, which should be made effective by a world government with judicial and executive branches. He tried to point out which instincts in human nature, including the lust for aggression and destruction, play a role. When after World War II UNESCO organized a survey among the most respected scientists in the world, the answers led to a conclusion that there is no doubt that human nature is the most frequent and the most usual basis for explaining social tensions, conflicts and wars.⁵¹ All these facts and concepts, which somebody could find as distant from our topic, we are mentioning because we think that institutional arrangements of appropriate kind can help a lot but can not eradicate conflicts.

Political and particularly ethnic conflicts arise among ethnic groups when one subdues (or tries to subdue) the other; because of traditional rivalries; religious or national intolerance; clashing national aspirations; unsettled frontiers; when some groups are in an unequal position in the same state; or when mere existence or geographical position of one group is an obstacle to achieving some aims of another group or groups. Cultural diversities, particularly religious differences (not only in the past but still today) and differences in value systems, as well as conflicting interests of more profane nature (e.g. of commercial nature, overlapping territorial claims which cause disputes, diverting or the way of using river waters, location of power plants, particularly those on nuclear power, etc.) play an important role in raising tensions which can lead to conflicts even when all ethnic groups are equal concerning their constitutional and political position (status). Studies of neutral scholars and observers show that different ethnic groups, i.e. "ethnic nations" have very similar claims and objections on account of each others. We have to take into

⁵⁰ Quincy Wright, *A Study of War*, Chicago University Press, 1942.

⁵¹ See: T. H. Pear, *L'Etude psychologique des etats de tensions et des conflicts*, Paris, UNESCO, 1957.

account that here, as with all other human affairs, perceptions or misperceptions, prejudices and biases, play very important role, regardless of what real facts are, and ideologies and religions have to be added as causes of tensions and conflicts, too. Stereotypes are widely present and cause effects in inter-ethnic relations. What we said concerning causes of ethnic conflicts is very similar to main causes of wars among nations if the word nation is taken as a synonym for states. Whether we like it or not, but it is true that differential rates of population growth (substantially different birth rates of different groups) by themselves lead to tensions and can cause a conflict between ethnic groups.⁵²

Diversities that contribute to the multiethnic (multinational or multireligious) kaleidoscope are results of different historical processes: voluntary and forced migrations; wars; centuries of life under different states and empires; of contacts with different cultures; influence of religions that encounter at many places; ethnic engineering during foreign domination, including policies to mix population in order to weaken national resistance of any single group; as well as of social, political, cultural and demographic development (differences between groups in regard to the natural birth rate) can be so conspicuous and significant that they can stir tensions and cause problems in some constitutional arrangements (more so if churches and states are not separated, and particularly if state churches are established).

However, many scholars assume that diversities *per se* do not lead to conflicts, particularly not necessarily. These scholars consider that diversities do play a big role and can facilitate conflicts but under some circumstances and through intentional activities of messengers (and the role of messengers can play leaders, politicians, priests, teachers, intellectuals, preachers etc.), which can increase/decrease or induce animosities and tensions between ethnic groups which easily lead to conflicts.⁵³ Concerning conflicts, the scholar in this field, Dov Ronen, in a book which takes Yugoslavia as a case study, assumes that the fear always plays big role, and the fear is the basis on which agitation and mobilization rely and begin. If the danger which is the cause of the fear is not real but an imagined one, it still plays its role, because the fear is frequently an irrational feeling and can be induced.

⁵² See more in our paper "Migrations and Balkan Geopolitics: Present Consequences of the Past" delivered at the IPSA Congress held in Buenos Aires (July 21-25, 1991).

⁵³ For an attempt to elaborate a general scheme of actors, conditions and mechanisms of ethnic mobilization which leads to conflicts, see: Dov Ronen, "Scientific Mapmaking through Exploration of the Mechanism of Conflict", in Miloš Macura i Vojislav Stanović (ur.), *Položaj manjina u SR Jugoslaviji*, [The Status of Minorities in FR Yugoslavia] Beograd, SANU, 1996, pp. 271-280; and with more details in Dov Ronen, *The Challenge of Ethnic Conflict, Democracy and Self-Determination*, London - Portland (OR), Frank Cass, 1997, in which Yugoslavia is taken as a "case study".

Despite all conflicts, the fact is that thousands of ethnic groups have to live mixed together at the same territories, all over the world, with the knowledge that ethnic and political (states') boundaries do not coincide. And many of ethnic groups aspire to some sort of autonomy or, some of them, to a nation-state, and that is described as "the resurgence of regional separatist movements".⁵⁴ An author writes about "identity explosion".⁵⁵ If patterns of the past would make effect in the future, then on the ground of present-day circumstances we could say, that the number of requests will increase in the future, though processes are going in opposite ways: there are tendencies of integrations and unifications, and at the same time to secessions and dissolutions. We can expect new "ethnic" groups to emerge over time.

To satisfy aspirations of hundreds or even thousands of ethnic groups and their political elites and leaders, many new independent states should have to be established. It would certainly require the reshaping thoroughly the world order and almost inevitably it would be a challenge which would most likely continuously disturb the world peace. The projected world order does not leave much room for such proposals and implied processes. But, also, the new world order already faces these problems and will have to recognize and protect not only individual, but also ethnic minorities rights, much more than in the past, despite opposition and critical objections to ethnic group rights.⁵⁶

In our approach of advocating a consociation as perhaps the best, and it seems as the most rational solution for multi-ethnic and multi-cultural societies,

⁵⁴ Ted Robert Gurr, *Why Men Rebel*, Princeton: Princeton University Press, 1970, p.222; quoted from a paper of Stuart Hill and Donald Rothchild, "The Contagion of Political Conflict in Africa and the World", submitted to International Sociol. Assoc. Colloquium on "Marxist Perspectives on Ethnicity and Nationalism", Belgrade, September 2-3, 1985.

⁵⁵ Ali A. Mazrui, *Post Imperial Fragmentation: the Legacy of Ethnic and Racial Conflict*, Denver: University of Denver Studies in Race and Nations, I, 2, 1969-1970. He says: "The identity explosion is the one which is helping to sharpen world-wide ethnic self-consciousness."

⁵⁶ A set of reasons for concern about group rights are given in Robert Cullen, "Human Rights Quandary", in *Foreign Affairs*, vol. 71, no 6, 1992: "Around the globe the assertion of collective rights by one or another national group roils the status quo. Francophone residents of Quebec agitate for distinct status within, or perhaps secession from, Canada. In Asia Tibetans seek independence from China, and Tamils want to partition Sri Lanka. In Africa a civil war tears apart Ethiopia. In the Middle East Kurds wish to carve their own country out of Iraq, Iran and Turkey, and Palestinians demand the right to create a state in the West Bank and Gaza Strip territories occupied by Israel - itself the product of one of this century's more successful campaigns for collective right of self-determination" (p. 80). The author added also requests of Balts, Georgians, Armenians and some others, based on aspiration to national self-determination, which in his view, makes a threat to global stability.

though we have to take into account many limits and obstacles on the way to realizing such an idea in situations when ethnic groups have been more or less "territorialized" or have a strong feeling of distinct identity and/or attachment to one or other element of identity (like religion or language, etc.), which are very frequently cases, or almost the rule. The main limits arise in the situation when there is already an open conflict, a civil war on ethnic grounds or strong and persistent after-war sentiments. In such a case, we can remind to Cicero's ⁵⁷ words expressing the view or a fact that in a state of war laws are ignored (stay tacit). Some people argue (at the UN Conference on Human Rights, held in Vienna, June 1993) that even in such situations states, scholars, humanitarian activists and other people or organizations involved have to insist that laws have to be obeyed. Or that the old sentence has to be changed into: "Inter arma - caritas". We do agree that on the ground of moral duties, we have to insist on that, but on the ground of facts, it is obvious that wars bring disrespect for law. And not only wars, but even bloodless radical and sudden changes of legal and political orders. For international conflicts there are some basic norms developed and accepted over time (which otherwise are frequently breached or violated), and such rules should be extended to other armed conflicts, but it will not be easy to achieve when those who violate rules have power or powerful support to rely on.

Nevertheless, even if groups would obey some international norms concerning the behavior in armed conflicts, it is much more difficult to develop a constitutional and institutional arrangements usually associated with the idea of consociation, if groups concerned are in a conflict. At an international conference in 1992, Donald Horowitz, a distinguished expert in studying ethnic conflicts and conflict-resolution⁵⁸, had pointed to the experience of Sri Lanka, where the relations between Sinhalese and Tamils could be relatively easily solved by constitutional arrangements if they were made before the open conflict started. But the government of the majority (Sinhalese) rejected to consider an adequate arrangement on the basis of consociation which would include autonomy for Tamils. Now it is too late and such an offer of autonomy would not have much effects any more.⁵⁹ Similar lessons could be drawn from many other cases. All cases where powers insisted on mere majority principle led to conflicts, including proposals of Badinter Commission to organize a referendum and to declare independence sticking to the principle of mere majority rule, instead of developing institutions of consociational democracy. In all republics and autonomous provinces of former Yugoslavia (though Slovenia

⁵⁷ "Inter arma silent leges", in Cicero, *Pro Milone*, 4, 10.

⁵⁸ Donald L. Horowitz, *Ethnic Groups in Conflict*, Berkeley, University of California Press, 1985.

⁵⁹ International Conference on "Nationality Policy in the Russian Federation", Moscow, September 22-24, 1992.

is more homogeneous than any other) there existed ethnic pluralism and so consociation as a social fact. A political system which would demonstrate a sincere attempt to accommodate political regime and political institutions to the fact that diverse groups live together, could be modern and democratic federalism, regime of "grand coalitions", as well as different types of cultural autonomies, or different special rights or privileges provided for some groups in order to preserve their status or a conditions, traditions etc.

Beside territorial federalism which still could be applicable to solve some relations between basic territorialized groups, consociation and functional federalism with cultural autonomy (and eventually with some elements of territorial autonomy, customary in the world) should be considered as in many situation the better solution. It was highly recommendable but unlikely to happen in situations when already existing tensions between ethnic groups had lead to apartheid instead of consociation. It is not just tensions between manipulated ethnic groups, but extreme animosities and disagreement between political elites that make it difficult for any consociation to function. In view of the fact of the mixed population all over former Yugoslavia, all attempts to create "ethnically pure" federal units, had chauvinistic consequences. In order to preserve the peace, and to establish some prerequisites for prosperity, different consociational arrangement offer many options to solving problems if there would be the willingness to do so. There is a general principle applicable to these and similar situations: Never do to others what you do not like to be done to you.

II POLITICAL TRANSFORMATION OF AUTHORITARIAN SOCIETIES

1. Is The Word and the Concept “Democracy” Adequate to Cover All Main Elements of Political Transformation

When we treat the problems of transition from authoritarian government to democracy, these political changes of a vast region that stretches over several Continents (Eastern Europe, Asia, Africa, South America), and includes not only postcommunist states, but also some still “communist” ones (like PR China, Korea, Cuba), and many states that have never been communist (Turkey, Nigeria, Libya) and some even are strongly anti-communist (like Indonesia, Malaysia, Iran, Iraq, Saudi Arabia etc.), it is also important to bring improvements in the status of national minorities in so many countries. Despite cultural, ideological and other differences between these countries, despite even some institutions which are theoretically treated as democratic (multi-party systems, elections, parliaments, even constitutions etc.), in most of them the prevailing political culture is authoritarian, many political freedoms limited, and so there are many big obstacles to “democratic” transformation. In the countries of Eastern Europe and the former Soviet Union, formerly under communist regimes, the declared political goals include the transition to democracy, the due process and the rule of law, the free enterprise economy, safeguards for human rights, and so on. That all and many other things are summarized in a slogan “transition to democracy”. But in practice there are too many problems, obstacles, deformations on the way to “transition”, consolidation and democratization. We will just mention here the research and published results of a couple of scholars.⁶⁰ Some authors write on the “third wave of democra-

⁶⁰ See: Juan J. Linz and Alfred Stepan (eds.), *The Breakdown of Democratic Regimes*, 3 volumes, Baltimore, John Hopkins University Press, 1978; Guillermo O'Donnell, Philippe Schmitter and Laurence Whitehead (eds.), *Transitions from Authoritarian Rule*, Vol. 1-4, Baltimore, The Johns Hopkins University Press, 1986; *Transitions from Authoritarian Rule: Southern Europe*, 1986; *Transitions from Authoritarian Rule: Latin America*, 1986; *Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies* (Vol.4), 1986. See also Donald Horowitz, "Comparing Democratic Systems", in *Journal of Democracy*, Fall 1990; Juan J. Linz: "The Perils of Presidentialism", in *Journal of Democracy*, Vol. 1, No 1, Winter 1990 ; and "The Virtue of Parliamentarianism", in *Journal of Democracy*, Vol. 1, No 4, Fall 1990; Arend Lijphart, "Constitutional, Choices for New Democracies", *Journal of Democracy*, Vol.2, No 1, 1991; and "Presidentialism and Majoritarian Democracy: Theoretical Observations", in György Szoboszlai, *Democracy and Political Transformation: Theories and East-Central European Realities*, Budapest, Hung. Pol. Sci. Assoc., 1991; Samuel P. Huntington, "How Countries Democratize", in *Political Science Quarterly*, Vol.106. No.4. Winter 1991-92, pp. 579-616. And, among the most important of all,

tization". There exist, of course, the well-known and continuous discrepancies between political reality on one side and declared goals and constitutional declarations on the other. Beside the political manipulation with some widely supported ideals (like "democracy"), there are many real problems which some of these countries are facing and which slow down their transformation even when it is pursued in the earnest by political leaders.

The very meaning of "democratic transformation" is not as clear as it could seem at the first glance. We see it as very controversial idea/program, and "democratic" was and could be (mis)interpreted in a way that contradicts to some sound principles of a good government. It can go so far that under the name of "democratic transition" new forms of authoritarianism appear, particularly in a symbiosis with nationalism or with the support of influential media which imposes its "criteria" who and what is "democratic" or "authoritarian". This labeling influences opinions even of influential politicians, or *vice versa*. And the system of government called democracy has become so popular, that there is hardly any government whose representatives would not claim that their government is democratic, and probably few political parties or movements which also would not claim to have democracy as their aim. Not only that still today every government tries to convince the public (to induce public opinion) how democratic that government is, but also whatever is one's preference, that one labels it as "democracy". Political allies are frequently treated as "democratic" even if they are not. As we know from the past and present, such qualifications or "views" on democracy very frequently neglect or omit some of those elements which are in today prevailing views a *conditio sine qua non* democracy.

Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, and Post Communist Europe*, Johns Hopkins University Press, 1996 (available in Serbian, ed. by Vukašin Pavlović and Svetozar Stojanović, published by Filip Višnjić, Belgrade, 1999); The book of H. E. Chehabi and Juan J. Linz *Sultanistic Regimes* (The Johns Hopkins University Press, 1998), though it deals with several Caribbean, Middle East and South Asian regimes, by the very title attracts the attention of readers in the Balkan area where many regimes had some sultanistic features. This notion was taken from Linz to cover some political phenomena at the Balkans (but, of course it could be extended to much wider regions). Some cases included in the volume treat Sultanistic regimes as based neither on ideology nor leaders' charisma or mission, but on the raw power, while in South Eastern and most of east European states still some kind of ideological commitments, some poor forms of semi-charismatic leadership, and quite present pretensions to national missions are playing role in providing support for caesaristic, bonapartistic and populist forms of regimes. And in many cases in the region such forms can be interpreted, covered, masked as a form of "majority rule" based on majorities in parliaments staffed by ruling parties or coalitions.

It is widespread that everybody calls "democracy" whatever one supports as a normative category in one's value system, and wishes to see it realized. According to that, some programs or institutions are judged. Using the term, not only ordinary people or unscrupulous politicians, but even political scientists have in mind different things, different conceptions of democracy, and different aims and institutional arrangements.⁶¹ Despite conceptual vagueness, there are, however, some institutional elements which make an indispensable ingredient of a democratic government.

To all other problems, we have to add that the vagueness of the very idea of democracy opens possibilities to be interpreted and misinterpreted in different ways, particularly when it comes to institutional arrangements, the role of different subjects (factors) and political relations between them, when institutions have to become impersonal instruments of constituting, regulating, limiting and exercising power, i.e. allocating scarce resources. There is no doubt that the word "democracy" is very popular and widely used, but the meaning of the term remains quite ambiguous. As Claus von Beyme wrote: there is a strong tendency to treat democracy as "synonymous with good, beautiful and true in a society".⁶²

There is hardly any set of political and/or legal institutions which would automatically provide what probably most scholars mean by "democracy", i.e. what they assume to be democratic government. And many conditions (or let's say "preconditions") have to be present in order that a set of potentially "democratic" political and legal institutions work, i.e. function in a democratic way. Among several "(pre)conditions" there are important ones, which do not exist in the region we talk about, and to achieve them it would require not only wish and willingness to have them, but a lot of other things including favorable social structure (numerous and influential middle class, many stable and functional social institutions, some economic conditions), knowledge, educational

⁶¹ Many differences over the meaning of "democracy" expressed in a UNESCO publication after the World War II (*Democracy in a World of Tensions*, ed. by R. McKeon, Chicago, 1951) were result of the cold war divisions and of the influence of Marxism and communist ideology which tried not only to interpret democracy in economic terms, but also to justify authoritarian systems and even to treat them as democratic. This division has become obsolete much before the collapse of communism, and after that collapse some basic features of democracy (like multi-party system, free elections, freedom of the press and association, etc.) are widely recognized as necessary elements of democracy. One should say - necessary yes, but not sufficient. Thus, some problems remain concerning the very notion, i.e. the meaning, as well as the conditions, environment, institutional arrangements, and the working of democracy in practice. To all those additional problems appear when we approach multi-ethnic societies from the point of majoritarian democracy.

⁶² Claus von Beyme, *Die politischen Theorien der Gegenwart* (1972), Croatian translation, Zagreb, 1977, p. 199.

work and network, time, and managerial, technical and constitutional expertise. We have further in mind particularly three inter-related things as preconditions for democracy: “open civil society”, “the democratic political culture” and “the rule of law”. From time to time we will refer to the first two, but we are going to put the stress on the third, indispensable element - the rule of law.

It is not easy to develop democratic political culture. And without it, some sets of institutions can perhaps be instrumental in advancing to democracy, but will not bring what we expect and imply when we use the term democracy. Superficial or mechanical transplantation of institutions can even compromise those institutions and the idea of democracy. Many South American countries tried to transplant two institutions - federalism and presidential system - that proved to be successful in the US, but failed to give the same results under conditions of a different, authoritarian political culture. So called Westminster system of electoral principles and majority rule can perhaps be taken as one of standard criteria of a democratic government. In one sense it means that government is elected by democratically elected Parliament and in theory responsible to that Parliament.

Westminster principle as electoral one means that territory is divided into single-member constituencies, presumably of similar size (this means as many electoral units as there are members to be elected). Candidate who gets most of votes (a plurality of votes) in an electoral unit that one wins the seat in Parliament (system is implemented in England, but not in Scotland and Wales where proportional system exists). This system is usually described by its effects - “the first past the post”. One of basic features of this system is that it is majoritarian and favors the group (political or ethnic or other) which makes majority. This system does not take into account those votes which are against one who wins the largest number (that “wastes votes”) and if there are several candidates it can mean that majority (all opponents taken together) was against elected candidate. So, a candidate can be elected by numerically thiny minority. This system is particularly bad for multi-ethnic societies if minorities are dispersed, and can be eventually be very convenient for minorities which are concentrated, under a condition that they make electoral unit. But, in cases of minority concentrations so called electoral geometry can be misused.

A form of the “Westminster” system was designed by communist governments in all parts of former Yugoslavia in a hope that it will make it possible for communists to stay in power even if they do not get support of the 50 per cent of electorate. It was assumed that the opposition would be fragmented and paralyzed, just as it has happened later. On the ground of such “democratic” laws authoritarian nationalist forces in Croatia and Serbia had achieved absolute control of legislatures with less then half of votes in their support. Dr. Tudjman’s Croatian Democratic Community (HDZ) in 1990 elections with somewhat over 43 % of votes of support had won two thirds of

seats in Croatian Parliament (Sabor). And President Milosevic's Socialist Party of Serbia the same year with somewhat below 47 % of votes had won three fourths of seats in the Parliament (Skupstina) of Serbia. In both Republics presidents had an absolute control over legislature and the government.

In a similar way French type of presidential system which could not be denied to be democratic was implemented in many East European countries which instituted strong presidents. However, if such a system could be democratic in frames of appropriate institutions and political culture (in France) it was just a joking with democratic "words" or playing with "democratic" institutional puzzles.

It is true that institutions which are instrumental to bring democracy can help to gradually develop democratic political culture, too, bringing some changes in the direction of democracy and educating people for democracy, but it is anyhow a long process. This takes us to stress again the relevance of such ideas as those current for some decades that prevailing political culture influences how a set of institutions supposed to be "democratic" will really work.⁶³

The importance of political cultures has also to be seen when we deal with problems of multiculturalism. In many post-communist countries multi-ethnicity makes problems of transition even more complex than it was assumed earlier. Multiculturalism means the richness of cultural traditions and variety of religious and cultural experiences, but suspicion frequently prevailed on the side of governments in regard to the role and position of minority groups, and some recent studies stress, as we have mentioned already, that multiculturalism can be an obstacle to democracy because it makes very difficult to reach a consensus over some basic things in a society, a condition which also was treated in political philosophy as a condition for peaceful development of a society and for functioning of basic institutions.

Many problems in actual reality revive some old dilemmas and considerations concerning basic values, institutions, procedures. It seems that democracy today in post-communist states is widely identified with the popular support, interpreted or reduced to majority rule, and in this sense, regardless of institutional frames, procedures, protection of minorities, taken as a sufficient ground and standard of good, democratic and so legitimate government. Some pseudo-institutions which provide popular support at elections, majority in parliaments etc. are obviously interpreted as "democracy", though, from standpoints of many political thinkers (from classic to contemporary) such "institutions" and practice would be criticized, because the will of majority, neither regulated nor limited by law, those thinkers treated as the worst form of government - as "tyranny of majority", "democratic tyranny" or ohlocracy. To

⁶³ Particularly after Gabriel Almond and Sidney Verba published *Civic Culture* (Princeton, 1963).

add more difficulties to all these problems, political institutions have to be cultivated in connection with the environment and evaluated not only on the ground of their supposed qualities, but according to real effects and results.

Problems and obstacles that societies face in the process of transition from authoritarianism to democracy in post-communist era, are even larger and sometimes seem as insurmountable in multiethnic societies, even if minority rights would be treated as complementary to majority rule. In such (multiethnic) societies simple "majority rule" creates many problems and majoritarian democracy has to be reshaped into consociational democracy.

We are going to put the stress later on the rule of law as a precondition of democracy in general and of consociational democracy applicable and recommendable for multi-ethnic societies, and on some obstacles on the way to achieving both things. The rule of law is closely related to constitutional designs, but does not depend on such designs only. The vast regions that we mentioned as being permeated by authoritarian or parochial political cultures, have never had the rule of law in the sense that political philosophy interprets this idea. So, very important preconditions or social ingredients of "constitutional democracy" are lacking, and that makes transition to democracy at the best a political program, which is not to be realized easy or fast.

The notion of democracy will very likely remain controversial in the future. And, despite wide use and popularity of the word "democracy", if we want to give more specific and proper names to phenomena and to conceptions which cover what we treat in normative political theory as a good form of government, we would simply have to look for new notions and new words. What many political scientists obviously have in mind when they use the word democracy, that word simply does not and can not cover if we take the word in its etymological sense. In some way, a new term (and notion) is already coined, though it is not in a wide use. We have in mind the term "constitutional polyarchy" which is covered by term used by Robert Dahl and some other political scientists. In our view, Carl J. Friedrich's conception of constitutional government was also close to this meaning that we have in mind and will try to elaborate further.

2. The Nation-building and Constitutional Nationalism

For any democratic body politic, and particularly for a consociation, it is of vital importance to establish and to safeguard individual human rights and freedoms. When, after the World War II the issue of "national minorities" became actual again, then it was important to avoid some bad consequences and non-efficiency of minorities protection as provided and practiced between two world wars. After the World War II the stress was put on individual rights and

freedoms. In 1945 Oscar Jaszy wrote that the best system of protecting minorities is the Swiss system which simply protects each individual regardless of his ethnic origin, background or belonging.⁶⁴

This approach found an expression in the Universal Declaration of Human Rights adopted by the UN in December 1948. Low standard in implementing these rights is one of elements which helps to explain why so many individuals in communist and other countries tried to find a harbor under the umbrella of their ethnic fellows. Also, mono-organizational structure of these societies and states, and the fact that no particular or group interests could be legally articulated, expressed, advocated and represented outside of mono-organizational structures, made many people to stick to their national or ethnic ties in order to instrumentalise them in such a way that it would make possible for them to provide actual or future participation in allocating values, and sharing allocated values, which according to Harold Lasswell under certain conditions would mean "sharing power".

Under conditions characterized by "ethnic revival" and "explosion of identity", the "nation-building" and "state-building" become more complex because population has different religious, ethnic, national background and origin. After years of atheistic (communist) propaganda and political repression, religions take their role as an essential element of group identity, and become associated with political movements inspired by nationalism. These processes make political mobilizations easier, increase tensions and may cause conflicts. Constitutional designs and the rule of law offer certain advantages, but some other conditions can nullify them and a lot of efforts are required for a successful "consociation" in "divided societies". If "nation-building" is based on preferences of one group only (though making majority), that leads to what some scholars call "constitutional nationalism" - "constitution" gives power to majority consisting of one nationality, while directly or indirectly discriminating, isolating or ignoring other nationalities, national/ethnic and religious minorities.⁶⁵ This affects issues of identity, self-determination, security, peace, collective rights and consequences, and some options of "non-majoritarian", "consociational democracy".

In so called divided societies, i.e. states with ethnic, national, religious, linguistic and other diversities among the groups of their population, most of the

⁶⁴ Jaszy wrote: "Minority problem can be solved only in an atmosphere in which the individual is more highly regarded than the state. That is why we have only one genuine solution of this problem, and that is Switzerland". Quoted in A. W. MacMahon (ed.), *Federalism: Mature and Emergent*, Garden City: Doubleday, 1955, p. 25.

⁶⁵ The term "constitutional nationalism" is used by an anthropologist and lawyer, who accurately describes the process, features and some bad consequences of the phenomena. See Robert Hayden, "Constitutional Nationalism in the Formerly Yugoslav Republics", *Slavic Review* 51, No 4, 1992.

well known problems of transition from authoritarian to democratic government and building the democratic state become more complex. If some problems would not be solved successfully or in a spirit of dialogue and compromise, that could endanger the peace and postpone democratization or make it just a professed goal concealing "constitutional nationalism," which means that "constitution" serves the building of an ethnic-nation state i.e. the state of the largest ethnic-nation making members of minority groups second-rate citizens.

We have already quoted Ivo Duchacek who turned our attention to measures usually used to achieve ethnic homogeneity inside a group or a state. In his words these measures ranged "from barbaric cruelty to mild inhumanity", or from genocide to assimilation.⁶⁶ Daniel Elazar points to a kind of processes which can be detected in many countries (and it was confirmed by the experience of Yugoslavia): while elites have supported heterogeneity in society in general, they act very energetically to impose homogeneity inside groups which they control, in order to oust (exclude) strange elements (in ethnic, ideological, religious etc. sense), and to achieve ideological, religious, etc. including "ethnic purity". Elazar writes: "Segments themselves have to be quite hierarchical...So while the regime-wide coalition may be democratic, there is no guarantee that democracy will prevail within segments themselves."⁶⁷

There is a substantial difference depending on whether ethnic groups are "territorialized" on certain territories which they claim as "their" fatherland, or whether they live in diaspora. Alternatives to some traditional democratic and federal institutions are looked for. Modern democracy has to deal with these problems in a different way than in the past when in the name of popular sovereignty it was assumed that the people (*populus, demos*) was in political terms divided only on the ground of political orientation (based on ideology or interests), while in multiethnic societies the problems of identity and other just mentioned requests are involved. It is simply not straightway applicable without bad effects in multiethnic countries, and some corrections and additional institutional arrangements have to be introduced to provide autonomy of groups.

Concerning democracy vs. authoritarianism issues, and political life in general, it was frequently assumed and stressed that under some conditions, national (ethnic) movements can create social and political pressure towards decentralization, federalization and democratization of authoritarian political structures (e.g. such was the case with former empires where such movements contributed to decolonization, and within some multinational, but unitaristic, centralistic states). However, in multi-ethnic or divided societies, democracy as usually conceived, as majoritarian democracy, frequently is not acceptable for minorities.

⁶⁶ See Note 10 (Duchacek, *Comparative Federalism*).

⁶⁷ Daniel Elazar, "Federalism and Consociational Regimes", in *Publius*, Vol. 15, No 2 (Spring, 1985; see also his *Exploring Federalism* (Tuscaloosa: The University of Alabama Press, 1987).

The “ethnic revival” affects conceptions and institutions of majoritarian democracy, and alternatives to models of domination have to be introduced, reshaping at the same time institutions of majoritarian democracy. Some situations in multiethnic societies revive old dilemmas concerning institutions, procedures, even values attributed to “democracy”. Some works of outstanding scholars, who study problems of multi-ethnic societies, suggest/advocate institutions of “consociational democracy”⁶⁸ as more appropriate than institutions of “majoritarian democracy”. It is difficult to introduce models of partnerships (of groups) unless democracy is modified along some principles of “consociational democracy”. However, it can happen that in some cases no kind of institutional arrangements would work, neither consociational (cases of Lebanon, Cyprus, former Yugoslavia demonstrate that) nor federal.

We also have to take into account what we already said about the perception of “nation” as “ethnic nation”, which has historical roots.⁶⁹ This in many ways affects the relationship between an individual and the state on the basis of different statuses of citizenship, and even some Western states base the citizenship primarily on blood connections, and not on the territory of birth or some other civic relations. Beside the “ethnic revival”, another process was the

⁶⁸ A pioneering contribution to the idea of consociational democracy is given by Robert A. Dahl, Arendt Lijphart, Daniel Elazar and some other authors. For ideas about consociation see particularly: Arendt Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, New Haven, Yale University Press, 1977 (sec. printing 1980); *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven, Yale University Press, 1984); “Federalism and Consociationalism: A Symposium” in *Publius*, vol. 15, no. 2, 1985 (ed. by Daniel Elazar); Jurg Steiner, *Amicable Agreement Versus Majority Rule: Conflict Resolution in Switzerland*, Chapel Hill, University of North Carolina Press, 1974; K. D. McRae (ed.), *Consociational Democracy: Political Accommodation in Segmented Societies*, Toronto, McClelland and Stewart, 1974. Some authors have pointed to a number of dangers of consociational democracy (see: Brian Barry, “Consociational Model and its Dangers”, in *European Journal of Political Research*, 1975). Criticism directed to collective rights can also be taken as implicitly directed against consociational arrangements.

⁶⁹ See the Note no 38 and 39 for the term political and ethnic “nation” related to a community more or less based on an assumption of blood relationships, but practically on common language, religion and some kind of oral tradition. Some scholars call this kind “imagined communities” (after Benedict Anderson’s, *The Imagined Communities*, London, Verso, 1983). In some way, they are product of imagination, but also of history, and these “imagined” factors should not be underestimated as they played an enormous role in the past, helped some groups to preserve themselves as distinct groups in opposition to foreign empires or aggressive neighbors, and still play an enormous role today in many constitutional and institutional arrangements, having significant consequences for the status of minorities, laws on citizenship, etc. the term “ethnic nation” when he referred to Yugoslav “nations” (Dennison Rusinow, *Yugoslavia: Fractured Federalism*, Washington: Wilson Center Press, 1988).

“religious revival”. Namely, after years of atheistic (communist) propaganda and political repression, religions regain their role as a relatively influential political force and even more important as an essential element of group identity, and became associated with political movements inspired by nationalism. This can particularly be illustrated by experience of countries where followers of three main religions – Eastern Orthodox, Roman Catholic and Muslim – live in the same state as it was the case of former SFR Yugoslavia, and in later FRY and present-day S&M. These two processes are inter-related and affect by each other, but should not be simplified or reduced to one only.

We have in view that many post-communist (and some other newly independent states) are in the process of state-building, constitutions and laws making or amending. This is closely connected with the “nation-building” under conditions characterized by religious revival, “ethnic revival”, “explosion of identity”, and as a matter of fact “crises of identity”. When any one of mentioned religion groups, makes majority in such a state, then nation-building based on preferences of one group only, leads to what some scholars call “constitutional nationalism” (R. Hayden applied that term specifically on Croatia).

Between the universal values and messages of e.g. the Gospels (or Koran) and practical policies of hierarchies of churches, or individual priests, very big discrepancy can be noticed. Churches sometimes follow state politics, or behave themselves like secular organizations. And *vice versa* i.e. political organizations and even state bodies are involved in materializing some religious goals. So the process of the nation-building or state-building becomes more complex when population has different religious, ethnic, national background and origin. These processes make political mobilizations easier, increase tensions and may cause conflicts. (One of issues which is interpreted as very important now in the process of drafting new constitution for the Republic of Serbia is how to define the state in the constitution - as a state of Serbian nation and of national minorities whose members are equal citizens, and any discrimination would be unconstitutional and illegal; or to define the state as multicultural or multinational one. Some propose to mention all minority groups. It is very difficult to achieve a consensus over this and similar issues, and it would perhaps be the best to avoid “constitutionalizing” such issues and to disregard them in constitution-making, but both opposing sides are reluctant to accept that. It is not of much help to point that many constitutions, including the first modern still in force - the US Constitution - do not touch anyone of let us say “metaphysical” issues irrelevant for the functioning of democratic government.

Without treating such issues in the historical context it is not easy to understand consequences of one or the other option nor to comprehend the relevance of similar cases and issues for S&M and some special concerns of minorities, like of Bosniacs/Moslems part of whom live in Serbia and part in Montenegro, and their group can be further divided if a split of the State Union

would take place. Namely, they are already divided over the name of the group: majority of those in Serbia adopted a new name – Bosniacs, while those in Montenegro stick to earlier name of the group - Muslims, and in both cases the reasons are more of political than of cultural or religious character. Memories of different modes of domination, which cover the whole past, raise many fears on the side of different ethnic groups (particularly those whose collective consciousness is framed by an experience of large-scale mass suffering). In such cases it is very difficult to introduce models of partnerships unless democracy is modified along some principles of "consociational theory".⁷⁰

The role of political elites can be very, very important in both developing cooperation and in leading to a conflict. Some authors (e.g. A. Lijphart) rightly take a cooperation between political elites as an important element of consociational democracy. However, in multi-ethnic societies, and particularly when between ethnic groups exist tensions or conflicts (which can be instigated by elites and ambitious leaders in their competition and struggle for power), groups do not trust easily political leaders if they come from another group, sometimes regardless of their programs. Social distances between groups and elites usually follow each other. Claiming or pretending that they defend interests of an ethnic nation, and particularly when ethnic groups are in conflict, political elites can achieve a plebiscitarian support, which anyhow remains far short of democracy. It decreases the opportunity and the field of solving problems on legal grounds and through the judicial procedure and increases the number of cases where the "sovereign political wills" of the elites confront each other.

Political elites in multiethnic societies, among other things try and usually succeed to monopolize for themselves the mediation between groups and reduce the possibilities of "crosscutting". S. M. Lipset writes about "crosscutting connections" as a factor that increases the chance for stable democracy.⁷¹ In order to increase their own power they reduce the possibility of cooperation without mediation of elites. So elites in general, and particularly if cooperation

⁷⁰ However, it can happen that in some cases no kind of institutional arrangements would work. Two opposite ideas and sets of institutions were tested in Yugoslavia: the idea of a "melting pot" and administrative centralism accompanied the democratic idea of a state being based on citizens and multi-party pluralism; and the idea of "consociationalism" based mainly on one-party ethnic federalism without much concern for individual rights or political role of citizens. And both proved to be a failure in Yugoslavia. The first one was tried after the World War I, and it affected badly national relations in the decades that followed. The second one was tried since 1960s. But we have to add that federalism in Yugoslavia was never a genuine one: from a "facade federalism" as Carl Friedrich called it (Carl J. Friedrich, *Trends of Federalism in Theory and Practice*, New York, Praeger, 1968) it evolved to some mixture of federalism and confederalism, which was undermined by nationalism and by political elites struggling for power.

⁷¹ Seymour Martin Lipset, *Political Man: The Social Basis of Politics*, Garden City, NY: Doubleday, 1960 (Serbo-Croatian edition: *Politički čovek*, Beograd, Rad, 1969, p. 112).

between them is low, prevent social integration of an inter-group scale. Daniel Elazar points to a process which can easily be detected in many countries, and that is also confirmed by the experience of Yugoslavia: while elites support heterogeneity in what is not under their control, they act very energetically to impose homogeneity inside groups which they control (to oust what they take as "strange" in ethnic, ideological, religious etc. sense), to achieve ideological, religious, etc. including "ethnic purity". Elazar writes: "Segments themselves have to be quite hierarchical...So while the regime-wide coalition may be democratic, there is no guarantee that democracy will prevail within segments themselves."⁷²

The general criticism of the majority rule from the point of minority rights is strengthened in ethnically mixed communities, particularly if minority ethnic groups are "territorialized" i.e. where ethnic groups inhabit distinct territories that they consider as "their own". In such cases tendencies to secession are strong. This is frequently accompanied with emotions and irrational behavior.

Modern democracy, in principle, is based on an equal position of citizens and their individual rights (this is frequently, though in an over-simplified way expressed in a request of "one man, one vote"), and in most respects on the majority rule or "volonté general", but usually on the rule of law, too. In situations when some of prerequisites for democracy, like the rule of law, high standards of human rights, and appropriate liberal political culture of tolerance and dialogue are lacking, as it is the case over the most of the region which we have in mind, and where tensions or "unsolved problems" from the past between ethnic groups make a heavy burden for creating new democracies, it is neither simple nor acceptable for many groups to base their political institutions just on citizenship and majority rule (though it is one of corner-stones of democracy, frequently even a main element of its definition). In multiethnic countries "majoritarian democracy" is simply not straightway applicable without bad effects. Memories of different modes of domination, which cover the whole past, raise many fears on the side of different ethnic groups and make it very difficult to introduce models of partnerships unless they are based on some principles of "consociation"⁷³ and adequate safeguards. Because of these some corrections and additional institutional arrangements have to be introduced to safeguard identity and proportional power-sharing of ethnic groups.

⁷² Daniel Elazar, "Federalism and Consociational Regimes", in *Publius*, Vol. 15, No 2 (Spring, 1985; see also his *Exploring Federalism*, Tuscaloosa: The University of Alabama Press, 1987.

⁷³ "Consociation" is an old concept of Johannes Althusius, which means "living together" and implies consent, some democratic and rational institutional arrangements which will provide for participation of all groups or corporations. This concept of institutionalizing cultural and ethnic pluralism is present in studies of multiculturalism, multiethnicity and related problems (studies of Dahl, Lijphart, Van den Berghe, Elazar and others).

3. Self-Determination as Meaningful Autonomy

The self-determination and secession, interpreted as absolute rights, were rarely considered in political and constitutional theory, and raise a gamut of questions in theory and problems in practice. We could mention just a couple of political thinkers or politicians who, for different reasons, put the stress on such concepts, like Johannes Althusius in the beginning of the 17th century, John Calhoun in the 19th, and Vladimir Lenin and Woodrow Wilson in the 20th. The last two advocated the right to secession on the principle of national self-determination, for different reasons. Vladimir Lenin had understood that enormous accumulated nationalistic energies, resentments and discontents could be used as an instrument to dismantle Russian monarchy and Empire and to facilitate and accelerate the revolution which he was envisaging. So the idea of "national self-determination" taken from Austrian socialists and strengthened by idea of the right to secession, and the right of joining other states, was one of his political programs. But when he took power, the implementation of such an idea could be counter-revolutionary. So the idea of self-determination was replaced by an earlier unacceptable federation, but remained as an important part of ideology, the part very attractive for many ethnic nations under colonial or any foreign rule.⁷⁴

American President Woodrow Wilson found the "self-determination" as a convenient democratic formula to solve some problems at the end of the World War I, and he put it as the point 10 among his famous 14 points, i.e. conditions for the peace with Central Powers. He did not go further into envisaging future problems. His Secretary of the State, Robert Lansing, commented that it is a principle that many people will pay with their lives. The Czech, Thomas Masaryk also used formula to persuade powers of the Great Alliance during the World War I that Austro-Hungarian Empire should be dissolved and that subjugated people should be given a right of self-determination. So, President Wilson declared the principle of the right of people on self-determination as a principle for reshaping political map of Europe after the World War I. This principle about three decades later became part of the UN Charter and of many other documents including both International Covenants [on Human Rights] of 1966, which in their articles no. 1, have the same provision that "All peoples have a right of self-determination".

In the very nature of liberal political ideology it is to advocate wide freedoms and self-determination of people in frames of law. It is true that the stress of liberal ideology is on individualism and individual freedom, but

⁷⁴ Vladimir I. Lenin, *O pravu nacije na samoopredeljenje* [On the Right of a Nation to Self-Determination, 1914], in: V.I. Lenin, *O nacionalnom i kolonijalnom pitanju* [On National and Colonial Question], Zagreb, 1958; and in *Socijalizam i nacionalno pitanje* [Socialism and National Question], Zagreb, Školska knjiga, 1977.

nobody could deny in the name of that ideology, a right of individuals to associate on ethnic principles and then to use this right of association to disassociate, i.e. to secede from other groups or states. It is true that this ideology leads us to a *reductio ad absurdum* because a right of self-determination can not be denied to any group and in last analysis to no individual.⁷⁵ For good reasons liberal political ideology is taking ground today over all other ideologies, though the liberal one can also be undermined by nationalism. If we would without any reservation accept what Duchacek had suggested as "territorially bound states" into which peoples have to be herded and kept, so limiting their freedom regarding body politic, then we would really come into position to advocate the famous "*reason of the state*" (Guichardini's and implicitly Machiavelli's "*ragione di stato*") instead of the "reason of the people" which is more in accordance with liberal political ideology, and present-day democratic ideas based upon such ideology. Finally, the ethnicity revival is a fact, which will continue to color political events in the 21st century, among other things, because different nationalistic and religious propaganda which were organized and were producing their effects throughout the 19th and the 20th centuries, can not be canceled as if they never existed. They already produced bloody consequences. Reliance on national and religious feelings and specific national and frequently nationalistic features had enormous instrumental role over several decades in the struggle against communism, too. Now after the implosion of communism, nationalisms remain as obstacles to democracy even in monoethnic countries, because nationalism in the past produced authoritarian governments, and probably the same will happen nowadays.

The experience of many successful federal and consociational systems, as well as the most recent trends in Western Europe, tell us about the importance of accommodations and compromises. Impossibility of reaching a compromise among groups raises the issue of separation (secession) which is usually claimed on the principle of the right of people to self-determination. But, in such a case, a question appears about the legitimate subject of this right: "Who is 'the people'?" And this determines one basic aspect of democracy - the scope of the body politic, and both human and "territorial dimensions of politics".

Regardless of how attractive the principle of self-determination may seem to be to solve inter-ethnic problems, it is very difficult to see how this principle could equally be applied to all these groups and other internal divisions in a situation where ethnic and political boundaries do not coincide neither inside states, nor even at the a level of federal units, and in some cases not even at the

⁷⁵ For different interpretations and logical consequences of liberal political philosophy and liberal views, see Allen Buchanan, "Towards a Theory of secession", in *Ethics*, vol. 101, 1991.

regional level. In some countries as a matter of fact every group is minority, and every one tries to become majority at a part of the territory turning others into "mini-minorities".

Some patterns of ethnic tensions, demands, requests, conflicts, trends towards dissolutions of larger political bodies are similar in many poly-ethnic states. And the great majority of present-day states are poly-ethnic. That has to be borne in mind when considering the right of self-determination, secession, and drawing new international borders between former component units of federal or otherwise complex states, when their parts tend to become independent states. But, we should not forget either that twentieth century nationalism was described as the most powerful force of our age.

Despite realistic fears concerning inevitable consequences of nationalistic extremism, many politicians and nationalistic agitators did not and do not refrain from increasing tensions and hatred. On the contrary, they instrumentalize hatred and conflicts in order to build up personal power and popular support, and to achieve some gains on account of others. Partitions, secessions, and attempts at creating ethnically pure political units or states in the past, as well as wars between nations, frequently led to forceful transfer of populations.⁷⁶

In practice the principle of "self-determination" is extremely vague and complex concerning the subject and modes of self-determination. Robert Lansing's remark stressed that two things were not clear about this idea: what is the scope of the right (e.g. does it imply a right of secession), and who is the subject (i.e. what is meant by "the people").⁷⁷ There are many writers, scholars and diplomats who recently try to interpret the right of self-determination as that it does not imply a right of secession,⁷⁸ and it is more widely interpreted in that sense.⁷⁹

⁷⁶ Joseph B. Schechtman, *Postwar Population Transfers in Europe, 1945-1955*, London, Oxford University Press, 1962; and Joseph B. Schechtman, *European Population Transfers, 1939-1945*, Philadelphia, University of Pennsylvania Press, 1971.

⁷⁷ Robert Lansing, "Self-Determination", *Saturday Evening Post*, April 9, 1921; see also: Robert Lansing, *Notes on Sovereignty*, Washington, Carnegie Endowment, 1921.

⁷⁸ See Max M. Kampelman, "Secession and the Right of Self-Determination: An Urgent Need to Harmonize Principle with Pragmatism", *The Washington Quarterly* (Summer 1993). The author argues that self-determination should not be interpreted as a right to secession. Some other authors express the trend of interpreting this right as restricted (Joseph S. Nye, "The Self-Determination Trap", *Washington Post*, December 15, 1992; Amitai Etzioni, "The Evils of Self-Determination", *Foreign Policy*, No. 89 (Winter 1992-93). Though reasonable and understandable, these new interpretations raise some doubts about their meaning in view of the fact that they come after the Soviet Union, Yugoslavia and Czechoslovak Republic were dissolved in the name of that principle (of self-determination). For approaches dealing with self-determination in a wider and

In a number of the United Nations documents after the World War II "the right of self-determination of the people" is provided and obviously taken to mean the right of every people not to be dominated by another, but to elect its own government, which means "democracy" or "autonomy". That did not satisfy many propagandistic pamphleteers interpreting Lenin's slogans in the former communist countries nor nationalistic/secessionist leaders in their demands. A couple of published works (like those of Lee Buchheit, 1978; Don Ronen, 1979; John Wood, 1981; Allen Buchanan, 1991)⁸⁰ or announced works assume that political and legal theory will have to treat this issue more systematically and thoroughly. At a Conference of scholars organized by the United States Institute for Peace in Washington in June 1991, a prevailing interpretation was that "self-determination" can be taken as "meaningful autonomy".

Ideas concerning national self-determination and secession that were expressed in Yugoslavia and elsewhere, appear to be very simple and frequently oversimplified slogans, but situations and problems that stir such ideas as well as those caused by them are very complex and complicated. They threaten with serious and tragic consequences. Whatever the further consequences for Yugoslavia's population are going to be, the case of that country could be an instructive lesson for the other poly-ethnic states.

Federalism after the World War II was introduced in Yugoslavia along the Soviet model and the Bolshevik type of federalism based on Lenin's idea of the right of self-determination and secession. That "model" was everywhere in crisis (Soviet Union, Yugoslavia, Czechoslovakia) even though in Yugoslavia it evolved from "facade federalism" to a mixture of federal and confederal elements (Constitution of 1974) and even further in connection with general dissolution of communism and tensions between nationalities. Tensions and tendencies toward creating a number of independent states (more than are created by now) were strengthened by economic and cultural differences and

mostly liberal terms see Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press), 1978; Elias Berg, "Democracy and Self-Determination", in Pierre Birnbaum et al. (eds.), *Democracy, Consensus, and Social Contract* (London: Sage Publications), 1978; Dov Ronen, *The Quest for Self-Determination* (New Haven: Yale University Press), 1979; Allen Buchanan, "Toward a Theory of Secession", *Ethics*, vol. 101, 1991.

⁷⁹ See our paper on "National Self-Determination and Secession: Ideas and Problems" (presented to the XV IPSA Congress, Buenos Aires, 1991) in *Arhiv za pravne i društvene nauke* (Beograd), vol. CII, no. 4, 1993.

⁸⁰ Elias Berg, "Democracy and Self-Determination", in Pierre Birnbaum et al. (eds.), *Democracy, Consensus, and Social Contract*, London, Sage Publications, 1978; John Wood, "Secession: A Comparative Analytical Framework", *Canadian Journal of Political Science*, vol. 14, 1981; Allen Buchanan, "Toward a Theory of Secession", *Ethics*, vol. 101, 1991.

diversities, conflicts of interests, and general economic crisis and deterioration of life conditions. General tendency among more developed regions (republics) was secession with arguments that the right of self-determination includes a right of secession.

For a number of reasons discontent and nationalism were growing in Yugoslavia for many decades. Nationalism and religions were for a long period an expression of the opposition to the communist system. Poor performances of the economic system and impossibility of using human and material resources (because private initiative and free enterprise were limited or forbidden; state or socially owned enterprises had many deficiencies in satisfying needs of population and the level of satisfaction in most services was low) stirred general discontent. For a long period mere expressions of some national or religious feelings were not allowed and in many cases were punished. So national feelings and energies were turned against the common state even when the main actor of the system was regional state (republics) or local and not the federal government.

Centuries of the longing of at least larger ethnic nations to achieve independent national states was easily put in the service of radical nationalism and nationalists. The regional elites in their struggle for independent and absolute power, and jealous, suspicious and distrusting each other contributed to increasing the inter-ethnic conflicts. These elites were simply incapable to negotiate, frequently did not demonstrate willingness to compromises and sometimes did not show even politeness in addressing each other. These elites were formed during the communist period and despite their today's different ideological orientations they appealed to nationalism. Popular support expressed at 1990 elections led to some kind of populism. Some leaders could not resist the temptation. Elites and leaders acted in an authoritarian way similar like earlier communist. The leaders and politicians were gaining support expressing radical and extremist views and proposals, while those who were moderate and liberal were more and more isolated by their fellow/nationals, or even treated as traitors of the national cause.

The secessionists argued that they would do much better economically if they would be independent and that in the common state (Yugoslavia) one national group, Serbs, dominated. Serbs are the largest single group in Yugoslavia, but they do not make majority in the country. They make about 40 % of Yugoslavia's population. And they were among the most discontent. Their dynasty, though anti-fascist, was dethroned by communists, and monarchy abolished. Serbian nation was fragmented, while neither either was. Among political leaders that Tito removed, there were mostly Serbian and Croatian ones, but among Serbs it was prevailing feeling that Croats and Slovenes were making the system which fits and satisfies their interests, while Serbs criticized (in private talks) their own representatives as unable to match to others. After constitutional changes that started in 1967, Serbia was further politically

fragmented and communist political "elites" in two Autonomous Provinces encouraged to act as a balance against Central Serbia. For those outside of Serbia two provinces as almost federal units were represented in federal bodies, seemed like advantages and privileges for Serbia concerning votes in federal bodies. This could give an impression that Serbia could or already controlled federal legislature, Presidency of the Federal State or Federal Executive Council (government). But whoever was familiar with the Yugoslav system, that one knew that most important decisions could not be taken by any kind of majority vote, but by unanimity, that in the most important bodies all republics were equally represented and had a veto power over the most important matters.

It has been proven by experience that under conditions of an etatistic-ethnic federalism like Yugoslav was, it would be difficult to provide functional and democratic federalism and the mobility of different factors in economic and social life (mobility of capital, people, information etc.). It was similarly difficult, though important and had to be encouraged (but was not), to introduce or develop cooperation which would cut across borders of federal units or ethnic groups. Two things are frequently mentioned in theory of consociation, and these are connected in political realities. They are (1) political cooperation of segmental elites which Lijphart stresses as an important element of consociational democracy (and we could say peaceful consociation in general) and (2) the possibility that "groups and individuals have a number of crosscutting, politically relevant affiliations." S. M. Lipset sees it as a factor which increases the chance for stable democracy.⁸¹

Otherwise, the right to secession on the principle of national self-determination was not provided by any of Yugoslav Constitutions, but those whom that principle could serve, were appealing to that principle as one of old communist tenets, that even Tito would never deny. However, in the "Basic Principles" of the 1974 Constitution (as with a couple of earlier ones), which served just as an underlying ideology of the constitutional system and did not represent constitutional norms, it was formulated that "nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession, on the basis of their will freely expressed in the common struggle of all nations and nationalities...united in a federal republic of free and equal nations and nationalities.." etc. So, it sounded as if that right had been consumed. But, more important is the Art. 5 which provided that the frontiers of Yugoslavia may not be altered without the consent of all Republics and Autonomous Provinces. The change of boundaries of Republics and Autonomous Provinces could not be made without the agreement of the respective federal units. So practically it was impossible to change frontiers of Yugoslavia

⁸¹ Seymour Martin Lipset, *Political Man: The Social Basis of Politics*, Garden City, NY: Doubleday, 1960 (Serbo-Croatian edition: Politički čovek, Beograd, Rad, 1969, p. 112).

without consent of all eight federal units, and their agreement to that effect would be very difficult to reach. In this case the union was secured by a request for general consensus which, if necessarily required, is otherwise a confederal principle.

One of issues before the dissolution was whether new political arrangement between Yugoslav republics should be fixed by a new Constitution or by a confederal (international) pact between republics (six of them). A good part of forces supporting unity of the country and claiming the readiness to do that on the ground of a democratic constitutional federal government with very limited common government functions, were connected with some old-fashioned concepts of socialism and communism. At the same time, secessionists were ardent nationalists and less and less ready to accept even a loose confederation. In propaganda they presented their aims, not the secession, but the independence in order to be able to establish democracy, free economy, and freedoms of citizens. Drafting constitutional arrangements for Czechoslovakia after 1989 had followed a pattern very similar to those in former Yugoslavia since 1960s on. Some leaders of the Slovak side were very eager to acquire independence and all attempts to provide frames for the common state were undermined.⁸²

Most of secessionists arguments were weak, but trends to secession very strong. This is contrary to trends in contemporary Europe. The fact is that thousands of ethnic groups have to live mixed together at the same territories, all over the world. One of complications and heavy obstacles to particular secessions in Yugoslavia was the fact (due to history) that ethnic groups (with

⁸² This is all explained in details in a very good and instructive book of the American Professor, Eric Stein, who was born in Prague, took Ph. D degree in Law from Charles University (Prague), escaped Nazi occupation in 1939, took another Ph. D degree in Law from the University of Michigan, participated in the World War II in the US Army and as an adviser to the American Delegation at the first UN General Assembly, revisited Czechoslovakia in 1982 and 1985, became the member of an international team of observers who followed events in Czechoslovakia, and was appointed as the Member of the Constitutional Commission when the Constitution for Czechoslovakia was drafted. Stein himself was deeply disappointed with the outcome and with the behavior of actors who invested all energies and used different devices to cause the disintegration (which he describes in details), as well as with the later behavior of the President Vaclav Havel. See: Eric Stein, *Czecho/Slovakia: Ethnic Conflict, Constitutional Fissure, Negotiated Breakup*, Ann Arbor, The University of Michigan Press, 1997. This book is praised as a unique exploration of a case of failed federalism against the background of an ethnic conflict in the context of complex societal, political and economic transformation. The preparation of the breakup up, a process condensed in less than three years, was to an unbelievable degree similar to much earlier processes of constitutions-making in former Yugoslavia, though the outcomes were so opposite, i.e. a civil war in one case, and peaceful split in the other with the termination of the Czecho-Slovak Republic (December 31, 1992).

an exception of Slovenia and Slovenians) were dispersed over two-three or even more republics and felt insecure for their life, identity and property if left under the rule of other-nationality governments without any guarantee or supervision of the common government.

So the problem was of nationalities living in diaspora (by far the largest of which in Yugoslavia was the Serbian). Many other problems were obvious: because of mixed population, radical and intolerant nationalisms and uncertain boundaries, there were warnings that a civil war could be expected as an imminent result, if the federation would dissolve, and problems of minorities would not be constitutionally settled. It was also clear that it would be the problem how to determine who owed and how much to whom out of \$ 20 billions foreign debt, more than half of that amount being domestic savings guaranteed by federal government, but borrowed and spent by republics, and the assets and credits of former investments. There were warnings that the separation (division) of armed forces would also be a problem.

Yugoslav experience, as well as processes in other countries (e.g. Czechoslovakia, the Soviet Union and others), demonstrated that on multi-ethnic societies, political elites monopolize the mediation between groups and reduce the possibilities of "crosscutting". In order to increase their own power they reduce the possibility of cooperation without their mediation. Elites in general, and particularly if cooperation between them is low, prevent social integration between groups. Daniel Elazar pointed to a process which could easily be detected in many countries, and that was also confirmed by the experience of Yugoslavia: while elites supported heterogeneity in society in general i.e. among (ethnic) groups, they acted very energetically to impose homogeneity inside groups which they controlled.

We treated consociation as a social and political fact on one side, and as an institutionalized system of partnership in power, on the other. In an earlier paper (article)⁸³ we stressed that ethnic federalism and consociationalism modify significantly the principle of majority rule and many other tenets of the democratic theory. Some basic conditions were lacking in former Yugoslavia and in many other cases. We touch them at other places in this text, and we have to repeat here what we had in mind: open and developed civil society; in frames of *the rule of law*; and accompanied by appropriate liberal political culture.

⁸³ Vojislav Stanovcic, "Ethnic Federalism and Majority Rule", presented to the XIVth World Congress of the IPSA, Washington, August 28 - September 1, 1988; and to a Conference "Otvoreni problemi narodnosti u Jugoslaviji", June 5 - 6, 1990, organized by Univerza v Mariboru and Jugoslovenski forum za ljudska prava. In a shorter version published as "Etnicki federalizam i princip vladavine većine" in *Otvoreni problemi narodnosti u Jugoslaviji*, Novi Sad, *Pravo*, 1991; and in Hungarian as "Az etnikai federalizmus es a többseggi uralom elve", in *Letunk*, Ujvidek, 6, 1990. Many contributions to this Conference and the book *Otvoreni problemi* ...clarify many problems of inter-ethnic relations in Yugoslavia.

III CONSTITUTIONAL/LEGAL FRAMES OF CONSOCIATION

1. The Rule of Law and its Importance for Democratic Institutions and Consociational Democracy

The idea on the rule of law is one of the large topics of legal and political philosophy used by many thinkers. To define the law, besides the will of the legislator as one factor, they include elements of rationality and a scale of values or justice which must lie in the essence of the law. Locke, Montesquieu, Kant, Bentham, Hegel, Mill and others advocated the idea on meta-legal foundations and the need to respect the principles of the rule of law, freedom within the law, recognizing the freedom of others as a limit of one's own freedom, and on the law as the limit of power and guarantee of freedom.

A crucial role in protecting minorities and establishing a consociation has the rule of law as the central idea and a condition number one for any of the ideas or institutions in this domain to obtain permanency, or to contribute to the improvement of cooperation and lessening of the tension between the groups. The rule of law is a prerequisite for any institution to acquire the character presupposed and expected of them by the democratic public.

The rule of law as an idea revives the tradition of natural law stating that people being rational creatures could guard the peace and consocial life if there is a mutual respect for natural (that is rationally accepted and equal for all) rights to life, body, freedom and possession. The rule of law must include relatively rational and balanced legal system, so called corpus of subjective civil rights and freedoms, certain minimum of collective rights of ethnic groups, as well as constitutional and legal, institutional and other guaranties and conditions, one of which is democratic political culture, social and political pluralism, autonomy of social factors (science, press, universities, syndicates, economy, church, associations), division of power and independent legislature.

The rule of law means limiting of power and political will. In the past the absolute political will was dominating in creation and application, and there is a possibility that it might continue so. The law must consider and express measures of justice and other values which comprise the achievements of our civilization, as well as be, at a given moment, the answer to the conflicting situations and problems, it must provide legal safety, legal circulation and in practical sense fundamental rights and freedoms of people. The rule of law, does not mean, as it is often misunderstood, mere application of existing laws and constitutions. Arbitrarity in orders and procedures of the government, even when it is given in the form of law, is contrary to the principle of the rule of law. A critical distance from the content of positive law must be observed. The history of constitutionalism is the history of attempts to replace the arbitrary rule of people by the rule of objectivated and impersonal regulatives founded on certain reasonable principles. Some of these principles are cited.

The idea of the rule of law means that law, and even every legal decision, besides the will of the legislator, be defined and imbued by the element of rationality and the scale of value, which must be contained in the bases of law, as has always been required by numerous thinkers.

The history of constitutionalism as the process of giving form to the basic and highest human laws is in fact the history of efforts by the greatest minds and defenders of human freedom to replace the arbitrary rule of people with the rule of objectivized and impersonal rules based on certain reasonable principles. Many such principles can be cited such as *Audiatur et altera pars*; *Nullum crimen, nulla poena sine lege*; *In dubio pro reo*; the assumption of innocence for the accused, the rule that the weight of proving (*Onus probandi*) lies on whoever claims something; the rule that laws can not be valid retroactively (*ex post facto laws*); that laws must be promulgated (published) and that a certain period has to pass before they come into force; and the important principles of procedure as well as respect for vested rights and legal certainties. Also numerous are the rules of material and process law which have been confirmed over time as suitable to bring about material truth and justice, but which the political authorities or individual power holders usually break as soon as those rules present an obstacle to the achieving of some particular or short-sighted interests or goals which the power holders want.

At the very beginning of Plato's considerations, as it is expressed in his *Republic*, he believed that wise and able rulers are rare and that they should not be limited by any rules. Later he realized that even if rulers would be good and wise, they could fall into temptation and become corrupted. In his *Statesman* he expressed the "second best political order" in which ordinary people could rule well. They would do that by putting into law what wise statesmen in other countries do. Gaining experience, Plato had to abandon his ideals. The turning point in his beliefs was expressed in *Laws*. Plato's disappointment with politicians brought him among the founding philosophers of a great idea, the idea on the rule of law. Plato did not see laws as just the expression of the political will of wise power holders, but the instrument which has great overall significance for the humanisation and survival of man: "It is necessary for men to have laws and to live by them or not differ at all from wild animals. The reason for this is that no man is born with the ability to know what men need in state life nor if he does discover what is best for them to be able and willing to perform it always". And: "States ruled by mortals can not avoid difficulties but a lot can be achieved if we conform to immortal nature calling law all that reason has provided".⁸⁴ In his *Politics* Aristotle opted for the rule of law for the same reasons as Plato accepted it as the best form of order for mortal man with all his faults. He writes: "Demanding the rule of law means demanding the rule

⁸⁴ Plato, *Laws*, IV, 6.

of God and mind while demanding the rule of man means allowing the animal to rule because lust is something animal and passion ruins even the best of men when they are in power... Hence it is evident that in seeking for justice men seek for the mean and neutral, for the law is the mean".⁸⁵

In regard to laws Aristotle noted a problem that is topical today: how to ensure that the laws are good, that is to ensure that those who introduce them are really capable of it. Laws can be bad or as he says "oligarchic or democratic" (remember that to him democracy was a corrupt form of the free republic - but democracy was tolerable if it would be moderate and ruled by laws and not the mere current will of the majority). Aristotle saw that if laws are bad then the stand on the rule of law solves nothing. Still his conclusion that "supreme authority should belong to wisely constructed laws while the bearers of power, whether more, should wield that power only if the laws are not precise since it is not easy to encompass all individual cases with general principles. But we still do not know what the wisely constructed laws should be and that old problem remains a problem."⁸⁶

The process of establishing constitutionality, as well as political institutionalization itself, were actually forms of limiting political power. In time, at least in theory the old opinion prevailed that democracy must be limited by laws i.e. that its power can not be based on the momentary will of the majority or that the majority just sees its interests or implements its standpoints while disregarding the character of the argument or interests of those who oppose it. It could happen that the traces of the rule of the majority reek of inhumanity. Constitutional law was born as an instrument of regulating the basis (source) of political power and the manner of exercising political authority, and of guaranteeing individual rights and freedoms, which also act as a factor of limiting power.

Historical experience, as well as modern legal and political science and practice, confirm that the existence of the legal act which is called "Constitution" and which is claimed to be of the highest legal power, does not guarantee that constitutionality will exist in the legal philosophical, political and sociological sense. Also the existence of sources of law which are called "laws" does not mean the establishment of legality even if those rules are implemented. The opposite is possible: the more legal rules the less legality. Especially when the rules are an expression of the arbitrary will of authorities.

In the period of the creation of the modern theory of democracy and first democratic institutions in the new era, old debates were revived on "natural" and "man's" or positive law, on the relation between morality and law, law and force, on man's natural rights which positive law must respect etc. The idea on

⁸⁵ Aristotle, *Politics*, III, xi, 2-4 and 6.

⁸⁶ Aristotle, *Politics*.

the rule of law has become the foundation of modern theory of constitutionality and inspiration of movements which fought for constitutionalism, as well as the instrument of struggle against the King's absolutism. John Locke advocated the view that government and authority are not their own purpose but are in the function of protecting man's rights and creative potentials whose practice the human mind accepts and can justify. The natural rights belonging to man by the very fact that he is a human being were interpreted by Locke as a basis and the reason for establishing governments. As the forebear of modern democratic theory, he developed ideas of the school of natural law that men as beings endowed by reason can secure peace and mutual tolerance if they all respect natural (i.e. accepted by reason as equal for all) rights to life, body, freedom and property. Positive laws which are introduced must also contribute to that purpose so that the government that adopts them can aspire to legitimacy and obedience. Locke assumed that every authority should be limited by the fact that it must serve the purpose that wise men intended and that no body, nor individuals nor parliaments, can have unlimited power. That also limits the content of law i.e. laws also can not be ordered to do all that political will wants, just opposite of what later Rousseau thought that the "general will" ("volonte general") of absolute popular sovereignty could.

According to Locke "the Law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent Agent to his proper Interest, and prescribes no farther than is for the general Good of those under that Law ... the end of the Law is not to abolish or restrain, but to preserve and enlarge Freedom... where there is no Law, there is no Freedom. For Liberty is to be free from restraint and violence from others which cannot be, where there is no Law".⁸⁷ He required that positive laws must fulfill certain conditions to be considered laws in the true sense. Locke lists some conditions: although legislative power is the highest authority in a country it "is not nor can possibly be absolutely Arbitrary over the Lives and Fortunes of the People", it further "cannot assume to its self a power to Rule by extemporary Arbitrary Decrees, but is bound to dispense Justice, and decide the Rights of the Subjects by promulgated standing Laws and known Authoris'd Judges"⁸⁸; that Legislature "cannot transfer the Power of Making Laws to any other hands" and is limited (bound) because its authority "is put in them by the Society, and the Law of God and Nature ... to govern by promulgated establish'd Laws, and not be varied in particular Cases, but to have one Rule for Rich and Poor, for the Favourite at Court and the Country Man at Plough"; also "Laws ought to be designed for no other end ultimately but the good of the People".⁸⁹

⁸⁷ John Locke, *Two Treaties on Government, Second Treaty* (Beograd, Ideje, 1978), Chapter VI, par. 57; quoted from Peter Laslett's edition (Cambridge University Press, 1963).

⁸⁸ Ibid., Ch. XI, par. 135 and 136.

⁸⁹ Ibid., par. 141 and 142.

The rule of law is a necessary prerequisite to establishing and strengthening democratic relations and on the other hand democracy is also in a way the precondition to establishing the rule of law as the expression of reason, dialogue, reflection not force. Therefore it can be said that democracy is necessary but that is not a sufficient condition neither for the legitimacy of a regime nor for the adoption of good laws. Democracy can be radical (such as it would be if Rousseau's concepts were realized through it or as the Jacobinians implemented in the French Revolution) and it can be totalitarian.⁹⁰ Since the time of Aristotle it is taken as a given that democracy is evaluated by its level of respect for some general rules. If it doesn't it becomes mobocracy or ohlocracy.⁹¹

Montesquieu knew of difficulties and the need to secure freedoms through a structure of the political system which would allow one power to limit another effectively. Rousseau's theory did not envisage developed institutional obstacles and balances nor adequate procedures. There were so many revolutionaries who wanted to exchange the previous absolute authority with another absolute in which they would participate.

A great problem that accompanies democracy is the one that has been debated from Aristotle to Stuart Mill and relates to the so-called tyranny of the majority. The majority does not in itself turn evil into good through its support. Franc Neumann wrote that the voice of the majority can not make evil into good but that evil with the support of the majority becomes an even greater evil.⁹² That means that agreement, participation, mass support and other similar forms of acceptance and popularity are just a necessary but not sufficient condition for the legitimacy of an authority and its laws. Modern theory of legitimacy would add rationality of action for those who propose laws as the condition of their legitimacy i.e. it would demand that laws be rational responses to a given situation.

There are two opposite views on the nature of the rule of law and so called legality. Whether the orders of a political will, backed by enough force can be treated as laws no matter what their content, is a question which was debated by both ancient and today's legal and political philosophers. The law was multiply contradictory from its very beginning. On the one hand it is an expression of political will and on the other an instrument of rational regulating relations and conflicts and a way to limit political will and political arbitrariness.

⁹⁰ See J. Talmon, *The Origins of the Totalitarian Democracy*, London, 1952.

⁹¹ Aristotle considered that democracy in which "the supreme power belongs to the masses, not the law... is caused by demagogues... That kind of democracy is what tyranny is among monarchies" (*Politics*, IV iv 3-6 or 1292a).

⁹² Franz Neumann, *The Democratic and Authoritarian State* (Zagreb, Naprijed, 1974, p. 177).

The rule of law is impossible if law is interpreted only as an expression of the will of the ruling circles. Legal practitioners differ on this question with legal philosophers. Power in society is a product of social organization, but also it is necessary precondition of society in some form of authority, which is just an expression of power. That is why political philosophy, i.e. the theory of legitimacy, deals with the modalities in which the authorities and especially the institutionalized public authorities gain the support of those which it rules, that is with the limits of authority and criteria of its legitimacy and not its abolition. All European revolutions, from the end of the 16th to the 20th century, offered new basis and modalities for the legitimizing of authority. Robert Michels wrote that perhaps the entire human history is nothing more than a struggle between different conceptions of authority.⁹³

Whatever the importance of and need for the element of political will in creating the law it must not be forgotten that for the essence of law the element which makes it the foundation of human civilization is much more important. The law becomes that with its degree of rationality in regulating relations among people, including those in power. The attitude towards the law will depend much more on how adequately it regulates relations between people and the movement of goods, services, ideas, to be conducted freely and under humane conditions, than on the severeness of threatened punishments. For the law to be rational, it must be a sufficiently wide framework for what is called "legal traffic" and which is just the reflection of other forms of traffic i.e. exchanges among people. The content of given laws depends on the quality of the legislature i.e. on how much it is an instrument which facilitates or makes more difficult this traffic. Instead of everything being proscribed by law, it is much more important for the legal system to be rationally ordered so as to enable people to have a favorable framework to live in. That essentially means to secure man's life, body, freedom and property as Locke wrote. Those are the values that orders were set up for and which were constantly violated, frequently in the name of the regime.

Even when it claims it does not, i.e. when it praises liberal principles because of their popularity, authoritarian regimes by their very nature want to interfere in everything and make large, rigid and comprehensive legal systems which goes into great detail when regulating numerous aspects of social and human relations. That happens most often through so-called imperative norms i.e. regulations which must be implemented in a strictly defined manner disregarding the fact that those who would want to regulate their relations would want to reach agreement (contract) in a different way. It builds, if we use Durkheim's categories, mechanically, by external bounds, a society secured with repression and criminal sanctions instead of a so-called organic community

⁹³ Robert Michell's "Authority", *Encyclopaedia of Social Science*, Vol 2, pp. 320-321.

based on solidarity and which rests on developed individuality, personality, mutuality, mutual usefulness, tolerance, understanding, offering favorable and to the average human mind understandable frameworks of order and mutual life.⁹⁴

With the tendency of statism to expand and strengthen, and that is today's tendency in many postcommunist countries, political power, i.e. institutionalized political power constantly expressed the tendency to treat the law as a mere means of expressing and conveying its will in a way similar to the situation under communism. But these beliefs are being propagated in our times in the name of radical ideologies, national states, constitutional nationalism⁹⁵ and other points of view and interests which defend the authoritarian rulers or simply speak out in favor of the strongest.

The conflict between political will (which, once unlimited grows into arbitrariness) on the one side and the law or feeling of justice on the other is one of the characteristics of history. Despite momentary and disputed "profits" which the use of force or "the right of the mighty" can bring, it appears that in the final instance life proves right the legal philosophy in its understanding that one system of norms which aspires to call itself legal must not break off with the category of justice which logically and historically justifies the legal system, nor can it be legitimized through the arbitrary interpretation of justice as the will or interest of the strongest. A prototype of that viewpoint Trazimah's stand in Plato's *Republic* can be taken.⁹⁶

⁹⁴ Emil Durkheim, *O podeli društvenog rada* (On the Division of Social Labor), Beograd, Prosveta, 1972, pp. 111-240. The lower or mechanical form of solidarity is based on mutual political and legal frameworks which Durkheim analyzes through conditions of imposition and the implementation of criminal law and administrative punishment. Besides the outer frames, unity is based on "organized belief" (which in the 20th century has the form of political ideology). The founding of larger and stronger wholes under those conditions calls for organized awareness in which the collective completely suppresses and represses the individual. That community assumes that people are equal. Higher or organic forms of community imply the fact that people are different. "The first form is possible" says Durkheim, "in the measure in which the individual fits into the collective, the second form is possible only if everyone has their own field of activity if she or he has a personality." (pp 160-161).

⁹⁵ Robert Hayden "Constitutional Nationalism in the Formerly Yugoslav Republics" in the *Slavic Review* 51, No 4, 1992.

⁹⁶ Trazimah's views, attributed to him in Plato's *Republic* were that "nothing but that which serves the strongest is just". The topic of force, arms and compulsion is ever-present, not just a guarantor of "validity" but the very foundation or essential feature of "the law". That concept of law omitted justice and rationality as the internal content and very essence. But even Seneca believed (or at least stated) that right is in the arms, that is, that those who are armed are always right (*Jus est in armis*), and so on to Bismarck, who also said that might precedes right (Die Macht geht vor Recht), and Stalin, who similarly stressed Lenin's stand that "The dictatorship of the proletariat is unrestricted by law and based on the violent rule of the proletariat" (J. V. Stalin, *Questions of Leninism*).

History, and especially the practice of political regime's in the 20th century has shown that the entire legal system of a country, no matter how much it is uncontradictory or consistent inside itself, and how effectively implemented (for example the national socialist regime and legal system were like that) does not necessarily have legitimacy nor civilized countries recognize it.

So, the rule of law does not mean, as it is frequently and wrongly interpreted, just the implementation of the existing laws and constitution. It does mean rational law which incorporates the main civilization achievements concerning human rights, and institutional arrangements which guarantee their implementation as well as adequate participation in managing society. The rule of law among other things means equal rights for all which further means equal opportunities for all. Just in another sense, the rule of law in a wide sense implies constitutionalism which regulates the relationship between local, provincial, ethnic or national political and cultural autonomy and self-administration, and on the other side provides all necessary guarantees for viability and sovereignty of a wider political entity, the state in frames of which the autonomy is enjoyed. Constitutionalism means also separation of powers and certain distribution of powers/jurisdiction in both horizontal and vertical dimension. That guarantees the autonomy of parts and integrity of the whole.

The universalization of principles is very important for solving many problems and establishing consociation of different ethnic groups. Frequently we witness that what one group asks for itself, that very group denies to others, and vice versa. This is something contrary to the deepest sense of the rule of law which has to include only principles that can be propounded as universal in the sense that Kant had in mind. Groups or their representatives can not propose some rules for the others and ask for an exemption in favor of themselves, or vice versa. Also each request has to be judged in the light of consequences in a case such a request would become a general rule.

In regard to political power, the law is one of the most basic and important forms of rationalization of the act of ruling, as it replaces the more rudimentary and coarse form of direct domination with rules which leave some space for freedom inside given norms. Some rudimentary legitimization of power and its holders is achieved, when power is based on some rules, even if that very government enacts those rules. From the point of man as member of the human community the offer of rules meets the seemingly deep rooted human need for order and certainty. Even at the cost of great sacrifice and suffering, man tends to live within ordered relations (inside a gnomic world) in which there is some public, social authority. Man feels anomie as the uprooting of the very foundations of his social existence and psychological stability. Great political thinkers, religious reformers, legislators, tried to reason out a minimum of rules based on which people could live peacefully in communities. Confucius' golden rule, Buddha's and Christ's teachings all have the same message: "Do not do unto others what you don't want others to do unto you".

Whatever the “democratic” veil around some institutions, that what the democratic public expects and assumes will be left out if institutions do not function in the context of the rule of law. The popularity of a liberal democratic principles is great, but they imply a limit (at least in theory) of power, and on the intervention of the authorities in the field of human rights and freedom, as well as in economic and social affairs. There are, however, in postcommunist countries many ideas about establishing a “Rechtsstaat” which would also be a “Social State” i.e. some kind of Welfare State.

Having in mind the recent and current experiences we know that a constitution can promise all rights and freedoms and in practice such rights and liberties can be not just limited but also derogated to mere phrases, and even ruthlessly violated and crushed not only individual rights, but human beings themselves. The rule of law as a principle of political constitution in a real sense faces a number of obstacles: absolute power; underdeveloped democratic political culture, lack of democratic tradition; the invoking of the principle in a way that is contrary to it; ideological or nationalistic blindness which creates intolerance; insufficient knowledge of the nature of this principle as postulated, analyzed and developed by political and legal philosophy. Of all these the most important causes of the violation of the principle, both in the past and today, is the absolute power regardless of who (or what) is the bearer of such power.

The whole of history teaches us that the nature of political power is such that it tends to enlarge and concentrate and improve instruments of power, as well as the expansion of its influence and dominance in regard to the number of people and territory it encompasses. Lord Acton became a frequently quoted writer because of his pregnant aphorisms which he used to express millennia of experience on the corruptive nature of power. His words that "power tends to corrupt and absolute power corrupts absolutely" are famous. He writes: "Great men are always bad men even when they have influence and authority, and even more when you add the tendency or certainty of corruption due the authority they have".⁹⁷ Even without these popular and frequently quoted warnings, the history of Stalinism, Maoism, Titoism would be sufficient for us to learn what those quotes mean. But a practical conclusion should also be drawn in favor of the rule of law and some institutional bases which would contribute to it. Those are primarily a separation of powers, the role of the independent judiciary and a significant limiting of the power of all and especially of individuals with huge or unlimited power. It is not accidental that during the Brezhnev era, the Soviet ideology and press praised as the only good institution of the Yugoslav system at the time the institution of President. It is also not by chance that all the states that came out of the former communist systems have introduced presidential

⁹⁷Lord Acton "A Letter to Mendell Creighton" in *Essays on Religion, Politics and Morality*, edited by J. Rufus Fears, Indianapolis, 1988.

systems. The same holds true for the former Yugoslav republics. Undoubtedly the periods of crisis and sudden changes include many challenges which seem to favor the concentration of power in the hands of one or just a few people. But, various directoriums regularly present the way towards a Bonapartist form of rule. Those forms were, from Caesar to Cromwell, two Napoleons, Hitler and Mussolini, always accompanied by strong elements of populism. The system of the convent rule also gave bad results at the time of the French Revolution and was later mainly abused as a way of manipulating a democratic form of authority. The role of Jacobinian concept, system of government and the technique are compromised in practice and in theory, but they still can serve for purposes of manipulation and mobilization. That is why separation of powers with the “checks and balances” is perhaps less “democratic”, but definitely more appropriate to create conditions favorable to the rule of law. Judicial review and control of constitutionality of legally adopted laws is also a limit on democratically elected legislature. But such limits simply put some rules above anybody’s will.

Individuals with absolute power are always a danger for democracy, and an obstacle for consociational democracy. That is why in our view parliamentary system is a better one for developing democracy than presidential one. Juan Linz expressed the same opinion concerning conditions for transition from authoritarian rule to democracy. Within the parliamentary system in which the legislative body is a relatively adequate reflection of the influential forces in society and in which the moderate and wisest forces of society can influence affairs using the freedom of debate and possibility of freely expressing differences, offers possibilities of all arguments being taken into consideration, and so for potentially the best choice. We must remember, however, of fruitless efforts and sad fates of some reasonable individuals in communist and other authoritarian regimes since ancient times (such one tried to warn on time and o convince the communist leadership of the irrationality of the policy of collectivization of agriculture; another warned against neglecting to invest in industries producing consumers goods; and still another in the distant past opposed the building of Chinese Wall). But, authority that is too strong does not understand the reason. Just as the illiteracy of an emperor was explained by a statement that an emperor was above the grammar, so every authority, if absolute, instead of relying on the power of the argument would resort to the argument of power.

The rule of law among other things means equal rights for all which further means equal opportunities for all. Just in another sense, the rule of law in a wide sense implies constitutionalism which regulates the relationship between local, provincial, ethnic or national political and cultural autonomy and self-administration, and on the other side provides all necessary guarantees for viability and sovereignty of a wider political entity, the state in frames of which

the autonomy is enjoyed. Constitutionalism means also separation of powers and certain distribution of powers/jurisdiction in both horizontal and vertical dimension. That guarantees the autonomy of parts and integrity of the whole.

By treating the law primarily in the role of a political tool and defining it through state compulsion which is used to implement it, legal positivism has excluded the meta-legal basis of the legal order, weakened the axiological foundation for criticism of the law, a foundation that exists outside the law (in some system of values, political or legal philosophy, theory of natural right, ethics, achieved results etc.). That reduced criticism of the law primarily to criteria such as consistency between norms in regard to their place in the hierarchy, efficiency, i.e. to the questioning of conditions for the implementation of a legal system. All that is an important part of the law, but in the final analysis it can only be a manifestation of compulsion, force, sufficiently strong political will.

On the influence of legal positivism on the acceptance of state will as the highest law, Gustav Radbruch says: "Legal positivism which is taught, more or less, at all schools has accustomed lawyers to accepting all state will in the form of law as the law".⁹⁸ He understood that for a lawyer in practice, there is no other law except the "proscribed" positive law, but he also tended to oblige the state with "beyond positive, natural law, the same natural law principle which is the only one that the validity of positive law can be based upon".⁹⁹ According to Radbruch, as well as other advocates of the concepts which recognize meta-legal criteria for evaluating the law, the rule of law obliges the legislator i.e. the legislator is bound by the law.

2. Reshaping Institutions of Majoritarian Democracy: Constitutional Government as Polyarchy

The relationships between ethnic groups in non-democratic, authoritarian and totalitarian states, were (and still are) characterized by domination of some political (and sometimes ethnic) groups over others. This has to be surpassed by political, social and economic reforms. Models of domination have to be replaced by some models of partnership and consociation.¹⁰⁰

⁹⁸Gustav Radbruch "Aphorismen Zur Rechtsweisheit", Gottingen, 1963, Aphor 1948.

⁹⁹Ibid., Aphor. 1932.

¹⁰⁰Here we talk about consociationalism in the same sense as Arend Lijphart does in his works: *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale University Press, 1977; sec.printing 1980), *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven: Yale University Press, 1984), and "Non-Majoritarian Democracy", in *Publius*, vol. 15, no 2, 1985. It is encouraging that two modern, democratic and prosperous European states, heirs of two

Appropriate constitutional arrangements can contribute significantly to civil peace, to establishing viable and democratic political entities, to political stability and to improvements of the life of the people. Such arrangements today imply constitutional and other safeguards for human rights, i.e. protection of people's lives, families, liberties, property. But, that touches a very important element, which still remains controversial - the issue of collective (ethnic) groups' rights.¹⁰¹

Constitutional and institutional arrangements that we are going to mention are based on literature and research which is carried by scholars who dedicated their work to studying conditions for a successful consociation. It is obvious that different institutions have to be introduced depending on whether national (ethnic) groups are "territorialized" or dispersed. The idea of our approach is that citizens who are in a minority position should enjoy some special rights. And, whichever group is in a position of minority it has to enjoy all individual

old confederacies, succeeded - on federal or consociational basis - to institutionalize conflicts among constituent parts which once upon a time were involved in armed conflicts, and to provide frames for democracy, freedoms and welfare. We have in mind Switzerland and the Netherlands, whose experience, as well as of other states which succeeded to solve problems of how to live together in diversities, ought to be studied (See: Arendt Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, Berkley and Los Angeles: University of California Press, 1969; and Jurg Steiner, *Amicable Agreement Versus Majority Rule: Conflict Resolution in Switzerland*, Chapel Hill: University of North Caroline Press, 1974). These two examples tell us, too, that it is not federalism alone which helps. Switzerland is a multi-national and multi-lingual country, but her federalism basically is not organized along nationality or lingual lines, and cantonal self-government certainly helped to disperse tensions and to prevent conflicts between larger national blocks .

¹⁰¹ See e.g. Robert Cullen, "Human Rights Quandary", in *Foreign Affairs*, No. 6, 1992. Here many dangers of recognizing ethnic-nations rights are expounded. Many of ethnic-nations whose ambitions to achieve "nation-state" were mentioned in the article as a threat to peace, have in the meantime achieved their states. A different approach to this issue is taken in regard to liberal political theory by Michael Freeman ("Minority Rights in Liberal-Democratic Theory", in *Nationalism and Minorities*, Belgrade, University of Essex and Institute of Social Sciences, 1995, pp. 9-14): he suggests that liberal individualism advocated by Locke and more recently by John Rawls should be revised to find a place for minority rights. Otherwise, Lockean idea that right-protection and peace are connected, and if rights are systematically disregarded, it will lead to disorder, becomes reality when some minorities are systematically overlooked by victorious majorities, and remain permanent minorities. On the side of his arguments, Freeman quotes the critique of Rawls' theory in this respect (Vernon van Dyke, "Justice as fairness: for groups?", *American Political Science Review*, 69, 1975, pp. 607-14). Van Dyke wrote in another work on complementariness of community autonomy in internal affairs with a system of fair bargaining in regard to common interests (Vernon Van Dyke, *Human Rights, Ethnicity and Discrimination*, Westport (Conn.):Greenwood Press, 1985).

human rights without any discrimination, and above that some special minority rights. In this respect at least some minimums are required as standards which should be guaranteed and protected by international covenants, constitutional arrangements and efficient guarantees. In some cases judicial bodies and agencies involved in implementing justice for a longer period of time should be persons with an international reputation and expertise. If there is no other way, then some kind of international trusteeship over such territories has to be introduced.

It would be advisable to reach mutual consensus among groups representatives to the effect that respective groups treat and guarantee to each other or each one to any other equal rights and protection. Such a consensus should be elaborated into a treaty or constitutional law.

Different options are considered for solving (or trying to solve) problems in inter-ethnic relations in frames of the rule of law and some institutional arrangements based on individual and some minimums of collective ethnic groups rights. Options which are usually offered or considered in literature are based on different types and degrees of *autonomy*, decentralization and the delegation of authority to lower levels in the traditional state hierarchy, self-administration of local affairs wherever a minority is significant (numerous) as a group in local community, cultural autonomy (which was discussed a century ago by Austrian socialists), home rule for minorities (Greenland model), wide cantonal or regional autonomy (Switzerland and Spain are frequently taken as good examples; and recent solutions for Alto Adige /South Tirol/ in Italy), ethnic federalism, which was sometimes in the past considered as a very good solution, but the experience of former communist federations proved that this form, particularly if practiced in etatistic and authoritarian frames with one party monopoly, brings many difficulties.

Consortium implies ethnic pluralism, and tries to base such pluralism on some constitutional and institutional arrangements. It modifies majority rule or majoritarian democracy, but some authors write about "compound majorities" and of "non-territorial federalism" or "functional federalism".¹⁰² We take consociationalism as a social and political fact on one side, and as an institutionalized system of partnership in power, on the other. But, some scholars point that even "consociationalism is a specific form of elite domination based on ethnic proportionality" (P. L. van den Berghe).

Many traits of political systems, that Lijphart treats as elements of majoritarian democracy, have to be modified or abolished in a consociational regime, like concentration of executive power in one-party and bare-majority cabinets (and this refers even more to cases when concentration of power is in

¹⁰² D. Elazar, "Federalism and Consociational Regimes", *Publius*, vol. 15, no. 2, 1985. This issue of *Publius* is dedicated to "Federalism and Consociationalism: A Symposium."

one person as it is more or less situation in all former communist states, and in all former Yugoslav republics); executive dominance in executive-legislative relations (which was the case under communist regimes, and also in postcommunist ones); unicameralism or bicameralism with a very weak second chamber; two-party system (instead of that, real multi-party system is better solution with parties which do not base their politics on ethnic grounds solely); one-dimensional party system (i.e. party system in which the parties' programs differ from each other mainly along the one issue dimension); plurality system of elections (proportional system is better solution for consociation); unitary and centralized government in which there are no clearly designated geographical and functional areas from which the parliamentary majority and cabinet are barred; unwritten constitution and parliamentary sovereignty: where the majority's power to legislate is not restricted by any requirement of qualified majorities or judicial review; exclusively representative democracy in which the power of the parliamentary majority is not restricted either by any element of direct democracy such as referendum.¹⁰³ Lijphart relies on Robert A. Dahl, who, dealing with problems of democracy, suggests political processes to resolve conflicts involving subcultures. Among devices he includes mutual veto, autonomy on a territorial or non-territorial basis, and proportional representation.¹⁰⁴

In contrast to just mentioned possible features of majoritarian democracy, Lijphart especially stresses elements of non-majoritarian, that is of consociational democracy: executive power sharing instead of being exercised by one party, bare majority cabinets; coalition governments of two or more parties; balanced executive-legislative relations instead of executive that dominates legislature; effective bicameralism; multi-party system as an antithesis of one or two-party systems which are not appropriate for the purpose of consociation; multidimensional party system (which means that differences between parties are not based on one element only, like, for example, national origin of members or national program aims); proportional representation in contrast to the plurality method (to what we could add so called positive discrimination in

¹⁰³ Lijphart, "Non-Majoritarian Democracy", op. cit. In his *Democracy in Plural Societies*, Lijphart particularly considers effects of varieties of "Grand Coalitions", mutual veto, proportionality, segmental autonomy and federalism, but also deals with problems of secession and partition. Among favorable conditions he treats the balance of power, multiparty systems (especially representative party systems), overarching loyalties, traditions of elite accommodation. But he is also aware of some disadvantages of consociational democracy. S. Ramet deals extensively on how "balance of power" politics affected former Yugoslavia (see: Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia, 1962- 1991*, Bloomington: Indiana University Press, 1992 (second edition)).

¹⁰⁴ Robert A. Dahl, *Political Opposition in Western Democracies*, New Haven: Yale University Press, 1966, pp. 357-359.

favor of small group); federalism/decentralization; written constitution; minority veto (we would precise: for the most important decisions crucial for the identity and existence of minority groups).¹⁰⁵ An ombudsman for each ethnic group should be established from among persons belonging to such a group and elected by their members.

For any democratic body politic, and particularly for a consociation, it is of vital importance to establish and to safeguard individual human rights and freedoms. Human rights and freedoms, in accordance with the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights (1966) have, indeed, to be taken as a starting point in solving problems of ethnic groups. Low standard of these rights and their implementation and safeguarding is one of elements which helps to explain why so many individuals in communist and other countries tried to find a harbor under the umbrella of their ethnic fellows. Also, monoorganizational structure of these societies and states, and the fact that no particular or group interests could be legally articulated, expressed, advocated and represented outside of mono-organizational structures, made many people to stick to their national or ethnic ties in order to instrumentalize them in such a way that it would make possible for them to provide actual or future participation in allocating values or in sharing in allocated values, which according to Harold Lasswell under certain conditions would mean "sharing power". The over stressed role of the state versus individual, makes ethnic groups so eager to achieve their own, independent state.

Ethnic groups rights, sometimes called minorities rights or national rights, can not be denied, underestimated or neglected today, but have to be taken as supplemental to individual rights. Some balance between individual and collective rights has to be provided. There has to be here some balance, which authentic federalism is capable to establish. Many individuals still think that it is true what Giuseppe Mazzini had said - that a man can not be free if a nation he belongs to is not free. So talking about rights today in a multiethnic society, one has to include some basic collective rights of ethnic groups. These rights are recently discussed at different international conferences and have a perspective of becoming part of the international law¹⁰⁶ and could help in establishing consociations. We have in mind attempts and documents or drafts of documents which can be interpreted as elaboration of Articles 1 and 27 or as an implementation of provisions of the International Covenant on Civil and Political Rights.¹⁰⁷

¹⁰⁵ Lijphart, op. cit.

¹⁰⁶ Some arguments against collective ethnic groups rights see in Robert Cullen, "Human Rights Quandary", in *Foreign Affairs*, 1992.

¹⁰⁷ Such an instrument of implementation is, for example, Facultative Protocol to the International Covenant on Civil and Political Rights, whose ratification by a certain country would mean that individuals of that country, their complaints and grievances concerning violations of their rights, could legally address to international bodies.

The protection of minorities (national, religious - ethnic in a wide sense) has a longer history which goes far in the past when European powers tried to protect Christian minorities in Turkey. But in a systematic way, the protection of national minorities was introduced after the World War I. The peace treaties that were concluded at that time (1919 and after) had explicit provisions that were imposed to newly created countries including Kingdom of Serbs, Croats and Slovenes (later Yugoslavia), Hungary, Czechoslovakia, Romania, Bulgaria, and some other countries. This institution, intended to protect national minorities, was misused in the period between two world wars, and so after 1945, the stress was on individual human rights and freedoms. Also the mentioned protection was ineffective in respect to minorities and the suspicion has remained among those who should be protected concerning the effectiveness of such a protection. That's why minorities do not trust treaty and constitutional provisions guaranteeing their rights. The Charter of the United Nations, the Universal Declaration of Human Rights and Covenants of 1966 were inspired and permeated with the ideal of individual rights. But, the idea about the right of people to self-determination (though of ambiguous meaning) was a basis for some collective rights.

Many international and the CSCE (Conference on Security and Cooperation in Europe) documents take "persons" belonging to ethnic groups as subjects of the protection. Their rights are guaranteed regardless to which ethnic group they belong, which means that the stress still is on individual rights. In a more recent time, trends are more and more in favor of protecting at least some minimum of collective rights of ethnic groups. Both International Covenants of 1966 in their articles no. 1, have the same provision that "All peoples have a right of self-determination". In practice it is extremely vague and complex concerning the subject and modes of self-determination, and it does not imply a right to secession which is rarely advocated in political theory and is not provided by international law.¹⁰⁸ The trend toward minority rights is, though slightly, reflected in the Paragraph VII of the Helsinki (CSCE) Final Act which calls participating states "to recognize and respect the rights of individual, alone or in community with others" (such a formulation is proposed last year in the UN regarding economic activities, which really covers the right of free enterprise). Despite this moment, a careful reading of one of the most elaborated documents of the CSCE follow-up conferences, - the Copenhagen (June, 1990) Conference on Human Dimension of the CSCE, shows that it repeats many times that provisions relate to "*persons* belonging to national minorities", and only in Art. 32.6 it says that "Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other

¹⁰⁸ See our paper presented to the IPSA Congress (Buenos Aires, July 1991) on "Self-Determination and Secession: Ideas and Problems in Yugoslavia."

members of their group". It seems that this is taken by some and rejected by others as a basis for some rights which can be enjoyed (only) collectively (an individual can not have his own script, language, or university). But even states that initiate discussions and regulations of human rights issues are reluctant to treat them as collective rights. It happens because consequences would be far-reaching for nation-states, which are in reality composed of minorities.

The mentioned Copenhagen document states that "the participating states recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law with a functioning independent judiciary". It stipulates "equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power". It also stipulates many rights for persons belonging to minority groups (fundamental freedoms without any discrimination; full equality with other citizens; the right fully to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects; to use freely their mother tongue in private as well as in public; to establish and maintain their own educational, cultural and religious institutions, organizations or associations; to profess and practice their religion; to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other states with whom they share a common ethnic or national origin, cultural heritage or religious beliefs). The states are obliged to protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotions of that identity.

"The Charter of Paris for a New Europe" (November 16, 1990) is more general (as it is the Statement of the Heads of States) and less devoted to minority issues, but it states that "democracy is the best safeguard of freedom of expression, tolerance of all groups of society and equality of opportunity for each person", and then that *democracy is necessary but not sufficient means*¹⁰⁹ to ensure the guarantee of group rights. It admits that it is widely recognized that in the absence of special measures, it is not possible to protect minority rights through the traditional modes of protecting individual rights. These ideas are being elaborated at some other conferences and there are conventions proposals based on them.¹¹⁰ It is widely recognized that after so many years of

¹⁰⁹ Italics are ours.

¹¹⁰ The Conference of Experts on Minority Rights (St. Petersburg, June 2-4, 1991) recommended to CSCE participating states to adopt a Covenant on Minority Rights. As we said, many states are objecting to such an instrument of minority protection. Also, important are: the Meeting of Experts on Minority Rights (Geneva, July 1-19, 1991) and CSCE Conference on Human Dimension (Moscow, September 10 - October 4, 1991),

putting the stress on individual rights, the content of collective minority rights needs an elaboration. Different are the problems regarding "territorialized" minorities and dispersed minorities living in diaspora.

In short, beside individual rights some collective rights have to be treated and guaranteed as a minimum. Among mentions rights, all nations (ethnic groups), as well as persons belonging to these groups, should have the right to manifest their religion or belief, in public or private, in worship, teaching, practice or observance, in the way usually practiced by believers or religious communities.

Because of different (mis)interpretations of democracy, it can be used as a facade or a mask for different populistic, bonapartistic, authoritarian "institutions" and practices. This, as well as the history of the notion of democracy, persuades us that the term "democracy" can hardly cover all those things which are advocated today by most political scientists dealing with the normative political theory. We are going to argue in favor of institutional arrangements in an open, pluralistic civil society, which limit, deconcentrate and disperse any power, even "power of the people". In terms of normative political theory, and in frames of an open pluralistic society, it is perhaps justified to make our choice/support in favor not of majoritarian democracies, but of "constitutional polyarchies". We see that, in fulfilling this function, the rule of law and "democracy" are complementary, but if we would have to make choice between two, then the advice of classic political thinkers, including founders of democratic theory, would be that the "rule of law" is more crucial and has higher priority than "democracy" in its etymological and literary meaning. That all, because democracy, without the rule of law i.e. when it is not based on some constitutional principles but just on the force, power or prevailing *ad hoc* will of any individual, body or the "people" as a whole can, according to many classic political thinkers, deform into the worst of all forms of government. This is true today as well as in the past.

Constitutionalism as a "constituent principle" is interrelated with the rule of law, and includes separation of powers and a certain dispersion of authority both in the vertical and horizontal sense. In the "Declaration of the Rights of Man and Citizen" adopted in 1789, Article 16 says that there is no Constitution in that country which does not guarantee the rights of the citizen and in which

and there are others in frames of the CSCE and the U.N. In the Concluding Document of the CSCE Vienna Conference participating states confirmed their commitment to the principle of self-determination of the peoples, to strictly and effectively observing the principle of the territorial integrity of states (but these principles contradict to each other!), and to taking effective measures to prevent and eliminate discrimination against individuals or communities, on the ground of religious beliefs, to foster a climate of mutual tolerance and respect, and to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory.

there has been no separation of powers. The constitutional government is in a sense always polyarchic. Its assumption is a strong civic society, and a weaker and socially responsible government.

The rule of law places legal principles above "state reasons" and that really means above the state authorities. Statist concepts of the relation of society and state are not in accord with the rule of law. The rule of law assumes the lasting nature of rights and duties, the idea of continuity and respect for vested rights. Frequently, and especially arbitrary changing of rules , and usually excessive regulating of relations with a limiting of autonomy, runs counter to this principle. It assumes an independent judiciary, and that in turn assumes some kind of separation of power. All these principles can obstruct those who believe they represent the will of the people or "popular sovereignty" and they can feel called upon, in order to implement the will of the people, to break some legal rules.

For the rule of law, the due process of law is important. The procedures in accordance with which decisions are taken on man and his rights, systems of elections, decision making, openness, parliamentarianism, the procedure of adopting laws etc. - all these are contributing to both democracy and the rule of law. To control and respect "legality" a two-tiered or multi-tiered procedure is established, and usually, institutions of the constitutional judiciary are introduced. The principle of legality in the legal positivist sense must be included in the minimum of criteria which a legal system should meet. Most legal philosophical schools believe that to be the case, but they demand of the law more than just the accord between norms of lower legal force with those of higher and that citizens, legal persons and government administration abide by the law.

In the region we talked about , the process of transforming the ideological state into the "legal state" is not yet over. That process is accompanied now by moral and legal uncertainty, which is also a tool of authoritarian control. And other, much worse, processes have begun which bring about lawlessness. It is taking on mass proportions and "the law" is taken into their own hands by those who are in conflict with it. Uncertainty of life, freedom and property seem not to be worrying the authorities who are preoccupied with their own preservation, in those conditions the basic ratio of authority (of any kind) is lost and the regime, in that case, falls lower than a despot since it does not meet even the function that Hobbes said establishes the Leviathan. The difficulties and problems are numerous in achieving the rule of law. It is hard to imagine in the general uncertainty, undeveloped political culture, widespread authoritarian forms of behavior, burden of dogmatism, convertesque ideological exclusivity coupled with unlimited power and total insecurity among the citizens. The deeper causes are in the non-existence of the highest moral law.

The moral autonomy of lawyers is a prerequisite for so-called free judicial conviction which relates not only to judges. The lawyer must be prepared to say

“No” if his professional knowledge and conscience tell him to even when everyone else says “Yes” or agrees. Individual civic courage is needed and the solid support of colleagues from the same profession to establish legality let alone the rule of law. Those individuals in the recent past got serious consequences as shown by the cases of trials of judges, public attorneys and lawyers and cases of bravery within the limits of legal and meta-legal ethical principles, one of which is described in the book *The Judge*. That was done in the name of moral autonomy and professional ethics.

In general, to achieve the rule of law, democracy, more freedom and guarantees for human rights, political power has to be limited and social power in general dispersed. Political power has to be dispersed in horizontal (separation of powers, checks and balances and other institutional arrangements) and in vertical sense (decentralization, territorial autonomy, federalism). And also different political, social and economic factors (like political parties, professional associations, trade-unions, churches, universities, research institutes, the press, enterprises, corporations, foundations) have to enjoy autonomy and in frames of some basic laws (constitutions) to have a possibility to influence political decisions. Such a society would have political structure which could be called constitutional polyarchy. That would facilitate democratic transition and consociational arrangements among ethnic groups. Concentration of power makes both goals difficult to achieve.

Human rights and freedoms, not only for individuals in accordance with the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights of 1966,¹¹¹ but also those collective rights of ethnic groups which are recently discussed at different international conferences of scholars and probably one day will become a part of the international law. We also have in mind attempts and documents or drafts of documents which can be interpreted as elaboration of Articles 1 and 27 or as an implementation of provisions of the International Covenant on Civil and Political Rights.¹¹² Many Yugoslav scholars contributed to spreading the idea of

¹¹¹ Yugoslavia ratified these Covenants in 1971. For their text in Serbian, see Jovan Djordjević, *Ljudske slobode i prava*, Beograd, *Arhiv za pravne i društvene nauke*, 1968; and also *Službeni list SFRJ*, god. XXVII, br.7 of February 4, 1971, which contains Serbo-Croatian and French version. This official gazete is also published in Albanian and several other languages used in Yugoslavia.

¹¹² Such are, for example, Facultative Protocol [to the International Covenant on Civil and Political Rights], which Yugoslavia signed this year (1990) and is expected to ratify it. This is of the utmost importance because that would give a right to individual citizens to address their grievances concerning violation of individual rights to international, i.e. CSCE bodies. In 1976 Yugoslavia initiated in the UN Commission on Human Rights to prepare a Declaration of UN on Rights of Persons belonging to Ethnic, Religious or Lingual Minorities. The draft of the Declaration is prepared to be submitted to the

human rights by supporting and promoting them, as well as by elaborating concepts and institutions concerning their implementation. It is assumed that individual human rights as civil and political rights, particularly in modern versions after International Pacts of 1966, which extended the range to social, economic and cultural rights, guarantee to individuals, among others, freedom of association, of the press, election, information and other civil and political rights, which are significant for achieving and exercising many "ethnic rights", too. The individual rights do not solve the problem of ethnic identity but do help to achieve the recognition of such rights. Individual rights like the right to participate in electing government can have direct effect on the right of self-determination (also provided by international covenants, but does not imply a right to secession) and some other collective ethnic rights, the use of which can lead to cultural autonomy. There is some interrelated connection between individual and group rights. There is a slow and moderate tendency to extend individual rights by some minimum of collective cultural and economic rights. It means that beside individual rights some collective rights have to be treated as a minimum. Nevertheless, as we already mentioned, collective rights can be achieved and exercised on account on somebody's else or everybody's individual rights because nationalistic governments established in pursuing collective ethnic rights can be very oppressive and authoritarian regarding individual rights of others, particularly of individuals belonging to other ethnic groups that inhabit territories under such governments. A balance between individual and collective rights has to be established and safeguarded

Neither individual nor collective rights should be used to violate similar rights of others, or to change by violence the state order or against the integrity and sovereignty of the state which are protected by the UN Charter. But just that has happened in former Yugoslavia, which for many reasons failed as a state and as a factual consociation of different ethnic groups (nations). Such a case of failure with tragic consequences gives an importance to the studying of conditions under which consociation can be fruitful and successful, constitutional and institutional arrangements that have to be established in order to achieve such an aim, and what have to be the characteristics of structures and processes of the consociation.

Commission, ECOSSOC and to the UN General Assembly. As far as the documents of the CSCE are concerned, it is not only the Final Act of the Helsinki Conference (see: Conference sur la sécurité et la coopération en Europe, Acte finale, Helsinki, 1975), but of the Charter for New Europe adopted at the CSCE summit in Paris in 1990 (this Conference decided to convene a meeting of experts in Geneva in 1991 to deal with problems of the protection of minorities), and the document of the Copenhagen CSCE Conference (1990) which deals with individual and collective ethnic (national) rights (particularly in part IV, points 30- 39).

Different options are considered for solving (or trying to solve) problems in inter-ethnic relations in frames of the rule of law and some institutional arrangements based on individual and some minimums of collective ethnic groups rights. Options which are usually offered or considered in literature are based on:

- Different types and degrees of *autonomy*:

Among important and frequently considered options are different types of functional self-government in fields like education, use of language and cultural activities ("National-cultural autonomy" as advocated once by Austrian Socialists) ; and possibilities of personal exemptions, though they challenge some principles that modern states are still based upon.

- Decentralization and the delegation of authority to lower levels in the traditional state hierarchy.

- Self-administration of local affairs wherever a minority is significant (numerous) as a group in local community.

- Cultural autonomy.

- Wide cantonal or regional autonomy (Switzerland and Spain are frequently taken as good examples; recent solutions for Alto Adige (South Tirol) in Italy are instructive and worth of wide studying); these are variants of territorial and political autonomy;

- Federalism was sometimes considered as a form which provides some advantages as a solution for the "national question": in expressing ethnic identity, national "sovereignty", preventing assimilation, hegemony, domination, legal inequality (in some cases to prevent or discontinue discrimination, maltreatment or even genocide), to extend the democratic participation, and in some cases to improve living conditions, while preserving larger political entities (in form of federations). In frames of quite a different concept, federalism was not excluded, but treated as a set of institutions which could serve purposes of consociational democracy. However, advantages of federalism are relative, not absolute, and depend upon some other conditions and circumstances. Eric Nordlinger, writing about "conflict-regulation practices" says that they "include a stable governing coalition, proportionality, and mutual veto", but he explicitly excludes federalism as a method of regulating ethnic conflicts.¹¹³

Ethnic federalism,¹¹⁴ which for some time in some countries was treated as the best global solution, has shown many deficiencies and shortcomings

¹¹³ Eric A. Nordlinger, *Conflict Regulation in Divided Societies*, Cambridge: Center for International Affairs, Harvard University, 1972.

¹¹⁴ In a normative sense "ethnic federalism" means an application of federalism in order to accommodate ethnic groups in a political system, i.e. to improve their position in the polity, via their autonomy and participation in power sharing on the ground of a constitution which allocates power to different governments and bodies, and established

(particularly in the Soviet Union, Yugoslavia, Czechoslovakia, but also in other cases). That's why some authors exclude federalism as a method of regulating ethnic conflicts.¹¹⁵

Ethnic federalism (where federal units are organized on ethnic/national principles), particularly if accompanied with some extreme ideas and secessionist movements, brings many problems. Some serious studies have to be done, and conclusions and suggestions based on such studies drawn. Despite the failure of these projects, lessons can be drawn from their doctrinal and political-institutional deficiencies. The failure and the dissolution of three such federations (Yugoslavia, the Soviet Union, and Czechoslovakia) also raised a lot of questions and suspicions: Isn't it federalism, organized along ethnic (national) lines, which caused the dissolution? The failure of this type of federalism influences the search for alternatives. After the experience with the dissolution/disintegration of the mentioned federations, political leaders try to avoid federalism, because it is now seen as an instrument which facilitates dissolution/disintegration.¹¹⁶

These suspicions regarding federalism are particularly related to political processes and consequences in former Yugoslavia, which can be taken as a negative paradigmatic case to illustrate how nationalistic ideas and movements caused the disintegration, as well as the character and the way of disintegration.

Though ethnic federalism brings a dispersion of power, it does not necessarily bring its democratization. It does not establish polyarchy, or maybe it does an ethnic polyarchy which can disregard or even threaten citizens, and not only those who belong to another group, but its own. Ethnic federalism presupposes and gives priority to corporate bodies. The establishment of civil society, the rule of law and so on requires adequate political culture, while ethnocentric political cultures are parochial even when very large groups share it.

the rule of law. This type of federalism would assume that each ethnic group would have its own federal unit, but in practice it is not so. In an empirical sense, ethnic federalism is a convenient means to solve some problems among diverse groups of population living in common political frames. But solving some, creates other problems. Concerning the life of diverse ethnic (national, religious, linguistic, etc.) groups in a joint political community, there is a great difference in regard to whether ethnic groups are "territorialized" or not, i.e. whether or not members of respective groups inhabit distinct territories which so become homogeneous in the ethnic sense.

¹¹⁵ Eric A. Nordlinger, *Conflict Regulation in Divided Societies*, Cambridge, Center for International Affairs, Harvard University, 1972, pp. 20-33 writes on "conflict-regulation practices." He says that they "include a stable governing coalition, proportionality, and mutual veto, but explicitly excludes federalism from his list". See: Arendt Lijphart, "Non-Majoritarian Democracy", *Publius*, vol. 15, no. 2, 1985, p.10.

¹¹⁶ See earlier notes on Valerie Bunce's and other relevant studies of deficiencies of Yugoslav federalism.

Consociation, which is an old concept of Althusius, but revived (after the concept of pluralism) recently has been studied as a very widespread social phenomena. At first the concept of "non-territorial federalism"¹¹⁷ was initiated (but in another sense - as the functional federalism). Lijphart's studies we have to take very seriously. As a scholar of Dutch background and probably taking Althusius as a starting basis, he thoroughly studied successful consociations and reached very relevant conclusions.

- Consociation we talked about is an old concept, revived in the 20th century after the concept of pluralism, and studied as a very widespread social phenomena. It modifies majority rule or majoritarian democracy, but some authors write about "compound majorities" and of "non-territorial federalism" or "functional federalism".¹¹⁸ We take consociation as a social and political fact on one side, and as an institutionalized system of partnership in power, on the other. But, some scholars point that even "consociationalism is a specific form of elite domination based on ethnic proportionality".¹¹⁹

Despite limits and difficulties that proposals advocating consociational democracy will face, that remains as the least painful and the most convenient and fruitful way. The problems we face today in Bosnia and Herzegovina, but also at Cyprus, Israel and Palestine, Lebanon, Sri Lanka, "Kurdistan" etc. we can not "solve" by offering some schemes, but the only thing we as scholars can do is to present a wide range of options based on comparative studies.

- Combination of different mentioned and other forms and institutional arrangements can offer appropriate solutions.

What Arendt Lijphart treats as elements of majoritarian democracy have to be modified or abolished in a consociational regime: concentration of executive power in one-party and bare-majority cabinets; executive dominance in executive-legislative relations; unicameralism or bicameralism with a very weak second chamber; two-party system (instead of that, real multi-party system is better solution with parties which do not base their politics on ethnic grounds solely); one-dimensional party system (i.e. party system in which the parties' programs differ from each other mainly along the one issue dimension); plurality system of elections (like so called Westminster system which we described above; proportional system is better solution for consociation and minorities); unitary and centralized government in which there are no clearly designated geographical and functional areas from which the parliamentary majority and cabinet are barred; unwritten constitution and parliamentary

¹¹⁷ D. Elazar, "Federalism and Consociational Regimes", *Publius*, vol. 15, No. 2, 1985. Here Elazar also writes on *compound majorities* (p.17).

¹¹⁸ D. Elazar, "Federalism and Consociational Regimes" (Op. cit.).

¹¹⁹ Pierre L. van den Berghe, *Ethnic Phenomenon*, p. 191, quoted by L. Adelke Jinadu, "Federalism, the Consociational State, and Ethnic Conflict in Nigeria", in *Publius*, Vol. 15, No 2 (1985).

sovereignty (like in the United Kingdom) where the majority's power to legislate is not restricted by any requirement of qualified majorities or judicial review; exclusively representative democracy: the power of the parliamentary majority is not restricted either by any element of direct democracy.¹²⁰ Lijphart relies on Robert A. Dahl, who, dealing with problems of democracy, suggests political processes to resolve conflicts involving subcultures. Among devices he includes mutual veto, autonomy on a territorial or non-territorial basis, and proportional representation.¹²¹

In contrast to just mentioned possible features of majoritarian democracy, Lijphart especially stresses elements of non-majoritarian, that is of consociational democracy: executive power sharing instead of being exercised by one party, bare majority cabinets; coalition governments of two or more parties; balanced executive-legislative relations instead of executive that dominates legislature; effective bicameralism; multi-party system as an antithesis of one or two-party systems which are not appropriate for the purpose of consociation; multidimensional party system (which means that differences between parties are not based on one element only, like, for example, national origin of members or national program aims); proportional representation in contrast to the plurality method (to what we could add so called positive discrimination in favor of small group); federalism or regionalization and decentralization; written constitution; minority veto (we would precise: for the most important decisions crucial for the identity and existence of minority groups).¹²²

Constitution has to establish such relationship between local, regional, national (ethnic) and state political and governing bodies which would provide and secure autonomy and self-administration with the basic guarantees for viability of a wider political entity, the state in frames of which the widest regional autonomy is enjoyed. Separation of powers and certain distribution of powers/jurisdiction in both horizontal and vertical dimension that guarantees the autonomy of parts and integrity of the whole should be one of institutional arrangements. It has to be established on a set of mutual or veto, and have the main executive as a body of equal members who represent three main groups.

An ombudsman for ethnic/national minorities should be established from among persons belonging to such a groups and eventually elected by their members. The right and the duty of the ombudsman should be to act as the attorney of ethnic groups whenever their rights are violated. The ombudsman should be authorized to make proposals to the legislature and to the executive

¹²⁰ Lijphardt, "Non-Majoritarian Democracy", *op cit.*

¹²¹ Robert A. Dahl, *Political Opposition in Western Democracies*, New Haven: Yale University Press, 1966, pp. 357-359.

¹²² Lijphart, *op. cit.*

concerning the protection of ethnic group rights, and to initiate cases in front of constitutional courts or other bodies safeguarding human rights. All states, and particularly multi-ethnic, should accept obligations provided by the provisions of the International Covenant on Civil and Political Rights and of the Optional Protocol to this Covenant which gives the right to individual citizens to address their grievances concerning violation of individual rights to international bodies.

It would be very important and should be encouraged, to introduce or develop cooperation which cuts across borders of regions or ethnic groups. Already quoted David Chapman elaborated an electoral system which would favor parties and candidates who have support among all groups concerned and disfavor those who rely on support of their own group only.¹²³ It would make more difficult for political elites to monopolize the mediation between groups and reduce the possibilities of "crosscutting".¹²⁴

The principles and rights provided to minority groups should also apply in areas where members of the majority or the largest single group are numerically inferior to one or more other national (ethnic) groups in that area. Government agencies should refrain from pursuing or encouraging policies aimed at the assimilation of ethnic groups or aimed at intentionally modifying the proportions of the population in the regions inhabited by ethnic groups.

Bicameralism is taken in many studies (see: Lijphart's quoted works) as a distinct feature of consociationalism and of federalism. It is usually assumed that the best solution would be to have a two-house legislature, with an Assembly on proportional basis and the Senate or similar body on somewhat different basis. Members of ethnic groups should be included in government bodies at all levels at least in numbers which are proportional to the size of the group in relation to the whole population.

In our view, beside representation in legislature and participation in government bodies provided by constitution, each ethnic group should have a

¹²³ David Chapman, *Can Civil Wars be Avoided? Electoral and Constitutional Models for Ethnically Divided Countries*, London, 1991.

¹²⁴ In the course of 1992, a distinguished businessman of Yugoslav background, Boris Vukobrat initiated a Project "For the New Community" intended to offer some solutions for Yugoslav crisis. The proposals are based on individual and collective ethnic groups rights, free enterprise economy, legal system which would correspond to European legal standards, and regionalization along borders of traditional regions in order to decentralize government as much as possible. The Foundation "Peace and Crisis Management" from Zug (Switzerland) and Elisabeth Kopp as coordinator of the Project with a group of Swiss experts prepared a set of documents and drafts for eventual constitutions and laws which could facilitate the operationalization of some ideas aimed at the solving of the most serious crisis that the region of former Yugoslavia had ever faced. Proposals do not favor any group and offer many very inspiring ideas which could be useful in designing institutions which could be of common benefit for all of them (see: *Proposals for a New Commonwealth*, Paris: CopArt, 1993).

National (Ethnic) Council consisting of representatives elected by members of the respective group regardless of territorial disposition of respective population. Such councils could be established with an aim to coordinate voluntary activities of group members and to initiate proposals and solutions regarding the situation of the group and policy concerning the group.

Pluralism and autonomous civil and open society are important conditions for fruitful consociation, as well as socioeconomic and political safeguards of human rights. Under pluralism we understand, first, pluralism of autonomous economic, cultural, political associations, enterprises, trade-unions; ideological, cultural and religious groups and beliefs; autonomous universities; free press (which means not influenced by government or one party sole). This makes society pluralistic and it also means that citizens are relatively independent from the government in making their earnings. In another sense by pluralism we mean multi-party system. That implies political opposition, some political fair-play and parliamentarian rules, criticism of government in parliament and in the press and that all is perhaps the best single safeguard to human rights and an opportunity to give an expression to ethnic group feelings and views.

To "establish civil society" is certainly not a matter of decision, but of letting social, economic, political and cultural processes to develop freely without rigid control, but in frames of and under some flexible laws (the old maxim of the freedom under law becomes handy). If the prevailing ideas in a state are statist, as it was the case in communist states, that prevents the emergence of the civil society as well as the realization of individual and collective rights and of consociational democracy.

The establishment of civil society, the rule of law and so on requires adequate political culture, while ethnocentric political cultures are parochial even when very large groups share it. A successful consociation requires a liberal political culture, and it further requires an educational work. Toleration and dialogue have to take place instead of confrontations - that's the way how human consociations are built instead of being just biological facts of living side by side. In all great religious teachings there are enough messages leading to this point, but they have to be practiced instead of being misused in mutual confrontations.

One conclusion which has already been drawn by many politicians, and even scholars in the region, stresses some negative aspects (misperceptions) in regard to federalism, nourishes suspiciousness in regard to any arrangements which could have or resemble features of a federal structure, and so with rare exceptions, most of conclusions drawn by regional politicians and constitutionalists are critical about or against federalism. That all despite the fact that regional and ethnic diversities are so widespread in regions of former Yugoslavia, that federalism could be seen as a useful arrangement which could solve some of serious local problems, as an alternative to some opposite

concepts (constitutional nationalism, unitarism, centralism, undivided sovereignty, integralism etc.).

The role of so called international community in the case of Yugoslavia represents the "precedent" which made federalism less popular or unacceptable. On the one side, Yugoslav case and cases of the Soviet Union and Czechoslovakia will probably encourage secessionist movements giving them ground for conclusions that secession can easily achieve an international recognition, if it fits interests of some great powers. On the other side, tragic events frighten both new leaders and some secessionist movements.

Decentralisation and development of local and regional self-government, both *de facto* and *de jure*, will increase the possibilities offered to minorities. Institutions such as ombudsman, parliamentary interpellations, parliamentary investigating committees, control of the police and the army by working bodies of the parliament, new election laws and territorial division into electoral units, laws on education and schooling system, on the official language and languages of minorities, those regulating media and information, state symbols, and many other matters outside the scope of the present Draft Law, will affect the position and life of minorities. Relevant elements in this respect are also the present-day multiculturalism and multiethnic structure of society. Experts engaged in this endeavour also took part in drafting several other important legislative enactments (some of which are mentioned above), taking in consideration in the process also the ideas relative to minorities.

The Council of Europe, after the experience in post-communist countries and some ideas developed in the OESC, paid a greater attention to problems of national minorities. This attention and corresponding Convention and Charter are concerned with preserving and promoting identity of minorities (in all relevant elements) and their sharing in power through appropriate institutions.

European Union countries, from the time of initial efforts of creating their community, have placed emphasis on the protection of human rights and freedoms. This is expressed in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and through appropriately developed institutions and practices. The Council of Europe has subsequently adopted several acts whose acceptance and implementation are a requirement for new members for joining that institution. The European Framework Convention for the Protection of Minorities (1995) is one of basic document relating to these problems. The other one is the European Charter on Regional and Minority Languages (1992). One should add here the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and numerous obligations stemming from a series of decisions of the OSCE, as well as recommendations concerning several important matters, advanced by experts groups engaged by the High Commissioner of that

Organization.¹²⁵ The Council of Europe has accepted in 1996 the revised version of the European Social Charter, so that any country's efforts for integration into Europe should also encompass the obligation of adopting that Charter as well. In the year 1992 the UN Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Language Minorities was proclaimed.

Federal Republic of Yugoslavia in 2001 ratified the Framework Convention and provisions oblige that state, and the new State Union of Serbia and Montenegro in which earlier FRY transformed. The basic ideas and provisions of the (European) the Framework Convention were also used as guide-lines for the federal Law on Protection of Rights and Freedoms of National Minorities (enacted in FRY Federal Assembly in 2002). There is a widespread opinion here, including the media, that European institutions in respect of European standards require something that is designed especially for candidates for joining the Council of Europe or the European Union. Naturally, the situation had been easier at the time for those states who joined the Union (Community) from the beginning, like France, becoming thus principal initiators of such integration, but one has to acknowledge that strict European standards in some matters bind all the members of the Council of Europe and the European Union. This is, for instance, the case with the Framework Convention on the Protection of Minorities, while greater possibility in some cases is left open to some countries to commit themselves, in the case of the Charter on Regional and Minority Languages. However, that Charter, too, requires a certain minimum in carrying out the commitments of countries adopting and ratifying it, which applies also to all other accepted international obligations of whatever level and provenience. Along these lines, the experts from the High Commissioner Office for Minorities have warned us to be careful with promises in the new law, since otherwise minorities could be disappointed in case of impossibility of realization of rights specified in the text. An important element in this respect are considerable financial and material means and qualified personnel necessary for the job – which for the time being is difficult to provide in many countries, including the State Union of Serbia and Montenegro.

¹²⁵ The OSCE Office of the High Commissioner for Minorities has sponsored the drafting and publication of several recommendations: the 1966 Hague Recommendation on the right of national minorities to education; the 1998 Oslo Recommendation concerning the right of national minorities to the use of own language; the 1999 Lund Recommendation on effective participation of minorities in public activities; and the one drafted in Warsaw in 2001 relative to promoting participation of national minorities in the election processes. Relevant in this respect are also conclusions significant for the status and protection of minorities, reached at the meetings of OSCE bodies, such as the ones formulated in The Hague in 1990 , but also the Final Document of the OSCE, released after the meeting in Istanbul in 2000.

SOCIAL SECURITY OF MINORITY GROUPS AND SOCIETIES IN SOUTHEAST EUROPE

ZLATKO ISAKOVIC

The general purpose of this work is to examine the agenda of societal security¹ of minority groups² and societies in large parts of Southeast Europe (in particular Albania, Bulgaria, Macedonia, Moldova, Romania, Serbia and Montenegro, i.e. the former Third Yugoslavia). More precisely, the purpose of this paper is to detect whether ethnic minorities and societies in the region are faced with certain kinds of threats, to detect their sources and propose possible ways out from the unwished situations. If the answer to the mentioned question is positive, one will make attempts aimed to determine what are the specific kinds of threats, their intensities and what kind of means are utilised for that purpose. One can assume that this study is different from (but at least partly related to) national security studies.

In this work, the term security will be utilised in the mentioned Buzan's mining. A more complex definition of this phenomenon could present it as a state whose qualification depends of a few kinds of assessments based on perceptions: first, of threat directed to the certain protected object (perceived as a value or good). One could mention that the same author warns that assessments what is (not) threat, for whom, in which way and within which period could be difficult and risky task.³ Second, the qualification depends of threat perceptions and insecurity feelings based on the perceptions, i.e. at least relative unprotectedness of the object. Third, the qualification may depend of capabilities for its protection and their perceptions and assessments.

¹ The term societal security was first used by Barry Buzan in his book *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (second edition, Harvester Wheatsheaf, London, 1991) in which security was defined in general regard as the "pursuit of freedom from threat" (p. 20).

² Dealing with minority groups, the author will utilize a definition of national minorities as distinct groups from the rest of population that have the need to preserve and advance their ethnic, cultural and religious identities (see also a survey of definitions of minorities: Goran Basic, *Zastita prava nacionalnih manjina u SRJ prema standardima Okvirne konvencije za zastitu nacionalnih manjina Saveta Evrope*, Centar za antiratnu akciju, Beograd, 2002, str. 12).

³ See: Barry Buzan, *Societal Security, State Security and Internationalisation*, in: Ole Wæver, Barry Buzan, Morten Kelstrup i Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd, London, 1993, p. 43.

The state of (in) security may exist in numerous fields of social life, and in this work will focus primarily those fields that contain or are more or less closely related to the fields of *democracy, human rights* and, in concluding part of this work, of *protection of national and ethnic minorities and societies* in the mentioned Southeast European countries. Thus, threats to a minority group and/or society in the meaning utilised in this paper may consist of, for example, a regulation, its (dis) respect within the mentioned fields (for example, acts of breach, violation, or putting in jeopardy some human rights, to some degree suspending, misusing or distorting democracy, and/or disrespecting the needed protection and stability of national and ethnic minorities within the societies along with the protection and stability of society of secessionist and some more or less similar efforts and orientations and capabilities). However, a precise and complete list of threats one cannot create since they are based on group and individual perceptions, feelings, capabilities available for protection, etc. One could conclude that the term “societal” in this case is utilised in a bit different meaning than in the Buzan and Wæver’s meaning⁴ since the structure of this work will follow just the mentioned list of fields.

⁴ „The ability of a society to persist in its essential character under changing conditions and possible or actual threats”, when it perceives its identity as threatened, and on this basis, it starts to act in a security mode triggering certain kinds of behaviour (Ole Wæver, *Societal security: the concept*, in Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd., London, 1993, p. 23). Buzan, located societal security initially as just one among five sectors of state security (along with military, political, economic, and environmental security), i.e. society was just one sector where the state can be threatened (see *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, second edition, London, Harvester Wheatsheaf, 1991). A couple of years later Wæver in the anthology *Identity, Migration and the New Security Agenda in Europe*, argued that the five-dimensional approach was untenable any more as a framework for societal security (op. cit., p. 25) proposing the concept consisting of a duality of societal and state security (see Ole Wæver, Ole, “Insecurity and Identity Unlimited”, *COPRI Working Papers*, No. 14, 1994, Copenhagen, Copenhagen Peace Research Institute; Ole Wæver, *Securitization and Desecuritization*, in R. Lipschutz, (ed.), *On Security*, Columbia University Press, New York, 1995; Barry Buzan and Ole Wæver, *Slippery, Contradictory? Sociologically Untenable: The Copenhagen School Replies*, *Review of International Studies*, No. 23, 1997). It was remarked that the implications of the societal security concept for policy were „far from clear” since the authors did not attempt „to develop any complete or coherent prescription. They acknowledge the familiar dilemma: is there not a risk that raising the agenda of societal security might seem to legitimise xenophobia and nationalist reactions against foreigners or against European integration?” The authors stated that the danger, however, „has to be set against the necessity to use the concept of societal security to try to understand what is actually happening” (see Margaret Blunden, *Bezbednost posle hladnog rata*, Medjunarodna politika, Beograd, No. 1042, 1996, p. 24; cf. Barry Buzan,

The history of Southeast Europe and some other parts of the world shows that the threats may include acts aimed to preserving and development of ethnic, cultural, linguistic and religious identity including in some cases the conquering historic group or society's territory, the deportation, the killing of members of the community, the suppression of society's and/or minority's expression of its own identity and interference with its ability to reproduce itself by, for example, names and dress, forbidding the use of language (denying language rights), closure of places of education (denying freedom of education) and/or worship (denying freedom of worship). If one forbids operating the institutions that reproduce culture and, it seems, particularly language, normal communication within the minority groups and even societies could be more or less badly damaged and finally identity cannot be transmitted effectively from one generation to the next. However, the same kind of threats "may not only come from forbidding something, but also allowing it. Forbidding something will often be in terms of a threat to the minority group from the majority group. Allowing something, however, may be the other way around: allowing a minority group something may threaten the homogeneity of the state...".⁵ Threats to societal security – according to utilised means – may be military or paramilitary ones (for example, conquering historic territory, killing members of the group) and non-military ones [so-called statistical genocide, denying right of worship or language rights by legislative, administrative bodies (government, police or other executive state organs), courts, etc.].

In linguistic regard, stability could be defined as "the state or quality of being stable", "firmness in position", "continuance without change", or

Societal security and European security, in Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd., London, 1993, pp. 188–189). Buzan considered „societal security is less self-defining than state security, but not necessarily less real” (*Ibid*, p. 187). The main purpose of the volume by the author of this paper was to elaborate and apply the Buzan and Wæver's concept of societal security systematically in this meaning to the five states into which the Second Yugoslavia have now been divided during after the wars in the territory of the second Yugoslavia (Slovenia, Croatia, Bosnia and Herzegovina, Third Yugoslavia and Macedonia), looking at the past and present, and trying to draw implications for the future. There is a question of determining what is perceived as threatening in the field of identity. For example, is it that what is different within national identities may be seen as more threatening than what is similar? In the Southeast Europe very different minorities are recognized, and the most similar are not recognized. As German philosopher and sociologist George Simmel (1858–1918) once said, the more similar groups are, the more they draw sharp boundaries (more details: Zlatko Isakovic, *Identity and Security in former Yugoslavia*, Ashgate, Aldershot, 2000, pp. 1–5 and 12).

⁵ Barry Buzan, *Societal security, state security and internationalisation*, in Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd., London, 1993, p. 43.

resistance to change (especially a sudden one), disintegration, or deterioration, permanence, constancy, steadiness, etc.⁶ In this paper the term stability will be utilised in the meaning covering feature of some society to return independently and without some bigger political, economic, cultural or other problems or conflicts to a previous position after the end of the causes (societal security or some other threats) that moved the society from the previous position.⁷ In a way this meaning could be – at least partly – identified with the term flexibility.

The line (criterion) of division between minority groups has been in many cases national, i.e. ethnic differences. For example, Wiberg began answering the question of the relationship between state and nation from the starting point of nation, trying to look at some ideal types or patterns of the relationship identifying, with some simplifications and for illustrative purposes,⁸ nations by languages. If a nation N could be taken as the point of departure one can determine the following possibilities: (1A) one nation can exist in one state as the only nation, i.e. the majority without ethnic minorities there; (1B) one nation may exist in one state as the majority nation in the society having one or more minorities; (1C) one nation may exist in one state as the majority, i.e. the largest group (like the Serbs in all three Yugoslavias); (1D) one nation can exist in one or more states as a minority in the statistical sense (like the Serbian minority in Romania and Hungary). Since the cases 1B and 1C were merged into one category (“main group”), the situation, which exists, was presented within Table 1.1. Depending on where one draws the line between monopoly and main language, Korea and Germany are represented as case 2A or 2B.

Table 1. – Nation in states A and B

Nation N in state B	Nation N in state A		
	Monopoly	Main group	Minority
Monopoly	Case 2A	Case 2B	Case 2C
Main group	–	Case 2D	Case 2F
Minority	–	–	Case 2G

⁶ See: *Random House Webster's Electronic Dictionary and Thesaurus*, 1993, Windows version 1.0.

⁷ Compare: Odrednica: *Stabilitet ili stabilnost*, Leksikon JLZ, Jugoslovenski leksikografski zavod 1975, Zagreb, p. 925.

⁸ For example, Vietnamese used to be the majority language in two states; Korean is the majority language in two states and a minority language in a few others; German represents the majority language in (previously divided) Germany, Austria, Liechtenstein, Switzerland and (in a way) Luxembourg. Spanish is the majority language in Spain as well as in several American states. However, one sees that common language may (not) be sufficient for making people defining themselves as a common nation.

Second way of starting to offer answer to the same question may be from the point of view of a certain state S, in which may be spoken one or more languages. In the case of one spoken language only, one can define the following existing situations: (IA) spoken only in S (the same as the 1A); (IB) main group's monopoly existing elsewhere; (IC) minority's language spoken elsewhere (like the Hungarian language in Second and Third Yugoslavia and the Union of Serbia and Montenegro).

The series of movements of ethnonational nature emerged in Western Europe in the late 1960s and early 1970s fulfilling the three important tasks. First, economic growth and affluence (reduced after the first 1973 "oil crisis"). Secondly, the integration process made state boundaries to have increasingly little meaning starting with the Nordic countries and after that in the nowadays EU. Thirdly, the old and deeply rooted democratic cultures and constitutions handled ethnic (and other) conflicts by political means preventing political violence to gain legitimacy.

In Central and Southeast Europe similar kinds of movements appeared only in the 1980s (the Kosovo in 1968 and Croatia in 1971 were exceptions that emerged under different conditions). First, the economic stagnation was far lower and followed by the accelerating economic crisis with increasing inflation, unemployment and falling of living standard and GDP. Secondly, the vital democratic traditions were rare; new constitutions and power-thirsty domestic and foreign politicians' political ambitions were insufficient as substitutes (in some cases on the contrary). Thirdly, the previous organizations that had had integrative functions (the COMECON and WTO) were dissolved having no replacements, and boundaries became increasingly significant as symbols of sovereignty. One author concluded "the prognosis was therefore very much worse than in Western Europe".⁹

The author also considered that, although there were numerous examples of different nations living together peacefully in one state, historical statistics shows a higher risk of civil wars in multinational states than in others, and the risk was "particularly great where both Christians and Moslems are large groups, no matter which of them is the biggest one. Since the average state in Central/Eastern Europe is more nationally heterogeneous than that in Western Europe, we also have to count with a worse prognosis".¹⁰ There was also little ground for optimism in 2000, "given that the main cases combining a majority of one with a big, or locally predominant, minority of the other include the Philippines, Lebanon, Cyprus, Azerbaijan, Bosnia and Herzegovina, FRY,

⁹ See Håkan Wiberg, *Ethnicity, Identity, Conflict, From Nonviolent Liberation to Tolerance – The Development of Civil Society in Eastern Central Europe*, Reports and Abstracts, Conference From Nonviolent Liberation to Tolerance – The Development of Civil Society in Eastern Central Europe, LOGOS, Vilnius, 1995, p. 39–47.

¹⁰ Håkan Wiberg, *Ibid*, p. 44.

Macedonia, Albania and Bulgaria, plus several African states, the worst cases being the Sudan, Ethiopia, Nigeria and Uganda.”¹¹

When a national heterogeneity is seen as a potential or actual problem by society, i.e. most often actors in a state, the following options have been attempted by actors to solve the problem:

1. Assimilation of minorities into the majority group by sticks and/or carrots;
2. Creating identities considered as “transethnic” (for example, such as “American”, “British”, “Swiss”, “Finlander”, etc.);
3. Having two or even more official languages and/or setting up a wide degree of local autonomy concerning the official languages choices;
4. Establishing for various groups different social orders;
5. Political “neutralization” of the minorities (making it difficult or impossible to have the same or even a similar status as the “state carrying” nation) by citizenship or voting legislation;
6. Getting rid of the minorities as much as possible by terror, state deportation or other kinds of mass expulsion utilising more legal forms;
7. State organized genocide, which caused a severe reduction, or even the disappearance of several nations.

The seventh, most versions of the sixth, and some variations of the fifth method have entailed or created intensive societal security threats and conflicts that have been far worse than the ones they were supposed to resolve, and they have carried risks for international sanctions as violated international law. It is difficult to combine the fourth with the formal modern requirements of equality before the law. In particular some variants of the fifth and first method and some of the others too carry a considerable likelihood of generating societal security threats and animosities and even resistance that can lead to armed conflict escalation either by the means used for suppressing it or by itself. “What the predominant group sees as ‘law and order’ may be seen as intentional discrimination by others; and what the former sees as peaceful assimilation may look like planned ethnocide in the eyes of others”.¹²

The methods two and three appear to have the best societal security maintenance and conflict management prospects. However, one main problem with the third method is the fact that multilingualism and autonomy may be combined in various ways. The maximal degree of bilingualism exists when the official languages of a state have the same role at all political and administrative levels too, with many complicated issues concerning financing of school

¹¹ See more details: Zlatko Isaković, *Identity and Security in Former Yugoslavia*, Ashgate, Aldershot, 2000, pp. 6–10.

¹² See Håkan Wiberg, *Ethnicity, Identity, Conflict, From Nonviolent Liberation to Tolerance – The Development of Civil Society in Eastern Central Europe*, Reports and Abstracts, Conference From Nonviolent Liberation to Tolerance – The Development of Civil Society in Eastern Central Europe, LOGOS, Vilnius, 1995, p. 49.

systems, government staff's language abilities, etc. A state religion does not have to exist or the state can "be mute, nor can it handle addressing issues in any language that some citizens may count as mother tongue".¹³ Minimal multilingualism and maximal autonomy often appear together, the central government is the only multilingual institution, and each language is exclusive in the territorial unit in which it is biggest.

One version of the second method – called "citizen state" – is characterized by greater identification and solidarity with the state than to the nation, class or any other phenomena that the citizens may identify themselves with (to the colliding extent). One author concluded that, "in any case, the existence of such a superidentity seems to be a necessary condition for such a citizen state"; and "examples also suggest that if a state has arrived sufficiently far in this direction, it may also get stable as a state, whatever other grudges its citizens may harbour".¹⁴ The Second Yugoslavia (among other examples) tried to create a Yugoslav identity along with the national ones from 1945 to 1964.

There are several schools of thought, orientations or theories about the national or ethnic issue. In one wish to define "nation", among the first questions is how one define it and utilising what criteria, and to some degree a separate question is how actors within the societal security field think of a nation (the crucial issue here is *who* are the people?). Primordialist school is featured by essentialism considering that ethnic groups are taken as givens. Instrumentalist school has voluntaristic orientation reducing ethnic identification to cost-benefit-oriented economic choices. Objectivist school tries to establish objective criteria according to which an ethnic group can be identified assuming that a nation consists of persons who share the same language, ancestral myths, religion, etc., but perceptions and classifications of languages, sometimes myths and religions can change through space and time. Subjectivists rely on the groups' own definition when acknowledging the existence of an ethnic group (a nation consists of people who consider themselves as its members). However, it is frequently difficult to predict whether and when an "ethnic group" will cross the line becoming a "nation" in the narrower sense, and it is not certain what one person's answer will be tomorrow. According to "state" group of definitions, a nation is the totality of individuals born or naturalized in a certain country living under a single government. This definition, however, creates a tautological relationship between "nation" and "state".¹⁵

¹³ Håkan Wiberg, *Ibid* p. 50.

¹⁴ Håkan Wiberg, *Ibid.* 50.

¹⁵ More details: Håkan Wiberg, *Security Problems of Small Nations*, in Werner Bauwens, Armand Clesse, Olav F. Knudsen & Nicholas Sherwen (ed.), *Small States and the Security Challenge in the New Europe*, Brassey's, London – Washington, 1996, pp. 28–30.

One may also discuss is it possible to create a definition and classification of nations on which all authors would agree, and utilise it to determine who belongs to what nation? One could stress just that different concepts are dominant in different parts of the world. Many actors in the Southeast Europe do not use the concepts of imagined community and of clash. Local people rather see their belonging to a nation as a solid fact about which one cannot make decisions.

To conclude, this paper deals with *means and ways in which minorities may be stability disturbing, i.e. threatening factor for security in the Southeast European region and with ways in which they can establish and protect own stability and maintain security*. One of the most crucial questions is: what might be the societal security relationships between society (often represented by its state which is in many cases in Southeast Europe tending to identify itself with the majority nations, i.e. Albanians, Bulgarians, Macedonians, Moldovans, Romanians, Serbs, Montenegrins and Bosniacs) and minority (i.e., for instance, in these cases, Bosniacs,¹⁶ Turks, Russians, Albanians, Greeks, Croats, Jews, Slovaks, Ruthenians, Romas, Tzintzars, Vlachs, Roma, Vlachs, Ashkalias)?

The societal security concept utilised in this paper as well as the mentioned Buzan's concept "can be seen as a kind of analytical lens, able to give an insight into familiar problems. Like all lenses it gives a partial view, making some things clearer and pushing others in to the background".¹⁷ As democracy, human rights, protection, societies and ethnic minorities and majorities have multidimensional natures, this work has a complex methodology that includes combined groups of methods usually used in sociology, theory of state, theory of law, certain law disciplines (particularly theory of human rights), anthropology, ethnology, social psychology, philosophy, linguistic studies, studies of religion, political sciences, economy, (modern) history, theory of international relations, and some other more or less related disciplines. The presented methodological conglomeration is utilised to define possible answers to the questions related to the topic.

Finally, it is important to mention that this work was prepared during the first four months of the year 2003, mainly in the Centre for Research of Ethnicity (CRE) and the Institute of International Politics and Economics (IIPE), Belgrade, the State Union of Serbia and Montenegro, and with some parts researched and written in the former Copenhagen Peace Research Institute (COPRI), present-day Institute for International Studies, Copenhagen, in first four months of the year 2002. The work stemmed from the project *Development*

¹⁶ See more details on their minority position and some problems related to the societal security issue in Serbia: Goran Basic, *Položaj Bosnjaka u Sandžaku*, Centar za antiratnu akciju, Beograd, 2002.

¹⁷ Barry Buzan, *Societal security and European security*, in Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd., London, 1993, p 185.

of Democracy, Human Rights and Protection of National and Ethnic Minorities in Southeast Europe and the writing has been funded by a grant provided for me by the CRE and the Freedom House in 2003, which the author has very much appreciated.

I owe much gratitude to Mr. Goran Basic, Director of CRE, an objective scholar who has a substantial and wide knowledge of the position of minorities in the Southeast Europe; the support he has given me, both as a friend and colleague, has gone far beyond my highest expectations.

1. DEMOCRACY

According to a definition of democracy, it is a rule of majority and a procedure used for the non-violent elimination of political, economic conflicts and other discrepancies in positions, i.e. interests in society (including the societal security interests, i.e. needs). However, sometimes, even without abusing or violating the mentioned procedures, one party in the conflict is merely partly satisfied or completely dissatisfied with the decisions, what shows that the conflict has not been fully resolved (and in this way eliminated), i.e. that it has been 'resolved' just in formal, and not in essential regard. Having in mind the observed field, this could mean that the societal security threats and related fears have not been eliminated partly or fully.

One author – considering the relative importance of different cleavages (ethnonational, class, regional and other groups) – surveyed postcommunist states¹⁸ and compared the importance of different social cleavages: classes, ideologies, regions, ethnonational groups and combinations.¹⁹ He noticed that class and ideological terms soon came to predominate, even if their political rhetoric had abandoned the Marxist or similar dictionary in several countries after the end of communism. The first more or less democratic elections brought to power centre-right-wing governments. Since the economic reforms had painful short-term results for wide segments of the populations in the countries, the next elections created centre-left-wing governments (according to the well-

¹⁸ Second and Third Yugoslavia, Bosnia and Herzegovina, Kazakhstan, Kyrgyzstan, USSR, Latvia, Tadzhikistan, Moldova, Czechoslovakia, Estonia, Macedonia, Turcomenistan, Uzbekistan, Georgia, Ukraine, Croatia, Azerbaijan, Belarus, Lithuania, Russia, Bulgaria, Slovakia, Romania, Armenia, Slovenia, Albania, Czech Republic, Poland, and Hungary. The author of this paper added the Serbia and Montenegro (from 2002 they are the members of their State Union).

¹⁹ Håkan Wiberg, *Former Yugoslavia: nations above all*, in Bogdan Góralczyk, Wojciech Kostecki, Katarzyna Zukrowska (eds.), *In Pursuit of Europe – Transformations of Post-Communist States, 1989–1994*, Institute of Political Studies Polish Academy of Sciences, Warsaw, 1995, pp. 95–106.

known rule, governments usually governing make more enemies than friends). Although ethnonational movements have acquired some social basis in some states, they have rarely become separatist states (for instance, Slovakia was such a clear case). In most of the post-communist states such movements have rather inclined to look across the borders of their countries at co-nationals, i.e. minorities in other states having irredentism as the strongest political version. The second version was the perceiving neighbouring states as threatening and big. In both cases, they were calling for national mobilisation and internal unity. Cleavages of a more regional kind have from time to time played a specific role, in some cases merged or interacted with the ethnonationally defined ones.

The author warned since all countries have their specificities, one should avoid sweeping generalizations of any kind. Yet one may find one or more crude bases for predictions or/and postdictions as to what cleavages could be strongest in which case by looking at the ethnonational composition of the post-communist states. The author – according to their ethnonational heterogeneity – has ranked the states from highest to lowest degree giving in brackets the percentages of the second, third, etc. largest group or groups, i.e. minority or minorities.

The preliminary thesis was that “the simplest hypothesis on the relationship between heterogeneity and the balance of different cleavages is the following: ‘The more ethnonationally heterogeneous a state is, the higher is the likelihood that ethnonational cleavages, possibly also identified as regional cleavages, will predominate over class and class-related ideological cleavages’. This thesis is also strongly supported by an inspection of the Table below: its upper and middle part contains far more dissolved states, internal political tensions and wars than the lower half.” The thesis can also be at least implicitly relevant for the societal security issue (and particularly for the issue of democracy) discussed in this work.

Table 2. – Ethnonational Structures of Post-Communist States in Europe and their Successor States

1. Second Yugoslavia (I, ²⁰ DD, ²¹ W ²²)	36 (Serbs, 20 Croats)
2. Bosnia and Herzegovina (I, DD, W)	40 (Muslims, 32 Serbs)
3. Kazakhstan	41 (Russians, 36 Kazakhs)
4. Kyrgyzstan	49 (Kirgisisans, 26 Russians)
5. USSR (DD)	52 (Russians, 16 Ukrainians)
6. Latvia	54 (Letts, 33 Russians)

²⁰ „I” marks the state in which at least one national group has called for certain kind of sovereignty (some of these cases could be missing for a lack of information).

²¹ „DD” marks the dissolved states.

²² „W” means that a war was conducted with at least several hundred killed people in the state since the end of the Cold War or after later achieved independence.

7. Tadzhikistan (W)	59 (Tadzhiks, 23 Uzbeks)
8. Third Yugoslavia (I, D, W)	62 (Serbs, 16 Albanians, Montenegrins 5)
9. Montenegro (I, W)	62 (Mont, 15 Muslims, 9 Serbs, 7 Alban.)
10. Moldova (I, D, ²³ W)	64 (Moldovans, 14 Ukrainians, 12 Russians)
11. Czechoslovakia (I, DD)	64 (Czechs, 32 Slovaks)
12. Estonia	65 (Estonians, 28 Russians)
13. Macedonia (I, D, W)	67 (Macedonians, 22 Albanians)
14. Turcomenistan	68 (Turcomans, 13 Russians)
15. Uzbekistan	69 (Uzbeks, 11 Russians)
16. Georgia (I, D, W)	69 (Georgians, 9 Armenians)
17. Ukraine (I)	74 (Ukrainians, 21 Russians)
18. Croatia (I, D, W)	75 (Croats, 12 Serbs)
19. Azerbaijan (I, D, W)	79 (Azeri, 8 Russians, 8 Armenians)
20. Belarus	79 (Byelorussians, 12 Russians)
21. Lithuania	80 (Lithuanians, 9 Russians, 8 Poles)
22. Russia (I, W)	83 (Russians, 4 Ukrainians)
23. Serbia, including the Autonomous Province Vojvodina ²⁴ (I, DD, W)	83 (Serbs, Hungarians 3.91, Bosniacs 1.82)
24. Bulgaria	80-85 (Bulgarians, 13 Turks)
25. Slovakia	80-85 (Slovaks, c. 10 Hungarians)
26. Romania	85-90 (Romanians, 8-10 Hungarians)
27. Armenia	90 (Armenians, then Azeri)
28. Slovenia	91 (Slovenes, several small groups)
29. Albania	Above 90 (Albanians, then Greeks)
30. Czech Republic	Above 90 (Czech, then Slovaks)
31. Poland	c. 95 (Poles, then Germans)
32. Hungary	97 (Hungarians)

Sources of the statistical demographic figures: Various issues of *Statesman's Yearbook* (cf. *Statesman's Yearbook 1990/91*, London, Macmillan), supplemented by a few estimates; the war data from the last few years of *SIPRI Yearbook* (cf. *SIPRI Yearbook 1992, 1993, 1994*, Oxford University Press, Oxford; Håkan Wiberg, *Former Yugoslavia: nations above all*, in Bogdan Góralczyk, Wojciech Kostecki, Katarzyna Zukrowska (eds.), *In Pursuit of Europe – Transformations of Post-Communist States, 1989–1994*, Institute of Political Studies Polish Academy of Sciences, Warsaw, 1995, p. 97; *Transformations of Post-Communist States*, Macmillan and St. Martins Press, London and New York, 2000, p. 207).

²³ „D“ marks the divided states.

²⁴ Kosovo and Metohija (in keeping with the Constitutional Charter of Serbia and Montenegro the Province is run by an international administration under UN Security Council Resolution 1244) itself has around 82% Albanians and 10% Serbs (data taken from the 1991 census since the 2002 census in Serbia did not cover the Province). If it would become an independent state, it would be placed within the presented table between Russia and Lithuania.

The table was updated by the author of this work (sections dedicated to the Third Yugoslavia, Serbia and Montenegro and some others); shading was added for the rows belonging to the Southeast European countries. Additional statistical demographic data were taken from Goran Basic, *Polozaj nacionalnih manjina u SR Jugoslaviji*, in Goran Basic (ed.), *Demokratija i nacionalne manjine*, Centar za istrazivanje etniciteta, Beograd, 2002, p. 16; 1991 Census in Yugoslavia; 2002 Census in Serbia excluding Kosovo and Metohija).

One could stress that there is the confusion over the preliminary results of the most recent (October 2002) census results in Macedonia. Namely, the two dailies from Germany quoted unanimous Western diplomats' words the results might show that the Albanians are bellow 20% of the Macedonian population mainly due to the emigration. Macedonian newspaper *Dnevnik* assumed that this would be the unpleasant surprise for the Albanian minority. Experts consider that this could lead to political problems as the August 2001 Ohrid peace agreement and later constitutional and legal amendments provide greater rights only to those minorities whose share is more than 20%. If one includes those Albanians from Macedonia who have been living abroad for less than 12 months, they will make almost certainly more than 20%. The main Albanian parties from Macedonia²⁵ ruled out any possibility that the Albanians could be less than 20 percent (predicting even 30%) and the Macedonian government temporarily suspended the activities of the State Census Commission.²⁶ One can assume that this issue could be even a wide source of social insecurity on both sides since it is likely that the minority will react trying to re-establish its security restarting the spiral process of threats and fears.

According to the presented table, the Second Yugoslavia was expected to run the highest risk of ethnonational cleavages, Bosnia and Herzegovina was the second; problems, i.e. conflict escalations were correctly anticipated in Third Yugoslavia (Kosovo) and Macedonia.²⁷ Middle-risk figures are in

²⁵ Political parties that mostly gather Albanians used to state that they used to be deprived of their rights by the fact that the Albanian minority has not had the status of constitutive or state-carrying nation.

²⁶ Ulrich Buechsenschuetz, *Confusion over Macedonian Census Results*, RFE/RL Balkan Report Vol. 7, No. 10, 11 April 2003.

²⁷ In Macedonia there has been relative long tradition of movements and organisations oriented towards establishing a greater independent state (covering even the whole geographic territory called Macedonia, i.e. beside the present territory of that state, northern parts of Greece and western parts of Bulgaria; for some authors from Greece, Serbia and Bulgaria, Macedonia represented just eastern, northern, southern or western parts of their countries having more or less numerous minorities in that country, i.e. the former Yugoslav republic of Macedonia. Albanian government has recognised a Macedonian state only if it is not exclusively that of the Macedonian people (which Albania recognizes), but also of the numerous Albanian minority there. In case of a repeated conflict escalation with the ethnic Albanians in Macedonia and Kosovo, Serbs

Croatia; Bulgaria and Romania have had rather low-risk figure; while Slovenia²⁸ and particularly Albania and Hungary have had very low-risk figures. Ethnonational mobilisation²⁹ – caused and resulting relatively often by societal security threats – has left little room for class mobilisation in most of the other Southeast European countries, and in all of them (except Bulgaria,

and Macedonians would in fact become allies, not a mutual threat (see more details: Zlatko Isakovic, *The Balkan Armed Forces at the End of the Cold War*, Medjunarodni problemi, No. 1–2, 1993, pp. 26–30; *International Position of Macedonia and the Security in the Balkans*, Medjunarodni problemi, No. 4, 1995, pp. 489–510; Håkan Wiberg, *Former Yugoslavia: nations above all*, in Bogdan Góralczyk, Wojciech Kostecki, Katarzyna Zukrowska (eds.), *In Pursuit of Europe – Transformations of Post-Communist States, 1989–1994*, Institute of Political Studies Polish Academy of Sciences, Warsaw, 1995, p. 106; Zlatko Isakovic, *International Position of Macedonia and Balkan Security*, in Leena Parmar (ed.), *Military Sociology – Global Perspectives*, Jaipur and New Delhi: Rawat Publications, 1999, pp. 159–186). One author – analysing the mentioned and numerous other possible causes and stimulators in the case of the Second Yugoslavia disintegration – has concluded „given all this, it would have called for a miracle for Yugoslavia not to break up – and not to do so very violently” (Håkan Wiberg, *Former Yugoslavia: nations above all*, in Bogdan Góralczyk, Wojciech Kostecki, Katarzyna Zukrowska (eds.), *In Pursuit of Europe – Transformations of Post-Communist States, 1989–1994*, Institute of Political Studies Polish Academy of Sciences, Warsaw, 1995, p. 97).

²⁸ In the county one has seen „more class related changes in government composition and the relative failure of ethnonational mobilization that have been characteristic for several other post-communist countries in Europe” (Håkan Wiberg, *Former Yugoslavia: nations above all*, in Bogdan Góralczyk, Wojciech Kostecki, Katarzyna Zukrowska (eds.), *In Pursuit of Europe – Transformations of Post-Communist States, 1989–1994*, Warsaw, Institute of Political Studies Polish Academy of Sciences, 1995, p. 96).

²⁹ The universal phenomenon of narcissism (individual as well as group) seems to be particularly applicable and important in analysing ethnonational mobilisation. Historical traumas could be considered as a source of fears and even aggression particularly or even only if they are simultaneously combined with the “wounding” narcissism. For becoming threatening and aggressive it is not enough to have a passive traumatic feeling; in addition, one needs perception of the group to which belongs as “the most wonderful”, “the most cultured”, “the most powerful”, “the most peace-loving”, etc. The trauma and narcissism coincidentally make man to feel the major bitterness and to react with aggressiveness and rage to any actual danger or threat (i.e. future possible danger), wound and injustice or to that what he can perceive on this way. A short description of his feelings is the following: “they” were doing such *nasty* things to “us”, who are so *good*, and now “they” are threatening “us” again; the resulting reply is dry, clear and sharp: “Enough is enough!” (See more details Zlatko Isakovic, *Erich Fromm’s Concept of Aggression and the ‘Missing Element’ of Ethnonational Mobilisation in the Second Yugoslavia*, COPRI Working Papers, No.8, 1997, pp.53; <https://wwwc.cc.columbia.edu/sec/dlc/ciao/wpsfrm.html>; <http://www.transnational.org/features/>; <http://www.geocities.com/>).

Romania, Slovenia, Albania and Hungary) at least one national group has demanded for certain kind of sovereignty. Majority groups as threats to their state usually perceive this kind of calls.

The ethnic escalation in Moldavia, i.e. later Moldova, started after its government, following the early 1990 elections, took national character. The National Front of Moldavia got the dominant role in the Parliament contrary to the multiethnic composition of the population (whose main elements were Moldavians, Ukrainians, Russians and Romanians with some Gagauz, Bulgarians, and Jews). In Fall the same year Gagauz region and the Russian populated region on the left bank of the Dniester River became the self-proclaimed republics, and later development of the situation led to ethnic conflicts between the four states on the territory of Moldova. During the process of getting independence of the Soviet Union and more or less intensive fears of a future influence of Russia appeared societal security fears and a “general interethnic nightmare” that was transformed to armed conflict in 1992 in Moldova. Each state wished to possess a peace of the state territory, and demanded withdrawal of the Russian army.

During June 1992 the conflict started to calm after the agreement between Russia and Moldova about neutrality of the 14th Russian army located in the left bank of the Dniester River and further persistent negotiations between the conflict sides despite the problems and difficulties that appeared from time to time. Even though the idea about unifying Romania and Moldova was launched during the Soviet Union’s dissolution, the first gave up the territorial pretensions towards the second late 1992. In addition, the Russian Ministry of Defence dismissed the 14th Russian army April 1995. The stabilisation of the relationships in north parts of Moldova was influenced by a relaxation of tensions in relations Russia – Ukraine as well as their proposal for proclaiming the left bank of the Dniester River for a neutral economic zone.

The leaderships of Moldova and the self-proclaimed “Dniester republic” made an agreement about a memorandum about principles for peaceful conflict regulation. The “Dniester republic” and the Gagauz region became state-territorial entities having a form of a republic within the borders of Moldova. In this way, Moldova became a sort of federation despite the constitutional norms about its unitary structure. The presented facts lead toward the conclusion that the Moldovan space, and first of all the left bank of the Dniester River, is burdened by social security fears and conflicts based on them within the democracy field. “As much as they will develop themselves in direction of stable states, the parties interested in the conflict will attempt to solve the problems by peaceful means by use of generally known and accepted democratic means”.³⁰

³⁰ Jelica Kurjak, *Novi oblici povezivanja postsovjetskog prostora – mogućnosti i perspektive*, *Medjunarodni problemi*, No. 4, 1997, p. 13.

David Carlton considered “Hungary may indeed eventually provide an example of a state willing to exploit irredentist aspirations” among Hungarian minority³¹ in the region of Erdelj, Transylvania, Transilvania or Siebenbürgen. Sharing the quoted opinion, many Romanians considered Hungarians should not be given cultural autonomy because Romanians tended to view this kind of autonomy as simply a step along the road towards region’s secession, and after that eventual re-unification with Hungary. The previously quoted author stressed “for Hungary’s grievances spring from the collapse of federal Austria-Hungary at the end of the First World War. The Treaty of Trianon was, of course, imposed on Hungary by the victors and has ever since led to protests from many Hungarian-speaking people living outside the new state’s frontiers. This is above all the case in the Transylvanian region of Romania”. Hungary and Romania are signatories of the Helsinki Accords. Hungary “so far has not sought to any serious extent to renege on its obligations under their terms. But would this good behaviour endure if these Accords were to be widely disregarded by other, larger powers, or if the dissolution of Czechoslovakia were thought to nullify the terms of the Treaty of Trianon?”³²

Romania represented “clearly another power whose attitude to the Helsinki standards might be said to be ambivalent. It is clearly delighted to see them remain in force so far as Transylvania is concerned”. It was considered that, however, “the loss during the Second World War to the Soviet Union of what is now Moldova still rankles. As long as Moscow takes an interest in the matter, Bucharest will have to proceed with care”. However, in a case in which the Russian Federation itself implodes, “an opportunity may arise to encourage a movement favouring reunification – even though the Russian-speaking minority in Moldova may strenuously resist to the point of use of violence”.³³ In 1995 Hungary and Romania were engaged in negotiations over the status of the Hungarian minority in Romania, and in September 1996 they reached agreement on a basic treaty ratified the Hungarian parliament in early 1997, and by Romanian Parliament in the fall of 1996.³⁴

³¹ The term „Erdelj or Transylvanian or Transilvanian Hungarians” describes Romania’s Hungarian minority in the region (around 72% of the region’s population are Romanians, Hungarians are approximately 24%, i.e. some 1.7–2 million) even though Hungarians live elsewhere in other regions of the country. Hungarian minorities exist also in Serbia (Autonomous Province of Vojvodina), parts of Croatia, Slovenia, Slovakia and Ukraine.

³² See David Carlton, *Civil war, ‘terrorism’ and public order in Europe*, in Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd, London, 1993, p. 176.

³³ See David Carlton, *Ibid*, p. 177.

³⁴ See: *Hungary*, Microsoft Encarta Encyclopedia 2000, Microsoft Corporation 1993–1999.

In 1990 the public approval of the Bulgarian NATO membership was only 17%, and only a political party of the Turkish minority supported this option. In the mid-1990s half of the population supported the option, and among the parties that voted in its support were also the Union of Democratic Forces (UDF) and even significant part of the Bulgarian Socialist Party (BSP). One should mention that this change coincided with the stalemate in NATO-Russia negotiations and the rush of other South, Central, and East European countries to join the NATO security umbrella.³⁵

The wars in Croatia and Bosnia did not represent great threats to Bulgaria, and they tested domestic media³⁶ and ethnic policy in the country. The Turkish minority has not felt driven to demand any changes in foreign policy of the state toward the war in Bosnia. The Bulgarian partnership with Turkey (which was more openly sided with the Bosniacs' side³⁷ during the war) also did not incur any harmful consequences even though the Turkey observed the war differently. With the 1997 Bulgarian government the relationships with Turkey have even developed more thanks to the agreements and to create (with Greece and Romania) the joint rapid reaction force for peacekeeping operations and regional emergency and to combat organized crime.³⁸ Thanks to the economic hardship and corruption the elections of 17 June 2001 were won by the National Movement led by the former king of Bulgaria, Simeon II who previously had struck the coalition deal with a party of the Turkish minority.³⁹ One can conclude that in some of the observed Southeast European countries political parties of ethnic minorities from time to time play even very significant roles in political life thanks to the distribution of forces of political parties and their coalitions belonging to majority nations or without a significant ethnic orientation. In that case, political parties of minorities can have the role of the 'drop' that – together with some bigger political party – makes their coalition predominant.

³⁵ See: *Report on Specific Problems in Civil-Military Relations in the Baltic Republics, Bulgaria, Romania, Russia, Slovakia, Slovenia, and Ukraine*, Harald von Riekhoff and Natalie Mychajlyszyn (eds.), Carleton University, 1999, pp. 90–91.

³⁶ It is considered the war in Bosnia and Herzegovina was presented in a balanced non-partisan manner in the Bulgarian mass media.

³⁷ See more details on their minority position and some problems related to the societal security issue in Serbia: Goran Basic, *Položaj Bosnjaka u Sandžaku*, Centar za antiratnu akciju, Beograd, 2002.

³⁸ See: Harald von Riekhoff and Natalie Mychajlyszyn (eds.), *Report on Specific Problems in Civil-Military Relations in the Baltic Republics, Bulgaria, Romania, Russia, Slovakia, Slovenia, and Ukraine*, Carleton University, Ottawa, 1999, p. 88.

³⁹ More details: *King, Turkish Party, Form Bulgarian Government*, Security Watch, and July 19, 2001.

When the narcissism in the mentioned meaning is once established, minority and majority peoples and people could become an “easy catch” for their political and other environment generating aggressiveness even with “little outside stimulation” (including manipulation and other actions by power-thirsty domestic and foreign politicians, media, etc.). As the cases of some parts of Southeast Europe and elsewhere showed, the presence of the three elements (the historical traumas, narcissism and stimulation) makes the ethnonational mobilisation successful (one may remark in spite of the almost regular disastrous economic, political, cultural, psychological and other results).

The main condition for reduction of benign aggression in the Erich Fromm's meaning of that term⁴⁰ is that neither individuals nor majority or minority groups are threatened by others, but a lot of threats from various sides and sources used to be and still are widely present in Southeast Europe and elsewhere. When minority groups threaten state territorial integrity, majority groups in return tend to threaten (really or allegedly, does not matter) minority and possible other nations' political position (and it is known that democracy it featured by the existence of a degree of possibilities for media and other manipulation). This position seems to be an important element of societal security. It can be changed respecting or violating the rules of democratic procedure, having in the second case as a result more intensive societal threats and fears for the minority. In that case, the threatened minority (allied or alone) group may start to threaten territorial integrity of the country together with political position of the majority population. The problems could be particularly serious in countries with territorially mixed population.

The attitudes and actions of foreign powers (boycotts, sanctions,⁴¹ interventions, interfering, supports, conditioning, etc.) could be perceived as

⁴⁰ See more details Zlatko Isakovic, *Erich Fromm's Concept of Aggression and the 'Missing Element' of Ethnonational Mobilisation in the Second Yugoslavia*, COPRI Working Papers, No. 8, 1997, 3; <https://www.cc.columbia.edu/sec/dlc/ciao/wpsfrm.html>; <http://www.transnational.org/features/>; <http://www.geocities.com/>.

⁴¹ For example, one could mention the UN sanctions against the Third Yugoslavia and the Greek boycott of Macedonia. It was concluded among the main losers – beside the two countries – were the other parts of the Second Yugoslavia, Bulgaria, Greece, Romania, Albania, and to a lesser degree Hungary, Ukraine and some other states. „The extremely weak bargaining position of the states in South Eastern Europe *vis-à-vis* the West is revealed by the fact that the sanctions have cost them some \$30 bn., several times more than they have received in assistance and loans from the West altogether. In spite of this, they have not been able to invoke the provision in Article 50 in the UN Charter for the possibility of compensating states that suffer from participating in sanctions by the Security Council” (Håkan Wiberg, *Former Yugoslavia: nations above all*, in Bogdan Góralczyk, Wojciech Kostecki, Katarzyna Zukrowska (eds.), *In Pursuit of Europe – Transformations of Post-Communist States, 1989–1994*, Institute of Political Studies Polish Academy of Sciences, Warsaw, 1995, p. 101).

societal or state security threats. Some groups could plan secession since they are threatened by a possibility of taking part against their will in expected war what could cause societal threats to minority groups in the political or regional unit that is the candidate for secession since the groups wish to live in the same states with those who belong to the same nation in other regions within that state. After the secession, the minority group may start to threaten territorial integrity of the newly established state generating new threats, etc. Minority groups in the whole country as well as majority groups in certain its parts could be threatened by remaining in the country without some other groups who are or can become their allies in confrontations with the most numerous group. As societal as well as other threats usually generate threats and sometimes even violence by the sides who perceive themselves as threatened, there appears the known very old question: *who can and is going to break the circle?*

2. HUMAN RIGHTS

The issue of human rights is an important element of present notion of democracy, and in this paper it will be elaborated as a separate topic trying to stress their specific importance for the societal security issue. One author has concluded that the existence of minorities and their rights does not represent anything new. If one observes the practice of this kind of the 16th and 17th century, one may conclude that the main purpose of the Augsburg Contract and the Westphalia peace (in 1648 after the end of the Thirty Years' War) was the establishing minority protection.⁴² The reason was that the bloodshed, destruction and hate among Protestants and Catholics in Europe went out of control. Minorities as well as other weaker groups should be protected in purpose of reconciliation and common life in peace and democracy (which sacrifice itself defending itself in wars) on common space. The needed system should be a one of power sharing kind in which each member of the society (does not matter whether member of minority or majority group) and his rights could be observed and he/she perceives and feels respected and has a possibility to take part in economic and political life. For that aim, one should apply two modern limits, i.e. principles of equality and non-discrimination.⁴³ The both principles are present in the Article 4 of the Framework Convention for the Protection of National Minorities by the Council of Europe properly accepted

⁴² See also a survey of historical development of minority protection: Zoran M. Lutovac, *Manjine, KEBS i jugoslovenska kriza*, Institut za medjunarodnu politiku i privredu, Beograd, 1996, pp. 7-26.

⁴³ See: Oldrich Andrysek, *Group and Collective Rights*, in Vojin Dimitrijevic and Milan Paunovic (ur.), *Prava i slobode – Medjunarodni i Jugoslovenski standardi*, Beogradski centar za ljudska prava, Beograd, 1995, p. 21.

only by Bulgaria, Macedonia and Slovenia within the observed region of the Southeast Europe.⁴⁴ The representatives of the State Union of Serbia signed the Convention and Montenegro (called in some cases in Montenegro the “State Union of Montenegro and Serbia”) after it’s becoming a full member of the Council of Europe early April 2003.

According to one opinion, Kosovo – after the Union’s adoption to the Council of Europe – remained one of rear places in Europe not covered by any international mechanism for minority and other human rights protection and Kosovo citizens – since Kosovo is outside of the Union’s jurisdiction – cannot ask for protection of the European Court for Human Rights in Strasbourg, and – as it is not independent – cannot ratify any international convention. According to one another opinion, Kosovo entered to the Council with the Union as its part under the international protectorate.⁴⁵ Since there are the contradictory opinions of international and local experts regarding the issue whether the jurisdiction of the Court is applicable or not to Kosovo, this question deserves careful and detailed elaboration. One should stress just the fact that the any stand about this dilemma is related not just to the traditionally critical issue of minority, majority and other human rights in Kosovo but also to the issue of Serbia’s territorial integrity since in keeping with the Constitutional Charter of the Union of Serbia and Montenegro (Preamble), the first includes the Autonomous Provinces of Kosovo and Metohija and Vojvodina, while Albanian secessionist political forces aim Kosovo to become independent. One should keep in mind that any solution for this problem could generate more or less intensive social security fears as well that the USA is unlikely to recognise an independent Kosovo thanks to the fears that in this case Americans could lose the Bondstil military base that represents the largest region under their control in Europe.

Among main rights for each majority and minority nation is the right to education in own language, which is extremely important for preserving national identity, and particularly minority identity (thanks to the fact that minorities are underdogs) in Southeast Europe and elsewhere. However, this right can be also utilised for creating and developing stereotypes and even animosities towards members of other minority or majority nations. One can mention the fact that in Nazi Germany one ministry (headed by Josef Göbbels) covered propaganda and education simultaneously.

The role of university in developing human rights and democratization in general and transforming ethnic conflicts in the Southeast Europe and elsewhere is proposing applicable and creative solutions. For example, if a system cannot

⁴⁴ See more details: Goran Basic, *Zastita prava nacionalnih manjina u SRJ prema standardima Okvirne konvencije za zastitu nacionalnih manjina Saveta Evrope*, Centar za antiratnu akciju, Beograd, 2002, pp. 7–16.

⁴⁵ See: *Kosovo bez mehanizama medjunarodne zaštite ljudskih prava*, B92 Vesti, 5 April 2003.

be qualified as democratic one (except maybe in formal regard, i.e. being parliamentary democracy), appears the complex dilemma what should and could come first: developing democracy (including the high and other education) or eliminating societal security threats, transforming ethnic conflicts or at least preventing their escalations or deescalating them.

Second, within most intensive threats that usually appear during conflict escalation, the Southeast European and other university's duty could be to offer to country's decision makers, minorities and the rest of the society and the world the knowledge residing on scholars in ethnicity, peace and conflict studies, historians, philosophers, economists, political scientists, engineers, and many other fields that may help understand the attitudes, goals, interests, identities, and behaviours of the other and "our" side as well as of the arbitrators, mediators, etc.⁴⁶

Before the 1990 elections, members of all ethnic groups in the Moldovan cities, especially Moldovans, often had accepted Russian language as a second one not abandoning their native languages. The Moldovan Constitution "guarantees all citizens the right to 'preserve, develop and express their ethnic, cultural, and linguistic and religious identity'".⁴⁷

Violence broke out between Romania's Hungarian minority in the Erdelj, Transylvania, Transilvania or Siebenbürgen region and Romanians over the Hungarian minority's demand for its own independent schools in several parts of the region in March 1990. Hungarian language signs were tore down and Hungarian Protestant churches vandalised by some Romanians. They declared: "Out with the Huns. We are prepared to die defending Transylvania; Bozgor (Hungarian), don't forget this is not your homeland".⁴⁸ This case, like many others, is featured by a cycle of action and reaction between the ethnic groups involved, while what is driving this cycle appears to have been qualitatively different in comparison with some other cases. "In Transylvania both sides seem to have harboured only benign intentions towards the other",⁴⁹ while in some other cases, one side's intentions have been malign to a (much) higher degree. This is the reason for the fact that violence between the Romanians and the Hungarians was ceased short of a widespread conflict that experienced the Croats and the Krajina Serbs in Croatia, Bosniacs and Serbs, Bosniacs and

⁴⁶ More details: *The Role of the University in Ethnic Conflict Transformation, Democratization, and Developing Human Rights in the Balkans*, COPRI Working Papers, No. 14, 2002.

⁴⁷ See more details: Jelica Kurjak, *Novi oblici povezivanja postsovjetskog prostora – mogućnosti i perspektive*, Medjunarodni problemi, No. 4, 1997, p. 13.

⁴⁸ More details: Laszlo Kurti, *A Culture of Enmity: Hungary, Romania and the Transylvanian Question*, COPRI Working Papers, No. 23, 1993, pp. 5–7.

⁴⁹ Paul Roe, *The Intra-State Security Dilemma: Ethnic Conflict as a 'Tragedy'?*, COPRI Working Papers, No. 18, 1977, p. 18.

Croats and Serbs and Croats in Bosnia and Herzegovina, Serbs and Albanians in Kosovo or Macedonians and Albanians in Macedonia.

One may at least partly explain the actions of the Romanians by the mentioned regional history, and also by the general political and economic conditions in that time Romania. In addition, the demonstrations had coincided with Hungarian commemorations devoted to the 1848 War of Independence. It is considered that such fears were exacerbated mainly because of the poor economic and political situation (chaos) in Romania.⁵⁰ “Thus, an illusory incompatibility rather than a real incompatibility over societal security is apparent. Violence broke out because many Romanians misperceived the intentions of the Transylvanian Hungarians, assumed a worst-case scenario (secession), and thus set an action-reaction process in motion.”⁵¹

It was considered the autonomy would threaten the territorial integrity of the Romania, and would also create threats to the societal security of the majority Romanian population in the region since in case of secession the majority could become a minority outside of its state, i.e. within Hungary. Thus, even just cultural autonomy (that could be observed as a generally useful tools for maintaining societal security) of the local Hungarians was perceived by the Romanians as a threat to their own societal and state security. The more the Hungarians called, for example, for schools in their own language, the more the Romanians were determined to deny them this. Thus, once again a cycle of societal security and political, i.e. democratic action and reaction began to take place.

Thus, numerous Romanians used to be resolute that the Hungarians should not be given cultural autonomy because Romanians tended to view this kind of autonomy as simply a step along the road towards region’s secession, and after that eventual re-unification with Hungary. According to one author, for most Hungarians, nevertheless, secession did not appear to have been their aim; they were prepared to remain if they would not be treated as second class citizens (meaning the right to use their language in the courts and administrative procedures, proportionate representation at all administrative levels and no economic or other discrimination, and education in their own language).⁵²

When Albanians in Macedonia established their university in Tetovo (parallel to the state universities in Skopje and Bitola) demolishing the

⁵⁰ Laszlo Kurti, *A Culture of Enmity: Hungary, Romania and the Transylvanian Question*, COPRI Working Papers, No. 23, 1993, p. 5; Katherine Verdery, *Nationalism and National Sentiment in Post-Socialist Romania*, Slavic Review, Summer, Vol. 52, No. 2, 1993, p. 196.

⁵¹ Paul Roe, *The Intra-State Security Dilemma: Ethnic Conflict as a ‘Tragedy’?*, COPRI Working Papers, No. 18, 1977, p. 18.

⁵² See C. J. Dick, *Instabilities in Post-Communist Europe: Hungary*, Conflict Studies Research Centre, January 1995, p. 20.

university makeshift buildings by the Skopje authorities appeared to have exacerbated the level of ethnic tensions in Macedonia. The existing political and social atmosphere in the country probably generates fears and frustrations of the involved sides. On one side, reason could be a danger for integrity of the state (generated by the other side), and at the other side, reason could lie in impossibilities to join the mother (neighbouring) state or establishing own state (generated by the opposite side). It seems political and economic problems of Macedonia⁵³ and some other countries in Southeast Europe, having own internal and international causes, sources, and results, to a large degree almost by themselves point to the significance of the respect for human rights as well as societal security of minority and majority population.

If one analyses the issues related to the freedom of religion, one should keep in mind primarily international and constitutional norms devoted to non-discrimination and their application in practice. Article 6 of the Framework Convention for the Protection of National Minorities obliges the Parties “to take appropriate measures to protect persons who may be subject to *threats or acts of discrimination, hostility or violence* as a result of their ethnic, cultural, linguistic or religious identity” (italics Z.I.). For example, the Article 9 of the Constitution of the Republic of Macedonia contains a norm about equal rights and freedoms of its citizens regardless to their sex, race, skin colour, national and social origin, political and religious beliefs, property and social position. The Article 19 of the Constitution guarantees religious confessional freedoms, the right on individual and collective expression of faith and a norm about separation of religious groups (communities) from the state. As far as it has been known, in this regard in the country there have not been cases that one could consider as violations of the mentioned constitutional norms.

According to the Constitution (Article 19 and 45), religious communities have the right to establishing schools and charitable institutions utilising the procedure proscribed by the law. One also provided the right to establishing private schools on all levels (except elementary schools) under the conditions determined by the law. In a case of an establishers’ intention to make a religious high education organisation, one could expect that it should be also religiously assigned in certain direction since the Albanians are divided in this as well as in some other regards.⁵⁴

⁵³ More details: Zlatko Isakovic, *Macedonia, Its Neighbours and Balkan Security*, Analysis of Current Events, Association for the Study of Nationalities (Eastern Europe and ex-USSR), Year 6, No. 10, History Department, City College of New York, May 1995; *Macedonia and the Security in the Balkans*, CSS Survey, No. 56, May–June 1996; *International Position of Macedonia and Balkan Security*, COPRI Working Papers, No. 9, 1997.

⁵⁴ After the Second World War, some 70% of the population of Albania belonged to Islam and they were dispersed in all country, 20% to the Christian Orthodox Church

The establishing the Albanian university in Tetovo has been based on the objection against the Article 48, Paragraph 4, of the Constitution guarantying the right to education in native language only in elementary and secondary schools. As a result one was stressing that Albanians have been handicapped at university admission examinations since in numerous cases know Macedonian language less than other candidates. Students Macedonians protested after a law allowed teaching in Albanian language at Skopje Pedagogical Faculty – the solution adopted by the Skopje government that was supposed to neutralise the demands for legalising the Tetovo Albanian University. It seemed that the law also – with the support of the Constitutional Court – has decreased some criteria for elections at teaching ranks. The law was the topic of numerous discussions and also boycotts by students of the both nationalities seeming to represent results of societal threats on both sides.

Afterwards state universities applied admission quotas enabling to those who belong to members of minorities to be admitted outside regular quotas. Since students who belonged to the majority nation have perceived these measures as own discrimination, the admission announcement was contested in front of the Constitutional Court. The Court, however, has taken the stand that the measures have not represented acts of violation of the equality principle.⁵⁵

In addition, the Macedonian state soon after the Constitution adoption has not passed a law about high education that would regulate creation of curricula, human resources issues, etc.; the law could be perceived as a precondition for the utilisation of the mentioned right to establishing high and other educational institutions. Finally, one can mention the pressure of the separated Macedonian Orthodox Church towards introducing a religious

(living mostly in the south of the country), and 10% to the Catholic Church (mostly living in the north). Among Muslims the most numerous used to be Sunnites. One-quarter of them used to belong to the Bektachi sect (more details see *Encyclopaedia Britannica*, 1998, CD) that has been from time to time considered by Orthodox Sunnites as a sect on the Islam's brink or even not belonging to this religion. Albanians in Macedonia and Serbia – have been also mostly Sunnite Muslims with some exceptional Shi'ite Muslims, and members of Orthodox and Catholic Church. The shared memories and myths on common origin and ancestry of Albanians, some Slavic and other nations in Southeast Europe are somewhat disputed. What Albanians in Kosovo and Macedonia have in common with others in Macedonia and Kosovo are tribe groups and clans, which have been the basis of north Albanians' (Ghegs') family and social life in general. While members of the Albanian most numerous group Ghegs have been known as capable warriors, the southerners Tosks have been much more exposed to foreign influences in the first thanks to the easier accessibility of their territory (more details: Zlatko Isakovic, *Identity and Security in Former Yugoslavia*, Ashgate, Aldershot, 2000, pp. 121, 176, 211, and 223).

⁵⁵ More details: Zvonimir Jankuloski, *Nationality (Minority) Protection in Macedonia: A Question of Human Rights or Politics*, Balkan Forum, No. 2, June 1996, p. 168.

education as a course within the system of regular education. A better idea for Macedonia and other multiethnic societies in Southeast Europe and other parts of the world seems to be introducing a subject devoted to the knowledge about main world religions including also religions present in the society although they are not among the main ones.

The Constitution of Macedonia in its Article 48, paragraph 1 and 2 provided also the right of national minorities (i.e. “nationalities” in the constitutional terminology) to free expression, cherishing and development of identity and national particularities; the Republic has the role of the guarantor of protection for ethnic cultural, linguistic and religious minorities’ identities. A law devoted to local self-management allowed local communities in Macedonia have the right to create and utilise own flags that can be in that way harmonised with their local relationships. In communities in which elections were won by political parties gathering mostly Albanians the flag of Albania was regularly utilised what was allowed by the law in days of holidays and some other particular occasions (together with Macedonian state flag, which was disputed by Greece during the period in which Macedonia heraldically incorporated in it the star of Alexander the Great from the Greek territory). After the Constitutional Court stated that the mentioned practice was unconstitutional in Tetovo, Gostivar and some other communities, early July 1997 Albanians and police clashed. Albanians considered that the flag represented their national symbol, i.e. the flag of all of them wherever they are, while Macedonian state organs took the stand that it is the state symbol of Albania. A similar problem was present in Kosovo before the conflict escalation late 1990s.

Ministry for human and minority rights of the State Union of Serbia and Montenegro opened an office for legal aid and SOS telephone line for those citizens who perceive their human rights are breached, jeopardised or just restricted. The Ministry formed a team of experts whose task is to give the aid too; the office will be active until an Ombudsman will be established.⁵⁶

As far as it is known, functionally, partly, or totally illiterate conscripts enrolled in Bulgarian army made officers to devote time for teaching them. Since many of these soldiers have been simply not capable for finishing the training within nine months of their military service, they have been used only for some auxiliary tasks or patrolling purposes. After the closing of the Construction Troops in the army many young Turks have not been utilized as working force any more becoming conscripts in other units causing also some societal fears among the rest of the military.

A first edition of a multi-ethnic school paper under the name *Point* appeared in the streets of the small town Tetovo in Macedonia on 20 January 2002. The paper is created and edited by Macedonian, Albanian and Turkish

⁵⁶ B92 Vesti, 14 and 15 April 2003.

youngsters. The teams for writing articles, designing graphics, drawing cartoons, taking photos and distributing the eight-paged paper are composed of some 40 girls and boys from all six high schools in the Tetovo region. The content is focused on the interests of youngsters everywhere: from qualities of a good teacher to music and skateboarding. The *Point* also publishes interviews with local entertainment and sports personalities. The paper is supposed to come out every two weeks having a print run of 10,500 (8,000 in Albanian, and 2,500 in Macedonian; an edition in Turkish language is planned too). This project - serving as a good example of good practice and a sustainable solution that improves societal security in a ethnically mixed region like the Tetovo – is funded by the Media Development Unit of the OSCE Spillover Monitor Mission to Skopje and by Confidence Building Initiative of the International Organization for Migration.⁵⁷

A lady from Cuba was forbidden to enter to a supermarket in Belgrade as security workers – thanks to her dark skin colour – assumed that she was Roma. A part of inhabitants of Belgrade suburb settlement Zemun Polje protested against establishing by the town authorities a Roma settlement nearby.⁵⁸ Belgrade Centre for Human Rights has expressed its concerns because of the more and more frequent expressions of intolerance and threats directed towards citizens belonging to minority nations, ethnic or religious groups.⁵⁹ The Foundation for development financed opening and equipping office of the Roma's Cultural-Educational Society in city Sombor, Vojvodina. The Society was established two years ago with support of the Open Society Fund and the Centre for Interactive Pedagogy.⁶⁰ One can conclude that within the field of human rights one can find out examples and cases that can be qualified as positive ones along with the negative ones in the observed region.

One could add that these nations have lived in the area for centuries being more or less good neighbours, close relatives, and even making mixed marriages but also waging wars.⁶¹ Thus, one can assume that an aptitude to human rights protection and violation, and (dis) respect for societal security of the “others” is traditionally present in the region.

The concept of three-pronged autonomy derives from an almost identical human rights program developed in the mentioned Romania's region, and the

⁵⁷ See more details *OSCE Newsletter*, Vol. 10, No. 1, p. 16.

⁵⁸ See also about their societal security and other problems caused by the refugee and displaced persons' status in Montenegro: Bozidar Jaksic, *Roofless People – The life of Refugees and Displaced Kosovo Roma in Montenegro*, Republika, Beograd, 2002.

⁵⁹ B92 Vesti, 11 March 2003.

⁶⁰ B92 Vesti, 13 April 2003.

⁶¹ See more detailed: Zlatko Isakovic, *Poloza Makedonije u balkanskem okruzenju*, Medjunarodna politika, No. 1024, 1994, p. 35.

concept has been further elaborated and developed within Hungary itself.⁶² In addition, an author noted, “the roots of such a concept of minority protection go back far beyond the work of the Badinter Committee, and are already present, for example, in the work of the early twentieth century Austrian Marxists Karl Renner and Otto Bauer. They promoted the idea that people living in the Austrian-Hungarian Empire could be simultaneously both citizens of the Empire and members of ethnic associations striving to protect the identity and culture of their respective ethnic groups”. The author concluded “such protection might often require a certain measure of territorial autonomy within the Empire. Their central inspiration was to overcome ethnic conflict by accepting ethnicity as a strong political factor that could be mitigated and channelled through various forms of autonomy within the Empire’s borders.”⁶³

The subsequent violent developments in Macedonia along with those in the Kosovo and other parts of the former Third and Second Yugoslavia opened very largely the question is it possible to protect human rights by war, terrorism, terror and other kind of violence? Answering to that question, one could mention just the existence of the civil and political human rights belonging to the first their generation (the right to life, liberty, and the security of the person; freedom of residence and movement; to asylum from persecution; freedom from racial and equivalent forms of discrimination; freedom of opinion and its expression; freedom of peaceful association and assembly; freedom from slavery or involuntary servitude; freedom from arbitrary detention, arrest, or exile; the right to a public and fair trial; freedom from torture and from cruel, degrading, or inhuman punishment or treatment; freedom from interference in correspondence and privacy; freedom of conscience, thought, and religion; and the right to directly or indirectly participate in government; the right not to be deprived of one’s property arbitrarily; the right to own property, etc. “What is constant in this first-generation conception … is the notion of liberty, a shield that safeguards the individual, alone and in association with others, against the abuse and misuse of political authority. This is the core value”⁶⁴ One could conclude that the violent events that happened in the observed region and numerous other similar events represent very favourable conditions even for gross-violations of the mentioned and numerous other human rights.

⁶² For Instance, a leading Hungarian historian in a work devoted to the ethnic tensions within East Central Europe developed the concept of three-pronged autonomy integrating both the communitarian principles of the ethnic minority standards and liberal principles of human rights protection (see Ferenc Glatz, *Minorities in East-Central Europe*, Europa Institut, Budapest, 1993).

⁶³ See Dejan Guzina, *Nationalism in the Context of an Illiberal Multination State: The Case of Serbia*, Ph.D. thesis, Faculty of Graduate Studies and Research, Department of Political Science, Carleton University, Ottawa, January 14, 2000, pp. 277–278.

⁶⁴ *Human Rights*, <http://www.britannica.com/bcom/eb/article/2/0,5716,109242>), 27 March 2003.

Finally, there is the third generation of human rights – that has not been usually included among internationally recognised human right yet – composed of the right to political, economic, social, and cultural self-determination; the right to social and economic development; the right to participate in and benefit from “the common heritage of mankind”, i.e. shared Earth-space resources; scientific, technical, and some other information and progress; and cultural monuments, traditions, and sites. The others belonging to the same generation of rights are *the right to peace*,⁶⁵ the right to humanitarian disaster relief, and the right to a healthy and balanced environment.⁶⁶ One author included the right to development to this group of the rights instead of the right to humanitarian disaster relief.

The rights of this generation tend to be posed as collective ones; each of them, however, has both collective as well as individual dimension. It is considered, “[Finally], the third generation of solidarity rights, while drawing upon, interlinking, and reconceptualizing value demands associated with the two earlier generations of rights, are best understood as a product, albeit one still in formation, of both the rise and the decline of the nation-state in the last half of the 20th century”.⁶⁷ One could add that this generation still lacks an international adoption and specification and theoretical elaboration that could be compared with the one to which the two previous generations have been subjected.

Having in mind just the right to peace one may elaborate actual and possible implications of the dilemma: does the world need both peace and respect for human rights or just one of them in Southeast Europe and elsewhere? Presenting the main elements of the notion of peace and briefly reviewing its historical genesis (lack of war is a traditional definition that moves the whole task to the area of the defining war), one can also mention the possibility that the definition of peace could include, among other phenomena and activities, respect for (some of) the human rights. The mentioned dilemma can be avoided or resolved by inclusion of peace within the categories of human rights (one more right of that kind could be the right to societal security) or the inclusion of human rights within notions of peace (one element of whose definition could be an absence of or at least relatively low intensity of societal security threats, i.e. fears).

⁶⁵ See Declaration on the Right of Peoples to Peace adopted by the UN General Assembly in 1984 in Louis Henkin, Gerald L. Neuman, Diane F. Orentlicher and David W. Leeborn, *Human Rights*, Foundation Press, New York, 1999, pp. 480–481.

⁶⁶ See Declaration on the Right to Development adopted by the UN General Assembly in 1986, in Louis Henkin, Gerald L. Neuman, Diane F. Orentlicher and David W. Leeborn, *Human Rights*, Foundation Press, New York, 1999, pp. 481–485.

⁶⁷ *Human Rights*, <http://www.britannica.com/bcom/eb/article/2/0,5716,109242>), 27 March 2003.

In the opinion of the author of this work, if such inclusions are not acceptable, i.e. if the world does need distinct notions, at least in situations in which they are in collision, i.e. in relationships of incompatibility, and then one must decide which one of them is more important. In that case, an additional dilemma could appear: does any violation of one of the two phenomena or their segments represent sufficient reason for sacrificing the other phenomena or its segments?

Although the general theoretical conclusion could be that people(s) should not have to choose between human rights and peace, in real life situations in Southeast Europe and elsewhere there is sometimes a choice to make.

It seems that one could find out an another possible conclusion in the words once said by the known Soviet dissident Andrey Sakharov that the ideology of human rights is probably the only that could be linked with so different ideologies such as is communist, socialdemocratic, religious, technocratic as well as those that could be described as national or native. The human rights ideology can also serve as a base for those who got tired of numerous ideologies, any of them has not brought simple human happiness. The defence of human rights represent a clear path toward human uniting in the turbulent world, path toward mitigating of sufferings.⁶⁸

3. CONCLUSION: PROTECTION OF NATIONAL AND ETHNIC MINORITIES AND SOCIETIES

Where the main threat comes from depends much on where the societal security social life field or dimension is being focused. For example, the Bulgarians seem to be the main societal security threat for Macedonian minority in Bulgaria, majority in Macedonia and elsewhere from the point of view of language, Albanians from the point of view of statehood thanks to their relatively large number in the state of Macedonia (and other countries neighbouring to Albania), Serbs from a religious point of view since the secession of the Macedonian Orthodox Church was not recognised by the Serbian Orthodox Church, and Greeks concerning the name of the nation, its language and the state (considering that they have some sort of copyrights on the name). Macedonians identity is thus potentially the most threatened among the main nations in the

⁶⁸ See more details Zlatko Isakovic, *Human Rights Related to the Expression of Religion and Ethnic Relations in Macedonia and Balkans*, International Conference/Round Table The Contribution of Religious Communities to Peace and the Removal of the Consequences of the War on the Territory of the Former Yugoslavia, ISCOMET, Maribor in co-operation with The Foundation for International Understanding, Copenhagen, and The European Centre for Ethnic, Regional and Sociological Studies, University of Maribor, Rogaska Slatina, Slovenia, September 19–21, 1997, pp. ???.

Yugoslav successor states. Internally, the predominant dynamic is that of how the Macedonians' and Albanians' national identity threaten each other in a vicious circle.

According to the above-mentioned concept, one could decide whether a certain phenomena or action could actually be treated as societal security threats or as something else. For instance, in Serbia, Albania, and Montenegro the existing differences in majority languages do not seem to be a bigger problem, except maybe for members of minority groups who may perceive them in that way. Religion affiliation is divided within the majority population in Albania or Romania. The previously existing threats between Protestants and Catholics have disappeared in the observed and other European and world regions.

A problem is how to find a way in which one can identify a situation where one minority group and/or society perceives each other as a societal security threat in the mentioning meaning and how to distinguish this kind of threats from their other kinds. One way is behaviour; the other is language (and primarily propaganda). In the second case, sometimes the speaker is the state itself as the protector of state security and sometimes cases societal security. In Southeast European and other countries a minority can also speak on its societal security via its intellectuals and/or political parties, cultural, educational and other organizations. As rhetoric consists of words, it is easier to deal with. Actions rarely speak for themselves and for that reason they are more difficult to be interpreted.

One could give the general affirmative answer to the question whether ethnic minorities and societies in the region of Southeast Europe are faced with societal security threats although this rule – as any other – has own exceptions. The threat sources one can find out, among others, in the previously elaborated linked fields of democracy and human rights. Some of the specific cases and kinds of the threats and sometimes their intensities were presented within the previous sections of this paper. Reading this work, readers should keep in mind that “real threats may not be accurately seen. Perceived threats may not be real, and yet still have real effects”.⁶⁹

Governments and politicians in general make their minority or majority populations believe that they have been or will be seriously threatened in order to mobilize their support. The predictions of threats could be fulfilled, in the first place thanks to discrimination and inequality with some other nation and during war and similar operations, but afterwards one could often hardly say to what degree the predictions were self-fulfilling. The predictions are at least partly based on human beings' historical traumas, narcissisms, aptitude to react

⁶⁹ Barry Buzan, *Societal security and European security*, in Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd., London, 1993, p. 43.

to outside stimulations when someone threaten or ‘threaten’ to their ethnic feelings and identities, capacity for imagination and foresight that enhance the frequencies of aggressive reactions (that the reacting human beings and their groups perceive as defence). One can stress that the capacities are not boundless and perfect; relatively often they appear to be more or less false making people to become the “easy catch”.

This fact may provide a space for applying the security dilemma concept developed within the traditional international security theory. When actions of state A undertaken in purpose to increase its own security (such as purchasing armament) cause as a rule a reaction of state B, whose government interprets the A’s actions as a threat to B’s security in turn, ultimately diminishing the security of A.⁷⁰ If one side failed to interpret others’ intentions correctly (perceiving other side’s benign intent as malign one), such a dilemma could be viewed as one of main conflict causes. Political, economic and moral interests, motivation and bureaucratic inertia of political and economic actors, above all the army and other state bodies and the military industrial complex, may lead to the failure. The fatality of the economic, political and other social consequences of such behaviour became obvious when the socialism collapsed in Europe after becoming powerless by trying to acquire political power, first of all military power.⁷¹ “To the extent that tensions over migration, identity and territory occur between societies, we might by analogy with international politics talk about a societal security dilemma” in the Buzan’s meaning. “This would imply that societies can experience processes in which perceptions of ‘the others’ develop into mutually reinforcing ‘enemy pictures’ leading to the same kind of negative dialectics as with the security dilemma between states”.⁷² As Herz concluded, one of the tragic implications of this kind of dilemma may be that the mutual threats, i.e. fears of something that had not existed at the onset could end in precisely what one had feared the most.⁷³

⁷⁰ See John Herz, *Political Realism and Political Idealism*, Chicago University Press, Chicago, 1951; R. Jervis, *Perception and Misperception in International Politics*, Princeton University Press, New York, 1976; B. Posen, *The Security Dilemma and Ethnic Conflict*, *Survival*, Spring, Vol. 35, No. 1, 1993, pp. 27–47.

⁷¹ For more details see Zlatko Isakovic, *Vojni troškovi i propast socijalizma u Sovjetskom Savezu i Istočnoj Evropi*, in Zlatko Isakovic (ed.), *Vojske i promene u evropskim socijalistickim zemljama*, Institute for European Studies – YUPeace Centre for Peace and Conflict Research, Belgrade, 1994, 43 ff; Zlatko Isakovic, *Introduction to a Theory of Political Power in International Relations*, Ashgate, Aldershot, 2000, pp. 215–216.

⁷² Barry Buzan, *Societal security, state security and internationalisation*, in Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaître (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd., London, p. 46.

⁷³ See John Herz, *International Politics in the Atomic Age*, Columbia University Press, New York, 1966, p. 24.

Thus, states', minority and majority group's actions to increase their own security may be undermined by this kind of dilemma setting off a chain reaction. Pre-emptive attacks, preventive wars, the settings up of rival alliances along with the more or less intensive societal security threats can be observed as manifestations and results of the dilemma. This dilemma may be resolved by proper consideration of the other side's security concerns and preference utilisation of security means that are not detrimental to the others' security. Such military non-offensive defence is defined as actions and military strategy that maximize strength of defence minimising options of offensive cross-border attack. This kind of behaviour – since it is opposed to the one featuring the security dilemma – leads to the avoidance of conflict escalation, war, destruction, the Cold War type of the bipolar division in the world, a reduction in military spending, etc.⁷⁴ along with the societal security threats and fears generated by the threats.

Raul Roe – following this way of reasoning – has constructed own concept of the societal security dilemma in the Buzan's and Wæver's meaning of the term societal security and operationalised it utilising the mentioned cases of the Hungaro-Romanian relations in Romania and the Serbo-Croat conflict in Krajina.⁷⁵ The author has adapted the Barry Posen's approach emphasising societal (rather than state) insecurities fundamentally changing thinking about the concept of the security dilemma. Roe suggested that societal security dilemma "can open the door somewhat to our also thinking about non-military security dilemmas".⁷⁶ It seems that this suggestion could be useful for studies of the societal security concept discussed in this work.

This kind of non-military societal security dilemmas could generate threats and fears and finally the kind of escalated conflicts between minorities/majorities and majorities/minorities that leads to the collapse of multi-ethnic states (similarly to the role of the Kosovo conflict in the disintegration of the Second and Third Yugoslavia). The Kosovo and Macedonian cases show that this may also represent the necessary conditions for military security dilemmas and further military conflict escalation. It was concluded, "while in some cases societal security dilemmas may operate solely within the societal sector of security, in others they may come to operate in both the societal and military sectors of security (and usually in the political and economic sectors as well). Moreover, this may also reflect a change firstly in

⁷⁴ See more details Bjørn Møller, *Towards a New Global Military Orde*, COPRI Working Paper, No. 23, 1997.

⁷⁵ See Paul Roe, *The Intra-State Security Dilemma: Ethnic Conflict as a 'Tragedy'?*, COPRI Working Papers, No. 18, 1977; Paul Roe and Paul Prince, *The Societal Security Dilemma*, COPRI Working Papers, No. 3, 1977.

⁷⁶ Paul Roe, *The Intra-State Security Dilemma: Ethnic Conflict as a 'Tragedy'?*, COPRI Working Papers, No. 18, 1977, p. 18.

the aim of the conflict from, for example, demands for cultural autonomy within a state to those for secession from a state; and secondly, in the nature of the conflict from, for example, localised ethnic violence to widespread ethnic conflict".⁷⁷

As the South Europe has a long and extensive tradition of minority problems and ethnic conflicts, one could stress the problem of objective and subjective possibilities for political parties and other actors attempting to bridge ethnic cleavages to find out a common denominator of societal as well as national security that could satisfy the Romanian majority and the Hungarian minority in Romania; Bulgarian majority and Turkish minority in Bulgaria; the majorities and minorities in the Yugoslav successor states?⁷⁸ The answer to this question is a rather complex one.

The problems elaborated in this work have a few more relevant aspects. Having probably in mind the possible threats to the state territorial integrity and independence, the authors of the Article 21, the Framework Convention for the Protection of National Minorities, includes the text that "nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States". However, it is disputed issue can this Convention be applied to Kosovo conflict.

One of the additional key questions related to the Kosovo, Macedonian and some other cases within the societal security fields of democracy and human rights seems to be who is the one who could make valid decision about secession: the whole society or a minority that represents a majority or even is just significantly concentrated in one territorial segment of the society?

If one deprives a majority of the threatening 'right' to violate minority human rights (representing some kind of guaranties for preserving minority dignity and identity), one should deprive minorities of the also threatening right to national self-determination (particularly if it is interpreted as the 'right' to secession as it is the case in the Southeast Europe as well as elsewhere) and *vice versa*. One author concluded maybe a solution could be found within the scope of the principle "all rights to minorities, excluding the right to secession".⁷⁹ The solution for the problem seems to be that the both parties (minority or majority) should be deprived of the mentioned 'rights'. The dilemma seems to be at least

⁷⁷ Paul Roe, *The Intra-State Security Dilemma: Ethnic Conflict as a 'Tragedy'?*, COPRI Working Papers, No. 18, 1977, p. 19.

⁷⁸ See Robin Alison Remington, *Security Dilemmas in the Post-Communist Balkans – Party-Army Dynamics*, Eurobalkans, Winter 94/95, No. 17, p. 71.

⁷⁹ See: Misha Glenny, *The Yugoslav Nightmare*, The New York Review of Books, Vol. XLII, No. 5, 1995, p. 57.

partly similar to the one that often appears between states and their alliances within the field of disarmament: which side is going to get rid of its arms first?

A solution could be found attempting to create a procedure (including a schedule) and aim a kind of security that assumes that each side does not take care just of own societal security, but also of other (does not matter minority or majority) side's societal security. This kind of security is at least partly derived from the mentioned military non-offensive defence and may be named *common societal security*.

One author stressed that for the fruitful stable democracy and consociation, it is important the cooperation between elites of different groups (Lijphart), and the possibility that organisations and individuals belonging to different ethnic groups affiliate themselves and cooperate beyond borders of their respective ethnic or federal units (Lipset). The development of the situation in the Second Yugoslavia and processes in some other countries of Southeast Europe and elsewhere showed that “political élites monopolize the mediating role between the groups, and reduce the possibilities of direct cooperation between citizens and organizations from the areas they have the control over. It is said that élites support heterogeneity of the society as a whole, i.e. between the ethnic groups, but act very energetically in order to impose homogeneity within the groups they control (Elazar)”⁸⁰ Consociation or power sharing and respect for human rights (and particularly their inviolability) could be considered as theoretical and political long-term solutions that are among most appropriate for maintaining societal security of minorities and majorities, i.e. societies.

Generally, successful democratization in Southeast Europe and elsewhere assumes national unity as a basic precondition. The unity can hardly be fulfilled within a social and political environment burdened by existing ethnic conflicts, particularly in multiethnic societies. Even within societies that can be perceived and considered as democratic ones with long traditions of this kind, ethnic conflicts escalations have lead their parties to restrain democracy more or less and/or reduce (the fields for application of) democratic principles and human rights, and restrict the functioning power of the democratic institutions and processes. Southeast European states do not represent an exception in such a situation. On the contrary, the restraints, reductions and restrictions seem to be even more durable and more severe there. In general ethnic and other conflicts, and especially if they are escalated, have negative impacts on democracy, and at least partly suspend or disable the development of the democratisation process. To conclude, although all authors do not agree

⁸⁰ Vojislav Stanovic, *Vladavina prava i suzivot etnickih grupa*, Polozaj manjina u Saveznoj Republici Jugoslaviji, Zbornik papira prezentiranih na naucnom sastanku, 11, 12 and 13 January 1995, Srpska akademija nauka i umetnosti, Beograd, 1996, p. 68.

with the conclusion, the more conflicts, the harder it is to achieve democracy and even more so to experience it.⁸¹

Since the mentioned possible at least partial and imperfect (within the existing conditions in several Southeast European countries) ways out from the presented problems are not quite new in theoretical and practical regard, they are matters of mass (minority and majority) and elite's wisdom and political will based on certain societal conditions (heterogeneous ethnic structure characterised by fears, i.e. perceived threats by "them" in the mentioned meaning in the first place) and intentions, motives and means utilised for achieving mass, group and individual goals.

The mentioned prognosis based on the national structure of the population only predicts the likelihood of mobilisation ethnonational by its nature. High mobilisation of any kind does not automatically mean an armed conflict (seen as ethnonational almost by definition). The practice of Southeast Europe and some other parts of the world indicates that serious societal security threats and even outbreaks of violent conflicts escalation can be stimulated also by several groups of phenomena in political and related fields of social life. First, deep and long economic crises (high inflation, unemployment, etc.) threaten (really or allegedly, does not matter) from time to time minority and majority national groups, but maybe most of all those living in most underdeveloped regions and having lower living standards. One can add to the list deterioration of living standards in a country, regional inequalities, i.e. differences in political and social power elements (population, territory, economic strength, political system, ideology and morale, military power, communication power).⁸² Finally, one could also mention an existence of an increasing economic disintegration, war economy, unequal distributions of internal and international state debt, unequal regional contributions to state budget, developed corruption, etc.

Secondly, one can include to the list of the phenomena nourished deep historical traumas among national groups, traditional and present political

⁸¹ Cf. de Nevers, Renee, *Democratization and Ethnic Conflict*, Survival, Vol. 35, No. 2, Summer, 1993, pp. 31–48. For a provocative and multi-faceted discussion of some of the major points discussed in this paper see one of the Slavic Review issues of 1996. The discussion was initiated by the article by Robert M. Hayden (*Schindler's Fate: Genocide, Ethnic Cleansing, and Population Transfers*, Vol. 55, issue 4, Winter 1996, pp. 727–748). The authors who disputed his thesis in the same issue were Carol S. Lilly (*Amoral Realism or Immoral Obscuration?*, Vol. 55, issue 4, Winter 1996, pp. 749–754); Susan L. Woodward (*Genocide or Partition: Two Faces of the Same Coin?*), Vol. 55, issue 4, Winter 1996, pp. 755–761); Wallace, Paul (*The Costs of Partition in Europe: A South Asian Perspective*, Vol. 55, issue 4, Winter 1996, pp. 762–766). Finally, Hayden replied to these articles (*Reply*, Vol. 55, issue 4, Winter 1996, pp. 767–778).

⁸² See more details: Zlatko Isakovic, *Introduction to a Theory of Political Power in International Relations*, Ashgate, Aldershot, 2000, pp. 13–76.

disagreements over the very important constitutional issues (including the political territorial and other organisation of the state), internal historical and present territorial disputes and disagreements exacerbating the constitutional ones, a more or less strong relation between ethnonational composition and regions, traditional and present secessionism, problems with the very notion of society and some others, rule of law, etc.

Third group of the phenomena could be composed of an existence of narrow populist political elites having crucial roles, inability to compromise and authoritarian spirit,⁸³ large scale ethnonational mobilisation and ethnified party system; weak states and governments lacking legitimacy, political systems that can be seen as authoritarian and hard-line nationalist ideologies expected to legitimate it, elections that may be seen as rigged and whose results follow ethnic lines more or less closely, shifting coalitions between national leaderships and inside them, etc.

Fourth and maybe the most important group of the phenomena – having in mind the field of societal security – includes great minority integration problems covering large scale emphasised cultural specificities by state policies and social movements; problems in defining a way for making a nation out of the state designed for itself by the majority ethnonational group, i.e. close linkages in relationships majority nation – state having “citizen state” and modernisation as a distant prospects, i.e. carrot only; governments have pretensions to have their own official languages and in some cases even independent churches; changes in minority cultures accompany changes in majority cultures, and political systems then get working at them utilising from forced assimilation and discrimination to increasingly mass expulsion and murder, and hard repression; propaganda and other communicational champagnes between nationally oriented and sometimes politically controlled mass media, etc.

Fifth group of the phenomena could include a direct or indirect dependence of internal cohesion on the certain phenomena within international environment (such as world, cold or other wars, revolutions) and geopolitical position; the inappropriate or even counterproductive diplomatic, economic, military and other conflict resolution or management, peacemaking and peacekeeping attempts; aptitude to pinpointing guilt at collective or individual actors in order to pass legal or moral judgment; international historical and present territorial disputes and disagreements, alliances and animosities, etc.

One could mention several kinds of ways and activities that could be more or less useful in maintaining societal security in the mentioned meaning in

⁸³ See Miroslav Pecujlic and Radmila Nakarada, *The Breakdown of Yugoslavia and the Constitution of the New World Order*, in Radmila Nakarada (ed.), Europe and Disintegration of Yugoslavia, Institute for European Studies, Belgrade, 1995, p. 31.

Southeast Europe. First, preventing the threats by development and spreading of the spirit of tolerance, spreading ideas of and stimulating the rule of law, respecting differences of various ethnic and religious groups and particularly utilise practice of non-discrimination in Southeast European countries and the region as a whole. Second, eliminating fears by establishing, preserving and spreading existing trust among different ethnic communities in the region. Third, the threats and fears can be eliminated or at least decreased their intensities by the building of the sustainable and development system established and based on the principles of understanding, societal, regional and cross-border cooperation and of good-neighbourly relations and free mobility of people within the countries, the Southeast European region and the rest of Europe and the world), and, understandably, multiculturalism. Fourth, reaching the same aims one could eliminate the practice of trafficking and smuggling people and various goods and corruption that could spoil – among other relationships – interethnic relations and stimulate distrust and ethnic distance in the region.

It seems that the reaching objective that enlargement of the existing ERC or establishing a similar network of individuals and organisations interested in developing democracy and civil society, improving human rights in general and protecting the rights of national ethnic and religious minorities could be a helpful appropriate step in the mentioned direction. In addition, one can observe an enlarging of the open regional database concerning the protection and rights of ethnic minorities' members in the Southeast Europe.

Dealing with the issues of democracy, human rights and relationships between minorities and societies in Southeast Europe, one of the key questions could be whether it was possible for Macedonia, the State Union of Serbia and Montenegro and the other weak Yugoslav successor states to strengthen soon after the disintegration of the Second and Third Yugoslavia and in to avoid the weakness characterizing their ancestor state within the last decade of its existence. Most of the successor states have been weak, first, since “the idea of the state is firmly planted in the ‘minds’ of other states, the state has no secure environment”.

Second, the states have been weak thanks to legal and institutional weakness. In such conditions, the overemphasised significance of institutions performing state repressive function makes the state weaker, and not stronger. Since repression cannot make a weak state stronger (on the contrary!), the circle is being closed: the more repression the more weakness, and the weakness “asks” for more repression. In this kind of states, security discussions priority give to internal threats, and the problem of the lacking legitimacy of the regime is ‘solved’ by a temporary mitigation of social conflicts, while the roots of the problems remain completely or almost untouched.⁸⁴

⁸⁴ See more details Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, second edition, Harvester Wheatsheaf, London, 1991, pp. 82–90.

The overemphasised significance of the institutions that perform state repressive function the mentioned author detected in the Third Yugoslavia (thanks to the Albanians' armed rebellion and unsettled relationships between Montenegro and Serbia). Similar situations existed in the country before the rebellion in Croatia, during wars in the country, and in Bosnia and Herzegovina as well as in cases of trade union, students' protests, and opposition demonstrations in Belgrade, Zagreb and other cities. One can add to this list the case of Macedonia and the escalated conflict there.

Third, the weakness exists thanks to the potential territorial instability and demographic inequality with ethnic features. The conclusion that "the idea of the state, its institutions, and even its territory can all be threatened as much by the manipulation of ideas as by the wielding of military power"⁸⁵ is applicable to the situation in most of the Yugoslav successor states as well as in some of other Southeast European and some other states. The state security threats and fears generate societal security threats and fears particularly within majority populations, and as rule minority populations react making new threats and fears for majority populations. Nationalism "offers a particularly attractive mode in times of crises and depression since the link to a glorious past ... donates immediate relief, pride and [a] shield against shame", and the development of nationalism "is accelerated by an idea about the existence deep in the national soul of a ... golden future".⁸⁶

One can add to this quotation that ethnic groups (more often minorities) have dreams about the "golden future" (generated or stimulated often by their politicians) as soon they get own states. One can conclude that they are affected by the kind of prison psychology making long-term prisoners to believe that will have a magnificent and joyful life or at least their main grievances and problems would quickly disappear when they leave prison. Consequently, for the accomplishment of such a national goal, "no human price is too high to pay". However, among other tragedies and problems created and emerged during the history of numerous wars in the Southeast Europe and elsewhere, the clearly visible or latent conflicts in most of the states were created, or existing were intensified. The great quantities of societal insecurity that was created in this and other ways in turn made the conflicting parties even more rigid and unready to utilise the compromises needed for conflict resolution or some other procedures and means useful for (partly) diminishing the conflict intensity.

As it was mentioned, since the end of the Cold War politicians within the observed region and out of it are the main social protagonists interested and

⁸⁵ Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, second edition, Harvester Wheatsheaf, London, 1991, p. 97.

⁸⁶ Ole Wæver, *Societal security: the concept*, in Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.), *Identity, Migration and the New Security Agenda in Europe*, Pinter Publishers Ltd., London, 1993, p. 21.

utilising in nationalistic ideologies. They are as a rule, however, less concerned with historical and theoretical deliberations about national issues. They rather observe own and other nations' more or less particular myths, origins, religions, cultures and languages as "geese laying the golden eggs" that enable them increasing or at least keep their political power regardless to the social price that include in many cases the societal security threats and fears. Politicians even – among other means – use conflicts of identities that are at least to some degree different and the differences could serve as a base for violating the minority and/or majority societal security. Simultaneously, they tend to ignore the similarities between the identities of different nations along with differences that exist between parts of their nation, i.e. sub-identities (sometimes even greater than the differences in comparison with other close nations' identities. Therefore, it can be assumed that these threats and corresponding fears are mostly or at least in some cases generated not by different identities themselves, but by their misuse (by their stressing and amplifying) in function of a means in a political power struggle and gathering by power-thirsty domestic and/or foreign politicians and political parties.

On the other hand, within second type of explanation, politicians or at least all of them are not power-thirsty; they are rather scrupulous individuals who loyally serve their nations. They, among other actions, enable their nations to retrieve and preserve their own identities, history (and nations in this part of the Europe can be considered as overburden by history), and national treasures can be considered that are important as historical values as well as can also be utilised in the certain situation.

However, history, if cumulatively subjected to subjectivist and pragmatic criteria within a conflict, may become a rich and 'reliable' source of facts that can be used for creating a desired vision of one's own national specificities, ancestors, etc. (and of one's own successors, who in this way become those who create history as well as other contemporaries belonging to the same social group (nation, tribe, family, etc.). The more one moves back into the past (often handling less comprehensive and/or reliable data impossible or hardly possible to be verified by utilising other sources), the greater one has the impression of own perfection and, thus, supremacy and domination over others in that way threatening them. A great majority of ethnic and other minority and majority social groups could find in their own recent or distant pasts positive and monumental achievements that can create a higher profile – in numerous cases by propaganda – overshadowing other (mis) deeds.⁸⁷ Since ethnic group often considers own past achievements the most or at least among most positive and monumental (thanks to them, "we" are "the most wonderful", "the most

⁸⁷ More details: Zlatko Isakovic, *Identity and Security in Former Yugoslavia*, Ashgate, Aldershot, 2000, pp. 230–234.

cultured”, “the most powerful”, “the most peace-loving”, etc.), this could be considered as a means for threatening and source of social security fears, i.e. societal insecurity for the other ethnic majority or minority group, which is in that way motivated to react, usually making counter-threats, i.e. fears for the opposite side, etc. Thanks to the limited space of this work, the complex role of propaganda, i.e. persuasion within the field of social (in) security could and should be elaborated in a separate paper or book.⁸⁸

⁸⁸ The author's concept and attitudes devoted to this phenomenon are presented in the book *Uvod u propagandu*, Zavod za udžbenike i nastavna sredstva, Beograd, 1991.

PREVENTING ETHNIC TENSIONS: BENTHAM'S "SELF-REGARDING PRUDENCE" AS A WAY OUT FROM PESSIMISM

DIMITRIS CHRISTOPOULOS

1. THE NORM OF EXCEPTION: SOVEREIGNTY AND MINORITIES

Man is free only when he is submitted to the state's sovereign power. This is the major modern paradox. *"Liberty of the subject consistent with the unlimited power of the sovereign"*, states Leviathan. For C. Schmitt, a sovereign is he who makes decisions in cases of emergency. The concept of sovereignty is a concept of politicisation of the divine, a secularisation of a theological concept. Gradually, this divine power gives way to state sovereignty. According to Schmitt, the essence of this concept – as of every concept – can only be perceived in extreme cases and not in its normal procedural forms. In our case, the particularistic exception forged by a minority within the boundaries of Nation-State gives essence to the universal norm of contract liberty. Minorities cannot exist without the concept of sovereignty. The religious and cultural difference becomes claim within the modern liberal framework of rights. The advent of universalism changes (by the "discovery" of sovereignty and the modern individual subject) the cultural particularism into that of emergence of individual rights. Within the context of state sovereignty, minorities can be defined as an *exception* giving breath to the general norm.

The protection of religious minorities became an element of the new sovereign order in Europe when the Treaties of Westfalia (1648) gave birth to the new state pluralistic system in Europe, which signified the end of the "natural mankind" in the continent.¹ The new modern system is characterized by the protection of the religious element. The emphasis in such early treaties is on freedom of conscience and worship. However, the principle of *cuis regio, eius religio*² is not abandoned as being incompatible with individual rights, but as being one of the accepted reasons of religious conflicts. Populations obtain freedom of religion not due to their natural human attributes, but as an indemnity awarded to kingdoms that have lost powers or territories. Historically, the individual is still absent.

¹ Cf. the first chapter – referring the Westfalia peace – of OSIANTER A., *The State System of Europe, 1640–1990. Peacemaking and the Conditions of International Stability*, Clarendon Press, Oxford, 1994.

² Principle according to which the prince who was changing religion has the right to decide whether his subjects would follow his choice.

2. HUMAN RIGHTS CRITIQUES FROM A MINORITY POWER RELATION PERSPECTIVE

The birth of the individual is the triumph of modern reason (*ratio*). The fusion of individualism, universalism and rationalism is historically and philosophically placed in the French Declaration of 1789.

Since then, critiques of human rights focus on the abstraction and the indeterminacy on the basis of which the individual subject is legitimized. These critiques attempt gradually to modify the modern paradigm in order to socialize the subject inside the historical and social structures determining his claims and rights. The notorious traditionalistic critique of Burke's,³ points out the impossibility of existence of an abstract individual. "There are no individuals, but French, English, Russians, etc". States De Maistre.⁴ Hegel's historicism tries to reconcile universalism – the World Spirit (*Weltgeist*) – with human particularism.⁵ For him, individual worth as a universal person is only due to his cultural particularities. The Hegelian philosophy becomes the foundation of the Marxian critique of human rights. For the *Jewish Question* of Carl Marx, human rights are the rights of the egoist bourgeois and hide the alienation and separation between the liberal abstraction and the social reality.⁶ This separation is the daily experience of the individual belonging to a minority; free and equal within the sphere of liberal abstraction, but deprived of rights that would guarantee his particular entity within his social surrounding.

3. THE IDEAL AND REQUIRED ENEMY

The nation-state is simultaneously the creator and the creation of modern Europe. State presupposes nation nation needs State. The ideal relation-ship between the two is a relation-ship of absolute identification; a state of nation, further, a state of *one* nation.⁷ This historical and philosophical procedure leads

³ *Reflections on the Revolution in France*, (1790) ed. O' Brien, Penguin Books, 1968.

⁴ *Considerations sur la France*, (1796), ed. Tular, Garnier, 1980.

⁵ *Grundlinien der Philosophie des Rechts*, (1821), Suhrkamp, 1970.

⁶ Cf. particularly *inter alia* SANFORD A., LAKOFF, „The Marxian Critique of Liberal Equality”, in *Equality in political Philosophy*, Harvard University Press, 1964, pp. 216–224.

⁷ On nationalism, from a rich bibliography, cf. ANDERSON B., *Imagined Communities: reflections on the origin and the spread of nationalism*, London, Verso Editions, 1983; DEUTSCH K.W., *Nationalism and Social Communication. An enquiry into the Foundations of Nationality*, Cambridge Mass. and London, The M.I.T. Press, 1969; GELLNER E., *Nations and Nationalism*, B. Blackwell, Oxford, 1982; HOBSBAWN E., *Nations and Nationalism since 1780 – Program, myth, reality*, Cambridge, 1990; KEDOURIE E., *Nationalism*, London, Hutchinson University Library, 1985; KOHN

naturally to the exclusion of the citizen that would not identify himself with the leading nation. It leads to the exclusion of minorities. Minorities become the internal enemy. Schmitt claims that every political unity requires the existence of an enemy; politics are based on the distinction between friend and enemy.⁸ The great paradox here is that the universal concept of human rights becomes historical reality through its « nationalisation », within the new sovereign nation-states. The revolutionary order in Europe is an order that denies minority rights and protection. The exclusive political project is nation building. Within this perspective, minorities or even every cultural and religious difference is regarded as an exception or enemy, which has to be abolished. The national will is "one and indivisible", the French constitution is there to remind us.

National unity territorializes the philosophical processes of exclusion. From now on, minorities are regarded as a danger for European diplomatic balance. The Powers of the reactionary restoration of the monarchies (1815), although against the people's rights accord rights to religious minorities in order to preserve the Holy Empire.⁹ A change of crucial importance takes place during the XVIII century. Gradually, the religious difference gives place to national minorisation. This change is reflected at the Congress of Vienna where several religious minorities are protected, this time in explicit terms of *rights*. Simultaneously, the Polish become the first national minority to be protected by international law after the partition of their motherland. The new perversion of the national paradigm is its *selective* application, implemented by the principle of nationalities.

4. THE PRINCIPLE OF NATIONALITIES, PERVERSION OF THE NATIONAL PARADIGM

The nation envisaged as a plebiscite is the foundation of the principle of nationalities. According to Renan, the patriarch of French nationalism, man does not belong to his language, his race, but to his subjective national will.

If the principle of nationalities had been implemented without any exceptions, minorities would have never existed as such. According to this principle, the moral and territorial objective would be to create one state for one nation. John Stuart Mill states: „*It is in general a necessary condition of free institutions that the boundaries of governments coincide with those of nationalities*”¹⁰ Since the integral application of the nationalities principle is

H., *Nationalism, its meaning and its history*, Princeton, D. Van Nostrand Company, 1955; SMITH A., *Theories of Nationalism*, London, Gerald Duckworth, 1971.

⁸ Schmitt C., *La notion du politique, Theorie du partizan*, Calman-Lévy, Paris, 1972, p. 72.

⁹ Cf., OSIANTER, *op. cit.* pp. 166–248.

¹⁰ *Representative government*, 1860, ch. 16.

impossible or utopia, its selective application definitively creates minorities in the new born European states.

The principle of nationalities is a creation of modern Europe. Fruit of rationalism: all power is established by the human *ratio*. Fruit of humanism: human nature is the only stable point in the moving world. Fruit of individualism: individual is the only subject that can transform his reason (*ratio*) in right. The intentions of the nationalities principle are equivocal. The essence of liberation for the new nation-states becomes an instrument of oppression for minorities. Actually, it creates minorities. States form the ideal of nationalism, and nationalism creates nations. This normal process of nation building faces the abnormality of the minority presence. Newly born state international sovereignty limits its competence when it comes to minority protection. This protection is initially international.¹¹ Sovereignty cannot fulfil its initial target. It cannot totalize the common good of the citizens.

Minority protection is indirect through the general human rights provisions aiming „every person” and *rectificative*, because it tries to remedy the inequality of *different* between the equals. Minority rights, following the Hohfeld’s classification,¹² can be qualified as rights of absence of prohibition (human rights of first generation); rights – direct permissions (human rights of second generation); rights – legitimate claims and correlative obligations of the others. The first category corresponds to what we have qualified as indirect protection. The second or third correspond to the rectificative protection.

The League of Nations’ found what could be considered as the only international system of minority protection ever applied.¹³ Minority protection was explicitly mentioned as a condition of recognition of the new states after the War. But yet, even this protection has been selective. Some minorities,

¹¹ „International law provides a number of devices by which individuals and groups of individuals may obtain protection against the arbitrary of State authority. Under international customary law, the right of diplomatic protection of citizens abroad, strengthened by the minimum standard and treaty rights, is a generally accepted principle of territorial jurisdiction. Since the seventeenth century attempts were made to grant international protection by means of treaties to religious groups and individual members of such groups even against their own sovereign. In the nineteenth century this policy was extended in favour of ethnical and national minorities. During the inter-war period the protection of national, ethnical and religious minorities came to be closely linked with the League of Nations”. SCHWARZENBERG G., *International Law as Applied by International Courts and Tribunals*, Vol. I, London, Stevens, 1929, p. 273.

¹² HOHFELD W.N., *Fundamental Legal Conceptions*, New Haven, 1920 (reed. 1978) p. 23. A similar classification is proposed by NINO C.S., in *The Ethics of Human Rights*, Clarendon Press, Oxford, 1991, pp. 25–29.

¹³ On the system of the League of Nations, cf. *inter alia* the study of ROSTING, *Protection of Minorities by the League of Nations*, in American Journal of International Law, No 17, 1923, p.64, as well as the extensive references of THORNBERRY P., *International Law and the Rights of Minorities*, Oxford Clarendon Press, 1991, pp. 38–55.

generally those of the defeated states are mentioned and protected, while those of the great Powers are absent. Population transfer is a measure widely applied during this period in order to prevent minority problems.¹⁴ Unfortunately, the ideas of C. Schmitt are confirmed. Population transfer is the institutionalized confirmation that the states regard their minorities as enemies. If in normal cases minorities are protected, in extreme cases they are expelled or by force exchanged.

One of the reasons of the failure of the League of Nation's system consists exactly of this selective and unjust character. Some minorities were protected others were not. Some states were binded by the League's norms others were not. As the French scholar of international law, C. Rousseau has written, the League system was more or less a status of exception.¹⁵ In any case, this system was but a part of the fragile world structure established in Paris.¹⁶ The collapse of the League of Nations signifies the end of European hegemony in world affairs and a crisis of international law, which, after W.W.II, searches for new ways to protect minorities. Paradoxically this time, protection consisted of the minority's *negation*: what is protected is „*every person without any distinction on race, sex etc*”.

5. THE POST-MODERN QUESTION OF BELONGING: MINORITY PHENOMENON AS AN OBSTACLE

The legal negation of the minority phenomenon is the main characteristic of the post-W.W.II international order. With the exception of some bilateral treaties concerning specific the most burning minority issues, the New World order regards collective entities with suspicion. The only mention of minorities is article 27 of the International Covenant of Civil and Political Rights¹⁷ as well as article 14 of the European Convention of Human Rights.¹⁸

¹⁴ Cf *infra*.

¹⁵ ROOSEAU C., *Droit International Public*, Sirey, 5 vol. t. 2, 1974, pp. 749–750.

¹⁶ „It is unjust to view the failure of the minority system of the League... independently of the international conditions of its time. The minority protection system was but a part of the world structure established in Paris. Inevitably it depended on the general state of international order and relations, and inevitably when that order disintegrated, the system collapsed with it”. BAGLEY I.H., *General Principles and Problems in the Protection of Minorities*, Geneva, Imprimairies Populaires, 1950, p. 126.

¹⁷ *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

¹⁸ *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground, such as sex, race, colour, language, religion,*

Modern law cannot conceive the minority existence because it is strictly structured on two exclusive entities: the state and the individual. It is articulated on two exclusive principles: identity and non – contradiction. Between the two poles of modern law there is an ideal gap. However, a minority is neither an individual, nor a state. International law has solved its minority questions by incorporating minorities to both of its poles. Either it has created states, or it classified minority protection in the individual's protection. In this sense, the minority phenomenon can be qualified as an *epistemological obstacle*¹⁹ to modern law. As described above, the obstacle is one of conceptualisation. Further, minority protection has always been an evolution of *opinions* related to other relevant or sometimes irrelevant issues: security, human rights, international relations, diplomatic balances etc. We have never thought minorities as an autonomous category of legal being. However, opinions (according to structural and constructivist epistemology) *do not* think, but strictly translate necessities in (legal) axioms. Minority existence and impossibility of conception reveal the *bipolarity of errors*²⁰ that governs international law.

Minority groups can be characterized as new international actors through the crisis and/or return of nation-state in our days. If we might generalize, these actors aim at the differentiation of *political* from *national* identity. This is what we qualified as the post-modern question of (ethnic, cultural or national) belonging. The difficulty of legal modernism to conceive the minority phenomenon is faced by a revival of neokantian contractualism²¹ and a communitarian reaction to liberal individualism. Although the major representative of the first tendency in contemporary political philosophy, J. Rawls, does not treat minorities as such in his *Theory of Justice*, one can assume that ethnic belonging does not play an important role in his reasoning of achieving *justice as fairness*.²² A liberal thinker like W. Kymlicka²³ tries to reconcile liberal individualism with the need of protection of cultural difference. He admits that in states where minority problems are posed, individuals are integrated not in a universal way, as Rawls considers, but in a consociational way, according to

political or other opinion, national or social origin, association with a national minority, property, birth or other status.

¹⁹ The term was first used by the French philosopher of science G. BACHELARD, in *La formation de l'esprit scientifique*, Paris, Vrin, 1993.

²⁰ The term was initially developed by Bachelard (*supra*). It has been further elaborated within the field of legal science by OST F. and VAN DE KERCHOVE M., *De la 'bipolarité des erreurs' ou quelques paradigmes de la science du droit*, Archives de Philosophie du Droit, 1988, pp. 177–190.

²¹ This revival is largely due to the publication of *The Theory of Justice* by J. Rawls in 1970.

²² Cf. equally, *Justice as Fairness*, in The Philosophical Review, 1958, vol. 57, pp. 164–194.

²³ *Liberalism, Community and Culture*, Clarendon Press, Oxford, 1991.

their belonging to a cultural community. J. Raz, in his *Morality of freedom* claims that „if there is one common thread to the argument of this book is its critique of individualism and its endeavour to argue for a liberal morality on no- individualistic grounds”.²⁴

The communitarian critics to the liberal *Limits of justice*,²⁵ although heterogeneous – from Aristotelian conservatism to the Hegelian left – focus on the importance of community.²⁶ The individual is not the abstract and empty being, proposed by the liberal neokantian, but a *cultural* being, existing through his social-historical characteristics and his sense of belonging. Although communitarianism seems to hearken more intensively minority facts, its contribution is largely ambiguous. The absolute priority of communitarianism to community culture leads necessarily to the supremacy of *one* – the strongest – culture and the further minorisation of the other (minority) cultures.²⁷

The question is not resolved, and in any case the debate between individualism and communitarianism is placed exclusively in the same liberal economic and institutional framework.²⁸ This framework is not contested at all, for there *cannot* be any radical integral solution to the minority question. There can be some *solutions* dictated by the mutual understanding between different collective arguments put forward by various cultures, depending on the necessity of intercultural communication. To A. McIntyre's pessimistic communitarian argument²⁹ one can propose elements of J. Habermas theory of communicational action.³⁰ In the end, all people are obliged to communicate

²⁴ Oxford University Press, 1986, p. 18.

²⁵ *Liberalism and the Limits of Justice*, (Cambridge University Press, Cambridge, 1982) of SANDELS M. represents a global communitarian critique of liberal individualism.

²⁶ An excellent review of the debate between liberals and communitarians is proposed by MULHALL S. and SWIFT A.: *Liberals & Communitarians*, Blackwell, 1992.

²⁷ On this critique: KAPTEIN H., *The Morals of Post-Modern Human Rights*, in ARSP – Legal System and Practical Reason, Beiheft N° 51, Franz Steiner Verlag, Stuttgart, 1993, pp. 154–165, as well as the chapter *The Communitarian Challenge to Liberal Rights*, of The Ethics of Human Rights, of NINO C.S., *op.cit.*

²⁸ On the debate between communitarianism and individualism in the field of minority rights, cf. ADDIS A., *Individualism, communitarianism and the rights of ethnic minorities*, in: *Notre Dame Law Review*, Vol. 66, No 5, 1991, pp. 1219–1280.

²⁹ According to A. McIntyre, (*What Justice, What rationality*) not only cultures are different on the level of values, but also groups are distinct on the level of their self-perception, the validity of their own cultural argument. The essence of this argument is entirely subjected to principles, which are opposite. Consequently, groups communicate only as far as absolute necessity and urgency dictate.

³⁰ Some reflections on the application of the theory of communicational action of J. Habermas in the field of international law are proposed by CARTY A., in *The Decay of International Law?* Manchester University Press, 1986. „Legal doctrine could perhaps reconstruct conflict situations in accordance with basic principles of possible under-

with another. There can be equality without the acceptance of a common identity and there can be difference without it's degenerating into superiority/inferiority. Putting aside the universal rules of communicational action proposed by Habermas, or even more the ultimate foundation of communication, which is ethics according to K.O. Apel,³¹ ultimately, people are obliged to communicate by the fact that they live. Minorities communicate with the state through their claim(s).

6. PROTECT CULTURE (S)?

It is all about this claim. If we accept any territorial claim as being incompatible to positive law (though we should never close our eyes to changes occurring around us) then the point arises with the *cultural claim*. The fundamental issue here is whether *culture should be protected*. Modern liberal tradition accepts and favors the protection of what makes us all alike (the abstract human nature) but radically denies protecting what makes humans different. Is there any compatibility between universalism of human rights and cultural particularism of minorities?³² We stand for the opinion that these two can be regarded as two opposites of the Hegelian dialectic and be perceived in their unity.

In the first place, universalism is not radically universal. It is geographically, historically, philosophically defined. It belongs to the European modernity: the first culture ever reserving for itself an exclusive access to universality. In the second place, particularism is not radically particular. In our days, culture is more an amalgam than a pure code of values.³³ We have to accept that the universalist culture of human rights protection achieves the universal through its own (European) particularity and singularity. Like any other culture.

The thesis above implies the radical distinction between two terms consistently confused in contemporary legal terminology: *universalism* and *universality*. *Universalism implies the pretension to be universal*.³⁴ Human

standing, a theory of knowledge based on the development of argument, rather than the search for objectivity or experience as such". p. 130.

³¹ *La question d'une fondation ultime de la raison*, in Critique, octobre, 1991, p. 902.

³² A similar question is posed by WALLERSTEIN I., *Le national et l'universal: une culture mondiale est-elle concevable?*, Procés N° 19, 1990, pp. 173–184.

³³ DE LUKAS J., *Droits universels, égalité et pluralism culturel (à propos des droits des minorités culturelles)*, in: Revue Interdisciplinaire d'Eudes Juridiques, 1994, 33, p. 3.

³⁴ RICOEUR P. states: „What is disturbing for a Westerner is to see himself in the eyes of the Third World as the bearer of a message based on ignorance, at the very moment when he is proclaiming the universality of human rights. The lesson is clear: first, the

rights are a universalist value but they are not and they cannot be universal: neither at the level of their conception or perception, nor at the level of their application. Human rights are protected in the world in various manners.³⁵ The European Convention of Human Rights constitutes the most sophisticated system of human rights protection on the universal level. In other terms, the European is better protected than anyone in the world.

7. THE COMPARATIVE ADVANTAGE OF THE UTILITARIAN ARGUMENT...

The founder of modern utilitarianism, Jeremy Bentham. Bentham, in his magistral work *An Introduction to the Principles of Morals and Legislation*,³⁶ launches the notorious *greatest happiness principle*. His objective was to identify a new foundation for the reform of state institutions, especially the legal ones. He considered as an obstacle the philosophy of natural law, which he considered as a mystifying fallacy. According to Bentham, natural law is not more than a number of self-founded abstractions behind which politicians, judges and intellectuals of the new born national states could actually hide their own interests and prejudices. The only way to deconstruct this "historically natural", whereas in the same time socially erroneous c discourse, seemed, according to Bentham, to evaluate all human and state institutions according to their eventual *utility*. Such intellectual perspective meant for him two things: in the first place, that one should exclusively refer to the real and effective consequences of the institutions and not bother much about the historical sources that would render these institutions legitimate in the citizen's eyes. In the second place, the exclusive target of the institutional functioning is to be focused on the human happiness.

It doesn't want much, to see that in the hard core of Bentham's discourse is a strongly antinationalist argument. Antinationalist, in the same time it fully recognizes and acknowledges the effective and moral existence of the political community based on a common belief or sense of belonging. What is interesting for us is to notice that Bentham's utilitarian argument goes against the current

West is reminded that the language of human rights is authenticity from Europe, from that of the bourgeois revolution against the absolutism of the state. Thus, when the proclamation of human rights ignores its own origin in the struggle for emancipation, it becomes false". Introduction in: *Philosophical Foundations of Human Rights*, UNESCO and the International Institute of Philosophy, 1986, p. 27.

³⁵ POLLIS A., SCHWAB P., *Human Rights: A Western Construct with Limited Applicability*, in Human Rights – Cultural and Ideological perspectives, New York, Sydney, Toronto, 1979, pp. 1–19.

³⁶ London, 1789.

of both the School of natural law and Historical Law, more in the sense that he finds the natural or historical origin of law and polity *indifferent* rather than ill founded. What is important is to identify whether it serves the citizens and contributes to the happiness of all-them, or if not possible, of most of them. I would not go far here, by saying that the principle underlying the utilitarian argument is an a-moral one, in the sense that it deliberately would not follow a naturally or historically prefixed normative argument, expectation or principle. It wants only to judge and to be judged by the results.

It doesn't want also much to see that the wildest atrocities in the eras of nation building, in our area including, have been committed in the name of normative arguments. Extremely noble values and principles historically or naturally somewhat imposed in the peoples' consciousness: crimes in the names of nations are always mystified, actually regarded as duties and not as rights, by individuals or groups that take themselves as victims.

8. ... AND ITS LIMITS

For what imperfection or even guiltiness we can actually hold responsible the utilitarian argument? Exactly, for its a-moral nature. For its disregard towards ethics. By what means we expect to reach the greatest happiness principle? Would that include, for example, our consent to a legal measure such as the compulsory exchange of populations that took place in 1923, following the terms of the Lausane, between the Turk-Muslims in Greece and Greek-Orthodox community in Turkey? A really inhuman measure, that – despite the firm objections of the international lawyers at the time³⁷ – deemed to serve the goal of common happiness for both communities in their motherland: a sacrifice of one or even two generation for the sake of the future ones. The fate of the excepted from the exchange Greek minority of Istanbul does nothing but to confirm that the immoral preventive action undertaken by the compulsory exchange of population has been effective. The once flourishing Greek community of Istanbul that counted around 70.000 individuals at the time of the exchange, under all different circumstances, abandoned Turkey: today, not more than 2000 Greeks remain there.

Here are some arguments of famous international jurists at that time. The Greek diplomat G. Seferiades noted :

³⁷ On the exchange of the Greek-turkish populations, cf: SEFERIADES G., *L'échange des populations*, Recueil de Cours de l'Académie de Droit International, 1928, IV, The Hague; TENEKIDES G., *Le statut des minorités et l'échange obligatoire des populations gréco-turques*, in Revue Générale de Droit International Public, 1924, pp. 7-72 ; LADAS S., *The exchange of Minorities, Bulgaria, Greece, Turkey*, The McMillan Co., New York, 1932.

„L'échange d'hommes malgré leur volonté, est une conception que plus d'une conscience juridique se refusera à comprendre et à accepter, bien qu'elle ait été considérée comme nécessaire par la politique”.

In this perspective and by a purely jusnaturalistic argument the author considers the treaty as nul and non-existing.³⁸ The Roumanian Mandelstam notes:

„Cette convention s'explique, dans une certaine mesure, par l'état d'animosité existant entre Turcs et Grecs, à la suite de leur terrible lutte. Du point de vue du droit international, la convention de Lausanne constitue néanmoins un regrettable pas en arrière. Lord Curzon a dit à la séance du 13 décembre 1922 de la Conférence de Lausanne, à propos de l'échange forcé des populations, que c'était «une solution extrêmement défectueuse»... La triste situation dans laquelle les malheureux Grecs et Turcs, échangés en vertu de la Convention de Lausanne, malgré tous les secours qui leur sont prodigués, semble donner raison à lord Curzon. Il faut espérer, en tout cas, que la convention gréco-turque de Lausanne restera un précédent isolé dans l'histoire de la protection des minorités.³⁹ (...) La transplantation forcée d'un peuple ne peut être approuvée parce qu'elle est en contradiction avec un droit primordial. Certes, la migration obligatoire se met au service d'une cause utile, elle crée l'unité nationale dans le cadre politique existant, elle rassemble en une vie commune les membres épars d'une même famille. Ce procédé réalise ainsi l'Etat unique et homogène que les conationalistes postulent au nom du principe de l'autodétermination ; il le réalise par des moyens mécaniques. Mais, en le constituant, il sacrifie un autre bien supérieur auquel l'homme aspire au nom d'un droit non moins sacré : ce bien, c'est la terre. Elle aussi, la terre, est l'objet d'une revendication initiale qui plonge ses racines dans des croyances de justice. Il est un droit à la terre, c'est un droit de l'homme. Or, à regarder le fond des choses, le droit de l'homme est de la même famille que le droit des nationalités. Tous deux procèdent d'une même croyance : l'auto-détermination”.⁴⁰

In 1928, Carl Schmitt that never had the slightest intention to show off as a humanist or advocate of the new system of the League of Nations reveals in an extraordinary manner the nature of things:

„Si on envisage la Nation comme substance de l'égalité démocratique, il en résulte des conséquences pratiques d'un genre précis. Un Etat démocratique qui trouve dans l'homogénéité nationale de ses citoyens la condition préalable de sa démocratie, répond au fameux principe des nationalités, selon lequel une Nation forme un Etat, un Etat englobe une Nation. Un Etat nationalement

³⁸ L'échange de populations, *op.cit.* p. 328.

³⁹ *op.cit.* p.417

⁴⁰ *op.cit.* p. 166.

homogène devient alors le cas normal. Un Etat auquel cette homogénéité fait défaut a quelque chose d'anormal, de dangereux pour la paix. Le principe des nationalités devient aussi la condition préalable de la paix et le "fondement du droit international". Si cette homogénéité nationale vient à faire défaut dans la pratique parce qu'un Etat se compose de plusieurs nationalités ou englobe des minorités nationales, plusieurs éventualités se présentent. D'abord la tentative d'une solution pacifique; mais en fait cela implique soit une dissociation et une séparation pacifiques, soit une assimilation pacifique et progressive à la nation dominante. La protection des minorités nationales établie de nos jours en droit international cherche à garantir une solution pacifique. La minorité nationale n'est alors protégée en tant que nation; elle n'est pas censée avoir des droits politiques en tant que nation à l'égard de la nation dominante, sinon ce serait non seulement le principe de nationalité, mais encore le principe même de l'Etat démocratique qui serait abandonné. Dans le droit international actuel, la réglementation de la protection des minorités nationales se place plutôt dans la perspective de la protection des droits individuels de l'homme à qui, en tant qu'individu, on garantit l'égalité, la liberté, la propriété et l'usage de sa langue maternelle. L'idée ouvertement déclarée, est de produire ainsi pacifiquement homogénéité nationale, dans la condition préalable de la démocratie. L'autre méthode est plus rapide et plus violente: éliminer le corps étranger par l'oppression, l'expulsion de la population hétérogène et d'autres moyens radicaux. Le meilleure exemple de cette méthode est fourni par le traité gréco-turc de 30 janvier 1930".⁴¹

Compulsory exchange of populations in our days carries the name of ethnic cleansing. Not only once Europeans turned a blind eye on it, but also they rendered it legal.

9. BENTHAM'S "OBSERVATIONS BY AN ENGLISHMAN" IN THE POST-OTTOMAN BALKANS⁴²

Right after the Greek revolt against the Ottoman Empire, back in 1821, Bentham visited the Peloponese, actually the sole territory that escaped the Ottoman rule. Along with some very interesting comments on the first Greek Constitutions, Bentham offered us a unique, in our belief, quotation on how the new state should treat its remaining Muslim minorities:

⁴¹ *Théorie de la Constitution*, Paris, Léviathan, P.U.F. 1989, Ch.17 ; *La théorie de la démocratie. Concepts fondamentaux*, p. 369–370.

⁴² *Observations by an Englishman*, on an Raffanel's quotation from *Histoire des événements de la Grèce*, Paris, 1822, chez Dondey-Dupré imp. lib., éditeurs, p. 429 passim.

„Mohometan and Jewish Natives. First as to Mohometans. In relation to this part of the population, what is the most eligible course that can be taken: the government being supposed established in the hands of the Christian part. To put them all to death surely cannot be in contemplation: as little to export them all by force. In same number or other, absolute and relative, relative in relation to that of the Christians, they will continue in the territory of the State.

Here the first object or end in view is that which is dictated by Self-regarding prudence. Against hostility on their part, when reduced to the condition of subjects, every necessary precaution must of course be taken.

The next object or end in view is that which is dictated by Effective benevolence. Treat them with as much kindness as the indispensable regard for your own safety will permit.

The more closely the matter is looked into, the greater will be seen to be extent to which the dictates of effective benevolence will, in this instance, be found to coincide with those of self-regarding prudence. (...) Strange it was, if by such treatment, the Mohometans were not rendered good citizens".⁴³

This quotation offers a more than a well-deserved end to this short article. It is only due to the habit and formalities that we should add the last word. But Bentham says it all. One can never be sure with minorities. For the better or for the worst, shape of things to come is uncertain. Minorities are there to remind us our imperfections. As long as there is not any general eschatological "conclusion" on the great issues that guide the evolution of minority phenomenon through European history (law, Europe, nation, state, sovereignty, etc.), no separate conclusion would stand for minorities. Contrary to the expectations of legal essentialism, the structural continuities of the minority phenomenon are not internal. As long as the *abstract* modern anthropological and legal interrogations remain without any general reply, minority issues will persist. The dilemma, then, is not whether we will find a solution to their problem(s). Such solution, in a hegelian sense, does not exist. The Kantian project of perpetual peace seems already an awkward irony. Nevertheless, some solutions regarding minorities should be well considered. The real dilemma is whether we undertake the responsibility to handle their uncertainty with prudence and fairness. It worth being equitable, despite the fact that justice is not always a recipe with humans. We've been through a decade, at the course of which the Westerners though that law is omnipotent, by providing all possible solutions to ethnic tensions. What an optimist, let me call it naïf, liberal view. Already by now, we are more suspicious with ourselves and with the weak ones. Kosovo has been a tough but good lesson for all sides. The soonest we learn it, the better

⁴³ Philip Schofield (ed.), *Securities Against Misrule and Other Constitutional Writings for Tripoli and Greece*, The Collected Works of Jeremy Bentham, Clarendon Press, Oxford 1990, pp. 254–256.

for all parties involved. This is where “self regarding prudence” comes as a way out. In the sincere sense of acknowledging the fact that when we deal with minorities trying to find institutional ways to handle them, we actually do it – not in the name of our humanism – but in the name of our self-conservation. Protecting minorities, we protect ourselves from them.

Bentham’s utilitarian argument cannot function in states of emergency and never did actually. A nation building is *par excellence* a state of emergency. In such a state we don’t think much. Including others, we do not have much time to think, but only to translate our needs in axioms, in a context of a greedy instinct not of self regard, but of collective self-preservation: an instinct of real or imaginary survival. Our hope that collective subjects, nation-states or national minorities, would act according to Bentham’s argument should be limited in other – let me call them normal – periods.

Allow me to finish with an optimist message. After all what we’ve been through, our region is slowly entering in such a period and there is a hope that we might be able to avoid Schmit’s pessimist prophecies this time.

It’s worth trying.

STANDARDI ZAŠTITE NACIONALNIH MANJINA U SAVREMENOJ EVROPI*

GORAN BAŠIĆ

OEBS I SAVET EVROPE

U poslednjoj deceniji, standardi zaštite prava nacionalnih manjina u Evropi su značajno unapređeni. Pojedini autori zaključuju da je razvijeno partikularno evropsko pravo posvećeno zaštiti manjina. Na razvoj političke i pravne svesti o značaju unapređenja položaja manjina presudan uticaj su imale evropske međunarodne institucije – Savet Evrope i Organizacija za bezbednost i saradnju u Evropi. Pod okriljem ovih organizacija usvojeni su dokumenti koji predstavljaju *Magna cartu zaštite manjina u Evropi*.

Organizacija za bezbednost i saradnju u Evropi (OEBS) pitanjima nacionalnih manjina bavila se još u fazi svog konstituisanja. Naime, sredinom osme decenije prošlog veka, kada je KEBS kao preteča OEBS konstituisan, vođena je rasprava o tome da li je neophodno da se pitanja nacionalnih manjina uvrste u Završni akt Konferencije u Helsinkiju 1975. godine. U ideoološki i interesno podeljenoj Evropi toga vremena bila su razvijena dva oprečna pristupa manjinskom pitanju, čiji je zajednički imenitelj bilo mišljenje da su pitanja u vezi sa statusom nacionalnih manjina anahrona i da će u bliskoj budućnosti biti rešena. Po mišljenjima marksističkih teoretičara, ova pitanja su prevazidena solidarnošću koja se razvijala unutar međunarodnog radničkog pokreta, a po mišljenjima liberala sa zapada i u SAD moderne tehnologije i komunikacije doprinose "topljenju" identiteta malih naroda.¹

Uprkos protivljenju nekih država u Završni akt je ušlo nekoliko odredbi o manjinama koje su, iako po obimu šture a po sadržaju opšte, bitno uticale na politiku ove organizacije prema manjinskom pitanju u Evropi.² Prvi put manjine se u dokumentu pominju u načelu VII koji se odnosi na poštovanje ljudskih prava i osnovnih sloboda: "države učesnice na čijoj teritoriji postoje nacional-

* Rad je nastao tokom rada na projektu IDTF, *Društveno razvojne mogućnosti Srbije u evropskim i svetskim procesima*, br. 1926, po ugovoru sa MNTR Vlade Republike Srbije.

¹ Goran Bašić, *Značaj tolerancije za multietnička društva*, u: Tolerancija, ur. Božidar Jakšić, Republika, Beograd 1999.

² O odnosu OEBS prema zaštiti nacionalnih manjina videti: Zoran Lutovac, *Manjine, KEBS i jugoslovenska kriza*, Institut društvenih nauka, Beograd 1995.

ne manjine, poštovaće pravo lica koja pripadaju ovim manjinama na jednakost pred zakonom, pružiće im punu mogućnost za stvarno uživanje ljudskih prava i osnovnih sloboda i štitiće na taj način, njihove legitimne interese u ovoj oblasti". Najzad, odredbe o manjinama se nalaze i u delu posvećenom kulturnoj saradnji "... države učesnice priznajući doprinos koji nacionalne manjine ili regionalne kulture mogu dati njihovoj međusobnoj saradnji u raznim oblastima kulture imaju nameru da, kada takve manjine ili kulture postoje na njihovoj teritoriji, olakšavaju davanje ovog doprinosa uzimajući u obzir legitimne interese njihovih pripadnika."

Pomoću ove dve odredbe, koje su dopunjavane novim sadržajima na konferencijama u Beogradu, Madridu, Beču, Parizu, Kopenhagenu, Ženevi, Moskvi, Helsinkiju, Lisabonu i Istanbulu osmišljena je pasivna politika ove organizacije prema pitanjima u vezi sa položajem nacionalnih manjina u Evropi. Tačke oslonca ove politike su institucija Visokog komesara za nacionalne manjine koja je ustanovljena Helsinškim dokumentom iz 1992. godine i Kancelarija za demokratske institucije i ljudska prava.

Uloga Visokog komesara za nacionalne manjine je utemeljena na dva načela: prevencije i rane akcije na osnovu kojih bi trebalo da prati položaj nacionalnih manjina i da u slučaju napetosti deluje na sprečavanje sukoba u najranijoj mogućoj fazi. Institucija visokog komesara se ne bavi pojedinačnim slučajevima povrede prava pripadnika nacionalnih manjina, već pravima manjina kao grupa i to u slučajevima kada su ugroženi mir i bezbednost u pojedinih regionima.

Nastrojeći da unapredi standarde zaštite nacionalnih manjina, a time i njihov položaj kancelarija Visokog komesara je formirala ekspertske timove koji su doneli preporuke koje bi trebalo da budu implementirane od strane država. Prva grupa preporuka se odnosila na pravo nacionalnih manjina na obrazovanje i donete su u Hagu 1996. godine. Dve godine kasnije usvojene su preporuke iz Oslo koje se odnose na pravo nacionalnih manjina na upotrebu sopstvenog jezika i pisma, a preporukama iz Lunda 1999. godine predviđene su poželjne aktivnosti država u vezi sa delotvornim učešćem nacionalnih manjina u javnom životu.

Sa procesom zaštite prava nacionalnih manjina Savet Evrope je počeo 1950. godine usvajanjem Konvencije za zaštitu ljudskih prava i osnovnih sloboda, a nastavljen je donošenjem Evropske povelje o regionalnim ili manjinskim jezicima (1992), i tri godine nakon toga otvaranjem za potpis i ratifikaciju Okvirne konvencije za zaštitu nacionalnih manjina, do sada jedinog multilateralnog instrumenta zaštite prava nacionalnih manjina u Evropi.³

³ Goran Bašić, *Zaštita prava nacionalnih manjina u SRJ prema standardima Okvirne konvencije za zaštitu nacionalnih manjina Saveta Evrope*, Centar za antiratnu akciju, Beograd 2002, 7.

Usvajanju Okvirne konvencije prethodile su odluke donete na Samitu Saveta Europe održanom u Beču 1993. godine. U završnom dokumentu sa ovog samita izražena je namera država članica da utvrde standarde zaštite prava i unaprede uslove za očuvanje i razvoj kulturnog, etničkog, verskog i jezičkog identiteta nacionalnih manjina u skladu sa tradicionalnim demokratskim vrednostima – jednakost pred zakonom, načela nediskriminacije i jednakih mogućnosti, sloboda udruživanja i aktivno učešće u javnom životu.

Okvirnu konvenciju su do danas potpisale gotovo sve evropske države, među kojima i SR Jugoslavija. Međutim, potpisivanje i ratifikaciju ovog dokumenta u Jugoslaviji prate neobične okolnosti koje je 1999. godine izazvao tadašnji jugoslovenski establišment. Naime, nastojeći da opravdaju u to vreme često (zlo)upotrebljavaju sintagmu da je, uprkos međunarodnoj izolaciji države, zaštita prava nacionalnih manjina u Jugoslaviji iznad "evropskih standara", te da time nevešto neutrališu nezadovoljstvo pripadnika manjina, tadašnje savezne vlasti su ratifikovale Okvirnu konvenciju, a da pre toga nisu ispoštovale uobičajenu proceduru koja, pored formalnopravnih uslova, podrazumeva i demokratski uređeno društvo i odgovorne institucije u državama potpisnicama. U obnovljenoj proceduri Konvencija je potpisana 11. maja 2001. godine, a ratifikovana je u nekadašnjem Saveznom parlamentu nekoliko meseci kasnije.⁴

SADRŽAJ I CILJEVI OKVIRNE KONVENCIJE

Okvirnom konvencijom za zaštitu nacionalnih manjina utvrđena su načela i principi odnosno minimum granica zaštite prava nacionalnih manjina koji bi države koje budućnost grade u okviru evropskih integracionih tokova, trebalo da obezbede pripadnicima nacionalnih manjina. U tom smislu, odredbe Okvirne konvencije nisu obavezujuće za države potpisnice kojima je ostavljeno pravo da utvrde modalitete i implementaciju njenih ciljeva. Uvažavajući specifične okolnosti kako u različitim evropskim regionima, tako i u svakoj državi, kao i činjenicu da u okviru SE postoje države koje različito gledaju na odnos etničke većine i manjine, Okvirna konvencija utvrđuje principe zaštite manjina primerene univerzalnim načelima evropske demokratije.

Konvencijom se ne jamče konkretna prava pripadnika nacionalnih manjina, ali se utvrđuju željene aktivnosti i mere koje bi države trebalo da preduzimaju kako bi stvorile uslove za zaštitu i unapređivanje prava manjina. Države prihvataju ove obaveze, smatrajući da "zaštita nacionalnih manjina, te prava i slobode pripadnika manjina predstavljaju sastavni deo međunarodne zaštite ljudskih prava..." (čl. 1), kao i da se zaštita manjina ostvaruje u okvirima "vladavine prava, poštovanja teritorijalne celovitosti i nacionalne suverenosti drža-

⁴ *Ibid.*, 11.

va" (preambula). Ova poslednja konstatacija, iako načelna, čini se važnom posebno sa stanovišta država, jer izražava obaveze manjina u pogledu odnosa prema državi i njenim institucijama. U ovom smislu je i član 20 Okvirne konvencije koji od manjina traži da poštuju nacionalno zakonodavstvo i prava drugih, posebno kada pripadnici nacionalnih manjina čine većinu na delu teritorije neke države. Na ovom mestu neki analitičari u raspravu uvode pojam lojalnosti. Međutim, kao što se podrazumeva da pripadnici nacionalnih manjina moraju da se podvrgavaju nacionalnim zakonima i propisima, tako i države ne bi trebalo da poimanje lojalnosti akcentiraju na samom postojanju državne zajednice, već na pragmatičnom i za građane svršishodnom delovanju kojim će stići poverenje svih pripadnika zajednice. Ukoliko ne uspe da ispoštuje minimum zahteva u pogledu uspostavljanja identifikacionih i prihvatljivih vrednosti, teško da bilo koja država može računati na stabilan društveni razvoj.

Sledeće karakteristike Okvirne konvencije su otvoren pristup definiciji nacionalne manjine i odnos prema kolektivnim pravima. Iako se u literaturi mogu naći brojne definicije pojma nacionalne manjine⁵ Konvencija ne operacionalizuje ni sa jednom od njih već ostavlja mogućnost pripadnicima manjina da se opredede da li žele da se prema njima ophodne kao takvima ili ne (čl. 3). Dakle, subjektivni izbor pojedinca povezan je sa objektivnim kriterijima relevantnim za njegov identitet. U vezi sa tim je odnos prema kolektivnim pravima koja Okvirna konvencija ne pominje, ali zahvaljujući formulaciji da pripadnik nacionalne manjine ostvaruje prava pojedinačno ili "u zajednici sa drugima" otvorena je mogućnost da se pojedina prava mogu zajednički odnosno grupno ostvarivati i realizovati.

Jedno od temeljnih načela Okvirne konvencije – načelo nediskriminacije proističe iz ranije pomenutih fundamentalnih evropskih vrednosti: demokratije, vladavine prava i ljudskih prava. Konvencija polazi od stanovišta da je princip nediskriminacije široko razrađen u međunarodnim instrumentima i praksi, ali da njegova puka primena ne mora biti dovoljna za realizaciju jednakosti u svakodnevnom životu. Osnovna pretpostavka je da sva ljudska bića nisu ista, odnosno da je različitost ukorenjena u ljudskoj prirodi i da individualistička primena načela nediskriminacije zasnovana na pretpostavkama zabrane diskriminacije može podsticati postojeće nejednakosti. Čak i kada bi se načelo nediskriminacije sprovodilo jednakost prema svim ljudima, pojedine grupe bi se ponovo našle u diskriminisanom položaju. Recimo, obaveza prebivališta kao

⁵ Najznačajnije definicije pojma nacionalna manjina dali su F. Kapotorti, O. Eide, Ž. Dešans, a u instrumentu Srednjoevropske inicijative (SEI) za zaštitu nacionalnih manjina ovaj pojam se određuje "kao grupa koja je brojem manja od ostatka stanovništva neke države, čiji pripadnici kao državljanji te države imaju etničke, verske ili jezičke karakteristike različite od ostatka stanovništva i koje žele sačuvati svoju kulturu, veru ili jezik".

osnova za sticanje određenih prava može uzrokovati probleme ljudima koji žive nomadskim načinom života. U tom kontekstu neophodno je stvoriti uslove u kojima bi svi ljudi imali jednake mogućnosti da ostvare punu jednakost. Pripadnici nacionalnih manjina mogu da ostvaruju dodatna prava kako bi očuvali nacionalni, verski ili jezički identitet. Skup ovih posebnih mera čini načelo pozitivne diskriminacije (afirmativne akcije) koje ne možemo shvatati ni kao diskriminaciju ni kao privilegiju, već kao korektivne mehanizme za ostvarivanje jednakosti pojedinaca i grupe u slabijem položaju.⁶

Sadržaj okvirne konvencije afirmiše kulturnu autonomiju nacionalnih manjina koja podrazumeva zaštitu njihovog identiteta i stvaranje uslova za njegovo unapredjenje. U tom smislu Okvirna konvencija preporučuje državama da se uzdržavaju od nasilne asimilacije nacionalnih manjina i da podstiču uslove za održavanje razvoja kulture i identiteta nacionalnih manjina (čl. 5). U tom cilju države će licima koja pripadaju nacionalnim manjinama obezbediti nesmetano ostvarivanje prava na mirno okupljanje, slobodu udruživanja, slobodu izražavanja i veroispovest (čl. 6).

Prema sadržaju članova 10–15 Okvirne konvencije države pripadnicima manjina stvaraju uslove za otvoren pristup medijima, korišćenje maternjeg jezika u privatnom i javnom životu, obrazovanje na tom jeziku na svim nivoima i delotvorno učešće u ekonomskom, socijalnom i kulturnom životu i obavljanju javnih poslova.

Države se suzdržavaju od preduzimanja mera koje za cilj imaju promenu odnosa stanovništva u područjima koja naseljavaju pripadnici nacionalnih manjina (čl. 16). U tom smislu naročito se misli na slučajevе prekrajanja postojećih jedinica lokalne samouprave ili državne uprave kojima se umanjuju stečena ili postojeća prava nacionalnih manjina.

Pripadnici manjina mogu, bez mešanja države, uspostavljati i održavati slobodne i miroljubive kontakte sa matičnim državama, a sa svoje strane države će u cilju unapredivanja prava manjina podsticati sklapanje bilateralnih i multilateralnih ugovora, kao i prekograničnu saradnju (čl. 17 i 18).⁷

Dakle, Okvirna konvencija utvrđuje načela zaštite manjina ostavljajući dovoljno prostora državama u pogledu određivanja strategije za njihovo sprovođenje.

⁶ Goran Bašić, *ibid.*, 12.

⁷ *Ibid.*, 15.

OSTALI INSTRUMENTI ZAŠTITE NACIONALNIH MANJINA U EVROPI

Evropska povelja o regionalnim i manjinskim jezicima

Standardi zaštite nacionalnih manjina ostvaruju se i kroz druge instrumente i mehanizme Saveta Evrope. Ne manje značajan instrument za očuvanje identiteta manjina je i Evropska povelja o regionalnim i manjinskim jezicima koju je inicirala početkom devete decenije XX veka bivša Stalna konferencija, a danas Kongres lokalnih i regionalnih vlasti Evrope. Cilj Povelje je da doprinese očuvanju jezičkog blaga Evrope kao dela njenog kulturnog nasleda. U tom smislu, države potpisnice povelje obavezuju se na preduzimanje mera koje doprinose očuvanju i razvoju regionalnih i manjinskih jezika u različitim aspektima privatnog i društvenog života. Pod regionalnim jezicima podrazumevaju se oni koji se govore na jednom delu teritorije neke države, a manjinskim se smatraju jezici kojima govore osobe koje ne nastanjuju homogeno neka područja i njihov broj je manji u odnosu na lica koja govore većinskim jezikom.

Ciljevi Povelje su ustanovljeni na činjenicama da u svakoj evropskoj državi delovi stanovništva govore jezicima različitim od jezika koji je u službenoj upotrebi i kojim najčešće govore pripadnici najbrojnije jezičke (etničke) grupe i da se manjinskim jezicima ne posvećuje dovoljno pažnje. Pored toga, neki jezici su rasprostranjeni u više država, tako da jezik koji je službeni u jednoj, postaje manjinski u susednoj zemlji. Takođe, u okviru jednog jezika govori se više dijalekata koji bi, u smislu bogatstva različitosti, trebalo da imaju jednake uslove za očuvanje. Poseban problem predstavljaju jezici radnika migranata koji su u nekim evropskim državama mnogobrojniji od autohtonih manjina.

Drugim delom Povelje ustanovljeni su ciljevi i načela kojima se utvrđuje minimum zaštite manjinskih jezika koji države svojom politikom, zakonodavstvom i kroz praksu moraju da obezbede.

Treći deo Povelje odnosi se samo na one jezike za koje država prihvata posebne obaveze, pri čemu da je određen minimalan broj stavki koje potpisnice Povelje prihvataju kao obavezu u pogledu upotrebe regionalnih i manjinskih jezika u javnom životu, odnosno u obrazovanju, pravosuđu, administrativnoj komunikaciji, medijima, kulturi i ekonomskom životu.

Bilateralni ugovori o zaštiti manjina

Raspad bipolarnog sveta doprineo je unapređivanju saradnje među državama u istočnoj Evropi. Potreba stabilnog razvoja i izgradnja demokratskih institucija upućuju na uspostavljanje i negovanje dobrosusedskih odnosa. Principi međusobnog dogovaranja i saradnje obnovili su praksu bilateralnog sporazumevanja, koja u evropskim međunarodnim odnosima ima dugu tradiciju.

Svesne činjenice da postojeći međunarodni standardi zaštite manjina prenebregavaju određene specifičnosti položaja i života pripadnika brojnih nacionalnih manjina i inspirisane uspešnim iskustvima država na zapadu Evrope, koje su bilateralnim ugovorima uredile mnogobrojna pitanja uključujući i elemente zaštite manjina,⁸ istočnoevropske države su pristupile potpisivanju međusobnih sporazuma o dobrosusedskoj saradnji. Razvoju ovog procesa naročito je doprinela strategija nemačke diplomatiјe koja je, nakon pozitivnih i efikasnih iskustava iz ugovora potpisanih sa Poljskom o međusobnom priznavanju država (14. novembar 1990) i dobrosusedskim odnosima i prijateljskoj saradnji (17. jun 1991), sklopila slične ugovore sa nekadašnjim Sovjetskim Savezom (9. novembar 1990), a kasnije i sa Ruskom Federacijom (23. aprila 1992), Kazahstanom i Ukrajinom, potom i Češkom (27. februar 1992), Slovačkom (14. septembar 1992), Mađarskom (6. februar 1992) i Rumunijom (27. april 1992).

U centralnoj Evropi "nemački model" bilateralne saradnje najuspešniji je bio primenjen u strategiji mađarske diplomatiјe, koja je pitanje položaja manjina unapredila sporazumima o saradnji sa Ukrajinom (1991), Ruskom Federacijom (1992), Slovenijom (1992) i Hrvatskom (1995). Dalje je po svom značaju za učvršćivanje mira u regionu i prevazilaženja tradicionalnih meduetničkih animoziteta izdvajaju sporazumi o dobrosusedskoj saradnji zaključeni sa Slovačkom (19. mart 1995) i Rumunijom (16. septembar 1996). Krajem 2002. godine parafiran je ugovor o zaštiti manjina sa SR Jugoslavijom, međutim ovaj sporazum do sada nije potpisani i ratifikovan. Mađarska je potpisivanje sporazuma i primenu bilateralnog uređivanja položaja manjina u političkom smislu utemeljila Deklaracijom vlade od 18. avgusta 1993. godine u kojoj je istaknuto da "stabilnost u zapadnoj i srednjoj Evropi u dobroj meri zavisi od odnosa država u regiji prema svojim nacionalnim, etničkim, verskim i političkim manjnama, koje ne smeju biti žrtve aktuelnih političkih ciljeva".

Zaštiti manjina posvećen je i sporazum koji su 1996. godine sklopile Hrvatska i Italija⁹. Sporazum, kojim se uređuje položaj italijanske manjine u Hrvatskoj, odnosno Hrvata u regiji Molise, oslanja se na međunarodne standarde zaštite manjina i uređuje pitanja koja se odnose na kulturu, identitet manjina i njihovo učešće u javnom životu. Konačnom dogovoru predstavnika vlada pretvodio je Memorandum o zaštiti italijanske manjine u Hrvatskoj i Sloveniji donesen u Rimu posle raspada druge Jugoslavije.

Već je rečeno da su Poljska i Nemačka sporazumom uredile položaj Nemaca u Poljskoj, u smislu posebnih odredbi koje se odnose na kulturna prava i učešće manjine u odlučivanju na svim nivoima vlasti, a slične sporazume

⁸ Austrijska državna pogodba (1955), Nemačko-danski sporazum (1955), Osimski sporazum (1975), Austrijsko-italijanski sporazum o statusu Južnog Tirola.

⁹ Posebno je potpisani i regionalni ugovor između Istarske županije i regije Furlanija-Julijjska krajina (22. februar 1999).

u vezi sa dobrosusedskim odnosima i zaštitom Poljaka u rasejanju država je potpisala sa svim susednim zemljama od kojih su strateški značajni oni zaključeni sa Litvom i Rusijom sredinom 1992. godine. U ovim ugovorima su specifikovana recipročna prava manjina i naglašena je lojalnost pripadnika manjinskog stanovništva prema državi u kojoj žive. Iz liste prava uređenih ovim sporazumima trebalo bi izdvojiti ona koja su obično predmet nacionalnog zakonodavstva, ali su zbog svog značaja u ovim slučajevima pojačana preuzimanjem obaveza država: pravo na slobodno ispovedanje vere (poljsko-ruski sporazum), pravo na predstavljanje i zastupanje interesa manjina i pravo na službenu upotrebu jezika pred sudskim organima (poljsko-litvanski ugovor).

Za bilateralno uređivanje položaja manjina značajan je i član 8 Sporazuma o normalizaciji odnosa između Republike Hrvatske i SR Jugoslavije (23. avgust 1996), u kojem strane potpisnice Srbima i Crnogorcima u Hrvatskoj i Hrvatima u Jugoslaviji jamče sva prava predviđena međunarodnim pravom. Posle rata koji je voden i nakon postratnih događanja ovaj sporazum bi trebalo shvatiti kao nesumnjiv doprinos stabilizaciji regiona i kao unapređivanje međusobnih odnosa, posebno u smislu bržeg povratka izbeglih Srba u Hrvatsku, odnosno uzajamnog uređivanja položaja i zaštite prava Srba u Hrvatskoj i Hrvata u Jugoslaviji.

Već 2001. godine Savezno ministarstvo nacionalnih i etničkih zajednica je počelo pregovore sa Rumunijom, a potom i sa Mađarskom i Hrvatskom, u vezi sa zaključivanjem ugovora o uzajamnoj zaštiti manjina. Međutim, nejasna koncepcija naše delegacije u vezi sa ciljevima sporazuma koje je trebalo sklopiti i konfuzno osmišljena politika u vezi sa aspektima regionalne saradnje posvećene unapređivanju položaja i zaštiti prava nacionalnih manjina doprinele su ishitrenim rešenjima i prihvatanjem pojedinih odredbi koje bi mogle produbiti regionalne nesporazume. Ova pitanja zaslužuju analizu, a svakako da će ona potvrditi ili opovrgnuti sumnje u vezi sa doprinosom pojedinih odredbi, dosada zaključenih sporazuma, regionalnoj saradnji i bezbednosti. U svakom slučaju do jeseni 2003. godine predstavnici SR Jugoslavije, odnosno Državne Zajednice Srbija i Crna Gora potpisali su sporazum o zaštiti manjina sa Rumunijom i parafirali ugovor sa Mađarskom. Pregovori sa Hrvatskom još uvek nisu okončani, a trebalo bi očekivati da će pregovori o zaštiti nacionalnih manjina uskoro početi i sa Makedonijom.

Iz analize procesa u kojima su se osmišljavali, potpisivali i ratifikovali sporazumi o uzajamnoj zaštiti manjina između evropskih država evidentno je da je uvek postojala odgovarajuća odluka predstavničkih ili izvršnih vlasti o ciljevima koje je trebalo postići tokom pregovora sa drugim državama. Za sada nije poznato da je Savezno ministarstvo nacionalnih i etničkih zajednica kao koordinator pregovora sa susednim zemljama predložilo ili obezbedilo odgovarajuću osnovu za vođenje pregovora. Činjenica da u timu državne uprave koji vodi pregovore učestvuju predstavnici iz različitih ministarstava ne garan-

tuje zastupljenost kako državnih interesa, tako i interesa nacionalnih manjina. S druge strane, uočljivo je da pregovore o uzajamnoj zaštiti prava nacionalnih manjina sa susednim zemljama koordinira organ državne uprave koji je zadužen za ostvarivanje prava nacionalnih manjina u Srbiji i Crnoj Gori. Iz te činjenice sledi zaključak da ovo telo državne uprave štiti interese nacionalnih manjina u Srbiji i Crnoj Gori koje su predmet ugovora, što je razumljivo i opravданo. Međutim, njihove interese štiti i matična država dok su interesi srpske nacionalne manjine podređeni interesima međunarodnog položaja Državne Zajednice Srbija i Crna Gora ili drugim razlozima. Osmišljena politika odnosa prema nacionalnim manjinama podrazumevala bi da se pre zaključivanja međudržavnih ugovora, u vezi sa zaštitom nacionalnih manjina, prethodno definiše ukupna politika ponašanja prema nacionalnim manjinama u zemlji, utvrdi odnos prema dijaspori i, naravno, usvoji određena strategija i ciljevi pregovora.

Predmet mađarsko-slovenačkog sporazuma o manjinama od 6. novembra 1992. godine su slovenačka manjina koja nastanjuje pet naselja u Porabljiju i Mađari koji žive u prekomurskom delu Slovenije¹⁰. Potpisivanju sporazuma prethodila je konvencija o obezbeđivanju posebnih prava za obe manjine¹¹. Države su se u četvrtom stavu preambule obavezale da će u skladu sa međunarodnim pravom unapređivati uslove za razvoj identiteta, kulture, jezika, obrazovanja i drugih karakteristika manjina i da će u tom smislu ustanoviti sledeće mehanizme i instrumente (nabrojane u članovima 2–8 Ugovora): obrazovanje na maternjem jeziku, osnivanje društvenih i kulturnih ustanova manjina, upotrebu maternjeg jezika i pisma i informisanje, metodologiju naučnog rada u vezi s proučavanjem položaja i ljudskih prava manjina, zaštitu ekonomskih interesa manjina i obezbeđivanje uslova za delotvorno učešće manjina u javnom životu.

Države su se posebno obavezale da izvšenje promena administrativno-teritorijalnog ustrojstva zemalja neće biti na štetu manjina, da će omogućiti manjinama slobodne i neposredne izbore zajedno s pripadnicima većinskog naroda, da će odredbe ovog sporazuma biti poštovane prilikom sklapanja drugih međudržavnih ugovora, te da će ustanoviti komisiju u kojoj će se predstavnici obe vlade starati o sprovodenju sporazuma.¹²

Verovatno najznačajniji bilateralni ugovor o dobrosusedskoj saradnji i prijateljstvu koji sadrži član posvećen međusobnoj zaštiti manjina u postkomunističkoj Evropi zaključile su Mađarska i Rumunija. Proces potpisivanja ugo-

¹⁰ Položaj ovih manjina je od potpisivanja Trijanonskog ugovora bio redovno predmet razmatranja, često i sporova u međusobnim odnosima država.

¹¹ Slična strategija primenjena je i prilikom zaključivanja sporazuma između Mađarske i Ukrajine. Pre njegovog potpisivanja države su usvojile Deklaraciju o principima saradnje.

¹² Članovi 9 i 15.

vora opterećivala su loša iskustva u vezi sa ranijim pokušajima država da urede manjinsko pitanje. Još 1975. godine tadašnji komunistički predsednici Kadar i Čaušesku zaključili su sporazum koji je normativno zadovoljavao većinu i danas aktuelnih zahteva u vezi sa položajem Mađara u Erdelju i Rumuna u Mađarskoj. Ugovorom je, između ostalog, bilo predviđeno otvaranje konzulata u područjima koje manjine homogeno nastanjuju. Međutim, nedostatak političke volje obe strane uslovio je da odredbe ovog sporazuma ostanu "mrtvo slovo na papiru", ali i kao opomena savremenim generacijama koje su, shvatajući globalne tendencije u kojima je regionalna stabilnost značajan faktor, sklopile 16. novembra 1996. godine Ugovor o razumevanju i dobrosusedskoj saradnji. U smislu jačanja regionalne saradnje i bezbednosti formulisan je i član 3/1, kojim se države obavezuju da neće ugrožavati teritorijalni integritet suseda i da će se prilikom eventualnih nesporazuma uzdržavati od upotrebe sile.

Važno je reći da Ugovor nije u celini posvećen uređivanju statusa manjina, ali da je član 15 u potpunosti posvećen ovom problemu i da predstavlja novinu u odnosima između dve zemlje, jer se, u skladu s međunarodnim standardima, kroz dvanaest tačaka uređuje položaj Mađara u Rumuniji i Rumuna u Mađarskoj. Sadržina ovih odredbi mogla bi se sažeti u segmentima socijalno-ekonomskih i kulturnih prava, delotvornog učešća manjina u društvenom životu i obaveza vlasti da konsultuju predstavnike manjinskih organizacija u vezi sa odlukama koje se odnose na zaštitu identiteta manjina.

U članu 15 nalaze se i odredbe o zaštiti manjina od asimilacije, o unapređivanju kulturnog identiteta, o zaštiti kulturne i duhovne baštine, a instrumenti nadzora odnose se na Međuvladinu komisiju zaduženu za praćenje sprovođenja odluka iz sporazuma, kao i na infrastrukturu međunarodnih evropskih organizacija – OEBS i SE.

Najzad, sa Slovačkom je Mađarska 1995. godine potpisala Sporazum o dobrosusedskoj saradnji čiji sastavni deo je Preporuka Parlamentarne skupštine SE 1201. Potpisivanju sporazuma prethodili su dugotrajni pregovori državnih delegacija u kojima je provejavalo pitanje teritorijalne autonomije manjina. Ovo osetljivo pitanje retko se pominje u savremenim međunarodnim dokumentima, a države nerado prihvataju obaveze u smislu teritorijalnosti etničkih manjina. Izuzetak predstavlja Preporuka 1201 Saveta Evrope odnosno Protokol uz Evropsku konvenciju o ljudskim pravima koji je pridodat i u čijem članu 11 stoji: "U oblastima u kojima su u većini, lica koja pripadaju nacionalnoj manjini imaju pravo da raspolažu odgovarajućim lokalnim ili autonomnim upravama ili imaju pravo na specijalni status, što odgovara specifičnom istorijskom i teritorijalnom položaju, a u skladu sa nacionalnim zakonodavstvom države." Kako je reč o formulaciji čija implementacija može imati političke posledice, Komitet za pravne poslove i ljudska prava Parlamentarne skupštine SE je zatražio mišljenje Komisije za demokratiju putem prava (Venecijanska komisija) o ovom dokumentu, a posebno o članu 11. Komisija je usvojila mišlje-

nje da ova odredba nije operativno pravilo međunarodnog prava, već predlog koji ne korespondira sa članom 15 Okvirne konvencije u kojem se ne sugerisu oblici specijalnog statusa ili autonomnih lokalnih vlasti, već se utvrđuje pravo lica koja pripadaju nacionalnim manjinama da aktivno učestvuju u vlasti u stvarima koji se njih tiču. U tom smislu je zaključeno da međunarodno pravo ne raspolaže mehanizmima kojima bi se državama naložilo bilo kakvo teritorijalno rešenje manjinskog pitanja.

Međutim, na unošenju u bilateralne sporazume Preporuke 1201 SE, odnosno člana 11 Dodatnog protokola uz ove preporuke insistira mađarska diplomacija koja, iako nesumnjivo opredeljena za evroatlanske integracije, uvažava i istorijske, političke i etničke okolnosti koje su uslovile da trećina Mađara živi u susednim zemljama. U bilateralnom ugovoru koji su zaključile Mađarska i Hrvatska Preporuka 1201 je pomenuta, ali već tokom usklajivanja teksta sporazuma sa Slovačkom i Rumunijom vođene su polemike oko sadržaja člana 11. Pregovori su okončani potpisivanjem sporazuma o saradnji i dobrosusedskim odnosima u kojima se uređuje i pitanje položaja manjina, ali uz izričito ograđivanje Slovačke i Rumunije u pogledu prihvatanja obaveza u smislu teritorijalne autonomije manjina. Slovačka vlada je prilikom ratifikacije dala izjavu "da nikad nije prihvatile ili ugradila u Ugovor bilo kakvu formulaciju zasnovanu na principu priznavanja kolektivnih prava manjina ili kojom bi se dozvilo stvaranje autonomnih struktura po osnovu etničke pripadnosti". U listi dokumenata koja je sastavni deo Sporazuma o dobrosusedskoj saradnji između Rumunije i Mađarske unete su i Preporuke 1201, ali je dodat i Anex koji se odnosi na član 15, stav 1b u kojem izričito stoji da se "ugovorne strane slažu da se Preporuka 1201 ne odnosi na kolektivna prava, niti da nameće obavezu da se licima koja pripadaju nacionalnim manjinama dodeli pravo na specijalni status teritorijalne autonomije koja bi se zasnivala na etničkom kriterijumu".

Očigledno je da države nerado prihvataju obaveze o kolektivnim pravima nacionalnih manjina, odnosno ustanovljavanje kulturne, personalne ili drugih vidova autonomije. One strahuju da bi formiranje administrativnih autonomija, zasnovanih na etničkom principu, a potkrepljeno legitimnim i u međunarodnim odnosima utemeljenim pravom na održavanje veza manjina sa matičnim državama, pojačalo secesionističke tendencije. U tom smislu u bilateralnim ugovorima se obično ne produbljuje ovo pitanje, već se nastoji da se postojeće stanje unapredi i dopuni.

Prednosti bilateralnih ugovora nad multilateralnim dokumentima¹³ su u tome što mogu da posvete pažnju i obezbede uslove za rešavanje osetljivih pi-

¹³ Svesne značaja bilateralnog sporazumevanja međunarodne organizacije su preduzele aktivnosti i inicijative posvećene njegovom unapredavanju. Članom 18.1 Okvirne konvencije za zaštitu nacionalnih manjina preporučeno je državama, posebno susedima, da kad god je to moguće zaključuju multilateralne i bilateralne ugovore o zaštiti

tanja i skoncentrišu se na konkretnе potrebe svake nacionalne manjine u zavisnosti od istorijskih, političkih i društvenih prilika koje su uticale na njihov položaj. Osnovna namera bilateralnog sporazumevanja za države matice je ustanovljavanje visokog stepena zaštite za svoje manjine, a za države u kojima su te manjine nastanjene da ostvare jednakе uslove zaštite manjina kao preduslov za njihovu integraciju.

Bilateralni ugovori ili dokumenti koji im prethode, sadrže obostrane obaveze država u pogledu poštovanja međunarodnih normi zaštite nacionalnih manjina, a obično i klauzule ili odredbe kojima se izričito naglašava zaštita teritorijalnog integriteta država. "Sadržaj" prava nacionalnih manjina obuhvaćenih ugovorima, uglavnom, se odnosi na zaštitu: identiteta, kulture i kulturne baštine, obrazovanja, veroispovesti, slobode izražavanja i udruživanja, delotvornog učešće u procesma odlučivanja i uspostavljanja i održavanja veza sa matičnim državama i sunarodnicima u dijaspori.

Samo izuzetno države priznaju i izvesna kolektivna prava manjinama. Mnogo češće, međutim, nastoje da u tekst sporazuma unesu odredbe kojima se izričito ograju od obaveza u pogledu priznavanja kolektivnih prava manjina i teritorijalizacije etničnosti.

Praksom bilateralnog sporazumevanja su svakako unapređeni međudržavni odnosi i stabilnost u datom regionu, kao i položaj nacionalnih manjina, ali svakako da bi ono bilo još efikasnije ukoliko bi države uspostavile odgovarajuće mehanizme za njihovo sprovođenje. Dok se to ne desi, ovi ugovori će biti ipak deklarativni i okvirni, jer se njihove odredbe primenjuju posredno: putem nacionalnih zakonodavstava ili putem međudržavnih sporazuma o određenim pitanjima. U praksi ugovorne strane su obavezne da poštuju ugovorima predviđena prava nacionalnih manjina i da vode periodične bilateralne razgovore o njihovoj primeni. S tim ciljem ustanovljavaju se međudržavne komisije u čiji sastav su uključeni predstavnici manjina koji, međutim, ne raspolažu efikasnim mehanizmima pomoći kojih bi uticali na odlučivanje. Do sada, ovlašćenja komisija su se ograničavala na preporuke vladama u pogledu realizacije, a u najboljem slučaju mogle su uticati na izmenu ugovora.¹⁴

nacionalnih manjina. UN, Rezolucijom Komisije za ljudska prava od 22. februara 1995. godine, nedvosmisleno zagovaraju praksu bilateralnog sporazumevanja (E/CN.4/1995 L.32). Evropska unija je, smatrajući bilateralno sporazumevanje pogodnim sredstvom za ostvarivanje stabilnosti u JIE, podržala inicijativu francuskog diplome Balađura o sklapanju Pakta za stabilnost u JIE. Pakt su potpisale 52 države, a njegove ingerencije zasnovane su na principima OEBS-a o regionalnoj saradnji. Odnosio se na Bugarsku, Češku, Estoniju, Mađarsku, Litvaniju, Poljsku, Rumuniju i Slovačku – države koje su izrazile interes za pridruživanje EU (94/367CFSP).

¹⁴ Ni u jednom do sada zaključenom ugovoru ne postoje kaznene mere za stranu koja ne saraduje ili koja krši odredbe ugovora. Takođe, retko se koriste pravne mogućnosti za unapredivanje mehanizama za efikasnije sprovođenje ugovora. U tom smislu, na

Posredni mehanizmi za ostvarivanje obaveza preuzetih bilateralnim ugovorima mogli bi da budu nadzor Savetodavnog i Ministarskog odbora Parlamentarne skupštine Saveta Evrope¹⁵ i domaća zakonodavstva u slučajevima kada su države obavezne da direktno primenjuju odredbe međunarodnih ugovora¹⁶. Do sada najefikasniji mehanizmi uticaja na strane koje se ne pridržavaju odredbi ugovora bili su politički pritisci međunarodne zajednice, koja je bila prinuđena da opominje pojedine države da neprimenjivanjem preuzetih obaveza krše osnovne principe međunarodnog prava po kojima su prekogranična i regionalna saradnja osnova dobrosusedskih odnosa.

Zaštita prava nacionalnih manjina u okviru ustavnopravnih sistema država u JIE i CE

Najzad, poslednji vid zaštite nacionalnih manjina prenet je na nacionalni nivo, odnosno države potpisnice Okvirne konvencije same uređuju položaj manjina. U tom smislu države preduzimaju mere i aktivnosti na zaštiti prava nacionalnih manjina koje se sprovode ili na osnovu posebno donetih zakona ili kroz postojeću legislativu. Posebne zakone o zaštiti nacionalnih manjina donele su Ukrajina (1992), Hrvatska (1992, 2000, 2002), Mađarska (1993), Litvanijska (1989), Rusija (1999)¹⁷, Češka (2001), Moldavija (2001), SR Jugoslavija (2002), Bosna i Hercegovina (2003), a Vlada Crne Gore, odnosno Ministarstvo za prava etničkih grupa je početkom proteklog leta u saradnji sa OEBS-om formiralo ekspertske tim za donošenje odgovarajućeg zakona. Zaštitu manjina kroz ustave i druga zakonska i podzakonska akta obezbeđuju Rumunija, Makedonija, Slovačka, Slovenija i druge zemlje.

Dakle, nastojeći da stvore stabilne uslove za razvoj demokratskog društva, ali i radi blagovremenog priključenja evropskim integracionim tokovima, države u regionu su usvojile standarde i principe zaštite manjina. Većina njih

osnovu mehanizama koji postoje u Paktu za stabilnost u JIE države ili možda predstavnici manjina (?) mogli bi da se, u slučaju nepoštovanja prava koja proizilaze iz ugovora, obrate Međunarodnom sudu za pomirenje i arbitražu ili da na osnovu člana 15 Deklaracije Pakta o stabilnosti zatraže pomoć Kancelarije visokog komesara za nacionalne manjine OEBS-a.

¹⁵ Ovaj mehanizam u praksi deluje, zato što je većina odredbi iz bilateralnih sporazuma sadržana u Okvirnoj konvenciji, a države u svojim periodičnim izveštajima o njenoj primeni uključuju, po pravilu, i informacije o ispunjenim obavezama iz bilateralnih ugovora.

¹⁶ U domaćem zakonodavstvu se retko pokreću sporovi proistekli iz neprimenjivanja međunarodnih ugovora. Najčešći uzroci tome su neobaveštenost kako sudova, tako i organa i lica koji bi mogli da pokrenu odgovarajući postupak.

¹⁷ Ruski zakon se odnosi na zaštitu prava manjinskih naroda.

je na nivou unutrašnjeg zakonodavstva razvila sisteme zaštite prava nacionalnih manjina čiji zajednički imenitelji su zaštita individualnih (ali delom i kolektivnih prava nacionalnih manjina), priznavanje kulturne autonomije manjinskih zajednica (koja najčešće podrazumeva unapređenje uslova za čuvanje i zaštitu identiteta i kulture) i uređivanje prava u vezi sa njihovim obrazovanjem, informisanjem i službenom upotrebom jezika. Najzad, države u regionu nastoje da manjinama priznaju pravo na samoupravu u odomenu kulturne autonomije, te da obezbede učešće pripadnika nacionalnih manjina u radu lokalnih, regionalnih i centralnih organa vlasti.

Međutim, posle iskustva dužeg od decenije u vezi sa uređenjem položaja nacionalnih manjina u savremenoj Evropi, nametnuo se zaključak da je razvoj prava nacionalnih manjina moguć samo u uslovima stabilnih političkih prilika u kojima usvojene zakonske mere i inicijative podržava i prihvata šira društvena celina.

U tom smislu verovatno najupečatljiviji primer je Hrvatska koja je od 1992. godine tri puta menjala *Zakon o ljudskim pravima i slobodama i pravima nacionalnih manjina*. Prvi zakon kojim je nastojala da unapredi položaj nacionalnih manjina na svojoj teritoriji, Hrvatska je donela nakon izveštaja takozvane Badinterove komisije u kojem su ustavne garancije ocenjene kao nedovoljnim za demokratski razvoj višeetničke hrvatske države.¹⁸

¹⁸ O situaciji u vezi sa ljudskim pravima i pravima manjina u Hrvatskoj početkom devedesetih godina prošlog veka svedoči izveštaj delegacije Helsinške građanske skupštine prilikom posete Hrvatskoj i Sloveniji od 27. do 31. jula 1992. godine. Problemi o kojima izveštaj govori odnosili su se na oštru diskriminaciju u pogledu sticanja državljanstva Republike Hrvatske. Dok su "etnički čisti" Hrvati državljanstvo sticali uz kratku proceduru, gradani Hrvatske koji nisu hrvatskog porekla morali su prijaviti dokaze o ispunjenju niza uslova neophodnih za sticanje hrvatskog državljanstva. Često ni ispunjenje uslova u pogledu stalnog boravka u Hrvatskoj u trajanju od najmanje deset godina ili bračna veza sa državljaninom/državljkom Hrvatske nisu bili garancija da će zahtev za sticanje državljanstva biti pozitivno rešen. Izveštaj poimenice navodi slučajeve kada deci iz mešovitih brakova Hrvatica i Srba, iako rođenim u Hrvatskoj, nije odobreno državljanstvo.

Istovremeno Ustav i Zakon o izborima u Republici Hrvatskoj dozvoljavali su Hrvatima u dijaspori da glasaju na izbornim listama iako nisu državljeni Hrvatske, niti su živeli u Hrvatskoj u poslednjih deset godina. Mnogim pripadnicima manjinskog sticanja uskraćeno je pravo da glasaju na izborima 1992. godine zbog toga što postupak oko sticanja prava na državljanstvo nije bio okončan. O tome da je raskorak između normativnog i faktičkog bio ogroman govori podatak da je neposredno pred izbore 1992. godine predsednik Republike izdao zvanično saopštenje čiji sadržaj nedvosmisleno potvrđuje da državljanstvo nije uslov za ostvarivanje biračkog prava na tim izborima. Etnička podobnost, odnosno pripadnost hrvatskoj etničkoj zajednici, bio je prečutni kriterij i vladajuće stranke i opozicije za isticanje na kandidatskim listama.

Poslednja verzija ovog zakona usvojena u Saboru 2002. godine obezbeđuje nacionalnim manjinama visoko standardizovane normativne uslove zaštite njihovih prava. Pored ovog zakona, sistem zaštite prava nacionalnih manjina u Hrvatskoj čine i ustavna rešenja, ratifikacija Okvirne konvencije za zaštitu prava nacionalnih manjina i Evropske povelje o regionalnim i manjinskim jezicima, te posebni zakoni o obrazovanju i službenoj upotrebi jezika nacionalnih manjina koji su proizišli iz obaveza koje je hrvatska Vlada preuzeila potpisivanjem multilateralnih i bilateralnih ugovora. Najzad, hrvatska Vlada je, shodno postojećim ustavnopravnim rešenjima, usvojila i model ostvarivanja prava nacionalnih manjina.

Društveni i politički uslovi u kojima se ovaj sistem zaštite prava nacionalnih manjina razvijao razlog su tome da je prvi Zakon ljudskim pravima i pravima nacionalnih manjina suspendovan odmah po usvajanju u Saboru, te da se u narednim godinama potpuno izmenila etnička slika države i da je Hrvatska od etnički heterogene i razuđene, postala nacionalno homogena država u kojoj manjine predstavljaju značajniji demografski činilac u tek nekoliko opština. Okončanje ratnih strahota koje su potresale hrvatski narod, ali istom merom i pripadnike drugih naroda koji žive u Hrvatskoj donelo je stišavanje tenzija i omogučilo izgradnju konstrukcije dobro zamišljenog sistema zaštite manjina, ali nažalost ne i njegovu odgovarajuću implementaciju. Na ovo stanje je reagovao i Savetodavni komitet zadužen za praćenje implementacije Okvirne konvencije za zaštitu prava nacionalnih manjina Saveta Evrope, zaključkom u kojem je istaknut nepovoljan položaj srpske i romske nacionalne manjine.

O tome da postoje i druga opterećenja u vezi sa međuetničkim odnosima, i da tradicionalni animoziteti i visok stepen etničke distance uslovljavaju regionalne probleme, svedoče i izmene Ustava Republike Hrvatske koje su uticale na položaj pripadnika slovenačke i bošnjačke nacionalne manjine. Naime, Ustav Republike Hrvatske usvojen 22. decembra 1990. godine, u Izvorišnim osnovama konstituiše Hrvatsku kao "...nacionalnu državu hrvatskog naroda i državu pripadnika inih naroda i manjina, koji su njeni državljanici: Srba, Muslimana, Slovenaca, Čeha, Slovaka, Talijana, Mađara, Židova i drugih kojima jamči ravnopravnost s građanima hrvatske nacionalnosti...". Član 3 Temeljnih odredbi Ustava Republike Hrvatske nacionalnu ravnopravnost uvrštava u red najvećih vrednosti ustavnog poretka, a član 15 jamči ravnopravnost svih pripadnika naroda i manjina.¹⁹ Ustavnom revizijom iz 1997. godine tekst preambule je izmenjen u smislu da je "Hrvatska država hrvatskog naroda i autonom-

¹⁹ Istim članom narodima i manjinama je garantovana sloboda izražavanja narodnosne pripadnosti, sloboda upotrebe maternjeg jezika i pisma i kulturna autonomija.

nih narodnih manjina". Iz taksativnog navođenja "državno priznatih" manjinskih zajednica isključeni su Slovenci i Muslimani,²⁰ a naknadno su uvršteni Nemci, Austrijanci, Ukrajinci i Rusini.

Neosporno je da su napori koje je učinila hrvatska Vlada, naročito u poslednjih nekoliko godina, doprineli formalnopravnoj zaštiti prava pripadnika nacionalnih manjina, ali ne i njihovoj integraciji u hrvatsko društvo. Postojanje regionalnih problema u vezi s manjinama, kao i neumerene i uvredljive izjave predstavnika političkih partija prema pripadnicima srpske i romske nacionalne manjine, te prikrivanje ratnih zločina koje su počinili pripadnici hrvatske vojske tokom domovinskog rata 1992–1995. godine doprinose održavanju etničke distance i nepoverenja uprkos visokom nivou zaštite nacionalnih manjina.

Slična, a možda i složenija situacija je i u Srbiji i Crnoj Gori koju odlikuje još rastresitije etničko tlo i potpuna dezorientacija u pogledu perspektive kako državne zajednice i njene definicije, tako i u pogledu odnosa većinskih naroda i nacionalnih manjina prema njenim institucijama. Pitanja ustavnog ustrojstva, državnih granica, zajedničkog i za sve građane prihvatljivog nacionalnog koncepta od krucijalnog su značaja za svaku demokratski uređenu državu. Naročito je važno naći odgovor na pitanje koje su to društvene i političke vrednosti koje su prihvatljive za sve članove etnički i interesno heterogene zajednice? Aktuelni simboli i državna heraldika svakako to nisu, još manje nacionalna politika i fluidna institucionalna rešenja. Očigledno je da Srbiji i Crnoj Gori, ili samo Srbiji, ili samo Crnoj Gori, na putu ka Evropskoj uniji nedostaju čvrste institucije, poput Prvog amandmana Ustava SAD ili nepisanog britanskog Ustava koje bi bile prijemućive svim građanima.

Nažalost na početku XXI veka ova pitanja u Srbiji i Crnoj Gori nisu rešena, a još uvek su otvorena i druga koja su u vezi sa međuetničkim povremenjem i organizacijom multietničkog i multikonfesionalnog društva: status Kosova i položaja albanskog stanovništva na jugu Srbije; položaj Bošnjaka koji je različit u Sandžaku gde imaju blagu demografsku prednost u odnosu na ostale nacionalne zajednice i u drugim delovima Srbije gde su, i ako mnogobrojni, neprepoznatljivi i predstavljaju skrivenu manjinu; status romske nacionalne manjine je doveden do karikaturalnih razmera, jer unapređivanje njihovog institucionalnog položaja nije praćeno odgovarajućim programom socijalno-eko-

²⁰ Razlozi za izostavljanje slovenačke i bošnjačke (muslimanske) manjine iz ustavne taksacije bili su političke prirode. Kada je u pitanju položaj slovenačke manjine jasno je da je reč o shvatanju manjinske politike po principu reciprociteta u odnosima između država. Nezadovoljna položajem Hrvata u Sloveniji kojima nije priznat status autohtone manjine, Hrvatska je posegla za merama pritiska kako bi ovo pitanje dovela u ravnotežu. Pogoršavanje statusa Bošnjaka (Muslimana), takođe je u vezi sa međusobnim odnosima država, ali kod nekih autora ova ustavna restrikcija je otvorila mogućnosti za spekulacije o obnovljenom "pravaškom" shvatanju o nepriznavanju bošnjačke nacije.

nomske integracije; napori koje čini međunarodna zajednica ostaju obesmišljeni zahvaljujući tome što ovo pitanje nije razmatrano na institucionalan način.

U takvim društvenim i političkim okolnostima donet je u februaru 2002. godine *Zakon o zaštiti prava i sloboda nacionalnih manjina u SRJ*, čijem je usvajanju u tadašnjem saveznom parlamentu prethodilo niz pravnih protivrečnosti koje su proizlazile iz nestabilnih političkih prilika i iz slabo koncipirane politike prema manjinama.

1. Zakon je formalno donet u skladu sa tadašnjim ustavom SRJ. Međutim, jasno je da je Zakon u mnogim odredbama prevazišao ustavna određenja, te da je zakonodavac, u nastojanju da rešenje uskladi sa međunarodnim standardima, zanemario unutrašnjopravni poredak. Priznavanje kolektivnih prava nacionalnih manjina u Zakonu ne bi trebalo da bude sporno, ali jeste sporan način na koji su u unutrašnji ustavnopravni poredak uvedena. Naime, kolektivna prava nacionalnih manjina, ne priznaje ni Okvirna konvencija za zaštitu nacionalnih manjina saveta Evrope sa kojoj je zakon uskladivan, a još manje tadašnji ustav SRJ (ukoliko se u obzir ne uzme krhka spekulacija sa članom 11 kojim je bilo predviđeno da pripadnici nacionalnih manjina ostvaruju prava u zajednici sa drugima i u skladu sa međunarodnim pravom, odakle je moglo proizlazi tumačenje da pošto međunarodno pravo priznaje kolektivna prava onda ih priznaje i jugoslovenski ustavnopravni sistem). Kolektivna prava, međutim, nisu ni razrađivana ni priznata u bilo kojem drugom segmentu pravnog sistema SRJ.

2. Ovaj problem je produbljen u Ustavnoj povelji Državne Zajednice Srbija i Crna Gora i u Povelji o ljudskim i manjinskim pravima i građanskim slobodama time što se insistira na instituciji stečenih prava nacionalnih manjina u koje spadaju i kolektivna prava. S pravom možemo postaviti pitanje da li je nešto stečeno, i što je još važnije, održivo, ukoliko je priznato na neustavan način. Primer Hrvatske, koja je zbog nedoslednosti i polurešenja više puta menjala ustavni zakon o nacionalnim manjinama, dovoljno govori u prilog tome da je neophodno da se pre uredivanja položaja nacionalnih manjina definišu osnove nacionalne i državne politike. U suprotnom, ishitrenost poteza i nedoslednost u sprovođenju konzistentne kako nacionalne, tako i manjinske politike, uslovjavaju kompromitaciju neosporno važnih načela, institucija i prava u vezi sa položajem nacionalnih manjina.

U vezi s tim trebalo bi pomenuti da su odredbe o zaštiti nacionalnih manjina u Ustavnoj povelji i Povelji o ljudskim i građanskim slobodama i pravima nacionalnih manjina uglavnom preuzete iz Zakona o nacionalnim manjinama. Predstavnici manjinskih političkih partija koje deluju o okviru DOS-a – DZVM i Sandžačke demokratske partije, – strahujući da bi ostvareni stepen prava mogao biti ugrožen, izvršili su pritisak da se u tekst Povelje o pravima nacionalnih manjina, maltene, prepše čitav Zakon o nacionalnim manjinama. Time je propuštena šansa da se postojeća rešenja unaprede i ustavnopravno

opravdaju, već je verifikovan ranije utvrđen model koji se neposredno po usvajanju i promociji suočio sa preprekama koje nikada nije prevazišao (ingerencija na celoj teritoriji države, demokratski izbor manjinskih samouprava, usklađenost zakona u Srbiji i zakona u Crnoj Gori sa odredbama "saveznog" zakona...). Ne stiče se utisak da je demokratski model politike prema nacionalnim manjinama temeljno osmišljen, već se stiče utisak da on počiva na kodifikaciji anahronih i voluntarističkih rešenja iz predašnjeg sistema zaštite nacionalnih manjina, dopunjeno korpusom kolektivnih prava. Ukoliko se takva politika dovede u vezu, na primer, sa uvođenjem veronauke u vaspitnoobrazovni sistem, a da pre toga nije utvrđen odgovarajući program i plan, te da nije izglasан Zakon o verskim zajednicama, onda je uočljivo da se na lokalnom nivou podstiče podvojenost dece već na početku školovanja, čime su u društveni sistem ugrađeni elementi njegove dezintegracije.

3. Činilo se da će se uspostavljanjem Državne Zajednice Srbija i Crna Gora prevazići problemi u vezi sa implementacijom Zakona o zaštiti prava nacionalnih manjina. Ovaj problem se pojavio još prilikom formiranja ekspertske grupe za pripremu Zakona, kada su učešće u njenom radu odbili predstavnici državne uprave, stručnjaci iz manjinskih zajednica iz Crne Gore. Osnovni problem je bio iz činjenica da, potonji utemeljivač Državne Zajednice Srbija i Crna Gora, Demokratska partija socijalista, nije priznavala ingerencije jugoslovenskog establišmenta na teritoriji Crne Gore u kojoj su ostvarivali suverenu vlast, kao i iz stava albanske nacionalne manjine čiji pripadnici su najbrojniji u Crnoj Gori da ne žele da o njihovom statusu raspravljaju i odlučuju centralne vlasti. Međutim, ni nakon formiranja Državne Zajednice Zakon o nacionalnim manjinama se ne primenjuje na teritoriji Crne Gore. Naproti, po njenom formiranju Vlada Crne Gore je obrazovala ekspertsku grupu za pripremu posebnog zakona o pravima manjinskih grupa u Crnoj Gori. Pretpostavlja se da će predlog zakona biti pred poslanicima Parlamenta do kraja 2003. godine. Ova zakonska inicijativa je u skladu sa podelom nadležnosti između organa uprave u Državnoj Zajednici i državama članicama kako to predviđa Ustavna povelja. Kada ovaj zakon bude izglasан nadležnosti Ministarstva za ljudska prava i nacionalne manjine Državne Zajednice će se odnositi samo na teritoriju Srbije, a kada je reč o ostvarivanju ljudskih i manjinskih prava u Crnoj Gori ona će se svesti na praćenje implementacije međunarodnih standarda zaštite prava nacionalnih manjina u unutrašnje-pravno zakonodavstvo. Sasvim je moguće da će nakon toga u Sandžaku, koji je podeljen između Srbije i Crne Gore, Bošnjaci ostvarivati različite stepene prava zaštite svojih nacionalnih posebnosti, a da će se ingerencije dve manjinske politike zaustavljati na graničnim međama koje dele dvorište jednog domaćina.

S obzirom na podelu nadležnosti i odnose unutar Državne Zajednice i organa uprave Republike Srbije, ingerencije centralnih vlasti su ograničene i svaka implementacija prava ostvaruje se isključivo u okviru pravnog sistema

Srbije. Pokušaj da se deo nadležnosti i programa ostvaruje preko formiranja interministarskih grupa kao formi koordinacije rada, pokazao se nedovoljnim, jer inicijative koje su predlagale ova *ad hoc* formirana tela, nisu donele rezultate primerene problemima i potrebama nacionalnih manjina u Srbiji. Poseban problem u radu ovih grupa je što nisu formirane u skladu sa odgovarajućom zakonskom procedurom, odnosno njihov rad počiva na neformalnom okupljanju, a ne na odgovarajućim odlukama nadležnih organa uprave. Svojevremeno su osnovane interministarske grupe za reformu obrazovanja pripadnika nacionalnih manjina i za integraciju Roma. Domašaji rada ovih tela su bili ograničeni, a analiza aktuelnog stanja u vezi sa obrazovanjem i položajem Roma ukaže na to da su efikasnije rezultate postigle neformalne ekspertske grupe i nevladine organizacije.²¹

4. Određene probleme stvara sam koncept Zakona o zaštiti prava nacionalnih manjina koji je u nastojanju da se približi duhu liberalnog multikulturalizma, prihvatio definiciju nacionalne manjine koja je trebalo da prevaziđe balkanske uskogrudosti iz kojih je proizišla neusklađenost prethodnog ustavnog sistema koji je operacionalizovao sa pojmovima nacionalna manjina (Ustav SRJ), narodnost (Ustav Srbije) i nacionalne i etničke grupe (Ustav Crne Gore). U smislu Zakona pod pojmom nacionalna manjina podrazumeva se (član 2) *svaka grupa državljana SRJ koja je po brojnosti dovoljno reprezentativna, iako predstavlja manjinu na teritoriji SRJ, pripada nekoj od grupa stanovništva koje su u dugotrajnoj i čvrstoj vezi sa teritorijom SRJ i poseduju obeležja kao što su jezik, kultura, nacionalna ili etnička pripadnost po kojima se razlikuje od većine stanovništva i čiji se pripadnici odlikuju brigom da zajedno održavaju svoj zajednički identitet, uključujući kulturu, tradiciju, jezik ili religiju.* Ovoj definiciji se ne bi imalo mnogo prigovoriti da je nakon toga usledilo određivanje titulara prava – odnosno da su pobrojane nacionalne manjine koje ova prava ostvaruju. Pitanje ko su one, zakonodavac je rešio solomonski – nacionalnom manjinom u formalnopravnom smislu smatraju se one zajednice koje ispunjavaju uslove iz člana 1 Zakona i koje formiraju svoje nacionalne saveze. Za izbor ovih saveta utvrđena je posebna procedura, a suština je u tome da dok se ova tela manjinskih samouprava ne formiraju i ne registriraju kod nadležnog ministarstva, organizacija manjinske zajednice se vodi i registruje kao udruženje građana. U vezi sa tim je i problem verifikacije manjinske zajednice kod nadležnog organa uprave, jer se može prepostaviti da u zemlji žive zajednice koje ne žele da identitet dokazuju upisom u državne registre. Takode,

²¹ Centar za multikulturalnost iz Novog Sada je na osnovu analize obrazovnih politika nacionalnih manjina u JIE i CE uradio predlog Zakona o obrazovanju nacionalnih manjina u Vojvodini, koji se lako mogao primeniti na celoj teritoriji Srbije. Centar za istraživanje etniciteta je sproveo istraživanje o socijalnom položaju Roma u Srbiji i dao preporuke za njihovu socijalno-ekonomsku integraciju.

ukoliko se administrativno potvrđivanje identiteta dovede u vezu sa stvaranjem manjinskih samouprava kao centara preko kojih država sarađuje sa manjinama i vrši distribuciju sredstava i uticaja, može se naslutiti da će kod nekih manjinskih zajednica doći do raslojavanja i slabljenja unutrašnjih kohezivnih veza.

Većina država u regionu je sasvim drugačije pristupila definisanju nacionalnih manjina na svojoj teritoriji. Naime, Hrvatska, Bosna i Hercegovina i Mađarska koje su donele posebne zakone o zaštiti prava svojih građana koji pripadaju različitim manjinskim etničkim zajednicama, odredile su kriterije koji odgovaraju istorijskim, etničkim i kulturnim okolnostima u svakoj od zemalja i na osnovu kojih su u ustavima ili u samim zakonima pobrojale istorijske, autohtone ili po nekom drugom svojstvu priznate nacionalne manjine.

5. Zakonom je predviđeno formiranje nacionalnih saveta nacionalnih manjina "radi ostvarivanja prava na samoupravu u oblasti upotrebe jezika i pisma, obrazovanja, informisanja i kulture".²² Zakonodavac se opredelio za elektorski sistem i Dontov metod raspodele mandata. Međutim, način izbora i funkcionisanja rada saveta favorizuje pripadnike manjina koji su članovi raznorodnih političkih partija, već postojećih udruženja i organizacija i ne podstiče širu participaciju manjinskih predstavnika. Elektorski način izbora nacionalnih saveta koji je zakonom predviđen pogoduje dobro organizovanim i politički profilisanim strankama nacionalnih manjina, ali ne i malobrojnim ili teritorijalno disperziranim i nedovoljno organizovanim manjinama. Nacionalni saveti u ovom slučaju postaju stecište interesnih grupa unutar jedne manjine, koje su najčešće zatvorene i nepropustljive za drugačija mišljenja i poglede. Ovakvo mišljenje potkrepljuje i činjenica da Zakonom nisu predviđena regionalna ili lokalna tela manjinskih samouprava kao dela jedinstvenog sistema manjinskih samouprava. Da je prihvaćen sistem disperziranih manjinskih samouprava bila bi obezbeđena njihova decentralizacija i demonopolizacija i mogli bi se ustanoviti efikasni mehanizmi njihove unutrašnje kontrole. Čini se da je demokratski način izbora manjinskih samouprava putem isticanja "malih" manjinskih lista mogao biti organizovan tokom izbora za lokalne organe vlasti. Na taj način implementirali bi se demokratski principi na osnovu kojih bi u tela manjinskih samouprava bili izabrani predstavnici koji bi poverenje sunarodnika stekli na neposredan način.

Izbor predstavnika nacionalnih manjina u tela manjinskih samouprava na izborima obezbeđen je u Mađarskoj i Hrvatskoj gde se formiraju posebne izborne liste i utvrđuju pravila na osnovu kojih pripadnici manjina biraju predstavnike kako u manjinskim samoupravama.

6. Sledeće pitanje koje možemo izdvojiti odnosi se na problem izbora predstavnika nacionalnih manjina u lokalnim, regionalnim i centralnim vlastima. Na lokalnom i regionalnom nivou njihova zastupljenost je obezbeđena,

²² Zakon o zaštiti prava i sloboda nacionalnih manjina, član 19

uglavnom, zahvaljujući dobroj organizovanosti i koncentraciji na lokalnom nivou pripadnika mađarske, slovačke i hrvatske nacionalnosti u Vojvodini. Zastupljenost manjinskih predstavnika u izvršnim, sudskim i drugim oblicima vlasti u Vojvodini se ostvaruje i zahvaljujući postignutom nivou političke kulture, koji je građen decenijama, i u kojem su pripadnici manjina bili sugrađani i najosetljiviji međunalacionalni problemi rešavani su u institucijama i dogovorom. U drugim krajevima Srbije zastupljenost predstavnika manjina u lokalnim organima vlasti ostvarena je uglavnom u opštinama u kojima čine većinsko stanovništvo. U sandžačkim opštinama Tutin, Novi Pazar i Sjenica, u dve opštine na jugu Srbije (Bujanovac i Preševo) i dve opštine koje su nastanjene pripadnicima bugarske nacionalne manjine (Dimitrovgrad i Bosilegrad) manjinski predstavnici održavaju vlast, ali uz puno problema u vezi sa sprovođenjem nadležnosti, naročito kada su u pitanju odredbe iz Zakona o pravima nacionalnih manjina. Opštinske vlasti u sandžačkim opštinama u kojima vlast ostvaruje Stranka demokratske akcije, neosporno najuticajnija bošnjačka partija, suočile su se sa problem uvođenja bosanskog jezika u službenu upotrebu. Pored problema zbog bliskosti dijalekta kojima govore Srbi u Sandžaku sa govorom suseda Bošnjaka, prisutan je i problem žestokog otpora koji pruža stanovništvo srpske nacionalnosti sprovodenju ove zakonske odluke.

U aktuelnom srbijanskom izbornom zakonodavstvu nisu predviđene olakšice na osnovu kojih bi predstavnici nacionalnih manjina birali svoje predstavnike u Narodnu skupštinu i Parlament Državne Zajednice. Postojeći izborni cenzus za dobijanje mandata u predstavničkim telima iznosi 5% i nepremostiva je prepreka za sve političke partije nacionalnih manjina. Predstavnike u aktuelnim zakonodavnim telima političke partije nacionalnih manjina su obezbedile ulaskom u koalicije ili su pak pripadnici nacionalnih manjina birani sa lista velikih političkih partija. Predlozi za snižavanje izbornog cenzusa sa 5% na 2% ne čine se politički realnim jer bi, pored predstavnika političkih partija Bošnjaka, Mađara i eventualno Albanaca, u Narodnoj skupštini bile zastupljene i mnogobrojne male političke partije. Pitanje je da li bi takva koncepcija do prinela izgradnji stabilnih institucija i razvoju demokratije u Srbiji. Sadašnji primer DOS-a kao nestabilne koalicije jedne velike i mnoštva malih stranaka, pre ukazuje na to da bi za zastupljenost predstavnika nacionalnih manjina u republičkim vlastima trebalo primeniti princip afirmativne akcije. U tom smislu trebalo bi obezbediti izvestan broj poslaničkih mesta za predstavnike onih nacionalnih manjina koje ne pređu izborni cenzus. U regionu, ovaj princip prva je prihvatala Rumunija gde nacionalne manjine koje na izborima ne pređu cenzus od 5% ostvaruju pravo na jednog poslanika u Donjem domu Parlamenta. U Sloveniji pripadnicima autohtonih nacionalnih manjina – Mađarima i Italijanima – garantovana su takođe mesta u parlamentu, a u Hrvatskoj po poslednjem zakonu, pripadnici srpske nacionalne manjine mogu izabrati do 3 predstavnika u Sabor, a ostale nacionalne manjine dele još pet zastupničkih mesta. U Mađarskoj ne postoji mogućnost zastupanja manjina u Parlamentu.

Zakonom o lokalnoj samoupravi Srbije, članom 63, predviđeno je da se u nacionalno mešovitim opštinama osnivaju *saveti za međunacionalne odnose koji čine predstavnici svih nacionalnosti i etničkih zajednica*. Nacionalno mešovitim opštinama smatraju se one u kojima jedna nacionalna manjina čini više od 5% stanovništva ili sve nacionalne manjine čine više od 10% stanovništva. Predstavnike u savetu mogu imati nacionalne manjine koje imaju više od 1% stanovništva u opštini. Savet ima nadležnosti u smislu usklađivanja međunacionalnih odnosa i ostvarivanja individualnih i kolektivnih prava nacionalnih manjina, ali i pravo da pred Ustavnim sudom pokrene postupak za ocenu ustavnosti i zakonitosti odluke ili drugog akta skupštine opštine za koje se smatra da su njime povredena prava nacionalnih manjina.

7. Sledеća nedoslednost Zakona o zaštiti prava nacionalnih manjina i Ministarstva koje ga je predložilo odnosi se na činjenicu da do danas nisu ustanovljeni ni Savezni savet za nacionalne manjine u kojem je trebalo da se ostvari povezanost interesa predstavnika nacionalnih saveta nacionalnih manjina i državne uprave, ni Fond za nacionalne manjine.

8. Za kreiranje sveukupne politike prema nacionalnim manjinama važni su takođe, institucija ombudsmana i Zakon o sprečavanju diskriminacije, o kojima je vodena javna rasprava i pokrenute zvanične procedure za njihovo ustanovljavanje, odnosno donošenje, ali za sada do toga nije došlo. Istine radi treba pomenuti da je nedavno Skupština Vojvodine postavila Ombudsmana za ljudska prava, međutim, njegova ingerencija je omedena granicama autonomne pokrajine. Već zbog te činjenice pripadnici nacionalnih manjina nalaze se u ne povoljnijem položaju od pripadnika nacionalnih manjina u Vojvodini, što sa stanovišta sveukupne manjinske politike predstavlja određeni vid diskriminacije.

9. Za ostvarivanje prava nacionalnih manjina u Srbiji od suštinske važnosti je usklađenost zakona sa Ustavnom poveljom, Poveljom o ljudskim i manjinskim pravima i građanskim slobodama i Zakonom o nacionalnim manjinama. Ostavimo po strani činjenicu da Ustav Srbije u okviru kojeg bi trebalo da se donose zakoni u Srbiji nije usklađen sa ovim dokumentima i analizirajmo kakva je situacija u vezi sa implementacijom kolektivnih i individualnih prava pripadnika nacionalnih manjina u pravnom sistemu Srbije.

U Zakonu o lokalnoj samoupravi, koji je usvojen 26. februara 2002, dake gotovo u isti dan kada i Savezni zakon o nacionalnim manjinama, uvršteno je u izvorne nadležnosti opština da se staraju o zaštiti i ostvarivanju ličnih i kolektivnih prava nacionalnih manjina i etničkih grupa i da utvrđuju jezik i pisma nacionalnih manjina koji su u službenoj upotrebi na teritoriji opštine (član 18, tačke 18 i 19).

Simboli, nazivi ulica, trgova, gradskih četvrti, zaselaka i drugih delova naseljenih mesta utvrđeni su Zakonom o lokalnoj samoupravi Republike Srbije po kojem opštine samostalno odlučuju o ovim pitanjima. Ukoliko sadržina odredaba statuta opština koje se odnose na ovu oblast ne odgovaraju istorijskim

ili stvarnim činjenicama ili ako se njima vređaju nacionalna ili verska osećanja nadležno ministarstvo može da odbije takve odredbe ili statut u celini.²³ Međutim, u Zakonu o lokalnoj samoupravi Republike Srbije sadržana je u članu 118 odredba koja ukazuje na pravnu neuskladenost ova dva zakona u pogledu prava nacionalnih manjina na upotrebu nacionalnih simbola. Naime, dok savezni zakon precizira da se “simboli i znamenja nacionalnih manjina mogu službeno isticati tokom državnih praznika i praznika nacionalne manjine na zgradama i u prostorijama lokalnih organa i organizacija sa javnim ovlašćenjima na područjima na kojima je jezik nacionalne manjine u službenoj upotrebi”, Zakon o lokalnoj samoupravi RS predviđa da se u “službenim prostorijama organa jedinice lokalne samouprave ističu samo državni simboli i simboli jedinica lokalne samouprave”. U skladu sa Saveznim zakonom o zaštiti prava nacionalnih manjina nadležno ministarstvo, dakle, Ministarstvo za ljudska prava i prava nacionalnih manjina je trebalo da uloži ustavnu žalbu (član 23 Zakona o manjina) kako bi se izvršilo usklađivanje tada republičkog zakona sa saveznim.

U Zakonu o javnom informisanju koji je usvojen 2003. godine (SGRS br. 43/2003) predviđeno je *da radi ostvarivanja prava nacionalnih manjina i etničkih zajednica²⁴ u informisanju na sopstvenom jeziku i negovanju sopstvene kulture i identiteta, Republika, autonomna pokrajina, odnosno lokalna samouprava obezbeđuje deo sredstava ili drugih uslova za rad javnih glasila na jezicima nacionalnih manjina i etničkih zajednica* (član 5).

U delu ovog zakona koji se odnosi na zabranu distribucije informacije (član 17) predviđeno je da nadležni okružni sud može na predlog javnog tužioca zabraniti distribuciju informacija koje, pored ostalog, raspiruju rasnu, versku ili nacionalnu mržnju.

Istim zakonom u našu pravnu praksu uvedena je zabrana govora mržnje koji podstiče nacionalnu i versku netrpeljivost (član 38). Lica kojima su povređena prava na osnovu člana 38 Zakona mogu podneti tužbu odgovarajućem sudu.

Članovima 134, 154 (stav 1) i 186 Krivičnog zakona SR Jugoslavije, koji se primenjuje u slučajevima kada neka materija nije regulisana KZ Srbije, predviđeno je izricanje kazne od tri meseca do pet godina licima koja krše ljudska prava pripadnika nacionalnih manjina, šire rasnu, versku ili nacionalnu netrpeljivost ili u službenom postupku čine bilo kakvu diskriminaciju ili povlasticu po osnovu nacionalne, etničke ili verske pripadnosti. Član 60 Krivičnog zakona Republike Srbije komplementaran je sa članovima 134 i 154 Saveznog krivičnog zakona, a član 61 dopunjuje materiju, predviđajući kaznu do godinu dana zatvora za lica koja uskrate ili ograničavaju pripadnicima nacionalnih

²³ Članovi 117–121 Zakona o lokalnoj samoupravi Republike Srbije, Službeni list Republike Srbije od 26. februara 2002.

²⁴ Zakon koristi termin etnička zajednica koji se nije upotrebljavao ni u ranijem ni u aktuelnom ustavno-pravnom sistemu.

manjina upotrebu maternjeg jezika i pisma na način kako to Ustav i Zakon predviđaju. U članu 100 istog zakona predviđena je zatvorska kazna do tri godine za lica koja izlože poruži narode, narodnosti ili etničke grupe. Izmenama i dopunama Krivičnog zakona Republike Srbije uvršten je član 76a kojim su predviđene kazne (novčana ili do 1 godine zatvora, a ako je izvršilac službeno lice u vršenju službe kazniće se zatvorom od 6 meseci do 5 godina) za lica koja građanima SR Jugoslavije protivpravno uskrate ili ograniče slobodu kretanja ili nastanjivanja na teritoriji Republike Srbije.²⁵

Službena upotreba jezika i pisma narodnosti (nacionalnih manjina) regulisana je Zakonom Republike Srbije o službenoj upotrebi jezika (1991),²⁶ a u Vojvodini i Statutom Autonomne pokrajine.²⁷ Opštinskim skupštinama je ostavljena mogućnost da, u mestima gde su narodnosti dominantne u populacionoj strukturi, Statutom regulišu upotrebu jezika narodnosti. Koristeći ovo pravo pripadnici narodnosti u trideset sedam vojvodanskih opština uveli su u službenu upotrebu pored srpskog i jezike manjina. U skladu sa odredbama Ustava i Zakonom, kada je u službenoj upotrebi jezik narodnosti, tekst na ovom jeziku ispisuje se ispod teksta na srpskom jeziku ili desno od njega, istim oblikom i istom veličinom slova. Članom 7 Zakona o službenoj upotrebi jezika i pisma određeno je da se geografski nazivi i vlastita imena u javnim natpisima ne mogu zamenjivati drugim nazivima, te se moraju ispisivati na jeziku narodnosti, u skladu sa pravopisom tog jezika.

Članom 12 Zakona utvrđeno je da se prvostepeni upravni, krivični, parnični ili drugi postupak vodi na srpskom jeziku, ali može i na jeziku manjine koji je u službenoj upotrebi. Ukoliko je institucija koja vodi postupak nadležna u više nacionalno heterogenih opština, postupak se može voditi na maternjim jezicima za pripadnike manjina koji imaju stalno prebivalište na teritoriji opštine. Na područjima na kojima jezici manjina nisu u službenoj upotrebi, ustanove nadležne za vođenje postupka dužne su da pripadnicima manjina dozvole upotrebu maternjeg jezika i pisma, da na svom jeziku podnose molbe, pritužbe, podneske i predloge i da im se na istom jeziku dostavljaju sudske i drugi upravni otpisi.

U opštinama u kojima su jezici manjina u službenoj upotrebi, svedočanstva o stečenom obrazovanju na jeziku manjine, kao i druge javne isprave, na

²⁵ Izmene i dopune Krivičnog zakona Republike Srbije, od 1. marta 2002. godine.

²⁶ Član 1/3 Zakona o službenoj upotrebi jezika i pisma Republike Srbije precizira: "Na područjima Republike Srbije na kojima žive pripadnici narodnosti u službenoj upotrebi su istovremeno sa srpskim jezikom i jezici i pisma narodnosti, na način utvrđen ovim zakonom."

²⁷ Član 10 stav 4 "obezbeduje službenu upotrebu istovremeno sa srpskohrvatskim jezikom i madarskog, slovačkog, rumunskog i rusinskog jezika i njihovih pisma i jezika i pisama drugih narodnosti, na način utvrđen zakonom", Statut AP Vojvodina, Službeni list APV, br. 17/1991.

zahtev pripadnika manjine izdaju se na maternjem jeziku. U ovim opštinama propisana evidencija se vodi i na jezicima manjina, a obrasci se štampaju dvojezično, na srpskom i jeziku manjine čiji je jezik u službenoj upotrebi (čl. 18).

Dopunu ovoga zakona predstavljaju odredbe sadržane u zakonima o kričnom postupku, opštem upravnom postupku, parničnom postupku i Zakonu o prekršajima koje predviđaju upotrebu jezika nacionalnih manjina tokom svih faza vođenja postupka, korespondencije i izricanja presude.

Savezni zakon o nacionalnim manjinama sadrži odredbe o službenoj upotrebi jezika nacionalnih manjina (član 11) u kojem se kaže da je jezik nacionalne manjine u službenoj upotrebi u opštinama u kojima su tradicionalno nastanjeni pripadnici nacionalnih manjina. Opština obavezno u službenu upotrebu uvodi jezik nacionalne manjine ukoliko više od 15% stanovništva pripada nekoj nacionalnoj manjini. Opština može smanjiti ovaj cenzus i u službenu upotrebu uvesti jezik nacionalne manjine koja čini manje od 15% ukupnog stanovništva opštine. Zakon je takođe predviđeo da se u opštinama u kojima je službena upotreba jezika nacionalnih manjina uvedena pre donošenja Zakona ne smeju umanjiti već stečena prava.

Obrazovanje na jezicima nacionalnih manjina regulisano je Zakonom o osnovnoj školi, Zakonom o srednjoj školi i Zakonom o osnovnom obrazovanju i vaspitanju. Prava u oblasti kulture regulišu odredbe niza zakona: o bibliotečkoj delatnosti, kulturnim dobrima i baštini, muzejima kao i drugi zakonski akti. Ovaj vid zaštite prava nacionalnih manjina razvijen je u Vojvodini u kojoj je implementacija poverena specijalizovanim zavodima i manjinskim organizacijama.

Ukoliko se sistem zaštite nacionalnih manjina u Državnoj Zajednici Srbija i Crna Gora i u Srbiji uporedi sa sistemima koje su razvile države u regionu, onda su njegove slabosti lako uočljive. One su još izraženije u pojedinim regionima i opštinama u Srbiji u kojima su naglašeni problemi u vezi sa ostvarivanjem prava nacionalnih manjina, ali i u vezi sa međunacionalnim odnosima. Poređenja u smislu da je njihov položaj bolji u odnosu na stanje koje je ostavio prethodni režim neumesna su, jer unapređenje položaja nacionalnih manjina ostvareno je zahvaljujući sveukupnom demokratskom napretku Srbije, a ne posebnoj politici ili strategiji koju je formulisao nadležni organ državne uprave.

MEHANIZMI KONTROLE NAD IMPLEMENTACIJOM OKVIRNE KONVENCIJE U SRBIJI I CRNOJ GORI

Već je bilo reči o tome da implementacija Okvirne konvencije podrazumeva da države potpisnice moraju inicirati ne samo donošenje adekvatnih zakona nego i kreiranje odgovarajuće politike koja obezbeđuje sprovođenje preuzetih obaveza. To znači da vlade moraju izmeniti postojeće zakonodavstvo i sprovoditi politiku na načelima vladavine prava, tolerancije i međusobnog razumevanja. U društвima u tranziciji za sprovođenje načela Okvirne konvencije neophodna je izgradnja demokratskih institucija koje doprinose uspostavljanju novih društvenih odnosa.

Bilo je reči i o tome da implementaciju prava nacionalnih manjina sadržanih u Okvirnoj konvenciji u državama potpisnicama prati Komitet ministara koji je u tu svrhu osnovao Savetodavni komitet čiji su članovi ugledni stručnjaci u toj oblasti. Savetodavni komitet, kao nezavisno ekspertsко telо, prati implementaciju i ostvarivanje prava nacionalnih manjina u državama potpisnicama Konvencije ne samo preko izveštaja koje prilažu države i nevladine organizacije (shadow report) već traži mišljenja, dodatna objašnjenja i planira i obavlja posete sa ciljem utvrđivanja stanja.

Nastojeći da što bolje pripremi prvi izveštaj u vezi sa ostvarivanjem prava nacionalnih manjina u zemlji, tada Savezno ministarstvo nacionalnih i etničkih zajednica je u septembru 2002. godine pripremilo ekstenzivnu studiju u kojoj su dati podaci o broju, položaju, statusu i stanju nacionalnih manjina. Ova studija – izveštaj naglašavajući pravnu zaštitu manjina bavila se prevashodno Zakonom o zaštiti prava nacionalnih manjina. Istaknute su njegove prednosti i dobra rešenja, a nijednom rečju nisu analizirani problemi i realno stanje u pojedinim regionima u Srbiji ili pomenuta njegova neusklađenost sa većinom zakona u zemlji ili pak neprimenjivost u Crnoj Gori. Takvim izveštajem propuštena je šansa da se od Savetodavnog komiteta zatraži ekspertska i druga pomoć. Očigledno je da svi nasleđeni problemi nisu mogli biti rešeni u dve godine, koliko je proteklo od uspostavljanja demokratskih vlasti u zemlji, tim pre jer nisu izgrađene odgovarajuće institucije i nije usvojena jasna nacionalna politika u kojoj odnos prema manjinama neće biti pežorativan i marginalan.

Nakon ovog izveštaja Savetodavnog komitetu alternativne izveštaje su podneli Vojvodanski centar za ljudska prava i Centar za multikulturalnost, Fond za humanitarno pravo i grupa nevladinih organizacija iz Crne Gore: Ask, Matica Bošnjaka, Bonum i Forum Muslimana-Bošnjaka.

Izveštaj koji su podneli CMK i VCLJP sadrži neophodna kritička zapožanja o primeni prava, ali i problemima sa kojima se suočavaju pripadnici nacionalnih manjina i njihove organizacije u Vojvodini. Izveštaj je rađen na

osnovu empirijske analize i predstavlja jednu od tačaka oslonca za buduća pro-mišljanja o unapređenju sistema zaštite prava nacionalnih manjina.²⁸

Sličnog sadržaja je i izveštaj koji je podneo Fond za humanitarno pravo koji je pažnju pored Vojvodine, posvetio i drugim regijama koje nastanjuju pripadnici nacionalnih manjina u Srbiji i Crnoj Gori.²⁹

Najzad izveštaj koji su podnele nevladine organizacije iz Crne Gore baziра se isključivo na odredbama Ustava SRJ i Ustava Crne Gore. Ovaj izveštaj, takođe, ukazuje na to da pored primera dobre prakse još uvek postoje brojne slabosti u vezi sa ostvarivanjem prava pripadnika nacionalnih manjina.³⁰

Razlike koje su uočene u državnom izveštaju i izveštajima koje su pri-premale nevladine organizacije ukazuju na to da pristup osmišljavanju politike prema nacionalnim manjinama ni izdaleka nije okončan. U budućnosti politika prema nacionalnim manjinama zavisiće od razvoja demokratskih procesa u zemlji i regionu, ustanovljavanju stabilnih institucija i sposobnosti odgovornih da osmisle i razviju odgovarajuće strategije i modele ostvarivanja prava nacio-nalnih manjina, pri čemu se parcijalni interesimoraju podrediti interesima mul-tietničke zajednice u kojoj je nacionalnim manjinama omogućeno da ostvaruju svoja građanska i nacionalna prava.

²⁸ Izveštaj koji se podnosi na osnovu člana 25, paragraf Okvirne konvencije za zaštitu nacionalnih manjina.

²⁹ Izveštaj o sprovođenju Okvirne konvencije za zaštitu nacionalnih manjina u Srbiji, Crnoj Gori i na Kosovu, FHP, 2003.

³⁰ Videti: Altentativni izvještaj o primjeni Okvirne konvencije za zaštitu nacionalnih manjina u Crnoj Gori, Ask, Matica Bošnjaka, Bonum, Forum Muslimana-Bošnjaka, 2002.

MULTICULTURALISM AND MINORITIES' RIGHTS IN THE BALKANS¹

ZAGORKA GOLUBOVIĆ

To begin with one should pose certain preliminary questions, i.e.: what the term multiculturalism means and what kind of relationship of different cultures it allows; what is the difference between multiculturalism and interculturalism; what are the characteristics of the Balkan cultures?

Multiculturalism assumes that a state consists of different cultures and the established relationship between the dominant culture and the minority ones. But very often the nature of these relations are not quite clearly determined, and multiculturalism is confused with another term – interculturalism. Therefore, it is necessary to precisely define how cultures are linked within the realm of multiculturalism. According to the scientific considerations of this topic one might say that the proper determination of the ties here established is *coexistence* of various cultures, which presupposes their rights to keep their own identities and develop their unique traditions without being assimilated, but integrated, within the dominant culture; and it does not necessarily assume the interchange of their differences.² In other words, unlike monoculturalism, the latter means that every constitutive culture is treated as justified among the others, suggesting that their mutual communication is possible and preferable, but not automatically achievable. Whether those cultures will form some kinds of “ghettos”, being more or less isolated in themselves within the general culture, will depend on the cultural politics and policy at large (e.g. Chinese ‘Districts’ in the American cities and the like), or will the policy induce their interchange. And that may be treated as a second phase of multiculturalism, expressed in the concept of interculturalism.

¹ Why speaking about the Balkans and not of South-Eastern Europe? This is because I want to take into account a sociological concept of the region instead of geographical one, having in mind, first of all, the differences of cultures of which that area is composed.

² See: W. Kymlicka, 1995, *Multicultural Citizenship*, Clarendon Press, Oxford; Ch. Taylor, 1992, *Multiculturalism and the Politics of Recognition*, Princeton University Press, Princeton; M. Walzer, 1994, *Multiculturalism and Individualism*, Dissent, Spring; L. Nicolson, 1996, *Recognition and Multiculturalism, Constellations*, vol. 3, no.1; F. Dolmear, 2001, *Demokratija i multikulturalizam*, Zbornik, Multikulturalizam i moderna država, Treći program, br.111; D.C.Lock, 1992, *Increasing Multicultural Understanding*, SAGE, London.

Interculturalism is a form of communication between different cultures within the state which expresses certain penetration of cultural differences (link diversity) and exchange of experiences, knowledge, beliefs and values, contributing thus to the improvement of the general culture, in terms of which Charles Taylor has written that when being familiar with the other cultures one gets insight into the limits of one's own culture. This is a more profound meaning of recognition of cultural differences, because plurality of cultures are not only recognized but also comprehended in terms of their mutual influences, by which the higher development of cultures themselves has been achieved. However, it does not assume cultural assimilation but such integration within the dominant culture in which particular identities are kept alive, allowing a free expression of cultural differences in a common frame of reference. That is to say, reconciliation between the particular and universal is needed in order to achieve harmonization of both dimensions in a multicultural society.

The difference between multiculturalism and interculturalism may be described by evoking the recent past of ex-Yugoslavia, wherein different cultural traditions existed side by side to one another, without being properly integrated into the wholeness of the national culture (not in ethnical terms but as a political unit), which produced the lack of cohesiveness; and it may be taken as one of the serious reasons of dissolution of the Yugoslav state in the 1990s. Therefore, interculturalism does not make it possible only an escape from isolation, but has as its premise adaptation to more general, universal aims of a larger community as far as multinational/multicultural states are in question. Thus stability of a multicultural state depends on the policy, which provides a free development of all its constitutive parts, allowing cultural differences to flourish within a cohesive society's culture. Will Kymlicka has warned in his writings that the interaction among cultures is not a threat to their integration in so far as they are not forced to assimilation (1995, 187). On the contrary, it enables people in a larger community to see what is worthwhile of being adopted from the other cultures and integrated into their own cultural tradition, which assumes that each culture has to be open for the other cultures so as to increase the opportunities for further development. In this context Dolmear suggests a vision of "democratic cultural pluralism", which presumes an emancipatory and transformative meaning (2001, 260). That is quite the opposite of the definition of the differences as an "absolute otherness" (anti-democratic conception), which excludes differences and their interactions.

To conclude with: multiculturalism gets a democratic meaning when it promotes different cultures and recognizes the rights of the "others". As such it makes it possible for the minority (marginal) groups to keep their cultural traditions; therefore, recognition of the minority rights may be taken as a real test of democracy, being that the cultural pluralism is one of the basic features of the modern democratic state. Opposite to this is an understanding of multiculturalism as an assimilation of the marginal cultures under the umbrella of a dominant culture.

That is, when multiculturalism is conceived of and practiced as intercultural communication, the division between the dominant culture and those subordinated to it, becomes unimportant, because it excludes discrimination (in terms of subordination) of the minority cultures

However, a recognition of the differences in theory is one thing, and quite another the practical policy which may be the opposite. Tibor Varadi poses this as an important question³: whether the western model of ethno-cultural justice helps the postcommunist societies to find the way to cultural differences (71). And here the harmonization of ethnic/national and cultural identities should be taken into account. Because intercultural communication is not possible in so far as an ethnic concept of nation prevails imposing the strong borders between ethnic groups and their cultures (which the recent past in former Yugoslavia has shown).

The next problem to deal with concerns the cultures in the space of the Balkans. What the countries in the Balkans have in common, at first glance, is their multiculturalism, which should be treated as its advantage, not its fault, because each Balkan society can benefit from the diversity of cultures by enriching one's own capacities without losing its identity, in so far as a democratic policy provides the needed conditions.

But what about the relations of different Balkan cultures? Does the Balkans represent merely a geographic space of several nations and cultures, or it has a more profound anthropological meaning, as a space of intercultural communication and penetration? In order to answer this question one should take into consideration the components, which the Balkan cultures share that may be detected as follows:

- An interchange in the field of language (the mixed words)
- Common myths within national mythologies (a heroic past)
- Similar stereotypes (expressed by the term "balkanization")
- The opposition of Balkanization to Westernization
- "Periferial capitalism" (underdevelopment⁴ of the majority of the Balkan countries)
- Common trends in the field of transition (totalitarian past of certain Balkan countries and the problem how postcold war has made the impact on them)
- The legacy of the traditional (patriarchal) mentality
- A belated nationalism in terms of national romanticism (due to the delay of the constitution of nation-states that marked Balkan history)
- The interethnic/internation conflicts that prevailed over their harmonization (leading to the Balkan and other wars).

³ T. Varadi, *O šansama za etnokulturnu pravdu u Centralnoj i Istočnoj Evropi, Habitus*, 1999, Novi Sad

⁴ Maria Todorova, *Imaginarni Balkan*, Biblioteka XX vek, Čigoja štampa, Beograd, 1999.

The legitimate questions, which arise, are the following: to what extent one can speak about interculturalism when the Balkan societies are observed? And how the Balkan similarities and diversities speak in terms of a possible Balkan integration? How much an ethnification of the Balkan states may explain the importance of national myths that have always been intensified in the hard times and social crisis? And what has been the role of national myths politically instrumentalized at the end of the 20th century in former Yugoslavia, as the only shaper of national identities, as well as in this context the role of politics in the mobilization of the population, by the means of national mythologies, in interethnic wars? Are Maria Todorova's writing still valid, when speaking as if Balkan countries have not been liberated from the East, but still having adopted no one virtue of the West?

Having been accustomed of using the term "Balkanization", which implies underdevelopment, poverty and lack of civilization, one should ask: how much it stems from the facts, or is it influenced by the adopted prejudices and stereotypes? That is to say, whether the very term is rooted in the Balkan tradition, or it comes out of the Eurocentric opposition between "Balkanization" and "Westernization"?

A comparative analysis is needed of the Balkan societies in order to provide the answers to that question, in particular because their histories are being burdened by mythologies, which induce another question: why the Balkans has been for centuries a good foundation to mythologies and traditionalism? And how national myths politically instrumentalized became the only defence of national identities (which was shown in the 1990s in former Yugoslavia, when reviving the national shrines and cults as national symbols as a way of being opposed to the "others", which reproduced hatred and xenophobia). That is the reason why the Council of Europe proclaimed in the 1990s that history of the Balkans is to be read in a new way in order to avoid accentuating the conflicts, and instead to promote cooperation and achieve peace and better understanding.

The new reading of Balkan histories⁵ may facilitate the Balkan countries to get rid of their own stereotypes, as well as of Eurocentric prejudices so as to get to their own roots. The important topic is thus demystification of misreadings of Balkan identities, both from within and from without. I.e. can we speak of the Balkan peoples as ones of warriors, obsessed by the spirit of violence, whose main features are barbarianism and non-civilization, which is

⁵ Nenad Dimitrijević in his article *Kritičko čitanje tradicije i poredak slobode*, Republika 310–311, 2003, p. 34, concludes that historians have been offered a new interpretation of history, and that is why a rereading of it is now necessary, because they revived the ideology of a mythical traditionalism, when former Yugoslavia is in question.

usually expressed in terms of “Balkanization”? In other words, are the Balkan peoples really incapable of: order, self control, effective administration, the respect of the rule of law, or such a legacy of the past disappears with the trend of modernization and the recent practice of transition? Is Balkan a “Third world” within Europe, according to Ernst Gelner's saying, or as a “dark side of Europe”, as its alter-ego, which Maria Todorova describes as following: “Balkan serves as a store of negative characteristics vis-a-vis of what has been construed as a positive and self-praised image of ‘Europeans’ and the West”⁶ And what an ethnic nationalism⁷ contributes to such an impression? And what is not less important, how a still alive impact of the Ottoman legacy in every-day life marks the new developments in this part of Europe (in nutrition, language, café-life, the structure of the towns, etc.) A Yugoslav writer, Ivo Andrić has characterized the Balkan person as a man with inherit complex of a renegade, always suffering as a victim of the destiny, but enjoying such a role, as well as having the spirit of violence and being incapable of anything else but to bear violence, or to do it.⁸

Do we still hold such an image of the Balkans nowadays when we think about the integration in Europe, confessing, at least unconsciously, that we do not belong yet to the European realm? Is a multicultural nature of the Balkan countries an advantage, which may bring us closer to European civilization in so far as we escape from the policy of isolation in the ethnic nation-states that has not been expressed as a trend in the states of former Yugoslavia? The Balkan countries should follow the demands ordered by the European Community so as to harmonize their traditional practices with European standards; but those demands should be approached selectively, i.e. coordinated and reconciled with one's own historical tradition, that has to be reassessed, and with nations sovereignty and identity. This is very hard task but necessary to keep in mind when creating policy of transition, and as one of the Yugoslav authors has recognized that there is a paradox as far as the countries in transition are concerned, i.e. that they are much less critical towards the strong imposition of a neoliberal model of globalisation than the West, which has produced the catastrophic results in the countries following such demands (e.g. in Russia, according to the brilliant analysis of Joseph Stiglitz)⁹. The opposite trend to the undisputable surrender to the demands from the West is populism,

⁶ Maria Todorova, *Imaginary Balkan*, p. 324.

⁷ The obsession with ethnogenesis in the Balkan countries, according to Maria Todorova.

⁸ Ivo Andrić, *Znakovi pored puta*, Svetlost, Sarajevo, 1976. Andrić explains it as follows: „A long-lasting slavery and the bad administration may confuse and obstruct the opinions of the peoples so as that common sense and right thinking slow down, being completely distorted...” (p.155)

⁹ J. Stiglitz, *Protivrečnosti globalizacije*, SBM-x, Beograd, 2002, pp. 190,191.

expressed in the ethnic nationalism, which tends to close the Balkan countries in their ethnic territories, producing the feeling that the other nations are not only strangers but the enemies as well, who cannot be the tolerant neighbours. In that case the warious spirit is intensified and the peace on the Balkans is threatened. Moreover, the needed economic, political and intercultural communication become impossible, and not only in the international policy between Balkan countries, but also inside the individual countries which are nationally heterogenous, consisting of the dominant national culture and national/cultural minorities.

Another significant obstacle to the process of a democratic transition may be found in the disposition, seen in the Balkans, to glorify a “heroic past” and superiority of one's own nation/culture, or in a feeling of an unjust victimization, being promoted by primarily relying on the traditional past, ignoring thus the changes and the needs to be oriented towards the future developments. It also means relying to the “glorious predecessors”, while losing sight of the activities of the actual potential actors, undermining thus in particular, the role of the younger generations.

The same holds true as far as the national/cultural minorities are concerned: their also ethnically rooted mythologies make a sharp distinction between the dominant national culture and national/cultural minorities, which primarily lean to their own roots, making difficult a necessary integration into the larger community/culture, and threatening the existence of the multicultural society. Here comes the question: to what extent the differences should be promoted without leading to the separation and impossibility of communication. Nancy Frazer¹⁰ rightly asks whether multiculturalism demands that all the differences should be publicly recognized, indicating that certain demands concerning identities have their roots in the relations of inequalities and domination, and there is the difference between democratic and non-democratic demands; therefore, she adds, cultural differences can be democratically mediated only on the basis of social equality, i.e. it is necessary to consider which identity/difference enlarges democracy, and which works against it (72).

If coming back to the problem of multiculturalism when the state of Serbia and Montenegro is in question, one should point at their different historical political geneses, but not so distinct cultural backgrounds, however both having national/cultural minorities; that implies that harmonization of the differences is to be achieved on two levels: one is the federal level while another refers to the republic one. Therefore, the problem of reconciliation is a double task not so easy to succesfully realise on both sides without losing the original identity.

¹⁰ Nancy Frazer, *Multiculturalism and Gender Equality*, Constelations, vol. 3, 1996, p.61.

However, there is another aspect of this problem which is related to the process of globalisation whose mainstream trends are leading to universalisation, more or less conceived of in terms of unification (under the umbrella of Western culture). Both the Balkan countries and Serbia and Montenegro have to compromise a twofold transnational integration: into Europe and the "world community", on one side, and nation-state's and cultural sovereignty, on the other side; that is to say, to reconcile the Western standards and demands with ones coming out of their own traditions, which is very hard to achieve when the small nations are in question, for being submitted to much stronger pressure from the outside. It is due to the existence of a great imbalance of political power between the most developed states with long-lasting democratic orders, and those still economically and democratically underdeveloped societies on the Balkans and in former Yugoslavia. The sharp difference is particularly shown when one takes into consideration the position of the omnipotent super-power of the USA, whose demands are usually transmitted in forms of dictate, which the relatively poor countries cannot abandon, because they badly need a promised financial help.

In his analysis of an onesided policy of International Monetary Fund and World Bank, Stiglitz has criticized their enforcement of one narrow-minded model of market-economy development that lose sight of the complex and different social and cultural resources of particular countries, which should have their own responsibility in finding their way in the process of globalisation and transition. And within this context the most difficult task belongs to national minorities in the multicultural states, because they are faced with a multiple identification/adaptation between the global, transnational and local/national levels. The latter have to overcome both the external conflicts between the demands imposed upon multinational societies by transnational associations, and the internal tensions between the dominant nation's interests and those of their own, being thus in-between two sharp edges.

This indicates how it is difficult for multinational/multicultural states to choose the proper way of transition in accordance to their own needs and interests, which would make their democratic development less problematic. However, I disagree with those authors who claim that only the homogenized nation-states have a real democratic perspective, for the latter imply the ethnically closed societies, deprived of the benefits of different national and cultural resources.

Much arguments might be provided in order to prove the thesis that multicultural states have more opportunities for a democratic development: 1) they have more choices on their disposal, obtaining them from the existing different cultures and their penetrations; 2) thus becoming richer in their resources for creating more open both cultural and political community; 3) when cherishing different traditions they promote and protect tolerance

regarding the differences; 4) promoting as such a peaceful cooperation and anihilating the tensions, that lead to the conflicts and wars.

All the above-mentioned features are substantial to a democratic process, as the foundation of an open society capable of constantly being reshaped and progressively developed, unlike a homogenous nation-state, whose inclination is towards a culture closed in itself that excludes differences as a potential threat to its own existence.

That is the reason why the quest for intercultural communication between the Balkan countries, as well as within the individual countries in that region, may improve the transition processes in terms of democratisation despite the difficulties in the course of harmonization of the existing differences. In other words, the mere coexistence of different cultures, and even different civilizational backgrounds, should be transformed into an active exchange of cultural goods and values so as to enable the better integration of the region and its more successful partnership in Europe.

Moreover, in a global perspective the multicultural states bring closer different civilizations and make it possible for their interchange and convergence, instead of a still prevailing and a potential clash of civilizations.

MULTIKULTURALNOST I ETNOKULTURALNI DIVERZITET S POSEBNIM OSVRTOM NA SRBIJU

ALPAR LOŠONC

UVODNE NAZNAKE

Ukoliko se raspravlja o etnokulturalnom diverzitetu u jugoistočnoj Evropi, valja uzeti u obzir nekoliko dilema i momenata koji izviru iz strukture istorije i utiču na konstelaciju razumevanja multikulturalnosti:

a) Moderna država i njena racionalna birokratija izviru iz zapadnoevropske tradicije, dakle, radi se o obrascima tradicije koji su drugačiji u odnosu na strukturu tradicije u jugoistočnoj Evropi. To znači da se postavlja problem uvođenja kulturne matrice sa drugačijim sadržajima, što kontinuirano proizvodi napetosti. Primera radi, odnos između vlastodržaca i podanika se u jugoistočnoj Evropi odvajkada promatra drugačije, država je u značajnoj meri prisvojila modernizacijsko znanje, te se promovisala kao nosilac modernizacije. Postoji veliki značaj neformalnog regulisanja društvenih odnosa, relacije između patrona i klijenta se mogu prikazati u drugačijem svetlu itd. Napetost se, opet primera radi, izražava u tome da se modernizacijske vrednosti često prihvataju kao *strani* obrasci.

Danas se ova konstelacija odražava u tome da se evropske norme definišu na Zapadu, a zemlje jugoistočne Evrope se sa različitim brzinama prilagodavaju zahtevima Evropske unije. To nipošto ne znači da je Zapad privilegovani i vanvremeni nosilac neke vrline, nego samo to da se norme racionalnog vođenja života definišu na Zapadu.

b) Postojanje etnokulturalnog diverziteta je nepobitno u jugoistočnoj Evropi – ipak, ovde nije potrebno navesti podatke koji su manje-više poznati, i dokazuju iznimni karakter ovog terena gde se u ponekoj zemlji beleži i više od dvadeset različitih etniciteta. Valja obratiti pažnju na neke druge dimenzije koje su određujuće.

Etnokulturalni diverzitet u jugoistočnoj Evropi se vezuje za duboke istorijske korene, što podrazumeva određene tipove iskustva i drugačije oblike znanja nego u zapadnoj Evropi, a i modifikovanu semantiku interetničkih odnosa. Napokon, teritorije jugoistočne Evrope su ispresecane linijama tradicije koje su ispisala nekadašnja multinacionalna carstva. Samo ovo treba dobro razumeti. Prvo, etnička koegzistencija u nekadašnjim multinacionalnim carstvima je samo delom orijentaciona, jer je priroda strukture moći, oblik raspodele resursa danas bitno promenjen, te predmoderni modeli ne mogu poslužiti kao orijentiri. Dru-

go, i na samu multinacionalnu sazdanost se često gleda kao na ostatak, u stvari, stranih oblika moći i vlasti. To, i sada, dakako, skraćujem ocenu, ne znači ništa drugo do postojanje ambivalentnosti nasleđa i njegovu stalnu napetost sa modernizacijskim tendencijama.

c) U zemljama jugoistočne Evrope posle Drugog svetskog rata ostvaren je komunistički projekat koji je promovisao odozgo sprovedenu modernizaciju. Nosioci komunističkog projekta su se na različiti način ophodili prema nacionalnom/multinacionalnom momentu, jer su čas kritikovali nacionalnu artikulaciju sveta, čas su se i sami oslanjali na nacionalističke obzore, instrumentalizujući ih u svahu održavanja moći. Ova protivrečna praksa je bila kombinovana sa ideološkim postulatima emancipovanog čovečanstva koji prevazilazi uske okvire nacionalnog videnja sveta. Naravno, postoje razlike između različitih zemalja, i to shodno tradiciji, i stanju etnokulturalnog diverziteta. No, među multinacionalnim zemljama izdvajala se bivša Jugoslavija koja je ponajviše otvorila vrata ispoljavanju etnodiverziteta, ali je i ona, zapravo, upregnula značenja etnokulturalne raznovrsnosti u ideološki projekat nadnacionalnog cilja istorije. Od značaja je činjenica da je posle urušavanja komunističkog projekta došlo do oživljavanja etnocentrističkog poimanja stvarnosti, te da je multinacionalna sazdanost dotičnih država tumačena kao rezidualni element komunizma. Naročito su antikomunistički orijentisani politički akteri bili usredsređeni na ovaj tip retorike.

d) Srbija se, po mnogim karakteristikama, može tretirati u posebnom svetu. Ona je ispresecana tragovima raznovrsnosti, čak neki njeni delovi pokazuju jedinstveni diverzitet. U toku devedesetih godina prošlog veka, u svetu ratne dinamike, etnocentrizam se snažno ubličio, i došlo je do srozavanja mnogih institucija i prava koji su konstitucionalni za održavanje i negovanje etnokulturalne raznovrsnosti. Na odnos prema etnokulturalnim razlikama je duboko uticalo disperzovano nasilje koje je obuhvatilo određene segmente društva i kreiralo i način govora u značajnom delu javnog mnjenja. S jedne strane, režim je ritualno ponavljaо da u pogledu etnokulturalnog diverziteta realizuje nivo koji je viši od standarda na evropskom planu, s druge strane, ili je pasivno promatrao destrukciju manjinskih institucija ili je i sam doprineo negativnim tendencijama. Neizrečena prepostavka mnogobrojnih političkih nastupa je bila mogućnost instrumentalizacije etnokulturalne raznovrsnosti, ili iskorišćavanje jedne etničke grupe spram druge.

Iz navedenih naznaka proizlazi da se sadašnje stanje etnoraznovrsnosti mora sagledavati u svetu: a) unutrašnje pravne i političke dinamike spomenutih zemalja, b) tempa, načina prilagođavanja evropskim strukturama, c) spremnosti iznalaženja ravnoteže između sećanja na istoriju i institucionalne fantazije koja gleda u budućnost.

KRATKA DIJAGNOZA DATOSTI

Po jednoj studiji realizovane na osnovu zahteva *Evropske Komisije*, kritički nivo za manjine počinje ispod nivoa populacije od 300.000 stanovnika. Nadalje, po istoj studiji nivo ispod 50.000 stanovnika ukazuje na etnicitet čiji je opstanak izuzetno otežan. Napokon, smatra se da atomizirana demografska struktura u značajnoj meri doprinosi oslabljenju šansi za opstanak.

Dovoljno će biti da sagledamo datosti u Srbiji. Jer, na osnovu poslednjeg popisa stanovništva dolazimo do zaključka da (ne računajući Kosovo o čijem problematičnom statusu ovde ne govorim) manjine u Srbiji padaju u spomenute kategorije. Drugačije rečeno: sada su sve manjine u zoni ispod 300.000 stanovnika. A registracija ove činjenice upozorava i na neophodne pravce odgovarajućeg političkog tretmana, i na nužnost da se politički angažman uobliči prema relevantnosti navedenih fakata.

Osim toga, valja zabeležiti još jednu značajnu činjenicu. Popis jednoznačno pokazuje kontinuirani pad broja najvećeg dela manjina, te se može govoriti o intenzivnoj asimilaciji koja je, bar po mnogim aspektima, nepovratna. Asimilacija konstantno slabi šanse za opstanak manjina, i doprinosi oslabljenju institucionalnih mogućnosti korišćenja kolektivnih resursa. Tako, npr. u pogledu Vojvodine, stručnjaci opravdano govore o radikalno promenjenoj etničkoj mapi, što se izuzetno negativno odražava na šanse manjina.¹ Radi se o ireverzibilnim promenama, jer se posle protoka od deset godina beleži manji broj Hrvata, oko pedesetak hiljada manje Mađara, dvadeset hiljada manje Slovaka, dvanaest hiljada manje Rumuna itd. Dakako, uzroci su mnogobrojni, možemo ih tražiti u širokom spektru različitih činjenica (disperzovano nasilje u devedesetim godinama XX veka, oslabljenje institucionalne strukture, zvanična retorika koja nije pogodovala manjinama, ekonomski migracija itd.). No, problem je u tome da nema koordinisanog angažmana od strane postojećih vlasti u odnosu na sagledavanje uzroka, mehanizama koji su negativno uticali i utiču na broj manjina. U svakom slučaju, bez restitucije poverenja u odnosu na angažman države asimilacija se čini neminovnom. A restitucija, pak, prepostavlja i kudikamo kompleksniji pristup države, u najmanju ruku stratešku odluku u pogledu uvažavanja diverziteta kao neophodne dimenzije održivog razvija Srbije.

Osim toga, neprestano valja ponavljati da je institucionalna struktura manjina drastično srozana posle devedesetih godina prošlog veka. Jer bez institucionalnih resursa, i realne mogućnosti da se ti resursi koriste, o raznovrsnosti se i ne može iole ozbiljno govoriti. Valja i ovde skrenuti pažnju na jedan momenat. Naime, mnogo puta se institucije manjina registruju statističko-faktički u cilju

¹ Vidi detaljnu analizu popisa stanovništva i zaključke T. Žigmanova, I. Farkaša, M. Račića u časopisu *Informator*, mart/april, 2003.

nabranjana, čime se stiče utisak da srozavanja zapravo i nema. Međutim, pravo stanje stvari se prepoznaće tek kada se sagledava *realna mogućnost korišćenja istih institucionalnih resursa*. Drugačije rečeno kvalitet istih institucija, to jest, realna mogućnost da li one odista i mogu da upriliče razvoj manjina. Ukoliko uzmemo u obzir poznate teškoće u odnosu na stvaranje institucija, nadalje evolucione staze ovih institucija, tada nam se ukazuju sve teškoće institucionalne konstelacije manjina. Pri tome, u protekle tri godine od političke promene samo su stvorenii određeni uslovi za institucionalnu transformaciju, što znači da nam predstoji još mnogo dublji zahvat u ovom pogledu.

Ne treba zaboraviti ni činjenicu da održavanje etnokulturalnog diverziteta zavisi od šire, političko-pravne konstelacije koja postoji u dатој земљи. Jer je o modernoj integraciji kao o osnovu koegzistencije između većine i manjina moguće progovoriti tek ukoliko se sagledavaju širi institucionalni resursi date zemlje. A u Srbiji je neophodno prepoznati difuznu ustavnu konstelaciju, nedovršenost države, još uvek slabe institucionalne matrice koje karakterišu državu. Zaključak je da postoji neprestana *napetost* između zahteva prema održavanju i razvoju etnokulturalne raznovrsnosti i institucionalnih kapaciteta države, jednostavno rečeno, srpska država raspolaže slabim institucionalnim kapacitetima u odnosu na iznimnu etničku raznovrsnost. Postoje snažni argumenti koji pokazuju da visoki kvalitet institucija kao što je vladavina prava, kvalitet birokratije, predstavljaju neophodne uslove kulturne raznovrsnosti. Jer, zemlje koje raspolažu institucionalnim kapacitetima omogućavaju korišćenje različitih ekonomskih i kulturnih resursa, a kvalitetne institucije doprinose razrešavanju konflikata.

Međutim, iz ove argumentacije ne bi trebalo izvesti pogrešan zaključak, jer bila bi zloupotreba navedenog stava ukoliko bi se tvrdilo da je moguće odložiti institucionalnu transformaciju manjina za budućnost, dok se ne sačeka dovršenje institucionalne gradnje date države. Naprotiv, sistematski i dosledno ispoljena briga prema raznovrsnosti može imati edukativni značaj u sklopu demokratske normalizacije i pospešiti institucionalno preoblikovanje države. Drugačije rečeno: dosledna realizacija institucionalne transformacije države je istovremena sa promenom stava prema etnokulturnoj raznovrsnosti.

PRILAGOĐAVANJE EVROPI KAO MOMENAT U KONTEKSTU ETNIČKE RAZNOVRSNOSTI

Evropska unija i njene institucije predstavljaju generatore dinamike na pravnom i političkom nivou. Mada, valja primetiti da na evropskom planu postoji izvesna tenzija između intencije ka održavanju kratkoročne stabilnosti i du-

goročno važećih normi, to jest, potrebe održavanja raznovrsnosti.² Ne može se poreći da je u Evropi od početka devedesetih godina prošlog veka došlo do značajnog prestrukturiranja mehanizama zaštite manjina. Na političkom nivou Evropska unija postavlja zahteve u odnosu na pristup evropskim strukturama, što se reflektuje i na pravni nivo. Da zabeležim da je 2002. važenje „Okvirne konvencije“ u odnosu na zaštitu nacionalnih manjina obuhvatilo 34 zemlje, u isto vreme je odgovarajući dokument o mogućnosti korišćenja jezičkih prava stupio na snagu u sedamnaest država.³ Nadalje, Evropski savet je ustanovio organe za verifikaciju mehanizama zaštite, što potvrđuje konzistentnu praksu u sklopu institucionalizovane evropske perspektive. Napokon, navodim nedavne nastupe evropskih sudskeh institucija, kao i tzv. izveštaj-Gross⁴ u kontekstu Evropskog saveta koji su jasnije negoli raniji nastupi uobičili mogućnost institucionalizacije manjinskih autonomija.

Bez sumnje, evropske institucije su značajni generatori promena u jugoistočnoj Evropi. U pogledu Srbije zainteresovanost Evrope je očigledna (dakako, posle krvavih devedesetih godina prošlog veka to je višestruko razumljivo), što se može prepoznati povodom relevantnih zakona (Zakon o zaštiti prava i sloboda nacionalnih manjina ponajviše, no mislim i na druge zakone), ali i u sistematičnom praćenju postignutih rezultata, u vidu oficijelnih i alternativnih izveštaja.

Valja naglasiti da aktivnost evropskih institucija, kao i dalekosežno praćenje postignutih rezultata, evaluacija učinaka, predstavlja samo neophodni *uslov* za održavanje raznovrsnosti. Jer, preuzimanje evropskih standarda predstavlja *samo* stvaranje osnovne situacije koja se mora neprestano tumačiti. Evropski standardi su uopšteni, i izražavaju opštu normativnu osnovicu koja se mora konkretizovati u odnosu na postojeće situacije. Uzimajući u obzir često (gde-gde ritualno) pozivanje na činjenicu da smo se vinuli više nego Evropa, to jest, da su odgovarajuće norme ovde na višem nivou, čini se neophodnim istaći upravo da evropske institucionalne strukture ne supstituišu napore povodom etnokulturalne raznovrsnosti nego omogućavaju uobičavanje uslova. Drugačije rečeno: integracija manjina, i shodno tome etnokulturalna raznovrsnost, u smislu dugoroč-

² O tome kritički u *Can Liberal Pluralism Be Exported? Western Political Theory and Ethnic Relationships in Eastern Europe* (ed. by Will Kymlicka and Magda Opalski), Oxford University Press, 2001.

³ Da budem tačniji, do 12. oktobra 41 zemlja je potpisala Okvirnu konvenciju o zaštiti nacionalnih manjina (potpisnici nisu Andora, Francuska, Turska), i 34 zemlje su ratifikovale Konvenciju. Do istog datuma je došlo do potpisivanja evropskog dokumenta o regionalnim i manjinskim jezicima od strane 29 zemalja i do ratifikacije od strane 17 zemalja.

⁴ Prevashodno mislim na praksu Evropskog suda za ljudska prava, i naročito na odluku u procesima Szerif c. Grčka, i Hasan i Chaush c. Bugarska. A za izveštaj vidi: *Positive experiences of autonomous regions as a source for conflict resolution in Europe*, Doc. 9824, Rapporteur: A. Gross.

ne koegzistencije i zajedničkog građenja društva se realizuje uz demokratsku normalizaciju, ali *celokupnog društva*. Navešću jedan primer. U određenim međunarodnim dokumentima jasno se prepoznaće da se prema državi mogu postaviti zahtevi koji prevazilaze toleranciju, jer se govori o kreiranju povoljnih uslova od strane države za manjine, to jest, država treba da omogući povoljan razvoj jezika i kulture manjina. Dakako, ovakvi zahtevi prepostavljaju materijalni angažman države, odnosno, stanovito korišćenje budžetskih resursa. Ovakva praksa se formuliše veoma široko, pa i neodređeno, te se ostavlja široki manevarski prostor za državne organe.

Dakle, niti se etnokulturalna raznovrsnost može svesti na dogovor političkih elita većine i manjina, niti se ona može redukovati na jedan od nužnih, tako reći taktičkih, elemenata evropske integracije. U prvom slučaju ona bi bila izraz pukog interesnog zajedništva, koje preti nestabilnošću interesne dinamike, u drugom slučaju ona bi bila redukovana na tehnološki element prilagođavanja evropskim institucionalnim strukturama. Etnokulturalna raznovrsnost seže dublje, to jest, etnokulturalna raznovrsnost doteče identitet srpskog društva, jer, tek se samoprepoznavanjem *identiteta* društva posredstvom etnokulturalne raznovrsnosti može odista istrajavati na održavanju multikulturalnosti.

POLITIČKE I PRAVNE DILEME INTEGRACIJE MANJINA

1. Za manjine je politička reprezentacija u demokratiji od izuzetne važnosti. Prvo, bez određenog jedinstva manjine ne mogu ni učestvovati u demokratskim procedurama. Drugo, ukoliko ne postoji određeno jedinstvo, tada manjine postaju slabe, te se lako mogu instrumentalizovati. No, za političku reprezentaciju u demokratiji vezuju se mnogobrojni problemi. Demokratija sama po sebi ne može da blokira mnogobrojne opasnosti po manjine, ona se mora ubličiti posebnim korekcijama. Mogli bismo reći da i od političke kulture zavisi u koliko meri se izražava spremnost za uvažavanje odgovarajuće reprezentacije.

Pitanje se zaoštrava i zbog toga što različiti zakoni određuju visoki prag za ulazak u parlament. U većem broju zemalja to je 5%, što je u najvećem broju slučaja nedostizno za manjinske partije, naročito za manjine koje potпадaju pod kategoriju ugroženih manjina. Ukoliko se zakonom, odnosno pravnim normativima, ne reguliše ovaj problem, manjinska reprezentacija, i učešće u demokratskim institucijama ostaje arbitрerno pitanje koje zavisi od pregovaračke snage političkih elita. Sličnu situaciju uostalom prepoznajemo u Srbiji. Osim toga, situacija se komplikuje kada postoji veći broj manjina različitim resursima i različitom političkom snagom. Tada nastaje mogućnost da vladajuće političke elite većine instrumentalizuju elitu jedne manjine spram druge manjine. Takve situacije valja preduprediti i zakonskim normama stvoriti situaciju koja prevazilazi arbitрernost, zavisnost od *ad hoc* pregovaranja između elita, i mogućnosti isko-

rišćavanja manjina u političkim konfliktima u okvirima demokratije. Da bi se to postiglo, valja upriličiti pozitivnu diskriminaciju u odnosu na reprezentaciju manjina koja ih ne marginalizuje i ne redukuje ih na priveske demokratije. Naročito u politički nestabilnim situacijama postoji mogućnost instrumentalizacije manjina, i sagledavajući dinamiku demokratije u Srbiji, ovakve situacije se ne mogu isključiti. Valja razmotriti i institucionalnu kooperaciju između samih manjina u cilju razvijanja sistematičnog dijaloga, razrešavanja njihovih međusobnih spornih pitanja. Napokon, i u odnosu na međusobne odnose manjina od velikog su značaja institucije koje stabilizuju očekivanja i prevazilaze oportunitam. A pretpostavka za ovakve institucionalne transformacije je jasno *konstitucionalno izražavanje zaštite manjina*, odnosno, konstitucionalno normiranje manjinskih pozicija. Tek konstitucionalna odvražnost u odnosu na zaštitu manjinskih interesa predstavlja pravovaljanu podlogu i za ostale zakonske norme povodom priznavanja manjinskih prava.

2. Spominjem problem koji se odnosi na samoopredeljenje manjina. Nai-me, upravo ovaj problem je tumačen s velikom dozom skepse u jugoistočnoj Evropi. Jer, implicitno ili eksplicitno se smatralo da je oformljenje bilo kog oblika autonomije odskočna daska za otcepljenje ili za druge oblike separatizma. Čini se da se dalekosežnija recepcija ovog problema uopšte nije ni odigrala u jugoistočnoj Evropi, što znači da ni u Srbiji ne možemo zabeležiti sistematičnu zainteresovanost za ovaj problem. Doduše, uskovitlana je prašina nekoliko puta kada su neke manjinske partije nastupile sa određenim konceptom autonomije, ali se nije išlo dalje od toga.

Gross-izveštaj, međutim, decidno nagoveštava institucionalizaciju mogućnosti autonomije.⁵ U izveštaju se autonomija nijednog trenutka ne nudi kao panacea za sve moguće probleme o kojima govorim, no, teško je i necelishodno izbegnuti raspravu o pitanju autonomije. Jer, danas je nemoguće reći da su autonomije uperene protiv teritorijalnog integriteta date zemlje, na njih se pre gleda kao na mogući indikator stabilnosti i razrešavanja spornih pitanja, i nadasve one se tumače kao pozitivan metod prevazilaženja etničkih konfliktata. To bi značilo nužnost sagledavanja pitanja u koliko meri bi različite forme autonomije mogle doprineti integraciji manjina u jugoistočnoj Evropi. Osim toga, to znači neophodnost da se tematizuje pitanje na koji način autonomije mogu doprineti daljoj modernizaciji jugoistočne Evrope, a i na koji način one mogu odigrati bitnu ulogu u njenoj integraciji.

⁵ Vidi još i nešto ranije teorijske radove: J. Coakely, *Approaches to the Resolution of Ethnic Conflict: The Strategy of Nonterritorial Autonomy*, International Political Science Review, 1994, Vol. 15, No. 3, 297–314. D. McIvor (ed.), *The Politics of Multinational State*, 1999, Macmillan, Hounds Mills.

Možda bi se moglo tvrditi da nacionalni saveti⁶ manjina koji funkcionišu i izazivaju različite interpretacije kod manjina, predstavljaju dovoljan osnov za stvaranje autonomija, ili da već predstavljaju određenu institucionalnu formu autonomije. Odmah da kažemo, stvaranje nacionalnih saveta predstavlja korak u tom pravcu – ako su kompetencije nacionalnih saveta toliko jasno postavljene da saveti mogu formulisati interes manjina i doprineti održavanju raznovrsnosti. No, čak i u slučaju da postoji takve vrsta jasnih kompetencija, nacionalni saveti kakvi postoje u Srbiji ne mogu se izjednačiti sa autonomijom. Na ovom mestu nije moguće da se udubim u različite modele autonomije (to jest, ne mogu da ulazim u raspravljanje problema da li je kulturna ili teritorijalna autonomija adekvatnija za manjine u jugoistočnoj Evropi) jer oni, kao i dileme u vezi s njima, zahtevaju posebnu pažnju. Samo ću nagovestiti tvrdnju da autonomija može značiti takvu vrstu preraspodele moći koja seže mnogo dublje nego što su to kompetencije nacionalnih saveta.

Prepoznavanje drugačijeg konteksta tematizovanja podrazumeva stvaranje poverenja između većine i manjine. Bez sumnje, bilo koja forma autonomije traži preuređenje države, decentralizaciju, korekciju postojećih mehanizama. A bez stanovitog poverenja bilo bi nadasve opasno uputiti se u pravcu dubokog preuređenja, što podrazumeva odgovornost države da svojim nastupom i retorikom širi poverenje i stvori podlogu za uvođenje autonomije.

3. U srednjoj i istočnoj Evropi odnosi između manjine i tzv. matične zemlje predstavljaju predmet pažnje. Tačnije, ovde valja govoriti o trouglu između manjine, matične zemlje i domicilne zemlje. Bez sumnje, odnos manjine prema matičnoj zemlji predstavlja značajan momenat etnokulturalne raznovrsnosti i restrikcija bilo kog oblika komunikacije manjine sa matičnom zemljom može biti pogubna za održavanje etnokulturalne raznovrsnosti.

Ukoliko se uputimo prema međunarodnim perspektivama, beležimo stav Venecijanske komisije po kojem su bilateralni ugovori merodavni instrumenti za razrešavanje problematike manjina. To je, svakako, orientacija koja je normativna i za jugoistočnu Evropu. Jer, bilateralni ugovori su izraz konsenzusa između međunarodnih partnera, izraz su postignutog dogovora između zemalja koje su povezane mnogobrojnim vezama. Aktuelna evropska dinamika nago-veštava mogućnosti koje sežu i dublje.⁷ Prevashodno, mislim na činjenicu da globalizacijski procesi i evropska dinamika menjaju smisao državljanstva, te da dosada poznati tipovi državljanstva trpe značajne promene. Migracije, mobilnost radne snage, neprestana komunikacija koja prevazilazi postojeće granice

⁶ Vidi komentare o funkcionisanju nacionalnih saveta od B.H. Cvetković, J. Ivanovića, Z. Spevaka u: *Informator*, 2003, br. 43/44, maj/jun.

⁷ Frey, B. S. and Reiner Eichenberger (1999), *The New Democratic Federalism for Europe: Functional Overlapping and Competing Jurisdictions*, Cheltenham, UK and Northampton, USA: Edward Elgar.

više se ne mogu regulisati tradicionalnim tipom državljanstva. I demografska struktura veoma često deluje u pravcu promene značenja državljanstva. Osim toga, tradicionalno državljanstvo je odraz statičkog razumevanja i nacije i državljanstva i drži da je vezanost za teritoriju najbitnija oznaka pripadanja određenoj državi. Državljanstvo podrazumeva određene relacije, to jest, prava i odgovornosti između subjekta prava i države, i to je odnos posebnog karaktera koji prevazilazi kratkoročne egoistične interese pojedinca.⁸ No, ovaj odnos je tradicionalno monološki postavljen, dakle, građanin, „državljanin“ je vezan za datu državu, prevashodno posredstvom njegovih poreskih i vojnih obaveza. Setimo se samo toga da ove obaveze predstavljaju okosnicu nacionalne države koja je iskonski monološki postavljena. Valja uzeti u obzir da na evropskom planu postoje mogućnosti višestrukog državljanstva i da postoje solucije koja nude mogućnosti razrešavanja problema proizašlih iz dvojnog ili višestrukog državljanstva. Potrebno je proučiti sve primere i razmotriti mogućnosti. I drugi valjani razlozi govore u prilog razmatranju višestrukog državljanstva, i to upravo u svetlu etnokulturalne raznovrsnosti. Naime, postojanje višestrukog državljanstva podrazumeva da su države koje predstavljaju pripadnost za datog građanina upriličile takve odnose koji su povoljni za pripadnika manjine, da je došlo do odgovarajućeg sporazuma koji izražava spremnost za saradnju u cilju uvažavanja međusobnih odnosa.⁹ Osim toga, proširivanje državljanstva može ulivati sigurnost pripadniku manjinske grupe, jer označava situaciju u kojoj on ne mora da bira između dve države da bi zadovoljio sve svoje potrebe.

Dakle, s obzirom na konstelaciju u jugoistočnoj Evropi, od značaja je sa-gledavanje mogućnosti višestrukog državljanstva. Ne radi se o tome da se multiplikovano građanstvo nudi kao metafizički ključ za razrešavanje svih problema raznovrsnosti. Dakako, proširivanje državljanstva je moguće tek tamo gde

⁸ Nedavno je premijer Srbije izjavio da se neće protiviti ukoliko jedna susedna zemlja (Mađarska) uvede dvojno državljanstvo. I ukoliko sam spomenuo ovaj primer, stoji, da bez obzira na motive, Srbija se nije protivila ni mađarskom zakonu koji je projicirao neke privilegije manjinskim stanovnicima (i) Srbije, i to za razliku od drugih tangiranih zemalja koje su stavljaše i stavljaju primedbe na isti zakon. Ovakve izjave zavređuju svaku pažnju, jer nagoveštavaju promenu odnosa i prema susedima, kao i prema manjinama.

⁹ R. Brubaker, 1992, *Citizenship and Nationhood in France and Germany*, Cambridge; M. Den Boer, and W. Wallace, 2000, *Justice and Home Affairs. Integration through Incrementalism*; H. Wallace and W. Wallace, eds., *Policy-Making in the European Union*, 4th edition, Oxford University Press, pp. 493–419; S. Green, 2000, *Beyond Ethnoculturalism? German Citizenship in the New Millennium*, German Politics, Vol. 9, No. 3, pp. 105–124; J. Habermas, 1994, *Citizenship and National Identity*, in: B. van Steenbergen, ed., *The Condition of Citizenship*, London; R. Koopmans, *Germany and its Immigrants: An Ambivalent Relationship*, Journal of Migration and Ethnic Studies, 25/4 (1999); E. Meehan, 1993, *Citizenship and the European Community*, London; St. Stetter, 2000, *Regulating migration: authority delegation in justice and home affairs*, Journal of European Public Policy, 7: 1, pp. 80–102.

postoji odnos poverenja među državama. U svakom slučaju, ukoliko postoji pozitivna korelacija između etnokulturalne raznovrsnosti i promene državljanstva, a postoje razlozi koji govore tome u prilog, tada se valja okrenuti tematizovanju problema u njegovoj raznovrsnosti.

DIMENZIJE ŠIRE POLITIKE PREMA MANJINAMA KAO USLOV RAZNOVRSNOSTI¹⁰

Moramo dobro odmeriti šta je postignuto a šta predstavlja predmet daljih razmatranja, i moramo razmisliti o doslednosti manjinske politike, jer:

- kreiranje upravljanja manjinskih odnosa na *dugoročnim* osnovama, to jest, regulisanje manjinskih odnosa na osnovu etnokulturalne pravde, a ne na osnovu podele moći između različitih većinskih i manjinskih elita (ovde bi se moralo podvući da je upitno u koliko meri generalna politika uvažava politiku prema manjinama kao jedan od prioriteta, ili se radi tek o iznuđenim potezima) predstavlja još uvek zahtev;
- valja osnažiti orientaciju po kojoj svakodnevica manjinskih zajednica ne može zavisiti od situacija dogovaranja u okvirima političke utakmice, iznudenih kompromisa, naročito u slučaju jedne nekonsolidovane demokratije. U javnom govoru i u javnoj sferi se prepoznaju znakovi govora mržnje, kao što beležimo s vremena na vreme i violentne pojave,¹¹ što svedoči, barem o nekim regresivnim tokovima: difuzna violentnost u javnom govoru se prevaljuje i na manjine;
- postoje oblici netolerancije i diskriminacije na nivou svakodnevice koji zahtevaju pažnju i praćenje, jer ih objavljena istraživanja i različite statistike ne registruju, što baca senku na mnoge studije o manjinama koje donose malo novog – pre stvaraju iluzije;
- treba nastaviti donekle započete reforme u obrazovanju, koje su na samom početku u pogledu uvažavanja istorije i kulture drugosti (npr. u istorijskim udžbenicima je neophodna jasna i dalekosežna intervencija u pogledu vidljivosti manjina i pluralnog tumačenja istorije);
- valja ne zaboraviti da će nužnost nastavljanja reforme, odnosno prinuda upriličavanja reformi, izbaciti na površinu mnoge dileme u vezi sa troškovima i koristima, što će se neminovno odražavati u domenu manjinske politike i

¹⁰ Ovde preuzimam neke naznake iz drugih mojih članaka.

¹¹ Human Rights Watch je čak i kritikovao srpsku vladu zbog pasivnosti u odnosu na ispade ekstremnih, desničarskih reprezenata, <http://www.B92.net/news, 28. avgust 2002.> Neki reprezentanti manjinskih zajednica su isto tako pokazali nezadovoljstvo zbog javnog promovisanja nekih ličnosti iz predratnog perioda, primera radi, A. Lebl: *Slast oca đavola*, Danas, 21. maj 2003.

- napokon, institucionalni kapaciteti manjinske politike su srazmerno slabici shodno opštim slabostima institucionalnog sistema države, te su nepripremljeni za kompleksne angažmane.

Prema tome, promišljanje građenja nacija u svetu odnosa prema manjinama nas suočava sa problematikom a) *interiorizacije* normi i zahteva manjinske politike, b) razumevanja manjinske politike kao *sistematski nužne* i u sklopu ovima stabilizovane demokratije, c) promišljanjem manjinske politike na nivou svakodnevice u smislu obuhvatnog zahvata, što podrazumeva i izgradnje kapaciteta za odnošenje prema drugima, d) osnaženjem onog dela političke, kulturne, medijске elite kojoj je postalo jasno da tretman etničkih manjina više nije unutrašnja stvar suverene države, f) podupiranjem stvaranja institucionalnih kapaciteta države koji će moći reagovati na negativne situacije, ali i uobičavati strateške zadatke. U svakom slučaju, valja držati na umu da ono što je dostignuto stoji na krhkim osnovama, te da bez dogradnje institucionalnog aparata nije moguće održavati dosadašnje rezultate.

REGIONALIZAM I PARTICIPATIVNA DEMOKRATIJA KAO FAKTORI DEMOKRATSKE INTEGRACIJE MANJINA^{*}

LJUBIŠA MITROVIĆ

I

Razvijena svest o neophodnosti reformi institucionalnih osnova prvi je korak u suštinskim preobražajima. Borba za novi kvalitet društvenih i međuetničkih odnosa zahtevaće dugoročnu akciju domaćih i međunarodnih aktera na prostoru Balkana na kome je balkanska oluja haosa i smrti ostavila duboke i tražiće posledice po međuetničke odnose, ali je uticala i na geopolitički položaj i ulogu Balkana u savremenosti. Iako je Dejtonskim sporazumom zaustavljen taj krvavi trend ognja i mača i pomahnilo delovanje „sablazni istorije” (N. Berđajev), valja reći da proces retrabilizacije, etnocentrizma i „identitarnih sukoba” (F. Tijal) nije okončan, te da se balkanske zemlje još uvek nalaze u stanju nedovršenog rata i mira. U tom smislu može se istaći da je fenomen buđenja regionalnih identiteta u usponu i da je on izražen posebno na Balkanu.

Savremena praksa pokazuje da ne postoji jedinstvena formula rešavanja nacionalnog pitanja u svetu, jer su klasične vladajuće paradigme (socijalističke i građanske) istrošene. Otuda je sve više istraživača, pokreta i aktera koji tragaju za novim komplementarnim rešenjima na fonu prevazilaženja zatvorenih etničkih država i formiranja građanske demokratske države. U tom smislu vrši se kombinacija institucionalnih rešenja, u rasponu od federalizma ka regionalizmu, participativnoj demokratiji i poliarhiji. Na delu je proces radikalnih promena u položaju i ulozi nacionalnih država i njihovog suvereniteta pod uticajem međunarodnih i unutrašnjih aktera. Suočeni smo sa fenomenom tranzicije etničkih kulturnih identiteta, sa potrebom prevladavanja predmodernih oblika identiteta i formiranja modernog, pluralističkog (slojevitog) etničkog, kulturnog građanskog identiteta. Odnos prema manjinama postaje test moderne demokratije, ali se odnos između manjine i većine mora danas posmatrati u kontekstu zasnivanja demokratske građanske države i realizacije ljudskih prava i sloboda. Moderni teoretičari govore o fenomenu konsocijalne participativne demokratije i poliarhije.¹ Naravno, realizacija ovog koncepta u uslovima balkanskog društva pretostavlja razrešavanje i ključnih problema koji su vezani za novonastale balkan-

* Rad sa projekta *Kulturni i etnički odnosi na Balkanu – mogućnosti regionalne i evropske integracije* (1310), koji se realizuje u Institutu za sociologiju Filozofskog fakulteta u Nišu, a finansira ga Ministarstvo za nauku, tehnologije i razvoj Republike Srbije.

¹ O tome videti šire u studijama o multikulturalizmu, multietničkim zajednicama, participativnoj demokratiji i oligarhiji, posebno u radovima Roberta Dala, Arenda Lajpharta, Pjera van den Bergea, Danijela Elazara i dr.

ske crne rupe (Bosna, Krajina, Kosovo) kao izraz rata i velikih etničkih izmeštaja stanovništva. Bez stvaranja uslova za stvarni povratak stanovnika velikih etničkih grupa na svoja ognjišta, iluzija je da će i manjinske grupe doživeti istinski demokratski procvat, tj. promenu sopstvenog položaja.

Za stvarnu transformaciju međuetničkih odnosa na Balkanu i dugoročnu konsolidaciju, suštinsko je pitanje odnos prema demokratiji, ljudskim pravima i slobodama, izgradnja nove demokratske političke kulture. Iluzija je da se jednim potezom mogu rešiti svi problemi a posebno normativnim i političkim sredstvima. Ovde na Balkanu biće potrebna dugoročna strategija s jedne strane normativnih institucionalnih reformi u duhu evropske standardizacije i integracije, a s druge strane za izgradnju i oblikovanje nove moralne, kulturne svesti o zajedništvu i suživotu. Tu obavezu kulturne i političke modernizacije Balkana i formiranje građanskog identiteta, moraju preuzeti različiti akteri i institucije (škole, fakulteti, privreda, kultura, mediji) a ne samo politički faktori. Na ovom prostoru nam je potrebno novo vaspitanje za demokratiju kako bi rekao Monteskije i istinsko pregalašće za poštovanje prava na razliku, za polifoniju kultura i interkulturalizam. Na tom programu borbe za multikulturalizam i nov kvalitet u međuetničkim odnosima balkanskih naroda treba se setiti poruka Žaka Atalija iz njegovog teksta *Demokratija bez granica* i Edgara Morena iz njegove studije *Kako misliti Evropu*² – o potrebi izgradnje „novih moralnih katedrala” oličenih u toleranciji i **pravu na razliku**, bez kojih nema istinske demokratije i građanstva, stvarnog humanizma i emancipacije među narodima i ljudima.

II

U radu elaboriram sledeću tezu: *razvijena participativna demokratija* u formi neposredne društvene demokratije, lokalne i regionalne samouprave, sa razvijenom autonomijom civilnog društva *brana je protiv birokratizma centralne vlasti i, istovremeno, prepostavka demokratske integracije manjina*.

Na kraju XX veka suverenitet nacionalnih država našao se na dvostrukum udaru: *spolja*, kroz proces globalizacije i *iznutra*, naraslim procesima retrivalizacije i fragmentacije (verskih i etničkih pokreta). Proces globalizacije ima Janusovo lice: emancipatorsko i porobljivačko. S jedne strane, moderne proizvodne snage naučno-tehnološke revolucije impliciraju visoki razvoj i integraciju sveta i, u tom kontekstu, stvaraju pretpostavke za emancipaciju čoveka. S druge strane, transnacionalne globalne korporacije („*planetarni gladijatori*” – A. Tofler), kao izraz krupnog kapitala, teže novoj hegemoniji u planetarnim okvirima. U tom kontekstu razvija se i teorija o ograničenom suverenitetu država i nacija i konstituiše se „novi svetski poredak”. Ovaj proces uporedo je praćen i jačanjem

² O tome videti u radovima Ž. Atalija: *Demokratija bez granica*, Treći program, broj 100, Beograd, 1994. i E. Morena: *Kako misliti Evropu*, Svetlost, Sarajevo, 1989.

pokreta separacija i secesija unutar nacionalnih država, što dovodi ne samo do krize njihovog demokratskog legitimiteta, već i do direktnе političke dezintegracije i rekompozicije.

Postavlja se pitanje kako nacionalne države i njihove elite odgovaraju na ovaj izazov? Globalno govoreći, prisutna su dva regresivna i dva progresivna pristupa ovom problemu.

U odnosu na ovakav položaj nacionalnih država i njihovog suvereniteta u savremenosti izražene su dve regresivne tendencije: s jedne strane, težnja ka re-tradicionalizaciji – povratak na koncept zatvorene nacionalne države sa obnovom ideologija „krvi i tla“ (što ima za posledicu ksenofobiju i izolacionizam); druga varijanta ovog regresivnog teorijskog i istorijskog pristupa jeste obnova neokonzervativnog etnonacionalizma, preko hipercentralizovanog birokratskog sistema, u liku novih levijatana koji zarobljavaju društvo i blokiraju njegove pluralističke i razvojne snage. I jedna i druga tendencija (i kao teorijska i kao praktično-socijalna alternativa) su pogubne sa stanovišta moderne koncepcije otvorenog društva i društvenog razvoja.

Nasuprot ovim tendencijama, u društvenoj i teorijskoj praksi, ispoljavaju se i dva progresivna pristupa: jedan je liberalno-demokratski, a drugi socijal-demokratski. Protagonisti liberalno-demokratskog koncepta zalažu se za demokratizaciju i reformu sistema sa naglašenom pravnom državom i insistiranjem na političkim pravima i slobodama građana. Nedostatak ovog pristupa je to što ne elaborira problem socijalnih prava i socijalne demokratije. Na drugoj strani, izdvaja se moderni demokratski koncept – socijalno-demokratski – države i društvenog razvoja, u kome se pored insistiranja na pravnoj, građanskoj državi, insistira i na autonomiji civilnog društva, socijalnim pravima, sa razvijenim institucijama participativne i socijalne demokratije. Dok je prvi koncept razvoja više u ključu anglosaksonske, individualističke filozofije razvoja, dotle je drugi više u skladu sa evropskom tradicijom socijalne države i civilizacijskog napretka čovečanstva. Na nauci je i društvenoj kritici, ali i akterima društvene prakse, da procene domete i ograničenosti ovih razvojnih modela i da saobrazno svojim društvenim potrebama oblikuju odgovarajuće razvojne strategije u funkciji određenih kolektivnih i individualnih ciljeva.

Mišljenja smo da je ključno pitanje koje treba elaborirati u svetu savremenih izazova i demokratskog razrešavanja problema položaja etničkih manjina sledeće: da li je alternativa nacionalno-birokratska ili demokratsko-građanska država, odnosno da li se pomenuti problemi mogu rešavati autoritarno-prisilnim integracijama ili demokratskom integracijom unutar globalnog društvenog sistema?

Kada je u pitanju izbor strategija, puteva i sredstava demokratske integracije građana, pa u tom kontekstu i manjina, neophodno je:

1. nastaviti sa doslednom borbom za afirmaciju integralnih ljudskih prava i sloboda iz Univerzalne deklaracije o ljudskim pravima Generalne skupštine OUN (dakle, ne samo pravnih i političkih, već i socijalnih i kulturnih);
2. raditi na razvoju autonomije civilnog društva, naspram težnje države da se širi i totalitarno kontroliše sve sfere društva („svet života“ – J. Habermas – mora

imati prioritet nad svemoći Levijatana); odbrana oblika neposredne društvenosti u mikrodruštvenoj strukturi – autonomija porodice, škole interesnih grupa – mora imati prednost;

3. razvijati oblike lokalne i participativne, neposredne demokratije (u preduzećima i lokalnim zajednicama);
4. jačati oblike lokalne i regionalne samouprave (u formi funkcionalnog regionalizma), kao pouzdanih puteva demokratske integracije i pacifikacije naraslih konfliktata u nacionalno mešovitim regijama.

Samo u svetu radikalne demokratizacije, modernizacije i reforme post-socijalističkih društava u tranziciji na Balkanu nacionalne manjine mogu postati most među narodima i državama, bogatsvo izražajnih moći određenih nacija, država i prostora, a ne faktor nestabilnosti i dezintegracije. Integralni deo ovog procesa borbe za integraciju manjina u nastajuće nove političke zajednice jeste i konstituisanje nove kulturne politike, utemeljene na filozofiji multikulturalizma, etničke i kulturne tolerancije, građanske i nacionalne ravnopravnosti, političke, socijalne i opšteliudske emancipacije. Tek je u tom svetu moguća istinska ravnopravnost građana i emancipacija ličnosti kao preduslov emancipacije i napretka čovečanstva i mira u savremenom svetu.

Savremena nauka, kao i akteri savremenih društvenih promena, moraju se suočiti sa metamorfozom slike savremenog sveta na kraju XX veka i na početku novog milenijuma, kao i nastupajućim radikalnim posledicama po dalji razvoj čovečanstva. Samo u toku prošlog veka svedoci smo metamorfoze pogleda na svet: od geopolitike (na početku veka) ka geoekonomiji (u drugoj polovini veka) i geokulturi (na pragu novog milenijuma).

Od moći politike i prostora, preko moći ekonomije i tehnologije, na kraju veka došlo se do teze o prevalentnom značaju kulture u društvenom razvoju. Za razumevanje grupne dinamike u savremenosti, sve se više ističe značaj sukoba kulturnih identiteta, za razliku od borbe oko prostora. U tom kontekstu nije slučajna Hantingtonova teza o sukobu kultura i civilizacija u XXI veku. Ona izražava značaj identitarnih razlika i funkciju identitarnih sukoba. Imajući u vidu nastanje značaja kulture i kulturnog identiteta društvenih grupa potrebno je u politici nacionalnih država i međunarodnih institucija aktivno razvijati svest o neophodnosti tolerancije i svesti o identitetu »drugosti«.

Uz razvijanje svesti i odgovornosti o nacionalno-kulturnom identitetu, neophodno je, u skladu sa modernim građanskim konceptom države, stvarati uslove za razvoj kulturnih osobenosti nacionalnih manjina. Bogatstvo različitosti kultura, uz očuvanje vlastitog nacionalnog identiteta, imperativ je mirne ko-egzistencije naroda i manjina. Na nivou međunarodnih odnosa neophodno je podsticati razvoj planetarne svesti čovečanstva, ali ne kao jednodimenzionalnu sliku „amerikanizacije“ i „mekdonaldizacije“ sveta, koja može voditi i duhovnoj kolonizaciji, već kroz afirmaciju pluralističkog bogatstva različitosti kultura i civilizacija u svetu – sa razvijenom svešću o zajedničkoj odgovornosti čovečanstva: da smo na istom brodu, iako ne svi na palubi.

MANJINSKE VERE I VERE MANJINA NA BALKANU¹

DRAGOLJUB B. ĐORĐEVIĆ

„Logika je prosta: kako je moguće baviti se etničkim odnosima, pripremati zakon o nacionalnim manjinama, ispitivati pretpostavke multikulturalizma i interkulturalnosti, a ne problematizovati manjinske religije i religije manjina – znamo li da i u tom polju vrvi od teškoća”.

UVOD

Rasprava o odnosu *među religijama, između njihovih veroispovesti i, dalmome, stanja manjinskih vera i vera manjina* u Srbiji i Crnoj Gori, a onda i na celom Balkanu, jeste nedopustivo skrajnuti problem u domaćoj i balkanskoj religiologiji. Analizu prvog tipa odnosa – onog među religijama i između njihovih veroispovesti – pokušao sam, izgleda bezuspešno, da stimulišem već davne 1997. godine.² Misao vodilju pronašao sam u znamenitom napisu Ernesta Rena – *Šta je nacija?* i njegovoj dalekosežnoj konstataciji, tako važećoj za *brdoviti Balkan*: „Čovek nije rob ni svoje rase, ni svoga jezika, ni svoje vere, niti rečnih tokova, niti pravaca kojim se pružaju planinski venci”. Analizu drugog tipa odnosa – onog između manjinskih vera i vera manjina – bez lažne skromnosti, uspeo sam da nanovo aktuelizujem pre godinu-dve.³ To sam učinio i zato što se preda mnom isprečila upitnost: „Logika je prosta: kako je moguće baviti se etničkim odnosima, pripremati zakon o nacionalnim manjinama, ispitivati pretpostavke multikulturalizma i interkulturalnosti, a ne problematizovati manjinske religije i religije manjina – znamo li da i u tom polju vrvi od teškoća (Đorđević, 2002:71)”. Kako je došlo do delimičnog rasplamsavanja diskusije o ovim pojavama i kod nas i u balkanskim državama, sada želim da ih dodatno razjasnim, navedem tipičan iskustveni primer i ponudim uputstvo za praktično ponašanje.

¹ Urađeno u okviru projekta (1310) *Kulturni i etnički odnosi na Balkanu – mogućnosti regionalne i evropske integracije*, koji se izvodi na Filozofskom fakultetu u Nišu, a finansira ga Ministarstvo za nauku i tehnologiju RS.

² Referatom *Religijske i konfesionalne granice na Balkanu: izazov interkulturalnosti*, izloženom na međunarodnoj konferenciji Granice: izazov interkulturalnosti (Đorđević, 1997).

³ Organizući 2001. godine VIII međunarodnu konferenciju JUNIR i nametnuvši temu o verama manjina i manjinskim verama (Đorđević i dr., 2001).

RAZJAŠNJENJA

Metodološki je sasmosto nužno, a i zbog realija koje proizvode prenapregnutete odnose među ljudima i narodima, što preciznije pojmovno omeđiti i odrediti sledeće fenomene: »religiju«, „veroispovest“, „manjinsku veru“, „veru manjina“ i „manjinsku versku zajednicu“. Može se pretpostaviti da oko njihovog definisanja ima puno nesporazuma, da ih ključni društveni akteri veoma suprotstavljeni shvataju, te da to direktno prouzrokuje situaciju u kojoj postoje privilegije za jedne a uskraćenosti za druge – prvi se favorizuju a drugi žigošu. Evo primera: Množina misli kako je sve potaman oko *religije* – svi znamo šta ona jeste, mnoštvo je neposredno živi – i zaludno traćimo dragoceno vreme iznova se čudeći pred njom. Ali, i o tome ide reč, jedno je ona u zamisli naučnika, drugo u formulaciji teologa, sasvim nešto treće u službenoj (državnoj) konceptualizaciji. I zaista, držeći na umu P. Bajera (Beyer, 2003) izuzetno uticajnu trodelnu tipologiju konceptualizacije religije na *bogoslovsku*, *naučnu* i *oficijelnu*, lako uočavamo razlike u tretmanu religija, koje idu toliko da pojedinim od njih uopšte osporavaju da su to za šta se izdaju, pravno ih sankcionisu kao nereligije i izgone sa javne scene. Službena zamisao religije, oslobođena teoloških i naučnih uvida a oslonjena na četiri društvena podsistema – sud, vladu, mas medija i obrazovanje – arbitrarno presuđuje: nekome veli „ti jesni religija, tebi to priznajemo, dajemo ti slobodu javnog delovanja i podržavamo te“; i nekome kazuje „ti nisi religija, tebi to ne priznajemo, oduzimamo ti slobodu javnog delovanja i proganjam te“. I gde čuda: jedna istovetna pojava „ovde“ je religija sa svim počastima, „tamo“ nije čak ni registrovana – jeste zabranjena ili se prihvata kao ikoje preduzeće ili udruženje građana. (Primera radi, u srpskim školama sedam verskih zajednica može da izvodi veronauku, ostali nikako; u kineskim školama se taoizam ubraja u religije, u tajvanskim ne; kineska i indonežanska vlast prepoznaju pet službenih religija, ali svih pet različitih; u SAD sajentologija jeste religija, u Nemačkoj nije.)

Dakako, ostavljajući na stranu izazovnu tvrdnju Dž. Z. Smita (Beyer, 2003:142) o naučnoj konstrukciji religije („Religija je jedino kreacija naučnih istraživanja. Ona je stvorena u naučnoistraživačke svrhe putem komparacije i generalizacije. Religija ne postoji nezavisno od akademskog sveta“.), mi se vezujemo za sociološko određenje: *Religija je organizovani skup saznanja, osećanja, simbola, kulturnih radnji, moralnih i drugih propisa i verovanja vezanih za zamisao o „onostranom biću“*.⁴

⁴ Ili: „Religijom se može smatrati svako *verovanje* u apsolutnu i mističnu *moć*, od koje čovek *zavisi*, i koja *kontroliše* njegov život i smrt, ali na koju može *uticati*, ako se *ponaša* na određene načine; svoja *iskustva* sa tom moći može da *izražava* na kognitivan, emocionalan, praktičan i mističan način, to jest u obliku učenja, obreda, zajednice vernika ili harizmatske ličnosti; sticanje i izražavanje *iskustava* sa tom moći ima za njega određeno *značenje*, a za zajednicu određen *značaj*, jer bi bez toga njegov život i život zajednice izgledao sasvim drukčiji (Šušnjić, 2003:378)“.

Ako je donekle razumljivo da iz državnog i bogoslovskog – najmanje iz naučnog – ugla neke religije mogu biti osporene i proglašene za nepostojeće, mnogo je teže shvatljiv istovetan postupak prema jednoj od veroispovesti unutar konkretnе religije. U gornjoj situaciji imamo to da jedna religija odbija drugu – na primer, oficijelno definisano hrišćanstvo u Nemačkoj (protestantizam, rimokatolicizam i pravoslavlje) ne priznaje sajentologiju, nesumnjivu religijsku i kulturnu novinu. U donjoj zgodi dešava se da jedan krak neke religije samostalno ili u zajednici sa drugim odbacuje treći – primera radi, oficijelno definisano hrišćanstvo u Srbiji (pravoslavlje i rimokatolicizam) eliminiše protestantizam, izistinsku najmlađu hrišćansku konfesiju; brat udara na brata u veri samo zato što se u nečemu razlikuje, često u sitnom detalju.

Pojam *konfesija* se pogrešno, barem po mom sudu, poistovećuje sa rečju *religija* (Đorđević, 2003b:408). Konkretna religija je šira odrednica i u okviru nje većma imamo po nekoliko konfesija, našim jezikom imenovano – veroispovesti. Nema svetske, univerzalne ili otkrivene religije bez veroispovednih „krakova“. Tako se na primer, ako pogledamo religije koje preovlađuju na Balkanu, hrišćanstvo grana na pravoslavnu, katoličku i protestantsku konfesiju, a islam na sunitski i šiitski (tabela 1). To za sobom povlači razvoj konfesionalne kulture, specifičnog veroispovednog mentaliteta i konfesionalne pripadnosti. Bude li se na njima preterano insistiralo, eto nam konfesionalcentrizma i nevolja koje za sobom neminovno donosi. Rat jeste najtragičniji produkt religio- i konfesionalcentrizma.

Stvar se komplikuje i zbog činjenice da u svakom društvu, pa i u društvenima Balkana, pored većinske/ih, postoje i *manjinske vere*. Koje su to vere? U nedavnom određenju (Đorđević, 2002:76) „*pod manjinskim verama u našem slučaju podrazumevam sve sem islamske religije i pravoslavne i rimokatoličke konfesije. Znači, u ovu kategoriju ulaze, pre svega, protestantska veroispovest i raznoliki izdanci orientalnih religija, transformisani u zapadnim društvima*“. U drugim balkanskim državama razdeoba na većinsko/manjinsko može biti drukčija; istaknimo tako da u Rumuniji sve sem pravoslavne i rimokatoličke veroispovesti spada u manjinske vere, a u Albaniji sve osim islama i katolicizma.

Trenutak je da se ovde uvede i pojava „*manjinska verska zajednica*“. Pošto nema religije bez institucije, možda će biti jasnije ako kažemo da su većinske verske grupe u Srbiji i Crnoj Gori Islamska zajednica i Srpska pravoslavna i Rimokatolička crkva, a ostale religiozne organizacije – denominacije, sekte i kultovi – manjinske. O njima inspirativno piše i R. Mel (2003:187), unoseći preko-potrebno razlikovanje između brojnog, kvantitativnog i sociološkog, kvalitativnog aspekta manjinskog položaja verskih zajednica: „Brojčano manjinstvo nužno se ne poklapa sa sociološkim“. Tako, nasuprot našem svrstavanju, Ružica Cacanoska (2003:445),⁵ vredan istraživač verskih zajednica u Makedoniji, vo-

⁵ Prepostavljamo da je previd u pitanju, jer se ona pretežno oslanja na analize Mela, čiju je citiranu knjigu i prevela na makedonski.

Tabela 1. – Balkanska religijsko-konfesionalna panorama⁶

Zemlja	Religija	%	Konfesija	%
Albanija	Islam	70,0	Sunitizam	67,0
	Hrišćanstvo	30,0	Šiizam	33,0
Bugarska	Pravoslavlje		Pravoslavlje	67,0
	Rimokatoličanstvo		Ostalo	33,0
BiH	Hrišćanstvo	86,0	Pravoslavlje	99,00
	Islam	14,0	Ostalo	1,0
Grčka	Pravoslavlje		Sunitizam	99,0
	Islam		Ostalo	1,0
Makedonija	Hrišćanstvo	42,7	Sunitizam	100,0
	Islam	44,9	Pravoslavlje	60,0
Rumunija	Ostalo	7,3	Rimokatoličanstvo	30,0
	Neizjašnjeno	5,0	Ostalo	10,0
SCG	Hrišćanstvo	99,0	Pravoslavlje	97,0
	Islam	1,0	Ostalo	3,0
Hrvatska	Pravoslavlje		Sunitizam	100,0
	Ostalo			
Rumunija	Hrišćanstvo	75,0	Pravoslavlje	99,0
	Islam	25,0	Ostalo	1,0
SCG	Pravoslavlje		Sunitizam	99,0
	Islam		Šiizam	1,0
Hrvatska	Rimokatoličanstvo		Pravoslavlje	89,7
	Protestantizam		Rimokatoličanstvo	4,3
SCG	Hrišćanstvo	91,5	Protestantizam	6,0
	Islam	3,1	Sunitizam	92,8
Hrvatska	Ostalo	5,4	Pravoslavlje	5,9
			Rimokatoličanstvo	1,1
SCG	Pravoslavlje		Protestantizam	100,0
	Ostalo		Sunitizam	90,0
Hrvatska	Rimokatoličanstvo		Pravoslavlje	10,0

deći računa samo o kvantitetu a zapostavljajući kvalitet, u manjinske grupe ubraja i Rimokatoličku crkvu. U niti jednoj balkanskoj državi, premda je u svim, sem u Hrvatskoj, zaista manjinska po brojnosti vernika, ona nema status manjinske zajednice, jer je sociološki većinska, tj. izjednačena sa islamskim zajednicama i pravoslavnim crkvama. To se slaže sa Melovom intervencijom koja izlazi na sledeće: za postojanje manjinske verske grupe nužno je da bude priznata kao takva od javnog mnjenja i da se to priznanje pokazuje, ili da je bilo mani-

⁶ Procentualni iznosi formirani uvidom u: Miz, 2002; Cacanoska, 2003; Popis, 2003.

festovano, u strukturi društva preko posebnog pravnog statusa. Hoće se reći da jeste, ili je bila, pravno ispod vladajuće religije i verske zajednice, a njeni vernici građani drugog reda – po pravilu žigosani i šikanirani. Iako se misli da nije korektno namah i po definiciji jednačiti manjinsku versku zajednicu sa sektom, koliko god da objektivno stremi prema njoj, mi ipak tvrdimo da, barem na prostoru Balkana, ona jeste najčešće kult, sekte ili denominacija, ili se tako na nju gleda.

U Srbiji, a kako je to sistematizovala i R. Cacanoska (2003:447–448) za Makedoniju, verništvo manjinskih verskih zajednica regrutuje se iz tri izvora: (1) reprodukcijom iz date manjinske verske zajednice, koja prilično dugo postoji – adventisti kod nas, metodisti kod njih; (2) preobraćanjem članova i privrženika većinske verske organizacije – pravoslavaca u obe zemlje; i (3) misionarenjem među religijski sinkretičkoj etničkoj manjini – Romima u oba slučaja.

Sva je prilika da će uskoro po koja manjinska verska zajednica – u Srbiji, Makedoniji, Albaniji... svejedno gde – da to ne bi bila, ispuniti brojčani uslov, tj. kvantitativno narasti, no ostaće dugo još manjinska, jer će teško osvojiti sociološki uzus, tj. neće moći tako brzo i bezbolno da izmeni stav okruženja, čak i državno-pravni tretman. (Da ne manjka prostor, bilo bi uputno navesti koji primer žigosanja manjinskih vera i njihovih zajednica, jer je toga puno u svim balkanskim zemljama bez izuzetka).⁷

I poslednje razjašnjenje: koje su to *vere manjina*? Povodom njih je stvar jednostavnija i nema nekih nesuglasica. Kako sam već pisao (Đorđević, 2002), nema omeđivanja, jer su pripadnici svih etničkih grupa i nacionalnih manjina na Balkanu ujedno i privrženici neke od religija i konfesija, odnosno članovi većine verskih zajednica – bile one velike ili male (tabela 2). Iz tog rakursa gledano, religije i konfesije jesu vere i etničkih većina i etničkih manjina. Problem je u tome kako su etničke grupe i nacionalne manjine, ovoga puta i kao verske manjine, primljene i tretirane u religijama i konfesijama, tj. verskim organizacijama kojima odsudni pečat udaraju većinski narodi. Tako se može desiti, o čemu mnogi analitičar ne brine, da konkretna etnička grupa bude u dvostrukom manjinskom položaju: istovremeno je i etnička i verska manjina.

⁷ Čak i svagda oprezni NIN (2003) uspeo je da „ude u kolo”, tj. priključi se sirovom antikultnom pokretu u srpskoj varijanti, objavljuvajući specijalnog dodatka *Sekte – duhovna droga*.

Tabela 2. – Manjinske vere i vere manjina na Balkanu

Zemlja	Religija	Konfesija	Manjinske vere	Manjinske verske zajednice	Vere manjina
Albanija	Islam Hrišćanstvo	Sunitizam Šiizam Katolicizam	Pravoslavlje Protestantizam	APC Protestantske zajednice	Sve pobrojane
Bugarska	Hrišćanstvo Islam	Pravoslavlje Katolicizam Sunnitizam	Protestantizam	Protestantske zajednice	Sve pobrojane
BiH	Islam Hrišćanstvo	Sunitizam Katolicizam Pravoslavlje	Protestantizam	Protestantske zajednice	Sve pobrojane
Grčka	Hrišćanstvo	Pravoslavlje	Protestantizam Katolicizam Islam	Protestantske zajednice Katolicizam Islam	Sve pobrojane
Makedonija	Hrišćanstvo Islam	Pravoslavlje Katolicizam Sunnitizam	Protestantizam	Protestantske zajednice	Sve pobrojane
Rumunija	Hrišćanstvo	Pravoslavlje Katolicizam	Protestantizam Islam	Protestantske zaj. Islamska zaj.	Sve pobrojane
SCG	Hrišćanstvo Islam	Pravoslavlje Katolicizam Sunnitizam	Protestantizam	Protestantske zajednice	Sve pobrojane
Hrvatska	Hrišćanstvo	Katolicizam	Pravoslavlje Protestantizam Islam	SPC Protestantske zaj. Islamska zaj.	Sve pobrojane

PRIMER

Na primeru Roma može se i najbolje odslikati položaj vera manjina. Pogledajmo kakvo je stanje u Srbiji. Oni su bar za sada na nekoliko stepenica i višestruko u manjinskom položaju. Jesu manjina na republičkom nivou, ali, po

pravilu, i manjina okružena većinskom etničkom manjinom i većinskim narodom (primera radi, Raška oblast: Romi – etnička manjina > Muslimani – većinska etnička manjina > Srbi – većinski narod), ili samo većinskim narodom (na primer, Nišavski okrug: Romi – etnička manjina > Srbi – većinski narod). Pa i kad se tačno utvrdi njihova zastupljenost u populaciji Republike, u navedenom pogledu, zbog teritorijalne raspršenosti, neće se nešto mnogo izmeniti manjinski status Roma.

Oni su i republička religijska manjina, ali i manjina okružena religijom većinske etničke manjine, koja, najčešće, nije i religija većinskog naroda (Raška oblast: Romi muslimani – religijska manjina > islam – religija Muslimana, većinske etničke manjine > pravoslavlje – konfesija Srba, većinskog naroda), ili samo religijom većinskog naroda (Nišavski okrug: Romi pravoslavci/muslimani – religijska manjina > Srbi pravoslavci – religijska većina).

Mnogo toga jeste nepoznanica u verskom životu Roma, pa je zadatak sociologije religije i romologije da to iznesu na videlo, sistematizuju već poznato, daju preporuke za dalja proučavanja i opredеле konkretnе korake za sticanje njihove ravnopravnosti u religijsko-crkvenoj sferi.⁸ One taj zadatak ne mogu valjano obaviti ako ne odgovore i na pitanja o: a) *odnosu većinskog verskog stanovništva prema romskoj verskoj manjini*; i b) *verskoj diskriminaciji prema Romima*.

Sledeći ovaj nalog, ukratko komentarišemo rezultate socio-empirijskog istraživanja, sprovedenog 1999. godine,⁹ stavova Srba, Mađara i Muslimana Srbije (bez Kosmeta) o Romima kao vernicima, o tome: a) „Da li Romi mogu biti *dobri vernici*: pravoslavci, rimokatolici, protestanti, muslimani?“; b) „Da li bi s Romom istovernikom zajednički učestvovali u religijskim obredima i proslavama (pričešće, molitva, klanjanje, slave, litije, blagdani...)?“; c) „Da li bi Romi bili mnogo vezaniji za konkretnu religiju kada bi se bogoslužbene knjige prevelle na romski i, primera radi, liturgija ili opelo služili na njihovom jeziku?“; d) „Da li bi bili protiv da se umrli Rom sahrani na njihovom mesnom groblju?“; i e) „Da li su Romi religijski tolerantni ili su religiozni fanatici?“ U interpretaciji se oslanjamo na interkulturalističke ideje. Interkulturalizam najviše pasuje baš Romima, jer su u transnacionalnoj situaciji, svagda i svugde žive sa drugim etnosima i kulturama – „Romi u interkulturalnom okruženju“. On prvenstveno i ima šansu u kulturnom podsistemu, a verski život je njegova značajna karika.

Ukupni rezultati *ohrabruju* (tabele 3 i 4) – pozitivni stavovi su većinski, ali ne u onim iznosima koji bi značili krajnje potiskivanje religijskog animozitea spram Roma. Mađari i Srbi su tolerantniji od Muslimana.¹⁰

⁸ Konsultovati jedan sistematičniji uvid u religiju, religioznost i verske običaje Roma (Đorđević, 2003v).

⁹ Socio-kulturna adaptacija Roma u Srbiji u procesu tranzicije – integracija, asimilacija ili segregacija? Šema za podršku istraživanja, Prag, 1998–2000.

¹⁰ Videti i u: Filipović and Đorđević (2003).

Bez obzira na skroman uzorak i mali broj propitanih stavova, može se izvući nekoliko opštijih zaključaka o odnosu većinskog naroda i dveju nacionalnih manjina – mađarske i muslimanske – prema Romima, trećoj etničkoj i verskoj manjini: 1) većinski narod (Srbi) i etničke manjine – Mađari (katolici) i Muslimani (islamisti) – kao pravoslavne, rimokatoličke i islamske religijske većine, imaju prema religijskoj manjini više-manje odnos koji obećava korektni stav spram Roma kao klasičnih vernika; 2) većinski narod (Srbi) i etničke ma

Tabela 3. – Rang pozitivnih stavova većine prema veri Roma

Pozitivni stavovi	Srbin rang/%	Mađar rang/%	Musliman rang/%
Svakako, Romi mogu biti dobri vernici kao i svaki drugi narod	2/81,8	1/88,3	3/74,0
Da, svakako (zajedničko učestvovanje u obredima)	2/69,3	1/71,6	3/34,0
Ne, trebalo bi Roma sahraniti na lokalnom, mesnom groblju	2/61,2	1/81,1	3/6,0
U potpunosti slaganje sa religijskom upotrebljom romskog jezika	2/15,2	1/38,9	3/8,0
Romi su religijski tolerantni	2/52,5	3/46,9	1/74,5
Ukupno	2	1	3

Tabela 4. – Rang negativnih stavova većine prema veri Roma

Negativni stavovi	Srbin rang/%	Mađar rang/%	Musliman rang/%
Nikako, Romi nikada neće biti dobri vernici poput drugih naroda	1/3,1	2/2,1	3/–
Nikako (zajedničko učestvovanje u obredima)	2/10,6	3/2,1	1/22,0
Bio bih protiv, trebalo bi Rome sahranjivati van našeg naselja	2/1,9	3/1,1	1/2,0
Nikako, treba vršiti službu na jeziku većinskog naroda	1/48,8	2/38,9	3/8,0
Romi su religijski fanatici	1/12,5	2/11,5	3/2,0
Ukupno	1	3	2

njine – Mađari i Muslimani – kao pravoslavne, rimokatoličke i islamske religijske većine, ne samo u neposrednom okruženju već i u republičkom prostoru, međusobno se razlikuju u stavu prema religijskoj manjini: Romima kao konvencionalnim vernicima; 3) iznosi pozitivnih stavova o Romima kao vernicima, sem u jednom slučaju, uvek su daleko viši u Srba i Mađara no u Muslimana; 4) kod Srba u jednom slučaju – prevoda bogoslužbenih knjiga (i služenja na romskom) – iznosi pozitivnih stavova ne prelaze natpolovičnu većinu, čak su veoma

udaljeni od polovine; 5) u Mađara u dva slučaja – prevoda bogoslužbenih knjiga (i služenja na romskom) i religijskog fanatizma Roma – iznosi pozitivnih stavova ne prelaze natpolovičnu većinu, ali su blizu polovine; 6) u Muslimana u tri slučaja – zajedničarenja u kultu, prevoda bogoslužbene književnosti (i služenja na romskom) i sahranjivanja Roma na lokalnom groblju – iznosi pozitivnih stavova ne samo da ne prelaze natpolovičnu većinu već su daleko od polovine; 7) Srbi su u najvećoj nedoumici, odnosno u njih izostaje čvrsto izgrađen stav o potrebi prevoda bogoslužbene književnosti i služenja romskim jezikom pri praktikovanju obreda; 8) Mađari su u najvećoj nedoumici, odnosno u njih izostaje čvrsto izgrađen stav o religijskoj ne/toleranciji Roma; 9) Muslimani se većinski dvoume oko prava Roma na crkveno štivo i rituale na rodnom jeziku; 10) Srbi su u većini protiv religijske upotrebe romskog jezika; 11) Mađari najveći otklon imaju prema prevođenju svetopisamske literature i upotrebi romskog jezika pri obrednim radnjama; 12) Muslimani se u većini suprostavljaju gradnji „večnih kuća“ Roma na mesnom groblju; 13) jedino se muslimanski odnos prema pogrebu Roma može okvalifikovati u segregacionističkim i rasističkim terminima.

ZAKLJUČAK

Rečju, stabilnost i razvoj civilnog društva u balkanskim državama nisu mogući ako se ne popravi: a) *odnos većinskog verskog stanovništva prema vera-ma manjina*; i b) *prema manjinskim verama*. Zato njihove pravoslavne crkve, Rimokatolička crkva i islamske zajednice imaju zadatak da u svojih najbrojnijih vernika usađuju ideju religijskog saživota s manjinskim istovernicima ili inovernicima. Tako bi religijska tolerancija postala uzor za trpeljivost i interkulturalističku praksu u ostalim podsistemima društva.

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NATIONAL MINORITIES IN ROMANIA

STEVAN BUGARSKI

1. DEMOGRAPHIC STRUCTURE SURVEY

The national population structure of contemporary Romania was established in the year 1918 when at the time of the changing of boundaries of the territory of former Austro-Hungaria, Romania secured the largest part of the territory on which it laid a claim to. So that from the pre war Romania, which consisted of historical provinces of Țara Românească (in Serbian science better known as Vlaška) and Moldavia (Karabogdanska) Great Romania was formed, which integrated the provinces of: Transylvania (Erdelj), Maramureş, Crişana and part of Banat. The territory of the country increased from 138.962 m² to 296.932 m² and the population from 7.771.291 to 14.034.836.

At that time a serious change in the national population structure took place.

While in the old Romania there were almost no national minorities, with the exception of Gypsies, the Great Romania encompassed a significant number of Hungarians, Germans and Jews, as well as Serbs, Bulgarians and other national minorities, which were of small number.

Before long this national structure changed too.

With the loss of Basarabia and Northern Bucovina, in the year 1938, the country lost some 2.500.00 citizens mainly Romanians;

Due to circumstances during the Second World War and post war emigration of Jews to Israel, the population was decreased by approximately 800.000 Jews;

Due to the emigration of Germans to Germany, which started immediately after the Second World War, and mainly did not cease, but rather after the year 1990 started to be of mass nature, 500.000 citizens of German origin were lost.

So that was how the current national population structure of Romania was crystallized, in which Romanians present 89,5%; of the national minorities a significant share have Hungarians (6,6%) and Gypsies (2,5%), while the remaining 15 national minorities take up a share of only 1,3%. In order to show the tendency of change in the demographic structure, we are presenting the results of the last two censuses:

	1992		2002	
	Number	%	Number	%
Total	22.760.449	100	21.698.181	100
Romanians	20.352.980	89,4	19.409.400	89,5
Hungarians	1.620.199	7,1	1.434.377	6,6
Gypsies	409.723	1,8	532.250	2,5
Germans	119.436	0,5	60.088	0,3
Ukrainians	66.833	0,3	61.353	0,3
Russians	38.688	0,2	36.397	0,2
Turks	29.533	0,1	32.596	0,2
Tatars	24.649	0,1	24.137	0,1
Serbs	29.080	0,1	22.518	0,1
Slovakians	20.672	0,1	17.199	0,1
Bulgarians	9.935		8.092	
Croats	4.180		6.786	
Greeks	3.897		6.513	
Jews	9.107		5.870	
Czechs	5.800		3.938	
Poles	4.247		3.671	
Italians *			3.331	
Karaševans **	2.775			
Armenians	2.2'23		1.780	
Others	8.420		18.950	
Non declared	1.047		5.935	

* In the data for 1992 included in Others

** In 2002 the majority declared themselves as Croatians

In comparison with the census of 1992, in 2002 approximately a total of one million citizens were registered less, which was the result of a negative rate of population growth and emigration, not so much of minorities (only the number of Germans was reduced by half), as of Romanians, to countries of Western Europe and overseas countries.

The number of Gypsies was increased by approximately 135.000 and the number of Croatians by 2.700 citizens. In the case of Croatians it is not the question of effective increase, but of the fact that citizens who had previously declared themselves as Serbs, or who did not declare their nationality, as for example Karaševans, this time declared themselves as Croatians.

The number of Serbs was decreased from 29.408 to 22.518, that is to say by 24%, which was expected, as result of the old age of this population, due to many years of negative rate of population growth; from the remaining number more than 2000 Serbs declared that their native language was not Serbian.

The territorial distribution of the minorities is such that the majority of them are grouped. The greatest numbers of Hungarians inhabit central Ardeal (for example, in the counties of Harghita, and Covasna they present an absolute majority of the population); Germans inhabit Ardeal and Banat; the Russians, Turks and Tatars inhabit Dobrogea, Serbs live in Banat (counties of Arad, Timiș, Caraș-Severin and Mehedinți). The exception are the Gypsies, who do not have a center of dwelling (they have a king and czar in Sibiu), but they are unevenly and inconstantly distributed throughout the entire territory.

2. LEGAL PROTECTION NATIONAL MINORITIES

The national population structure was favorable for defining Romania in its first post war *Constitution*, in 1923, as a “national, united and indivisible state” (Article 1). The same definition remains in the *Constitution* of 1938. The communist *Constitutions* from 1948, 1952 and 1965 were in that sense evasive, whiles the *Constitution* from 1991 again defined Romania as “national sovereign and independent, united and indivisible state” (Article 1).

2.1 Regarding the basic freedoms and rights – Although according to the *Constitution*, Romania is defined as a “national state based on the unity of the Romanian nation” (Article 4); in the same Article it is precisely stated that “Romania is a common and indivisible homeland of all its citizens, without any discrimination on account of race nationality, ethnical origin, language, religion, sex, opinion, political adherence, property or social origin”. That generally means that the national minorities are according to the *Constitution* equal with the Romanian citizens who present the majority.

Apart from this the *Constitution* ensures that the country recognizes and guarantees rights of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious entity, respecting the principles of equality and nondiscrimination (Article 6).

According to the *Constitution*, all the citizens are equal before the law and public authorities, without any privileges and discriminations, and no one is above the law (Article 16). Romania interprets and realizes its *Constitutional* provisions in compliance with the *General Declaration on Human Rights*, respecting the international obligations, which it has taken on itself; if the internal regulation is in discrepancy with the international, the international regulation has supremacy (Article 20).

Romania is the signatory of numerous international documents, directly or indirectly related to the question of national minorities, of which we will mention: the *Charter of the United Nations* (1953), *Universal Declaration on*

Human Rights (UN 10.12.1948), *Convention on Defense of Human Rights and Basic Freedoms* (European Council, Rome, 04.11.1950), *Convention on the Battle Against Discrimination in the Field of Education* (UNESCO, Paris, 14.12.1960), *International Convention on the Elimination of all forms of Racial Discriminations* (UN, 21.12.1965), *International Treaty on Citizens and Political Freedoms* (UN, 16.12.1966), *International Treaty on Economic, Social and Cultural Rights* (UN, 16.12.1966), *Final documents of the Conference for European Security and Cooperation* (Helsinki, 01.08.1975; Madrid, 06.09.1983; Vienna, 19.01.1989; Copenhagen, 29.06.1990; etc.) *European Charter on Local Autonomy* (Saltsburg, 15.10.1985), *Paris Charter for the New Europe* (21.11.1990), *Outline of the Convention for the Protection of National Minorities* (01.02.1995). Romania is also a signatory of numerous bilateral agreements with various countries; agreements with bordering countries: Hungary, Bulgaria, former Yugoslavia, Ukraine, Russia, Poland, and Czechoslovakia encompass provisions in respect to national minorities.

In compliance with the *Criminal Law*, any public servant is to be persecuted, should he by his action limit the possibility of use or realization of the citizen's rights, or should he by his actions place the citizen in an inferior position on the grounds of nationality, race, sex or religious confessions.

So out of this results that the normative protection of the national minorities regarding the basic freedoms and rights is ensured.

2.2. Regarding personal freedoms - according to the *Constitution*, if anyone is taken into custody or arrested, he is to be immediately informed of the reasons for such an action in the language he understands (Article 26).

This Constitution regulation is not precise, because it does not provide the explicit right of the arrested party to have the reason for the arrest explained to him in his native tongue, irrespective of the fact whether he has knowledge of the Romanian language or not.

2.3. Regarding freedom of conscience – according to the *Constitution* the freedom of conscience, thought, opinions, religious beliefs, may not be restricted in any form whatsoever, if they expressed in a manner of tolerance and mutual respect. The religious confessions are organized in accordance with their own Statutes, in compliance with the law, and are autonomous. The State provides aid for the performance of religious confessions in the army, hospitals, jails, homes for the old and orphanages (Article 29). The *Constitution* recognizes the right of the members of religious confessions to, upon request and religious explanation, according to the conditions provided by law, be free from obligatory army service (Article 39).

In compliance with the *Criminal Law*, any disruption of the right to expression of religious confession, which is organized in a legal manner, and which respects the provisions of the Law, as well as the forcing of any person

to participate in the religious rituals of any religious confession, is liable to prosecution (Article 274, 318).

The legal procedure for the legalization of the existing religious confessions, as well as for the official registration of new confessions is provided by the law and is the same for all religious confessions.

2.4. Regarding freedom of expression – according to the *Constitution*, the freedom of expression of thoughts, opinions and religious beliefs, as well as creativity of all kinds, is untouchable under the condition that it is not defamatory to the country or the nation, that it does not encourage war, hatred (racial, social or religious) and that it is not amoral (Article 30).

2.5. Regarding rights to education – according to the *Constitution*, the right of national minorities to learn and be educated in their native language is guaranteed (Article 32).

According to the law, the members of the national minorities are guaranteed the right to education in their native language. Upon request, according to the specific needs of the community, groups, grades, sections or schools are organized, in which lectures are held in the language of the national minority. Learning Romanian is obligatory (Article 119). This right also applies to the public and university education, when a need arises for organizing special groups and sections for the education of teaching staff or cultural-art professionals of the national minorities (Article 123).

In the elementary grades (I-IV) the Romanian language is taught according to the specific programs and schoolbooks for the minorities; starting from V grade the Romanian language is taught according to the programs and schoolbooks for Romanian schools, the subjects Romanian History, and Romanian Geography are taught in Romanian and examinations, oral and written, are held in the same language. Upon request, starting from grade V, a subject History and Tradition of the specific national minority may be added, which is taught in the native language (Article 120).

The pupils who attend Romanian schools, upon request, are granted the possibility to learn their native language and literature as well as History and Tradition of the national minority (Article 121).

For the trade schools, in which the lectures are in Romanian the law provides the possibility to members of the national minorities to learn the professional terminology in their native language. The lectures are in the languages of the minorities – but it is obligatory that the pupils also learn the professional terminology in Romanian (Article 122).

Although the entrance and final exams are always in Romanian, in schools, that is to say in sections in which the lectures are in the languages of the national minorities, they may be in the language of the national minorities, with the exception of the subjects which are taught in Romanian; but

irrespective of the language in which the exams are taken, the native language and literature is an obligatory subject in these schools, on the entrance exams as well as on the final exams, and on maturity exams (Article 26).

The freedom of religious education is guaranteed, in compliance with the specific needs of each religious confession. This applies also to public schools, on all levels, including universities. Upon request of the recognized religious confession, according to the requirements, specific forms of religious lectures for the persons who will be performing or assisting in religious rituals is organized (*Constitution Article 32, Education Law Article 9*).

2.6. Regarding the passive and active voting rights – The members of the national minorities have the right to elect and be elected for all government bodies, including Parliament, as the highest legal body. They can realize their active rights as candidates of existing parties and organizations taking participation in the election, or as independent candidates.

In the *Constitution* an additional provision grants the right to national minority organizations to participate in the elections, as well as the right to, even if they do not obtain a sufficient number of votes for the Parliament, under conditions provided by the law, have one member in the Parliament each (Article 59).

The Law on the Election to the Chamber of Deputies and the Senate is restrictive, in the sense that the above mentioned right does not take into account national minority organizations which participated in the elections on common lists with other political party(s) or which did not obtain the number of votes equal to (or larger than) 5% of the average regular votes in the whole country, in order to have one representative elected (Article 4).

According to the *Law on Local Elections*, the national minority organizations can participate in the elections, assimilated into regular political formations (Article 105).

2.7. Regarding the use of language and script in official correspondence – *According to the Constitution and other regulations in this domain, the official language of the country is Romanian.*

The Law on Religious Communities provides that within each religious community communication can be in the language the community usually uses, or which is prescribed in the Statute, with the obligation that the religious community communicates with the authorities of the country in Romanian.

The Law on the Local Public Administration provides that in the administrative – territorial units, where the number of members of national minorities is significant, the decisions of the public authorities are communicated in Romanian as well as in the language of the respective national minority (Article 30).

According to the Law, the members of the national minorities who do not understand or speak Romanian, have the right to communicate with the local

authorities orally and in the written form, in their native tongue. When communicating in the written form, they are obliged to submit the official translation of the document in Romanian; when communicating orally, if the local authority representative does not know the language of the national minority, a translator will be provided (Article 54).

With the normative act on the use of regulations regarding the rights of national minority members to use their native language in local public administration, the maximal limits are precisely stated, which are provided by the *Law on Local Public Administration*. If the population of the national minority in an administrative-territorial unit surpasses 20% of the total population of the unit, the member of the respective minority has the right, not only to communicate with the local authorities in his native language, without a translator, but also to request an answer in his native language. In the municipalities in question the name of the places on road signs and names of institutions must be in both languages.

If the population of the national minority surpasses 33,3% in the administrative-territorial unit, then the councillors and committee members are allowed to, in the sessions of various bodies, speak in their native tongue, for the ones who do not know this language a translation will be provided.

The *Constitution* provides for the right of the national minority members, to in the case of need, have a translator as an intermediary in all phases of the legal process (Article 127). This right is provided for also in the *Criminal Law Procedure* as well as in the *Civil Law Procedures*.

According to the *Law on Use of Romanian Flag, Hymn and Seal with Coat of Arms*, no one in Romania is allowed to put up flags of other countries, except, as protocol requires, along with the Romanian flag, during visits of representatives of other countries and ceremonials.

3. INSTITUTIONAL PROTECTION OF NATIONAL MINORITIES

The protection and realization of rights of the national minority members is under the jurisdiction of a number of institutions, as follows:

3.1. Constitutional Court – Since human rights and freedoms are realized in compliance with the *Constitution*, for each violation of these rights the damaged side may place an appeal in front of the Constitutional Court. Since it is in the jurisdiction of the Constitutional Court to assess the compliance of the laws and other normative regulations with the *Constitution*, it is the task of the Constitutional Court to protect the minorities in the case when the regulations with their noncompliance to the *Constitution* infringe the rights of the national minorities.

3.2. Judicial Organs – The country is responsible for the implementation of its laws and regulations, so it is the responsibility of its judicial organs to annihilate actions, which in any way whatsoever infringe the rights of the national minorities. According to the *Constitution* each person may place an appeal to the judicial organs for the protection of his legal rights, freedoms and interests (Article 21).

3.3. Department for the Protection of National Minorities – This is a separate government organ, established in 1997 and under the direct control of the Prime minister, and its jurisdiction is to monitor the realization of the rights and freedoms of national minorities, to maintain a communication with the minorities, to support them in a material and legal manner, to design juridical projects which will improve the state in this area.

Within the Department there is a separate body named the National Office for the Integrating of Gypsies. The Department has a counselling body, and the Council for National Minorities, through which direct communication with minority organizations is established.

3.4. National Minority Organizations – Although these organizations are in the position of users, they can, and are obliged to, as legal entities, protect the rights and freedoms of their members, by legal means.

4. THE EFFECTIVE REALIZATION OF NATIONAL MINORITIES RIGHTS

4.1. The rights regarding to the freedoms of conscience – According to the last census the state regarding religious confessions of Romanians is as follows:

	1992		2002	
	Number	%	Number	%
Total	22.810.035*	100	21.698.181	100
Orthodox	19.802.389	86,8	18.806.428	86,7
Roman Catholics	1.161.942	5,0	1.028.401	4,7
Greek – Catholics	223.327	1,0	195.481	0,9
Reformed	802.454	3,5	698.550	3,2
Pentecostals	220.824	1,0	330.486	1,5
Baptists	109.462	0,5	129.937	0,6
Adventists	77.546	0,3	97.041	0,4
Unitarians	76.708	0,3	66.846	0,3
Muslims	55.928	0,2	67.566	0,3

NATIONAL MINORITIES IN ROMANIA

Christians of Gospel	49.963	0,2	46.029	0,2
Old Rite Christians	28.141	0,1	39.485	0,2
Evangelic C.A. (of Augustan Confession)	39.119	0,2	26.194	0,1
Evangelic S.P. (Synodo-Presbyterian)	21.121	0,1	11.203	
Mosaic	9.670		6.179	
Orthodox of the Julian Calendar **	32.228	0,1		
Armenians ***	2.023			
Others	21.121	0,1	106.758	0,5
Atheists	34.645	0,2	23.105	0,1
Non confessed	8.139		18.492	0,1

* The data is taken from official lists of the Ministry of Religions. Curiously these figures only slightly differ from the ones the Government published relating to data on the national structure.

** Here only members of the Metropolitan of Slatioara are reflected, while the Serbs and Ukrainians, although they go by the Julian calendar, are placed in the column under Orthodox. In the data for the year 2002 they are included in the column Others.

*** In the data for the year 2002 they are included in the column Others.

Although the number of members of various religious groups differs, all the religious confessions recognized by the law have equal rights.

The country ensures the freedom and conditions for the performing of religious rituals to all religious confessions.

Religious confessions also enjoy a certain material support:

- The persons performing religious rituals, as well as the assistants, of all religious confessions, receive a part of their salary from the State, and the other part from the revenue of the respective religious group.
- The buildings in which rituals are performed as well as the land, on which they are placed, are excluded from taxation.
- The religious groups have a monopoly on the production of religious articles (including candles) and books.
- In compliance with the *Law on Real-estate Funds*, the land each community church possessed has been returned, if the land was under 10 hectares; church municipalities which possessed more than 10 hectares had 10 hectares returned to them; each monastery had its land returned to it if it possessed less than 50 hectares; monasteries which possessed more than 50 hectares had 50 hectares returned to them.
- All the employees working for a religious confession are included in the State pension fund.
- On the base of documented requests the State grants from time to time material aid for the maintenance, repair and construction of places of worship.

The members of the national minorities also enjoy all these privileges within the religious confessions they belong to.

When we examine the participation of the national minorities in the structure of each religious confession the following is observed:

Hungarians are largely members of the confession to the Reformed (around 50% of the Hungarian population in Romania). A part of them are Roman Catholics (43%), and as such are under the catholic hierarchy of the territory they belong to. Although few in number Unitarians (Bishopric of Cluj) consists of only Hungarians (5%). The Hungarians have 2.150 churches and temples and around 1.700 priests or pastors, according to the specifics of each religious confession.

Germans in Ardeal are mostly Lutherans, and in Banat the majority of them are Roman Catholics and a smaller number are Lutherans. Due to their emigration hundreds of churches have been left without parishioners.

Ukrainians have until the year 1948 been Greek Catholics, and now the majority of them are Orthodox and included in the Romanian Orthodox Church. They have around 20 parish churches and 30 priests; not long ago they have opened-up one monastery. There is a certain number of Ukrainians who are Roman Catholics or Greek Catholics (around 10% of the Ukrainian population in Romania).

Russians – Lippovans belong to the religious confession Old Rite Christians, they are independent, on the level of metropolitan, with the center in Braila. They have 59 churches, 3 monasteries and 37 priests.

Turks and Tatars are all Muslims. The center of their religious confession is in Constanța. They have 80 mosques and 35 imams.

Serbs are Orthodox. They belong to the Serbian Orthodox Church, that is to say the Bishopric of Timișoara. In the last years they have established 3 new parishes in the places they had moved to after the Second World War. They have 53 parish churches with 36 priests and 5 monasteries with 5 monks.

Jews are members of the religious confession of Moses, with the center in Bucharest, where the chief Rabbi resides. Regardless of their small number they have 124 synagogues, temples or places of worship in the 30 current counties. Due to their small number and elderly population, they with great effort, and aid of the State and abroad, maintain their cultural sites and graveyards, also ten restaurants with kosher food and four homes for the old. Having in mind the regulation that no religious ritual can be performed without the presence of at least 10 adult males, when needed they provide transport, so

that in places where this number is not secured, rituals, for example funerals, can be performed. It is then evident that the remaining Jews in Romania, all elderly, bear great sacrifices in order to fulfil the vows of their forefathers.

Slovaks are Evangelists or Roman Catholics.

Bulgarians have two centers: one Orthodox in Bucharest and the other Roman Catholic in Banat.

Croats are Roman Catholics. They are grouped mainly in around ten villages in Banat. They have 7 churches and 3 priests from their order.

Armenians A small number of them are Catholics and the majority of them belong to the Armenian Church (with the center in Echimiadzin), that is to say its Bishopric in Bucharest, which in Romania has 10 parishes, mainly in cities, with 14 churches, 2 monasteries and 3 priests.

The position of **Gypsies** is specific, regarding this as other matters. They mainly declare themselves as members of the religious confession in who's surroundings they live in, not shrinking form declaring themselves as members of another religious confession in other surroundings. Since they inhabit mainly areas where Orthodox live the majority of Gypsies declare themselves as Orthodox. Due to the influence form abroad and especially because of material aid coming form there, a significant number of Gypsies are now in neo-protestant religious confessions (mainly Baptists and Pentecostals).

Employees needed for the functioning of religious life are secured through the education system. The appropriate level of education is recognized to Schools for Theology in respect with the same level of education in public schools. Apart from schools in Romanian language, their are also school in languages of the national minorities as follows:

The school in which lectures are given in Hungarian are: Roman Catholic School for Theology, secondary school level, (Alba Iulia, Miercurea Ciuc, Satu Mare, Oradea, Timișoara, Carei, Cluj–Napoca); Theology School for the Reformed, secondary school level, (Cluj-Napoca, Oradea, Zalău, Satu Mare, Aiud, Sfântu Gheorghe); Theology School of Adventists, secondary school level, (Cluj –Napoca) it has one class for pupils who have lectures in Hungarian; Theology School of Unitarians, secondary school level, (Cluj-Napoca, Cristuru Secuiesc), post secondary Theology School for the Reformed for the Medical Profession (Târgu Mureș, Cluj–Napoca), Roman Catholic Institute of Theology, university level, (Alba- Iulia, on universities and in cities of Timișoara, Oradea, Satu Mare), Evangelist Institute of Theology, university level (Cluj-Napoca).

The schools in which lectures are held in German: Within the Evangelist Institute for Theology, university level, in Cluj-Napoca their is a class for pupils who have lectures in German.

The schools for Turk and Tatar Muslims: Muslim Theological Schools for Pedagogy is of the secondary level in Megidia.

Other national minorities are of too few in number to have continued need for the education of their young and to be able to secure a sufficient number of pupils, so compromise solutions are found: Serbs educate their candidates in the Orthodox schools in Romania and Serbia, Armenians in Armenia, Jews in Israel etc.

The Russians – Lippovans are specific regarding their Old Rite Christians religious confession.

They do not educate the ones who perform and assist in the religious rituals but rather have courses for them within the church, organized by uneducated priests during school holidays.

Apart from education processes conducted in schools national minorities also have periodicals pertaining to questions of their religious confessions:

- In Hungarian: 1 weekly and 1 magazine publish by the Roman Catholic Church; 4 magazines published by the Reformed Church; 2 magazines published by the Unitarian Church; 1 magazine published by the Evangelistic Church.
- In German: 1 magazine published by the Evangelistic Church.
- In Serbian: 1 magazine published within the Bishoprics of Timișoara by the Serbian Orthodox Church
- In Hebrew: a magazine is issued two times a week in Romanian and Hebrew in Bucharest.

Generally speaking all national minorities in action realize the right of freedom of conscience.

This right is not infringed by the fact that the religious confessions have contact with the international religious groups, neither by the fact that most of them are under the rule of centres, which are outside the Romanian borders.

4.2. Rights Referring to Education

This right depends firstly of the number of pupils which the respective national minority has at the beginning of the school year. In other words the problem is not in the realization of the right to education in the native language, but in the securing of the number of pupils.

A small number of pupils is a result of many years of negative birth rate; the result of immigrations of whole families from Romania; the result of mixed marriages, from which the majority of children are sent to Romanian schools; and at last the result of territorial distribution in city centres, why it becomes more practical for the children to go to the nearest Romanian school, than to go by city busses to the nearest school of the national minority.

How favourable a position the State has regarding this issue can be seen by the fact that, for the lower grades, if needed, simultaneous lectures are possible for all four grades, if the total number of pupils is not less than 7.

A small number of pupils in each grade brings difficulties regarding the publication of schoolbooks, and a constant uneasiness at the beginning of each school year regarding the fact will there be a minimal number of pupils needed. This presents a constant threat of the possibility that the children will be placed in other classes or even schools, which is an undesired perturbation in the education process. Due to this fact the securing of performance of schools, which are on the border line between to be or not to be, has its advantages. They are maximal endurance in learning of the native language. There are also disadvantages – uncertainties of whether the school will survive or not, lessens the chances of parents enrolling their children in class or section of the national minority, and so the school grows weaker due to subjective reasons.

According to the specific needs of each national minority, three types of studies in the native language are organized as follows:

- The education structures in which lectures are in the native language
- Educational structures in which the lectures are partially in the native language
- Educational structures in which lectures are in Romanian, but the native language is studied as a subject

4.2.1. The education structures in which lectures are in the native languages

In the Czech language lectures are held in three elementary schools (I-IV), with just 159 pupils. The majority of pupils of Czech nationality attend Romanian schools and study their native language as a regular school subject. The teachers are educated in the Slovakian High School in Nădlac, and on the base of an international agreement there are also teachers from the Czech Republic.

In the German language lectures are held in a large number of schools and sections in 15 counties. The school and nursery teachers are educated in the Pedagogical Institute, of university level, in Sibiu and the professors in appropriate universities in the city universities of Bucharest, Timișoara, Cluj-Napoca, Iași, and Sibiu. If there is a possibility, the learning of German philology is secured in other university centers as well. In Mediaș a Center for Constant Education in the German language is established. It secures the education of the professors that are required and also attends to their professional enhancement through courses in Germany and Austria.

Numerous university centres, not just for social studies, but also for natural sciences, have special faculties or sections where pupils study German.

Based on the international agreement a certain number of professors from Germany work in Romania.

In compliance with their number, the Hungarian nationality has a highly developed network, 2.388 schools and sections with 12.473 teachers and professors, 193.635 pupils and 19.654, students. There is no public university, but in around 8 cities there are groups at the university in which lectures are held in Hungarian and certain subjects taught in Hungarian. For university studies the candidates also go to Hungary. The Hungarians are the only national minority whose school system is not at the lowest pupil level needed to keep working.

In Serbian lectures are held in Arad, Caraş-Severin, Mehedinți, Timiș, mainly in lower grades, and even there with the exception of Timișoara, the number of pupils is very small, so that teaching is performed parallelly and simultaneously in 4 grades. In two village schools lectures are held in Serbian in the V-VIII grade and in Timișoara there is a Serbian High School.

The teaching staff for the nursery schools and lower grades is educated in Romanian institutions for pedagogical studies, and currently there are more teachers than required educated in Serbia. The professors are educated at the appropriate universities, at Departments for Serbian and Croatian Language at the University of Bucharest and Timișoara.

The number of pupils of Serbian nationality in Romanian schools by far surpasses the number of those who attend schools where lectures are in their native tongue. The Serbian language as a subject in Romanian schools has been initiated, but has not developed, nor has it given tangible results.

In Slovakian there are schools and sections in four counties (Arad, Bihor, Sălaj, Timiș). In Nădlac and Budoï there are Slovak High Schools.

The teaching staff for the lower grades is educated in the High School in Nădlac, and professors – at the Department for Slovakian Language and Literature at the University of Bucharest. For university studies the candidates go to the Czech and Slovak Republic. A small number of Slovaks attend Romanian schools, and in them they study their native language and literature.

Lectures in Ukrainian are organized in 5 counties; in the city of Sighetu Marmației there is a high school; nevertheless the largest number of Ukrainian pupils attends Romanian schools and study their native language as a subject.

The teaching staff is educated in Romanian schools for pedagogy or in Ukraine.

In counties an adequate number of inspectors, methodologists and part time substitutions have been assigned from teaching staff of schools and sections held in native languages, for the monitoring and management of lectures in native languages,

The lectures are also improved by regular contacts of teaching staff and pupils with teaching staff and pupils from the native countries.

Apart from the traditional Olympiads on the subject of native language held in Romania the pupils participate in open competitions and other forms of out of school activities in native countries.

4.2.2. Educational structures in which the lectures are partially in the native language

This form of education must be viewed as transitional. Up to the sixties there were schools in Croatian and Turkish. Due to the fact that they stopped working, and that the lectures were held in Romanian for three decades, even though the majority of pupils were of the respective national minorities, it was impossible to start again to lecture entirely in the native language.

The Croatians are grouped in seven villages of the Caraș-Severin county and the majority of pupils attend Romanian schools and study their native language as a subject. There are nurseries in which Croatian is spoken for just 36 children, and there are primary graded with just 30 pupils in which lectures are held in Croatian. In the high school in Karaševo around 40% of the subjects are taught in Croatian for just 48 pupils.

As for the teaching staff it has for decades been educated in Serbian and Romanian schools; of recent times the candidates study in Croatia.

The similar case is with the Turkish and Tatar national minority. For them also after 1990 schools have been opened with a part of lectures held in the native languages. The schools are grouped in Dobrogea and have 3.133 pupils, out of which a certain number attend Romanian schools and study their native language as a subject.

The teaching staff is educated in the Institute for Catechises and Pedagogy in Megidia. and at the Department for Turkish at the University of Bucharest and Constanța.

4.2.3. Educational structures in which lectures are in Romanian but the native language is studied as a subject

Apart from the study of native language in Romanian schools, previously mentioned for the Czech, Croat, German, Hungarian, Serbian, Slovak, Turkish and Ukrainian national minority, there are minorities which do not have lectures in their language, but the native language is just studied as a school subject.

That form of education is held for Armenians (in Bucharest), for Bulgarians (a number of villages in the county of Timiș and one High School in

Bucharest), for Greeks (in Bucharest, Constanța, Babadag and Tulcea), for Italians (county of Tulcea), for Poles (county of Suceava and Constanța), for Russians –Lippovans (in the counties Tulcea, Brăila, Suceava and Constanța).

There are special problems for the learning of the language of the Gypsies.

First of all, this language has only recently been standardized on the international level, but this is mainly known to intellectuals (who are among the Gypsies for now few) and among the common Gypsies it is not respected, and their language is dispersed into numerous dialects.

On the other hand, the number of Gypsies is not only large (they are the second most numerous national minority in Romania), but their birth rate is still far above the average, so that there is a large number of Gypsy school children. Still due to their mentality and way of life the Gypsy children do not attend school regularly.

The foundation for the study of the Romany language was formed in 1990 by the opening up of special classes for Gypsies, in specialized schools for teachers, in the cities Bucharest, Târgu Mureș and Bacău. In 1992 the Romany language was introduced into two schools experimentally, and now it is studied throughout the territory.

In the Ministry of Education an inspector for the language of the Gypsies was assigned in 1998, and from then on – one inspector was assigned for each county.

A number of schoolbooks have been published.

A long-term program has been designed, with the help of the government, nongovernmental organizations and various international organizations for the enhancement of teaching of the Romany language. Bulletins are published which reflect the state of work in the educational system regarding Gypsies. An attempt is made in the forming of Gypsy intellectuals. Meetings and joint activities of the Gypsy pupils and pupils of other nationalities is organized. However, the success of this program will depend on the success of the general program of involving of the Gypsies in social life.

A great difficulty is encountered in all forms of study of the native languages, and even more when we have in mind other subjects taught in the native language, due to lack of schoolbooks. The number of pupils (excluding Hungarians) is generally small, so that the publication of a certain small number of books is not economical. This is even more so due to the fact that the educational system is in the process of change, so that from time to time, there are substantial changes in the program, and so unused books have to be substituted. Due to this fact, when need arises, sometimes old schoolbooks, now already outdated and inadequate must be used, but more often, with the approval of the Ministry, schoolbooks imported from native countries are used.

Statistical data (data for the schools year 1999/2000*)

* The last school generation for which complete data has been published

4.2.3.1. Pre-university education in Romania, according to language

Language	Total number of schools and sections	%	Total number of pupils	%
Hungarian	2.388	8,7	193.635	4,7
German	277	1,0	18.353	0,4
Slovakian	35	0,1	1.323	
Serb	31	0,1	1.066	
Ukrainian	18	0,06	892	
Czech	3		159	
Croatian	3		114	
TOTAL IN COUNTRY	27.512	100	4.125.762	100
TOTAL FOR MINORITIES	2.755	10,0	215.542	5,2

Network of pre university education, according to language

1. Preschool Institutions

Language	School	Section	Total	%	Total no. of pupils	%
Hungarian	645	491	1.136	8,8	40.207	6,5
German	19	131	150	1,1	5.467	0,9
Ukrainian	5	5	10		282	
Serb	6	9	15	0,1	287	
Slovakian	10		10		319	
Czech	2		2		59	
Croatian	1	1	2		36	
TOTAL IN COUNTRY	12.194	637	12.831	100	616.313	100
TOTAL FOR MINORITIES	688	637	1.325	10,3	46.657	7,5

2. Lower grades (I-IV)

Language	School	Section	Total	%	Total no. of pupils	%
Hungarian	306	162	468	7,9	59.982	5,0
German	1	28	29	0,4	5.420	
Ukrainian					322	
Serb	1	2	3		219	
Slovakian	13	5	18	0,3	453	
Czech	1		1		100	
Croatian	1		1		30	
TOTAL IN COUNTRY	5.663	197	5.860	100	1.189.058	100
TOTAL FOR MINORITIES	323	197	520	8,8	66.526	5,6

3. Junior High School (V-VIII)

Language	School	Section	Total	%	Total no. of pupils	%
Hungarian	267	365	632	8,7	59.175	4,5
German	2	70	72	0,9	4.961	0,4
Ukrainian	7		7	0,1	189	
Serb		12	12	0,1	156	
Slovakian	4	1	5		360	
TOTAL IN COUNTRY	6.846	448	7.294	100	1.309.081	100
TOTAL FOR MINORITIES	280	448	728	9,9	64.841	5,0

4. High School

Language	School	Section	Total	%	Total no. of pupils	%
Hungarian	56	77	133	9,9	26.430	3,8
German	6	18	24	1,8	2.388	0,4
Ukrainian		1	1		99	
Serb	1		1		404	
Slovakian	2		2	0,1	191	
Croatian					48	
TOTAL IN COUNTRY	1.244	96	1.340	100	694.376	100
TOTAL FOR MINORITIES	63	96	161	12,0	29.560	4,3

4.2.3.2. Number of pupils of Romanian schools who studies their native language as a school subject in school year 1999/2000

Language	No. of schools	No. of pupils	I-IV grade	V-VIII	IX-XIII	Total of no. teaching staff
Hungarian	24	2.845	1.105	1.194	546	39
Ukrainian	81	8.132	3.861	4.017	254	82
Russian	16	1.630	863	761	6	29
Turkish	54	3.133	1.702	1.289	142	48
Polish	10	397	171	198	28	13
Bulgarian	4	478	171	160	147	17
Serbian	11	381	120	261		14
Slovakian	3	88	30	50	8	4
Czech	6	123	10	113		6
Croatian	7	539	241	298		10
Greek	4	193	98	88	7	4
Gypsy	210	4.200	2.800	1.340	60	60
Armenian	1	11	4	7		1
Italian	1	19		19		1
German	9	519	351	168		28
TOTAL	441	22.688	11.527	9.963	1.198	356

4.3. Participation in the political life of the country

All the national minorities in Romania are organized into ethnical organizations; although any Romanian citizen can be a member of these organizations, with the exception of the Jewish one, the majority of members are, of course, members of the respective national minority. The Statutes of the some of the organizations (for example German) are restrictive, in a manner that,.. members of other nationalities, if they become members, do not have passive or active voting rights.

The minority organizations are registered as legal entities, they conduct themselves in compliance with their Statute and have a network of branches. Their main objective it to unite the Romanian citizens, members of a certain national minority, in the aim of their correct and harmonious integration into the modern society; uniting of efforts and concentration of free ideas, to secure for the respective national minority, all rights and legal interests of social, cultural, educational, economical and humanitarian nature.

They have their symbols and participate in elections the same way political parties do, but they have a privileged position and obtain a right to a place in the Parliament under much more favourable conditions than political parties do.

A deficiency of this is that the State considers as the representative of the respective national minority just one of the organization, the one that secures a place in Parliament; the State finances the national minority just through this organization, and expects to solve all the problems of the national minority through it. In reality, sometimes the management of the organizations is incompetent to solve many of the specific issues (for example, in the field of religious confession, education, etc.), so that with the State funds it finances marginal issues and fails to address the important ones.

Also the question whether the organization receives the funds from the State for the organization of for the national minority remains unsolved. There are certain cases when the organizations act discriminatorily towards some of the members or their national minority, stating the fact that they are not official members of this organization. Unfortunately the fact that this issue is not precisely defined, gives place for misuse.

The privileged position of appearance of the one granting funds tempts the minority organizations to involve themselves in fields of other legal entities and in that way becoming a competitor and obstinate partner rather than a honorable associate.

In compliance with the *Law on Political Parties* no Romanian citizen can be a member of two political parties (Article 8). In respect to this the national minorities have a privileged position: although they are regarding elections assimilated into political parties, the *Law* grants the right to members of the minority organizations, even when the organization participates in the elections, to also be members one of the political parties.

The summery of the political activities of the national minorities is as follows:

Hungarians. The organization of the Hungarian national minority, named the Democratic Union of Magyars of Romania, was ideologically founded on the 25th of December 1989 and registered on the 28th of January 1990, with a headquarters in Bucharest.

Contrary to other national minority organizations, which declare themselves as apolitical, the Democratic Union of Magyars in Romania is a political organization of the right center. It consists of: 25 county organizations, 6 affiliate Magyar organizations (Magyar Cultural Union in Transylvania, Association »Bolyai«, State Union of Associations of Magyar Students, the Union of Magyar Businessmen in Romania, the Union of Magyar Heads of Households in Romania, Union of Magyar Workers in Romania) 3 parties

(Magyar Demo Christian Party of Romania, Party of the Magyar Small Land Owners of Romania, Union of Magyar Youth Organizations) and 3 movements known under the name Hungarian Platform in Ardeal (Magyar Initiative in Ardeal, Liberal Circle and Platform of Christian National Liberal Unity).

On all elections the a fore mentioned Democratic Union of Magyars of Romania, had candidates run for President, for Senate and Chamber of Deputies, and they have regularly secured a significant number of places in both Houses of Parliament (once it even came just behind the leading political party). It also participated in various right oriented political coalitions and with them took part in the Government; it cooperated and is cooperating with formations in the Government, which were formerly their opposition, always maximally striving to represent the interest of the Hungarian national minority.

The Union was very successful also on every local election, securing leading positions in numerous county centers.

Holding high regard for the position and reputation of their party, they sacrificed individuals: László Tökes, who regardless of his great merit became unrealistic, as well as the radical movement of Toró Tibor.

Apart from the Democratic Union of Magyars have a number of political parties organized in a standard fashion which are: the Independent Democratic Party of Magyars in Romania, with the headquarters in Târgu Mureş, Party of Magyar Heads of Households in Romania, with the headquarters in Miercurea-Ciuc; Magyar Demo Christian Party in Romania, with the headquarters in Cluj-Napoca; Magyar Independent Party.

As the only national minority able to, independently, in a regular fashion, secure places in the Parliament, the Hungarians have found themselves in a special position. In comparison to them the term *small minorities* is commonly used for other minorities. So that while the Magyars have their own Parliament Members Club all the rest of the minorities have a single Parliament Members Club for all of them.

Albanians. The Cultural Union of Albanians in Romania has been founded on the 6th of July 1990, and is considered to be a descendent of the cultural associations of Albanians in Romania, which existed in the period from 1880-1953. The Cultural Union of Albanians in Romania had from the very beginning representatives in the Council for National Minorities, it publishes its own newspapers; in order to avoid political implications, rejected to send a representative to the Parliament.

After 1995 another organization for the Albanian minority was established: the Union »Albanian League«, with headquarters in Craiova, which since the last elections (2000), has a representative in the Chamber of Deputies.

Bulgarians. As they have two centers, one in Bucharest, and the other in Banat, the Bulgarians have two minority organizations: one is The Bulgarian

Community “Bratstvo”, with the headquarters in Bucharest, founded on the 8th of February 1990, and the other – The Bulgarian Union from Banat, with headhunters in Timișoara, founded also in 1990.

The Bulgarian Community “Bratstvo”, publishes its newspaper, has branches in 14 counties, and is affiliated to the International Associations of Bulgarians in Sofia.

The Bulgarian Union from Banat, although in its name it has a term of regional character, operates with more success, so that they have their representative in the current legislation. It publishes its newspaper in Timișoara.

Greeks. On the 28th of December 1989, the Foundation Board initiated the founding of the Hellenic Union of Romania, the founding act was approved by the Assembly held on the 6th of February 1990; headquarters are in Bucharest. The Union consists of 16 territorial branches, publishes their newspaper, and has a representative in the Chamber of Deputies and the Council for National Minorities.

Jews are traditionally organized in their municipalities and synagogues they belong to, and do not have any other forms of organizations except religious ones, which represent them in civil issues. Although few in number they have 80 communities in 30 counties. The legal representative is the Federation of the Jewish Communities of Romania, with the headquarters in Bucharest, which has a representative in the Council for National Minorities. The Federation of the Jewish Communities of Romania publishes their own newspaper and is a member of the major International Jewish Organizations: Joint, Jewish World Congress, European Rabbi Confederation, etc.

Armenians. The Union of Armenians of Romania was founded in February 1990, with the headquarters in Bucharest. The Armenian national organization, always few in number, is traditionally persistent and very active in the political life of Romania; it publishes its own newspapers, has a representative in the Chamber of Deputies and Council for National Minorities. The Armenian representative has for many years been heading the Parliament Members Club for small national minorities in the Romanian Parliament.

Germans. Distributed throughout the whole territory of Romania, the Germans are organized in 130 local organizations, grouped in 5 district associations, which form the Democratic Forum of Germans of Romania, with the headquarters in Sibiu. Although in the population of Romania there are two classes of German population – Germans from Ardeal (german Sachsen), who have inhabited Transylvania from the 16th century, and Germans from Banat (Schwaben) who have immigrated to Banat in the 18th century – together they act successfully, publish a newspaper, and have representatives in the Chamber of Deputies, Council for National Minorities and municipality administrations.

Poles. Traditional organization "Dom Polski" was founded in 1903 and remained in function until 1953. The current Community of the Poles Unions of Romania "Dom Polski" was founded on the 30th of August 1991 and encompasses 18 territorial branches. Although according to its Statute apolitical, the Community of the Poles Unions has from time to time participated in the elections on common lists with other parties; they publish their newspaper, and have representatives in the Chamber of Deputies, Council for National Minorities and municipality administrations.

Russians. The Union of the Russians – Lippovans of Romania was founded on the 12th of February 1990 with the headquarters in Bucharest; it has 28 branches on the territories of Dobrogea and Moldavia. They publish their newspaper, and have representatives in the Chamber of Deputies, Council for National Minorities and municipality administrations.

Slovaks and Czechs. The Democratic Union of the Slovaks and Czechs of Romania was founded on the 4th of January 1990, with a headquarters in Nădlak. The break up of Czechoslovakia did not cause the breakup of the Union, as was the case with Serbs and Croats. The Union publishes its newspaper and has representatives in the Chamber of Deputies, Council for National Minorities, as well as in municipality administrations.

Serbs. Traditionally, the Serbs in Romania did not participate in the political life: Their only political party, State Serbian National Party (1934-1938) was a marginal entity, and the post-war participation in the political life, although they even had representatives in the Parliament, was of formal nature. On the 27th of December 1989 in Timișoara the Democratic Union of Serbs and Karașevans of Romania was founded. After the break up of Yugoslavia, due to the fact that the Serbs gravitated to Serbia and the Karașevans more and more to Croatia, disputes arose within the Union, which resulted in gradual separation of the Karașevans, after which in 1997 the Statute and name was changed to Union of Serbs of Romania. The Union publishes its newspaper and has representatives in the Chamber of Deputies, Council for National Minorities as well as in municipality administration; it is a member of numerous Serbian international organizations.

Italians. Few in number and distributed on a large territory, the Italians are organized in 10 district communities, which are united into a Italian Community of Romania, founded on the 11th of August 1993, with the headquarters in Bucharest, through which they publish their newspaper. They have a representative in the Chamber of Deputies and Council for National Minorities.

Tatars. On the 29th of December 1989 the Democratic Union of the Turk-Muslims of Romania was founded, which was to encompass the Tatars and Turks. Because internal disputes arose, one group of Turks left the organization and founded a separate Democratic Turkish Union of Romania; at that time (July 1990) the Statute was changed and the organization changed its name to the

Democratic Union of the Turk-Muslim Tatars of Romania. At the beginning the headquarters were in Bucharest, then later on the headquarters were transferred to Constanța. The Tatars publish their own newspaper, and have representatives in the Chamber of Deputies, Council for National Minorities and municipality administrations.

Turks. By separating themselves from the Turk-Tatar organization, the Turks founded the Democratic Turkish Union of Romania in 1990, with the headquarters in Constanța. The Union publishes its newspaper and has representatives in the Chamber of Deputies, Council for National Minorities and municipality administrations.

Ukrainians. The Union of Ukrainians of Romania was founded on the 29th of December, 1989 in Bucharest. The Union has 5 district organizations, which each encompass a number of county organizations; it is a member of the World Congress of Independent Ukrainians with the headquarters in Toronto (Canada) and has realized a cooperation with some fifteen organizations worldwide, tightly cooperating with the: "Association of Ukraine" from their native country. They publish two newspapers, and have representatives in the Chamber of Deputies, Council for National Minorities and municipality administrations.

Croatians. Parallel to the founding of the Democratic Union of Serbs and Karașevans in Timișoara, attempts were made to form the Community of Croats in Romania, with the headquarters in Karađevo. The efforts bore fruit, especially in 1997, when the Democratic Union of Serbs and Karașevans was transformed into the Union of Serbs, so that the Karașevans (which is a determiner for location, not nationality) entered the Community of the Croats, which now has its newspaper and representatives in the Chamber of Deputies, Council for National Minorities and municipality administrations.

In the meantime another organization has been registered which in its name contains the word Croats, with the headquarters in Lupak. It acted as a rival to the Union of Croats of Romania; however, it remained in their shadow.

Gypsies. As well as in other instances the Gypsies present a specific case. Having in mind their number, the Gypsies could be a significant factor on the political scene, however because they are dispersed throughout the territory they are not.

The following political parties have been organized using the term and in the name of Gypsies (Romany): The Democratic Party of Independent Gypsies, with the headquarters in Sfântu Gheorghe, the Romany (Gypsy) Party of Romania, with the headquarters in Sibiu, the Independent Democratic Union of Gypsies of Romania, with the headquarters in Cluj-Napoca, Romany Demo-Christian Party of Romania, with the headquarters in Cluj – Napoca, the Progressive Party of Romany Tinsmiths, with the headquarters in Bucharest, the Party of Romany Nomads and Coppersmiths, with the headquarters in Târgu-Jiu, the Party of Romany Brick Makers, with the headquarters in Segarcea, the Social Democratic Party with the headquarters in Bucharest, the United Party of Romany Mine

Diggers and Musicians. Apart from this, the Republican Party (prior to the fusion with the Romany Social Democrat Party focused greater attention on the Gypsies, so that two newspapers were published in their language.

In order to overcome the division into small groups, the Gypsies have organized themselves in ethnical unions, but unfortunately the deficiencies, which were present in the political parties, remained. That is how the following were formed: Ethnical Federation of Gypsies, founded on the 28.05.1990 and the Romany (Gypsy) Party, founded on the 20.07.1990, both with the headquarters in Bucharest; parallel to this on the 04.06.1991 the Joint Union of Gypsies in Romania was founded, with the headquarters in Târgu-Jiu, really the former Democratic Union of Gypsies in Romania, founded on the 13.02.1990. According to the confirmation of the heads of the Joint Union of Gypsies the following political formations have joined them: the Independent Democratic Union of Gypsies in Romania, the Demo Christian Union of Gypsies of Banat, the Party of Gypsy Tinsmiths, the Party of Romany Nomads and Coppersmiths in Romania, Syndicate of Gypsies in Romania, Union of Independent Romany Syndicates from the county Covasna, the Romany and Gypsy Union from Târgu Mureş, Demo Christian Party of Gypsies in Romania, The Cultural Union of Gypsies from Maramureş and the Union for the Protection of Romany Rights in Romania.

The organizations of Gypsies have rightly chosen the federal organization principle, in compliance with their specific situation. The Gypsy population combines the territorial principle with the professional principle, uniting the Gypsy associations of (musicians, coppersmiths, tinsmiths etc.) and Gypsies who are different in respect of the language, ones who use other languages (Hungarian, Turkish, etc.) as native.

All of the three have proclaimed similar objectives: endeavours made for the preservation of languages, culture, vital interests and rights (individual and collective); support of the integration of Gypsies in all domains of social life; strive for recognition of Gypsies as a national minority equal in rights with the other minorities, and even with the Romanian majority, not only in written legislation, but also in effect; gradual education of the Gypsy community to be able to proportionally participate in the Local administrative bodies.

The Romany (Gypsy) Party of Romania publishes its newspaper. The Gypsies have a representative in the Parliament, their intellectuals although few in number, support the program for social integration of their people, although it is considered that they will succeed in this only with the younger generations.

In the *Opinion* for Romania given by the Consultation Board for the Outline of Convention on National Minorities Protection (Saltsburg, 06.04.2001), after giving observations on endeavours of the Romanian Government and effective progress in the protection of national minorities, have given the largest number of remarks regarding the position of the Gypsies, and the largest number of suggestions for the improvement of their position.

4.4. Cultural life and media

The State of Romanian supports the cultural life and informing of the members of the national minorities by means of media, materially and through funds, financing their publications, theatres, folk ensembles, museums, libraries and various cultural manifestations.

The most important publications of the national minorities published through government funding:

Title	Language	Publisher
Művelődés	Hungarian	Democratic Union of Magyars of Romania
A Hét	Hungarian	Democratic Union of Magyars of Romania
Közoktatás	Hungarian	Democratic Union of Magyars of Romania
Hivatalos Közlönye	Hungarian	Democratic Union of Magyars of Romania
Hermanstadter Zeitung	German	Democratic Forum of Germans of Romania
Karpaten Rundschau	German	Democratic Forum of Germans of Romania
Neue Literatur	German	Democratic Forum of Germans of Romania
Naše Snahy	Slovakian	Democratic Union of the Slovaks and Czechs
Literaturna Miselj	Bulgarian	Bulgarian Union from Banat
Naša glas	Bulgarian	Bulgarian Union from Banat
Българска зорница*	Bulgarian	The Bulgarian Community “Bratstvo
Наша реч	Serbian	Union of the Serbs of Romania
Књижевни живот	Serbian	Union of the Serbs of Romania
Zori*	Russian	Union of the Russians – Lippovans of Romania
Hrvatska grančica	Croatian	Community of the Croats of Romania
Karadeniz*	Tatar	Democratic Union of the Turk-Muslim Tatars
Elpis*	Greek	Hellenic Union of Romania
Hak Ses*	Turkish	Democratic Turkish Union of Romania
Ararat*	Armenian	Union of Armenians of Romania
Nor Ghiank*	Armenian	Union of Armenians of Romania
Revista Cultului Mozaic*	Hebrew	Federation of the Jewish Communities of Romania
Columna*	Italian	Italian Community of Romania
Albanezul*	Albanian	Cultural Association of Albanians of Romania
Curierul Ucainean	Romanian	Union of Ukrainians of Romania
Наш Голос	Ukrainian	Union of Ukrainians of Romania
Polonus*	Polish	Community of the Poles Unions of Romania
Asul de Treflă	Gypsies	Romany (Gypsy) Party
Şatra	Gypsies	Romany (Gypsy) Party

*Published in two languages: Romanian and the language of the minority.

In the Hungarian language around twenty various other periodicals are published, on top of which there are around thirty local newspapers.

The national minorities also have access to radio and television shows. Dedicated to them are regular radio shows on central and territorial radio stations. Among them the most important are:

Radio station	Language	Time schedule	Duration
Bucharest	Hungarian	Monday – Saturday	60 minutes
	Hungarian	Sunday	20 minutes
	German	Monday – Saturday	60 minutes
	German	Sunday	10 minutes
	Serbian	Daily	60 minutes
	Romanian for minorities	Saturday	30 minutes
Cluj-Napoca	Hungarian	Daily	240 minutes
Târgu Mureş	Hungarian	Daily	300 minutes
	German	Daily	60 minutes
Timișoara	German	Daily	60 minutes
	Hungarian	Daily	60 minutes
	Serbian	Daily	60 minutes
	Bulgarian	Sunday	30 minutes
	Slovakian	Sunday	30 minutes
	Czech	Sunday	30 minutes
	Ukrainian	Once a month	60 minutes
	Gypsy	Sunday	30 minutes
	Greek	Monday	30 minutes
	German	Monday	30 minutes
Constanța	Turkish	Tuesday	30 minutes
	Russian	Wednesday	30 minutes
	Tatar	Wednesday	30 minutes
	Armenian	Friday	30 minutes
	Craiova	Romanian for Gypsies	Once a week
Reșița	Croatian	Once a week	60 minutes

The Romanian television also broadcasts programs dedicated to national memories as follows:

Program	Language	Time schedule	Duration
Bucharest 1	Hungarian	Monday	90 minutes
	German	Friday	60 minutes
	Romanian for minorities	Tuesday	60 minutes
	Romanian for minorities	Thursday	60 minutes
Bucharest 2	Hungarian	Wednesday	90 minutes
	German	Thursday	60 minutes
	Romanian for minorities	Saturday	60 minutes
	Romanian for minorities	Sunday	60 minutes

Apart from this there are shows on local T.V. stations such as in Cluj-Napoca, Timișoara, etc.

When this level of information is compared with other countries, it can clearly be seen that the number of newspapers and periodicals and the time given to the national minorities on the radio and T.V. is considerably reduced, especially in comparison to lets say Serbia, which has, on the international plan, been reprimanded for not respecting the minority rights. One of the explanations for the current state can be that the population number of the national minorities is very specific in Romania: while the Hungarians could immediately enlarge the frequency and duration of their shows, the question arises what should be done with minorities who only partially speak their native language, for the reason which they publish their newspapers in two languages?! Between those two end points are Serbs and Bulgarians who are grouped territorially so that the local studios, both radio and television, present the best means of information.

The Gypsy nation remains not to be covered by the media in their native language. This is a troubling issue, since the Gypsies are in the process of transformation to the standard Romany language, it can not be resolved until a sufficient number of Gypsy intellectuals is formed, who speak their native tongue, and until a number of generations of listeners are educated in their native language. This issue can also not be resolved until the social scorn of all languages ceases. And until some of the Gypsies stop being ashamed of their nationality, and preferring to use the official language or other languages to hide the fact that they are Gypsies.

As far as the cultural life is concerned, it is carried out on the professional and armature plan, according to the specific needs of each minority.

As can be seen only three national minorities - Hungarian, German and Jewish – have professional cultural scenes, in addition to armature performances of various folk ensembles.

The other national minorities have just armature performances (orchestras, dancing groups, complete folk ensembles, armature theater groups) that are difficult to monitor systematically, since they themselves are not systematical, and due to the fact that all the armature ensembles have their highlights and downfalls as well as a certain period of time they are active.

In contrast to the armature activities of the previous periods, when performers who were more or less skilled, and gave better or worse performances satisfied the audience, the radio and T.V. gave new aspirations to the audience, because they compared their scene with what they had seen on T.V. On the other hand the armatures were themselves inclined to imitate what they had seen on T.V., instead of performing, maybe not such spectacular, but

**The professional cultural institutions performing in
the languages of the minorities**

Institution	Language	Place
The State Theater	Hungarian	Oradea
The Magyar State Theater	Hungarian	Cluj-Napoca
The Dramatic Theater	Hungarian	Sfântu Gheorghe
The "Figure Studio" Theater	Hungarian	Gheorgheni
The National Theater	Hungarian	Târgu Mureş
The North Theater	Hungarian	Satu Mare
The Magyar State Theater	Hungarian	Timișoara
The Puppet Theater	Hungarian	Oradea
The Puppet Theater	Hungarian	Cluj-Napoca
The Puppet Theater	Hungarian	Târgu Mureş
The Magyar Opera	Hungarian	Cluj-Napoca
The Folk Ensemble	Hungarian	Sfântu Gheorghe
The State Szeckler Ensemble	Hungarian	Miercurea-Ciuc
The Artistic Ensemble	Hungarian	Târgu Mureş
The State Theater	German	Sibiu
The German State Theater	German	Timișoara
The Puppet Theater	German	Sibiu
The State Jewish Theater	Yiddish	Bucharest

authentic folklore. That is why the interest for the armature ensembles has somewhat declined, so they mainly give performances during bigger manifestations, as are the song and dance marathons, religious festivities of the churches, religious processions on holidays, contests of choirs and folk costumes. Due to this state the national minorities who do not have their professional scenes are at a loss. This could be somewhat compensated by the hiring of professional instructors, visits of the theaters and professional troops from abroad or in other ways. What is troubling is that everyone is reconciled with this state and no one is searching for a solution.

The national minorities also have their museums (ethnical, memorial and general), as well as memorial and history marks. However, while tenfold of sites of the Hungarian and German minorities can be named, there are just a few sites of the other national minorities.

4.5 Use of native language and script

Regulations on the use of the native language, on signs with in two languages and similar, are from the year 2001 and could not be officially implemented, because the percentage of the national minority in a certain administrative-territorial units can only be assessed from the census of February 2002, and the complete official results of this census have still not been issued.

Frankly saying, although there are no regulations on the use of two languages on the signs, the national minorities give names to their places of dwelling in their native languages, not only colloquially but also in newspapers, although these names are sometime very different form the official Romanian names (for example: Sibiu, in German Hermanstadt; Romanian Gelu, Serbian Ketvelj; Romanian Dudeşti, Bulgarian Bishnov and so forth).

On the other hand the Hungarians, and rarely even – the representatives of other minorities, have gone a step ahead, and placed signs in two languages, used their language in local government bodies, and even openly placed their flags and symbols, what previously caused reactions from the government.

The question of script, when writing of signs in two languages, should not present a difficulty, because in the language of the minority the script of the minority is used. But an interesting problems occurs in the case when streets are named after distinguished members of the national minority. Should their names be written: Dositej (which the uninformed will read as Dositezsh) or Dositei (which all will read as Dositey)? In that case, due to practical reasons, usually a compromise is found, so that the name in Romanian is written in such a way that every uninformed person will read it as close to the original as possible.

In any case the regulations regarding the use of native language will have wider use, again with the exception of Hungarian and maybe German, because numerous members of the national minorities know Romanian better than their native language, and the number of the administrative territorial units where the minorities would present 20% or 33.3% of the population are few.

5. CONCLUSION AND PERSPECTIVES

Romania is regarding its population homogenous, in the sense that the Romanians present a vast majority. Only two national minorities are of significance in respect to their number: Hungarian and German. Whiles the Hungarians maximally realize and protect their collective rights, the Gypsies have up to now been dispersed and are satisfied with their personal rights, which they have as citizens; it is still not in their mentality to interest themselves in the law, but rather to evade the law for their aims and interests. The process of the integration of Gypsies will be long and strenuous, which is to a lager extent caused by their lack of interest. The success will not depend so much on activities taken toward the Gypsy populations, as much as on results – in the first rate economic – which the society which wants to interrogate them will achieve. In any case the Gypsies are currently in Romania the only population with a positive birth rate, their issue must be taken into account and solved on longer – term bases.

All the rest of the minorities have a constant negative birth rate. The old age of the population of the national minorities will continue to in the future bring spectacular fall in the population. Let say, according to my findings, of all the marriages in Serbian families, only 25% have wives under the age of 39, which means, that only one forth of the marriages are theoretically fertile, so that it must be expected that in the next generation the decrees of the population will be as large as 75%. For each of the so-called small minorities the advantage is that they live on a small territory, which will prolonged their existence.

There are native countries, which are interested in their minorities (Hungarian, German, Republic of Slovakia, Czech Republic, Poland, Croatia, Italy), but there are also ones which have bigger issues and priorities, so that the only care regarding the minority is to from time to time affirm that they represent “bridges”. It is certain that the realization of the rights and endurance of the national minority will depends on the attitude the country of origin.

From time to time an opinion arises that the issue of minorities should be solved by a bilateral international agreement, according to the principle of reciprocity. That can bring a momentary one-time benefit, but such opinions are neither generally correct nor do they have a perspective. Finally it is an obligation of each country, Romania as well, to secure the rights and freedoms, personal and collective, of the members of the national minorities on its territory, regardless of the fact whether these rights are realized or not on the territory of other countries; and it is the obligation of each minority to request that their rights and freedoms be respected and realized.

The fact that Romania is rapidly being included into European currents and structures, that it will very soon be a member of the EU and NATO, that it is a signatory of numerous international acts on protection of national minorities presents a great chance. Hence, also according to the *Constitution*, the international regulations have supremacy offer the State regulations, there is a hope that the national minorities will at least continue to exist in compliance with the internationally recognized standards.

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POLOŽAJ NACIONALNIH MANJINA U BOSNI I HERCEGOVINI

NEĐO MILIĆEVIĆ

I

U okviru višefaznog projekta posvećenog položaju nacionalnih manjina u državama jugoistočne Evrope koji se provodi u organizaciji Centra za istraživanje etniciteta, u prvoj polovini 2002. godine urađene su analize tog stanja u jednom broju država ovog regiona, stanja kakvo je ono bilo na početku realizacije ovog projekta. Takva analiza je urađena i za Bosnu i Hercegovinu (i objavljena u zborniku *Demokratija i nacionalne manjine*, u izdanju navedenog centra).

Puno je razloga koji nalažu potrebu da se takve analize ponavljaju u određenim vremenskim intervalima, kako bi se komparativnim postupkom moglo sigurnije procjenjivati da li je i koliko je došlo do poboljšanja položaja nacionalnih manjina u pojedinoj zemlji, i to kako u odnosu na njeno prethodno stanje, tako i u odnosu na stanje u drugim državama u regionu.

U slučaju Bosne i Hercegovine u toku 2002. i 2003. godine bilo je više događaja koji objektivno imaju velikog i direktnog uticaja na ukupno društveno stanje u ovoj državi, uključujući i položaj nacionalnih manjina u njoj. To je, prije svega, prijem Bosne i Hercegovine u Savjet Evrope, što je čin koji, u domenu ljudskih prava i osnovnih sloboda, svaku državu-članicu stavlja u kvalitetno novi položaj, utoliko više koliko je normativno i stvarno stanje tih prava i sloboda u dotičnoj državi slabije (a što je upravo slučaj sa Bosnom i Hercegovinom). Obaveze koje po tom osnovu proističu za pojedinu državu-članicu u odnosu na međunarodne pravne akte o ljudskim pravima, institucionalizacija njenih prava i obaveza prema ovoj međunarodnoj asocijaciji (Savjetu Evrope), uključujući i već otvoreni proces priključivanja Evropskoj uniji, te značajno proširenje i poboljšanje sistema zaštite tih prava po tom osnovu, upravo treba da se, realno, najjače odraze u pravcu poboljšanja položaja nacionalnih manjina.

U Bosni i Hercegovini je u posljednjih nešto više od godinu dana došlo do vrlo krupnih promjena u normativnom tretmanu nacionalnih manjina. Izvršene su opsežne ustavne promjene, koje su, prije svega, bile opredijeljene nastojanjem da se otkloni neravnopravan i diskriminirajući položaj tri nacionalna kolektiviteta koji imaju tretman konstitutivnih naroda, ali što je samim tim neminovno moralno značiti i kvalitetno poboljšanje ustavnog tretmana nacionalnih manjina. Uz to, po prvi put je u Bosni i Hercegovini donesen poseban zakon o zaštiti nacionalnih manjina, tako da sada postoji solidna pravna osnova za njeno dalje kompletiranje i za sigurniji položaj pripadnika nacionalnih manjina u procesu ostvarivanja i zaštite njihovih prava.

U oktobru 2002. godine održani su predsjednički i parlamentarni izbori, i to prvi put u „domaćoj režiji” i sa mandatom izabranih predstavnika od četiri godine. Istovremeno, u 2004. godini predstoje izbori za opštinske organe vlasti koji su posebno značajni upravo za nacionalne manjine. Ovo stoga što sam prijem Bosne i Hercegovine u Savjet Evrope, obaveze koje proističu iz Evropske povelje o lokalnoj samoupravi i drugih međunarodnih pravnih akata o odgovarajućoj participaciji manjinskih kolektiviteta u vršenju javnih poslova, te takve dosta detaljne pa i kvantificirane obaveze koje proističu iz donesenih ustavnih amandmana i zakona o pravima nacionalnih manjina, morale bi rezultirati takvom dogradnjom izbornih pravila koja će osigurati adekvatno učešće nacionalnih manjina upravo u opštinskim i gradskim vlastima, a gdje je sada stanje ne samo nezadovoljavajuće, nego (u osnovi i u cijelini) i grubo diskriminirajuće.

Svi ovi i mnogi drugi razlozi opravdavaju potrebu analiziranja sadašnjeg stanja nacionalnih manjina u Bosni i Hercegovini, i to ne samo iz pozicije adekvatnosti i kvaliteta izvršenih normativnih promjena, nego istovremeno i uz procjene da li je i koliko je napredak u tom domenu do sada uticao na poboljšanje stvarnog položaja nacionalnih manjina u ovoj državi.

II

Nacionalne manjine u Bosni i Hercegovini karakteriše dosta skroman procent u ukupnom broju njenih stanovnika, veliki broj ovih nacionalnih kolektiviteta, istovremeno mali broj pripadnika pojedinog kolektiviteta (sa izuzetkom Roma, Albanaca i donekle Ukrajinaca), te teritorijalna razmještenost u gotovo svim opštinama u Bosni i Hercegovini (bez ikakve koncentracije na nekom njenom dijelu).

Prema popisu iz 1991. godine, pripadnici tri konstitutivna naroda (Bošnjaci, Srbi i Hrvati) učestvuju sa blizu 92% u ukupnom broju stanovnika Bosne i Hercegovine. No, neke od ovih podataka treba tretirati s rezervom. To se prvenstveno odnosi na oko 250.000 „Jugoslovena”, za koje se ne zna iz kojih su se nacionalnih skupina regrutovali, kao i na Rome, čiji se broj kreće od svega 442 lica po popisu stanovništva iz 1948. godine do najviše 8.864 pripadnika ove nacionalne manjine po popisu stanovništva iz 1991. godine.

I najskromniji podaci o Romima u Bosni i Hercegovini ukazuju na to da je njihov broj u Bosni i Hercegovini višestruko veći, a da su ovi statistički pokazatelji rezultat kako neodazivanja na popis zbog nomadskog načina života i inače nezainteresovanosti za državne popise, tako i zbog izjašnjavanja znatnog broja Roma da su pripadnici drugih naroda (ovakvu pojavu imamo i u posljednjih 10 godina, sve do sada). U ovom smislu ilustrativan je podatak da je samo na području opštine Bijeljina uoči rata živjelo između 5 i 6 hiljada Roma, te da samo na području šireg gradskog područja Bijeljine Romi imaju u svom vlasniš-

tvu oko 650 kuća. Dokaz da podaci iz popisa stanovništva ne odgovaraju stvarnom stanju je i činjenica da i sada, pored svih nevolja koje je rat proizveo, samo u opština Bijeljina, Visoko i Kakanj živi više pripadnika romske populacije nego što navedeni popis pokazuje za cijelu teritoriju Bosne i Hercegovine.

Ne postoje zvanični podaci o broju pripadnika nacionalnih manjina u Bosni i Hercegovini koji su u ratu 1992–1995. postali izbjeglice i raseljena lica. To je rezultat kako nesigurnih podataka o njihovom ukupnom broju prilikom popisa 1991. godine, tako (još više) činjenice da su aktuelne, nacionalno sastavljene, državne i političke vlasti nakon Dejtonskog sporazuma te statistike vodile samo za pripadnike „svog“ naroda. Sve procjene ukazuju na to da je procenat protjeranih i raseljenih pripadnika nacionalnih manjina, u odnosu na ukupan broj ovih lica koja su na početku rata živjela u Bosni i Hercegovini, znatno veći nego kad su u pitanju pripadnici tri konstitutivna naroda. Naime, procjenjuje se da je oko 70% do 75% pripadnika nacionalnih manjina u ratu napustilo svoje dotadašnje prebivalište (ili kao izbjeglice – odlaskom u inostranstvo, ili kao raseljena lica – nastanjenjem u nekom drugom mjestu u Bosni i Hercegovini).

Ni o broju pripadnika nacionalnih manjina koji su se kao izbjeglice ili raseljena lica vratili u mjesto svog predratnog prebivališta ne postoje sigurniji podaci. Istina, postoje određeni podaci o broju do sada realizovanih tzv. „manjinskih povrataka“, s tim što u tu kategoriju spadaju svi oni povratnici (Bošnjaci, Srbi, Hrvati i „Ostali“) koji se vraćaju u sredinu – opštinu u kojoj su pripadnici njihovog naroda u manjini (što je, takođe, slučaj i sa svakom grupacijom nacionalnih manjina u Bosni i Hercegovini). Takvih „manjinskih povrataka“ je do marta 2001. godine bilo ukupno oko 210.000. Od tog broja, je Bošnjaka, Srba i Hrvata oko 209.000, a „Ostalih“, gdje se svrstavaju pripadnici svih nacionalnih manjina, svega 1.358 ili oko 0,65% od ukupnog broja ovih tzv. manjinskih povrataka. Nije sporno da ovi podaci ne odgovaraju sadašnjem stanju, odnosno nacionalnoj strukturi tih povratnika. Osnovano se može tvrditi da se u mjesto svog predratnog prebivališta vratila desetina hiljada pripadnika nacionalnih manjina, među njima najviše Roma, koji inače pokazuju vrlo veliku upornost (pa i spremnost da podnose velike teškoće) da bi ostvarili to svoje pravo.

III

1. Pravni tretman pripadnika nacionalnih manjina u osnovi je opredijeljen karakteristikama i kvalitetom pravnog tretmana građanina dotične države kao pojedinca, kao i takvim tretmanom većinskog naroda u njoj. Ako taj tretman pojedinca i većinskog naroda nije adekvatan, onda je iluzorno očekivati zadovoljavajuće stanje u tretmanu pripadnika nacionalnih manjina. S druge strane, pravni tretman većinskog naroda koji toj većini može i odgovarati, nekada može biti i pokazatelj slabog položaja manjinskih nacionalnih kolektiviteta. Sve se to vrlo

reljefno vidi kroz sam ustavni tretman ljudskih prava i osnovnih sloboda, jer ona, sa svoje strane, značajno opredjeljuju kako zakonsko normiranje, ostvarivanje i zaštitu mnogih drugih čovjekovih prava, tako i njegov ukupan društveni položaj.

2. Ljudskim pravima i osnovnim slobodama posvećen je značajan dio ustavnih odredaba u Ustavu Bosne i Hercegovine i u ustavima entiteta. Sigurno postoji više razloga koji su tome doprinijeli. Upravo su ljudska prava i osnovne slobode u četverogodišnjem ratu bili drastično gaženi, sve do masovnog genocidnog postupanja i brutalnog atakovanja na čovjekove najveće vrijednosti – njegov život, zdravlje, slobodu i dostojanstvo.

Suočeni s takvom realnošću, kreatori Opštег okvirnog sporazuma za mir u Bosni i Hercegovini (čiji je sastavni dio i Ustav Bosne i Hercegovine) očito su nastojali da ovim međunarodnim sporazumom stvore državnopravni osnov za njihovu što potpuniju zaštitu. Stoga, pored Aneksa IV koji se odnosi na Ustav Bosne i Hercegovine, ovaj sporazum sadrži još više dijelova koji se odnose na ljudska prava i osnovne slobode, prvenstveno Aneks VI i Aneks VII.¹

Navedena nastojanja su u samom Dejtonskom sporazumu ostvarena sa promjenljivim efektom, uz dosta neselektivnosti i nekonzistentnosti pri odabiranju određenih rješenja. Sve te slabosti se baziraju, prije svega, na činjenici da je u tom momentu zatečeni stepen dezintegriranosti bosanskohercegovačkog društva i države imao velikog uticaja na opredjeljenje kako urediti odnose u Bosni i Hercegovini. To se vidi prije svega po tome što su ukupno ustrojstvo države i organizacija njene vlasti izvedeni na izrazitoj i jednostranoj dominaciji nacionalnog faktora. Takva dominacija je dobila posebno nepovoljan izraz u isparcelisanoj (teritorijalizovanoj) konstitutivnosti njena tri naroda, tako što su konstituenti Federacije Bosne i Hercegovine bili Bošnjaci i Hrvati, ali ne i Srbi, a konstituenti Republike Srpske su bili Srbi, ali ne i Bošnjaci i Hrvati. Time je svaki od ova tri naroda bio podijeljen u dvije kategorije, od kojih su u onoj drugoj, neravnopravnoj kategoriji bili svi oni gradani koji ne pripadaju konstitutivnom narodu dotičnog entiteta. Drugim riječima, svaki od navedena tri naroda bio je punopravan samo na polovini teritorije Bosne i Hercegovine (u jednom od entiteta), dok su njihovi pripadnici koji žive u drugom entitetu, kao i svi ostali gradani Bosne i Hercegovine, a to su svi pripadnici nacionalnih manjina, bili ili ograničeni ili onemogućeni u ostvarivanju nekih svojih ustavnih prava.

S obzirom na navedenu osnovnu karakteristiku ustavnog ustrojstva Bosne i Hercegovine, pravni tretman ljudskih prava i osnovnih sloboda u cijelini (posebno kad su u pitanju nacionalne manjine) nije ni mogao biti zadovoljavajući, bez obzira na činjenicu što je tim pitanjima posvećen značajan dio ustavnog teksta.

¹ Aneks VI – Sporazum o ljudskim pravim, Aneks VII – Sporazum o izbjeglicama i raseljenim licima

3. Među trinaest taksativno navedenih ljudskih prava i osnovnih sloboda u članu II 3 Ustava Bosne i Hercegovine nema posebnog garantovanja nekih specifičnih prava nacionalnih manjina. Istina, postoji posebna i dosta detaljna ustavna odredba o nediskriminaciji, koja glasi:

*„Uživanje prava i sloboda, predviđenih u ovom članu ili u međunarodnim sporazumima navedenim u Aneksu I ovog Ustava, osigurano je svim licima u Bosni i Hercegovini bez diskriminacije po bilo kojem osnovu kao što je pol, rasa, boja, jezik, vjera, političko i drugo mišljenje, nacionalno ili socijalno porijeklo, povezanost sa nacionalnom manjinom, rođenje ili drugi status”.*²

Sadržaj navedene ustavne odredbe je gotovo identičan članu 14 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda³ i to je, u stvari, jedina odredba Dejtonskog ustava koja se izričito odnosi na nacionalne manjine. Ista ovakva formulacija sadržana je i u Aneksu 6 Dejtonskog sporazuma,⁴ dok je u Aneksu 7 (Sporazum o izbjeglicama i raseljenim licima) odredba o nediskriminaciji još nešto preciznija.

U takvim uslovima, veliki broj međunarodnih pravnih akata o ljudskim pravima i osnovnim slobodama (u Ustavu BiH – 16, a u Ustavu Federacije BiH – 22), za koje je u ustavima propisano da su sastavni dio pravnog sistema Bosne i Hercegovine (u Ustavu Federacije BiH je navedeno da „imaju pravnu snagu ustavnih odredba”), nisu ni mogli dati neke pozitivnije efekte. A upravo su oni, s obzirom na postojeće stanje, trebalo da budu pravni oslonac i osnov za ostvarivanje i zaštitu ljudskih prava i osnovnih sloboda pripadnika nacionalnih manjina. Među ovim aktima se nalaze i neki koji su u potpunosti posvećeni zaštiti prava nacionalnih manjina. To se posebno odnosi na Okvirnu konvenciju o zaštiti nacionalnih manjina, Evropsku povelju o regionalnim jezicima i jezicima manjina i Međunarodnu konvenciju o ukidanju svih oblika diskriminacije.

Umjesto toga, svi ti akti, uključujući i Evropsku konvenciju za zaštitu ljudskih prava i osnovnih sloboda, kojoj je inače samim Ustavom Bosne i Hercegovine dat poseban tretman, ostali su uglavnom van primjene. Tome je, svakako, doprinijela i začuđujuća neselektivnost pri odabiru ovih akata za njihovo unošenje u ustavni tekst, jer se među njima nalaze i neki koji u tom momentu (i još dugo iza toga) nisu ni bili stupili na pravnu snagu, odnosno neki koji i nemaju karakter pravnog akta u punom smislu tog kvalifikativa, kao što su neke preporuke međunarodnih organizacija koje inače nemaju obavezujuću pravnu snagu, a unesene su u Dodatak uz Ustav Federacije Bosne i Hercegovine.

² Ustav Bosne i Hercegovine, član II 4.

³ Član 14 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda glasi:

„Uživanje prava i sloboda predviđenih ovom konvencijom osigurava se bez diskriminacije po bilo kojoj osnovi, kao što su pol, rasa, boja kože, jezik, vjeroispovijest, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, veza sa nekom nacionalnom manjinom, imovno stanje, rođenje ili drugi status”.

⁴ Vidi: član 1 stav 1 tačka 14 Sporazuma o ljudskim pravima (Aneks 6).

IV

Ustavni sud Bosne i Hercegovine je polovinom 2000. godine donio četiri djelomične odluke kojima je utvrdio da je u neskladu sa Ustavom Bosne i Hercegovine više odredaba i u Ustavu Federacije BiH i u Ustavu Republike Srpske. Među ovim odlukama, po svom značaju, posebno je važna treća djelomična odluka Ustavnog suda,⁵ koja se odnosi na konstitutivnost i jednakopravnost naroda na čitavoj teritoriji Bosne i Hercegovine. Ovim odlukama je utvrđeno da su neu-stavne odredbe entitetskih ustava kojima je normirano:

- da su Srbi konstitutivni narod Republike Srpske, a da to nisu Bošnjaci i Hrvati;
- da su Bošnjaci i Hrvati konstitutivni narodi Federacije BiH, ali ne i Srbi;
- da su bosanski jezik i hrvatski jezik službeni jezici u Federaciji BiH (ali ne i srpski jezik), odnosno da je srpski jezik službeni jezik u Republici Srpskoj (ali ne i bosanski i hrvatski jezik);
- da je službeno pismo u Federaciji BiH latinica (ali ne i cirilica), odnosno da je cirilica službeno pismo u Republici Srpskoj (ali ne i latinica);
- da u Republici Srpskoj „država“ materijalno pomaže Pravoslavnu crkvu, da sarađuje s njom u svim oblastima, a naročito na čuvanju, njegovanju i razvijanju kulturnih, tradicionalnih i drugih duhovnih vrijednosti;
- da Republika Srpska uređuje i obezbjeđuje saradnju sa srpskim narodom izvan Republike Srpske.

Odluke Ustavnog suda Bosne i Hercegovine stvorile su pravnu obavezu da se, bez odlaganja, otvori postupak promjene entitetskih ustava i da se njihove odnosne odredbe usklade sa tim odlukama. Očito je da u aktuelnim državnim i političkim strukturama, kao i u naučnim krugovima, nije postojala potrebna sa-glasnost o realizaciji ove obaveze, zbog čega dugo vremena na tome nije ni rađeno. Na kraju je Visoki predstavnik bio naprsto primoran da 19. aprila 2002. godine sam donese Odluku o izmjenama i dopunama Ustava Republike Srpske⁶ i Odluku o izmjenama i dopunama Ustava Federacije Bosne i Hercegovine,⁷ „uzimajući u obzir da do datuma donošenja ovih odluka nijedan entitet nije u cijelosti ispoštovao obavezu sadržanu u Sporazumu”.⁸

V

1. Navedene promjene u Ustavu Federacije Bosne i Hercegovine izvršene su sa 28 amandmana, dok je u odnosu na Ustav Republike Srpske utvrđeno 27 amandmana. U 10 ovih amandmana u Federaciji Bosne i Hercegovine i u 8 ovih

⁵ Vidi: Službeni glasnik Bosne i Hercegovine, broj 23/2000, od 14. septembra 2000.

⁶ Vidi: Službeni glasnik Republike Srpske, broj 21/02.

⁷ Vidi: Službene novine Federacije Bosne i Hercegovine, broj 16/02.

⁸ Isto.

amandmana u Republici Srpskoj pominju se i „Ostali”, pod kojim pojmom (još više nego do sada) treba podrazumijevati pripadnike nacionalnih manjina, u smislu njihovog pozitivnopravnog tretmana u aktima međunarodnog prava. Istina, ovim pojmom se u praksi moraju obuhvatati i svi oni pojedinci koji su porijeklom Bošnjaci, Srbi ili Hrvati, a koji se izjašnjavaju da pripadaju kategoriji „Ostalih”. Nije sporno da je to njihovo pravo, s tim što treba ukazati i na činjenicu da ima i primjera zloupotrebe tog prava (bilo iz nekog ličnog motiva, bilo po nagovoru).

2. U Ustavu Federacije Bosne i Hercegovine izričito se normira da „Bošnjaci, Srbi i Hrvati kao konstitutivni narodi, zajedno sa Ostalima, i građani Federacije Bosne i Hercegovine, ravnopravno uređuju Federaciju Bosne i Hercegovine”,⁹ uz posebnu konstataciju da su pri tome „odlučni da osiguraju punu nacionalnu ravnopravnost, demokratske odnose i najviše standarde ljudskih prava i sloboda”.¹⁰ Ustavom Republike Srpske se proklamuje da se ustavno uređenje Republike Srpske temelji na „poštovanju ljudskog dostojanstva, slobode i jednakosti, nacionalnoj ravnopravnosti, demokratskim institucijama, vladavini prava, socijalnoj pravdi, pluralističkom društvu, garantovanju i zaštiti ljudskih sloboda i prava kao i prava manjinskih grupa u skladu sa međunarodnim standardima, zabrani diskriminacije i uvažavanju pravila tržišne ekonomije”.¹¹ Ovome treba dodati i posebnu proklamaciju da „Srbi, Bošnjaci i Hrvati, kao konstitutivni narodi, Ostali i građani, ravnopravno i bez diskriminacije, učestvuju u vršenju vlasti u Republici Srpskoj”.¹²

3. Prema dosadašnjim ustavnim rješenjima, Parlament Federacije Bosne i Hercegovine se sastojao od Predstavničkog doma i Doma naroda, dok je Narodna skupština Republike Srpske bila jednodoma. U postupku rada na tretiranim promjenama ustava entiteta ova asimetričnost je bila jedno od najspornijih pitanja. Usvojeno je jedno kompromisno rješenje, po kome se i u Republici Srpskoj uvodi Vijeće naroda, ali ne kao jedan od domova Narodne skupštine, nego kao poseban organ zakonodavne vlasti.¹³ Time su se stekli uslovi da se u oba entiteta o zakonima i drugim propisima „koji se tiču vitalnog nacionalnog interesa bilo kog konstitutivnog naroda” izjašnjava i poseban organ zakonodavne vlasti koji i po svom nazivu ima takvu funkciju (u Federaciji BiH – Dom naroda; u Republici Srpskoj – Vijeće naroda).¹⁴

⁹ Amandman XXVIII, tačka (2) Ustava Federacije Bosne i Hercegovine.

¹⁰ Amandman XXVII Ustava Federacije Bosne i Hercegovine.

¹¹ Amandman LXVI, tačka 1 Ustava Republike Srpske.

¹² Amandman LXVII, tačka 1, stav 4 Ustava Republike Srpske.

¹³ Amandman LXXVI, stav 1 Ustava Republike Srpske.

¹⁴ Amandman XXXVIII, tačka (1) u vezi sa Amandmanom XL Ustava Federacije Bosne i Hercegovine.

Amandman LXXVI, stav 1 Ustava Republike Srpske.

U Domu naroda Federacije Bosne i Hercegovine svaki konstitutivni narod ima po 17 delegata, dok je 7 delegata iz reda „Ostalih”.¹⁵ U Vijeću naroda Republike Srpske ima po 8 članova iz sastava svakog konstitutivnog naroda i 4 člana iz reda „Ostalih”.¹⁶ U oba ustava se propisuje da delegati/članovi u ovim zakonodavnim organima iz reda „Ostalih” imaju pravo da „ravnopravno učestvuju u postupku većinskog glasanja”.¹⁷ Biće potrebno u praksi procijeniti domašaj i efekte ove odredbe, u okolnostima izričitog ustavnog opredjeljenja da se zakoni i drugi propisi „koji se odnose na vitalni nacionalni interes jednog od konstitutivnih naroda” smatraju usvojenim ako za njih glasa „većina svakog kluba zastupljenog u Domu naroda/Vijeću naroda”.¹⁸

Šta predstavlja vitalne nacionalne interese konstitutivnog naroda utvrđeno je u istom sadržaju u ustavima oba entiteta i oni su definisani kao:

- ostvarivanje prava konstitutivnih naroda da budu adekvatno zastupljeni u zakonodavnim, izvršnim i pravosudnim organima vlasti;
- identitet jednog konstitutivnog naroda;
- ustavni amandmani;
- organizacija organa javne vlasti;
- jednaka prava konstitutivnih naroda u procesu donošenja odluka;
- obrazovanje, vjeroispovijest, jezik, njegovanje kulture, tradicije i kulturno nasljeđe;
- teritorijalna organizacija;
- sistem javnog informisanja, te
- druga pitanja koja bi se tretirala kao pitanja od vitalnog nacionalnog interesa ukoliko tako smatraju 2/3 jednog od klubova delegata konstitutivnih naroda u Domu naroda/Vijeću naroda.¹⁹

Delegate u Domu naroda Federacije Bosne i Hercegovine biraju kantonalne skupštine iz reda svojih delegata, proporcionalno nacionalnoj strukturi stanovništva, i to – kad su u pitanju delegati iz reda konstitutivnih naroda – ovo pravo biranja pripada kantonalnim zastupnicima iz reda dotičnog naroda. Za izbor delegata u ovaj organ iz reda „Ostalih” propisano je da će se to urediti zakonom.²⁰ Za članove Vijeća naroda u Republici Srpskoj određeno je da ih bira „odgovarajući klub poslanika u Narodnoj skupštini”.²¹

¹⁵ Amandman XXXVIII, tačka (2) Ustava Federacije Bosne i Hercegovine.

¹⁶ Amandman LXXVIII, tačka 3, stav 2 Ustava Republike Srpske.

¹⁷ Amandman XXXIII, tačka (3) Ustava Federacije Bosne i Hercegovine.

Amandman LXXVIII, tačka 4 Ustava Republike Srpske.

¹⁸ Amandman XL, tačka (2) Ustava Federacije Bosne i Hercegovine.

Amandman LXXXIII, b), stav 3 Ustava Republike Srpske.

¹⁹ Amandman XXXVII Ustava Federacije Bosne i Hercegovine.

Amandman LXXVII Ustava Republike Srpske.

²⁰ Amandman XXXIV Ustava Federacije Bosne i Hercegovine.

²¹ Amandman LXXVIII, tačka 5, stav 1 Ustava Republike Srpske.

Ono što treba posebno apostrofirati jeste da oba entitetska ustava ne predviđaju potrebu „zaštite nacionalnog interesa 'Ostalih', tj. nacionalnih manjina”, a istovremeno osiguravaju njihovo članstvo u Domu naroda/Vijeću naroda, kao organima koji odlučuju o tim interesima (ali, uvjek, samo konstitutivnih naroda). Članstvo „Ostalih” osigurava se i u vijećima za zaštitu vitalnog interesa pri entitetskim ustavnim sudovima, koja takođe, u određenim slučajevima, odlučuju o pitanjima vitalnog nacionalnog interesa konstitutivnih naroda.²² Ovdje je posebno interesantan podatak da iz usvojenih ustavnih amandmana u oba entiteta proizlazi da i u Domu naroda/Vijeću naroda i u vijećima za zaštitu vitalnog interesa pri entitetskim ustavnim sudovima njihovi predsjednici/predsjedavajući mogu biti i iz reda „Ostalih”, iako se nadležnost ovih organa tiče samo zaštite prava konstitutivnih naroda.²³

4. U oba entitetska ustava predviđeno je da jednog člana entitetske vlade može imenovati predsjednik-premijer vlade iz reda „Ostalih”, i to iz kvote najbrojnijeg konstitutivnog naroda.

5. Iz usvojenih amandmana na oba entitetska ustava proizlazi da predsjednik/predsjedavajući u njihovim vladama, zakonodavnim organima, vrhovnim i ustavnim sudovima, te entitetski javni tužioci mogu biti i iz reda „Ostalih”,²⁴ dok na funkcijama predsjednika i potpredsjednika entiteta mogu biti samo pripadnici konstitutivnih naroda, a ne i pripadnici „Ostalih”.²⁵ Interesantno je i rješenje usvojeno prilikom ovih promjena u oba entitetska ustava da i instituciju ombudsmena u entitetima, koja je inače sastavljena od po tri lica, čini „po jedan ombudsmen ... iz svakog konstitutivnog naroda”.²⁶ Postavlja se pitanje koliko je ovakvo rješenje saglasno sa osnovnom funkcijom ombudsmena da štiti ljudska prava i osnovne slobode svih građana, a istovremeno je jedna značajna kategorija tih građana isključena iz mogućnosti da tu funkciju vrše. Tome treba dodati i činjenicu da su povrede ljudskih prava i osnovnih sloboda upravo najčešće u slučaju pripadnika nacionalnih manjina, ali zaštitu od takvih ponašanja sa pozicije ombudsmena mogu vršiti samo pripadnici konstitutivnih naroda.

6. U oba entitetska ustava doneseni su posebni amandmani kojima se utvrđuje obaveza proporcionalne zastupljenosti pripadnika konstitutivnih naro-

²² Amandman XXXVIII Ustava Federacije Bosne i Hercegovine.

Amandman LXXXVIII, tačka 2, stav 3 Ustava Republike Srpske.

²³ Amandman XLIX u vezi sa Amandmanom XXXVIII, tačka (3) Ustava Federacije Bosne i Hercegovine.

Amandman LXXVI u vezi sa Amandmanom LXXXVIII, tačka 2, stav 3 Ustava Republike Srpske.

²⁴ Amandman XLIX, tačka (1), stav 2 Ustava Federacije Bosne i Hercegovine.

Amandman LXXVI, tačka 2 Ustava Republike Srpske.

²⁵ Amandman XLI Ustava Federacije Bosne i Hercegovine.

Amandman LXXXIII, tačka 1, stav 2 Ustava Republike Srpske.

²⁶ Amandman XXX Ustava Federacije Bosne i Hercegovine.

da i „Ostalih” u organima vlasti (u entitetskim i kantonalnim vladama i ministarstvima, u opštinskim organima vlasti i u kantonalnim/okružnim i opštinskim/osnovnim sudovima). Ova proporcionalna zastupljenost se bazira na „popisu iz 1991. godine”,²⁷ s tim što je u Ustavu Republike Srpske u slučaju opštinskih vlasti konstatovano da se to bazira „na posljednjem popisu i sastavu opštinske skupštine”.²⁸

7. Amandmani na ustave entiteta predviđaju i postupak njihovih budućih promjena. Ovdje je zanimljivo skrenuti pažnju na različit položaj „Ostalih” u slučaju ovih promjena. Naime, dok je u Republici Srpskoj određeno da se promjena Ustava Republike Srpske smatra usvojenom (uz usvajanje u Narodnoj skupštini) ako za nju glasa „i većina članova Vijeća naroda iz svakog konstitutivnog naroda i Ostalih”,²⁹ za takvu promjenu u Federaciji Bosne i Hercegovine je određeno da se, pored usvajanja u Predstavničkom domu, usvaja i „u Domu naroda prostom većinom, uključujući većinu bošnjačkih, većinu hrvatskih i većinu srpskih delegata”.³⁰ Znači, kod usvajanja ustavnih amandmana u Domu naroda Federacije Bosne i Hercegovine ne traži se većina članova ovog organa iz sastava „Ostalih”, dok se to traži prilikom njihovog usvajanja u Vijeću naroda u Republici Srpskoj.

8. Navedene promjene u ustavima entiteta, van sumnje, predstavljaju značajno pravno poboljšanje položaja svih nacionalnih kolektiviteta u Bosni i Hercegovini, uključujući i nacionalne manjine. Time je izrazito pojačana ustavno-pravna osnova, ali i ustavna obaveza, da se u cjelini pravnog sistema ove države (i u domenu uređivanja i u domenu ostvarivanja ljudskih prava i osnovnih sloboda) osigurava princip ravnopravnosti u tretmanu kako pojedinca, tako i nacionalnog kolektiviteta.

Posebno je značajno to što se u ovim ustavnim promjenama vrlo konkretno i institucionalno reguliše participacija nacionalnih manjina („Ostalih”) u vršenju državne vlasti. Kao dokaz za to dovoljno je navesti podatak da se od donošenja zakona do nacionalnog sastava državnih organa na svim nivoima vršenja vlasti (od entiteta do opštine) osigurava i odgovarajuća zastupljenost pripadnika nacionalnih manjina, pri čemu je u određenim slučajevima i samo donošenje odluke u tim organima (uključujući i donošenje zakona) uslovljeno njihovim prihvatanjem i od strane predstavnika tih nacionalnih kolektiviteta (njihovog kluba delegata).

Ali, za navedeno postoje i neki ograničavajući faktori. Naime, činjenica je da ove amandmane nisu usvojili entitetski zakonodavni organi, nego da ih je

²⁷ Amandman LII Ustava Federacije Bosne i Hercegovine.

Amandman LXXXV Ustava Republike Srpske.

²⁸ Amandman LXXXV, stav 2 Ustava Republike Srpske.

²⁹ Amandman LXXXI, tačka 1 Ustava Republike Srpske.

³⁰ Amandman L, stav (2) pod (a) Ustava Federacije Bosne i Hercegovine.

„nametnuo“ Visoki predstavnik, što može imati za posljedicu nedovoljnu spremnost nadležnih organa državne vlasti da ih bez odlaganja i što dosljednije operacionaliziraju u drugim pravnim propisima i u svom konkretnom postupanju. To se prije svega odnosi na usaglašavanje kantonalnih ustava i entitetskih i kantonalnih zakona, jer se tek njihovim adekvatnim izmjenama i dopunama stvaraju realni uslovi za postizanje punog smisla i cilja ovih ustavnih promjena. Pri tome treba imati u vidu i činjenicu da je dosadašnji zakonski tretman nacionalnih manjina u oba entiteta u Bosni i Hercegovini bio ne samo izrazito nedovoljan, nego u nekim slučajevima i sa grubim diskriminirajućim rješenjima. Takođe, s obzirom na ustavom opredijeljenu nadležnost različitih nivoa državne vlasti, treba navesti i to da će od kvaliteta promjena u kantonalnim ustavima i izmjena i dopuna njihovih zakona značajno zavisiti položaj nacionalnih manjina u Federaciji Bosne i Hercegovine, pošto su neki društveni odnosi koji su od posebnog značaja za taj položaj upravo domen nadležnosti kantona.

Iako je rok za usaglašavanje kantonalnih ustava, zakona, drugih propisa i opštih akata sa ustavnim amandmanima na ustave entiteta, kojima su izvršene navedene promjene, istekao početkom ove godine, još nije okončan ni postupak tog usaglašavanja samih kantonalnih ustava, dok se o takvom usaglašavanju zakona, drugih propisa i opštih akata još gotovo i ne razmišlja.

Za puni efekat izvršenih ustavnih promjena posebnu teškoću predstavlja činjenica da u Ustavu Bosne i Hercegovine i dalje ostaje više odredaba koje sadrže ista (i još eksplizitnija) rješenja kakva su sadržana u odredbama entitetskih ustava koje su proglašene neustavnim. To je zbog činjenice što se odluka Ustavnog suda Bosne i Hercegovine ne odnosi, niti se može odnositi na njih, jer je to izvan njegove nadležnosti.

VI

1. Polazeći od izloženog, sama činjenica što je nedavno donesen Zakon o zaštiti prava pripadnika nacionalnih manjina³¹ zaslужuje punu podršku. Posebno je značajno to što je taj zakon donesen na nivou Bosne i Hercegovine, kako zbog ujednačenog pravnog tretmana ovih nacionalnih kolektiviteta na cijeloj teritoriji Bosne i Hercegovine, tako i zbog činjenice što je država Bosna i Hercegovina subjekt međunarodnih pravnih obaveza, odnosno „strana ugovornica međunarodnih sporazuma“ (među kojima je i više međunarodnih pravnih akata koji se odnose na nacionalne manjine).

2. Sigurno je trebalo dosta napora dok se došlo do utvrđenog teksta Zakona, ali bi – posmatrano iz sadašnje pozicije – bilo teško prihvatiti da njegov sa-

³¹ Zakon o zaštiti prava pripadnika nacionalnih manjina objavljen je u Službenom glasniku Bosne i Hercegovine, broj 12/03.

držaj odgovara realnim potrebama nacionalnih manjina u Bosni i Hercegovini, kao i domaćim i međunarodnim obavezama države Bosne i Hercegovine u ovom domenu. Da je ovaj zakon donesen prije amandmana na entitetske ustave iz aprila 2002. godine, ova ocjena bi morala biti znatno blaža, jer je do tada ustavni tretman nacionalnih manjina, u normativnim dijelovima ovih akata, bio skroman i pogotovo isuviše načelan. Nakon ovih amandmana, situacija je kvalitetno drukčija. Pri tome se, naime, ima u vidu posebno sljedeće:

- a) U gotovo svakom trećem amandmanu na ustave entiteta (proglašeni u aprilu 2002. godine) tretiraju se prava nacionalnih manjina (koje se u njima označavaju pojmom „Ostali“). Konkretno, u 10 od ukupno 28 amandmana na Ustav Federacije Bosne i Hercegovine i u 8 od ukupno 27 amandmana na Ustav Republike Srpske izričito se pominju „Ostali“, pod kojim pojmom (još više nego do sada) treba podrazumijevati prvenstveno nacionalne manjine, u smislu njihovog pozitivnopravnog tretmana u aktima međunarodnog prava. Istina, ovim pojmom se moraju obuhvatiti i svi oni pojedinci koji su porijeklom Bošnjaci, Srbi i Hrvati, a koji se ne žele tako izjašnjavati. Prava pripadnika „Ostalih“ su u ovim ustavnim amandmanima normirana vrlo konkretno i sa jakom ustavnopravnom pozicijom njihovog položaja u entitetskim zakonodavnim organima. Dokaz za to je činjenica da je za doношење mnogih najvažnijih odluka u ovim organima, a koje se smatraju da su od vitalnog nacionalnog interesa, uslov i saglasnost većine delegata iz sastava kluba „Ostalih“ u Domu naroda/Vijeću naroda.
- b) Svaki zakon, s obzirom na svoje mjesto u pravnom sistemu, morao bi biti prepoznatljiv i po tome što vrši dalju razradu i konkretizaciju ustavnih odredaba. U slučaju Zakona o zaštiti prava pripadnika nacionalnih manjina ima dosta odstupanja od ovog pravnog pravila. Jer, ako se u ovom smislu posmatra ovaj zakon, onda se s razlogom može tvrditi da su neka njegova rješenja ostala ispod realnih potreba ovih nacionalnih kolektiviteta, kao i ispod udovoljenja važećim ustavnim zahtjevima i međunarodnim pravnim standardima koji Bosnu i Hercegovinu obavezuju. Načelno obrazloženje ove tvrdnje jeste prije svega to da, bez obzira na to što ovaj zakon tretira veliki broj pitanja koja su od značaja za pravni položaj manjina, njegova karakteristika jeste da se to često čini na previše uopšten način, naprsto nabrajajući ta prava, tako da u nekim slučajevima nema ni minimalnog pravnog određenja o tome kako će se ta prava ostvarivati i kako će se ona zakonski štititi. U nekim slučajevima je prisutna i nepreciznost do mjere da se pojedine odredbe svode na političku proklamaciju, koja pravno znači vrlo malo. Uz to, ima i slabosti u pravnotehničkoj obradi zakona, što dovodi do nejasnoća, koje će svakako biti otežavajući faktor u njegovoj primjeni.

3. Iz samog naslova ovog zakona, kao i iz njegovog člana 1 (kojim se reguliše koja se prava i obaveze nacionalnih manjina regulišu ovim zakonom), proizlazi da su predmet njegovog regulisanja prava *pripadnika* nacionalnih ma-

njina kao pojedinaca. Bilo bi adekvatnije rješenje da su i naslov i odredba kojom se reguliše šta se uređuje ovim zakonom glasili: „...zaštita prava nacionalnih manjina”, a ne „... zaštita prava pripadnika nacionalnih manjina”. Ovo stoga što su neka od tih prava naprosto tzv. kolektivna prava, koja se jedino i mogu ostvarivati kao takva (takva su mnoga prava iz oblasti tzv. kulturnih prava nacionalnih manjina). Na taj način bi se pojmom „nacionalnih manjina” (a ne pojmom „pripadnika nacionalnih manjina”) obuhvatila i njihova individualna i njihova kolektivna prava, što je inače u daljem zakonskom tekstu i prisutno.

4. Zakon o zaštiti prava pripadnika nacionalnih manjina daje pozitivno-pravno određenje (svojevrsnu pozitivnopravnu definiciju) šta se podrazumijeva pod pojmom „nacionalne manjine”. U njemu je, naime, određeno da ja nacionalna manjina „*dio stanovništva – državljana BiH koji ne pripadaju ni jednom od tri konstitutivna naroda, a sačinjavaju je ljudi istog ili sličnog etničkog porijekla, iste ili slične tradicije, običaja, vjerovanja, jezika, kulture i duhovnosti i bliske ili srodne istorije i drugih obilježja*“.³² Iako se za ovo određenje opravdano konstatiše da je ono utvrđeno „*u smislu ovog zakona*”, treba naglasiti da međunarodni pravni akti koji regulišu prava nacionalnih manjina ne daju definiciju ovog pojma. To je posljedica činjenice da ne postoji jasan sporazum među državama o vrstama grupa koje tim pojmom treba obuhvatiti. Smatra se da na ovo pitanje treba gledati kao na činjenicu postojanja nacionalnih manjina kojima treba osigurati ravnopravan tretman, a ne kao na pitanje koje treba i pravno definisati.

Sljedstveno opredjeljenju da se odredi ko se ima smatrati nacionalnom manjinom, u Zakonu se ide i dalje, pa se poimenično navode nacionalne manjine „*čiji se položaj i ravnopravnost štite*“.³³ Navedeno je, naime, sedamnaest nacionalnih manjina i onda još, tzv. generalnom klauzulom, da su to i svi drugi „*koji ispunjavaju uslove iz stava 1 ovog člana*“ (znači, uslove iz definicije koja je u tom članu utvrđena za pojam ’nacionalne manjine’). Ovo može u praksi izazivati određene nejasnoće, jer se može tumačiti da se odnosi i na one grupe u kojima u cijeloj državi ima samo nekoliko pripadnika. Pošto takvim grupama objektivno nije moguće osiguravati sva prava i na isti način kao manjinskim kolektivitetima koji mogu biti i vrlo brojni, ovakav nediferenciran pristup može dovoditi do nesporazuma i sporenja o eventualnoj povredi principa ravnopravnosti. Upravo stoga države i izbjegavaju davanje definicije pojma ’nacionalne manjine’, a neke od njih još, pored ovog pojma, upotrebljavaju i pojam ’etničke grupe’ i sl.

³² Član 3 stav 1 Zakona o zaštiti prava pripadnika nacionalnih manjina.

³³ U stavu 2 člana 3 Zakona navedene su sljedeće nacionalne manjine: Albanci, Crnogorci, Česi, Italijani, Jevreji, Madari, Makedonci, Nijemci, Poljaci, Romi, Rumuni, Rusi, Rusini, Slovaci, Slovenci, Turci i Ukrajinci, te drugi ‘koji ispunjavaju uslove iz stava 1 ovog člana’.

U vezi sa navedenim, zaslužuje podršku odredba kojom je propisano da svaki pripadnik nacionalne manjine ima pravo da „*slobodno bira da se prema njemu ophode ili ne ophode kao takvom i ne smije doći u nepovoljan položaj zbog takvog opredjeljenja*“.³⁴ Ova odredba slijedi načelo iz člana 3 Okvirne konvencije za zaštitu nacionalnih manjina o slobodnom izboru pripadnika nacionalne manjine da li želi biti tretiran kao takav ili ne, bez bilo kakvog rizika zbog toga, s tim što to pravo može koristiti i pojedinačno i u zajednici s drugima. Puni smisao ove zakonske odredbe treba dovoditi u vezu sa utvrđenom obavezom organa vlasti Bosne i Hercegovine da „*poštuju i štite, očuvaju i razvijaju etnički, kulturni, jezički i vjerski identitet svakog pripadnika nacionalne manjine u Bosni i Hercegovini, koji je državljanin Bosni i Hercegovini*“,³⁵ da je zbranjena asimilacija pripadnika nacionalnih manjina protivno njihovoj volji,³⁶ te da su kažnjivi „*svaki čin, podsticanje, organizovanje i pomaganje aktivnosti koje bi mogle ugroziti opstanak neke nacionalne manjine, izazvati nacionalnu mržnju, dovesti do diskriminacije ili stavljanja pripadnika nacionalne manjine u neravnopravan položaj*“.³⁷

5. Zakon utvrđuje obavezu entiteta, kantona, gradova i opština da, u okviru svojih nadležnosti, „*svojim zakonima i drugim propisima potpunije urede prava i obaveze koje proističu iz ovog zakona i međunarodnih konvencija kojima se uređuju pitanja od značaja za nacionalne manjine*“.³⁸ Radi se, znači, o zakonom utvrđenoj obavezi svih ovih nivoa vlasti. To u nekim slučajevima može imati opravdanje (na primjer, kod regulisanja prava nacionalnih manjina u lokalnoj samoupravi), ali nosi sa sobom i opasnost da se na niže nivoje vlasti i na veliki broj subjekata prenose obaveze čiji je subjekt, po međunarodnom pravu, samo država Bosna i Hercegovina. Inače, puno je prava koja je jedino opravdano normirati na nivou države – zbog ujednačenog tretmana svih subjekata na koje sa ona odnose, zbog autoritativnosti donosioca, sigurnosti u sistemu zaštite tih prava i međunarodnih obaveza koje je preuzela sama država.

6. Vrlo je značajna zakonska odredba prema kojoj su „*Bosna i Hercegovina, entiteti, kantoni, gradovi i opštine u Bosni i Hercegovini obavezni, u okviru svojih budžetskih sredstava, osigurati sredstva radi ostvarivanja prava koja pripadaju nacionalnim manjinama po osnovu ovog zakona*“.³⁹ To znači da svi njihovi godišnji budžeti moraju imati posebnu stavku o osiguranim sredstvima za ostvarivanje prava nacionalnih manjina koja predviđa ovaj zakon. Makar ta sredstva bila i simbolična, sama obaveza njihovog predviđanja u budžetu daje

³⁴ Isto, član 4, stav 1.

³⁵ Isto, član 1.

³⁶ Isto, član 4, stav 2.

³⁷ Isto, član 25.

³⁸ Isto, član 7.

³⁹ Isto, član 8.

određenu sigurnost nacionalnim manjinama da će se stvarati realnije pretpostavke za ostvarivanje njihovih prava.

7. U Zakonu o zaštiti prava pripadnika nacionalnih manjina utvrđena je takva njegova struktura da su posebnim poglavljima označena neka najznačajnija prava nacionalnih manjina, i to: upotreba jezika, obrazovanje, informisanje, kultura, ekonomsko-socijalna prava i sudjelovanje u organima vlasti. Pri tome se posebnom odredbom normira da, u cilju ostvarivanja ovih prava, pripadnici nacionalnih manjina imaju pravo na slobodu organizovanja i okupljanja.⁴⁰ Ovakva struktura normativnog akta je, svakako, vrlo korisna, jer daje mogućnost veće jasnoće u zakonskom normiranju pojedinog prava, te jasnije pokazuje i dobre i loše strane njegovog pravnog tretmana.

7.1. Pripadniku nacionalne manjine se, prema ovom zakonu, priznaje i štiti pravo da upotrebljava svoj jezik – slobodno, bez ometanja, privatno i javno, usmeno i pismeno, te da upotrebljava svoje ime i prezime na svom jeziku i da zahtijeva da kao takvo bude u javnoj upotrebi.⁴¹

7.2. Odredbe o pravu na obrazovanje pripadnika nacionalnih manjina služuju posebnu pažnju kako zbog značaja ostvarivanja i zaštite ovog prava za ukupan društveni tretman i položaj nacionalnih manjina, tako i zbog dosadašnjeg vrlo slabog i u nekim rješenjima diskriminirajućeg zakonskog tretmana ovog prava pripadnika nacionalnih kolektiviteta. U tom smislu, vrlo je značajna izričita zakonska odredba o obavezi entiteta i kantona da, u okviru svog obrazovnog programa (predškolskog, osnovnog i srednjeg), u *naseljenim mjestima* u kojima pripadnici nacionalnih manjina čine većinu, osiguravaju obrazovanje na jeziku manjine. Takvih naseljenih mjesta ima u Bosni i Hercegovini, s tim što nema zakonskog određenja koje je kriterije potrebno ispuniti da bi se jedno mjesto moglo tretirati *naseljenim mjestom*, pa to može izazivati nesporazume u praksi. Pri tome se, nadalje, normira da su, „*nezavisno od broja pripadnika nacionalnih manjina*”, entiteti i kantoni dužni osigurati da „pripadnici nacionalne manjine, ako to zahtijevaju, mogu učiti svoj jezik, književnost, istoriju i kulturu na jeziku manjine kojoj pripadaju, kao dodatnu nastavu“.⁴² Ova odredba je dosta nejasna, jer se može tumačiti da je dovoljan svaki (pa i najmanji) broj pripadnika nacionalnih manjina za postojanje ove obaveze, što je realno teško, pa i nemoguće ostvariti. No, ovakva zakonska obaveza će, svakako, značajno doprinijeti da se u praksi profiliraju određeni kriteriji, pogotovo što se, u cilju ostvarivanja svih ovih prava, utvrđuje obaveza entiteta, kantona, gradova i opština da osiguraju „*finansijska sredstva, sredstva za osposobljavanje nastavnika koji će izvoditi nastavu na jeziku nacionalne manjine, osigurati prostor i druge uslove za izvođenje dopunske nastave i štampanje udžbenika na jezicima nacionalnih manjina*“.⁴³

⁴⁰ Isto, član 5.

⁴¹ Isto, član 11.

⁴² Isto, član 14, stav 1.

⁴³ Isto, član 14, stav 2.

Navedene zakonske odredbe o pravima nacionalnih manjina u oblasti obrazovanja podrazumijevaju velike nove obaveze države Bosne i Hercegovine, njenih entiteta i kantona, uključujući i značajna dodatna finansijska sredstva. Realno, njihovo ispunjenje mora biti proces, koji će dugo trajati, ali realizacija ovih prava mora biti neodložan i kontinuiran zadatak nadležnih organa, jer to ima suštinski značaj za ukupan društveni tretman nacionalnih manjina.

Zakon predviđa i pravo pripadnika nacionalnih manjina na „*osnivanje i vođenje privatnih ustanova za obrazovanje i stručno usavršavanje*“.⁴⁴ Radi se, u stvari, o specifikaciji međunarodnog pravnog standarda da „*i pojedinci i pravna lica imaju pravo da osnivaju i vode obrazovne ustanove (pravo osnivanja privatnih škola)*“.⁴⁵ Pri tome je teško prihvati odredbu stava 2 istog člana u ovom zakonu, prema kojoj su nacionalne manjine obavezne osigurati finansijska sredstva za ovakve ustanove. S razlogom se može postaviti pitanje njene usaglašenosti sa međunarodnim pravnim aktima, prema kojima je osnovno obrazovanje „*besplatno za sve*“, a srednje „*opštedostupno za sve putem potrebnih sredstava i posebno postepenim uvođenjem besplatne nastave*“.⁴⁶ Ovo je obaveza države, koja bi se onda teško mogla gradirati po svojinskom kriteriju i ograničavati samo na one škole koje nisu privatne.

7. 3. Pripadnici nacionalnih manjina imaju pravo „na osnivanje radio i televizijskih stanica, izdavanje novina i druge štampe, na jezicima manjine kojоj pripadaju“.⁴⁷ Zakonom se, takođe, predviđaju i obaveze drugih radio i televizijskih stanica prema nacionalnim manjinama. Konkretno, predviđena je obaveza radio i televizijskih stanica „*čiji su osnivači Bosna i Hercegovina, entiteti, kantoni, gradovi i opštine*“ da u svojim programskim šemama predvide „*posebne emisije za pripadnike nacionalnih manjina*“. Pri tome zakon precizira da će entiteti i kantoni svojim propisima izvršiti dalje preciziranje realizacije ovih „*posebnih emisija*“, vodeći računa o „*srazmernoj zastupljenosti nacionalnih manjina u entitetu, kantonu, gradu i opštini*“.⁴⁸

U slučaju radio i televizijskih stanica koje su javni servisi Bosne i Hercegovine navedena obaveza se dalje kompletira i precizira njihovom obavezom da „*najmanje jednom sedmično*“ osiguraju „*posebnu informativnu emisiju za pri-*

⁴⁴ Isto, član 13.

⁴⁵ Vidi: Član 13, stavovi 2 i 4 Međunarodnog pakta o građanskim i političkim pravima. Član 26, stav 3 Univerzalne deklaracije UN o ljudskim pravima.

Član 13, stav 3 Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima. Član 2 Prvog (dodatnog) protokola uz Evropsku konvenciju za zaštitu ljudskih prava i osnovnih sloboda.

⁴⁶ Isto.

⁴⁷ Isto, član 15.

⁴⁸ Isto, član 16, stav 1 i 3.

padnike nacionalnih manjina na njihovom jeziku?⁴⁹ Nije baš najjasnije šta u slučaju ove posljednje obaveze znači zahtjev „*na njihovom jaziku*”, u situaciji kada sam zakon navodi da u Bosni i Hercegovini postoji sedamnaest različitih nacionalnih manjina. Ovoj odredbi je teško dati drukčije tumačenje osim obaveze da to bude na jednom od jezika ovih nacionalnih manjina, ostavljajući slobodu dotičnom mediju da to konkretno utvrdi, vodeći računa o poštovanju načela ravnopravnosti.

7. 4. U članu 10 Zakona o zaštiti prava pripadnika nacionalnih manjina regulisana je upotreba znakova i simbola, i to tako što se u stavu 1 govorи o njihovoj upotrebi od strane pripadnika nacionalne manjine. U osnovi, ovdje se zakonom samo potvrđuje jedno civilizacijsko i demokratsko opredjeljenje da „*pripadnici nacionalnih manjina mogu slobodno isticati i nositi znakove i simbole nacionalne manjine kojoj pripadaju, kao i njihovih organizacija, udruženja i ustanova*”. Ali, djeluje sasvim neodgovarajuće da se rješenje iz stava 2 ovog člana veže za njegov stav 1. Naime, ispada da i sam pripadnik nacionalne manjine kao pojedinac ne može upotrebljavati ove znakove i simbole ako neće istovremeno isticati i službene znakove i simbole BiH, entiteta, kantona i opštine. Umjesto ovoga, trebalo bi predvidjeti da se simboli i znamenja nacionalnih manjina mogu isticati tokom državnih praznika i praznika nacionalnih manjina na zgradama i prostorijama koje koriste oni, odnosno njihova udruženja i druge njihove asocijacije, samo zajedno sa simbolima i znamenjima Bosne i Hercegovine (entiteta, kantona i opštine), u skladu sa odgovarajućim propisima ovih nivoa vlasti.

7. 5. Prošlogodišnjim proglašenjem amandmana na ustave entiteta osiguran je kvalitetan položaj nacionalnih manjina u domenu donošenja odluka u entitetskim zakonodavnim organima. Takođe, ovim amandmanima je određeno da će i konstitutivni narodi i „Ostali” biti proporcionalno zastupljeni u javnim institucijama u Federaciji Bosne i Hercegovine i u Republici Srpskoj.⁵⁰

Slijedeći ova ustavna opredjeljenja, u Zakonu o zaštiti prava pripadnika nacionalnih manjina je normirano da oni „*imaju pravo na zastupljenost u organima vlasti i u drugim javnim službama na svim nivoima, srazmjerno postotku njihovog sudjelovanja u stanovništvu, prema posljednjem popisu u Bosni i Hercegovini*”. Izričito je navedeno da ova njihova zastupljenost odnosi na zakonodavne, izvršne i sudske organe, na nivou entiteta i u kantonima, gradovima i opštinama, te da će se način i kriteriji njihovog izbora urediti zakonom, statutima i drugim propisima. Pri tome treba imati u vidu obavezu entiteta da svoje zakone i druge propise o pravima nacionalnih manjina, kao i druge zakone i propise u kojima se propisuju i štite prava nacionalnih manjina, usklade sa ovim za-

⁴⁹ Isto, član 16, stav 2.

⁵⁰ Vidi: Amandman LII na Ustav Federacije BiH.

Amandman LXXXV na Ustav Republike Srpske.

konom u roku od šest mjeseci od dana njegovog objavljivanja u službenim novinama.⁵¹

S obzirom na veliki broj nacionalnih manjina u Bosni i Hercegovini i istovremeno na malu brojnost tih kolektiviteta (donekle sa izuzetkom 2-3 nacionalne manjine), bilo je nužno zakonom normirati, što je i urađeno, da su „*predstavnici nacionalnih manjina u strukturama vlasti zastupnici svih nacionalnih manjina*“.⁵²

Svojevrsno učešće u vršenju javnih poslova, pa i same državne vlasti, od strane nacionalnih manjina onda kada se to tiče njihovog interesa, Zakon osigurava i osnivanjem vijeća nacionalnih manjina pri Parlamentarnoj skupštini Bosne i Hercegovine i pri entitetskim zakonodavnim organima.⁵³ Ova vijeća, sačinjena od pripadnika nacionalnih manjina, imaju savjetodavni karakter, tako što će navedenim državnim organima „*davati mišljenja, savjete i prijedloge ... o svim pitanjima koja se tiču prava, položaja i interesa nacionalnih manjina*“.⁵⁴

Pošto će se kriteriji i način izbora predstavnika nacionalnih manjina u strukturama vlasti i u vijećima nacionalnih manjina pri Parlamentarnoj skupštini Bosne i Hercegovine i pri entitetskim zakonodavnim organima utvrditi u zakonima čije donošenje tek predstoji, pri utvrđivanju tih rješenja u njima bilo bi nužno poći bar od sljedeća tri stava:

- a) da za ove predstavnike mogu biti izabrani/delegirani samo pripadnici nacionalnih manjina;
- b) da te predstavnike mogu birati/delegirati samo pripadnici nacionalnih manjina, te
- c) da se osigura takav mehanizam izbora/delegiranja u kome će sve nacionalne manjine biti u ravnopravnom položaju, bez majorizacije od strane nacionalnih manjina koje su izrazito brojne u odnosu na većinu drugih nacionalnih manjina.

U vezi sa navedenim treba imati u vidu da nacionalne manjine (s obzirom na svoju brojnost) teško mogu imati svoje političke partie koje bi zadovoljile ovu njihovu potrebu (sa izuzetkom, eventualno, Roma). Stoga bi trebalo razmotriti mogućnost da u procesu kandidovanja i biranja predstavnika nacionalnih manjina u organe vlasti i u njihova vijeća pri zakonodavnim organima vrlo značajna uloga pripadne samim udruženjima ovih nacionalnih kolektiviteta. To, takođe, znači da to naprosto ne mogu biti postojeće političke partie u Bosni i Hercegovini, pošto je dosadašnje iskustvo pokazalo da one svjesno kalkulišu (i manipulišu) biračkim tijelom iz sastava ovih nacionalnih kolektiviteta – stavljajući ponekog njihovog pripadnika pri dnu izborne kandidatske liste (kako, u

⁵¹ Član 29 Zakona o pravima pripadnika nacionalnih manjina.

⁵² Isto, član 20, stav 3.

⁵³ Isto, član 21 i 23.

⁵⁴ Isto, član 22.

stvari, taj ne bi ni bio izabran), a istovremeno dobijajući na taj način značajan broj glasova od strane birača iz tih sredina.

8. U nekoliko odredaba Zakona ostvarivanje nekih vrlo važnih prava nacionalnih manjina se predviđa pod uslovom da njihovi pripadnici u određenom gradu ili opštini čine većinu (članovi 9, 12, 14, 18). Takve opštine i takvog grada u Bosni i Hercegovini nema (nema ni opštine u kojoj pripadnici nacionalne manjine prelaze 10% njenog stanovništva), tako da ovakvo propisivanje prava više djeluje kao želja da se ostavi dobar dojam, negoli što zaista znači osiguranje i zaštitu tih prava. Ove odredbe se odnose na pitanja i odnose od velikog značaja za nacionalne manjine (poštovanje prava drugih nacionalnih kolektivita; upotreba jezika manjine u komunikaciji između njih i organa vlasti; natpisi na ustanovama; imena ulica i drugih topografskih oznaka; nastava na maternjem jeziku manjine; osnivanje biblioteka, videoteka, kulturnih centara, muzeja, arhiva, kulturnih, umjetničkih i folklornih društava; pružanje finansijskih i bankarskih usluga i dr.). To znači da je, zbog činjenice što su u Bosni i Hercegovini nacionalne manjine prisutne u gotovo svakoj opštini, ali istovremeno i svugdje u relativno malom broju, bilo neophodno utvrditi adekvatniji kriterij za ostvarivanje dotičnih prava.

9. U više odredaba Zakona upotrebljava se i pojam „*naseljeno mjesto*”, pa je stoga bilo potrebno definisati šta se pod tim pojmom podrazumijeva. Istovremeno, izgleda sasvim neprikladno vezati ostvarivanje nekih prava za „*mjesnu zajednicu*” ili „*naseljeno mjesto*”, a u nekim slučajevima i za pojmove „*opština*” i „*grad*”. Konkretno, u članu 18 Zakona navodi se da su organi vlasti „*obavezni osigurati da se u finansijskim i bankarskim uslugama i u drugim službama javnog sektora kroz uplatnice, obrasce i formulare, te u javnim bolnicama, staračkim domovima i drugim socijalnim ustanovama omogući upotreba jezika manjine i tretman na jeziku manjine*”. Pored toga što je ova odredba nejasna, ona je u mnogo čemu i neostvarljiva, pa stoga djeluje i kao proklamacija koja nema cilj da se prava ostvaruju, nego da se (bar trenutno) politički efekti postižu. Od ovakvih i sličnih proklamacija nacionalne manjine mogu imati samo štete. Umjesto toga, potrebno je tačno i precizno predvidjeti pojedino pravo nacionalne manjine, tako da se ono može i ostvarivati i pravno štititi.

10. Isto tako, bilo je puno razloga da ovaj zakon sadrži i odredbu o obavezi pripadnika nacionalnih manjina da poštuju teritorijalni integritet i političku nezavisnost države Bosne i Hercegovine, kao i njeno zakonodavstvo. Naime, u pravnom aktu kojim se regulišu prava nacionalnih manjina, bilo bi značajno da se istovremeno pravno proklamuje i ta tako značajna njihova obaveza, koja je inače kao takva izričito utvrđena u više međunarodnih pravnih akata. Zakoni o pravima nacionalnih manjina mnogih država sadrže ovakvu odredbu.

11. Bilo je puno razloga za opredjeljenje da se u ovom zakonu posebno predvide neka rješenja za poboljšanje položaja Roma, što je inače zakonodavna praksa u više evropskih zemalja. U pitanju je najbrojnija nacionalna manjina, ali

istovremeno i manjina koja je ne samo u najtežem ekonomsko-socijalnom položaju, nego i koja je najviše izložena diskriminaciji. Stoga su potrebna i neka posebna rješenja za prava Roma, uključujući i jači uticaj tzv. principa pozitivne diskriminacije, koji inače treba imati u vidu prilikom regulisanja prava svih nacionalnih manjina.

VII

1. Izloženo aktuelno stanje pravnog položaja nacionalnih manjina u Bosni i Hercegovini pokazuje da je tokom prošle i ove godine ono zaista značajno poboljšano. Veći broj novih ustavnih odredaba o kategoriji „Ostali“ (koja se, prije svega, odnosi na pripadnike nacionalnih manjina), u kombinaciji sa velikim brojem medjunarodnih pravnih akata koji obavezuju Bosnu i Hercegovinu a koji se tiču prava nacionalnih manjina, van sumnje, predstavlja solidnu pravnu osnovu najvišeg pravnog nivoa za prava ove kategorije stanovništva. Uz to, bez obzira na odredjene slabosti u Zakonu o zaštiti prava pripadnika nacionalnih manjina, od kojih su neke i takve da predstavljaju značajno zaostajanje u odnosu na važeće ustavne zahtjeve, samo donošenje ovog zakona je od velikog značaja. Radi se o tome da je, pre svega, ovo prvi put da je u Bosni i Hercegovini donesen poseban zakon o pravima nacionalnih manjina, i zatim, da je ovaj zakon donesen od strane Parlamentarne skupštine Bosne i Hercegovine, sa važnošću na cijelom prostoru ove države (kakva je praksa zakonskog normiranja društvenih odnosa u BiH još uvijek dosta rijetka).

Međutim, i u pravnim sistemima koji su znatno potpuniji i konzistentniji od pravnog sistema Bosne i Hercegovine poseban zakon o pravima nacionalnih manjina ne može biti dovoljan za zakonsko regulisanje svih pitanja i odnosa od značaja za ove nacionalne kolektivitete. On treba da predstavlja svojevrsni osnovni zakon o principima pravnog tretmana nacionalnih manjina, s tim da se onda, vodeći računa o tim principima, detaljnije i kompletnije regulišu njihova prava u više drugih zakona koji se odnose na pojedine oblasti društvenog života (obrazovanje, zapošljavanje, mediji, zaštita nacionalne kulture, jezik, pismo i dr.). Tek se u toj kombinaciji osigurava potreban pravni osnov i okvir za prava nacionalnih manjina. No, u Bosni i Hercegovini su upravo ovi drugi zakoni ključni problem zakonskog regulisanja prava nacionalnih manjina, i to ne samo zato što oni ne sadrže mnoga neophodna pravna određenja o njihovim pravima, nego i zato što u njima ima i nekih rješenja koja za pripadnike ovih kolektiviteta imaju diskriminirajuću sadržinu.

Zakonom o zaštiti prava pripadnika nacionalnih manjina, koji je stupio na snagu polovinom maja ove godine, propisano je da će „*Republika Srpska i Federacija Bosne i Hercegovine donijeti svoje zakone i uskladiti svoje propise o pravima nacionalnih manjina, kao i druge zakone i propise u kojima se propisu-*

ju ili štite prava nacionalnih manjina, sa ovim zakonom, u roku od šest mjeseci od dana stupanja na snagu ovog zakon”.⁵⁵ Ovaj rok još traje, ali od strane nadležnih organa do sada nisu preduzimane nikakve aktivnosti u cilju ispunjenja ove zakonske obaveze.

2. Stvarno stanje ostvarivanja i zaštite prava nacionalnih manjina u Bosni i Hercegovini je znatno slabije od onoga koje bi se moglo procjenjivati na osnovu izloženog pravnog stanja. To jeste, svakako, rezultat i činjenice da je sada važeći pravni tretman nacionalnih manjina ustavno i zakonski definisan tek u toku posljednje godine dana i što je još kratak period da bi se jače osjetili pozitivni efekti tih rješanja. Ali, problemi su mnogo više na drugoj strani, među kojima su primarno sljedeći:

- još traje naglašeno nestabilno političko stanje u Bosni i Hercegovini, koje se onda negativno reflektuje na ukupno društveno stanje;
- evidentne su mnoge slabosti u organizaciji i vršenju državne vlasti, uključujući i sam sistem zaštite prava građana, što se, u uslovima dominirajućeg nacionalnog sastava te vlasti, objektivno uvijek najviše i posebno nepovoljno odražava upravo na položaj nacionalnih manjina;
- još je veliki procenat izbjeglica i raseljenih lica koji se nisu vratili u svoja predratna prebivališta, u svoje domove i na svoja imanja, među kojima je veliki broj i iz sastava nacionalnih manjina;
- ukupno ekonomsko-socijalno stanje u Bosni i Hercegovinije je vrlo teško, što posebno teško pogoda upravo pripadnike nacionalnih manjina;
- opšte stanje ljudskih prava i osnovnih sloboda u Bosni i Hercegovini je nezadovoljavajuće, pa je, samim tim, tako pogotovo onda kada se radi o pravima i slobodama pripadnika nacionalnih manjina.

S obzirom na izložene karakteristike opštег stanja u Bosni i Hercegovini s razlogom se može tvrditi da su pripadnici nacionalnih manjina posebno suočeni sa problemima u oblastima zapošljavanja i obrazovanja.

2.1. Stanje izrazito velike nezaposlenosti u Bosni i Hercegovini traje već jako dugo. I za sam povratak izbjeglica i raseljenih lica posljednjih godina to predstavlja najveću prepreku. I onda kada se ostvari, taj povratak vrlo često upravo zbog nezaposlenosti ne može da ostane održiv. A onda, u situaciji kada politički dominiraju i kada vlast drže nacionalne političke partije iz sastava tri konstitutivna naroda, njihova briga je primarno usmjerena prema pripadnicima „svog” naroda, tako da su pripadnici nacionalnih manjina samim tim u drugorazrednom položaju i na margini društvene brige da im se omogući zaposlenje, kao nezamjenljiv uslov za iole pristojan život. Sto je pojedini od tih kolektiviteata u objektivno težim ukupnim društvenim prilikama, to je i šansa za zapošljavanje njihovih radno sposobnih pripadnika manja. To se, konkretno, posebno odnosi na Rome, od kojih je sada u cijeloj Bosni i Hercegovini u radnom osnosu svega između 100 i 200 lica.

⁵⁵ Član 26 Zakona.

2.2. Sistem obrazovanja u Bosni i Hercegovini, uz sve druge slabosti koje ga prate, još je jako opterećen nacionalnom dimenzijom. I sada u značajnom stepenu egzistiraju tri nacionalna, odvojena školska sistema, uključujući u više slučajeva i to da u istoj školskoj zgradi i dalje postoje razredi (i nastava) prema nacionalnom sastavu učenika. U svemu tome tretman nacionalnih manjina u sistemu obrazovanja je posebno nezadovoljavajući – i normativno i stvarno.

U više zakona o osnovnom i srednjem obrazovanju nema uopšte odredaba o nekim pravima nacionalnih manjina. A u onima koji sadrže takve odredbe njihov položaj je u osnovi diskriminirajući. Njima je regulisano da se nastava organizuje na jeziku nacionalne manjine samo onda ako se u dotičnoj osnovnoj ili srednjoj školi obrazuju samo učenici te manjine. Takav slučaj ne postoji (niti realno gotovo uopšte može postojati) u Bosni i Hercegovini, jer nema nijednog mikrolokaliteta koji bi bio i blizu broju pripadnika jedne nacionalne manjine da bi se u cijeloj školi obrazovali učenici „samo jedne narodnosti“. Izrazito su rijetki takvi lokaliteti i kad su u pitanju tri konstitutivna naroda.

U više ovih zakona je, takođe, normirano da onda kada u osnovnoj školi ima najmanje dvadeset učenika (u srednjoj školi najmanje trideset učenika) jednog razreda koji pripadaju „narodnosti“ kojoj ni bosanski ni hrvatski jezik nisu maternji jezici (Federacija BiH), a u Republici Srpskoj: kojoj srpski jezik nije maternji jezik, za njih se u toj školi organizuje nastava maternjeg jezika. Znači, ne nastava na maternjem jeziku nego nastava iz maternjeg jezika. I ovakvi slučajevi su vrlo rijetki u Bosni i Hercegovini, tako da je do sada postojalo samo nekoliko škola koje su organizovale takvu nastavu iz maternjeg jezika za učenike koji pripadaju određenoj nacionalnoj manjini.

U okviru neriješenog i faktički slabog položaja nacionalnih manjina u sistemu školskog obrazovanja u Bosni i Hercegovini, posebno je zabrinjavajuće stanje sa školovanjem romske djece. I po broju učenika i po uslovima u kojima izrazito mali procenat ove djece školskog uzrasta pohađa školu, stanje se može kvalifikovati naprosto katastrofalnim. I oni koji se odluče da pohađaju školu to uglavnom čine u prvih nekoliko razreda osnovne škole. Nema sumnje da su osnovni razlozi za ovakvo stanje u izrazito teškim ekonomsko-socijalnim uslovima u kojima živi romska populacija. Nemogućnost da osiguraju i najminimalnije uslove za pohađanje škole (odjeća, obuća, higijena, knjige i drugi školski pribor) jesu najčešći razlozi za to, ali u mnogim slučajevima i uvjerenje njihovih roditelja da se ta djeca moraju posvetiti prosjačenju kao jedinom načinu da preživi cijela porodica. Nisu rijetki ni slučajevi izloženosti te djece u školi šikaniranju, vrijeđanju na nacionalnoj osnovi i raznim drugim vidovima maltretiranja i diskriminacije, među kojima, nažalost, ima takvih ponašanja i od strane samih nastavnika, zbog čega se nekada njihovi roditelji odlučuju da ih ne šalju u školu, odnosno da ih ispišu iz škole.

Sada je u Bosni i Hercegovini u toku velika aktivnost međunarodne zajednice (za što je zadužena OSCE) na reformi sistema obrazovanja. Cilj je da se us-

postavi savremeni obrazovni sistem, komplementaran sa stanjem u Evropi, što, pored ostalog, podrazumijeva da se eliminiše organizaciona podvojenost po nacionalnoj osnovi, s tim da se osigura princip ravnopravnosti kroz tzv. grupu nacionalnih predmeta.

Ova reforma je, svakako, prilika da se znatnije poboljša i položaj pripadnika nacionalnih manjina u cjelokupnom školskom sistemu u Bosni i Hercegovini, što uostalom izričito proizlazi kao obaveza i iz nedavno donesenog Zakona o zaštiti pripadnika nacionalnih manjina. Naime, ovim zakonom je propisano da su „*nezavisno o broju pripadnika nacionalnih manjini*”, entiteti i kantoni „*obavezni obezbijediti da pripadnici nacionalne manjine, ako to oni zahtijevaju, mogu imati učenje svoga jezika, književnosti, istorije i kulture na jeziku manjine kojoj pripadaju, kao dodatnu nastavu*”. A ako oni u određenom gradu, opštini ili naseljenom mjestu „*čine apsolutnu ili relativnu većinu*”, postoji obaveza da im se omogući i „*obrazovanje na jeziku manjine*”.

Navedenim zakonom je utvrđena obaveza državnih organa da za ova prava osiguraju finansijska sredstva, sredstva za osposobljavanje nastavnika, prostor i druge uslove za izvođenje ove nastave i štampanje udžbenika „*na jezicima nacionalnih manjina*”. Uz ovo, ovim zakonom je za nacionalne manjine predviđena i mogućnost „*osnivanja i vođenja vlastitih privatnih institucija za obrazovanje i stručno usavršavanje*”.

S obzirom na sadašnje realno stanje i prilike u Bosni i Hercegovini, mora se izraziti velika rezerva prema spremnosti, ali donekle i prema realnim mogućnostima, da se u praksi ostvare ove zakonske proklamacije. No, sama činjenica da su ova prava utvrđena zakonom i da se u tom smislu predviđaju velike obaveze državnih organa predstavlja značajan oslonac za nastojanja da se poboljša ukupan tretman nacionalnih manjina u obrazovnom sistemu u Bosni i Hercegovini.

2.3. Sadašnje stanje manjinskih medija i medija koji pišu/emituju informacije o nacionalnim manjinama u Bosni i Hercegovini je slabije od stanja koje je postojalo prije rata 1992–1995. godine. U 1989. godini u Bosni i Hercegovini je izlazilo (periodično) 5 publikacija – listova pripadnika nacionalnih manjina. Od 56 lokalnih radio-stanica, u programskim šemama u osam ovih stanica bile su emisije na jezicima nacionalnih manjina (ukrajinskom, slovačkom, rusinskom, češkom i romskom). Postojala je i sedmična emisija na romskom jeziku na Radio Sarajevu, a jedno vrijeme i na TV Sarajevo, koji su tada imali tretman centralnih medija Bosne i Hercegovine.

U poslijeratnom periodu, do sada, samo Ukrajinci u Prnjavoru i Romi u Tuzli pokušavaju da imaju svoje radio stанице. Od pisanih medija samo Udruženje Čeha u Bosni i Hercegovini povremeno izdaje publikaciju „Češka beseda” i Slovensko kulturno društvo „Cankar” publikaciju pod naslovom „Zora”. Takođe, svega nekoliko lokalnih radio stanica imaju sedmične emisije (u tačno određenom terminu) o nacionalnim manjinama, i to o Romima, među kojima treba posebno navesti Radio Vitez.

Ima osnova za tvrdnju da će prijem Bosne i Hercegovine u članstvo Savjeta Evrope i početak procesa pridruživanja Evropskoj uniji, kao i tek izvršeno zakonsko regulisanje prava pripadnika nacionalnih manjina, rezultirati značajnim poboljšanjem njihovog ukupnog medijskog tretmana, uključujući i osnivanje svojih medijskih tijela. Pri tome je sada, van sumnje, osnovni problem u potpunom nedostatku potrebnih finansijskih sredstava. Interesantno je da tek donesen zakon o pravima pripadnika nacionalnih manjina ne predviđa nikakvu finansijsku obavezu države u vezi sa osiguravanjem njihovog prava u domenu javnog informisanja, iako takva obaveza proizlazi iz stava 3 člana 9 Okvirne konvencije o zaštiti nacionalnih manjina.

2.4. Treba posebno ukazati na činjenicu da su nacionalne manjine u Bosni i Hercegovini do sada bile gotovo potpuno izvan bilo kakve participacije u vršenju javnih poslova i posebno u vršenju državne vlasti. U osnovi, i onda kada se pri tome odlučivalo o njihovim pravima, potrebama i interesima, to su činili drugi – pripadnici konstitutivnih naroda, bez odgovarajuće uključenosti u taj proces samih pripadnika nacionalnih manjina kojih se to najviše tiče.

Sada je u Bosni i Hercegovini prava rijetkost da u organima lokalne samouprave i u organima državne vlasti na svim nivoima ima predstavnika nacionalnih manjina. A ti rijetki slučajevi su opet karakteristični po tome što su oni u te organe izabrani/imenovani od strane predstavnika većinskih naroda, odnosno političkih partija iz njihovog sastava, a ne od strane nacionalnih manjina.

Postojalo je opšte ponašanje političkih partija, prije svih onih sa nacionalnom odrednicom, da pred izbore nastoje pridobiti glasove birača iz sastava nacionalnih manjina, čineći pri tome neke simbolične i jednokratne gestove pažnje (podjelu određenog broja paketa humanitarne pomoći i sl.) i, eventualno, stavljući nekoga od njihovih pripadnika na kandidatske liste (u pravilu, na redni broj za koji se procjenjivalo da neće ni doći u krug osvojenih mesta na izborima). Nakon provedenih izbora, po pravilu je prestajao svaki njihov interes za probleme ovih manjina. Pripadnici nacionalnih manjina su posljednjih godina prozreli ovakva ponašanja političkih partija i sve više pokazuju otvoreni otpor protiv toga. Kao rezultat takvog stanja ove godine je došlo do formiranja romske političke partije. To i jeste jedina nacionalna manjina koja ima bar neke šanse da se preko svoje političke partije uključi u organe vlasti, jer su ostale nacionalne manjine toliko malobrojne da bi njihovo političko organizovanje na nacionalnoj osnovi realno ostalo bez željenih efekata.

Naspram navedenog faktičkog stanja, novouspostavljeno normativno stanje, nakon ustavnih amandmana na ustave entiteta i donošenja Zakona o zaštiti prava pripadnika nacionalnih manjina, pruža mnogo izgledniju situaciju za učešće nacionalnih manjina u vršenju javnih poslova i za učešće u organima državne vlasti. Ovim aktima je izričito propisano da nacionalne manjine imaju pravo na zastupljenost u organima vlasti i u drugim javnim službama na svim nivoima, srazmjerno postotku njihovog sudjelovanja u stanovništvu, da se osni-

vaju vijeća nacionalnih manjina pri zakonodavnim i izvršnim organima vlasti (kao savjetodavna tijela), te da se propisi i odluke koje se tiču prava i položaja nacionalnih manjina ne mogu donijeti bez određene i odgovarajuće uključenosti samih tih manjina u taj proces.

Ali, za navedena načelna ustavna i zakonska rješenja nužna je odgovarajuća operacionalizacija u izbornom zakonu i u entitetskim zakonima o pravima nacionalnih manjina, što do sada nije urađeno. Ta konkretizacija mora biti primjerena stvarnom stanju, polazeći od činjenice da u Bosni i Hercegovini ima veliki broj nacionalnih manjinskih kolektiviteta, od kojih uglavnom svaki ima mali broj svojih pripadnika, i to bez njihove koncentracije na određenim lokalitetima, već naprotiv, malobrojno prisutnih u velikom broju opština.

Rješenje, vjerovatno, treba tražiti u jakoj poziciji nevladinih organizacija pripadnika nacionalnih manjina, koje treba da budu baza i organizacioni oblici donošenja odluka od značaja za prava manjina i za izbor/imenovanje njihovih predstavnika u sve organe vlasti i u savjetodavna tijela koje zakoni predviđaju. Takvih nevladinih organizacija sada u Bosni i Hercegovini ima veliki broj, od kojih mnoge pokazuju veliku aktivnost i dobre rezultate u svom radu. Ono što je pri tome vrlo nepovoljno jeste činjenica da su one uglavnom sve suočene sa velikom oskudicom finansijskih sredstava, kao uslova da bi bar donekle mogle ostvarivati ciljeve zbog kojih su i formirane. Donacije iz inostranstva postaju sve manje, a pomoć države je ne samo nedovoljna i sporadična, nego i potpuno pravno neregulisana.

2.5. Na kraju treba navesti da je Bosna i Hercegovina primljena u Savjet Evrope u prvoj polovini prošle godine. Po toj osnovi, njena je obaveza da Generalnom sekretaru Savjeta Evrope predloži punu informaciju o pravnim i drugim mjerama koje su preduzete da bi se u ovoj državi primijenili principi sadržani u Okvirnoj konvenciji za zaštitu nacionalnih manjina, te da, nakon toga, ovom organu periodično dostavlja informacije relevantne za primjenu ovog međunarodnog dokumenta. Bosna i Hercegovina ovakvu informaciju nije dostavila ni ove godine.

PARLAMENTARNA SKUPŠTINA
BOSNE I HERCEGOVINE
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Na osnovu člana IV 4. a) Ustava Bosne i Hercegovine, Parlamentarna skupština Bosne i Hercegovine, na sjednici Predstavničkog doma, održanoj 20. juna 2002. godine i na sjednici Doma naroda, održanoj 1. aprila 2003. godine, usvojila je

ZAKON
O ZAŠTITI PRAVA PRIPADNIKA NACIONALNIH MANJINA
(Službeni glasnik BiH, broj 12/01)

I – OSNOVNE ODREDBE

Član 1.

Ovim zakonom utvrđuju se prava i obaveze pripadnika nacionalnih manjina u Bosni i Hercegovini (u daljem tekstu: BiH) i obaveze organa vlasti u BiH da poštuju i štite, očuvaju i razvijaju etnički, kulturni, jezički i vjerski identitet svakog pripadnika nacionalne manjine u BiH, koji je državljanin BiH.

Član 2.

Zaštita nacionalnih manjina i prava i sloboda tih manjina, sastavni je dio međunarodne zaštite ljudskih prava i sloboda.

Okvirna konvencija za zaštitu nacionalnih manjina Savjeta Evrope direktno se primjenjuje i sastavni je dio pravnog sistema BiH i entiteta u BiH.

Član 3.

Nacionalna manjina, u smislu ovog zakona, je dio stanovništva-državljana BiH koji ne pripadaju ni jednom od tri konstitutivna naroda, a sačinjavaju je ljudi istog ili sličnog etničkog porijekla, iste ili slične tradicije, običaja, vjerovanja, jezika, kulture i duhovnosti i bliske ili srodne istorijske prošlosti i drugih karakteristika.

BiH štiti položaj i ravnopravnost pripadnika nacionalnih manjina: Albanačca, Crnogoraca, Čeha, Italijana, Jevreja, Mađara, Makedonaca, Nijemaca, Poljaka, Roma, Rumuna, Rusa, Rusina, Slovaka, Slovenaca, Turaka i Ukrajinaca i drugih koji ispunjavaju uslove iz stava 1 ovog člana.

Član 4.

Svaki pripadnik nacionalne manjine ima pravo da slobodno bira da se prema njemu ophode ili ne ophode kao takvim i ne smije doći u nepovoljan položaj zbog takvog opredjeljenja, a bilo kakav oblik diskriminacije po tom osnovu je zabranjen.

Nije dozvoljena asimilacija pripadnika nacionalnih manjina protivno njihovoj volji.

Član 5.

Pripadnici nacionalnih manjina imaju pravo na slobodu organizovanja i okupljanja radi izražavanja i zaštite svojih kulturnih, vjerskih, obrazovnih, socijalnih, ekonomskih i političkih sloboda, prava, interesa, potreba i identiteta.

Član 6.

BiH omogućava i finansijski pomaže održavanje i razvitak odnosa između pripadnika nacionalnih manjina u BiH sa pripadnicima istih nacionalnih manjina u drugim državama i sa narodima u njihovim matičnim državama.

Član 7.

Entiteti, kantoni, gradovi i opštine u BiH, u okviru svojih ovlašćenja, svojim zakonima i drugim propisima potpunije će urediti prava i obaveze koje prostišu iz ovog zakona i međunarodnih konvencija kojima se uređuju pitanja od značaja za nacionalne manjine.

Član 8.

BiH, entiteti, kantoni, gradovi i opštine u BiH su dužne u okviru svojih buketskih sredstava osigurati sredstva radi ostvarivanja prava koja pripadaju nacionalnim manjinama po osnovu ovog zakona.

Član 9.

U gradovima, opštinama i mjesnim zajednicama (ili naseljenim mjestima) gdje pripadnici nacionalnih manjina čine većinu, dužni su poštovati prava pripadnika drugih nacionalnih manjina, kao i konstitutivnih naroda u BiH, uvažavajući načela njihove potpune ravnopravnosti.

II – ZNAKOVI I SIMBOLI

Član 10.

Pripadnici nacionalnih manjina mogu slobodno isticati i nositi znakove i simbole nacionalne manjine kojoj pripadaju, kao i njihovih organizacija, udruženja i institucija.

Prilikom upotrebe znakova i simbola iz prethodnog stava pripadnici nacionalnih manjina obavezni su isticati i službene znakove i simbole BiH, kao i simbole i znakove entiteta, kantona i opština, u skladu sa njihovim propisima.

III – UPOTREBA JEZIKA

Član 11.

BiH priznaje i štiti pravo svakom pripadniku nacionalne manjine u BiH korišćenje svog jezika slobodno i bez ometanja, privatno i javno, usmeno i pismeno.

Pravo iz prethodnog stava podrazumijeva i pravo pripadniku nacionalne manjine da koristi svoje ime i prezime na jeziku manjine i da zahtijeva da kao takvo bude u javnoj upotrebi.

Član 12.

U gradovima, opštinama i mjesnim zajednicama (ili naseljenim mjestima), u kojima pripadnici nacionalne manjine čine absolutnu ili relativnu većinu stanovništva, organi vlasti obezbijediće da se jezik manjine koristi između tih pripadnika i organa vlasti: da natpisi institucija budu ispisani na jeziku manjine, te da lokalni nazivi, imena ulica i drugih topografskih oznaka namijenjenih javnosti budu ispisani i istaknuti i na jeziku manjine koja to zahtijeva.

Gradovi i opštine mogu svojim statutima utvrditi da prava iz prethodnog stava mogu koristiti pripadnici nacionalne manjine i kada ne čine absolutnu ili relativnu većinu stanovništva, već kada čine u gradu, opštini ili naseljenom mjestu više od jedne trećine stanovništva.

IV – OBRAZOVANJE

Član 13.

Entiteti i kantoni u Federaciji BiH će svojim zakonima utvrditi mogućnosti pripadnicima nacionalnih manjina na osnivanje i vođenje vlastitih privatnih institucija za obrazovanje i stručno usavršavanje.

Finansiranje institucija iz prethodnog stava dužne su osigurati nacionalne manjine.

Član 14.

Entiteti i kantoni u Federaciji BiH obavezni su u okviru svog obrazovnog programa (predškolskog, osnovnog, srednjeg) obezbijediti da u gradovima, opština i naseljenim mjestima u kojima pripadnici nacionalnih manjina čine apsolutnu ili relativnu većinu omogući obrazovanje na jeziku manjine. Nezavistno o broju pripadnika nacionalne manjine, entiteti i kantoni su obavezni obezbijediti da pripadnici nacionalne manjine, ako to zahtijevaju, mogu imati učenje svog jezika, književnosti, istorije i kulture na jeziku manjine kojoj pripadaju, kao dodatnu nastavu.

Radi ostvarivanja prava iz prethodnog stava vlasti entiteta, kantona, gradova i opština dužne su obezbijediti finansijska sredstva, sredstva za osposobljavanje nastavnika koji će izvoditi nastavu na jeziku nacionalne manjine, obezbijediti prostor i druge uslove za izvođenje dopunske nastave i štampanje učbenika na jezicima nacionalnih manjina.

V – INFORMISANJE

Član 15.

Pripadnici nacionalnih manjina u BiH imaju pravo na osnivanje radio i televizijskih stanica, izdavanje novina i drugih štampanih informativnih glasila na jezicima manjine kojoj pripadaju.

Član 16.

Radio i televizijske stanice čiji su osnivači BiH, entiteti, kantoni, gradovi i opštine koji ostvaruju ulogu javne službe dužni su u svojim programskim šemama predviđjeti posebne emisije za pripadnike nacionalnih manjina a mogu obezbijediti i druge sadržaje na jezicima manjina.

Radio i televizijske stanice kao javni servisi BiH dužni su najmanje jednom sedmično obezbijediti posebnu informativnu emisiju za pripadnike nacionalnih manjina, na njihovom jeziku.

Entiteti i kantoni će svojim propisima utvrditi prava iz stava 1. ovog člana, polazeći od razmjera zastupljenosti nacionalnih manjina u entitetu, kantonu, gradu i opštini.

VI – KULTURA

Član 17.

Pripadnici nacionalnih manjina imaju pravo osnivati biblioteke, videoteke, kulturne centre, muzeje, arhive, kulturna, umjetnička i folklorna društva i sve druge oblike slobode kulturnog izražavanja, te brinuti se o održavanju svojih spomenika kulture i kulturnog nasljeđa.

U gradovima, opštinama, mjesnim zajednicama (ili naseljenim mjestima), u kojima pripadnici nacionalne manjine čine preko jedne trećine stanovništva, u institucijama za kulturne aktivnosti obezbijediće se sadržaj na jezicima nacionalne manjine.

Arhivi, muzeji, ustanove za zaštitu spomenika kulture i tradicije u BiH i entitetima dužne su u svojim programima i sadržajima obezbijediti i srazmjeru zastupljenost svih nacionalnih manjina u BiH i štititi spomeničko blago i kulturnu baštinu nacionalnih manjina.

VII – EKONOMSKO-SOCIJALNA PRAVA

Član 18.

U gradovima, opštinama i mjesnim zajednicama (ili naseljenim mjestima) u kojima pripadnici nacionalne manjine čine apsolutnu ili relativnu većinu stanovništva, organi vlasti su dužni obezbijediti da se u finansijskim i bankarskim uslugama i u drugim službama javnog sektora kroz uplatnice, obrasce i formule, te u bolnicama, staračkim domovima i drugim socijalnim ustanovama, omogući upotreba jezika manjine i tretman na jeziku manjine.

VIII – UČESTVOVANJE U ORGANIMA VLASTI

Član 19.

Pripadnici nacionalnih manjina iz člana 3 ovog zakona imaju pravo na zastupljenost u organima vlasti i drugim javnim službama na svim nivoima, srazmerno procentu njihovog učešća u stanovništvu prema posljednjem popisu u BiH.

Član 20.

Način i kriteriji izbora predstavnika nacionalnih manjina u parlamentima, skupštinama i savjetima, u smislu prethodnog člana, bliže će se urediti izbornim zakonima BiH i entiteta te statutima i drugim propisima kantona, gradova i opština.

Način zastupljenosti predstavnika nacionalnih manjina u izvršnoj i sudskoj vlasti, kao i javnim službama urediće se posebnim zakonima i drugim propisima BiH, entiteta, kantona, gradova i opština.

Predstavnici nacionalnih manjina u strukturama vlasti, predstavnici su svih nacionalnih manjina i dužni su štititi interes svih nacionalnih manjina.

Član 21.

Parlamentarna skupština BiH osnovaće Savjet nacionalnih manjina BiH kao posebno savjetodavno tijelo koje će sačinjavati pripadnici nacionalnih manjina iz člana 3 ovog zakona.

Član 22.

Savjet nacionalnih manjina BiH davaće mišljenja, savjete i prijedloge Parlamentarnoj skupštini BiH o svim pitanjima koja se tiču prava, položaja i interesa nacionalnih manjina u BiH.

Savjet nacionalnih manjina BiH može delegirati stručnjaka u radu Ustavno-pravne komisije i komisije za ljudska prava oba doma Parlamentarne skupštine BiH.

Član 23.

Parlament Federacije BiH i Narodna skupština Republike Srpske formiraće Savjete nacionalnih manjina Federacije BiH i Republike Srpske, kao i savjetodavna tijela čiji će se djelokrug i način rada urediti entitetskim propisima.

IX – MEĐUNARODNI NADZOR I SARADNJA

Član 24.

BiH će saradivati i razmjenjivati iskustva sa vladama i institucijama zainteresovanih država, kao i sa međunarodnim institucijama, radi što potpunijeg ostvarivanja prava čovjeka i prava nacionalnih manjina.

X – KAZNENE ODREDBE

Član 25.

U skladu sa krivičnim zakonima entiteta u BiH, zabranjena je i kažnjiva svaka radnja, podsticanje, organizovanje i pomaganje djelatnosti koje bi mogle ugroziti opstanak neke nacionalne manjine, izazvati nacionalnu mržnju, dovesti do diskriminacije ili stavljanja pripadnika nacionalne manjine u neravnopravan položaj.

XI – PRELAZNE I ZAVRŠNE ODREDBE

Član 26.

Republika Srpska i Federacija BiH donijeće i uskladiće svoje propise o pravima nacionalnih manjina, kao i druge zakone i propise u kojima se propisuju ili štite prava nacionalnih manjina, sa ovim zakonom u roku od šest mjeseci od dana stupanja na snagu ovog zakona.

Član 27.

Ovaj zakon stupa na snagu osmog dana od dana objavljivanja u Službenom glasniku BiH, a objaviće se i u službenim glasilima entiteta i Brčko Distrikta Bosne i Hercegovine.

PSBiH broj 24/03
1. aprila 2003.godine
Sarajevo

ANALIZA POLOŽAJA NACIONALNIH MANJINA U REPUBLICI HRVATSKOJ

SINIŠA TATALOVIĆ

UVOD

Nakon trinaest godina od međunarodnog priznanja Republike Hrvatske vrijedno je analizirati i raspraviti ostvarivanje prava nacionalnih manjina, kako u cilju sagledavanja iskustava i problema, tako i perspektiva. Reguliranje i praktično ostvarivanje prava pripadnika nacionalnih manjina postalo je važno mjerilo demokratizacije društva. Tih činjenica vrlo brzo je postala svjesna i Republika Hrvatska, koja je odmah nakon uspostave samostalnosti i neovisnosti omogućila nastavak ostvarivanja prava pripadnika dotadašnjih nacionalnih manjina, te započela rad na definiranju novog primjerenijeg modela ostvarivanja manjinskih prava, koji je trebao obuhvatiti i „nove“ nacionalne manjine.

Od usvajanja Ustavnoga zakona o ljudskim pravima i slobodama i pravima etničkih i nacionalnih zajednica ili manjina 1991. godine, u Republici Hrvatskoj je bilo omogućeno pravo nacionalnih manjina na zastupljenost u Hrvatskom saboru. Ono mnogo važnije pravo, što ga je regulirao taj ustavni zakon, pravo na zastupljenost manjinskih predstavnika u predstavničkim i izvršnim tijelima na razini lokalne i regionalne samouprave do sada nije bilo ostvareno. Zaštita manjinskih prava zbog toga se nije, u dovoljnoj mjeri, ostvarivala i na lokalnim i regionalnim razinama.

Stupanjem na snagu Ustavnog zakona o pravima nacionalnih manjina, kojeg je Hrvatski sabor usvojio krajem 2002. godine, to je pitanje detaljno regulirano, pa nacionalne manjine koje na području nekog grada ili općine, odnosno županije, čine više od pet, a manje od 15 % stanovništva, dobivaju pravo na barem jednog vijećnika u gradskoj ili općinskoj, odnosno županijskoj skupštini. U onim gradovima ili općinama, odnosno županijama, u kojima manjine čine više od 15 % stanovništva Ustavni zakon jamči razmjernu predstavljenost manjinskih predstavnika i u predstavničkim tijelima i u tijelima izvršne vlasti. Isto tako, Ustavni zakon predviđa pravo na razmjernu zastupljenost predstavnika većinskog hrvatskog naroda u onim jedinicama lokalne samouprave u kojima pripadnici nacionalnih manjina čine većinu stanovništva.

Osim prava pripadnika manjina na zastupljenost u jedinicama lokalne i regionalne samouprave, Ustavni zakon uvodi i dvije nove institucije koje će se brinuti o ostvarivanju prava nacionalnih manjina, i to vijeća i predstavnike nacionalnih manjina, koje pripadnici nacionalnih manjina biraju na razini lokalne i regionalne samouprave kao „manjinsku samoupravu“, te Savjet za nacionalne

manjine, koji se kao državni Savjet osniva na državnoj razini. Ustavnim zakonom dodatno je razrađena kulturna autonomija i potvrđeno ostvarivanje prava nacionalnih manjina na službenu uporabu jezika i pisma nacionalnih manjina, te obrazovanja na manjinskim jezicima i pismima. Ustavnim zakonom o pravima nacionalnih manjina uklonjene su sve formalne primjedbe koje je Vijeće Europe imalo na hrvatsko izvješće o primjeni Okvirne konvencije za zaštitu nacionalnih manjina. Provođenje Ustavnog zakona u praksi treba otkloniti i one preostale primjedbe, koje se odnose na praktično ostvarivanje prava nacionalnih manjina. U ovom tekstu se analizira ostvarivanje prava nacionalnih manjina u Republici Hrvatskoj u kontekstu donošenja i provođenja Ustavnog zakona o pravima nacionalnih manjina i drugih posebnih zakona. Analiza se temelji na izvještajima koje su Vlada Republike Hrvatske i nevladine organizacije slale Vijeću Europe, mišljenima Savjetodavnog odbora za Okvirnu konvenciju za zaštitu nacionalnih manjina, te dosadašnjim istraživanjima autora ovog teksta.

OPĆI PODACI O NACIONALNIM MANJINAMA

Hrvatska je prije osamostaljivanja 1991. godine bila kroz povijest u sastavu različitih država u okviru kojih se stanovništvo kretalo, tako da danas na njezinom teritoriju žive i pripadnici drugih naroda s kojima su Hrvatska ili njezini pojedini dijelovi bili u zajedničkim državama, kao što su: Habzburška monarhija, Osmanlijsko carstvo i dvije prethodne Jugoslavije. Prema popisu stanovništva u Hrvatskoj 2001. godine, građani su se izjasnili kao pripadnici 23 različite nacionalnosti. Pripadnici pojedinih nacionalnih manjina doseljavali su na područje Republike Hrvatske kao ekonomski migranti (Česi, Slovenci, Makedonci, Bošnjaci...) ili nakon svjetskih ratova (Rusi, Bugari), dok je dio pripadnika autohtonih nacionalnih manjina napuštao ovo područje (Talijani i Nijemci nakon Drugog svjetskog rata, te Srbi u ratu 1991–1995. i nakon njega).

Tablica 1. – Etnička struktura stanovništva Republike Hrvatske prema popisu stanovništva 1991. i 2001. godine

1991		2001		
Etnička pripadnost	Broj stanovnika	%	Broj stanovnika	%
Hrvati	3.736.356	78,1	3.977.171	89,63
Srbi	581.663	12,2	201.631	4,54
Muslimani	43.469	0,9	–	–
Bošnjaci	–	–	20.755	0,47
Talijani	21.303	0,4	19.636	0,44
Mađari	22.355	0,5	16.595	0,37

Albanci	12.032	0,3	15.032	0,34
Slovenci	22.376	0,5	13.173	0,30
Česi	13.086	0,3	10.510	0,24
Romi	6.695	0,1	9.463	0,21
Crnogorci	9.724	0,2	4.926	0,11
Slovaci	5.606	0,1	4.712	0,11
Makedonci	6.280	0,1	4.270	0,10
Nijemci	2.635	0,1	2.902	0,07
Rusini	3.253	0,1	2.337	0,05
Ukrajinci	2.494	0,1	1.977	0,04
Rusi	706	0,0	906	0,02
Židovi	600	0,0	576	0,01
Poljaci	679	0,0	567	0,01
Rumunji	810	0,0	475	0,01
Bugari	458	0,0	331	0,00
Turci	320	0,0	300	0,00
Austrijanci	214	0,0	247	0,00
Vlasi	22	0,0	12	0,00
Jugoslaveni	106.041	2,2	–	–
Grci	281	0,0	–	–
Ostali neizjaš-	73.376	1,5	79.828	1,80
Ostali	3.012	0,1	21.801	0,49
Regionalci	45.493	0,9	9.302	0,21
Nepoznato	62.926	1,3	17.975	0,41

Izvor podataka: Za rezultate popisa 1991. godine. Popis stanovništva 1991. – Narodnosni sastav stanovništva po naseljima, Republički zavod za statistiku, Zagreb, travanj 1992. i za rezultate popisa 2001. godine. Web stranice Državnog zavoda za statistiku: www.dszz.hr

U Hrvatskoj pripadnici nacionalnih manjina¹ žive na području velikog broja gradova i općina. Nacionalne manjine su koncentrirane u većem broju - uglavnom na područjima Istre, sjeverne Dalmacije, Like, Korduna, Banije, zapadne i istočne Slavonije i Baranje. Dolazak nacionalnih manjina u Hrvatsku

¹ U Ustavnom zakonu o pravima nacionalnih manjina Republika Hrvatska je po prvi put jasno definirala pojam nacionalna manjina. Prema Ustavnom zakonu: „nacionalna manjina je skupina hrvatskih državljana čiji pripadnici su tradicionalno nastanjeni na teritoriju Republike Hrvatske, a njeni članovi imaju etnička, jezična, kulturna i/ili vjerska obilježja različita od drugih građana i vodi ih želja za očuvanjem tih obilježja”, *Ustavni zakon o pravima nacionalnih manjina*, Narodne novine, broj 155/2002, članak 6.

odvijao se u različita vremena i u različitim povijesnim okolnostima. Češka nacionalna manjina je u većem broju naseljena na području gradova Daruvar, Grubišno Polje, Pakrac, Kutina, Požega, Garešnica, Bjelovar, Novska i Vrbovec, te u Zagrebu. Pripadnici češke nacionalne manjine u Hrvatsku su u većem broju počeli dolaziti tijekom 19. stoljeća u okviru uobičajenih migracija koje su se odvijale u Austrougarskoj monarhiji. Češko stanovništvo dolazilo je u Hrvatsku uglavnom u organiziranim skupinama, ako se radilo o seoskom stanovništvu, ili pojedinačno ako se radilo o obrtnicima, državnim službenicima ili vojnicima. Pripadnici mađarske nacionalne manjine tradicionalno uglavnom žive na području Osijeka, Bjelovara i Zagreba. Ipak, najviše pripadnika mađarske nacionalne manjine živi u Baranji, gdje su autohtono stanovništvo. Talijanska nacionalna manjina pretežito živi u Istri, gdje je autohtono stanovništvo,² a u daleko manjem broju na području Splita, Zagreba i Lipika. Glavna koncentracija slovačke nacionalne manjine je na području gradova Našica i Iloka, a neznatno ih ima u Đakovu, Osijeku, Novskoj i Sisku. Rusini su u najvećem broju naseljeni na području Vukovara, a manje u Vinkovcima i Županji, Zagrebu, Lipovljanim i Osijeku. Romi predstavljaju specifičnu kategoriju stanovništva, jer se kod njih tek u novije vrijeme javlja proces prostornog stacioniranja iprekidanja s tradicionalnim nomadskim životom. Prema statističkim podacima najveća koncentracija Roma je na području gradova Varaždin, Čakovec i Zagreb. Usporede li se rezultati popisa stanovništva iz 2001. godine s nekoliko dosadašnjih popisa stanovništva, kod svih nacionalnih manjina, osim kod Albanaca i Roma i nekih malobrojnih manjina, uočava se opadanje broja njihovih pripadnika. Najdrastičnije smanjenje iskazuje se kod najbrojnijih nacionalnih manjina, srpske, mađarske, češke i talijanske. Razlozi smanjenja broja pripadnika nacionalnih manjina, premda ne isključivo, nalaze se u:

- a) prostornoj raspoređenosti koja pogoduje slabljenju, a vremenom i kidanju veza unutar nacionalne manjine;
- b) seljenjem stanovništva u gradove i urbanizaciji koja dovodi do slabljenja seoskih zajednica, pucanju veza baziranih na autohtonom obliku privredivanja i kidanju veza s manjinskim kulturama;
- c) migracijama stanovništva i to ne samo na relaciji selo – grad, već i na relaciji interregionalnih i prekomorskih migracija, posebno za vrijeme i nakon rata 1991–1995. godine;
- d) višoj razini obrazovanja, što dovodi do brže socijalne pokretljivosti pripadnika nacionalnih manjina;
- e) mješovitim brakovima kao instituciji koja podvaja etničku komponentu stanovništva, što je posebno karakteristično za pripadnike srpske nacionalne manjine, koji žive u gradovima i područjima koja nisu bila zahvaćena ratom;

² Čak 85% Talijana u Hrvatskoj živi na području Istre.

f) slabljenju kohezivnih elemenata etniciteta koje zamjenjuje identifikacija s profesionalnom ili socijalnom skupinom ili regionalnom pripadnošću (Istrijani, Ličani, Kordunaši, Dalmatinци, Slavonci, Gorani).

Nakon raspada bivše SFRJ i osamostaljenja Republike Hrvatske, ona je i dalje ostala multietnička država u kojoj, osim većinskog hrvatskog naroda, žive pripadnici preko 23 nacionalne manjine. Njihova zastupljenost u etničkoj strukturi stanovništva bitno je smanjena u proteklih trinaest godina zbog velikih migracija stanovništva uzrokovanih ratom. Novi popis stanovništva proveden je u Republici Hrvatskoj u razdoblju od 1. do 15. travnja 2001. godine, sukladno Zakonu o popisu stanovništva, kućanstava i stanova 2001. godine.³ Službeni podaci o etničkoj strukturi stanovništva pokazuju bitno smanjenje pripadnika pojedinih nacionalnih manjina. Udio pripadnika nacionalnih manjina u ukupnom stanovništvu smanjen je na 10,37% ili na 460.230 stanovnika.

Najveće smanjenje manjinskog stanovništva dogodilo se u srpskoj nacionalnoj manjini i to sa 581.663 (1991) na 201.681 (2001) stanovnika. To znači da se broj Srba smanjio za otprilike dvije trećine u odnosu na njihov broj 1991. godine. Međutim, došlo je i do značajnog smanjenja pripadnika i drugih nacionalnih manjina. Tako je broj Bošnjaka - Muslimana smanjen s 43.469 na 20.755 stanovnika, Mađara s 22.355 na 16.595, Crnogoraca s 9.724 na 4.926 i tako dalje. Moglo bi se zaključiti da je do ovog smanjivanja došlo ponajprije zbog iseljavanja tijekom rata. Kada je riječ o Srbima, u to nema sumnje, iako ne postoje precizni podaci o tome koliko se pripadnika srpske nacionalne manjine iselilo tijekom 90-tih godina prošlog stoljeća. Približne procjene kreću se između 300.000 i 350.000.

Međutim, podaci o broju Hrvata između dva popisna razdoblja navode na zaključak da su brojni pripadnici nacionalnih manjina mijenjali svoju etničku pripadnost. Naime, oni su se vjerojatno na popisu 2001. godine izjašnjavali kao Hrvati. To se donekle može zaključiti na osnovu porasta broja Hrvata između dva popisa. Dok ih je 1991. godine bilo 3.736.356, godine 2001. njihov je broj porastao na 3.977.171, što predstavlja povećanje od 240.815 Hrvata. Ovaj porast se ne može objasniti isključivo povećanjem prirodnog priraštaja Hrvata u desetogodišnjem razdoblju (1991–2001) budući da je u tome razdoblju prevladavao negativni prirodni priraštaj.⁴ Ovo povećanje etnički izjašnjenih Hrvata može se jednim dijelom objasniti doseljavanjem Hrvata tijekom 90-tih godina prošlog stoljeća iz Bosne i Hercegovine i dijaspore, iako precizniji podaci o to-

³ Popisom su obuhvaćene sljedeće jedinice popisa: 1) osobe koje su državljanji Republike Hrvatske, strani državljanji i osobe bez državljanstva koje imaju prebivalište u Republici Hrvatskoj, bez obzira na to jesu li u vrijeme popisa u Republici Hrvatskoj ili inozemstvu, te osobe koje u vrijeme popisa imaju boravište u Republici Hrvatskoj; 2) kućanstva tih osoba i 3) stanovi i druge nastanjene prostorije.

⁴ Prema približnim demografskim procjenama u tome razdoblju je oko 45.000 ljudi više umrlo nego što ih se rodilo.

me još nisu objavljeni. To povećanje se može objasniti i time da se određeni broj građana Republike Hrvatske, iz mješovitih brakova (hrvatsko-srpskih, hrvatsko-bošnjačkih ...), prilikom popisa 2001. godine izjašnjavao Hrvatima. Isto tako ne treba zaboraviti da se prilikom popisa 1991. godine čak 106.141 građanin izjasnio kao Jugoslaven,⁵ dok ova mogućnost (nacionalnog) izjašnjavaanja nije bila predviđena u popisu iz 2001. godine. Pored svih navedenih razloga povećanja broja Hrvata u popisu 2001. godine ne treba isključiti ni mogućnost da je određeni broj Srba, Bošnjaka-Muslimana, Mađara, Crnogoraca i drugih pripadnika nacionalnih manjina promijenio nacionalnu pripadnost između dva popisna razdoblja. Jedan od glavnih razloga za taj čin jest procjena da će u hrvatskom društvu u budućnosti biti teže živjeti kao pripadnik nacionalne manjine, nego kao pripadnik većinskog hrvatskog naroda.⁶

KONSTITUCIONALNA RJEŠENJA

U području pravne regulacije položaja nacionalnih manjina Republika Hrvatska je dostigla visoku razinu normativnih pretpostavki za zaštitu njihovih prava. Krajem 2002. godine usvojen je Ustavni zakon o pravima nacionalnih manjina, ratificirane su sve međunarodne konvencije koje se odnose na prava nacionalnih manjina, usvojen je niz provedbenih dokumenata iz tog područja, te potpisano više međudržavnih ugovora kojima je regulirana obostrana zaštita nacionalnih manjina. U posljednje tri godine, do tada vrlo nepovoljan, status većine nacionalnih manjina se poboljšao. Za očekivati je da će se napredovanjem Hrvatske u pravcu europskih integracija i svih pozitivnih društvenih procesa koji će to potaći, značajno poboljšati položaj kako svih hrvatskih građana tako i pripadnika nacionalnih manjina.

Unatoč postratnim i tranzicijskim poteškoćama Hrvatska je uspjela stvoriti cijeloviti model zaštite nacionalnih manjina na državnoj, regionalnim i lokalnim razinama i uskladiti ga s europskim iskustvima i standardima. Važno je istaći da se kroz model kulturne autonomije nacionalne manjine integriraju u hrvatsko društvo, a ne asimiliraju. Njime se pripadnicima nacionalnih manjina osigurava očuvanje i razvijanje identiteta (etničkog, kulturnog, jezičnog, vjerskog), bilo pojedinačno, bilo u udruživanju s drugim građanima.

Prema usvojenom modelu kulturne autonomije, većina etničkih prava pripadnika nacionalnih manjina (obrazovanje, znanost, knjižnice, zaštita spo-

⁵ Iako izjašnjavaanje kao Jugoslaven u popisu 1991. godine nije u formalnopravnom smislu imalo značenje nacionalnog opredjeljivanja ono je faktički funkcionalo kao nacionalno opredjeljivanje.

⁶ O etničkim distancama u hrvatskom društvu vidi u: Malenica Zoran, *Etničke predrasude i socijalna distanca u hrvatskom društvu danas*, Nacionalne manjine II – zaštita manjinskih prava u Hrvatskoj, STINA, Split, 2003, str. 46.

menika) ostvaruje se kroz državne ustanove koje su odgovorne stručno i upravno za pojedina područja društvenog života, čime se ostvaruje princip integracije pripadnika nacionalnih manjina u hrvatsko društvo, ali i očuvanje njihovog kulturnog i nacionalnog identiteta. Drugi dio etničkih prava (informiranje, izdavaštvo i kulturni amaterizam) osigurava se djelovanjem nevladinih udruga nacionalnih manjina i na taj način dodatno osigurava zaštitu od asimilacije. Model omogućava i potiče razvoj odnosa između pripadnika nacionalnih manjina s državama njihovih matičnih naroda, radi omogućavanja kulturnog i jezičnog razvoja.

Opći pravni položaj nacionalnih manjina u Republici Hrvatskoj uređen je pojedinim odredbama Ustava Republike Hrvatske, odredbama Ustavnog zakona o pravima nacionalnih manjina u Republici Hrvatskoj, te pojedinim zakonima. Republika Hrvatska ubraja se u zemlje koje su položaj i prava nacionalnih manjina uredile posebnim zakonom. U Hrvatskoj je taj zakon nazvan Ustavnim zakonom o pravima nacionalnih manjina. Prvi takav ustavni zakon koji se odnosi na zaštitu nacionalnih manjina donesen je još 1991. godine, a u sljedećim je godinama doživio relativno brojne izmjene i dopune.⁷

Donošenje novog Ustavnog zakona o pravima nacionalnih manjina, na čije se donošenje Republika Hrvatska obvezala i u Sporazumu o stabilizaciji i priključivanju sa EU-om, predstavlja završetak stvaranja cjelovitog normativnog okvira za ostvarivanje prava nacionalnih manjina. Prema Ustavnom zakonu, Republika Hrvatska osigurava ostvarivanje posebnih prava i sloboda pripadnika nacionalnih manjina koja oni uživaju pojedinačno ili zajedno s drugim osobama koje pripadaju istoj nacionalnoj manjini, a kada je to određeno ovim Ustavnim zakonom ili posebnim zakonom, zajedno s pripadnicima drugih nacionalnih manjina, a naročito:

- služenje svojim jezikom i pismom, privatno i u javnoj uporabi, te u službenoj uporabi;
- odgoj i obrazovanje na jeziku i pismu kojim se služe;
- uporabu svojih znamenja i simbola;
- kulturna autonomija održavanjem, razvojem i iskazivanjem vlastite kulture, te očuvanja i zaštite svojih kulturnih dobara i tradicije;
- pravo na očitovanje svoje vjere, te na osnivanje vjerskih zajednica zajedno s drugim pripadnicima te vjere;
- pristup sredstvima javnog priopćavanja i obavljanja djelatnosti javnog priopćavanja (primanje i širenje informacija) na jeziku i pismu kojim se služe;
- samoorganiziranje i udruživanje radi ostvarivanja zajedničkih interesa;
- zastupljenost u predstavničkim tijelima na državnoj i lokalnoj razini, te u upravnim i pravosudnim tijelima;

⁷ *Ustavni zakon o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj*, Narodne novine, br. 65/1991, 27/1992, 34/1992 – pročišćeni tekst, 51/2000, 105/2000 – pročišćeni tekst.

- sudjelovanje pripadnika nacionalnih manjina u javnom životu i upravljanju lokalnim poslovima putem vijeća i predstavnika nacionalnih manjina;
- zaštitu od svake djelatnosti koja ugrožava ili može ugroziti njihov opstanak, ostvarivanje prava i sloboda.⁸

Iako model kulturne autonomije i političkog predstavništva nacionalnih manjina u Republici Hrvatskoj može po svojoj strukturi dobiti visoku ocjenu, postoje problemi u njegovoj provedbi koji su vezani za:

- nedovoljnu sposobljenost i/ili spremnost određenih ustanova;
- nedovoljnu zainteresiranost pojedinih tijela lokalne i regionalne samouprave;
- stanovitu apatičnost i/ili nedovoljnu motiviranost pripadnika nacionalnih manjina ili njihovih organizacija.

Rješavanje ovih problema, kao i uklanjanje predrasuda (kojih je većina posljedica rata) kod dijela stanovništva prema nekim nacionalnim manjinama, prioriteti su u poboljšanju statusa nacionalnih manjina u Hrvatskoj.

Obrazovanje pripadnika nacionalne manjine obavlja se u predškolskim ustanovama, osnovnim i srednjim školama, te drugim školskim ustanovama s nastavom na jeziku i pismu kojim se služe, pod uvjetima i na način propisanim posebnim zakonom o odgoju i obrazovanju na jeziku i pismu nacionalnih manjina.⁹

Prema Ustavnom zakonu, pripadnici nacionalnih manjina, sukladno posebnom zakonu, mogu koristiti svoj jezik i pismo u službenom komuniciranju. Isto tako, mogu održavati prekogranične kontakte i surađivati u pitanjima ostvarivanja svojih manjinskih prava s nadležnim institucijama države matičnog naroda.¹⁰ U pogledu predstavljanja političkih interesa Republika Hrvatska jamči pripadnicima nacionalnih manjina prava na zastupljenost u Hrvatskom saboru.¹¹ Pored toga, Republika Hrvatska jamči pripadnicima nacionalnih manjina pravo na zastupljenost u predstavničkim tijelima jedinica lokalne samouprave i predstavničkim tijelima jedinica područne (regionalne) samouprave.¹²

POSEBNA ZAKONSKA RJEŠENJA

Od manjinskih prava, koja su Ustavom i Ustavnim zakonom zajamčena pripadnicima nacionalnih manjina u Republici Hrvatskoj, Hrvatski sabor je posebnim zakonima, donesenima u svibnju 2000. godine, detaljnije razradio dva iznimno važna područja vezana uz ostvarivanje prava nacionalnih manjina na kulturnu autonomiju: Zakon o pravima pripadnika nacionalnih manjina na obra

⁸ *Ustavni zakon o pravima nacionalnih manjina*, Narodne novine, broj 155/2002, članak 7.

⁹ *Ustavni zakon* ..., članak 11.

¹⁰ *Ustavni zakon* ..., članak 16.

¹¹ *Ustavni zakon* ..., članak 19.

¹² *Ustavni zakon* ..., članak 20.

zovanje na manjinskom jeziku i Zakon o pravima pripadnika nacionalnih manjina na upotrebu manjinskog jezika.

Zakonom o uporabi jezika i pisma nacionalnih manjina u Republici Hrvatskoj¹³ uredeni su uvjeti službene uporabe jezika i pisma nacionalnih manjina, kojima se osigurava ravnopravnost s hrvatskim jezikom i latiničnim pismom. Ostvarenje tih prava nacionalnih manjina zakonodavac prepušta lokalnim i regionalnim samoupravnim jedinicama – općinama, gradovima i županijama, gdje je upotreba jezika i pisma od neposredne i svakodnevne važnosti za život pojedinaca – pripadnika određene nacionalne manjine. To znači da se odredbe tog zakona ne primjenjuju u postupcima koji se vode pred središnjim tijelima državne uprave, trgovačkim sudovima, pred Upravnim sudom, Visokim prekršajnim sudom, Vrhovnim sudom i Ustavnim sudom Republike Hrvatske, te pred drugim središnjim tijelima državne vlasti, ako ustavnim zakonom ili drugim zakonom nije drukčije određeno. One se također ne primjenjuju na vodenje službenih očeviđnika, te na javne isprave koje služe uporabi u inozemstvu, ako posebnim zakonom nije drukčije određeno.¹⁴

Zakonom o odgoju i obrazovanju na jeziku i pismu nacionalnih manjina¹⁵ određuju se uvjeti pod kojima nacionalne manjine u Republici Hrvatskoj ostvaruju pravo na odgoj i obrazovanje na svom jeziku i pismu. Odgoj i obrazovanje na jeziku i pismu nacionalne manjine obavlja se u predškolskoj ustanovi, osnovnoj i srednjoj školi, te drugoj školskoj ustanovi, kao i drugim oblicima obrazovanja (seminari, ljetne i zimske škole i slično), na način i pod uvjetima utvrđenim zakonom.

Dva posebna zakona, koja je Hrvatski sabor prihvatio 2000. godine, a kojima se detaljnije reguliraju pitanja vezana uz prava nacionalnih manjina na službenu uporabu jezika i pisma, kao i na odgoj i obrazovanje na jeziku i pismu pripadnika nacionalnih manjina, predstavljaju veliki doprinos stabilnijoj zaštiti i unapređivanju kulturne autonomije nacionalnih manjina u Republici Hrvatskoj. Njihova iznimna važnost proizlazi iz činjenice da je obrazovanje „najefikasnije sredstvo etničke reprodukcije“. Polazeći od činjenice da su prava vezana uz uporabu jezika nacionalnih manjina „najvidljivija“ manjinska prava, pravo na uporabu jezika i pisma nacionalne manjine u službenoj komunikaciji s tijelima lokalnih i regionalnih vlasti, kao i pravo na odgoj i obrazovanje na jeziku i pismu pojedine nacionalne manjine, važni su instrumenti prevencije etničkih sukoba. Putem njih se spriječava stvaranje predrasuda, netolerancije i ksenofobije, kao i pojava diskriminacionog ponašanja u društvu. Ostvarenjem tih prava

¹³ *Zakon o uporabi jezika i pisma nacionalnih manjina u Republici Hrvatskoj*, Narodne novine, broj 5/2000.

¹⁴ *Zakon o uporabi jezika ..., članak 3.*

¹⁵ *Zakon o odgoju i obrazovanju na jeziku i pismu nacionalnih manjina*, Narodne novine, br. 51/2000. od 19. svibnja 2000. godine, 56/2000 – ispr.

stvaraju se i navike prihvaćanja etničke i jezične raznolikosti u svakodnevnoj komunikaciji. Nažalost, primjena ovih zakona u praksi nailazi na poteškoće, kako u sredinama s razvijenom manjinskom kulturom poput Istre, tako i u područjima koja su bila zahvaćena ratom. Ipak, u ovom je trenutku najvažnija činjenica da su ti zakoni ipak doneseni. Upornim nastojanjem da se oni neposredno i implementiraju u društvenom životu zemlje, osobito u lokalnim zajednicama, postupno će se stvoriti i pretpostavke za jačanje društvene svijesti o razvoju Hrvatske kao multikulturne i multietničke države.

USKLAĐENOST OSTALIH ZAKONA I PRAVNIH AKATA USVOJENIH OD CENTRALNIH, REGIONALNIH I LOKALNIH ORGANA VLASTI S MEĐUNARODNIM STANDARDIMA

U Republici Hrvatskoj, od stjecanja samostalnosti, u proteklih trinaest godina, pitanja usklađenosti pojedinih zakona i drugih propisa koji se odnose na položaj nacionalnih manjina s međunarodnim standardima bilo je neodgovarajuće riješeno zbog etnocentrističkog i centralističkog koncepta države i autoritarnog vladanja do 2000. godine. Zakonska rješenja položaja nacionalnih manjina više su puta mijenjana u proteklom razdoblju, što samo po sebi već govori o (ne-)konzistentnosti vladajuće politike prema nacionalnim manjinama do političkih promjena koje su uslijedile nakon parlamentarnih izbora 3. siječnja 2000. godine i predsjedničkih izbora iz veljače 2001. godine.

Praksa do 2000. godine pokazala je da tako postavljen i proveden sustav državne uprave i u tome lokalne i regionalne samouprave nije usklađen s međunarodnim standardima i da su potrebne suštinske izmjene u konceptu ostvarivanja prava nacionalnih manjina. Zbog toga su ratificirani gotovo svi međunarodni dokumenti koji se odnose na prava nacionalnih manjina, a započelo je i usklađivanje nacionalnog zakonodavstva s tim dokumentima.

Ustavnim promjenama u 2000. godini omogućena je značajnija promjena ranije usvojene koncepcije državnog ustroja. Polupredsjednički sistem je zamijenjen parlamentarnim, što se pozitivno odrazilo i na proces demokratizacije društva. Ustav je omogućio dobru osnovu za decentralizaciju upravne nadležnosti i za njeno diferenciranje. Time se napustio ranije usvojeni monotipski model organizacije lokalne i regionalne samouprave i perifernog određivanja njene nadležnosti. Tako su otvorene pravne mogućnosti za prijenos ovlasti središnje vlasti na jedinice lokalne i regionalne samouprave, prije svega, na veće gradove kao urbane i gravitacijske centre u zemlji. To je pogodovalo i boljem ostvarivanju prava nacionalnih manjina na regionalnoj i lokalnoj razini.

Pored Ustava, Ustavnog zakona i manjinskih pratećih zakona u Republici Hrvatskoj postoji i niz legislativnih obveza, međunarodnih ugovora i sporazuma kojima su regulirana prava pojedinih nacionalnih manjina. Ovdje se misli na pra-

vne i političke akte koji posebno reguliraju ostvarivanje određenih prava talijanske, srpske i mađarske nacionalne manjine.¹⁶

Za ostvarivanje prava nacionalnih manjina posebno je važno to što je Republika Hrvatska prihvatile i Okvirnu konvenciju za zaštitu nacionalnih manjina.¹⁷ Izvješće Republike Hrvatske o provođenju Okvirne konvencije za zaštitu nacionalnih manjina izrađeno je u siječnju 1999. godine i pored toga što predstavlja službena očitovanja o primjeni određenih članaka Konvencije u praksi, ono pokazuje i devetogodišnje opstruiranje ostvarivanja prava nacionalnih manjina od strane pojedinih državnih institucija.¹⁸ Iako priznaje da je Republika Hrvatska uložila određeni napor, osobito kad je riječ o zaštiti talijanske nacionalne manjine, Savjetodavni odbor je smatrao da je provedba Okvirne konvencije složena zbog posljedica ratnog sukoba 1991–1995. koje se još osjećaju u hrvatskome društvu. Često se taj sukob odražava u raznovrsnim poteškoćama na koje se nailazi kad je riječ o zaštiti prava osoba koje pripadaju srpskoj nacionalnoj manjini, ali on utječe i na druge nacionalne manjine. Unatoč

¹⁶ Za položaj talijanske nacionalne manjine proteklih su desetljeća bili važni: (a) Pariški sporazum o miru iz 1947, (b) Londonski memorandum iz 1954, (c) Osimski sporazumi iz 1975, (d) Memorandum suglasnosti između Italije, Hrvatske i Slovenije iz 1992, te (e) Ugovor između Hrvatske i Italije o pravima nacionalnih manjina iz 1996. godine. Za položaj mađarske nacionalne manjine u Hrvatskoj važan je i međudržavni ugovor između Republike Mađarske i Republike Hrvatske o obostranoj zaštiti nacionalnih manjina, potpisani 1997, a za položaj srpske nacionalne manjine na području hrvatskog Podunavlja važan je Erdutsko-zagrebački sporazum (Osnovni sporazum za Istočnu Slavoniju, Baranju i Zapadni Srijem iz 1997. godine).

¹⁷ Implementacija Okvirne Konvencije za zaštitu nacionalnih manjina u Republici Hrvatskoj, može se sagledati ako se analiziraju slijedeća pitanja: – borba protiv diskriminacije; – pristup medijima radi primanja i emitiranja programa; – promidžba efikasne jednakosti i promidžba kulture, religije, jezika i tradicija; – sloboda okupljanja, udruživanja, mišljenja i izražavanja misli, savjesti i religije, sloboda tiska, govora i javnog nastupa, javnog priopćavanja i izvještavanja; – obrazovanje; – prekogranični odnosi i suradnja; – sudjelovanje u gospodarskom, kulturnom i društvenom životu; – zabrana nasilne asimilacije.

¹⁸ Nakon primanja prvog hrvatskog Državnog izvješća o provedbi Okvirne konvencije za zaštitu nacionalnih manjina 16. ožujka 1999 (rok je bio 1. veljače 1999), Savjetodavni odbor Vijeća Europe započeo je s razmatranjem Državnog izvješća na svom 4. sastanku održanom od 25. do 28. svibnja 1999. U okviru tog razmatranja izaslanstvo Savjetodavnog odbora posjetilo je Hrvatsku od 23. do 26. listopada 2000, kako bi dodatne informacije o provedbi Okvirne konvencije zatražilo od predstavnika Vlade i od nevladinih organizacija i drugih nezavisnih izvora. Vlada je u lipnju 2000. godine sačinila i odgovore na dopunska pitanja Savjetodavnog odbora vezana u Izvješće Republike Hrvatske o provođenju Okvirne konvencije za zaštitu nacionalnih manjina. Savjetodavni odbor potom je prihvatio svoje mišljenje o Hrvatskoj na svom 10. sastanku 6. travnja 2001.

tim poteškoćama, kako smatra Savjetodavni odbor, u posljednje vrijeme primjećeno je poboljšanje u izjavama i stavovima Vlade kad je riječ o zaštiti nacionalnih manjina. Spomenuta poboljšanja predstavljala su ključan temelj za napredak u provedbi Okvirne konvencije i dovela su do određenih pozitivnih pomača u području zakonodavstva. Mišljenje Savjetodavnog odbora bilo je od presudne važnosti za donošenje Ustavnog zakona o pravima nacionalnih manjina. Glavni razlog za zabrinutost Savjetodavnog odbora bio taj što se provedba Okvirne konvencije u praksi poboljšava jako sporo. Osobito na lokalnoj razini, i činilo se da određene vlasti nisu sklone njezinoj provedbi ne samo kad je riječ o ispravljanju negativnih posljedica diskriminatorske prakse iz prošlosti i drugih problema vezanih uz nacionalne manjine, već i kad je riječ o tome da je potrebno osigurati da se takvi problemi ne pojavljuju u budućnosti. Ti su problemi osobito bili prisutni u okviru procesa povratka, ali i u drugim područjima. S tim u vezi Savjetodavni odbor je smatrao da je područje koje zaslužuje brzu reakciju i uvođenje mjera, zaštita nacionalnih manjina, uključujući srpsku i romsku manjinu, u području zapošljavanja. Savjetodavni odbor je također pozvao i na uvođenje dalnjih mjera u području medija čiji bi cilj bilo pošteno prikazivanje osoba koje pripadaju nacionalnim manjinama i njihov bolji pristup raznim medijima.¹⁹

Savjetodavni odbor je u svom mišljenju o Hrvatskoj konstatirao da Državo izvješće na dugačko opisuje određene vidove zaštite nacionalnih manjina. Izvješće je uključivalo niz zanimljivih statističkih podataka, iako su neki od njih bili zastrijeli zbog kretanja stanovništva izazvanog ratnim sukobom 1991–1995. godine. Istodobno, određeni dijelovi Državnog izvješća pružali su vrlo ograničene informacije o čitavom nizu ključnih elemenata Okvirne konvencije, osobito o relevantnoj praksi. Međutim, Savjetodavni odbor dobio je znatno potpuniju sliku o stanju putem vladinog sveobuhvatnog pisanog odgovora na upitnik koji joj je Savjetodavni odbor uputio, te osobito tijekom posjeta Hrvatskoj, kada su obavljeni razgovori sa svim relevantnim faktorima vladinog i nevladinog sektora. Savjetodavnom odboru je posjet koji je organiziran na poziv Vlade pružio odličnu priliku za izravni razgovor s različitim izvorima. Dodatne informacije koje je pružila Vlada i drugi izvori, uključujući predstavnike nacionalnih manjina, bile su od velike važnosti, osobito kad je riječ o provedbi relevantnih odredbi Okvirne konvencije u praksi. Važno je da su određene manjinske organizacije imale priliku sudjelovati u procesu koji je doveo do prihvaćanja Državnog izvješća. Međutim, konzultacije koje je provodila Vlada bile dosta ograničene u svom opsegu i čitav niz poznatih nevladinih organizacija koje se bave pitanjima nacionalnih manjina nije bio obaviješten o procesu izrade Državnog izvješća.

¹⁹ *Mišljenje o Hrvatskoj Savjetodavnog odbora za Okvirnu konvenciju za zaštitu nacionalnih manjina*, Vijeće Europe, Strasbourg, 6. travnja 2001.

Kao nadopunu Okvirnoj konvenciji treba uzeti u obzir i Europsku povelju o regionalnim i manjinskim jezicima koju je Hrvatska prihvatile i na temelju koje je donesla i poseban Zakon o uporabi jezika i pisma nacionalnih manjina. Republika Hrvatska je potpisnica Europske povelje o regionalnim ili manjinskim jezicima, koja je u hrvatski pravni sistem ušla kao Zakon o potvrđivanju Europske povelje o regionalnim ili manjinskim jezicima.²⁰ Temeljem članka 3 Povelje, a u skladu s člancima 8, 9, 10, 11, 12 i 13 ugovorne strane se obvezuju da će u pogledu obrazovanja, sudbenih tijela, upravnih organa i javnih službi, javnih medija, kulturnih aktivnosti, gospodarskog i socijalnog života na području na kojem se manjinski jezici (talijanski, mađarski, srpski, češki, slovački, rusinski i ukrajinski) koriste kao službeni, omogućiti ostvarivanje prava na manjinskom jeziku.

Kao članica Vijeća Europe, Hrvatska je preuzela niz obveza političko-pravne prirode: ratifikacija Europske konvencije za zaštitu ljudskih prava, suradnja s Međunarodnim sudom za ratne zločine na području bivše Jugoslavije, poštivanje odredbi Daytonskog sporazuma, poštivanje ljudskih i manjinskih prava, te prava izbjeglica i raseljenih osoba, osiguranje slobode medija, održavanje slobodnih i demokratskih izbora. Navedene obveze su nakon parlamentarnih izbora od 3. siječnja 2000. godine vrlo brzo pretočene u konkretnе zakonodavne mјere koje je Hrvatska trebala poduzeti.²¹

Za Hrvatsku je važno istaći da spada u onu skupinu zemalja koje priznaju postojanje nacionalnih manjina. Što više, spada u one rijetke zemlje poput Slovenije i Rumunjske koje pripadnicima nacionalnih manjina ne osiguravaju samo zaštitu njihovog nacionalnog i kulturnog identiteta već i posebna mјesta u parlamentu, dakle pravo na političku prezentaciju i uskladivanje njihovih specifičnih interesa. Pored toga, Republika Hrvatska ima i dva bilateralna sporazuma o

²⁰ Narodne novine br. 18/97 – međunarodni ugovori.

²¹ Trebalo je u roku od godinu dana ratificirati Europsku konvenciju i s njom uskladiti domaće zakonodavstvo. Nadalje, tražilo se vraćanje suspendiranih odredaba Ustavnog zakona o pravima nacionalnih manjina. Tražilo se uklanjanje iz pravnog sustava diskriminacijskih odredaba u Zakonu o obnovi, Zakonu o područjima od posebne državne skrbi, te Zakonu o statusu izbjeglica i prognanika, kao i potpuno uklanjanje Zakona o privremenom preuzimanju i upravljanju određenom imovinom, potom donošenje odgovarajućeg zakona koji bi osigurao provođenje poštene i slobodnih izbora te riješio pitanje glasanja hrvatskih državljana u inozemstvu i glasanje pripadnika nacionalnih manjina. Na posljetku, tražilo se donošenje Zakona o HRT koji bi u najvećoj mjeri osigurao „javnu“ televiziju, te donošenje Zakona o telekomunikacijama koji bi, prije svega, na transparentan način riješio pitanje dodjele radio i televizijskih koncesija, te izmjena odredaba Kaznenog zakona i Zakona o javnom priopćavanju koje su negativno utjecale na slobodu medija. Za praćenje poštivanja preuzetih obveza zadužen bio je Odbor za praćenje poštivanja preuzetih obveza Parlamentarne skupštine Vijeća Europe, tzv. Odbor za monitoring i taj proces je završio krajem 2000. godine.

zaštiti nacionalnih manjina, a u pripremi su sporazumi i s drugim susjednim državama.²² Ovi sporazumi u značajnoj mjeri utječu na razinu prava nacionalnih manjina na koje se odnose, posebno na regionalnim i lokalnim razinama.

Sporazum između Republike Hrvatske i Republike Mađarske o zaštiti mađarske manjine u Republici Hrvatskoj i hrvatske manjine u Republici Mađarskoj temelj je suradnje dviju država na području zaštite manjina. Tradicionalno dobre odnose između dviju država ovaj Sporazum dodatno učvršćuje. Sukladno članku 16 Sporazuma ustrojen je međuvladin Mješoviti odbor za manjine koji prati provedbu odredbi Sporazuma.²³ Do sada su realizirani brojni projekti zadaći Sporazumom i zapisnicima Mješovitog odbora. Valja posebno izdvojiti: izgradnju Gimnazije u Budimpešti za pripadnike hrvatske nacionalne manjine, dovršenje Prosvjetno-kulturnog centra Mađara u Osijeku, otvorenje cestovnih graničnih prijelaza Kotoriba–Mlinarci i Beremend–Baranjsko Petrovo selo kojima se u velikoj mjeri služe predstavnici manjina koji žive u pograničnom području, otvorenje počasnih konzulata u Velikoj Kaniži i Rijeci, te potpisivanje Programa suradnje na području kulture, prosvjete i znanosti. U budućnosti će Mješoviti odbor nastaviti poticati rješavanje još nekih neriješenih pitanja kao što su nedostatno financiranje obiju nacionalnih manjina i izbor parlamentarnog zastupnika hrvatske manjine u mađarski Parlament.

Sporazum o zaštiti manjina između Republike Hrvatske i Talijanske Republike potpisani 5. studenoga 1996. godine pravni je temelj za ujednačenje uređivanje pravnog položaja nacionalnih manjina u obje države. Sporazumom se potvrđuje autohtonost talijanske nacionalne manjine u Hrvatskoj i jamče joj se stečena prava, dok se po prvi puta u povijesti, hrvatskoj manjini u Italiji na području tradicionalne naseljenosti (Molise) osigurava slobodno izražavanje kulturnog identiteta i nasljeda, uporaba hrvatskog jezika u privatnom i javnom životu, osnivanje kulturnih institucija i udruga, te osnivanje udruga s pravnom osobnošću radi predstavljanja u Italiji. Potpisivanje i primjena navedenog Sporazuma od iznimnog je političkog značaja, jer je položaj nacionalnih manjina tradicionalno osjetljivo pitanje u odnosima Hrvatske i Italije. Položaj manjina u ovom bilateralnom sporazumu utvrđen je prema relevantnim međunarodnim dokumentima, no za razliku od hrvatsko-mađarskog sporazuma, njime nije predviđen kontrolni mehanizam koji bi pratio provedbu Sporazuma.

²² Bilateralni sporazum o obostranoj zaštiti nacionalnih manjina sa Srbijom i Crnom Gorom, trebalo bi potpisati do kraja 2003. godine.

²³ Mješoviti odbor sastaje se jednom godišnje, a do sada je održano pet zasjedanja. Članovi Mješovitog odbora su predstavnici ministarstava i državnih tijela koja se bave nacionalnim manjinama, te predstavnici obiju manjina. Mješoviti odbor kontrolira provedbu Sporazuma i djeluje kao instrument za rješavanje otvorenih pitanja vezanih za položaj dviju manjina. Dosadašnji rad Mješovitog odbora ukazuje na opravdanost njegova postojanja – vidljivi su pomaci i napredak u ostvarivanju manjinskih prava na obje strane.

Uprkos postratnim i tranzicijskim poteškoćama Hrvatska je uspjela stvoriti cjeloviti model zaštite prava nacionalnih manjina na državnoj razini i uskladiti ga s europskim iskustvima i standardima. Važno je istaći da se kroz model nacionalne manjine integriraju u hrvatsko društvo, a ne asimiliraju. Njime se pripadnicima nacionalnih manjina osigurava očuvanje i razvijanje identiteta (etičkog, kulturnog, jezičnog, vjerskog) bilo pojedinačno, bilo u udruživanju s drugim građanima.

STANJE U VEZI S POLOŽAJEM NACIONALNIH MANJINA

Za položaj nacionalnih manjina u svakoj državi nisu značajna samo posebna prava regulirana ustavom, zakonima i podzakonskim propisima, već u isto vrijeme i ostvarivanje tih zakonom reguliranih prava u stvarnom životu. Ostvarivanje prava nacionalnih manjina zadaća je kako tijela vlasti i lokalne samouprave, tako i pripadnika nacionalnih manjina i njihovih organizacija, ali i svih stanovnika lokalne zajednice. Od državnih predstavničkih tijela i izvršne vlasti u Hrvatskoj koja su uključena i imaju utjecaj na artikulaciju i/ili rješavanja problema nacionalnih manjina, treba spomenuti: (a) osam zastupnika nacionalnih manjina u Hrvatskom saboru, (b) saborski Odbor za ljudska prava i Pododbor za prava nacionalnih manjina, (c) nadležna ministarstva, (d) uredi Vlade, (e) Savjet nacionalnih manjina, (f) vijeća i predstavnike nacionalnih manjina i (g) udruge i ustanove nacionalnih manjina.

Suradnja ovih subjekata ima značajan utjecaj i predstavljaju značajnu mogućnost za kvalitetnu provedbu zakonskih propisa koji reguliraju prava nacionalnih manjina. Osim ovih subjekata, vrlo je važno i djelovanje političkih stranaka, te utjecaj medija, koji zajedno utvrđeni zakonski okvir položaja nacionalnih manjina u svakodnevnom životu, mogu značajno unaprijediti, ali isto tako marginalizirati ga ili čak unazaditi. Promatrano po regijama u Hrvatskoj, participacija nacionalnih manjina u javnom životu, lokalnoj samoupravi i vlasti, bitno je različito. Razlike su uvjetovane, prije svega, ratom i postratnim oporavkom. Stoga je opravdano razlikovati dvije teritorijalne skupine regija/županija u Hrvatskoj kada se analizira ostvarivanje prava nacionalnih manjina, a glavni kriteriji razlikovanja su rat i njegove posljedice. Prema tome, možemo govoriti o dijelovima Hrvatske koji su bili pogodeni ratnim razaranjima i dijelove Hrvatske koje su ratna događanja mimošla. Osnovne razlike su u razorenom društvenom tkivu i sustavu vrijednosti stanovništva koje se ogleda u zaoštrenim međuetničkim odnosima i materijalnim poteškoćama uvjetovanim ratnim razaranjima. Tako stanovnici općina, gradova i županija koja nisu bila direktno pogodena ratom imaju mirnodopsku lokalnu problematiku koja je opterećena samo ponekad nedovoljnih finansijskim sredstvima za rješavanje problema lokalne zajednice i neodgovarajućim pravnim položajem same lokalne samouprave. Za razliku od

nih regija, u dijelovima Hrvatske koja su pogodena ratom u svakodnevnom životu se javlja niz postratnih problema koji otežavaju život stanovnika, od problema komunalne infrastrukture, rješavanja stambenih problema, povratak izbjeglih i raseljenih osoba do narušenih i/ili zaoštrenih međuetničkih odnosa. Pored toga, na tim područjima se radi i o teškoj ekonomskoj situaciji, koja se ogleda u većoj nezaposlenosti i socijalnoj ugroženosti stanovništva i nedostatku finansijskih sredstava za rad lokalne i regionalne samouprave.

Pored ovog kriterija vezanog za sudjelovanje u ratu, za razumijevanje položaja nacionalnih manjina važan je još i kriterij tradicionalnog statusa manjina za koje je granična crta stjecanje neovisnosti Republike Hrvatske. Po ovom kriteriju mogu se razlikovati dvije skupine manjina, one s tradicionalnim manjinskim statusom i novonastale nacionalne manjine koje su to postale stjecanjem državne neovisnosti 1991. godine. Isto tako za razumijevanje položaja nacionalnih manjina u Republici Hrvatskoj mora se objektivno razlikovati dva vremenska razdoblja u posljednjih trinaest godina, razdoblje etnocentričkog i centralističkog uređenja države te autoritarnog režima, koje je trajalo do stjecanja neovisnosti do kraja 1999. godine i razdoblje nakon parlamentarnih izbora 3. siječnja 2000. godine, kad počinju demokratski reformski procesi.

Obrazovanje pripadnika nacionalnih manjina

Obrazovanje pripadnika nacionalnih manjina na manjinskom jeziku obavlja se u školskim ustanovama koje se mogu osnovati i za manji broj učenika od broja utvrđenog za početak rada školske ustanove s nastavom na hrvatskoj jeziku. Ako ne postoji uvjeti za osnivanje školske ustanove, onda se odgoj i obrazovanje na jeziku i pismu nacionalne manjine obavlja u razrednom odjelu ili obrazovnoj skupini. Razredni odjel i obrazovna skupina ustrojavaju se u školskoj ustanovi s nastavom na jeziku i pismu nacionalne manjine ili školskoj ustanovi s nastavom na hrvatskom jeziku i pismu. Naziv školske ustanove s nastavom na jeziku i pismu nacionalne manjine i tekst njezina pečata i žiga ispisuju se na hrvatskom jeziku i latiničnom pismu, te na jeziku i pismu nacionalne manjine.²⁴

Nastavni plan i program odgoja i obrazovanja na jeziku i pismu nacionalne manjine uz opći dio obvezno sadrži dio čiji je sadržaj u vezi s posebnošću nacionalne manjine (manjinski jezik, književnost, povijest, zemljopis i kulturno stvaralaštvo nacionalne manjine). Dio nastavnog plana i programa, čiji je sadržaj u vezi s posebnošću nacionalne manjine utvrđuje i donosi Ministarstvo prosvjete i sporta po pribavljenom mišljenju predstavnika nacionalne manjine. Upis u školsku ustanovu, razredbeni odjel ili obrazovnu skupinu na jeziku i pismu nacionalne manjine obavlja se pod istim uvjetima kao i upis u školsku us-

²⁴ *Zakon o odgoju i obrazovanju ..., članci od 1 do 5.*

tanovu s nastavom na hrvatskom jeziku. Ako se za upis u školsku ustanovu, razredni odjel ili obrazovnu skupinu prijavi više kandidata nego što je predviđeno uvjetima natječaja za upis, pravo prvenstva imat će učenici koji su pripadnici nacionalne manjine. Učenici školske ustanove, razrednog odjela ili obrazovne skupine s nastavom na jeziku i pismu nacionalne manjine uz svoj jezik i pismo obvezno uče hrvatski jezik i latinično pismo, prema utvrđenom nastavnom planu i programu. Na području na kojem je statutom općine ili grada utvrđena ravnopravna službena uporaba jezika i pisma nacionalne manjine, učenicima školske ustanove s nastavom na hrvatskom jeziku i pismu omogućit će se učenje jezika i pisma nacionalne manjine.²⁵

Odgojno obrazovni rad u školskoj ustanovi s nastavom na jeziku i pismu nacionalne manjine obavljaju nastavnici iz reda nacionalne manjine koji potpuno vladaju jezikom nacionalne manjine, odnosno nastavnici koji nisu pripadnici nacionalne manjine, a potpuno vladaju jezikom i pismom nacionalne manjine. Pedagoška dokumentacija školske ustanove, razrednog odjela i obrazovne skupine s nastavom na jeziku i pismu nacionalne manjine vodi se na hrvatskom jeziku i latiničnom pismu, te na jeziku i pismu nacionalne manjine. Najmanje natpolovična većina članova tijela upravljanja školske ustanove s nastavom na jeziku i pismu nacionalne manjine pripadnici su nacionalne manjine. Za ravnatelja školske ustanove može biti izabrana osoba pripadnik nacionalne manjine, odnosno koja nije pripadnik nacionalne manjine, ako u potpunosti vlađa jezikom i pismom nacionalne manjine. Ministarstvo prosvjete i sporta dužno je za obavljanje poslova iz svojega djelokruga za školsku ustanovu s nastavom na jeziku i pismu nacionalne manjine osigurati potreban broj savjetnika i školskih nadzornika iz reda pojedine nacionalne manjine, odnosno iz reda osoba koje potpuno vladaju jezikom i pismom nacionalne manjine.²⁶

Na izdavanje udžbenika na jeziku i pismu nacionalne manjine primjenjuju se opći propisi o udžbenicima. Školske ustanove s nastavom na jeziku i pismu nacionalne manjine mogu koristiti udžbenike iz države matičnog naroda, uz odobrenje Ministarstva prosvjete i sporta. Sredstva potrebna za redoviti rad javne školske ustanove, razrednog odjela i obrazovne skupine s nastavom na jeziku i pismu nacionalne manjine osiguravaju se u državnom proračunu, ali školska ustanova s nastavom na jeziku i pismu nacionalne manjine može stjecati sredstva za rad i iz drugih izvora, u skladu sa zakonom.²⁷

U školama koje polaze učenici pripadnici nacionalnih manjina osim redovnih nastavnih planova i programa postoje i dodatni nastavni planovi i programi. Ti nastavni programi sadrže gradivo za upoznavanje s bitnim posebnostima iz područja manjinskog jezika, povijesti, zemljopisa, likovne i glazbene

²⁵ *Zakon o odgoju i obrazovanju ...*, članci od 6 do 9.

²⁶ *Zakon o odgoju i obrazovanju ...*, članci od 10 do 14.

²⁷ *Zakon o odgoju i obrazovanju ...*, članci 15 i 16.

kulture.²⁸ Koji će od navedenih nastavnih programa biti izvođen u nekoj školi koju polaze pripadnici nacionalne manjine, ovisi o njihovom izboru, te izboru lokalne samouprave, ovisno o tome koji je od tih programa najprikladniji za njihove prilike.

U praksi, neke nacionalne manjine (na primjer Talijani) biraju samo programe s kompletom nastavom na manjinskom jeziku,²⁹ dok druge biraju programe prema kojima se uči manjinski jezik i povijest i razvija manjinska kultura (na primjer Rusini i Ukrnjaci). Neke nacionalne manjine koriste prve tri vrste nastavnih programa (na primjer Česi), pa u nekim školama imaju organiziranu kompletну nastavu na svom manjinskom jeziku, u drugima imaju dvojezičnu nastavu, a u trećima se izvodi nastava učenja manjinskog jezika i povijesti te razvijanja kulture njihove nacionalne manjine.

Službena uporaba jezika i informiranje nacionalnih manjina

Ravnopravna službena uporaba jezika i pisma nacionalnih manjina ostvaruje se u Republici Hrvatskoj pod sljedećim uvjetima: (1) kada pripadnici pojedine nacionalne manjine na području općine ili grada čine većinu stanovnika; (2) kada je predviđena međunarodnim ugovorima kojih je Republika Hrvatska stranka potpisnica; (3) kada su to statutom propisale općine i gradovi; (4) kada to, u odnosu na rad svojih tijela, u samoupravnom djelokrugu, statutom pro-

²⁸ U Republici Hrvatskoj se i koriste četiri vrste nastavnih programa i to:

- nastavni programi koji sadrže, osim nastavnog gradiva kao i u školama s nastavom na hrvatskom jeziku, još i dodatno gradivo iz njihova manjinskog jezika, književnosti, povijesti, zemljopisa, te likovne i glazbene kulture, a cjelokupna se nastava izvodi na manjinskom jeziku,
- nastavni programi koji sadrže sve elemente kao i pod brojem 1, uz to što se nastava izvodi dvojezično (na hrvatskom jeziku i na manjinskom jeziku),
- nastavni programi tzv. njegovanja (fakultativnog učenja) manjinskog jezika, kulture i povijesti odnosne nacionalne manjine i
- nastavni program „ljetne škole”, koji sadrži osnovno gradivo iz manjinskog jezika, kulture i povijesti nacionalne manjine, a učenici ovaj skraćeni program savladavaju u vrijeme ljetnih praznika, obično u trajanju 10–15 dana.

²⁹ Za pripadnike talijanske nacionalne manjine, na talijanskom jeziku djeluje 18 predškolskih ustanova. U osnovnom obrazovanju radi 19 osnovnih škola s većim brojem odjeljenja. Cjelokupna nastava izvodi se isključivo na talijanskom jeziku, a hrvatski se jezik uči kao jezik društvene sredine. Na području Republike Hrvatske, talijanska nacionalna manjina u četiri srednje škole provodi obrazovanje na manjinskom jeziku. Pedagoški fakultet Rijeka u radnoj jedinici Pula obrazuje i stručno usavršava odgajatelje i učitelje pripadnike talijanske nacionalne manjine, a nastava se izvodi na talijanskom jeziku.

piše županija na čijem je području u pojedinim općinama i gradovima u - ravnopravnoj službenoj uporabi jezik i pismo nacionalne manjine.³⁰

Na području općine, grada ili županije ravnopravna službena uporaba jezika i pisma nacionalne manjine ostvaruje se: (1) u radu predstavničkih i izvršnih tijela općine, grada ili županije; (2) u postupku pred upravnim tijelima općine, grada ili županije; (3) u postupku pred tijelima državne uprave prvog stupnja, pred ustrojstvenim jedinicama središnjih tijela državne uprave koje postupaju u prvom stupnju, pred sudbenim tijelima prvog stupnja, državnim odvjetništvima i državnim pravobraniteljstvima prvog stupnja, javnim bilježnicima i pravnim osobama koje imaju javne ovlasti, a koji su ovlašteni postupati na području općine ili grada koji su u ravnopravnu službenu uporabu uveli manjinski jezik i pismo. Ravnopravna službena uporaba jezika i pisma nacionalne manjine u pravilu se uvodi za cijelo područje pojedine općine ili grada.³¹

U općinama, gradovima i županijama u kojima je u ravnopravnoj službenoj uporabi jezik i pismo nacionalne manjine, rad općinskih i gradskih vijeća, te općinskih i gradskih poglavarstava kao i rad županijskih skupština i poglavarstava odvija se na hrvatskom jeziku i latiničnom pismu, te jeziku i na pismu nacionalne manjine koji su u ravnopravnoj službenoj uporabi. U tim se općinama, gradovima i županijama osigurava dvojezično ili višejezično: (1) ispisivanje teksta pečata i žigova istom veličinom slova; (2) ispisivanje natpisnih ploča predstavničkih, izvršnih i upravnih tijela općina, gradova i županija, kao i pravnih osoba koje imaju javne ovlasti, istom veličinom slova; (3) ispisivanje zaglavlja akata istom veličinom slova. Vijećnik, član poglavarstva ili građanin u tim općinama, gradovima i županijama imaju pravo da su se osiguraju dvojezično i višejezično: (1) dostava materijala za sjednicu općinskog ili gradskog vijeća i poglavarstva, kao i županijske skupštine i županijska poglavarstva; (2) izrada zapisnika i objava zaključaka, te (3) objavljivanje službenih obavijesti i poziva predstavničkih, izvršnih i upravnih tijela općina, gradova i županija, kao i materijali za sjednice predstavničkih i izvršnih tijela. Općine, gradovi i županije u kojima je u ravnopravnoj službenoj uporabi jezik i pismo nacionalne manjine, osigurat će pravo građanima da im se dvojezično ili višejezično: (1) izdaju javne isprave, te (2) tiskaju obrasci koji se koriste u službene svrhe.³²

U općinama i gradovima u kojima je u ravnopravnoj službenoj uporabi jezik i pismo nacionalne manjine, dvojezično ili višejezično, istom veličinom slova, ispisuju se: (1) pisani prometni znakovi i druge pisane označke u prometu; (2) nazivi ulica i trgova; (3) nazivi mjesta i geografskih lokaliteta. Statutom općine ili grada može se propisati da na području, na kojem je u službenoj uporabi jezik i pismo nacionalne manjine, pravne i fizičke osobe koje obavljaju ja-

³⁰ *Zakon o uporabi jezika ...*, članak 4.

³¹ *Zakon o uporabi jezika ...*, članci 5 i 6.

³² *Zakon u uporabi jezika ...*, članci 8. i 9.

vnu djelatnost mogu ispisivati nazine dvojezično ili višejezično. Pripadnici nacionalnih manjina, čiji je jezik i pismo u ravnopravnoj službenoj uporabi, imaju u postupku prvog i drugog stupnja pred upravnim tijelima općina, gradova i županija ista prava i u postupku pred tijelima državne uprave prvog stupnja.³³

Tijela državne uprave prvog stupnja, ustrojstvene jedinice središnjih tijela državne uprave koja postupaju u prvom stupnju, sudbena tijela prvog stupnja, državna odvjetništva i državna pravobraniteljstva prvog stupnja, javni bilježnici i pravne osobe koje imaju javne ovlasti, koji su ovlašteni postupati na području na kojem je, uz hrvatski jezik i latinično pismo, u ravnopravnoj službenoj uporabi jezik i pismo nacionalne manjine, dužna su podučiti stranku s područja općine ili grada, koji su uveli u ravnopravnu službenu uporabu jezik i pismo nacionalne manjine, o pravu uporabe jezika i pisma nacionalne manjine u postupku, te unijeti u zapisnik izjavu o tome kojim će se jezikom i pismom stranka služiti u postupku. U općinama, gradovima i županijama u kojima je u ravnopravnoj službenoj uporabi jezik i pismo nacionalne manjine, prvo pismeno u postupku dostavlja se stranci na hrvatskom jeziku i latiničnom pismu i na jeziku i pismu nacionalne manjine koji je u ravnopravnoj službenoj uporabi. Jezik i pismo na kojem je predan, odnosno priopćen prvi podnesak stranke, smarat će se jezikom i pismom kojim se stranka želi služiti u postupku. Ako su se sudionici u postupku izjasnili za uporabu dvaju ili više jezika i pisama koji su u ravnopravnoj službenoj uporabi, u postupku će se, uz hrvatski jezik i latinično pismo, koristiti jezik i pismo za čiju se uporabu sudionici u postupku sporazume. Ako do sporazuma ne dođe, u postupku će se koristiti jezik i pismo nacionalne manjine kojim se služi većina sudionika u tom postupku, uz osiguravanje tumača za ostale sudionike u postupku. Ako se ni navedenim načinom ne može osigurati uporaba jezika i pisma nacionalne manjine kojim se služe pripadnici nacionalne manjine, postupak će se voditi samo na hrvatskom jeziku i latiničnom pismu, uz osiguravanje tumača. Tijela državne uprave prvog stupnja, ustrojstvene jedinice središnjih tijela državne uprave, koja postupaju u prvom stupnju, sudbena tijela prvog stupnja, državna odvjetništva i državna pravobraniteljstva prvog stupnja, javni bilježnici i pravne osobe koje imaju javne ovlasti, dužni su strankama i drugim sudionicima u postupku dostavljati sve akte, osim na hrvatskom jeziku i latiničnom pismu i na jeziku i pismu nacionalne manjine koji je u ravnopravnoj službenoj uporabi, a kojim se stranka, odnosno drugi sudionik služi u postupku. To isto vrijedi i za dostavu strankama dopisa, podnesaka i opravaka drugih akata postupka drugoga stupnja. Sva navedena tijela koja imaju svoje urede i ispostave u općinama, gradovima i županijama u kojima je u službenoj uporabi pored hrvatskog jezika i latiničnog pisma jezik i pismo nacionalne manjine, dvojezično ili višejezično: (1) izdaju javne isprave; (2) tiskaju

³³ *Zakon o uporabi jezika ...*, članak 10.

obrasce koji se koriste u službene svrhe; (3) ispisuju tekst pečata i žigova u istoj veličini slova; (4) ispisuju natpisne ploče, te (5) ispisuju zaglavlja akata istom veličinom slova. Za razliku od postupaka koji se vode u prvom stupnju u lokalnim jedinicama, tijela koja provode postupak drugoga stupnja postupaju na hrvatskom jeziku i latiničnom pismu. Samo iznimno, ako pred tijelom drugog stupnja sudjeluju neposredno stranke koje su se u postupku prvog stupnja služile jezikom i pismom nacionalne manjine koji je u ravnopravnoj službenoj uporabi, postupak se vodi kao i postupak prvog stupnja.³⁴

Na temelju zakona i provedbenih propisa kojima se uređuju djelatnosti javnog priopćavanja, proizvodnje i emitiranja radijskog i TV programa, stvaraju se uvjeti da se građani mogu upoznati s poviješću, kulturom i vjerom nacionalnih manjina. Radio i TV na državnoj, regionalnoj i lokalnoj razini imaju zadaću promicati razumijevanje za pripadnike nacionalnih manjina, proizvoditi i/ili emitirati emisije namijenjene informiranju pripadnika nacionalnih manjina na jezicima nacionalnih manjina, stvaranje i emitiranje programa kojima se potiče i unaprjeđuje održavanje, razvoj i iskazivanje kulturne, vjerske i druge samobitnosti nacionalnih manjina, očuvanje i zaštita njihovih kulturnih dobara i tradicije, te stvaranje i emitiranje programa kojima se pripadnici nacionalne manjine na tom prostoru upoznaju s radom i zadaćama njihova vijeća nacionalnih manjina i predstavnika nacionalnih manjina. Pravne osobe koje obavljaju djelatnost javnog priopćavanja (tisk, radio i TV) omogućit će udrugama pripadnika nacionalnih manjina i institucijama nacionalnih manjina sudjelovanje u stvaranju programa namijenjenog manjinama. U državnom proračunu i proračunima jedinica lokalne i regionalne samouprave osiguravaju se sredstva za sufinciranje programa radio i TV postaja u njihovom vlasništvu namijenjenih nacionalnim manjinama prema kriterijima koje utvrđi Vlada na prijedlog Savjeta za nacionalne manjine, odnosno nadležna tijela jedinica lokalne i regionalne samouprave na prijedlog vijeća nacionalnih manjina.³⁵ U cilju ostvarivanja prava pripadnika nacionalnih manjina na informiranje putem tiska te radija i TV na pismu i jeziku nacionalne manjine pripadnici nacionalnih manjina, njihova vijeća i predstavnici, njihove udruge mogu obavljati djelatnost javnog priopćavanja (izdavati novine, proizvoditi i emitirati radijski i TV program i obavljati djelatnost novinskih agencija) u skladu sa zakonom.

³⁴ *Zakon o uporabi jezika ...*, članci od 12 do 19.

³⁵ Do kraja 2003. godine na Hrvatskoj televiziji će se pokrenuti posebne tjedne emisije na jezicima nacionalnih manjina u trajanju od 20 minuta. Takve emisije bit će emitirane na talijanskom, češkom, slovačkom, madarskom, ukrajinskom, rusinskom i srpskom jeziku. I dalje će se emitirati pedestminutna multijezična emisija „Prizma“ namjenjena svim nacionalnim manjinama.

Djelotvorno sudjelovanje nacionalnih manjina u javnom životu

Pripadnici nacionalnih manjina u Hrvatskoj imaju pravo na samoorganiziranje i udruživanje radi ostvarivanja svojih etničkih i drugih interesa i sudjelovanja u javnom životu. U Hrvatskoj pripadnici nacionalnih manjina su se samoorganizirali djelovanjem različitih, autonomno organiziranih udruga i ustanova. U Republici Hrvatskoj veći broj nacionalnih manjina baštini manjinski položaj unazad pedeset i više godina, a manji broj otočeo je s izgradnjom manjinskog položaja od uspostave samostalnosti Republike Hrvatske. Prilikom određivanja visine iznosa finansijske pomoći za programe udruga i ustanova nacionalnih manjina, faktor njihove veličine nije najrelevantniji. Osiguravanje finansijske potpore srazmjerno je stupnju razvijenosti nacionalne manjine u cilju postizanja najvišeg stupnja ostvarivanja etničkih prava. U proteklom razdoblju naročita se pažnja posvećivala stvaranju uvjeta za rad i izgradnju institucija nacionalnih manjina koje su to postale raspadom bivše države kako bi razina i njihovih prava bila sukladna s europskim standardima.

U 2003. godini Savjet za nacionalne manjine je usvojio Model ostvarivanja etničkih prava pripadnika nacionalnih manjina u Republici Hrvatskoj koji polazi od normativa i kriterija iz temeljnih međunarodnih dokumenata koje je prihvatile Republika Hrvatska, a kojima se uređuju prava pripadnika nacionalnih manjina, Ustava Republike Hrvatske i Ustavnog zakona o pravima nacionalnih manjina. Model podrazumijeva ostvarivanje etničkih prava preko ovlaštenih, redovitih institucija Republike Hrvatske, koje su odgovorne stručno i upravno, za pojedina područja društvenog života, za sve državljane kako za većinski hrvatski narod, tako i za pripadnike nacionalnih manjina. Takvim modelom se osigurava zaštita i razvoj kulturnog i etničkog identiteta pripadnika nacionalnih manjina i njihova integracija u hrvatsko društvo.

Etnička prava koja nije moguće ostvarivati djelovanjem redovitih institucija, osiguravaju se finansijskom pomoći različitim programima nevladinih udruga i ustanova nacionalnih manjina s ciljem očuvanja njihovog etničkog i kulturnog identiteta. Radi se o programima iz područja informiranja (različite novine i časopisi), izdavaštva, kulturnog amaterizma, kulturnih i inih manifestacija koji se pomažu prema rasporedu sredstava iz državnog proračuna Republike Hrvatske, kojeg utvrđuje Savjet za nacionalne manjine. U 2003. godini na temelju iskazanih potreba i interesa Republika Hrvatska finansijski pomaže ostvarivanje programa rada 35 nevladinih udruga i ustanova nacionalnih manjina i za to će izdvojiti oko 20.000.000 kuna (2.800.000 EURA). Pored toga, preko nadležnih državnih institucija, financiraju se programi u sljedećim područjima: bibliotekarstvo (Ministarstvo kulture), odgoj i obrazovanje (Ministarstvo prosvjete i sporta), društvena istraživanja (Ministarstvo znanosti i tehnologije), zaštita spomeničkog blaga i muzejsko-arhivska djelatnost (Ministarstvo kulture). Dio kulturnih programa i drugih potreba nacionalnih manjina se financira i iz proračuna jedinica lokalne i regionalne samouprave.

S obzirom na razne obavijesti dobivene na uvid tijekom svojeg posjeta Hrvatskoj, a u svjetlu informacija koje su mu pružene, Savjetodavni odbor je bio ozbiljno zabrinut zbog nedostatka koji se tiču učinkovitog sudjelovanja pripadnika nacionalnih manjina u javnom i posebno gospodarskom životu. Iako je priznao da gospodarske poteškoće i nezaposlenost također ozbiljno utječu na pripadnike većinskog naroda, Savjetodavni odbor je smatrao da su pripadnici nacionalnih manjina često u osobito teškoj situaciji jer na njih također utječu i negativni rezultati diskriminacije u prošlosti (često povezani s ratnim sukobom 1991–1995). Što se tiče sudjelovanja pripadnika nacionalnih manjina u državnoj upravi kao zaposlenika, Savjetodavni odbor je smatrao da je situacija zabrinjavajuća u odnosu na pripadnike srpske nacionalne manjine, ali da je vrlo nezadovoljavajuća i što se tiče nekih, ali ne svih, drugih nacionalnih manjina. To se također jasno vidi i u tablici 2, koja pokazuje da su samo 2,8% uposlenih u tijelima državne uprave (isključujući Ministarstvo unutarnjih poslova i Ministarstvo obrane) bili pripadnici srpske manjine i da su u tim tijelima zaposlena samo dva Roma. Savjetodavni odbor je bio svjestan toga da je izvanredno niska predstavljenost nacionalnih manjina u izvršnoj i sudbenoj vlasti djelomice rezultat diskriminatorske prakse iz prošlosti (često povezane s ratnim sukobom 1991–1995) čiji je cilj bilo ograničenje, napose, broja pripadnika srpske manjine u raznim tijelima, uključujući sudove. U svezi s time, Savjetodavni odbor je smatrao da postaje stanje nije kompatibilno s člankom 15 Okvirne konvencije. Pod takvim okolnostima, Savjetodavni odbor je smatrao da može pripomoći ako Republika Hrvatska ne samo pomno nadgleda stanje u svim sektorima kako se takva praksa ne bi ponovila, već i da se pobrine i pronađe učinkovite pravne lijekove kojima će pomoći žrtvama takve prakse i uvede dodatne pozitivne mjere kojima je cilj uklanjanje postojećih negativnih posljedica ovakve prakse iz prošlosti. U tome cilju, Vlada je u protekle dvije godine počela provoditi mjere koje trebaju poboljšati navedeno stanje i omogućiti pripadnicima nacionalnih manjina lakši pristup javnim i državnim poslovima.

Što se tiče zastupljenosti pripadnika manjina u tijelima državne uprave podaci su prikazani u tablici 2.

Tablica 2. – Broj zaposlenih po nacionalnim manjinama u tijelima državne uprave bez Ministarstva unutarnjih poslova i Ministarstva obrane

Nacionalna struktura		Z a p o s l e n i			% manjina
Zaposlenih		Službenici	Namještenici	Ukupno	u ukupnom broju
Hrvati	Manjine				zaposlenih
Hrvati		11 481	4 216	15 697	95,007
	Albanci	7	2	9	0,054
	Crnogorci	19	3	22	0,133
	Česi	24	4	28	0,169
	Mađari	21	8	29	0,176
	Makedonci	13	4	17	0,103
	Muslimani	52	13	65	0,393
	Neopredijeljeni	51	11	62	0,375
	Nijemci	3		3	0,018
	Romi	1	1	2	0,012
	Rusini	7	3	10	0,061
	Slovaci	6		6	0,036
	Slovenci	38	12	50	0,303
	Srbi	353	114	467	2,827
	Talijani	23	5	28	0,169
	Židovi	4		4	0,024
	O s t a l i	21	2	23	0,139
Ukupno broj zaposlenih		643	182	825	4,992

Izborni sistem i nacionalne manjine

U članku 15 stavku 3 Ustava Republike Hrvatske propisano je da se zakonom može, pored općeg biračkog prava, pripadnicima nacionalnih manjina osigurati posebno pravo da biraju svoje zastupnike u Hrvatski sabor. Navedena je odredba unesena u Ustav Republike Hrvatske izmjenama iz studenoga 2000. godine.³⁶ Ta je odredba iznimno značajna s aspekta jamstva i osiguranja političkih prava nacionalnih manjina u Hrvatskoj, jer se njome i na ustavno-pravnoj razini nacionalnim manjinama formalno priznaje, uz opće i jednakobiračko pravo, još i posebno i nejednako manjinsko biračko pravo.

Unatoč tome što Ustav Republike Hrvatske sadrži sveobuhvatno jamstvo jednakosti svih pred zakonom, neovisno o nečijoj rasi, boji kože, spolu, jeziku, vjeri, političkom ili drugom uvjerenju, nacionalnom ili socijalnom podrijetlu, imovini, rođenju, naobrazbi, društvenom položaju ili drugim osobinama,

³⁶ Promjene Ustava Republike Hrvatske, Narodne novine, broj 113/2000.

zakonodavac se priklonio stajalištu prema kojem je, radi osiguranja jednakosti i ravnopravnosti većinskog naroda i nacionalnih manjina, u Hrvatskoj još uvijek potrebno normativno osiguranje (garancija) političke predstavljenosti nacionalnih manjina u najvišem predstavničkom tijelu države.

U članku 15 stavku 3 Ustava Republike Hrvatske izrijekom je propisano načelo pozitivne diskriminacije u korist nacionalnih manjina. Takvo ustavno određenje ukazuje na odmak, barem u jednom ustavnopravnom području, od inače nadzastupljene pojedinačne koncepcije zaštite pripadnika manjina u hrvatskom društvu. Ono, naime, u području političkih prava nacionalnih manjina formalnopravno omogućava prihvatanje ustavnopravne koncepcije manjinskih (političkih) prava kao kolektivnih prava manjinskih zajednica. S druge strane, iznimno je zanimljiva činjenica da Ustavni zakon koji je regulirao manjinsku problematiku već od 1991. godine neprekidno sadrži odredbe kojima se nacionalnim manjinama u Hrvatskoj osigurava pravo predstavljanja u predstavničkim i drugim tijelima državne vlasti, iako za takvo rješenje Ustavni zakon sve do 2000. godine nije imao formalnu osnovu ni u jednoj odredbi Ustava Republike Hrvatske.³⁷

U hrvatskom zakonodavstvu sadržana je tehnika unaprijed rezerviranih mjesta za pripadnike nacionalnih manjina u predstavničkim i drugim tijelima državne vlasti i tijelima lokalne i regionalne samouprave. Pri tome postoji razlika u broju tih mjesta s obzirom na postotak zastupljenosti pojedine nacionalne manjine u ukupnom stanovništvu Republike Hrvatske ili lokalne zajednice.³⁸ Na izborima za Hrvatski sabor u siječnju 2000. godine ta je tehnika provedena stvaranjem posebnih popisa birača za nacionalne manjine, čime je pripadnicima nacionalnih manjina dano pravo da se opredijele ili za opće kandidacijske liste (pri čemu moraju biti upisani u opće popise birača) ili za kandidacijske liste nacionalne manjine kojoj pripadaju (pri čemu moraju biti

³⁷ Kako smatra Jasna Omejec, sutkinja Ustavnog suda Republike Hrvatske, važnost tih odredaba Ustavnog zakona o nacionalnim manjinama ne umanjuje čak ni činjenica da je njihova neposredna implementacija obustavljena 1995. godine, do rezultata novog popisa stanovništva u Republici Hrvatskoj. Vidi: Omejec J., *Uloga lokalne samouprave u multikulturalnim pitanjima i međuetničkim odnosima u Republici Hrvatskoj*, Hrvatski pravni centar, Zagreb, 2001, str. 23.

³⁸ U zaštiti izbornog prava manjina na nacionalnoj razini Ustavni zakon o pravima nacionalnih manjina poznaće dvije skupine manjina, one koje čine više od 1,5 posto stanovništva i one koje su u stanovništvu Hrvatske zastupljene u manjem postotku. Srpska nacionalna manjina, koja čini više od 1,5 % posto ukupnog stanovništva ima pravo na zastupljenost u Saboru s barem jednim, a najviše s tri zastupnika. Ostale manjine imaju pravo na ukupno pet zastupničkih mjesta. Ustavni zakon nije propisao pravo pripadnika nacionalnih manjina na dvostruko pravo glasa, pa je malo vjerojatno da bi ono u budućim izbornim zakonima bilo uvedeno. Izborni zakon po kome će biti provedeni slijedeći izbori krajem 2003. godine ne predviđa njegovo uvođenje.

upisani u posebne popise birača za nacionalne manjine). Ovakvim izbornim postupkom pripadnici nacionalnih manjina bili su diskriminirani u odnosu na sve do tada provedene izbore, kada su mogli glasovati i za opće i manjinske kandidacijske liste. Zbog očitih mogućnosti manipulacije glasovima biračkog tijela kojeg čine pripadnici nacionalnih manjina, postavlja se pitanje opravdanosti primjene načela pozitivne diskriminacije u izbornom procesu. Pri tome valja podsjetiti na općeprihvaćeno stajalište: primjenu načela pozitivne diskriminacije opravdano je normativno predviđjeti samo za onoliko dugo razdoblje koliko je potrebno da bi se prevladali uzroci stanja koji su doveli do potrebe njegova uvodenja u izbornopravni poredak neke zemlje. Je li u Hrvatskoj politička predstavljenost nacionalnih manjina još uvijek potrebna po sili ustavne i zakonske norme, propisivanjem unaprijed rezerviranog određenog broja mjesta u predstavničkim tijelima za pripadnike nacionalnih manjina? Na to pitanje još uvijek nema jednoznačnog odgovora. Kao činjenična osnova rasprave mogli bi poslužiti statistički podaci o broju birača/pripadnika nacionalnih manjina koji su na dan parlamentarnih izbora 3. siječnja 2000. godine zatražili ispis iz izvadaka popisa birača za nacionalne manjine i upis u izvatke iz općeg biračkog popisa, kako bi na taj način mogli glasovati za opće kandidacijske liste izbornih jedinica prema svom mjestu prebivališta, a ne za pripadnike svoje nacionalne manjine. Postotak ispisanih se kretao od 66% kod pripadnika srpske nacionalne manjine, preko 69% kod pripadnika talijanske nacionalne manjine do 71% kod mađarske nacionalne manjine.³⁹

Pred zakonodavca ti podaci postavljaju zahtjev za pravilno tumačenje ponašanja onog dijela hrvatskog biračkog tijela koje pripada nacionalnim manjinama, a koje je izraženo na izborima za Hrvatski sabor 2000. godine. Tu se postavlja pitanje da li je iskazana volja velikog dijela birača/pripadnika nacionalnih manjina da glasaju za „opće” kandidacijske liste političkih stranaka ili njihovih koalicija, a ne za predstavnike svoje nacionalne manjine, znak da je i u Hrvatskoj došlo vrijeme za mijenjanje zakonskog okvira političkog predstavljanja nacionalnih manjina u najvišem predstavničkom tijelu države? Ili je to bila samo jednokratna pojava uzrokvana stjecajem objektivnih okolnosti koje su u trenutku izbora bile prisutne u hrvatskom društvu? Znaće li zahtjevi birača za upisom u izvatke iz općeg popisa birača njihovu trajnu političku volju da se u popisima birača više ne vode kao birači/pripadnici određenih nacionalnih manjina? Ili je to bio samo jednokratan zahtjev za upisom u opće popise birača, na što ih je prisilio izborni zakon namećući im diskriminirajuća pravila izbornog postupka? Najviše što se u ovom trenutku može reći jest to, da će zakonska intervencija, u obliku propisivanja zakonski obvezujućeg prava nacionalnih manjina na političko predstavništvo u Hrvatskom saboru, biti

³⁹ Tatalović Siniša, *Politika zaštite nacionalnih manjina u Hrvatskoj*, Nacionalne manjine II – zaštita manjinskih prava u Hrvatskoj, STINA, Split, 2003, str. 20–21.

potrebna sve dok hrvatsko društvo ne dođe do stupnja razvijenosti u kojemu više neće biti bojazni od političke marginalizacije ne-hrvata u najvišem predstavničkom tijelu Republike Hrvatske.⁴⁰

U vezi s pravom nacionalnih manjina na političko predstavljanje u lokalnim predstavničkim tijelima, važno je pitanje: s obzirom na odredbu Ustavnog zakona, prema kojoj pripadnici nacionalnih manjina imaju pravo na zastupljenost u tijelima lokalne i regionalne samouprave proporcionalno svom udjelu u ukupnom stanovništvu odredene jedinice lokalne i regionalne samouprave, može li se izborna tehnika unaprijed rezerviranih mjesta za pripadnike nacionalnih manjina u lokalnim predstavničkim tijelima smatrati optimalnom? Navedena odredba Ustavnog zakona u određenoj mjeri nije primjerena lokalnoj samoupravnoj razini, jer ona ne pogađa smisao europskim standardima zaštićenih prava nacionalnih manjina, osobito u životu lokalnih zajednica. Naime, osnovna ideja promicanja i zaštite prava nacionalnih manjina na lokalnim i regionalnim razinama jest u tome da se manjinskim zajednicama osigura pravo na vlastiti identitet, sa svim pratećim pravima koja iz njega proizlaze. Prema tome, politički utjecaj pripadnika nacionalnih manjina na donošenje odluka u lokalnom predstavničkom tijelu trebao bi se ograničiti samo na ona pitanja koja se tiču prava nacionalnih manjina i njihove manjinske zajednice. U ostalim poslovima koji prepostavljaju „opće“ političko predstavljanje u županiji, gradu ili općini, pripadnici nacionalnih manjina trebali bi se pojavljivati kao građani dotične županije, grada ili općine, neovisno o svojoj nacionalnoj pripadnosti. Time bi se ujedno stvarale prepostavke za uvođenje građanskog koncepta upravljanja na lokalnoj i regionalnoj razini. Suprotno tomu, propisivanjem prava pripadnika nacionalnih manjina na razmijernu zastupljenost u predstavničkim tijelima lokalne samouprave u Hrvatskoj taj se princip narušava, jer manjinski predstavnici u lokalnim predstavničkim tijelima praktički imaju „opći“ mandat kao i svi ostali vijećnici.⁴¹ Time se gubi smisao njihova

⁴⁰ Omejec J., *Uloga lokalne samouprave u multikulturalnim pitanjima i međuetničkim odnosima u Republici Hrvatskoj*, Hrvatski pravni centar, Zagreb, 2001, str. 27.

⁴¹ Kao i Zakon o izboru zastupnika i izborni zakon za lokalne razine također ima znatne mane, posebno vezane uz izbor manjinskih predstavnika. U zakonu se naglašava nepostojanje dvostrukoga prava glasa za pripadnike manjina, što je s obzirom na izborni model politička deklaracija, a ne suštinska odredba. Naime, razmijerni izborni model, što ga Hrvatska primjenjuje i za lokalnu i regionalnu samoupravu, naglašava ulogu političkih stranaka, a dopunski izbori za manjinske predstavnike obavljaju se samo ako na listama političkih stranaka, koje sudjeluju u diobi mandata u predstavničkom tijelu jedinice lokalne ili regionalne samouprave, nema niti jednog manjinskog predstavnika. Na taj se način može dogoditi da većina odabere tko će zapravo predstavljati manjinu, a smanjuje se uloga manjinskih nevladinih organizacija i manjinskih političkih stranaka. Ipak, pravo na zastupljenost u lokalnoj i regionalnoj samoupravi

unaprijed osiguranog političkog predstavljanja u predstavničkom tijelu, jer oni, osim što se u gradskom/općinskom vijeću bave manjinskim pravima u jednakoj mjeri kao i svi ostali vijećnici, u pravilu ne mogu djelotvorno utjecati na odluke većine kada se radi o pitanjima iz područja prava nacionalnih manjina, jer im njihov mandat „općeg“ vijećnika ne osigurava nikakva dopunska prava u manjinskim pitanjima u odnosu na nemanjinsku većinu u gradskom/općinskom vijeću.⁴² Predstavljanje i usklađivanje interesa nacionalnih manjina u lokalnim i regionalnim zajednicama, dodatno može opteretiti i djelovanje vijeća nacionalnih manjina, posebno u onim sredinama, gdje je osigurano pravo neke nacionalne manjine na razmjernu zastupljenost u lokalnoj i regionalnoj samoupravi.

S ciljem unaprjeđivanja, očuvanja i zaštite položaja nacionalnih manjina u društvu pripadnici nacionalnih manjina biraju, na način i pod uvjetima propisanim Ustavnim zakonom, svoje predstavnike radi sudjelovanja u javnom životu i upravljanju lokalnim poslovima putem vijeća i predstavnika nacionalnih manjina u jedinicama lokalne i regionalne samouprave. U jedinicama samouprave na čijem području pripadnici pojedine nacionalne manjine sudjeluju s najmanje 1,5% u ukupnom stanovništvu jedinice samouprave, u jedinicama lokalne samouprave na čijem području živi više od 200 pripadnika pojedine nacionalne manjine, te u jedinicama područne (regionalne) samouprave na čijem području živi više od 500 pripadnika nacionalne manjine, pripadnici svake takove nacionalne manjine mogu izabrati vijeće nacionalnih manjina, a na području jedinice samouprave gdje živi najmanje 100 pripadnika nacionalne manjine, za područje ovakve jedinice samouprave bira se predstavnik nacionalnih manjina.⁴³ Za razliku od izbora manjinskih vijećnika, za koje su i političke stranke ovlašteni predlagatelji, prilikom izbora članova vijeća nacionalne manjine one nemaju pravo kandidirati svoje članove. Za taj postupak, kao ovlaštene predlagatelje, Ustavni zakon navodi isključivo manjinske udruge i skupine građana-pripadnika te manjine.⁴⁴

Kao važna novina u Ustavnom zakonu, vijeća nacionalnih manjina u jedinici samouprave imaju pravo:

- predlagati tijelima jedinice samouprave mjere za unaprjeđivanje položaja nacionalne manjine u državi ili na nekom njenom području, uključujući davanje

barem je jednako važno kao i pravo na zastupljenost u parlamentu središnje države. Stoga Ustavni zakon i njegovo provođenje, dosljednije nego što je do sada bilo uobičajeno u Hrvatskoj, predstavljaju veliki korak u zaštiti manjinskih političkih, pa i izbornoga prava.

⁴² Omejec J., *Uloga lokalne samouprave u multikulturalnim pitanjima i međuetničkim odnosima u Republici Hrvatskoj*, Hrvatski pravni centar, Zagreb, 2001, str. 28.

⁴³ *Ustavni zakon* ..., članak 24.

⁴⁴ Svoga kandidata za općinsko vijeće nacionalne manjine može kandidirati najmanje 20 građana, za gradsko najmanje 30, a za županijsko najmanje 50 građana.

prijedloga općih akata kojima se uređuju pitanja od značaja za nacionalnu manjinu tijelima koja ih donose;

- isticati kandidate za dužnosti u tijelima državne uprave i tijelima jedinica samouprave;
- biti obaviješteni o svakom pitanju o kome će raspravljati radna tijela predstavničkog tijela jedinice samouprave, a tiče se položaja nacionalne manjine;
- davati mišljenja i prijedloge na programe radijskih i televizijskih postaja na lokalnoj i regionalnoj razini namijenjene nacionalnim manjinama ili na programe koji se odnose na manjinska pitanja.⁴⁵

Zakonodavac je izbjegao mogućnost formiranja manjinske samouprave na nacionalnoj razini, ali je ostavio mogućnost stvaranja koordinacija vijeća nacionalnih manjina. Dopusťa i to da se u koordinacije međusobno slobodno povezuju vijeća različitih nacionalnih manjina u jednoj jedinici, a omogućeno je i povezivanje vijeća jedne nacionalne manjine bilo u nekoliko lokalnih jedinica, bilo na nacionalnoj razini. Ipak, izostavljanjem mogućnosti za formiranje manjinske samouprave na nacionalnoj razini, izbjegnuta je mogućnost osnivanja Vijeća nacionalne manjine s pravnom osobnošću, koje bi autoritativno zastupalo nacionalnu manjinu pred središnjim vlastima. Jedinice samouprave obvezne su osigurati prepostavke za rad vijeća nacionalnih manjina na svom području, a vijeća imaju pravo i na financiranje iz državnoga proračuna. Osim toga, ona mogu ostvarivati vlastita sredstva iz donacija, poklona ili nasljedstava. Sredstva što ih dobivaju iz lokalnih ili državnoga proračuna mogu trošiti samo sukladno njihovoj proračunskoj namjeni, a u korištenju sredstvima iz vlastitih izvora vijeća su slobodnija i mogu ih trošiti za poslove od značenja za manjinu i to sukladno autonomno kreiranim programima.

U jedinicama samouprave u kojima manjina nema mogućnost za osnivanje vijeća nacionalne manjine, jer pripadnika manjine nema u minimalnom, Ustavnim zakonom propisanom broju, ali ih ima najmanje 100, pripadnici manjine mogu izabrati svoga manjinskog predstavnika. Njega se bira sukladno izbornom zakonu, kao i vijeća nacionalne manjine, a kad je izabran, on ima ovlasti predstavljati manjinu pred tijelima jedinice samouprave i obvezu brinuti se o promicanju interesa nacionalne manjine.⁴⁶ Održani su prvi izbori za vijeća nacionalnih manjina 18. svibnja 2003. godine, a njihovim provođenjem i formiranjem vijeća kao nevladinih organizacija *sui generis* Republika Hrvatska je ušla u novo razdoblje manjinske zaštite.

Prvi izbori za vijeća i predstavnike nacionalnih manjina, održani su uz dosta problema i relativno skroman odaziv birača. Ipak, oni su omogućili izbor

⁴⁵ *Ustavni zakon ...*, članak 31.

⁴⁶ Vlada je utvrdila kako nacionalne manjine imaju pravo na osnivanje vijeća u 16 županija i u 262 jedinice lokalne samouprave, a da u svim županijama i u 40 gradova imaju pravo na izbor predstavnika manjine.

značajnog broja vijeća i predstavnika nacionalnih manjina i početak boljeg ostvarivanja prava nacionalnih manjina na lokalnim i regionalnim razinama. Time su bitno otklonjene i najvažnije primjedbe Savjetodavnog odbora za Okvirnu konvenciju za zaštitu nacionalnih manjina, koje su se u njegovom mišljenju odnosile na Hrvatsku.

Tablica 3. – Podaci o ukupnom broju i odazivu birača za sve nacionalne manjine za koje su izbori provedeni

	Izbori za članove vijeća			Izbori za predstavnike		
	ukupno birača	glasovalo birača	%	ukupno birača	glasovalo birača	%
Županije	320.793	37.752	10,21	4.992	790	15,83
Gradovi	132.991	14.422	10,84	1.444	353	24,45
Općine	88.615	19.607	22,13	115	27	17,42

Izvor: Informacija o rezultatima izbora za članove vijeća nacionalnih manjina u jedinicama lokalne i područne (regionalne) samouprave i predstavnika nacionalnih manjina u jedinici lokalne i područne (regionalne) samouprave, Državno izborno povjerenstvo Republike Hrvatske, Zagreb, svibanj 2003, str. 5.

Jedna od novosti Ustavnog zakona o pravima nacionalnih manjina je i utemeljenje Savjeta za nacionalne manjine. Jedna od glavnih ovlasti tog savjeta je raspoređivanje novca koji je u državnom proračunu osiguran za programe nacionalnih manjina. Korisnici sredstava Savjetu podnose godišnje izvještaje o trošenju sredstava dobivenih iz državnog proračuna, a Savjet o tome obavještava Vladu i Sabor. Savjet za nacionalne manjine ima pravo Saboru i Vladu predlagati rasprave o pitanjima koje smatra značajnima, posebno vezano za provođenje Ustavnog zakona i posebnih zakona kojima su uređena prava nacionalnih manjina. Savjet također ima pravo davati mišljenja i prijedloge o programima javnih radijskih i televizijskih stanica, te predlagati poduzimanje gospodarskih, socijalnih i drugih mjera na područjima tradicionalno ili u znatnijem broju nastanjениm pripadnicima nacionalnih manjina, kako bi se očuvalo njihovo postojanje na tim područjima. Članove savjeta imenuje Vlada. Sedam članova Vlada imenuje na prijedlog vijeća nacionalnih manjina. Pet članova imenuje iz reda istaknutih kulturnih, znanstvenih, stručnih i vjerskih djelatnika, a na prijedlog manjinskih udruga vjerskih zajednica, pravnih osoba i građana pripadnika nacionalnih manjina. Članovi tog savjeta automatski su i svi zastupnici nacionalnih manjina u Hrvatskom saboru.⁴⁷ Vlada je već osnovala Savjet za nacionalne manjine, koji u početku nije djelovao u punom sastavu.

⁴⁷ *Ustavni zakon ..., članak 35 i 36.*

Imenovano je bilo pet članova iz reda uglednih javnih radnika, pripadnika nacionalnih manjina, i to na prijedlog manjinskih udruga, a za članove Savjeta je imenovano i svih pet (nakon sljedećih izbora bit će ih osam) manjinskih saborskih zastupnika. Sedam članova Savjeta, Vlada je imenovala na prijedlog vijeća nacionalnih manjina, nakon njihovog konstituiranja.

Na područjima, koja su tradicionalno ili u znatnijem broju nastanjeni pripadnicima nacionalnih manjina, Savjet može predlagati poduzimanje ekonomskih, socijalnih i drugih mjera radi osiguranja opstanka nacionalnih manjina. Nadalje, Savjet ima pravo od tijela državne vlasti, te lokalne i regionalne samouprave, tražiti i dobiti potrebne mu podatke i izvještaje. Pritom može pozivati na sudjelovanje na sjednicama predstavnike tijela državne vlasti, te lokalne i regionalne samouprave, u čiju nadležnost spadaju pitanja o kojima Savjet raspravlja. Predviđeno je također da Savjet surađuje s tijelima međunarodnih organizacija i institucija koje se bave pitanjima nacionalnih manjina, a i s nadležnim tijelima u matičnim državama pripadnika nacionalnih manjina koji žive u Hrvatskoj.

Djelatnost sudova u vezi s ostvarivanjem prava nacionalnih manjina

Djelatnost sudova u vezi s ostvarivanjem prava nacionalnih manjina u Republici Hrvatskoj je najviše vezano za izbjeglice i ostvarivanje prava na državljanstvo. Rat u Hrvatskoj od 1991. do 1995. godine pored velikih ljudskih žrtava i materijalnih šteta, prouzročio je i veliki broj izbjeglica, kako Hrvata, tako i pripadnika nacionalnih manjina, najviše Srba. Veliki broj izbjeglica, bio je rezultat nacionalističkih politika koje su sadržavale i takozvano humano preseljavanje stanovništva. Takve politike, koje još uvijek imaju uporište u dijelu javnosti, uzrok su problema u povratku izbjeglica i rješavanju njihovih statusnih pitanja. Olakšavanje povratka izbjeglicama izazov je za hrvatsku Vladi koja je postigla napredak u nizu područja vezanih uz povratak izbjeglica. No, mnogi Srbi koji se žele vratiti u Hrvatsku i dalje se susreću s poteškoćama, prvenstveno zbog sporosti sudova u rješavanju njihovih zatjeva. Vlada to nastoji promijeniti u sklopu reforme sudstva koja je u tijeku.

Vlada Republike Hrvatske i Visoki komesarijat UN za izbjeglice (UNHCR) u Hrvatskoj od 2000. godine primjenjuju strategije orientirane rješenjima sa snažnim naglaskom na povratak i početnu reintegraciju raseljene populacije u državi njihova podrijetla. To se prvenstveno odnosi na povratak izbjeglih Srba iz Hrvatske, ali i na povratak Hrvata u Bosnu i Hercegovinu. Proces povratka još uvijek je otežan dobijanjem materijalne pomoći, što je uvjet njihovog preživljavanja i postupnog reintegriranja u društvo. Ovo potiče i vrlo važno pitanje postrepatrijacijske pomoći i njenog odnosa prema širim izazovima obnove ratom razrušenog društva. Sadašnji trend povećanog povratka u

Hrvatsku morao bi biti više podupiran kroz nastavak razminiranja, izgradnju domova i infrastrukture, ekonomsku revitalizaciju i podršku sistemu socijalne pomoći. Intenzivniji povratak izbjeglica u Hrvatsku, između ostalog, posebice zahtijeva uklanjanje preostalih prepreka koje ometaju povratak i uvođenje interventnih mjera koje bi osigurale učinkovitu tranziciju s operacijama koje se bave humanitarnim djelatnostima na one koje se bave osnovnim pitanjima razvijanja.⁴⁸ Ohrabrujuće je što se sigurnosna situacija u gotovo svim područjima povratka znatno popravila, te su sigurnosni incidenti na etničkoj osnovi vrlo rijetki. Oni su nešto povećani nakon ukidanja viza između Republike Hrvatske i Srbije i Crne Gore, ali ne poprimaju zabrinjavajuće razmjere. Politička klima kako na državnoj, tako i na lokalnoj razini općenito se promijenila nabolje u smislu tolerancije, ili čak prihvaćanja cijelog povratničkog pitanja. To potvrđuje sve veći broj povratnika u sva područja kako organiziranih, tako i pojedinačnih.

Zakon o državljanstvu u Hrvatskoj razlikuje one koji polažu pravo na hrvatsku nacionalnost i one koji to pravo ne polažu. Pripadnici hrvatskog naroda mogu postati hrvatski državljeni čak i ako nisu živjeli u bivšoj Socijalističkoj Republici Hrvatskoj, ako podnesu pismenu izjavu da se smatraju pripadnicima hrvatskog naroda. Etnički nehrvati moraju zadovoljiti strože kriterije i prihvatići naturalizaciju da bi dobili državljanstvo, čak i ako su ranije zakonito živjeli u Hrvatskoj u vrijeme SFRJ. To je dvostruko mjerilo dovodilo do diskriminacije u drugim područjima, osobito u pravu glasa i zapošljavanju. Dok se njegov zahtjev rješava podnositelju se uskraćuju prava na socijalnu zaštitu, uključujući zdravstvenu skrb, mirovinu, besplatno obrazovanje, te zapošljavanje u državnim službama. Uskraćivanja su često bila temeljena na članu 26 Zakona o državljanstvu, koji propisuje da se iz razloga nacionalnog interesa državljanstvo može uskratiti osobama koje inače zadovoljavaju tražene uvjete, te članku 8 koji nalaže da ponašanjem dolična osoba pokazuje svoju „privrženost pravnom sustavu i običajima Hrvatske”, te da je na teritoriju Republike Hrvatske bila trajno nastanjena pet godina prije podnošenja zahtjeva za državljanstvo. Zbog toga je osobama koje su se vraćale u sklopu Vladinog programa povratka bez statusa državljeni uskraćivan status povratnika i pripadajuće socijalne povlastice. Uskraćivanje državljanstva iako se temelji na zakonima, uglavnom je bilo usmjereno prema pripadnicima određenih nacionalnih manjina. Najčešće su bili diskriminirani pripadnici srpske i bošnjačke nacionalne manjine.⁴⁹

⁴⁸ Dragovoljna repatriacija i održiva reintegracija hrvatskih izbjeglica, <http://www.vlada.hr/dokumenti.html>

⁴⁹ U odgovoru na dopunska pitanja Savjetodavnog odbora Vijeća Europe, u vezi stjecanja hrvatskog državljanstva Vlada je navela da se provode dva postupka: postupci utvrđivanja državljanstva (osobe se smatraju hrvatskim državljenima, ali zbog propusta bivše administracije nisu upisane u knjige državljenja) i postupci stjecanja državljanstva (postupci koji se vode po zahtjevima stranih državljenja koji žele hrvatsko

EKSPERTSKO MIŠLJENJE O PROBLEMIMA, OTVORENIM PITANJIMA I PERSPEKTIVAMA ZAŠTITE NACIONALNIH MANJINA

Osnovna ocjena je da se položaj nacionalnih manjina poboljšava započetim političkim, upravnim i društvenim promjenama koje se u Hrvatskoj događaju u protekle tri godine. To je postignuto i time što u novim zakonskim i političkim uvjetima veću odgovornost za svoj položaj imaju i nacionalne manjine. U tom smislu, pored odgovarajućih zadaća na poboljšanju nekih zakonskih propisa, kao i na provedbi zakona što reguliraju položaj nacionalnih manjina, a koje imaju tijela državne vlasti i tijela lokalne i regionalne samouprave, potrebno je definirati zajedničke osnove za društvenu akciju manjinskih organizacija na jačanju položaja nacionalnih manjina u budućnosti.

To bi trebale biti, prije svega, aktivnosti na jačanju društvene organiziranosti i samoorganiziranosti pripadnika nacionalnih manjina u nevladine organizacije, kao i njihovo veće uključivanje u rad tijela državne vlasti na državnoj, regionalnim i lokalnim razinama. Važne su zajedničke akcije udruga nacionalnih manjina, njihova međusobna suradnja i suradnja s nevladnim organizacijama za zaštitu ljudskih prava i promociju demokracije i civilnog društva. U Hrvatskoj je neophodno, više nego do sada, poduzimanje aktivnosti usmjerenih prema javnosti i većinskom narodu u cilju razbijanja postojećih stereotipa o nacionalnim manjinama (ili pojedinim nacionalnim manjinama) kao neprijateljima Hrvata, odnosno o stereotipima da realizacija prava nacionalnih manjina ugrožava samobitnost hrvatskog naroda i suverenost Republike Hrvatske.

Poduzimanje zajedničkih aktivnosti nevladinih organizacija nacionalnih manjina na izgradnji političke kulture i podizanja razine tolerancije, važno je da se bez nacionalnih strasti i euforije raspravlja o svim osjetljivim pitanjima života u multietničkom i multikulturnom društvu. U tom kontekstu neophodno je provesti i reformu obrazovanja sa ciljem da se inkorporiraju principi multikulturalnosti i interkulturalnosti u sve aspekte školskih aktivnosti.

državljanstvo). Za utvrđivanje državljanskog statusa osobe, sve osobe koje se smatraju hrvatskim državljanima upisuju se u knjige državljana, bez obzira na pripadnost nacionalnoj manjini. U postupcima stjecanja državljanstva svi strani državljanji pod jednakim uvjetima mogu stići hrvatsko državljanstvo. Pojedine kategorije stranaca koje su posebno vezane za Republiku Hrvatsku (rodene na teritoriju Republike Hrvatske, u braku su s hrvatskim državljanima, pripadnici su hrvatskog naroda) mogu pod povoljnim uvjetima stići hrvatsko državljanstvo. Važeći propisi o hrvatskom državljanstvu primjenjuju se jednako na sve pripadnike nacionalnih manjina, uz nešto povoljniji status pripadnika hrvatskog naroda koji su državljeni stranih država, radi zaštite hrvatske dijaspore, a sukladno ustavnim odredbama.

U odnosu na okruženje, Hrvatska bi trebala završiti započeti proces potpisivanja bilateralnih međudržavnih sporazuma sa svim susjednim državama s kojima to još uvijek nije učinjeno i razvijati prijateljske dobrosusjedske odnose, što bi se najdirektnije pozitivno odrazilo na položaj nacionalnih manjina. Rezimirajući pregled ostvarivanja prava nacionalnih manjina u Hrvatskoj, valja istaći da prava iz kulturne autonomije, zbog organiziranosti, najpotpunije ostvaruju pripadnici nacionalnih manjina koje su ta prava imale i prije uspostave samostalne Republike Hrvatske. Pripadnici naroda bivše SFRJ koji su živjeli u Republici Hrvatskoj, činom njenog međunarodnog priznanja, faktički postavši pripadnici nacionalnih manjina, još su u fazi organiziranja u cilju cjelovitog ostvarivanja svojih manjinskih prava.

Definiranje položaja nacionalnih manjina u Hrvatskoj je rješavano samostalno ili u suradnji s institucijama međunarodne zajednice, što je između ostalog rezultiralo donošenjem Ustavnog zakona o pravima nacionalnih manjina. Njegovim donošenjem, formalno je proširena mogućnost ostvarivanja prava nacionalnih manjina, a posebno nakon donošenja adekvatnog, provedbenog zakonodavstva i potvrđivanja temeljnih međunarodnih dokumenata koji se odnose na zaštitu nacionalnih manjina. U tome posebno mjesto zauzimaju Okvirna konvencija za zaštitu nacionalnih manjina i Europska povelja o regionalnim i manjinskim jezicima. Analiza ostvarivanja manjinskih prava na primjeru Hrvatske dovodi i do zaključka da na ostvarivanje prava nacionalnih manjina u praksi utječe i država matičnog naroda pojedine manjine, ne samo prateći ostvarivanje tih prava, već i aktivno pomažući programe sunarodnjaka.

Sadašnja ukupna politička i socijalna situacija u Hrvatskoj nije baš najpovoljnija za ostvarivanje manjinskih prava. Posljedice rata, složeno gospodarsko i socijalno stanje, učinili su svoje i razgovor o pravima nacionalnih manjina ne može se voditi kao u nekoj do kraja sređenoj državi. U tome kontekstu naveći problemi koji se odnose na neke nacionalne manjine su povratak izbjeglica i rješavanje njihovih statusnih pitanja (srpska nacionalna manjina), te socijalni problemi i problemi integracije (romska nacionalna manjina). Međutim, za očekivati je da će se napredovanjem Hrvatske u pravcu europskih integracija i svih onih pozitivnih strana koje takav proces nosi, brzo shvatiti da su nacionalne manjine bogatstvo Hrvatske, a ne nikakav joj balast. Stvaranjem prepostavki za ostvarivanje prava nacionalnih manjina Hrvatska je učinila važne prepostavke za jačanje svog međunarodnog položaja. Preko svojih nacionalnih manjina Hrvatska može ostvariti bolju povezanost i suradnju s nekim značajnim državama u svom okruženju i to ne samo na kulturnom, nego još više na gospodarskom planu. Te države Hrvatskoj mogu pomoći na različitim područjima. Nacionalne manjine treba shvatiti kao mostove koji povezuju i očekivati je da će se upravo na tom tako željenom putu u europske integracije nacionalne manjine pokazati kao velika hrvatska prednost.

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ETHNIC RELATIONS IN BULGARIA: GENERATIONAL ASPECT

PETAR-EMIL MITEV

ETHNIC COMPOSITION

The major population in Bulgaria is ethnic Bulgarians. Since Liberation (1978) until now the second largest ethnic group has been of Turks. Their relative share is decreasing because of the multiple emigration waves, including those after the Second World War, but, according to the last census, they are still a significant number (almost one tenth of the population). The third largest ethnic group is of Roma (*Appendix 1*). The difficult historical fate brings forth social cases as well. This applies mostly to Bulgarian Muslims. Some of them identify themselves as Bulgarians, others – as Turks, still others – as Bulgarian Muslims (Pomaks), and some simply refuse to identify themselves. Identification of Roma is also contradictory. Some of the Roma Christians identify themselves as Bulgarians, and some of the Roma Muslims – as Turks. This provides a reason for reassessment of statistical data, including the speculative overestimation of the number of Romanies, done especially by some Roma political leaders.

GENERAL CHARACTERISTICS OF ETHNIC RELATIONS

During the 90-ies deep changes occurred in ethnic communities and their mutual relations.

Under the conditions of administrative socialism, there was a dominant trend towards ethnic homogenisation, which initially started as a normal process and then was forced and exploited politically during the so called “revival (renaming) process”.

Post-socialist development brought forward the trend of a dominating and expanding ethnic differentiation. Restoration of identity right (“right to a name”) is the expression of the positive side of this process. Simultaneously, however, differences increased in living standard and in the statuses of the main ethno-religious communities. Mass impoverishment and unemployment to a higher degree affected ethnic Turks, Bulgarian Muslims and especially Romanies. The ultimate expression of the new social inequality is the marginalization of Roma as a complex result from the mass unemployment, deprivation of land, impoverishment and ghettoization.

Last census results (2001) show a clearly defined different demographic profile of the main ethnic groups. Ethnic Bulgarians are predominantly city residents, highly educated, older, mostly women. Ethnic Turks are predominantly village residents, with lower education (more often elementary than high education). Romanies reside both in cities and in villages and most often have only primary education or no education at all. Ethnic discrimination practices in the educational and labour spheres are becoming a social problem.

If the greatest achievement of Bulgarian transition is the attenuation of the “revival process” and healing, though slow, of its wounds, then maybe the greatest potential danger for the democratic development of the country is the accumulation of negative ethnic prejudices, suspicions and fears. Their possible actualization in a critical situation has not been overcome.

The prospects of ethnic relations will depend on young people: whether the positive aspects of the Bulgarian ethnic model will strengthen and develop or, on the contrary, its deformation will burden the country’s development in European way.

PROBLEM SITUATIONS

Several problem nodes characterize ethnic relations in Bulgaria.

First, uneven demographic growth of ethnic groups. The relatively high birth rate of Roma brings them demographic advantage, additionally increased by the fact that emigration is greater among ethnic Bulgarians and Turks. Age analysis of ethnic groups shows too big differences (*Appendix 2*). The difference is even more strongly expressed if we consider the differentiation *city – village*. In the age group of 0 to 9 years in villages, ethnic Bulgarians are only 52%, whilst minorities are 48% (2001).

Second, educational inequality. Educational levels of major ethnic groups are quite different, with Roma far behind (*Table 1*). It should be pointed out that the differences do not boil down to acquiring a diploma. These are even greater, if we consider the different level of access to modern codes – computer literacy and European language.

Third, economic inequality. Bulgarian transition was accompanied by mass impoverishment. It affected all ethnic groups but in different ways. Ethnic Turks were impoverished more than Bulgarians. Roma turned out to be in the most unfavourable situation. Unemployment rates and poverty with them cannot be measured with a simple measure. (*Table 2*)

Table 1. – Young people (15–19) without elementary education
According censuses in 1992 and 2001 (In %)

	Primary		Without primary		Total	
	1992	2001	1992	2001	1992	2001
Total	4,12	10,04	1,58	4,87	5,7	14,91
Bulgarians	2,21	6,48	0,78	2,22	2,99	8,7
Turks	7,63	16,82	2,42	7,72	10,05	24,54
Roma	27,61	35,88	13,12	28,17	40,73	64,05

Table 2. – Level of poverty by ethnic groups (In %)

Group	Poverty level	Share of groups among those living in poverty	Depth of poverty
Bulgarians	31,7	73,5	8,5
Turks	40,0	9,5	12,8
Roma	84,3	15,2	46,6

Source: Bulgaria: Poverty during the transition. World Bank, 1999, p. 18.

Fourth, existence of stable and strong ethnic stereotypes. Such stereotypes and prejudices exist in every country. In Bulgaria, negative stereotypes in respect of Roma are especially strong. For example, these are the results of data comparison between Bulgaria and Serbia. (*Appendix 3*).

Fifth, formation of ethnic underclass. According to a number of authors (*See: Myrdal: 1963, Wilson: 1978, Massey and Denton: 1993, Emigh and Szele nyi: 2000*) the definition of underclass includes three aspects: (1) extreme poverty, (2) durability and generic reproduction of poverty, and (3) space segregation. All three elements are present in the case of Bulgarian Roma. (*See: P.E. Mitev, Dynamics of Poverty*, in: *Review of Sociology*, Vol. 7/2001. Budapest: Akademiai Kiado). The ethnic stereotypes and distances motivate discrimination and their reproduction plays a key role in ethnic underclass formation.

ETHNIC STEREOTYPES AND DISTANCES

The new political and psychological design of the country conceals from the outside observer the importance of ethnic stereotypes.

Sociological surveys, systematically carried out in the 90-ies, show that ethnic prejudices and negative attitudes are common and exceptionally stable; in respect of Roma – these are even becoming greater and transferred from one generation to the next. Minority groups are thought of in general, de-personalized categories: “There are exceptions, but generally they are all alike”, thinks about the Turks every second Bulgarian (52%; of young people – 47%), and about Roma – 83% of all Bulgarians (of young people – also 83%). Certain negative qualities are believed to be natural: “Turks are religious fanatics” for 62%; “Gypsies are lazy and irresponsible” for 86% (84% of young people); “Gypsies are prone to criminal offenses” for 92% of all Bulgarians (90% of young people). Their status in society and in the social management is seen in unreal, biased light: as absurd as it sounds, every third Bulgarian – young people are no exception – thinks that Romanies are privileged in our country. Minority people cannot be trusted or relied on: Bulgarian Turks – according to two of every five Bulgarians (every third youngster): Romanies – according to every four of five people. Extreme push-out formulae are not so popular though insignificant in respect of Turks (one of every five Bulgarians agrees with the statement that “all possible measures must be undertaken for more Turks to go and live in Turkey”) but are a dominant opinion in respect of Roma (two thirds of all Bulgarians believe that “Gypsies should live apart and not mix with us”). (IMIR, July 2000)

Ethnic stereotypes create significant social distances, which equal alienation in informal relations and discrimination attitudes – in public ones. The ethnic motives appear to be important in the political process, too, deforming electoral behaviour. Unfortunately, this is truer for the representatives of the ethnic majority. No generation differences were observed with Bulgarians.

Table 3. – If the party you like nominates for the next election in your region as suitable (competent and honest) candidate, would you vote for such candidate if he/she were a Bulgarian Muslim, Jew, Turk, and Rom?

Responses “No” from ethnic Bulgarians, Turks and Roma (In %)

	Bulgarians		Turks		Roma	
	18 – 30	31+	15 – 30	31 +	15 – 30	31 +
Bulgarian Muslim	54	52	9	7	25	20
Jew	41	46	22	15	27	24
Turk	62	62	3	1	25	20
Rom	73	75	45	52	8	9

Source: Youth Studies Foundation (YSF), 2002.

**Table 4. – Social distances of Bulgarian Christians from ethnic Turks,
Bulgarian Muslims and Roma**

Responses “No” from young and adult Bulgarian Christians (In %)

	Turks/Turk		Bulgarian Muslims/ Bulgarian Muslim		Roma/Rom	
	15 – 25	26 +	15 – 25	26 +	15 – 25	26 +
To marry...	81	84	80	81	95	92
To be friends with...	35	35	33	31	74	70
To live in the same neighbourhood with...	34	24	29	19	71	60
To work in the same place with...	29	18	26	16	68	48
To live in the same habitation with...	26	15	20	14	56	35
To live in the same country with...	22	12	15	10	45	27

Source: YSF, 2002.

Note: The term “Bulgarian Christians” is a relative one and applies to all ethnic Bulgarians who have not defined themselves as Muslims.

The outlining picture is more than unfavourable. Social distances, separating young Bulgarians from ethnic and ethno-religious minorities, *not only are self-reproducing, but increasing*. Intolerance to Roma is particularly increasing. The majority of young Bulgarians do not wish to live in the same habitation with Romanies, and almost half – in the same country! Now not only half but two thirds of young Bulgarians do not wish to work in the same company with Romanies. Not so much but also increasing are the distances between young Bulgarians and ethnic Turks in all spheres except for informal relations. The fact is upsetting that every fourth young Bulgarian does not wish to live in the same habitation with Turks, and every fifth – in the same country.

Social distances are revealed also in the form of ethnic fears of potential institutional positions of representatives of ethnic minorities. (*Table 5*)

Negative generational changes, however, are not symmetrical: psychological distancing of young Turks from Bulgarian Christians not only does not increase but significantly decreases in one important respect – the family. (*Table 6*)

Unlike the attitude of young Turks towards Bulgarians, with Roma we observe significant increase of distances, even in the intimate and informal spheres. (*Table 7*)

Table 5. – Ethnic attitudes of Bulgarian Christians towards ethnic Turks, Bulgarian Muslims and Roma

Responses “No” of Bulgarian Christians (In %)

	Turk		Bulgarian Muslim		Rom	
	18 – 30	31 +	18 – 30	31 +	18 – 30	31 +
Your child’s teacher to be...	62	60	56	49	79	78
The local police chief to be...	72	68	61	60	81	79
Army officer to be...	70	69	59	60	77	79
Minister to be...	77	69	70	60	86	78

Source: International Centre for Minority Studies and Intercultural Relations (IMIR), 2000/2001.

Table 6. – Social distances of ethnic Turks from Bulgarians, Bulgarian Muslims and Roma

Responses “No” of young and adult ethnic Turks (In %)

	Bulgarian/ Bulgarians		Bulgarian Muslim/ Bulgarian Muslims		Rom/Roma	
	15 – 25	26 +	15 – 25	26 +	15 – 25	26 +
To marry...	46	62	54	63	84	87
To be friends with...	7	9	12	19	51	68
To live in the same neighbourhood with	1	1	5	5	36	55
To work in the same place with...	0	2	5	4	29	42
To live in the same habitation with...	0	0	5	3	27	31
To live in the same country with...	1	0	5	2	20	20

Source: YSF, 2002.

Table 7. – Social distances of Roma from Bulgarians, ethnic Turks and Bulgarian Muslims*Responses “No” of young and adult Roma (In %)*

	Bulgarian/ Bulgarians		Turk/Turks		Bulgarian Muslim/ Bulgarian Muslims	
	15 – 25	26 +	15 – 25	26 +	15 – 25	26 +
To marry...	45	30	49	59	68	61
To be friends with...	16	7	18	15	23	15
To live in the same neighbourhood with...	7	0	16	15	17	8
To work in the same place with...	3	0	7	6	9	5
To live in the same habitation with...	3	0	6	5	10	5
To live in the same country with...	0	2	4	0	8	5

Source: YSF, 2002.

On the background of social distances, the fact is understandable that minority rights are much less acknowledged on social-psychological than on institutional level. (*Table 8*)

Table 8. – Minority rights
Negative responses of Bulgarians, ethnic Turks and Roma (In %)

	Bulgarians		Turks		Roma	
	15-25	26 +	15-25	26 +	15-25	26 +
To create organizations and association for the purpose of preservation and development of their culture	13	15	4	2	1	0
To publish books and other publications in their mother	25	28	4	13	3	0
To study their mother tongue in public schools	48	58	6	4	11	13
Training in public schools to be in their mother tongue	67	74	25	21	26	34
To have their representatives in the National Assembly	19	20	5	1	2	0
To have their representatives in local governments	23	22	5	0	2	0
To have the rights in the habitations where they reside, to post in public access places signs (of companies, advertisement, road signs, etc.) in their mother tongue	58	74	24	22	15	31
To have their own political parties	34	37	6	10	3	9
To have the right to autonomous territory	74	87	36	33	21	43
To have their own television	40	48	6	14	4	14
To have broadcasts in their language on the national tv	50	55	4	2	4	19
To have their own newspapers	25	28	3	7	1	9

Source: YSF, 2002.

Reserved attitude and even negation is seen in those cases where officially acknowledged and actually exercised rights are concerned. These include also rights deprived of political meaning such as establishment of organizations and associations for preservation and development of culture, or such common democratic political rights as is the right of representation in local governments and in the General Assembly.

There is a definite distance between country's democratization and the mass social psychology. A large portion of the ethnic majority disagrees with minority rights that have existed even under the totalitarian regime – for instance, the right to publish their own newspapers.

Mass ethnic attitudes in Bulgaria reveal a certain *deficit of a democratic political culture*.

Young generations of Bulgarians are making a step forward, though not a big one. The differences are evident in the attitude towards political rights of minorities among young Bulgarians, on the one hand, young Turks and Roma, on the other hand.

SOCIAL INTEGRATION

The consensually expressed *sense of belonging to Bulgaria* of the young generation of ethnic minorities is most astounding. (*Table 9*)

Table 9. – Sense of belonging to Bulgaria
15 – 30 years (In %)

	Bulgarians	Bulgarian Muslims	Turks	Roma
Too weak	4	6	8	13
Weak	10	20	21	21
Strong	66	63	54	52
Too strong	21	11	18	14

Source: YSF, 2002.

The stronger *local awareness* of young Turks and Romanies is characteristic. This is an important feature for us to understand their sense of national belonging as well. Half of young Bulgarians feel most strongly related to their city or village, two thirds of young Turks, and almost three fourths of young Roma. The devotion to Bulgaria is decoded through the birthplace, and if we add the region – also a fragmentary term – this will apply to four fifths of both ethnic groups.

The fact is characteristic that the sense of young Roma for Bulgarian belonging rests mainly on language (35%), territory (30%) and way of life (18%). To a certain extent, the meaning of *territory* for the Roma is the same as the meaning of *history* for young Bulgarians. This difference suggests why ethnic minorities are more ready to pay the symbol price of European integration by potential repudiation of national attributes. The attributes themselves are the quintessence of history and separation from them is the easier, the less history itself defines the sense of belonging to Bulgaria.

In *cultural aspect*, the young people from ethnic minorities are also immersed in the *flow of westernization*, marked with strong American influence, but *an affinity to eastern culture* is more strongly felt with them. Their affiliation to Bulgarian cultural products is restricted by education but in the case of popular art is the same and even greater than the standard one for young Bulgarians of today. A popular art like cinema is a characteristic indicator. To the test question: "If you wish to go to the cinema, what movie would you choose?", two third of young people in the national sample respond: "American". The same response is provided by only half of the Romanies. These answers are less in number with ethnic Turks and Bulgarian Muslims as well. The difference is explained by the fact that Roma and Turks prefer Indian and Turkish films. In a sense, westernization is balanced by orientalization.

We observe an interesting peculiarity. Young people of all ethnic groups (Bulgarians, Turks, Roma, Bulgarian Muslims) like best American movies, Turkish movies rate second for the Turks, Bulgarian movies – for Bulgarian Muslims, Indian movies – for Roma. Bulgarian films rate third for Turks and Roma. Only for young Bulgarians Bulgarian movies rate fourth. The following merit list can be outlined: the American global common denominator is the leader, the second place is for the country-bearer of basic culture (for the Roma – India, for the Turks – Turkey), and the third place is for the actual fatherland. Cultural preferences intensify the sense of national belonging, as the non-accidental nature of responses shows.

Ethnic minorities experience the same degree of influence from *national press media*, as young people in the national sample. BNT broadcasts are watched "often" by 41% of young Bulgarians, 41% of young Turks, 44% of young Roma, and 65% of young Bulgarian Muslims. The situation is different with cable television: two of every three young people in the country can afford it, and only one of every five Roma. The difference should be explained with financial status rather than with different interests. The attitude toward BNR is also the same: it is listened to "often" by 16% of young Bulgarians, 17% of young Bulgarian Muslims, 19% of Turks and 23% of Roma.

The historical awareness of young people from ethnic minorities is not too much burdened with past memories. Rather the contrary – more people in this group have a positive attitude to the socialist period than young Bulgarians. (Table 10)

As far as perception of transition is concerned, the opinions of young Bulgarians and Turks are of the same type, opinions of Bulgarian Muslims are more critical, and of Roma – strongly critical. (*Table 11*)

Table 10. – How do you assess the period 9 September 1944 – 10 November 1987?
(In %)

Values	Bulgarians	Bulgarian Muslims	Turks	Roma
These are really successful years	7	5	15	25
There were mistakes and difficulties but achievements are more	24	45	34	34
There was good and bad, I cannot say which was more	40	40	35	21
Even if there were successes, what was lost was more	15	3	9	6
These are completely lost and hard years for the people	8	3	4	5
No answer	6	5	5	9

Source: YSF, 2002.

Table 11. – How do you assess the period from 10 November 1989 till now? (In %)

Values	Bulgarians	Bulgarian Muslims	Turks	Roma
These are really successful years	2	1	2	2
There were mistakes and difficulties but achievements are more	12	6	9	5
There was good and bad, I cannot say which was more	35	21	34	20
Even if there were successes, what was lost was more	32	52	32	30
These are completely lost and hard years for the people	17	20	19	41
No answer	2	0	4	3

Source: YSF, 2002.

Survey data once again show that “revival process” is attenuating and is actually not significant for social and psychological attitudes of ethnic minorities.

CONCLUSION

Sociological surveys of young people from ethnic and ethno-cultural minorities in the 80-ies established an effect, which could be called *generational lag*. Value orientation and life behaviour of young people from ethnic minorities were closer to those of the parents and even grandparents of Bulgarian young people. It would be an exaggeration to claim that the effect of the generational lag has been completely overcome. Its traces are visible and, in certain cases, still important. Paternalistic traditions still live to a certain extent. But a change has occurred. We are facing a phenomenon, which can be called a *generational homogenization* trend, a process of overcoming differences between values of young people of different religious beliefs and different ethnic origins. Generational belonging is becoming more important than the religious-ethnic one.

Thus, sociological surveys reveal a complex and contradictory picture of trends towards ethnic differentiation and generational homogenization. The national youth and ethnic policies will give a priority to one of those trends.

Appendix 1

Population of Bulgaria according confession and ethnic group

01.03.2001

Confession	Total	E t h n i c g r o u p												
		Bulgarian	Turkish	Roma	Russian	Armenian	Vlachian	Macedonian	Greek	Ukrainian	Jewish	Romanian	Other	No self-identification
Total	7928301	6655210	746664	370908	15595	10832	10566	5071	3408	2489	1363	1088	10554	62108
Christian Orthodox	6552751	6315983	5425	180326	14640	3821	10190	4792	2801	2341	184	980	3382	3659
Christian Catholic	43811	37811	2561	1059	94	123	12	8	47	29	5	18	1778	198
Protestant	42308	14591	2066	24651	97	110	145	21	9	22	10	44	325	208
Islam	966978	131531	713024	103436	86	—	19	129	401	2	—	—	2681	12129
Other	14937	4286	442	1767	86	6508	9	16	14	14	705	7	926	115
No self-identification	283309	151008	23146	59669	592	2700	191	105	136	81	459	39	1462	45799

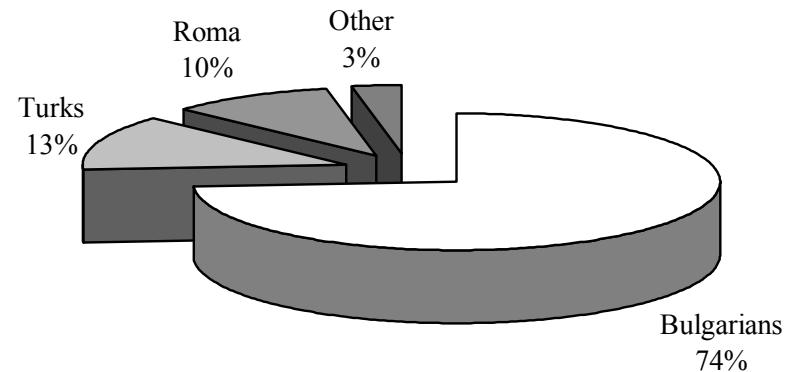
Source: National Institute of Statistics.

Appendix 2

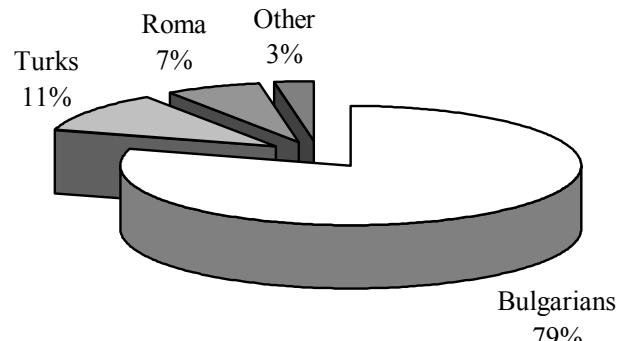
Census 2001

Population according age and ethnic group (in %)

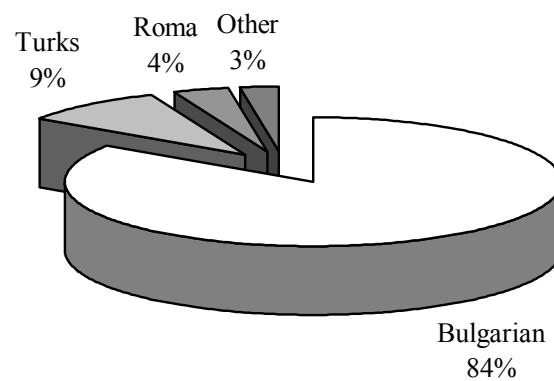
to 15 years



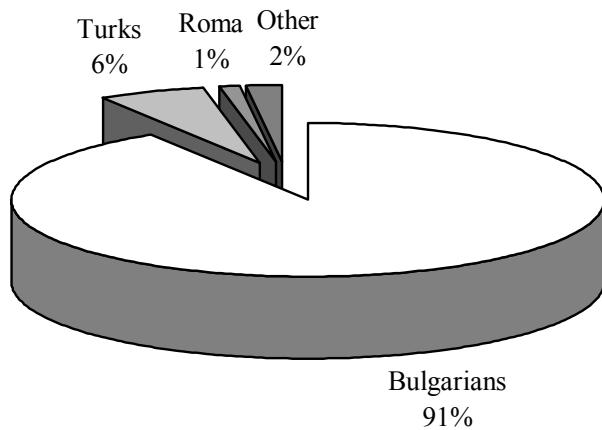
from 15 to 29 years



from 30 to 59 years



60 years and over



Appendix 3

Distances and prejudice towards Roma (in %)

Negative answers

Country	Ethnos	Marriage	Friend	Neighbour	Work/Firm	Chief	Town	State
Yugoslavia	Serbians	80	24	30	18	52	17	15
	Muslims	92	24	59	26	61	24	14
	Magyars	55	20	17	11	16	5	6
Bulgaria	Bulgarians	97	74	73	62	–	46	32
	Turks	94	69	52	40	–	26	24
	Bulgarian Muslims*	91	69	65	48	–	46	37

* Data for Bulgarian Muslims 18–30.

Source: Bogdan Durović. Kultura Roma, 2002; p. 83; IMIR/YSF, 2000; IMIR/YSF, 2001.

INTERETHNIC RELATIONSHIPS IN REPUBLIC OF MOLDOVA

N. N. CHERVENKOV

Republic of Moldova is a multinational state as a number of other countries. At 1st of January, 1997, 35,5 % of 4,305,000 Moldavian population's are not numbered among the title nation – the Moldavians. Of all Moldavian population, 13,8 % are Ukrainians, 13 % – Russians, 3,5 % – Gagauzes, 2 % – Bulgarians, 1,5 % – Jews, 1,7 % – other national minorities. According to official data, approximately 12,000 Gypsies live in the Republic. Besides, the Belorussian, Poles, Armenians, Greeks, Germans, Uzbeks, Chuvashes populate Moldova. For recent years, some so called “non-historical” ethnic groups have immigrated in Moldova such as the Arabs, Chechens, and Black African nations etc.

Despite a high rate of migration in the last decade, the ethnic composition of Moldavian population has not significantly changed. Under these circumstances the problem of interethnic relationships is objectively of paramount importance for planning and implementing state internal policy.

It is necessary to point out that there are two types of populating the ethnic minorities in the Republic – compact and disperse populating. Up to now there have been no clear definitions for these two categories in international law: compact and disperse populating. In practice, the regions where the percentage of a national minority is higher than average figures for the country are regarded as the places of its compact populating. Implementing this criterion, it may be asserted that the Falesti, Rascani and Glodeni raions in Northern Moldova are the regions with compact Ukrainian population (14,4 %, 22,9 % and 23,4 % respectively). Despite these considerable figures, the Ukrainians in three mentioned raions are outnumbered.

The Russians in Moldova have a similar type of populating. The places of their compact dwelling are Chisinau, Balti and Transnistria.

A different situation with national minorities is in the south of the Republic. The Law on Special Legal Status of Gagauzia (Gagauz-Yeri) protects the autonomous rights of the Gagauzes; moreover, in case Republic of Moldova has changed its political status (i.e. its status as an independent and sovereign state), Gagauzia will have the right to self-determination. This legal act is in full keeping with international standards in the area of legal preserving and supporting national minorities' ethnic identity according to territorial principles, in this instance. Within the same context, according to the same standards,

Judetul Taraclia, populated by Bulgarian minority, was established in 1999. The share of the Gagauzes in the Gagauzian Autonomy amounts to 78,8 %. Within these territories the Gagauzes and Bulgarians are not national minorities. However, for the whole Republic these two ethnic groups are undoubtedly national minorities. Above all, the Gagauzes dwell out of Gagauzia, in other regions of Moldova. This part of Gagauzes is considered as a dispersedly populated national minority. The Bulgarians have a similar pattern of spatial distribution in Moldova. Their share in the Taraclia raion is above 60 %. Although the dispersed part of the Bulgarian population is more than one of the Gagauzian population and exceeds 60 %.

The political and legal status of Transnistria (the Eastern Bank Region of the Nistru) is uncertain. After the armed conflict, in 1992, Transnistria was in fact totally separated from the Republic. The population of the proclaimed Transnistrian Moldavian Republic, which has not been admitted by international community, is above 700.000 peoples. Almost all Transnistrian population consists of the Moldavians, Ukrainians and Russians, which are approximately equal in quantity.

The spatial distribution of national minorities impacts on their specific interests and claims and shapes interethnic relationships and their peculiarities. This spatial distribution contains the most dangerous risks and threats, since dominating ethnic groups in the places of their compact populating hardly try to take control over the regional and municipal institutions of public authority.

For dispersedly populated national minorities, the problems of interethnic relationships is that as a rule the minorities have to contact and establish relations with the staff of government bodies, completely recruited from the title nation. The national minorities' rights are neglected; first of all, the right to elect and be elected and therefore they're right to vote. If there are some problems in interethnic relationships, the votes of national minorities will be insufficient to elect trustworthy persons capable to assert electors' national rights.

Statistic data can illustrate these problems. In the places where national minorities do not live compactly the representatives of the title nation occupies all positions in both executive and legislative bodies. The same situation is in the central government bodies of Moldova. In the supreme legislative body of the Republic – Parliamentul al Republic Moldova – only 14 deputies of 101 are not Moldavians. This figure (less than 14 %) is obviously less than the percentage of national minorities in Moldova (35,5 %), more than in two times. Of 1096 employees of the Ministry of Internal Affairs, 950 are Moldavians, 75 – Ukrainians, 51 – Russians, 8 – Gagauzes, 5 – Bulgarians; of 119 employees of the Ministry for Defense, 111 are Moldavians, 5 – Ukrainians, 2 – Russians, 1 – Gagauz; of 48 employees of the Ministry of Energy, only 3 are non-Moldavians. Similar indices can be easily calculated for other central bodies of public administration. No ministers, their deputies, heads of departments in Moldova are representatives of national minorities.

This situation contains some risks in interethnic relationships and can provoke conflicts in three main forms: (1) political conflicts (because of taking power and control over political institution); (2) social conflicts (because of redistribution of common resources) and (3) national conflicts (conflict of ethnic communities' interest). Eventually, this classification is arbitrary since all conflicts in the Republic have complex forms, conflictogenous factors are interrelated. Recently a sustainable tendency to politicize each conflict has obviously displayed, because conflicting parties aim at taking political power as their priority task.

To preserve their ethnic culture, traditions and peculiarities, the dispersedly populated national minorities of Moldova establish their non-governmental organizations. Now there are approximately 60 ethno-cultural non-governmental organizations in the Republic, half of them represent dispersedly populated national minorities. It is curious to note that almost all these organizations declare the cultural and educational goal of their activity; these goals are determined in their statutes. However, actually most leaders of these organizations climb to power, trying to realize their political ambitions. They cover their interests with the image and status of non-governmental and non-commercial organizations, using them as a kind of "spring-board" for taking positions in the legislative bodies both central and local. This tendency illustrates the striving of national minorities for political power.

A different type of interethnic relationships has formed in the regions compactly populated by national minorities (Gagauzia, Taraclia raion). In both regions the national minorities are in majority and control local government bodies. They have obtained some preferences and privileges. The problem of interethnic relationships should be considered in two dimensions: (1) interpersonal dimension; the problem is that the title nation is a minority in these regions; (2) state dimension; the problem is in relationships between central government bodies and local political institutions, which represent the interests of local communities.

The second dimension is more complex and dangerous, since the mentioned problems can be solved either on the constructive basis of dialogue and compromise or through aggravating contradictions and spreading conflicts in case the conflicting parties are not disposed to negotiate. An instance for the latter way of solving problems is the crisis in Gagauzia in the end of 2001 – beginning of 2002. The contradictions between the central and local authorities because of some principles and approaches to forming to the budget of the Gagauz Autonomy enlarged to the political crisis in the region and could have provoked an interethnic armed conflict. Although the central authority was able to master the political crisis by administrative method and improve the relationship between central and local bodies, the problem of forming the budget has not been finally solved that can provoke a conflict in the future and need negotiation and compromises.

It is necessary to note that the political leaders of Moldova have paid special attention to national minorities and interethnic relationships since obtaining independency in 1991. The Department of Interethnic Relations was established to co-ordinate the ethnic policy and activities of government bodies in the area of interethnic relationships. An efficient vehicle for defending national minorities' interests is the Coordination Council at the Department. The Council members are the leaders of ethno-cultural organizations. Although the resolutions of the Council are not normative acts, they are very useful as consulting aid to government bodies and institutions.

The legislation in this area has considerably improved. For the years of independency, Republic of Moldova has enacted about 50 international acts, elaborated by United Nation Organization, European Council, OSCE and other organizations. Most of them are about human rights and rights of ethnic and social groups. A great job has been done in developing national legislation. The Constitution of Moldova, having been enacted on 29 of July, 1994, the rights of all Moldavian citizens to preserve, develop and express their ethnic, cultural and language identity. The Constitution declares that all citizens of Moldova are legally equal irrespective their race, nationality, ethnic origin, mother tongue for legislation and public authorities, they can equally enjoy the rights, determined by the Constitution and laws. According to legislation, the state takes care on providing the option of a language for communication and education.

It should be noted that in the summer of 2001, the Law on the Rights of Persons, Who Belong to National Minorities and Legal Status of their Organizations was enacted. The Law established and repeated basic international standards, included in Frame Convention on Protecting National Minorities Rights and other international acts. The Law corresponds with international standards that oblige to protect national minorities' rights by internal legislation.

The Government of the Republic has issued a number of decrees on promoting the development of Russian, Jewish, Bulgarian, Gypsy national cultures and supporting the Gypsies in Moldova. It is worth to mention the President's decrees on the development of national cultures.

Republic of Moldova has authorized bilateral treaties with Bulgaria, Russia, Ukraine and Israel, which concerns with some national minorities in Moldova (the Bulgarians, Russians, Ukrainians and Jews). These treaties additionally facilitate protecting the rights of national minorities and strengthening the relations between Moldova and mentioned countries, corresponding with international standards, established by Article 7 of the UNO Declaration on the rights of persons, who belong to national, religious and language minorities and other international acts.

Thus Moldova has gained visible results in the area of protecting the rights of national minorities. The Republic has a legal base, which commonly corresponds to international standards. This notwithstanding, the problem is that

the instruments and procedures for implementing the laws are either underdeveloped or absent at all. It seems that Moldavian legislation has given equal rights to the citizen of Moldova, having removed the reasons for conflicts in the field of interethnic relationships. Nevertheless, in practice the situation is totally different. It is necessary to admit that the problems of interethnic relationship are still actual. Sometimes the problems are raised anew and become the subjects of a bargain in political conflicts. For instance, now the issue of using the Russian language as the language of interethnic communication or the second state language potentially provokes ethnic conflicts. Most national minorities and a part of the Moldavians asserts for such a status of the Russian language. However, because of the subtleness and complexity of this issue, it becomes very considerable and acute in the political struggle between the Moldavian authority and its political opposition. So it is hopeless to expect that this issue will be solved in the near future in a way, which could satisfy both parties. It is worth to mention that the most important claims, promoted by Christian-Democratic Popular Party in time of the protest action in the beginning of 2002, were to abrogate the decree of the Moldavian Government on implementing the subjects of Russian Language and History of Moldova in the state schools. The tendency of sustainable decreasing the number of students, who study the Russian language and languages of national minorities, is observable. It is clear from the following compared figures: in 2000/2001 academic years 132,000 students graduated Russian-speaking educational institutions, in 2001/2002 academic year – only 125,000 students. So, for an academic year, the number of students has diminished in 18,3 %. Moreover, 32 % of students, studying in Russian, are the Moldavians that restricts the access of national minorities to study in Russian.

The share of TV broadcast in Russian and national minorities' languages does not correspond with the percentage of national minorities in the composition of the Moldavian population. Many representatives of national minorities complain against the insufficient access to significant information, disseminated by national TV channels and radio, since the information is not interpreted into Russian and national minorities' languages. To sum up, very likely, the linguistic problems will be ones of the most considerable and dangerous for interethnic relationships for a durable period.

Another significant problem is the accessibility for national minorities to positions in government bodies. If the Government is able to solve this problem, it will facilitate not only the additional influx of managers and specialists in public administration and various sectors of national economy, but also reducing risks in interethnic relationships. At present time the ruling Communist Party is interested in attracting national minorities to public administration since they are the most loyal electorate of the Communist Party, but the main obstacle for the minorities to take positions in government bodies is poor

knowledge of the state language (Moldavian). Despite the efforts of the ruling Party to improve situation, for instance, the compulsory attestation of staff on the mastering the state language was canceled, it is a lot to do to finally solve this problem. In the judgment of national minorities, it is difficult to satisfy the requirements to know the state language for public servants and applicants for positions in public administration, because the state has not provided national minorities with favorable conditions for studying the state language. The problem is being aggravated by poor facilities for studying the state language in schools. Hundreds vacancies for the teachers of the state language are not occupied year by year. This problem is most acute for Southern Moldova where the Gagauzes and Bulgarians compactly live. This deficiency is partly covered by non-specialists.

The lawyers indicated some contradictions in the Moldavian legislation and juridical practice. For example, in spite of Article 39 of the Moldavian Constitution, which guarantees equal access to any positions in public administration for Moldavian citizens, the persons ignorant of the state language have not had access to public services. Despite of seeming logical grounds for the requirement to know the state language, it is necessary to take into account that such requirements drastically impact on interethnic relationships and rate of risks in this area.

The contradictions between the main branches of power in the area of interethnic relationships can be illustrated in the fact that in May, 2002, the Constitution Court resolved to publish Acts of Civil Status in one language (Moldavian), not in both Moldavian and Russian, as it is obliged by the Law, enacted in 2001. Apropos, the experts of European Council have spoken out the judgment on the discrepancy between this resolution and international acts. The articles of the Law on National Passport System and Law on National Minorities, regarding the transliteration of first names and family names according to the rules of mother tongue, are often neglected. Despite these Laws, the first names and family names of national minorities are “adapted” to the rules of the state language.

Thus, the risks in relationships between the title nation and national minorities are still high. The rate of risks is extremely sensible toward the state policy in the area of interethnic relationships and can drastically change. On the whole, there is no way for the development of Moldova except the way of protecting national minorities’ rights, facilitating preserving national identity, communicating in mother tongue, developing national cultures and preserving national traditions. At the same time, the process of developing interethnic relationships will be strongly influenced by the situation around the Transnistrian Conflict, which is an obstacle for developing civil society in Moldova. This Conflict makes the integration of Moldova into the European Union impossible, despite Moldova’s striving for integration.

KOSOVO IN APRIL 2003 – HEADING FOR INDEPENDENCE OR SLIPPING BACK TO ITS MIRROR WORLD

ANTONINA ZHELYAZKOVA

RESEARCH METHODOLOGY

The team consisted of five scholars: a Balkan studies historian, a historian-anthropologist, a linguist-anthropologist, a journalist well versed in Balkan affairs, and an interpreter-mediator¹. They represented the main body of the team already specialised in doing field research in the Western Balkans.

Field work was carried out between 31 March and 7 April in the territory of Macedonia and Kosovo, plus a number of additional interviews, conducted in Bulgaria, with family members of the Bulgarian police force contingent, as well as with members of the UNMIK American police force contingent, which were started in Priština and then continued in Sofia. In May, a team member visited Gračanica, Kosovo, again in order to make some more inquiries.

The aim of the study was to define the limits and chances for multiethnic co-existence in Kosovo; to identify the zones of compatibility and incompatibility between the different ethnic and religious communities. We sought to analyses to what extent were co-existence mimicry and an effort to demonstrate tolerance – by way of self-adjustment to the European standards, and to what degree, an existing reality and a potential chance. Would it be possible in the future to expand the tolerance zones, or overwhelming would remain the tendency of a shrinking agreement in all spheres of public, social, and political life.

Like in all previous studies, of course, the subject of our research interest included: the views of the different ethnic communities, as well as of the different social groups, the international administration, and the peacekeeping forces, concerning the Albanians' prospects and the future of the province of Kosovo.

The field study was carried out in Kačanik, Štrbce, Prizren, Priština, Kosovska Mitrovica, and Gračanica. The research strategy envisaged visiting both ethnically pure areas and places where at least some kind of multiethnic environment was present.

Interviewed were about 70 persons – males and females aged 17–80. The respondents were local residents, Albanians and Serbs, Muslims, Catholics and Orthodox Christians. Selected were members of all social groups – politicians, intellectuals, university students, hired workers, peasants, unemployed persons,

¹ A. Zhelyazkova, V. Grigorov, D. Dimitrova, T. Mangalakova, A. Chaushi.

clerics. Conducted were interviews and inquiries with members of the UNMIK police contingents – Bulgarians, Americans, Germans, etc., as well as with KFOR army personnel, of different nationalities, based in the large military camp X. near Prizren.

ADMINISTRATION, POLICY, ECONOMY, SOCIETY – FOUR YEARS LATER

Quite visibly, life in the province has been normalised, especially when compared with the chaos and tension of the early 2000. The international administration is getting ready for gradually handing over the government to the local politicians and security forces. This is being done even by way of demonstrative acts: the administrative buildings have been vacated of UNMIK officers and personnel of other international offices in order to accommodate their local counterparts. UNMIK officers have been moved to specially equipped transport containers or to other temporary premises.

Currently, there are several officially operating police forces in Kosovo: the one under the UN mission (UNMIK), the military one under KFOR, the Kosovo Police Service (KPS), and the Kosovo Defence Corpse (TMK).

Underway since January 2003 has been a two-year transition period during which the international administration is required to hand over, step by step, its powers to the local administration and police. The transfer of the administrative and law-enforcement functions has begun from the few ethnically mixed areas, the international forces being expected to have only supervisory and control functions, and, consequently, advise the local government and correct its wrong steps.

The first completely entrusted police station is that in the Štrpce municipality, a place inhabited by compact Serb population. Forthcoming in the next few months is the handover of the police stations in Gračanica, Kosovska Kamenica and Kosovo polje. In the course of this two-year period and alongside with the handover of the stations, the number of the international UNMIK officers, as well as the KFOR military contingents, should be reduced. Determined have been the percentage quotas by which the international presence in Kosovo is to be steadily diminished. In 2000, some 50 thousand KFOR troops were deployed in Kosovo, while in early 2003 their number was brought down to 30–25 thousand; the plans for cutting down the contingents envisage their number to fall down to 15 thousand by the beginning of 2004 and, later, to as low as 7 thousand.

As reported by our respondents – a colonel, a major and several lieutenants from the KFOR mission at the X. base, as well as by a colonel, a lieutenant-colonel, and a major from UNMIK Police Station 1 – the recruitment

of local personnel into the army and police forces is going at an extremely high rate. The Kosovo Defence Corpse formed in 2000 is already a contingent of 5.400, of which 1.000 are women. They have got their own budget, planning, technical equipment, vehicles with licence numbers, etc. They have even a sort of military academy. These troops were largely employed in 2002, at the time of the earthquake that hit Gnjilane. They were the first to arrive on the sites of disaster. They would most likely be the ones to form the core of the future army.

The police forces have been recruited from among the local population – people with high-school education, aged between 21 and 55, psychologically and physically fit, both males and females. The requirement for these forces is to include representatives of all ethnic groups, persons having clean records and possessing valid ID cards issued by the UN administration. Plans envisage that by the beginning of 2005, when the two-year transition period will be over, the number of police officers will reach 7 thousand, and that of the army personnel – 5 thousand, thirty per cent of them expected to be of non-Albanian origin.

At the time of our survey in Kosovo, the international police force had two subdivisions with specific functions: 3.300 police officers (among whom our respondents) served at the police stations in the municipalities and at the Central Headquarters; another 11 thousand, representatives of ten nations, were deployed at 10 bases and enjoyed the status of special police forces – they live at the bases, they are equipped with infantry weapons and armoured vehicles, and are mobilised in special cases alone. They serve as guards of witnesses and magistrates involved in court trials, they guard buildings, they are responsible for keeping law and order during demonstrations and civic disturbances, they escort prisoners.

The local police officers have taken upon themselves, almost fully, the responsibility of road traffic control, public order maintenance, duties on the home front and in the administration. They have not yet been entrusted with criminal investigation functions. However, by 2005/6 only observers are to remain in Kosovo.

While our field study was in progress, a public protest rally was staged by the Serbs against a proposal advanced by M. Steiner (the civilian governor of the protectorate) demanding the transfer of the competences of the international community to the newly created institutions in Kosovo. Some respondents in Northern Mitrovica and Gračanica explained the motives underlying their protest: "First of all, we are against the fact that the existent institutions are made up of persons who are suspects liable to The Hague Tribunal. We don't believe that similar institutions are prepared to take over the government. Parliament itself has discredited Steiner's idea, because everybody can see it is a discriminatory institution, which disregards human rights and aims to check any initiative coming from the Serb community or from the other minorities, they are simply dummies. Parliament has already proved it disrespects inter-

national law. Steiner can't full-fill public interests without an agreement between Belgrade, Priština and the international community, without Kosovo's status being determined. In fact, Mr. Steiner is trying, in a perfidious manner, to pave the way for the actual implementation and completion of the Albanian project for an independent state".

The civilian administrators of the province have been judged quite critically from the very moment of the establishment of the protectorate. Kosovo's first governor, B. Kouchner, was ironically dubbed Kouchneri by the Albanians themselves because of his weak-willed policy in making efforts to establish order in the province and check the aggression of the Albanians. The current governor, Steiner, has also compromised himself by his biased policy in favour of the Albanians and by his planned marriage to a local woman and wedding party arrangements. Steiner's love affair with an Albanian beauty, accompanied by all sorts of gossip of personal and political nature, has been the most widely discussed subject among the international missions in Kosovo.

THE ALBANIANS' PART IN POLITICAL LIFE

On the political scene after the local and general elections held in Kosovo, there are three basic Albanian parties whose influence is disputed by no one: DLK (the Democratic League for Kosovo) headed by Ibrahim Rugova, DPK (the Democratic Party of Kosovo) of Hashim Thači, and ADK (the Alliance for Democratic Kosovo) led by Ramush Haradinaj.

Highest, of course, is the popularity enjoyed by leader Rugova and his party; therefore, the answers given by respondents from different social strata were more or less alike. We asked questions about each leader's popularity in Kačanik, in the village of Mušanik, in Prizren, and in Priština. The responses we got were more or less the same, but prejudices were maybe best formulated by three students from the University in Priština, Albanian Catholics, who declared beforehand they were not politically committed and showed little interest in the political life of the province. When we asked them: "Why, after all, do you approve of Ibrahim Rugova most?", they answered: "Both in the past and at this time, Rugova has always acted for the sake of us all rather than to his own or to his party's political benefit. He is the only one who thinks in perspective, with a view to the future. All other politicians are focused on the present day and care about their own, personal interests alone." To all interviewees Rugova still personifies not only the right type of approach applied for achieving Kosovo's autonomy in the 1990s, but also the strategist who plans for the future of the province for decades to come.

In consequence of our conversations on this subject in a number of different localities and with members of different social groups in the

population, we have come to the conclusion that there is strong disappointment with the politicians and political life in Kosovo and a process of sobering down and disillusionment with respect to the effectiveness of the new free and democratic political system. We have figured out the approximate proportions of the political leaders' rates of approval as follows: some 15-18 per cent support Rugova, between 12 and 14 per cent favour Hashim Thači and over two per cent, representing the most radically-minded Albanians, back Ramush Haradinaj.

Over the past year, the tensions among the three leaders have become obvious. The more radical Thači and Haradinaj have teamed up as political opponents of Rugova. For the first time, on 5 March 2003 official celebrations were held on the stadium in Priština in commemoration of "the fourth anniversary of the liberation of Kosovo". There was a military parade of units of the Kosovo Defence Corpse, as well as of Kosovo's newly formed police forces. Our respondents, as well as some outside observers, pointed out the fact that it was only Hashim Thaqi and Ramush Haradinaj, in the company of the guests, members of the military wings of the Albanians from Southern Serbia, Western Macedonia and Greece, who reviewed the troops from the platform. Kosovo's president Ibrahim Rugova did not attend the official celebrations.

Some respondents commented speculations that immediately after the review of the troops the guests from the different regions, together with the two Kosovar party leaders, held a secret meeting of the military wing during which particular resolutions were adopted. According to their presumptions, most urgent were the decisions aiming to renew the tensions in Southern Serbia and thus prevent the negotiations on the status of the province initiated among Priština, Belgrade, and the international mediators.

TMK commander in chief, Gen. Agim Cheku, was said to have made efforts to mediate between the two camps and reconcile Thaqi and Haradinaj with Rugova, but to no avail. The friction between the political leaders obviously worried him, because it had been materialised in covert violence in the province ascribed to the new illegal Albanian National Army /ANA/, which operated not only within Kosovo, but also in Western Macedonia. The existing tension had made I. Rugova begin forming, for security reasons, his own party militia, which was expected to run up to 1000 combatants. A similar militia force had been raised under Thaqi, who already had as much as 1.000 fighters, some of whom had been recruited from Albania. With the help of his militia troops, Thaqi sought to increase his influence in the municipalities of Vučitn, Čičevica, Drenica and Kačanik. The leader of the Alliance for Democratic Kosovo, Ramush Haradinaj, too, had under his command about 900 soldiers that were concentrated at, and controlling, the villages in the Unič mountains and operated in the areas of Dakovica, Peć and Dečani. Supposedly, their task was to intimidate Rugova's supporters.

We kept asking the same question: “Who stands behind ANA?” Our respondents varied in their answers, but the overwhelming opinion was that “the ANA troops are under the control of Ramush Haradinaj and his brother Gen. Remi, who is currently under arrest as suspect in one of the “generals’ cases”. It’s thought to be in fact a matter of rivalry between the Albanian leaders about who will take control over the traffic”.

To us, as researchers, the borderline between ANA fighters and party militia troops was blurred, but one thing is beyond doubt in our analysis – it will become inevitable after the reduction in the number of peacekeeping forces in Kosovo, that the importance of party militias will grow and they will have a substantial influence on the country’s political and economic life.

The *Koha Ditore* newspaper conducted their own investigation and made public the following testimonies:

N. from the village of Luka (near Dečani): “My grandson was taken ill and I went to seek help, although I knew one shouldn’t go out after eight in the evening. I was in the car with my daughter-in-law and my grandson, a neighbour was driving. Five guys in soldier’s uniforms wearing black masks stopped us. They asked where we were going and then let us drive on. Some time later three other men wearing masks stopped us again, I knew one by his voice, but dared not ask anything. I was scared, because they were armed with Kalashnikovs”.

I. from the same village: “Nobody’s complained of physical abuse, but in the villages of Luka, Požar, Ljumbard, Irsnik, Gramaćel, Carabrek they would burst into the houses by night. In order to bully people, they sometimes shoot up in the air.”

N.R. from the village of Gramaćel: “Two guys tried to set my house on fire, but I threatened them I’d pay them back in the same coin. They maybe thought I might have recognised them and drew back, but anyway, out of anger they fired 60–70 shots in the air. I’m a member of Rugova’s party. I even reported the incident to the police, although their aim was not to liquidate, but rather to threaten me.

S. D. from the village of Carabrek: “There were three men wearing masks and uniforms drumming on the doors around the village, but only I bothered to lodge a complaint. The others were afraid. These guys move around in a jeep, they be organised. When we were with the Serbs, we knew whom we had to be wary of, but now we don’t know where the worst is to come from. Both civilian and police authorities in Dečani say they have no information. They have it, but they don’t care, they’d rather not interfere”.

B.S., the local leader of ADK (R. Haradinaj) in Dečani, tried to clear ANA of suspicion: “It couldn’t be that masked people be soldiers from this army, those are criminal groups. According to ANA members themselves, these are uncontrollable elements who are discontented with the government...”

A.H., a member of Hashim Thaqi's party, went even further in his assumptions: "There have always been collaborationists of Serbia in this area. They were active here during the war as they are now too..."

The police forces in this region have got intelligence that such squads exist. B.B., who is the international observer for the Dečani police station, said they had got only second-hand information – unofficial. It was only C. who had lodged a written complaint, and they could undertake nothing. The police deputy chief feared those people were organised and had lately been expanding their operations throughout Kosovo.

It is true that the margin between the Albanian politicians and the bands involved in political violence and trafficking is very thin. That is most clearly seen in the widely discussed "generals' lawsuits" against former commanders of the now disbanded UČK who are still looked upon as heroes of the war of liberation.

Over 50.000 ethnic Albanians in many towns in Kosovo protested against the sentences passed on five members of the group of Davut Haradinaj, Ramush Haradinaj's brother, who were sentenced to a total of 31 years imprisonment for abuses, abductions and murders of Albanians. During the war the two brothers were in command of UČK's Operative Zone 6 and were among the first associates of Hashim Thaqi.

After the war, Ramush Haradinaj himself became Gen. Cheku's second-in-command in the Kosovo Defence Corpse. During the first local elections in 2000, there was an assault against him. He suffered 7 or 8 injuries in it and was thereafter transported on a helicopter to Germany. After his recovery, he returned home and formed the ADK, which is the third political force in Kosovo's parliament.

Proceeding at the time of our sojourn in the province was the case against Rustem Mustafa – Gen. Remi, accused of torturing civilian Albanians as well as of murdering an Albanian family of which only two children had survived. Because in November last year the key witness in this case was killed in a blast in the Dardania café, the prosecutors relied only on the testimony of the children-survivors.

In February the International Criminal Tribunal in the Hague announced they would require the extradition of 10 former UČK commanders some of whom are already party leaders, heading their own parties. Again in February, arrested and brought to the Hague Tribunal were the spokesman of Hashim Thaqi's party, a war hero, and a general – member of Thaqi's military staff – Fatmir Limaj (our team had an extensive conversation with him in 2000), as well as the commanders Hairedin Bala, Isak Misliu and Agim Murtezi.

It is possible, at some point in the future, today's active politicians – Thaqi, Haradinaj and Cheku, be called to account and prosecuted too.

THE SERBS AND THEIR POLITICAL VIEWS

Kosovo's Parliament consists of 120 members and according to the electoral system put into effect the Serbs are entitled to 10 seats; another 10 seats are distributed among the rest of the non-Albanian minorities in Kosovo – Turks, Gorans, Bosniaks, etc. The remaining hundred seats are distributed in proportion to the election results.

Our UNMIK respondents refuted the complaints we had heard from the Serb interviewees in Štrpce: "Although the residents of our municipality are mostly Serbs, an Albanian mayor was imposed on us". Yet, a police colonel denied their statement: "They have themselves to blame. They boycotted the previous elections and didn't turn up. Of course, an Albanian mayor was elected and he, in turn, brought along 20 people, Albanians, to be appointed in the municipal administration. Ten or eleven Serb parties took part in the latest elections and each of them won some seats, while the Albanians got only four votes. It's silly, indeed, that the Serbs disperse their vote".

Another respondent added: "About 200.000 displaced Serbs from Kosovo were enabled to participate in the parliamentary elections, but they didn't go to the polls at all. They boycotted, and they could've taken the second place in parliament, next to Rugova. They could've obtained more votes than Hashim Thaqi's party and thus have stronger influence in political life."

So, finally, it became necessary to find out the number of Serbs left in the province. We heard from Serb respondents some obviously exaggerated figures – as many as 160.000 throughout Kosovo, a respondent from Kosovska Mitrovica telling us that in the municipalities in Northern Kosovo alone they numbered nearly 70.000. These assertions all but made an interviewee from the administration laugh; he assured us those figures were biased: "All Serbs in Kosovo are actually less than 65.000. In Northern Mitrovica, including Zvečan, the Serbs are between 12.000 and 20.000".²

At the office of the Coordinating Centre for Kosovo and Metohia of the Federal Republic of Yugoslavia and the Republic of Serbia, based in Gračanica, we talked about Kosovo's parliament with a respondent, Member of Parliament from the Serb group: "We, Serbs, are only dummies, we are present there in order for people to say that it's a multiethnic parliament. In reality, it functions for the sake of one nation alone – the Albanian. I was among the politicians who were strong supporters of the idea that the Serbs had to take active part in the elections. I was convinced we had to join parliament in order to be able to

² According to UNMIK data the population in Kosovo is between 1.800.000 and 2.400.000 people, i.e. 300 people per sq.m, which is the highest density of population in Europe. More than 500.000 Albanians are living in Pristina now and 170 Serbs only, while in 1999 the population in this city numbered 250.000 people, 40.000 of whom were Serbs.

work for the reconciliation process, for human rights, for bringing everybody's life back to normalcy, throughout Kosovo and Metohia. In a way, our parliamentary involvement is absolutely pointless – it doesn't help to bring the communities closer, neither does it lead to the realization of the human rights project. The Parliament disrespects resolution 1244. The institution's leaders are mostly Albanians who use the multiethnic parliamentary membership to propagandise the one-nation project of an independent state of Kosovo".

We asked a question about dialogue: "Isn't it possible to talk to any of the Albanian leaders or MP's?" Isn't anyone of them at least more dialogical? Rugova, let's say? Answer: "I'm sorry that, for some reasons, Rugova has probably gone out of the war frustrated, but his party is the most uncompromising one in pursuing the realization of the independence project. I don't think we have to talk personally with those liable for crimes – no matter from which side they are, but we are ready to have talks with Thaqi's and Haradinaj's parties, which emerged from the former UČK, though talks with them are extremely difficult. The truth is that the Albanians want no contacts whatsoever with Serbia, while the Serbs are not willing to return without having any institutional relations with Serbia in place, which doesn't mean they have given up their homes in Kosovo and Metohia".

A question from a team member: "Under what conditions would the Serbs be willing to return?" A female respondent – Member of Parliament – replied: "As a matter of fact, UNMIK are not ready to have the Serbs back home. They know perfectly well that their return would mean the restoration of some Serb institutions, killings of Serbs by Albanian extremists, renewal of problems with Serbia. There is no single Serb living in Kosovo who wants us to be separated from Serbia. Much like in the case of the disputes between Palestine and Israel, not only that the international community is unwilling to have the Serbs back here, it is even not willing to keep home those who haven't left."

The problem is that institutional discrimination inevitably leads to radicalisation. In the 1960s, before Milosevic stepped in, there was Albanian domination in the administration in Kosovo and, consequently – discomfort for and discrimination towards the Serbs. In those years nearly 150.000 Serbs left Kosovo. Later on, Milosevic established institutions that discriminated the Albanians and deprived the ethnic Albanian community of the possibility to defend their rights at an institutional level. This naturally led to the strong radicalisation of the Albanian community.

Currently, a *mirror* political and social conjuncture is being shaped. The Serbs fear to live without any institutional protection, and the tendency with them is to move towards an ever more conscious and extreme radicalisation. Criticisms to the international administration consist in that they have failed to alter the causes and factors underlying Kosovo's ever recurring *mirror worlds*: when the Serbs dominate, they impose their conception of power, when the

situation is reversed and the Albanians become dominant – they, in turn, impose their own power conception in which there is no place for the “others”. Based on the same mirror principle one community tried in the past, and the other one is trying now to survive and to feel safe by forming paramilitary troops, as well as parallel institutions. Kosovo has been an international protectorate for four years now, yet, the European administrators allow one ethnic community to dominate over the other and dictate the rules of living in all spheres, being unable to implement if not a multiethnic pattern of co-existence, at least equal participation of the minorities in the government and the economy – *de facto* rather than *de jure*.

A female respondent described the problem in a very conspicuous way: “You can’t imagine at all how difficult and painful it is to come to know as soon as you were born where you belong. One cannot choose where he or she wants to be – left, right, or social democrat, or maybe in the center – you know this kind of thing. You are familiar with political division, but also with the right to have choice, however, there’s no political power in this place, there’s ethnic power and one has no right to choose. Here, in Kosovo, you come into the world a Serb and you join the Serbs, if you were born Albanian – then your place is with the Albanians, no nuances in between, and I’m sorry to say that all these multiethnic projects advanced by the international community have been a grey zone that has ever been doomed, lacking any chance, or future”.

We came to speculate on the question of what were then the most realistic options for the future of Kosovo and which of the scenarios would be the most acceptable one for the Serbs. We suggested some alternatives and waited for the respondents’ answers: “Independent Kosovo with dual self-government – for either community, cantoning, or division of Kosovo through redrawing the country’s borders, or maybe any other alternative?”

The respondents, Serb politicians, summed up the projects for the future status in the following way: “The reality is that in Kosovo there are two major entities, which want to have their own governmental bodies. If some kind of federalisation is implemented, it will be based on the self-government of these entities. At a centralised level, we should have common bodies; the Serb entity would like to maintain close relations with Belgrade, and the Albanians – with Tirana. This won’t be an independent state, but it will be some long-term perspective for stabilization. The other alternative – division of Kosovo, would mean triggering a chain reaction – if a precedent is set, a divided Macedonia will follow, and one can’t say then what kind of developments would follow in Montenegro and Greece. Why not expect that to reflect on Romania, possibly on Bulgaria too, and so the processes of disintegration would be transferred to Europe”.

THE ECONOMY OR ITS EQUIVALENTS IN KOSOVO

The economic reconstruction in the province is in stagnation. The large ore-dressing works of Trepča, where over 2.000 workers were formerly employed, have been closed. None of the big industrial enterprises has reopened. There is no official data about the rate of unemployment, but there is no need, because it is obvious. In Kosovska Mitrovica, for example, out of a total population of 130.000 in its urban and rural communities, as many as 53.300 people are unemployed, 42 per cent of which are jobless women.

Labour opportunities are provided mainly by the service, trade, construction, and transportation sectors, and by the small factories making clothes. The average salary is about 120–150 euros, much higher is the pay received by local people employed as maintenance staff or interpreters at the military bases or with the international administration.

With support from some European funds, consultants and NGOs, some of the local businessmen and activists have been trying to set up and develop small and medium-sized enterprises for the production of building materials, sanitary ceramics, and textile.

On the face of it, there is a widespread economic upsurge, but this illusory picture is due to the ongoing large-scale construction, as well as to the lively trade – mainly in imported goods, because of the lacking local production. All money made, legally or illegally, is being invested in the construction of large houses; built are also a great number of new hotels and places of public resort.

In the southern (Albanian) part of Mitrovica, we visited one of our respondents, who ran a small sewing shop providing employment to three women. The dresses and embroideries they make have a good number of women customers, and, what is striking for the situation in this particular town, divided by the bridge spanning the Ibar river, not only Albanian, but also Bosniak, Turkish and Goran women come into this small shop. This respondent's business is on the brink of survival, because she has begun from scratch, by herself, together with a friend of hers, and pays a rent for the premises where the sewing machines and materials are placed. She dreams of expanding the production shop, of hiring at least 8–10 women, because she firmly believes that the Albanian women need to become emancipated and earn their own money, as well as be less bound to their homes and husbands.

She told us it was impossible for her to get a bank credit, because she had nothing that could serve as a bank guarantee. We asked her: “We've seen many rich Albanians with obviously thriving businesses, couldn't you borrow money from someone of them, under certain conditions?” The woman laughed, free-heartedly and loudly: “Everybody here works for his own family. No one supports anyone else. And, what is more, I'm a woman – no businessman would talk business with me, the less so money and money lending”.

For precisely this reason perhaps a female respondent at the town's municipality, a municipal councilor, told us how, using funds from some European projects, they had focused their efforts on women's qualification – namely, dressmaker's, hairdresser's and beautician training courses. The municipal administration had worked out a project to start 9 small production firms: for woodwork, paste products, textile, and sanitary materials. The idea was for a greater number of women to become motivated not only to get employment at the future factories, but also to become owners, to open their own firms. The respondent we interviewed was president of the newly founded "Association of Businesswomen", which sought to unite the efforts of women of enterprise from both sides of the divided city.

Having conducted quite many interviews, we were left with the impression that a common administration, tax collection, registration of businesses – all are a fiction in this divided city, where the bridge has been turned into a high-security site, barred with barbed wire and sacks of sand, and guarded by heavily armed soldiers from the French contingent of KFOR. Communication between the northern and the southern part of the city is so impossible that a municipal officer makes special visits to the northern part, where the Serb businessmen are, in order to collect the necessary information and enter them in the register on the site. There are some Serbs who would themselves cross the Ibar with the purpose of registering their businesses – they are about 300 in number already, but most of them prefer to go escorted by UNMIK soldiers.

The economic unsteadiness was strongly felt by the shortage of electric power supply. There are regular outages throughout the province and this fact has turned power generators into fashionable goods, they are booming outside each shop or café in the streets of the city. We asked some respondents about the state of electric power supply with certain astonishment, because it was known that electricity was imported from Bulgaria and from Serbia even at preferential, lower prices. In some interviewees' opinion, power shortage was caused by the resale in Italy of some of the cheaply purchased electricity at much higher prices.

Naturally, part of the economy in Kosovo is linked with smuggling and illegal trafficking in people, narcotics, weapons and other goods. Two days before our arrival in Kosovo, KFOR soldiers had caught a considerable amount of weapons trafficked illegally from Albania through the "green" border? There is an incredible information deficit – this sort of data are never publicised and no member of the civil society is clear about who transfers the weapons from exactly where and whom it is intended for. The truth is that the population is not interested in this matter, because they regard smuggling goods as part of routine daily life.

According to police officers, after the issuance of the special UN instruction of January 2001, which regulated the activity of the police and the control functions of the International Migrations Organisation, the situation of illegal traffic in women and prostitution has been constrained within certain limits. Most importantly, this instruction has repealed the hitherto effective legislation treating victims of traffic as criminals on an equal base with traffickers and procurers; it states instead that all trafficked individuals are considered victims. This has given the police a free hand to take action and, certainly, act in the name of saving hundreds of women, abducted or enticed into slavery.

In 2002 several large-scale police campaigns were carried out in Kosovo to check places of resort used as houses of prostitution, which did not stop procurers from their activity, but compelled them to legalise each girl's job. At the moment, the girls work legally, with official documents and contracts, as waitresses, bar tenders, or dancers, and it is not so easy to hold them in captivity.

We interviewed a police colonel, a specialist in this sphere: "A scheme has been created including three routes of trafficking in girls into Kosovo – through Serbia, through Macedonia, and through Albania. Trafficking takes place in three stages: the girls are recruited by means of job advertisements; afterwards they are transported to the three mentioned countries – the intermediate destinations, where they are maltreated and abused until they are bent, and, later, they are sold to other intermediary rings, the girls' value varying between 3 and 5 thousand euros; the third stage is the transportation of the women across the Kosovo border, most often across the "green" border, and their resale to local agents which distribute and once again sell them to the places of entertainment. A striking fact is, according to investigators, prosecutors and police officers that dramatically rising is the number of Albanian prostitutes – such were unknown until 10 years ago. Largest is the number of prostitutes from the Ukraine, Moldova, Romania, Russia, and Bulgaria. The prostitutes coming from Bulgaria constitute 10 per cent, 80 per cent of them being Roma women".

The Bosnian experience has shown that in provinces and states that have in the course of years been the arena of international peacekeeping operations or the field of operation of European civilian administrations and observers, trafficking in women and prostitution become a more profitable business than trafficking in drugs. With the emergence of the first places of resort functioning as houses of prostitution, special bans were introduced for the UNMIK police officers, as well as for the KFOR soldiers. All of them have been given a list of "forbidden" places they are not allowed to visit, places where escort girls are offered. This list is updated each month. Catching any officer of the

international missions at some of the places on the ban list is sanctioned seriously and most likely leads to the recalling of the rule-breaker from Kosovo. In the opinion of the respondents from the international missions, these measures have limited the possibility for the members of the international armed forces and the civilian services to get involved in relations of corruption and partnership with the local gangster structures.

THE KOSOVAR AESTHETICS

Albanians have traditionally been very good builders, that's why the ongoing large-scale construction looks awesome. Perplexing is only the size and overall square surface of the houses built, although the locally typical large patriarchal families do need such almost monumental structures. Apart from this, the Kosovars have been obsessed by the "gangster-baroque" aesthetics and they invest all the money they earn in concrete, in "high-rise" buildings, terraces and an excessive number of ornaments of an obscure style.

An inseparable part of the new architectural aesthetics is the extensive building of mosques. In fact, it meets the needs of the Albanian society for confirming all characteristics of a distinct and strong identity. The result is an ostensible clericalisation finding expression in building places of worship and publishing and circulating religious literature. There is another tendency among the young people, namely to turn to religious foundations and organizations for getting employment as assistants or volunteers, as well as to make their educational choice from among the religious schools and universities.

Our conversation with three university students, Catholics, helped us conclude that in the young people's eyes to get familiar with such fields of interest and activities and to assess their pragmatic value is worthwhile. Getting closer to the religious institutions and organizations is something unknown before, something, which is worth trying and learning, because it might turn out practicable. Our observations fully corresponded with the metaphoric statement made by an Albanian leader, who told us several years ago, that: "We are like a family in an empty house. We want to have in it everything other people have – tables and chairs and beds..."

One should not overlook the severe confrontation between modernity and the stringent Albanian tradition, where the latter's upholders are trying, with the help of religion, to maintain the *status quo*, the unequivocal *potestas* model, and the patriarchal hierarchy.

Oppressively ostentatious are the numerous monuments to the liberation war heroes. As a rule, those are two or three metre high obelisks or blocks of black marble on top of which there stands a full-length representation of the

hero, “Kalashnikov” in hand, equipped with a whole lot of cartridge-belts and other military attributes. There are also the corresponding heroic inscriptions, sometimes a listing of his merits, sometimes pledges for carrying on the hero’s deed, as well as plenty of artificial flowers, even artificial brushes and small trees. This is obviously necessary as part of the creation and establishment of the new myths and the aesthetics of heroization.

Emanations of the Kosovar fashion style are works devoted to “Liberator” America. The Kosovar Albanians have been infatuated by the United States, while President Clinton has risen to the rank of a national hero. One of the main streets in Priština is named Bill Clinton; the name of Bill Clinton has also been given to a stonemason’s and a service station. Near to the same main street there is a Hillary café. On entering the city, the traveller is struck by a huge replica of the Statue of Liberty, overtopping absurdly the roof of the newly built Victoria Hotel.

The local people and all our Albanian respondents are convinced that the Americans are the most steadfast defenders of the Albanian cause and would therefore back their claims for independent Kosovo. They would like the American forces to stay in Kosovo as long as possible, for this makes them feel secure. They were 100 per cent supportive of the war in Iraq, although they were somewhat envious about the fact that attention has been diverted from the Albanian national question and Kosovo’s independence over to the Middle East and the oil fields.

During our field work there were commentaries in TV programmes and daily newspapers in Macedonia and Kosovo, as well as in Serbia and Bulgaria, on a prognosis made by professor Francisco Veiga of the University of Barcelona, that the U.S. has decided to find a new loyal ally on the Balkans and will therefore support the establishment of Greater Albania. The agitated Balkan press published some maps. Our team bought for 5 euros a map of Ethnic Albania, which was on sale everywhere in the streets of Priština. This map had spread the ethnic Albanian territories as far as Niš, including the whole of Southern Serbia, Western Macedonia, with the border lying much farther east of Skopje and Kumanovo and touching upon Veles. Of course, it embraced Kosovo, Albania, but also Northern Greece and Çameria (Thesprotia). A great portion of Montenegro, together with the Adriatic coast and the capital Podgorica, were also within the ethnic Albanian borders. As it seemed, poor Montenegrins were actually left with only Cetinje and its adjacent villages. This paragraph is not a diversion from the subject of the corresponding section in the present text, but rather part of Kosovo’s geopolitical aesthetics.

PUBLIC SENTIMENTS, MYTHS AND ANTICIPATIONS IN THE TWO MAJOR COMMUNITIES

Albanians – the end of euphoria

During the past four post-war years something happened in the Albanian community, maybe the most tangible change occurred – a conflict of generations, or to put it less harshly, a growing generation gap. To us as analysts this fact is amazing, because we know quite well the stringent patriarchal character and tradition of the Albanians. The causes of the tearing up of the very fabric of the Albanian cultural model in such a short span of time are a challenge to the social anthropologist. Having collected dozens of interviews with men of all age groups whom we could describe in terms of family relations as four generations: fathers – sons – grandsons – great-grandsons, we can already make some assumptions.

It is the attitude to the present and the assessment of the past that are at the root of the thinning intergeneration ties. The generation between 45 and 80 years is affected by certain Yugo-nostalgia, which in the case of the older people has been reduced to extreme mythologisation of Marshal Tito. The middle-aged generation, too, cherishes nice memories of the Yugoslavian past and the autonomy. Both groups have extremely critical attitudes to the current state of affairs in society, politics and the economy in Kosovo. The young generation, on their part, remember only the humiliation of the late 1980s and the 1990s, the underground schools, the apartheid under Milosevic, the radical philosophies and the accumulating hatred. They were involved, directly or indirectly, in the war. They are happy with the present condition of Kosovo and anticipate the future with optimism.

On an early morning outside the post office in Prizren, we conversed at great lengths with the elderly people, from the town itself and from nearby villages, queuing up to get their pensions. Each of our interlocutors confirmed he was the head of a large family.

A respondent from the village of Opoja: “My family consists of 15 members – I have three sons and a daughter. All of them live with me, along with their daughters-in-law and the children. My sons are jobless, but they don’t want to leave for Europe illegally. They wait for some opportunity to seek a legal job outside Kosovo.” The interviewed old man had worked for three years and a half in Germany and had from there a pension of 45 euros. Before the war, he had received a pension of 800 dinars. This information was accompanied by a remark confirmed by the other old people assembled in front of the post office: “Yugoslavia is no more and the pension is gone too. I don’t care about politics now that I can’t live on my pension. How can I live on 45 euros, with so many people in my family who depend on me? ”

Nevertheless, we persisted in urging him to make some political comments and he agreed reluctantly: “I’ve gone through three wars and I know for sure it was best under Marshal Tito. A great man and a big politician! Things might change for the better now too, but when would that be, we won’t be living to see it. Only under Tito people lived properly and with dignity, it’s been all shit from that time on!”

Our respondent got excited and angry, therefore we changed the subject: “Do your sons know the Kanun? And their sons?” Answer: “They not only know the Kanun, but they also stick to it – both my children and grandchildren. I’m the head of the family and everybody should listen to me! Fourteen people in this family can’t make a single step without asking me.” Question: “Do you think this tradition will persist after you death?” The interviewee hesitated: “Who knows if they would obey the Kanun after my death. My eldest son will take my place and I believe he would continue running the family according to the old rules”. We revert to the political topic: “You now have your own parliament in Priština, don’t you expect things to improve, to have jobs and more chances for a better living?” His answer full of anger: “Kosovo’s head is KFOR, parliament can do nothing, and who knows if they want to, the young ones there, for they’ve lost respect for anything”.

One of our respondents drowned us in curses and unusual aggression: “The state’s already gone. Here and now it’s *nemechka* (German ground). It’s all because of the Serbs. Serbia should be run over by tanks, she wouldn’t listen to anything else. I’d roll tanks over Slavism anywhere. The way UČK did. (Cursing...!)” A member of the research team: “We are Bulgarians, there are many other Slavs beside the Serbs, we are different, do you hate all of us? Answer: “There’s no difference, Slavism is a disease, all Slavs should be done away with...!”

Worried that we had to listen to such a tirade and wild cursing, another respondent from the village of Leskovac broke in: “Don’t pay attention to him, don’t take offence. He belongs to a most disgusting breed the war brought to light. He is a murderer. He killed his wife and a man, her friend. He was in prison for fifteen years and would’ve lain for life, but he was let out during the war together with lots of other convicts. He is now playing the hero – a political convict, a sufferer, he yells all the time, makes threats, and he’s a greater extremist than any of the most extremist politicians.” Our tolerant respondent, too, needed infroming us: “I have a pension of 35 euros, I barely make both ends meet. What I’m most angry with is that all around is chaos, everything is in mess, the Americans rule us, and we live in fear. Now in Kosovo it’s impossible to speak out and criticise, to say the truth of how we’re living. The moment they hear you, some extremists like this one appear and begin threatening that if you talk too much and don’t keep you mouth shut, they’d thrash you or send you in jail.”

Unfortunately, there is a strange unanimity among all generations in their racist attitudes to and opinions of Slavicism. In the café at the Priština University we had a similar conversation, much calmer and sophisticated, indeed, with a student in literature: “I wouldn’t like to insult you, but I don’t like Slavs. I totally dislike them. All Slavs are the same. And Bosniaks are a disaster.” We felt we were on the track of the fascist-type racial theory spread throughout Kosovo, therefore, we went on with the interview: “Have you any prejudices as regards other nations?” Answer: “Of the European nations, I don’t like the Greeks, the French and the Italians.” We sought support from another interviewee, student in French philology: “We suppose you, studying the French culture, disagree with the views of your friend?”

Answer: “I don’t like the French either, and the Italians as well...” All three interviewees summed up that if they had to choose, they would prefer the English... They thought there was no point at all in discussing Romany people: “The Roma are always with those in power, they’re rubbish”, but they did not think ill of Gorans, although “they are Slav Muslims and very close to the Serbs...”

In fact, we witnessed the typical symptoms of national arrogance and self-sufficiency. For it became clear from the students’ answers to our next questions that they liked most and solely all things Albanian. One of the students, who came from Djakovica, set out his point: “You shouldn’t ask us questions about the Kanun in critical light. Those are rules and laws which should be introduced everywhere in Europe. It’s a good Albanian experience, an age-old one, which should be adopted by the constitutional and legal systems in the European countries.” A scholar from the team: “And what about blood feud, what about the fact that it is your parents who are entitled to say which woman you should marry? You approve of it all and want to spread it throughout Europe, is that so?” Answer: “Let’s talk like realists. At the university, I have studied the Kanun of Lekë Dukagjini thoroughly and I believe sixty per cent of the rules postulated in it could be applied anywhere, and if so it happens, the world would become a better place. Certainly, forty per cent may be discarded or critically revised before being applied.” Question: “At which departments is the Kanun studied?” Answer: “Each student in the humanities can study the Kanun as an optional discipline, for example at the Literature Department, also at the Faculty of Law.” Although they spoke as admirers of traditional law, we asked additional questions in order to establish how far the revolt of the young generation against traditions went: “Would you allow your parents to designate the woman you should marry, and how many children would you like to have, or would you listen to your parents’ advice?” The answers all students gave were of the same type: “I won’t let them arrange my marriage. I’d ask their opinion, of course, but I’ll choose for myself. The children will be two, three at the most, no matter what our parents say.”

It is absolutely clear that obsession with the Kanun of Lekë Dukagjini is part of the process of affirmation of the Albanian identity, part of the cult of Albanianism, and the core of Albanian nationalism. It is not at all a desire to strictly observe the prescriptions and norms the way they were observed by grandparents and parents, on the contrary, it is a matter of modernization and revolt against the rules, there is no denying.

We continued our interviews with the students taking up the topic of the future status of Kosovo. We asked: "Would you like to live in some other place, do you consider emigrating?" Unanimous answers by several of the young people: "To me Kosovo is the best place in the world. Studying somewhere else – yes, but we are going to work in Kosovo." Relatives who lived in Europe had covered the students told us that their university allowances. The yearly academic fee is 130 euros, and the cost of accommodation is about 50 euros per individual. They had brothers and sisters working abroad and, in this connection, they made the following commentaries: "Our relatives working in Europe invest in us." A literature student having two brothers in Germany: "They have an agreement, and one of my brothers sends me 200 euros each month. Even if there's only one person working abroad, it's enough – he would help."

A question from the team members: "Are there any fears in your life? What are you afraid of most?" Answer: "There's disappointment with Thaqi and Haradinaj, many people say they back and support them out of fear. If a politician speaks against another politician, he may be killed, but in politics it's like that in the other parts of the world too." Another young man breaks in making a topical remark: "We're afraid of the war in Iraq most, because it's possible for the American contingent to draw out of here. Then the Serbs will be back." "We worry about many things – about unemployment, about being forced to live together with the Serbs, sometimes we fear that Kosovo might be divided, that some part of Kosovo might be given to Serbia."

One of the youths summed up judiciously: "The truth is that both we and the Serbs in Kosovo still live with our illusions. We, Albanians, are waiting for independence, while the Serbs want Kosovo to be Serbian or something like that." Question: "Imagine you fall in love with a Serb girl, what would happen then, would you marry her?" Answer: "Should I fall in love, I would make love to her, but marry her – no, never!"

We also talked at great length about Macedonia, about the Albanians, wherever in the Balkans they live, and about Greater Albania, of course. An argument started among the students on the subject of whether they would fight for Greater Albania. The result was two to one in favour of those who were not willing to go to war. "If I'm supposed to defend the independence of Kosovo, I would fight in battle and I would give my life. But if someone decides to raise an army in the name of Greater Albania – I wouldn't enlist as a volunteer, I wouldn't sacrifice myself for such a cause." And the opposite opinion expressed

with pathos by a young man from Djakovica: “The Motherland is beautiful even if you are killed for her sake, I would go fighting and give my life for the ethnic Albanian boundaries. Albania’s borders should be those of the time of World War II – then the Albanian territory was 60.000 square kilometres; should America help us, in less than an year and a half Kosovo’s status and the frontiers will be settled.”

The men of the 40–50 age group whom we interviewed in Prizren, Kačanik and other places, presumed that Kosovo would be cantoned: “Write it down – we are going to have an independent and cantoned Kosovo.” They also believed that nothing depended on the parliament in Priština, that it was the U.S. and the international community that made the decisions.

The young people we conversed with in Kačanik added to the theme of independent Kosovo the following statement: “This thing, about the independence status, is inevitable, because we have already settled the problem – in ten years Kosovo is to become the biggest state in the Balkans – with a population of 10 million. Love with someone of another ethnic origin is not quite acceptable, it might be possible for a man, but for a girl to have an affair with a member of another ethnos – no.” They burst in a friendly laughter: “It may be acceptable, though, for us to marry Bulgarian, or Turkish, women.

The village of Kačanik is a very big one, 8–10 thousand residents. A countless number of children crowd the local school during the breaks. The Christians’ church is guarded by KFOR, as are all other Christian sites in the territory of Kosovo. Our interviewees kept family memories of how a hundred years ago there were Bulgarians in Kačanik and, in this connection, they made an ironic remark concerning Macedonia: “There is no such state. Those living in Macedonia are Bulgarians, Albanians, Turks, Serbs, and Gypsies. No other people”.

The Serb enclaves, the frustration and radicalisation of the Serb community

At the border checkpoint on entering Kosovo we met a UNMIK police officer that asked us different questions and, having realised that we were scholars, made some comments on the situation in Kosovo. With the cynicism typical of a long serving and, therefore, tired soldier, he told us: “If you want to know how the Serbs feel, just visit the village of Štrpce –they hang about in the pub from the morning – drinking, cursing, crying, singing...” That made an impression on us and, before heading for Štrpce, we asked: “And what would you say about the Albanians, what do they do?” Answer: “The Albanians? The Albanians make babies and that’s it... Well, of course they do business too. They are pragmatic.

Štrpce is a large village – as many as 13.000 residents, the school is crowded, and it is named “Jovan Cvijić”. The small gardens in front of the houses are cultivated, a mountain river flows through the village. In a central place on the façade of the municipal building there is a sign plate reading: “The Republic of Serbia/Autonomous province of Kosovo and Metohia/Skupština Štrpce”. Next to the municipal building there is a monument commemorating the victims of the Balkan war and World War I – inscribed in it are the names of all soldiers and officers who had lost their lives. OSCE’s offices are accommodated in the same building. One or two KFOR armoured vehicles could be seen along the main street, but things had obviously been left to OSCE, because there were more of their automobiles.

It goes without saying that we stopped at the tavern first; it is also situated right in the central part of the village, just next to the school and the municipal building. Not long before, we were already talking with two pensioners, who hurried to express their worries: “We are living as if we are under occupation. It’s not democracy, it’s cultural occupation. Only under Tito we had true democracy.” One of the pensioners, who had worked for nearly ten years in Germany, received a pension of 1.000 euro and therefore generously treated his friends in the pub to a drink of cognac: “I have a good pension, but even if I got one million euro, what would I need it for, what would I do with it, when we live like prisoners here – we can’t go anywhere. I can’t travel even to Skopje and Belgrade. I can’t start a business!”

The Štrpce municipality is part of Sirinička župa, near the border with the Republic of Macedonia, and includes 12 villages inhabited by Serbs. During the war, a numerous Serb military unit was deployed in the vicinity, and immediately after the withdrawal of the Serb army, the area was put under KFOR control, which protected the population from the UČK attacks. At present this Serb-populated enclave lives absolutely isolated from the neighbouring municipalities of Kačanik and Prizren, densely populated by Albanians. The local population maintains contacts with Serbia, there are passenger bus lines, Serbian newspapers are delivered daily and the elderly people get their pensions in dinars from Serbia. The basic monetary unit in the municipality is the dinar. Within the boundaries of the municipality people feel safe, but they are afraid to work on their fields. About 4 or 5 kilometres away from Štrpce, there is a well-known mountain resort – the local hotels accommodate Serbs that have chosen to return, but their homes are in ethnic Albanian localities and already inhabited by Albanians. The native residents feel depressed and cheer themselves up by hopes that the Serb state would be restored in the province: There will never be an Albanian Kosovo. Our great-grandparents lived here. This is Older Serbia, not Belgrade! What do we want? To live in a Serbian state, to move and work freely and not feel as if we are under occupation.

The only Serb enclave immediately bordering on Serbia is situated in the Northern part of Kosovo – Northern Kosovska Mitrovica, Zvečan, Trepča and Leposavić. Half of the Serb population that has remained in the province is concentrated here. The status of the divided town is a special one – for example, goods imported from Serbia are registered and relevant custom-duties are collected not at Kosovo's administrative border, but only after they pass through the divided Mitrovica. The local Serbs take part in Kosovo's political life, but they are also activists in Serbia. The northernmost municipalities are de facto ethnically and economically separated from Kosovo. This is perhaps one of the reasons why the Serbs in Northern Kosovo are most radically minded and convinced that whatever resolution is passed on Kosovo's status, they will be able to uphold to the last their self-government which resembles autonomy and which, in their views, should lead to an independent Northern Kosovo.

In February, the Union of the Serb Municipalities and Communities in KOSMET (the name used by the Serbs to designate Kosovo) was founded. We interviewed the leader of the Serbian National Council in Northern Mitrovica and he told us that the newly formed and newly elected Kosovo institutions are positively defined as Albanian. The Serbs are not interested in participating in them, therefore they trust in self-government. To them, any resolution that does not guarantee full self-government of the Serb communities is unacceptable and would mean continuation of the process of emigration of the Serbs from the province. When in February the Union of Municipalities was founded, i.e. an institution which in practice offered an alternative for the reorganization of Kosovo into two separate entities, M. Steiner commented that it was an attempt to establish a new parallel structure based on monoethnicity and directly contradicting the international multiethnic conception of Kosovo. Our respondent, a Serb leader, declared: "There isn't any willingness on the part of the Albanians themselves for living jointly. According to the Albanian conception, multiethnicity means an ethnically cleansed society, and 90 per cent of the areas you have traveled and visited demonstrate this." He also explained that their suggestions for united Serb municipalities aimed solely at the self-protection of the Serbs and were the only chance for bringing some of the refugees back to the province.

A respondent, a chairwoman of the Association of Women in Northern Mitrovica, brought us to the top of a tall hill in the highest part of the urban area, pointed down to an entire quarter of demolished houses and said: "This is what multiethnic Kosovo means according to the Albanians. When the KFOR troops drew out, the Albanians pulled down dozens of homes of Romany people and Serbs in order to drive them away for good." The Serbs from Northern Mitrovica live isolated from the other enclaves and travel to the other Serb-populated towns and villages on buses bearing special signs called "blue corridors". Our interviewee declared: "I want reconciliation, but should an independent Kosovo be proclaimed, I'll leave!"

Lying nearby Priština is the village of Gračanica, which is divided in two – an Albanian and a Serb part, where about 2'3 thousand Serbs live much like in an enclave. Situated in this Serb enclave is the Gračanica Monastery built in the 15th century under King Milutin and his wife Simonida, daughter of the Byzantine emperor Andronikos II Palaeologus. A remarkable fact is that Gračanica is a favourite place where the UNMIK police officers operating in Priština rent homes. We did not wonder the Bulgarians preferred the Serb enclave, but we were surprised that the place was a kind of oasis for the American police officers. The latter offered an explanation: “There’s no sense to pay 800 euro for a nasty flat in the dirty Priština. It’s clean, quiet and tidy here and you can rent a house with a garden for 500’600 euro.”

We inquired other Serb activists too about what we saw as an apparent intention and a political perspective before them. We asked quite directly: “Aren’t there parallel Serb structures being set up in Kosovo and won’t this impair the process of normalization of interethnic relations?” An angry radical retorted: “Let them take a dose of their own medicine. Haven’t they won through parallel structures, through paramilitary formations? It’s our turn now – we are going to make a parallel state, we’ll rely on Serbia the way they received assistance from Albania, we’ll also form our own Kosovo Serbs Liberation Army if that be the trick...”

The same question on our part caused irritation in our female respondent, a Serb politician, but she answered with restraint: “Yes, such private units, supported by Serbia, in the sphere of health care and education do exist. But everybody should know these are life-saving institutions. Not a single Serb works or is a patient at the hospital in Priština, only Albanian is spoken at the post office, on the television too. The Serbs don’t go to the theatre, because the plays are performed in Albanian, it’s the same in the cinemas, nor do they dare use the city transport. Naturally, this made it necessary to open three small hospital wards for medical care in Gračanica, the Serb children already go to private schools where they are taught in Serbian, and some of them have lessons at private homes.

Lying in the outskirts of Priština is the village of Kosovo polje, in which a very small number of Serbs have remained. They work at the Health Centre, which is under the control of the Russian international contingent. Our respondent is from the village of Lipljan, but he runs a tavern in Kosovo polje. It is not quite clear what keeps the business above water, because hardly any other customers were seen in the pub but Bulgarian officers or Russian soldiers occasionally dropping in. The Serbs that go there are as few as to gather at a single table. The interviewee related how, in order to supply his restaurant, he would go shopping to the Shkiftari shops under KFOR escort: “We’re done and over here. I’d sell my house in Lipljan, should anyone pay adequately. Should the Russian step out, we’re leaving too. Only 300 Serbs live in Priština – all of them old men and women. For now, the score is 1:1, we need another war...”

It was only in the city of Prizren that the atmosphere of multiethnicity could be slightly felt, since ethnic Albanians and ethnic Turks when living side by side get along relatively well. The population in the city itself and the nearby villages runs up to nearly 200.000 people of whom 20.000 are ethnic Turks. We were struck by the fact that many of the Albanians speak the two languages – they have a good knowledge of Turkish. The instances of intermarriages are not rare. However, there are as little as 63 Serbs, while their pre-war number was 12.000. All churches in Prizren are enclosed, there are strict premonitory signs forbidding getting close to them, and they are secured by KFOR guards and armoured vehicles. On top of one of the hills is the “Saints Cyril and Methodius” theological school, where 10 to 12 Serb refugees have been hiding. Most dramatic and emblematic is the case of a married couple – an Albanian husband and his Serb wife: “We live against our will. We can’t find a shelter anywhere. It’s good we have no children.” Terror-stricken, they are waiting for Australian emigration visas – they want to escape as far away as possible, preferably to another continent.

The refugees live on 35 euro a month: “We are like prisoners”; along the way to their asylum one could see graffiti reading: “We’ll kill you, nits!”

In the St. George church built back in 1856, we met the priest who had tried to collect from all places possible icons that had survived ‘ in order to save them. He told us: “I can’t abandon them, no matter they’re only about 60 people. It’s been four years now and I’m still waiting for some of them to come back, but there’s nobody. I travel occasionally to Belgrade, where my family lives. And it’s the fourth year in a row that I ride home on a tank...”

THE FATE AND VIEWS OF SEVERAL WOMEN LIVING IN THEIR MIRROR WORLD OR THE DISTORTING GLASSES OF KOSOVO’S POLITICAL PERSPECTIVE

Two emancipated Albanian women from the diaspora

The two Albanian women, about 45 years old, whom we met in Prizren, are nurses by training. When they were students, they took part in the 1981 demonstrations and were compelled to emigrate for political reasons. They had worked in Frankfurt on the Main, Germany, in the course of 20 years. The people of their generation emigrated most often to Germany, Switzerland, and the Arab countries, to Libya, for example.

They had returned to emancipated Kosovo in order to help – but it appeared to them that at this point there were many uncertain things which might frustrate the chances of independent Kosovo: “Most of the leaders from the diaspora should come home and work in the concrete political situation. Although the Albanians abroad, anywhere around the world, work for the cause too.”

We, as a research team, have known for several years now that the Albanian diaspora in Western Europe and in the United States has been one of the most important factors influencing the developments in Kosovo, as well as in Macedonia. First of all, the diaspora possesses significant financial resources, attachment to the family structures, and commitment to the national cause. It was in the midst of the diaspora that the core group of ideologists of the future of the Albanian national idea and the strategies for its realization was formed. In consequence of the fact that the members of the Albanian immigration have lived for a long time away from their native places, they are much less susceptible to regional disagreements and rivalries stemming from the level of cultural differences, identity characteristics, and family interests. Albanians' intra-community relations are charged with similar conflicts, no matter where in the Balkans they have been dispersed. From the perspective of time and from a long distance, the Albanian diaspora can more clearly see the future prospects of the Albanian national and political unity.

During the last several years the Albanian leaders living in Western Europe have increasingly taken the role of a driving force for the organization and funding of the military campaigns of the Albanians in Macedonia, Southern Serbia, and Kosovo itself. In the opinion of both commanders and combatants who have participated in armed clashes in the three regions, the important decisions concerning the military and political planning are produced by the Albanian national strategic center (traditionally called the *Elders' Council*) whose headquarters have been kept secret, but are probably based in Germany or Switzerland. The Albanians who have taken part in fighting in different parts of the Balkans, say they would not have been as effective were it not for the considerable logistic assistance, money, weapons, medicines and military experts coming from abroad.

The drawing up of plans has also been ascribed to this Albanian strategic center based abroad.

In a sense, our respondents from Prizren once again confirmed everything we had heard until that moment, except for certain nuances and some hitherto missing details. In Germany, the two women are members of the *Albanian National Democratic League (BKDSH – Beselidlyja Kombetare Demokratike Shiptare)*, which was registered in Germany; it represents an association of all Albanians, not only the Kosovars. The league was founded in 1928 as the successor of the political ideas of the Prizren League of 1878. In the late 1930s it discontinued its activities and resumed them after the end of World War II, in Germany. It has representative offices in Albania and Kosovo. At present, its formal leader in Germany is Emin Fazlia, known by the name of Emil Kastrioti. The League has taken care of the Albanian immigrants in Western Europe – accommodation, employment, etc. As for its influence in the province, the [two] respondents asserted, "the statutes of all Albanian parties in Kosovo have been

borrowed from the League's statutes, and what is more, all parties and many of the leaders have been trained by it".

Naturally, we asked them questions about their political views and intentions. In a nutshell, they profess several ideas: "KFOR is unable to do for Kosovo what the Albanians themselves, our party followers, can. The major problem is that the Serbs destroyed the intelligentsia in Kosovo. Some of them emigrated and are still abroad, others have become Belgrade's collaborationists. The Serbs had made life intolerable for almost all ethnic Albanians – we could not have meals together with the Serbs, nor work with them, we were separated in all spheres of everyday life. The situation today is better and we want to live and work here." Question: "And what do you think of the status of Kosovo?" Answer: It's too early to discuss Kosovo's status, because the wound is still running and it's impossible to consider multiethnic co-existence yet. One thing is definitely clear – we won't ever allow anybody to rule us, we won't ever be ordered about by anybody!" In connection with our observations, we were certainly interested in the views held by our interviewees concerning the possible unification of the ethnic Albanians: "There is a patch of land in Macedonia, Montenegro, Kosovo, Albania, all this is Albanian land. The Albanians, too, should get their own." One of the respondents stamped her foot on the ground and insisted: "Everybody who was born in this land has a right over it. The Albanians in Macedonia should also get their own. They even may not speak their own language there and they have both economic and political problems. I don't mean aggressive acts, but given that there are problems, they should be resolved calmly and each one should get his own..." Question: "Is there a possibility for the unification of Kosovo and Western Macedonia at a certain point?" Answer: "And why not. We don't have problems between us. We don't want to take another nation's land, we just want our people and our land, we want our own territory, where Albanians are present, and to live in peace with all other Albanians." Question: "Yet, you obviously want unification of all Albanians, i.e. Greater Albania?" Answer: "The Serb propaganda has contrived the Greater Albania thesis. We would like to live together – all Albanians in one place. It would be then that the Albanians of the diaspora, who are now living at their homes here and abroad, would return and would help for the implementation of a correct policy".

When we talked about the Albanian traditions, we heard from them something that surprised us, because it fully coincided with the views held by our respondents-students from the Pristina University: "You shouldn't perceive the Kanun only as something negative – those are wise rules that have made people's lives easier and have maintained order. The Kanun is great and it is currently being studied in the United States. It should be practiced, some of its chapters and paragraphs, while the negative substance should be abandoned. No matter what, be sure that God is kind to the Albanians. We have been visiting

various places around the world for decades and praying in all churches for freedom, independence and unification. And God has heard us, because each temple is a place of worship for the Albanian – be it a church or a mosque”.

A Serb woman from Priština and an Albanian woman from Southern Mitrovica looking at their destinies in the distorting mirror of “new, independent Kosovo”

Both of them are beautiful and strong-minded women around 45 years of age. Their laughter is much the same – loud and infectious. They themselves are very much alike – both physically and mentally, although a distance of many kilometars, by plenty of armoured KFOR equipment and numerous KFOR guards, separates them. They are also separated by what one of them described as follows: “Here, in Kosovo, your place is determined the moment you come into the world - a Serb belongs to the Serbs, an Albanian – to the Albanians.” Both of them do not want to accept this rule and are so similar in the way they think, that it is just impossible not to make a parallel and present them side by side.

The Serb woman R.’s account: “I spent all my life in Priština. I was with my parents first, then I got married, later I gave birth to my three children and brought them up, all in this city. I read lectures at the University; I worked as ward chief at the hospital. Today I can’t go freely to my house any more, I live in the X. enclave, at some other people’s place.³ In Priština, and in Kosovo as a whole, the international community has been in place for four years now and what does it matter for me and for my family, when I don’t even know the people who are living in my house. I don’t want anything exceptional but just be answered why I can’t go to my place where I have reared my children. Not because I’m better or worse than the Albanian women, not because I’m more intelligent or more stupid than they are, not because I work harder or lie idler, but simply because I’m a Serb woman. I’m sorry to say that after these four years the answer is but ethnic discrimination. Thank God, my children are already grown-up and independent. They study in Europe, you certainly don’t think that, as a mother, I could tell them: “come back here!”

We inquired about the new army of which we had heard to be operating within Kosovo and Macedonia – ANA, as well as about what we had heard from the ethnic Albanians on the subject of Greater Albania. Our interlocutor examined the Ethnic Albanians Map, which we unfolded in front of her, and

³ According to data of the international administration in Kosovo Albanians have settled in 77.000 somebody else’s houses, flats or other possession and more than 37.000 premises have been destroyed by fire.

laughed: “Just look how far they have spread out! But you put the question about Greater Albania in an unwise way. It’s just normal for anybody [of them] to declare this to be Serbian propaganda. In fact, the aspiration for a new status, for a State of Independent Kosovo, is only a mask put on to cheat the international community, to conceal the Greater Albania project. The Albanians are a nation that has never been and is not willing to live with anyone else. Take a look around the Balkans, the ethnically purest areas are to be found where Albanians live. It’s the same even with resort places – the ski resort near Štrpce used to be visited by Serbs, and by Macedonians, but it is now crowded with Albanians alone; isn’t the situation in some areas of Montenegro’s Adriatic coast the same? “Others” mustn’t frequent anything that has been taken under control by Albanians any more.

They make changes in everything – from changing the signs to destroying anything indicative of “stranger’s” presence – architecture, gravestones, and places of worship.

It’s no use asking again and again about the differences between KLA, ANA, AOPBM, – those are different names of the same thing. It’s not even certain that these armies spring up as a result of various group interests. This is rather a way of confusing the observers and sweeping up the traces. The same is valid of the parties. In order to divert the attention from the ADK and their radical positions, suddenly a new nationalist Albanian party is proclaimed – Bali Kombetar, which is active in the same territories – in Kosovo, in Albania, and in Macedonia, and which voices the same platform – unification of all Albanian territories. What’s the new then?

I have a theory, maybe because I’m a doctor. Natality is the most primitive way of conquering territories. The real problem wherever Albanians live is the total enslavement of their wives and turning them into breeding machines. I have interviewed Albanian women – all of them say that after the birth of their first child the family demands of them to give birth, without delay, to more and more children. Nobody asks them if they want it, or not. It’s an absolute violation of human rights, trampling of their human dignity all taking place within the confines of their walled and shut up houses. There’s help from nowhere. As a matter of fact I feel sorry for them, they need support in order to get emancipated. This is the real problem, and it is a civilization problem.⁴

The Albanians’ birthrate was taboo, a topic that was never commented on in Serbia and Yugoslavia. The problems were examined from all possible angles, but there never was a single word spoken about the emancipation, about the liberation of the Albanian women. It seems to me the international

⁴ The highest birthrate in Europe is registered in the province of Kosovo – 27 per mille. According to UNMIK data, between 55.000 and 5.000 children have been born since 2.000 in the province.

community now finds it disgraceful and impolite to discuss this issue, it is considered a racial prejudice. And what if a poor community has 5-6-10 children. No wonder, they can't provide education for them, nor easily ensure a normal standard of living, and this brings about criminal behaviour. I remember my childhood years ago – we were two kids and our parents provided us with everything we needed. It's quite normal to provoke envy when riding on a bicycle, while the neighbour's ten kids, my peers and schoolmates, wonder how to still their hunger on bread alone. So a time comes when my neighbours turn up at my place, enraged and armed, to kill me, to rob me, to take all nice things I've got, which they haven't.

In a way, this overwhelming birthrate threatens the Albanians themselves, because there is huge unemployment, they transmit criminality to Europe – to France, Germany, and Sweden. Aren't the Western societies aware of how endangered they are by the Albanian gangster rings and criminal activities. They are aware, of course, because they have their intelligence services, they have observers, and analysts like you. The truth is that Europe wants to create an independent Albanian state; they will concentrate the Albanians in one place, as in a ghetto, by promises that all will be integrated into the EU and Europe will be cleansed. The bad thing is that these plans are being made to the detriment of the Serbs and our Serb lands and homes, because they deprived us to produce this "black zone" in the Balkans with a nice sanitary cordon around."

The Albanian woman, F., whom we interviewed in Southern Mitrovica: "My parents come from Dolno Studime, they're workers, a decent family, we've never been committed to politics. My father had some chances, he had helped Tito's guerrillas, and he was offered different posts, but he didn't accept. He also used to tell my brother that "politics is great trouble and one can always tarnish one's good name". That's why I'm trying now to expand my business, I'm offered various European projects, but they're all tied one way or another to politics and I wouldn't like to get committed. I take a human to be a human; I don't care about what one's religion or nationality is. I also want to have knowledge of all languages, in order to be able to comprehend and communicate with people directly, without an interpreter. This is how I talk with my customers – with each woman in her own language.

I spent my life in Northern Mitrovica, we had a large house and a workshop, and our five kids were brought up there. During the war, I thought to stay, I wanted to keep living along with my neighbours, but that proved to be impossible. There were bands that kept threatening us and we fled as far as Albania. Two weeks after the war was over, I went to my house and there was already a Serb family living there. They didn't let me take anything of our belongings; they gave me only my kids' pictures. They took away from me everything else and I keep wondering how is it possible to use another's belongings, especially personal ones... What I hated most was that I knew the

people who had accommodated themselves in my house. I think it might've been easier for me if they were some strangers, but it was a man I had worked with over the years...

I'm not one of those who keep complaining. I moved to the southern part of Mitrovica and started my life from scratch. I live in a rented house and it was most difficult for me to set up a new home – beds, coverings, chairs and so on. I love stylish things, things beautiful and I've been accustomed to a high standard. We were quite rich. I'm poor now, but life is still interesting. I've rented this premise for a dressmaker's shop, and I pay 350 euro a month. I once used to work as a secretary of the chief of the "Smelting" division of the metallurgical works in Zvečan. Quite an important job I had. It was a large plant; I worked with Serbs, neighbours, and colleagues. Dressmaking was my hobby, and now I'm living on it. Sewing has been my leisure pursuit for 30 years now. I had even specialised in making traditional wedding costumes, today they are in demand only by folk ensembles.

I started with a single sewing machine, my sister's, but then I realised that my friends and other Albanian women also needed to earn their own money in order to be independent. Later I made up a good project and a German organisation supported me. However, their requirement to me was hiring Albanian women returning from Germany. I didn't mind and so I did, but now I dream of expanding my business, because I want to give jobs to more women who are trying to emancipate themselves. This is a very important issue for Kosovo – women's emancipation. You just can't imagine what it means to be closed up, dependent and all your life bear and look after children.

I have five children; two of my sons are in France. I love them all, I wouldn't give up anyone of them, but if I could choose, I would certainly have had fewer kids. Now I have the feeling that I've lost quite many years of my life. I have my dreams, it doesn't matter that I'm older now – I want to have money, to live, to travel around the world, I want very much to be able to travel. I wouldn't like to be rich the way Albanians get rich nowadays. There's something disgusting in it – they're doing wholesale trade, they're either laying up money or building huge houses. I don't even know what they do with their money.

I've changed a great deal after all that. I wouldn't build a house now; I wouldn't be piling up furnishings, because I already know how easy it is to lose everything in an instant. We, Albanians, are both Catholics and Bektashi, and me, I'm Muslim. I'm not a devoted believer, I know what the most important things are: don't steal, don't kill, and don't lie. I saw them during the war: a devout person, but stealing and killing. No faith teaches one to hurt others. And we all did much harm to each other. I'm an optimist, however, we'll be living together again. If only the extremists don't take the upper hand – they are to be found among the Albanians too, but more radical at the moment are the Serbs. If only could they get to peace...”?

CONCLUSION

As in the field studies published in the two volumes of the *Urgent Anthropology* series entitled *The Albanian National Problem and the Balkans*, IMIR, 2001 and *Albanian Perspectives*, IMIR, 2003 – the objective of the present field diary is, on the basis of the rich source material, to make comprehensive interdisciplinary conclusions without imposing the author's opinion.

Even so, two points stand out perfectly clear in all the interviews, inquiries and observations:

- The political and social environment now witnessed in Kosovo represents, in a certain sense, a distorted mirror reflection of the ethnic apartheid and segregation of the Milosevic's era. This will naturally lead to the gradual self-organization of the Serbs, isolated in several enclaves; it will make them radicalise their ideas and political actions, establish their own parallel administrative structures in the name of surviving and, in effect, struggle by all means against the federalization of the province.
- There is some tension among the three major political agents of the Albanian majority in Kosovo and it has led to the formation of almost equal in number and armament party militias exerting, by force and in a destructive way, their influence on political and economic life in Kosovo. After the eventual withdrawal of UNMIK and the reduction in the number of KFOR contingents, the presence of these militias as well as of the troops to be raised in the Serb enclaves, will become a factor that will undoubtedly lead to a sort of permanent guerrilla war.

MACEDONIA IN APRIL 2003. DIAGNOSIS: “CANCER WITH GALLOPING METASTASES”¹

ANTONINA ZHELYAZKOVA

METHODOLOGY AND PARAMETERS OF THE STUDY

This field study, conducted in the Republic of Macedonia from 30 March to 6 April 2003, was designed to establish the progress and stages in the implementation of the Ohrid Agreement, the state of interethnic relations, and the developments and changes in the contact zones where there are both Macedonians and Albanians. In addition, the object of the study was to identify Macedonia’s political, economic and social prospects, as well as the attitudes of the two ethnic communities to the near future of Macedonia and of the Balkan region as a whole.

A team of scholars carried out the fieldwork specialized in Albanian Studies: an expert in Balkan history, a Balkan linguist, an archaeologist-anthropologist, a journalist specialized in Balkan affairs, and an interpreter-mediator.² The methods employed were anthropological interview, group interviews, and an adapted system of questionnaires combined with observations.

The study was conducted in Tetovo, Mala Recica, Skopje, Gostivar and Struga, and covered approximately 30 male and female respondents aged between 20 and 60. The respondents were Macedonian and Albanian members of the political elite, intellectuals, journalists, randomly selected urban and rural residents, and Muslim clerics.

POLITICS, ECONOMY, SOCIETY: A SNAPSHOT

Events and Politicians

In spring 2003 Macedonia’s former Prime Minister Ljubco Georgievski announced that he was resigning from the VMRO-DPMNE leadership and published a series of articles about the situation in the Republic of Macedonia.

¹ This metaphor is from Ljupco Georgievski’s article ‘Агонијата на Балканот’ (*The Agony of the Balkans*), in *Dnevnik*, March 21, 2003.

² Antonina Zhelyazkova, Donka Dimitrova, Valeri Grigorov, Tanya Mangalakova and Alma Chaushi.

In a style of emotional analysis, irrespective of the obvious bitterness, dramatic exaggerations and partisan bias, the former VMRO-DPMNE leader formulated candidly the truth about the present state of relations between the two main ethnic communities and the future of Macedonia.

Georgievski voiced bleak truths – truths that everyone in the small country knows but is reluctant to admit even in private, and that are also very well known to international observers and peacekeeping missions, which likewise prefer to keep their real analyses and forecasts confidential.

In fact, perhaps what sounded most shocking was Georgievski's proposal for ending with protectorates, semi-protectorates, institutionally blocked states and experiments of all sorts, and convening a special Balkan conference to redraw the existing borders on the Balkans and to establish ethnically clean states. On the Balkans, where the inviolability of borders has been assigned cult status, and where the mere thought of their revision and exchange of population and property is tabooed this, admittedly, sounded too extreme. Simply because there have been too many historical precedents, which have inflicted wounds that are festering to this very day.

Moreover, the former prime minister took advantage of the Bulgarian Prime Minister's visit to Skopje in April to publish in his regular column in the *Dnevnik* daily "Theses on the Survival of the Macedonian Nation and State," where he called for more serious consideration of Macedonian academics' proposals for territorial and population exchange, separation of Macedonians and Albanians, and ethnic salvation of Kumanovo, Skopje, Kicevo and Struga.

The debate fired by Ljubco Georgievski's articles set the agenda of the political debates in March and April. The Socialists (SDSM) qualified the ex-prime minister's ideas as a "typical case of anachronism," whereas their partner Ali Ahmeti, leader of the Democratic Union for Integration (DUI), called them "alarming." On the other hand, the Albanian opposition parties partly or fully supported the former prime minister. The leader of the Party for Democratic Prosperity (PDP), Abdurrahman Haliti, congratulated Georgievski on his "courage to voice that which is on the mind of many people and which has been officially announced by the MASA" (Macedonian Academy of Sciences and Arts).

The leaders of the Democratic Party of Albanians (DPA), Xhaferri and Thaqi, partly supported Georgievski's projects, and readily expounded their new radical views to us because they are likewise in opposition: "If we hadn't given up power, there could have been a civil war between the Albanians themselves".

The problem with the ID cards of Albanians in Macedonia, which heightened tensions in the country during the dispute over whether they should be issued in Albanian, was criticized sharply by the Albanian opposition leaders: "The SDSM and DUI made a big compromise by adopting the decision

that the ID cards be issued in the Albanian language only at the card-holder's request. What's the point: we are a two-nation state and the future belongs to the two official languages. The Law on Amnesty was likewise vitiated by the amendments." We asked a series of questions to find out precisely which provisions had vitiated the law. Our respondents from the DPA explained: "All participants in the war, with the exception of those summoned by the Hague Tribunal, should have been amnestied. With the interference of the Macedonian secret services the formula prescribed by the Ohrid Agreement was revised and now no one is amnestied. We have young boys in prison who have been sentenced to 15, 10 or six years. The crisis and mistrust are being recycled".

A female Macedonian MP from the SDSM is not optimistic about the cohabitation of the two ethnic communities: "The Albanians identify themselves as victims only. They have a political and cultural problem with double standards. They don't want to accept that where they are a majority they must observe the same norms and relations that they are demanding for themselves where they are a minority. This doesn't even hold for the Macedonians only, but also for the Turks, the Roma, the Torbeshi and other ethnic groups. The obvious intolerance towards the Macedonians gives rise to scepticism about whether this is the end of their demands. The truth is that we are living as complete strangers in parallel worlds..."

DIVIDED SOCIETY

Perhaps the estrangement and incompatibility between the two ethnic communities are most palpable in the educational system. Our fieldwork coincided with an endless and heated debate about segregation in schools, which was covered by all media. The prime target for criticism was Minister of Education and Science Azis Polozani from the DUI quota, a former MP from the PDP, who was accused of trying to "ghettoize schools".

We spoke with the Minister and he expounded his view about the educational disputes in Kumanovo: "This is a typical post-conflict process, where emotions overcome common sense and stoke the mistrust between the communities. Besides, there are forces that are deliberately exploiting people's feelings. Students in Kumanovo are divided into groups and this reflects the division in society: the Albanians are on one side and the Macedonians are on the other. The media are accusing us of striving to establish ethnically clean schools, but that isn't true. Integration in the educational system is possible step by step only. At present we have the absurd situation in which Albanian and Macedonian students go to the same school but are divided, the ones in one corner and the others in the other. The ones go to school in the morning and the others in the afternoon, doing their best to avoid each other. Are those really mixed schools – aren't they segregated schools in their own way?"

An Albanian leader referred to another critical case in education to give us an example of the division in Macedonian society: “For more than six months now there has been a dispute over a school in the village of Semsevo, near Tetovo. Eighty per cent of the residents there are Albanian and 20% are Macedonian. The school was called “Nikola Kalev” for years, but the Albanians have now renamed it after an Albanian hero. As a result the Macedonian students, supported by their parents, are refusing to attend the school in question, whereas the Albanians are insisting that it is their right to have the school named after an Albanian considering that the village is predominantly Albanian. No one will make concessions, the educational process is blocked and there are tensions”.

In Struga we spoke with two young Albanian girls, one in the 5th and the other in the 3rd grade, and they told us the following; “They are sisters, and they have a younger brother. Their parents have two bookshops in which, apart from stationery, there is Albanian literature only. The elder sister speaks Macedonian and plans to learn English too, because she wants to become a lawyer. There are 36 students in her class, all of them Albanian. There are no Macedonian students. They study history and geography in Albanian and have only one hour of Macedonian a week”.

Another highly controversial issue concerns the legalization of the Albanian university in Mala Recica, which has been operating illegally for more than eight years now. This university has been a source of political capital for all Albanian politicians over the years, and has on the whole invariably been the bone of contention that reflects all controversies between the Macedonian and Albanian communities. Over the years the university has produced hundreds of graduates whose university diplomas are not recognized anywhere and who cannot find a job on the basis of the education they have received there, while another several thousand are currently studying at the said university. At the political level, as well as within the government, there are lengthy disputes about the precise way of legalizing those diplomas, because the Albanians urgently need university graduates to fill the quotas at all levels of administration set by the Ohrid Agreement. Admittedly, our respondents from Macedonia’s educated elite, irrespective of whether they are Macedonian or Albanian, were unanimous about the quality of education at the university in question: “The quality of education is like that in the erstwhile *rabfaks* [lit. “workers” faculties,] educational establishments from the period of early socialism set up to prepare workers and peasants for higher education]: upon graduation they are semi-literate but, on the other hand, politicized to the extreme.” The issue is so delicate that the OSCE and the Dutch Government have appointed a working group to consider the way in which the diplomas should be legalized.

Question from our team: "Is it possible, by means of political and government resolutions, to mitigate confrontation, to reduce the spheres of division and marginalization?" Answer from an Albanian government official: "We have no illusions that we can make people live in brotherly love, but they will have to resign themselves to the implementation of the Ohrid Agreement and the government resolutions because cohabitation and integration have no alternative". Question: "While travelling around the country we have seen many villages where people are completely divided. They are practically segregated, whereas the villages and regions are federated because people obviously feel more comfortable that way. How would you comment on this fact, which exists in real life and not in theory?" Answer: "In a democratic society such as that in Macedonia people are free to choose their way of life. As power-holders we don't intend to create conceptually new people and a new way of life. Our purpose is to create institutional mechanisms that are adequate to the social realities. If multiethnicity is a characteristic of a particular society, we must use institutions to avoid discrimination. And, besides, we must use the laws and their application to build an adequate environment for multiethnic cohabitation".

We got a different answer from an Albanian politician from the opposition: "On the Balkans there is disintegration of multiethnic states in which the three conditions for the functioning of the modern state are violated and not observed: loyalty of citizens, strong economy and liberal democracy. Those three factors are absent in part of the Balkan states. Bosnia is regarded as a multiethnic state. This is simply ridiculous: Bosnia is a zoo with different cages, there is no integration and all ethnic communities have been squeezed into their enclaves. It's the same in Kosovo: ethnically clean territories and barbed wire guarding the entities. On the Balkans there's hypocrisy: in theory, everyone is for multiethnic cohabitation but in practice everyone works for ethnically clean states. In all probability, this will be the fate of Macedonia too".

The Macedonians and the Albanians have their own ways of marking their territory by demonstration of identity. For the Macedonians the ethnic markers are huge Orthodox crosses raised almost across the country, the largest one being a towering metal cross installed on Vodno near Skopje last summer. The Albanians strike back by means of the real demographic ethnic marker. All Albanian or mixed population centres are bustling with life and full of young people. Besides, people are building nonstop: huge Albanian houses, most of which have not been plastered yet but are full of people. Obviously for the moment this battle of identities is in the Albanians favour, because the large crosses visible from kilometres look quite meaningless and helpless compared to the big houses and large families.

Macedonian bookshops are likewise assigned the mission of demonstrating identity: the window displays abound not so much in books as in bibles, crosses, flags and maps of Macedonia. The titles of the books are also of the

most patriotic type. All taxis display smaller, but more often larger crosses on their windscreens. The crisis of Macedonian identity is depressing.

An Albanian official from the municipal administration in Struga answered our questions briefly: “Albanians and Macedonians can live next to, but not with each other”. Whereas a Macedonian craftsman in the same town said: “The goal of the Albanians is Greater Albania. Ahmeti is a common crook. The Albanians have money from emigration, prostitution and drugs. Our life is hard, we have nothing left. All bad things are their fault.”

That evening we had free conversations in an Albanian coffee shop in Struga: “Want to know what divides the Macedonians and Albanians? Everything: the language, culture, and way of life, parents... Macedonians and Albanians don’t know each other. As regards the Bulgarians, we hold them in high esteem, they read a lot and they are civilized. In Skopje I had fellow students from Bulgaria at the faculty of medicine – they used to read a lot. People who have been to Bulgaria say that the Bulgarians read constantly, even on the bus. Besides, the Bulgarians are hospitable: when an Albanian in Varna asked someone where he could buy bread, the guy handed him his own loaf and that was it, he didn’t charge him anything... Sometimes, to taunt the Macedonians we deliberately tell them that the Bulgarians are by far smarter and more civilized, and they go mad...”

An Albanian intellectual added to the reflections on the vulnerable identity of the Macedonians: “Macedonia has no traditions in statehood, no intellectual elite or political elite, and that’s where the problems come from. Their identity is uncertain – they weren’t Bulgarians. So what if you *are* Bulgarians? You used to be but no longer are. There’s no need to serbianize their language deliberately. I write in four languages and I find it hardest to write in Macedonian, which is my second native language. Because it is made up, both phonetically and lexically. You can’t build a state when you’re afraid of everybody – of the Greeks, of the Bulgarians, of the Serbs, of the Albanians. Those who are afraid of the neighbours can’t build a house.” After a complicated commentary on the quality of politicians in Macedonia, the respondent concluded as follows: “You wanted to know why we’re divided. Because the Macedonians say, “that’s our country” – which is very well, but that’s my country too and I don’t have any other. Albania is not my country. We want the same thing as they do, but it’s impossible for us to come to an understanding. If it wasn’t alarming it would have been comic because both peoples can fit into a single pocket” (i.e. are pocket-sized).

We heard something similar from the currently most popular Albanian political leader when we asked him “how would he identify himself: as an Albanian from Macedonia, an Albanian from Yugoslavia, an Albanian from Western Macedonia, or simply as an Albanian?” His reply: “My country is Macedonia. Here I have a grandfather and great-grandfather... Neither Albania

nor Kosovo are my fatherland. There is one language: Albanian. We don't have problems in communicating, but Alma from your team wouldn't understand what my mother's saying because she speaks a dialect (our colleague comes from Tirana). There are also differences in the traditions and culture, but they aren't significant. We have three religions – Catholics, Orthodox and Muslims – but there have never been religious controversies among the Albanians, irrespective of their religion, because Albanianism is above all. I think Albania is like Germany, Kosovo is like Austria, while Macedonia is like Switzerland. There's nothing to stop anyone from having their own culture and traditions".

In everyday life the passions of incompatibility flare up in fights on buses or in the streets, occasional torching of houses in villages – especially where they would like to stop displaced people from returning and to keep their villages ethnically clean³ – or attacks on police patrols. It is usually Albanians who beat Macedonians, but sometimes it is the other way round.

A Macedonian respondent, a journalist, recounted the following story in horror even though he admitted that he had become radicalized himself: "The victims are usually innocent people. In the centre of Skopje a group of Macedonians noticed a man in rubber boots, and because Albanians usually wear such boots, they beat him black and blue. It eventually turned out that the victim was Muslim. Shame on them! Shame also on those who torched mosques in Bitolja! This is the dark Macedonian side from the war. But there's also a dark Albanian side from the war".

THE OHRID AGREEMENT: THE PEACE TREATY THAT CAN SPARK ANOTHER WAR

All our discussions in Macedonia with politicians, intellectuals and members of the public – both Albanians and Macedonians – sooner or later boiled down to commentaries, reflections and disputes on the Ohrid Agreement.

The Ohrid Agreement consists of ten sections. The main principles underlying the fragile peace between the two large ethnic communities are several:

- Renunciation of the use of force for achievement of political goals;
- Building a multiethnic Macedonian society by extending the rights of the Albanians;

³ For the moment (April 2003), in Macedonia there are 8,000 displaced Albanians who have not yet returned to their homes, and 3,000 displaced Macedonians. People are returning in the Tetovo region, whereas in the Kumanovo-Lipkovo region and Aracinovo there are problems with their return because of the traumas of the war. The Macedonians are living in collective centres and are afraid to return. The Albanians are staying with relatives until their houses are repaired.

- Preserving the borders and territorial integrity of the Republic of Macedonia;
- Constitutional amendments declaring Albanian the second official language in municipalities with more than 20% Albanian population and allowing its use in Parliament, etc.

The Ohrid Agreement guarantees the Albanian minority, which according to the 1994 census comprises approximately 23% of Macedonia's population, proportional representation in the public administration, army and police. In essence, this Agreement must serve as a basis for an entire system of institutional changes designed to create a functioning multiethnic society in Macedonia.

We questioned all respondents about the results of the latest census, held in 2002. We were told by respondents even at the highest parliamentary and government level that the results were not ready yet and that they did not have the practice of taking a preliminary two-percent sample. The anticipation of the release of the census results, which we believe might be delayed because of strategic and tactical considerations, gives rise to significant tensions and various myths in society, e.g. that the Albanians have exceeded 40%. Depending on the respondents, this mythical percentage varied drastically up or down. An Albanian respondent from Struga said: "I know the results for Struga only, because the census-takers are friends of mine. In the previous census in 1994 the Albanians in Struga and the municipality were 40%, but now in 2002 census they exceed 60%. There is probably a similar increase throughout Macedonia".

It would be much more advisable to release preliminary data, thus bringing clarity and defusing tensions in society.⁴

In 2001-2002 the Albanian political leaders and the Albanian community as a whole were happy about the Ohrid Agreement, reached through the use of military force, their commentaries ranging from moderate to extremist: "For the Albanians the Ohrid Agreement opens a broad opportunity for the actual federalization of Macedonia"; "We have achieved more than we ever hoped for"; "The Albanians will now have 4,000 policemen, 3,500 soldiers and officers, and more than 18,000 people in the public administration"; "Ohrid has laid the beginning of the solution to the Albanian problem..." In 2002 the agreement was condemned only by the ANA (Albanian National Army), which identified as its goal the secession of Western Macedonia and its unification with Kosovo – a goal renounced as extremist by the legitimate Albanian factors.

⁴ A Macedonian respondent cited a reporter from *Frankfurter Allgemeine Zeitung*, according to whom the census was genuine and the Albanians did not exceed 20%. This figure seems unrealistic even to the most radical Macedonians, who think that the Albanians are 23%, the same as the published data from the 1994 census.

On the whole, the Albanians were consolidated for the purpose of achieving their goals: to isolate the extremist elements and to motivate the Albanians to unite around legitimate Albanian political actors. On the very eve of the elections the Albanian bloc fell apart because partisan passions, personal hostilities and economic interests took the upper hand.

In the same period, except for some politicians and experts, the Macedonians as a whole regarded the Ohrid Agreement as "capitulation, national treason, signed under pressure from the great powers": "Ohrid did not seek a permanent solution to the problem but its postponement in time. This was the signing not of peace but of a truce".

Two years later the attitudes to the Ohrid Agreement have been reversed. The Macedonians are trying to accept it and to adapt to its stipulations, offensive as some of them might be to their national pride. The public realizes that the resolutions and their implementation are in a sense "the bad peace that is better than war." Macedonian politicians and experts attribute the slow implementation of the Agreement to objective reasons: "lack of sufficient financial support, the small number of educated and qualified cadres among the Albanian community, escalation of the Albanian demands in contravention of the Agreement".

Among the Albanian community, however, there is already an opinion that the Ohrid Agreement was an attempt to cheat them that the new power-holders are deliberately resorting to demagogic for the purpose of postponing the implementation of the provisions concerning equality, integration and more rights for the Albanians. We were repeatedly told by Albanians from all walks of life: "Our patience is running out, there will be a new war and this time it will be fought not for agreements but until the breakup of Macedonia or until the achievement of cantonization".

Young Albanians from Gostivar, supporters of Ruli Osmani in the 90s, recalled: "All of Macedonia [i.e. the Albanians] was for him. When he was arrested and we were beaten badly, we blocked Gostivar in his support.⁵ Back then we weren't ready for war and they crushed us easily." Question: "Did you take part in the NLA (National Liberation Army) during the clashes in 2001? And would you fight again now?" Answer: "Yes. We did and we are ready to do so again if necessary. The Ohrid Agreement is not being implemented, therefore in the new war we will demand Albanian cantons and such a development [cantonization] depends 90% on us. We will put up [with the present state of affairs] for another two or three years at the most". Question: "What do you think about a possible unification of Macedonia and Kosovo?

⁵ As mayor of Gostivar Ruli Osmani was the first Albanian politician to hoist an Albanian flag and he was arrested in July 1997. At present Osmani teaches at the University of Tetovo and is a very authoritative figure in the Albanian community.

Would you give your life for a united Albania?" Answer: "That would be good, it's normal for us to unite. I would fight for a united Albania with all my heart".

The loss of confidence in the Ohrid Agreement intensifies radicalization among the Albanians, which is all too welcome for the commanders of the ANA or, as they are known among the Albanians - the newly emerged units of the AKS/ANA (Albanian National Army), which is operating on the territory of Kosovo too, as well as the difficult to identify liberation division "Skenderbeg," whose traces lead to the village of Lipkovo. Part of the ANA leaders is campaigning for continuing the armed revolutionary struggle, and for new military offensives centred in Kicevo. The main political parties in Macedonia claim that the ANA's supporters are too few to cause concern and that they are incapable of launching a large-scale military campaign.

Our team, however, registered growing discontent among the Albanian population, which creates favourable psychological readiness for inclusion in a new military offensive. The young men from Gostivar were extremely resentful about the fact that they had started "studying Albanian history only in the past two years, that until recently they hadn't known anything even about Skenderbeg, that in population centres with an Albanian majority most signs are still in Macedonian, that the Macedonians, even when they are a minority in a given population centre, refuse to speak Albanian although they know the language, that they were university graduates but there were no jobs for them". In conclusion, our respondents in Gostivar declared: "We are ready for the war – we are waiting for orders!"

Our respondents suggested that the most reliable sign of whether there would or wouldn't be a military offensive was the intensified collection of a 3% tax for the *Motherland Calls* fund. The media claim and it is rumoured that the collection of the tax in question has intensified: the political front of the ANA, the Front for Integration of Albanians, had undertaken to collect the tax from the diaspora in Italy, every Albanian passenger of the air carrier SWISS AIR made his or her 3% contribution to the Albanian cause before take-off or landing, etc.

Respondents said that the new Albanian politician and former ANA commander Ali Ahmeti had traveled to Switzerland at the beginning of the year to persuade the elders from the mythical underground strategic Albanian national center to restore their confidence in him, to persuade them that he had not made big compromises and that he was not a "collaborationist," as well as to refrain from launching the military offensive precipitately in late spring 2003.

It is already known that after the experience acquired in 2001, Macedonia has been divided into four operational zones with five military formations to be deployed in the villages of Poroj (central command), Srbinovo, Papradiste, Belica, Lojane and Sipkovica. The names of the new strategists are pronounced with respect: Ekrem Mustafa and Kudri Veseli. We are left with the impression

that there already is an operational action, but that its execution may be expected only when there is a serious occasion for that. The Albanian political leaders demonstrate a high level of adaptability and react depending on the current political situation.

Graffiti in Skopje also suggests what the expectations are: “Branco – Ahmeti – Greater Albania”.

CLERICALIZATION OF ALBANIANS OR POLITICAL USE OF RELIGION?

We asked an Albanian politician and philosopher the following: “In view of the war in Iraq, which we are witnessing at the moment, and the tensions in Macedonia, please tell us something about religion and Albanians.” Answer: “Iraq has confused our Albanian positions considerably. Even Kosovo has lost its charm for the international community and the people there must now resign themselves to the fact that they are a common backwater province. As regards religions, especially Islam in relation to the Albanians, we must realize that intensive processes of clericalization in the world are coming to an end and that they are associated with globalization. In the globalized world of the 21st century there is no place for our petty ethnic disputes. Boundaries will be drawn on a large scale, outlined by the big religions, and everybody must choose which side to take. Us Albanians are in a weak position, because culturally we belong to three religious denominations. Eventually all empty niches in the Albanian communities will be filled by means of clericalization. This could divide us”.

We chanced precisely upon such division among the Albanians in Tetovo when we went to interview people in the Bektaşı centre Arabati Baba *Tekke*. Before we realized what was actually going on, we were pleasantly surprised by the excitement around and in the *tekke*. We told each other that peace is peace regardless, and that its positive impact had promptly increased the activity of worshippers. We quickly realized that we were wrong when we heard the voice of a muezzin rising from the interior of the *tekke* which, according to the tenets of mystic Sufism, is neither a mosque nor has a minaret or calls for prayer. This did not stop large groups of worshippers from lining up on the long narrow terrace of the *tekke* or from filling the hall for ritual contemplation, ready for prayer. They did this five times a day, as one of the *dervișes* explained to us. We were obviously witnessing the takeover of the *tekke* by the Sunnis, above whose gate the flag of the feast *Nevruz* (celebrated throughout the month of *Muharrem* to mark the advent of spring) was still flying, with the typical of the Bektaşı Order white 12-pointed star with a green ritual Bektaşı cap in the centre.

We asked the *Baba* of the *tekke* about the problem with the Sunnis: “They occupied the sanctuary seven months ago, in August. The mufti’s office sent its guards, primitive people who are armed and harass me and the *dervișes* in the monastery, as well as the worshippers who come from all over the country. Some of them have travelled a day or two to take part in our rituals, but they are threatened with weapons, their way is blocked, and they don’t muster the courage to come in for the rituals”.

According to the records and the numerous historical and cultural anthropological studies conducted to date, this is one of the oldest and largest religious sanctuaries on the Balkans, which was built in the Ottoman period and has belonged to the mystic Sufis from the Bektaşî Order for centuries. The Law on Denationalization of Property in Macedonia has not yet entered into force in the case of this particular *tekke*, although the lawyers of the Order have been negotiating with the authorities for almost four years now. The *Baba* thinks that the Sunni Muslims might have occupied the *tekke* to assert a *status quo* once denationalization proceeds.

The *Baba*, his *dervișes*, and the women caring for the *tekke* were all upset, especially after the brutes in the *tekke* courtyard threatened us with weapons too: “In Macedonia there is no rule of law, no one comes to throw out those primitive folks, the institutions are not doing anything. At present a kind of primitivism with no precedent in any Balkan land reigns supreme.” We still want to know what kind of people are these – people with whom even we who are professionally trained to talk with every human being are incapable of engaging in dialogue and are on the verge of being lynched: “Those are remainders of the UCK (NLA), not of the fighters who fought in the mountain but of those who came towards the end to loot and plunder. In 2001 they looted the *tekke* and torched the hotel. They have now opened a coffee shop in the *tekke*. They don’t drink alcohol because they pretend to be Muslim fanatics, but they do other evil things. Islam has remained a primitive faith. At present in Macedonia there are Wahhabites, they can also be found in Albania and in Kosovo, but the official Muslim religious community does not distance itself from them. It tacitly supports them”.

The *Baba*, as well as his *derviș* followers, is especially shocked by the substitution and contempt for the philosophy and meaning of the rituals: “The *tekke* is for Bektaşî rituals, not for mosque rituals. Only Bektaşî participate in the mystic rituals, they alone are qualified to participate in the “*meta*” prayer. This is not a mosque, and there is no mihrab and actually the Sunnis break all their rules. In our philosophy it is important to have eye contact – we pray face to face, and not behind one another as they do”.

Bektaşî from Gostivar who were on a pilgrimage came to bid the *Baba* farewell. They kissed his palm and he told each one “*eyvallah*,” which could be translated as “reverence.” We promptly asked him why they were kissing the

şeyh's palm: "How observant you are," he laughed good-naturedly. "This means that the worshippers respect my soul, the beauty and purity within me, and not the external, not appearances".

We were rescued from the armed guards, on whom we stumbled in the *tekke*, by a police inspector whom the *Baba* called by phone. The inspector on duty was Albanian, he walked us to the car and guaranteed that we would be all right. We, however, were amazed that he did not even take down the names of the armed brutes that had laid siege to the holy place, screaming at and threatening the *dervišes*. But he did take down our passport data.

In the next few days we asked all politicians and ministers whom we met to take care of the *tekke* as a cultural monument and of the life of the *Baba*, because we realized that greed and the desire to impose a form of religious extremism had placed the *şeyh* and the Bektaşî Order and its *dervišes* at enormous risk. All promised half-heartedly, and some even made a note to take measures.

Friends of ours, Albanian and Macedonian intellectuals, told us: "Don't expect anyone to help the *Baba*. This is a dispute over significant property and no one will interfere; they will seize everything that belongs to the Bektaşî Order. Besides, this dispute involves covert political interests and a struggle for superiority".

It became entirely clear to us that the struggle of the *dervišes* and the *şeyh* is doomed in advance. Perhaps the Albanian houses of worship in Macedonia should be guarded by the APCs of the multinational forces, just like the Serb monasteries and churches in Kosovo. The only difference is that here they need protection against their own kind, i.e. the Albanians.

Most of our Macedonian respondents were indifferent to what was going on, and a large part did not even know about this economic-religious dispute even though they were from Tetovo: "This is an internal Albanian affair and we needn't interfere. That's the kind of people they are – there's nothing holy for them as you've seen for yourselves..."

All Albanian politicians without exception claimed that the Albanians have always been united and that there couldn't possibly be religious disputes among them. They tried hard to persuade us that the dispute was "commercial only, and certainly not religious." Our conclusion is clear: as long as it brings certain gains, be they political or commercial, the Albanian politicians and official Muslim community would not hesitate to use extreme Islamic instruments to achieve their goals.

The Bektaşî *tekke* in Tetovo is a true oasis of spiritual peace and calm, of tolerance, goodness and contemplation and, most importantly, it believes in and advocates a philosophy of non-aggression, it condemns aggression and respects every individual, other cultures and outlooks. In Macedonia there is obviously no place for a worldview that affirms universal humane values. That is precisely

why during the communist regime the *tekke* functioned semi-legally, whereas in the 90s, when Macedonia took pride in its newly acquired independence, on the *tekke* premises there were restaurants and pubs in which drunken wedding guests fired guns. Then came 2001, and armed vandals used the *tekke* alternatively as police or ANA headquarters, until they finally desecrated and looted it. The time has now come to dispossess the peaceful Bektaşı Order of the *tekke*, thus obliterating all traces of one of the invaluable religious monuments of understanding on the Balkans.⁶

THE MACEDONIANS

The Macedonians are suffering from apathy and skepticisms. Compared to last year, when they grieved and complained about the Ohrid Agreement, or hoped for revenge – even military revenge, today the indifference of the doomed prevails. The Macedonians harbor no illusions: they are patiently enduring the implementation of the Agreement because whatever it might be, it offers hope that the ethnic conflict might be overcome. At the same time, it is clear to everybody that the Albanian demands will escalate and periodically destabilize the country. It is also obvious that the Agreement might also serve as a good excuse for a new military offensive, when a decision for launching such an offensive is taken on the grounds that its provisions are being violated or that its implementation is being delayed deliberately.

The Macedonians also feel uncomfortable on the foreign policy plane, i.e. in relation to the neighbours: with Greece they are still disputing the name of the country; with regard to Bulgaria there is an, albeit hidden, identity complex about the historical legacy and language; with Serbia relations are extremely strained because of the problem of the independence of the Macedonian Orthodox Church; with Kosovo they have constant problems concerning the border, as well as concerning control over people trafficking and smuggling.

A respondent who is a junior aide in the ruling political party said: "Life shows that the Macedonians and the Albanians have lived separately both before and after the war. We are now witnessing ethnic differentiation and capsulation: Macedonians are being driven out of the regions with a compact Albanian population. Macedonians are selling their houses and moving

⁶ Arabati Baba *Tekke* was built and extended from 1773 to 1854. Numerous travelers and Orientalists have described the *tekke* as an architectural and spiritual achievement: the French traveler Ami Boué, the German scholar V.W. Hassluck, the Turkish scholars and travelers E. Ayverdi and N. Bilmenoglu, and many others. The *tekke* was renowned for one of the richest libraries in this part of the Balkans: philosophy, religion, poetry, music and literature. Today the *tekke* in Tetovo is the largest surviving architectural complex of its kind on the Balkan Peninsula.

eastwards. It is a pure illusion to assume that a multiethnic Macedonia is possible in practice”.

A young activist from the opposition VMRO-DPMNE expounded his own view: “A large part of the blame for the crisis with the Albanians lies with the President, who behaved as a nongovernmental organization rather than as head of state. He did not send the army against the terrorists, whereas the police were inadequately trained and weak. Us people from the two main parties succumbed to partisan passions instead of working together to deal with the crisis. We should have united against the Albanian aggression, but it didn’t work out because all the ex-communists cared about was our failure and they deserted, pouring scorn on us. Now it is impossible for the SDSM and VMRO to unite against the Albanians, who will naturally demand more and more. Their purpose is not to defend human rights but to separate Western Macedonia so that they can live by their own rules, which rules are to live against the law”.

According to a respondent who works for the International Organization for Migration, women trafficking and transiting is hardest to control precisely in the regions in Western Macedonia with compact Albanian populations.

Police are incapable of conducting operations there for fear not to provoke some tension among the Albanian majority and that is why the presence of enslaved girls from Bulgaria, Moldova, Romania, Albania and elsewhere cannot be controlled or restricted. The victims of trafficking who have ended up in this part of the country have little if any chance of being rescued and transferred to rehabilitation centres or repatriated, as is done periodically in other parts of Macedonia.

CONCLUSIONS

For objective reasons the field diary on Macedonia in spring 2003 is shorter than the previous ones. That is because this time the team, which has been following the developments in Kosovo and Macedonia for five years now, did not register manifold opportunities, individual and public plans and prospects that could be analyzed, discussed and used as a basis for a constructive policy.

For the first time the scholars on the team – who are in principle trained to identify all overtones, to hear the voices of even the most marginal strata, to analyze projects on the future developed by eccentric intellectuals and scandalous politicians, and not to miss the opportunity of building realistic but also optimistic theories about the future – were confronted with a black-and-white snapshot of society in Macedonia:

1. The Macedonians have developed fatalistic attitudes and have sunk into apathy: there is no longer any patriotic fervour, or hope for an optimistic

future as a nation and state. In fact, the Macedonian public is already becoming used and reconciled to the federalized structure of the territory, as well as of political, economic and public life in the country.

Among the Macedonian public there is widespread demographic, political, geopolitical and economic pessimism. The Macedonians feel that, in all spheres, they are gradually being ousted in an unknown direction.

Psychologically, the outside observer is left with the impression that the Macedonians have distanced themselves from their own country and from everything that is happening in and to it, as well as to them as individuals and communities. They are as if watching themselves from the sidelines, expecting the final result.

2. The Albanians are self-confident, their life is normal, calm and optimistic. They are in no doubt that the future is theirs. They are advancing slowly but surely in all spheres of life: demographic, political, economic and social.

The Albanians no longer hesitate to declare that Macedonia is their motherland and that they have no other. They are calmly expecting a certain type of decisions from their leaders, politicians and centres abroad – they are ready for peace and they are also ready for war. They are ready to work hard, but they are also ready to take part in trafficking. They are ready to live in their places of birth divided regionally, and they are ready, if necessary, to cooperate for unification of different territories populated by their compatriots. The Albanians are very young and are in a constant state of readiness.

3. The most unexpected conclusion that we had to make after our fieldwork in Kosovo and Macedonia was that on the Balkans at the beginning of the 21st century natality is just as effective as a weapon as biological weapons.

All respondents, friends or colleagues we spoke with invariably brought up the subject of high birth rates or negative growth rates. The subject of natality or the absence of natality haunted us throughout our travels. *This* is the factor that will change the Balkans (including borders) in the next five to ten years, and probably this is a factor that will also change Europe and the US.

REGIJA – ISHODIŠTE ALBANSKOG I SRPSKOG SPORA¹

JOVAN ŽIVKOVIĆ

Jedno od najaktuelnijih podneblja sa savremenim negativnim reperkusijama kakvi su etnički konflikti jeste i geopolitički prostor Kosmeta/Kosova. Već sa dvojnim navođenjem na koje se podneblje misli, sugeriše se da je reč o prostoru koji odslikavaju *namere* dveju vodećih etničkih zajednica – albanske i srpske. Struktura stanovništva i postojeća pravno-politička ustrojenost ovog lokaliteta čini ovu sredinu posebno kompleksnom. Kosmet/Kosovo je dom Albanaca (okvirno oko 1.2000.000), Srba – iznad 125.000 (pre NATO – intervencije oko 450.000, kada je Albanaca bilo do 800.000), Roma – sada u zanemarljivom broju, a nekada iznad 70.000, te nepoznatog broja Turaka, Goranaca, Aškalija, Egipćana i drugih. Dodatna specifičnost je i to što je Kosmet/Kosovo Pokrajina Srbije (od istorijske i kulturne važnosti za Srbe) čiji status albanska populacija intenzivno nepriznaje nekoliko decenija, a već više od četiri godine je pod protektoratom OUN. Ne manje važna je činjenica da se nakon NATO – bombardovanja SRJ ovaj deo teritorije etnički podelio na dva dela (budući da su Srbi etnički gotovo očišćeni iz dela koji se naziva Metohija, ali i ostalih područja – osim severnog dela), tako da je prema sadašnjem stanju ovaj prostor po pitanju sprovođenja interkulturalnog koncepta doveden u pitanje. I na kraju – što povećava složenost situacije, važnu ulogu igra i geostrateški položaj ovog lokaliteta, jer je Albanija – kao matica kosmetsko-albanskog stanovništva u neposrednom okruženju, a za Srbe je Kosmet neotuđivi deo Srbije – nad kojim je privremeno izgubljen suverenitet. Posebno je težak položaj izbeglih Roma, Goranaca, Aškalija i Egipćana, koji su tu u pravom smislu manjina i bez ikakve zaštite i mogućnosti da se vrate u svoje domove.² Dakle, ako bi negde, da tako kažemo, trebalo primeniti standarde demokratskih dostignuća po pitanju saživota višeetničkog sastava – onda je to ovde, tim pre što je na delu više nivoa primordijalne svesti spremno na akcije koje podrazumevaju sve što sublimira sintagma „prirodni op-

¹ Rad je deo šire studije urađene u okviru projekta (1310) *Kulturni i etnički odnosi na Balkanu – mogućnosti regionalne i evropske integracije*, koji se izvodi na Filozofskom fakultetu u Nišu, a finansira ga Ministarstvo za nauku i tehnologiju Republike Srbije.

² Primer je situacija u kojoj se našlo oko 600 Roma, koji nisu mogli/smeli da se vrate na Kosmet i to što nijedna druga zemlja nije htela da ih primi kao izbeglice. Tek ovih dana ta grupa je dobila dopuštenje da se razmeste po Makedoniji (Prema: Danas, 11. 08. 2003, str. 2).

stanak”. Radi načelnog raspoznavanja problema – spor se nalazi na razmeđi tradicionalnog tumačenja rešenja: Albanci nastoje da etničkom zastupljenosću ostvare legalitet postizanja državnosti nad teritorijom, kao jedini vid sticanja identiteta i slobode naciona, naspram Srba koji (vekovima) priznatom državotvornošću brane teritorijalnu jurisdikciju i pravo na konstitucionalno utemeljeni identitet. Rešenje se neće tražiti, svakako, izvan postojeće prakse, ali ni ispod dostignutih civilizacijskih standarda savremenog vrednovanja položaja etničkih zajednica.

Međutim, zbog nejasno definisanog minimuma principa aktuelnim pitanjima ovog podneblja počela je da se bavi i međunarodna zajednica. Glavna dilema je konačni status Kosmeta/Kosova, koji se razapinje se između Kosova „nacije-države” i Kosmeta sa širokom autonomijom i labavom srpskom jurisdikcijom. U značajno suprotstavljenim konceptima zaboravlja se da su i ljudski životi, mir i tolerancija prva strana svake „istorijske gužve”, a koje zastupa i svaki pojedinačni interes.

U susret „odluci” apostrofiramo relevantnu praksu i nastupe u okruženju, najpre, ne bi li ukazali na okvirne pristupe za rešavanje ovog pitanja koje se nalazi između državnog suvereniteta i kolektivnih etničkih prava.

1. PRAKSA U OKRUŽENJU KAO ISHOD DOMINANTNE PARADIGME

Stavljujući u drugi plan argumente albanske i srpske zajednice, kao moguću jednostranost parcijaliteta, uvid u empiriju iz okruženja ukazuje šta je na opštem nivou realni pravac razvoja. Iz izjava i napisa zvaničnika međunarodne zajednice, ali i same kosmetske iskustvenosti, možemo da pratimo nagoveštaj ishoda rešavanja pitanja statusa Pokrajine.

a) Kako suverenitet država nije ukinut već ograničen³ – što je fokusno mesto savremene političko-pravne paradigme razvijenih demokratija, to je i za zemlje bivše SFRJ značilo da će zadržati po avnojevskim šavovima davno inaurisan vestfalski koncept državnosti, te da je većinski narod subjekt teritorijalno-državne omeđenosti. Tako Hrvatska postaje država većinskog naroda, Slovenija slovenačke populacije, a BiH po Dejtonskom sporazumu postaje država sa tri konstitutivna naroda. I Rumunija je nedavno, odbijajući inicijativu mađarske manjine o svome drugačijem statusu, ostala na poziciji da državotvornost gradi

³ Kruti nacionalno-državni suverenitet se uspostavlja u 19. veku na osnovama liberalne političke teorije. „Po ovom principu svaka ‘nacija’ ima pravo da sobom upravlja; svaka nacija bi čak trebalo da se vaspostavi u formi nacije-države – organizacije koju odlikuje nacionalni suverenitet. Unutar današnjeg svetskog društva, teško da ima prostora koji nije obuhvaćen nadležnošću ove ili one države” (J. Habermas, *Postnacionalna konstelacija*, str. 148).

rumunsko stanovništvo. Ako se zna da Bugarska nema valjani zakon o manjinama i da je Makedonija zaokružila državnost, u kojoj su Albanci legitimisali konstitutivni status učešćem u političkom životu, evidentno je da ograničeni suverenitet funkcioniše, pošto nema prepreke da svaka od ovih država uđe u evropske integrativne procese. Ideja o regionalizaciji koju zastupa EU radi daljeg unapredavanja ljudskih prava (pre svega u interesu manjina i drugačije zaokruženih celina) nije i koncept kojim se potpuno anulira suverenitet državotvornog statusa bilo koje već priznate države, ali je i međurešenje u prevazilaženju krutog državnog suvereniteta.⁴ U ovom kontekstu nagoveštava se i status Kosmeta nagoveštava, tim pre što je suverenitet SCG preciziran stavom 11 Rezolucije br. 1244 SB, a pogotovo Dodatkom 2, tačka 8, koja utvrđuje da se „Politički proces u pravcu uspostavljanja privremenog okvirnog sporazuma koji obezbeđuje značajnu samoupravu Kosovu”, oslanja na „puno poštovanje sporazuma iz Rambuja i načela suvereniteta Savezne Republike Jugoslavije i ostalih država u regionu ...”. Ono što bi još trebalo ustanoviti odnosi se na status Kosmeta unutar državnog prostora. U suprotnom „film pušten unazad” (H. Kisindžer) iznova će otvoriti problem granica Zapadnog Balkana (BiH i bližih i daljih područja), a što ne bi bilo samo prosto vraćanje u 19. vek.

b) Pored nedavne izjave H. Kisindžera da „Kosovo klizi ka nezavisnosti” i prejudiciranja Dž. Soroša i R. Holbruka – da vide Kosovo kao državu, na šta nije reagovano iako nijedan od zvaničnika nije usputna ličnost, predstavnik Unmika, je i predloge N. Čovića srpskoj javnosti šta bi trebalo ugraditi u platformu za razgovor Beograd–Priština–međunarodna zajednica, smatrao „govorom o konačnom statusu Kosova”. Međutim, i pored toga što se „konačni status Kosova neće određivati ni u Beogradu ni u Prištini”, ipak se mora istaći zvaničan stav međunarodne zajednice da ishod rešavanja statusa Pokrajine nije moguć bez sa-glasnosti oba pomenuta centra. Dakle, i ovaj proces je uzajamno-posledičan i zavisan od zainteresovanih strana, ali i od toga što su obe strane ispunile, akcentujući i rad Unmika po Rezoluciji 1244. O duhovnom i materijalnom stanju dela Kosmeta sa albanskom populacijom kazuju analize međunarodnih predstavnika. Radi konstatacije, stoji izvesnim saopštenje komesara međunarodne policije Kosova, Š. Felera, da je u Pokrajini prisutna ogromna trgovina ljudima, jer je policija tokom prošle godine u oko 400 racija u Pokrajini spasila 1.800 žena, da je uhapšeno 280 makroa, a protiv 90 lica je pokrenut sudske postupak. Na Kosovu je u 2002. godini bilo 68 ubistava, 144 pokušaja ubistva, 106 kidnapovanja, 64 pokušaja otmice i 114 silovanja. Bilo je i 463 ozbiljnih napada i 365 pljački.

⁴ U definisanju regionalne države D. Janča ističe da je ona „u suštini međuoblik između dva klasična oblika državnog uređenja: unitarne države i federacije. ...ona spaja izvesne dobre strane i unitarne i federalne države, optimalno vodi računa o posebnostima pojedinih delova državne teritorije i daje im pravo na sopstveno organizovanje, ali ne dopušta mogućnost ugrožavanja državnog jedinstva” u: *Regionalizam, regionalna država i problem regionalnog ujedinjenja Srbije*, Sandžak multietnička regija, str. 40–41.

Zbog sumnje da su izvršili delo ubistva uhapšena su 43 Albanca i dva Srbina. Takođe, po proceni međunarodnog protektorata, do sada je Srbima usurpirano oko 77.000 kuća i stanova, a oko 33.000 ih je zapaljeno ili srušeno. Od nekadašnjih 400.000 Srba koji su živeli u Prištini sada ih živi jedva 170, a u severnom delu Kosmeta ima još 125.000 stanovnika srpske i drugih etničkih populacija. O stanju u regiji može se suditi i prema podacima Koordinacionog centra za Kosmet: „za četiri godine UNMIK šefovanja pokrajinom, tačnije od 10.06.1999 – 10.06.2003. godine, izведен je 6.391 napad na Srbe. Od toga je 1.194 ubijenih, 1.305 povređenih, 1.138 otetih. Od ukupno otetih 155 je ubijeno, 13 je pobeglo, a 95 pušteno na slobodu. Nepoznata je sudbina 863 lica”. Šef sektora za pravosude MUP i za bezbednost Koordinacionog centra za KiM naveo je da je na Kosmetu od dolaska KFOR-a izvršeno 6.360 terorističkih napada u kojima je ubijeno 1.786 osoba, od kojih 593 Albanaca i da su ranjene 1.294 osobe.

Navođenje delimičnih činjenica nije sugestija da je i međunarodna zajednica delom odgovorna za neispunjene misije, i da nije cilj isticanje zle sudbine srpskog življa, već potvrda da je sve ovo tolerisanje genocida! Njegovo predstavljanje kao frustrirane reakcije Albanaca na nekadašnji autoritarni poredak je neprimereno zbog činjenica koje nisu samo čista statistika, budući da su Albanci iz ‘frustriranosti’, po rečima i H. Kisindžera, „etnički očistili preko 200.000 Srba sa teritorije nakon pobeđe NATO”, tj. da je uzrok takvoj statistici tekst od koga se niko nije ogradio. Indikativnost štiva iz lista „Koha ditore” (od 04.03.2003) je u tome što se povratak prognanih Srba, koji na Kosmetu imaju ličnu svojinu, podvodi pod „kolonizacioni korak” i nameru „da se izvrši rušenje kosovskog integriteta”. Koristeći preporučen stepen rigidnih mera protiv Srba, on predstavlja politički koncept albanskog etnosa u narednom periodu. Autor teksta, izvesni Piter Rogel, sistematizuje nastupe prema povratnicima kroz: (1) nadgledanje srpskih sela duž granice sa Srbijom, (2) opstruiranje gradnje i obnovu srpskih kuća i (3) korišćenje legitimnog prava na njihovo rušenje. Istovremeno, (4) Srbi koji dolaze nemaju pravo na život na Kosovu i zato su legitimne mete za napade, a (5) stanovnici srpskih sela uspostavljenih radi kolonizacije treba da žive u strahu. Dodatni zadatak je da (6) srpska sela uz srpsku granicu treba odvojiti od Srbije, a ako su već povezana sa Srbijom te veze treba preseći, te da (7) treba opstruirati Beograd da kupuje albansku zemlju. Da bi se zaokružilo vlasništvo, autor preporučuje da (8) Albanci treba da ubrzaju kupovinu srpske zemlje u mešovitim naseljima.⁵ Na fonu ‘instruktaže’ za dalje ponašanje albanskih ekstremista razumljivo je, posle miniranja železničkog mosta na putu Raška-Kosovska Mitrovica,⁶ i javno saopštenje ANE: „specijalne jedinice divizije Adem Jašari digne su u vazduh most na železničkoj liniji koja povezuje *okupirani deo Kosova sa Beogradom*”.

⁵ Prema: Danas, 12.03.2003, str. 2.

⁶ Most je sa ogromnom količinom eksploziva miniran 12.03. 2003. Tada su poginula dva pripadnika terorističke ANA, a njihov identitet nije objavljen.

Ukoliko je ovaj scenario iznenadenje za međunarodnu zajednicu, utoliko se njenim neposrednim delom može smatrati usvojena „Rezolucija o priznavanju Oslobodilačkog rata naroda Kosova za slobodu i nezavisnost”. Umesto da albanska elita sprovodi standarde, usedio je obrnuti proces, jer je „oslobodilačka borba u svim svojim fazama i oblicima bila (postala – nap. J.Ž) politička borba, mirovni otpor i oružana borba vođena od OVK”. Njome se opravdava svako ostvarenje „slobode”, uz ANA i Kosovski zaštitni korpus. Obznanilo se još da je put do „nacije-države” viđen kroz nezavršenu borbu. Zato je Skupština Kosova ratna. Njena opcija nije stvaranje integracionih i demokratskih preduslova, već militantna vizija – stavljanje svetu na znanje da joj je usmerenje rat protiv etniciteta koji su ostali bez potpore u sprovođenju standarda međunarodne zajednice. Akcenat Rezolucije Skupštine Kosova nije na sprečavanju povratka izbeglih, već na tome da se srpski narod odredi kao agresor, pošto se njome definiše „opravdanim svaki otpor prema srpskom agresoru”. Zato se može smatrati da je albanskoj eliti odgovaralo tvrđenje da su joj autoritarnim režimom bila ugrožena kolektivna prava, budući da je samo postojanje Srba njen suštinski protivnik. Dakle, skupštinska odluka izraz je jasne albanske namere stvoriti što čistije etničke teritorije. Orientacija prema monoetničkom društvenom obrascu toliko je jaka da se prihvata prkošenje međunarodno ustoličenim principima. I „po pravilu”, kako reče V. Zimerman, „nacije-države nemaju ništa što bi ih ujedinilo, osim nacionalizma”.⁷ Navedeno potkrepljuje A. Demaći: (1) „Albanci ne žele da budu građani Srbije i to je ono što bi ponovo moglo dovesti do krvoprolića na Kosovu”; (2) „A, ako Srbija bude želela pošto-poto da zadrži Albance, biće opet velikih problema, belaj će biti za Srbiju”.⁸ Dati iskazi su sublimirana pretpolitička volja sa „vraćanja filma”, kada je pozicija prvog tražila svaki vid žrtvovanja, pa i smrt, kao mogući ulog u ispunjenje *žudnje*.⁹ Drugom indoktri-

⁷ Voren Zimerman, *Problem mentalnih granica*, u: Danas, 09.12.2002., str. 19.

⁸ Prema: Blic nedelje, 20.04. 2003, str. 10–11 i Novosti, 13.05.2003, str. 2.

⁹ Intencije Albanaca Kosmeta fokusiraju se na pojam slobode, ali kroz nezavisnost i sticanje teritorijalne državne zaokruženosti. Međutim, smatrajući da nema slobode izvan sticanja državnog subjektiviteta (što odgovara stvaranju institucije države 18. i 19. veka), tj. da se politička priznatost može da ustanovi jedino kroz državni okvir kao samostalni oblik (kroz pounutražnjenošću) kojim se garantuje svako postojanje, istaknut je samo pretpolitički normativni aspekt društvenog organizovanja ili takav vrednosni pristup koji odgovara vremenu pre donošenja *Univerzalne deklaracije o ljudskim pravima*, pošto je od tada obezbeđena subjektivnost na civilizacijskom nivou, nezavisno od svesti pojedinaca i kolektiviteta. Dakle, navedena vrednosna orientacija albanske volje ne odgovara ni liberalnom vremenu stvaranja nacionalnih državnih ekonomija, kojima se štiti nacionalni interes sa svih aspekata. Da je i taj koncept bio otvoreniji, odnosno da i za tu vrednosnu paradigmu drugost nije izvan celovitosti sistema i da je deo zadatosti ostvarenja modernog duhovnog horizonta, Hegel je napisao: „Pojam ostvarenja samosvesnog uma, da u samostalnosti drugoga vidi potpuno jedinstvo sa sobom, – ili da ovu od mene zatečenu slobodnu predmetnost (Dingheit) drugoga, koja je negativitet mene samoga,

nacijom postiglo se da „biti građanin Srbije” albanska strana ne shvata samo kao potčinjenost, već i „ne biti gospodar tetitorije, svih društvenih odnosa i regulativa, svake običajnosti i, na kraju, života i smrti”. Samo broj nestalih od dolaska Unmika – pogotovo žena i nejači, dokaz je surovo shvatane suverenosti, pa ma koji nivo ljudske svesti da je deo tog čina.

2. SUSRET „POLITIKE SVRŠENOG ČINA” I VESTFALSKIH PREROGATIVA

Pošto je međunarodna zajednica suspendovala Srbiji suverena prava, obezbeđujući prava kosmetskim Albancima da izadu iz sistema autoritarne vlasti u vreme Miloševića, to im je pružilo dodatnu nadu u realno ostvarenje samostalne „nacije-države” – Kosovo. Naspram nade da je priznanje samostalnosti samo pitanje vremena, došle sa NATO- intervencijom, usledio je i drugačiji pristup – koji se oslanja na konzistentno priznanje „države-nacije” *politikom konzenzusa*. Takav pristup međunarodne zajednice dodatno inicira dva međusobno prepletena nivoa, čineći veoma složenim zapadnobalkanski čvor.

a) Prvi prilaz pitanju ishoda statusa Kosmeta razaznaje se u politici „svršenog čina”. On obuhvata ne samo nerealizovane obaveze iz Rezolucije 1244 (sprovođenje tačaka iz delokruga obaveznih standarda), za šta je blago reći da je nedopustiva manjkavost, već i neadekvatno reagovanje zvaničnika na neposrednu praksu albanske većine. U tom smislu indikativno je: (1) usvajanje *Rezolucije o priznavanju Oslobođilačkog rata naroda Kosova za slobodu i nezavisnost*, jer se OVK reafirmisala i tako anulirala zabrana ANA; (2) da se *Uredba o privatizaciji društvenih preduzeća* (13.05.2003) – na 99 godina, smatra pravim principom tranzicije, bez učešća Beograda nakon višedecenijskog ulaganja i dogovora sa Unmikom; (3) da K. Anan u aprilu kritički reaguje na situaciju u Podkrajini: „Zastršivanje, pretnje i nasilje upereno protiv manjina se, međutim, i dalje događa, sa ciljem da se manjinsko stanovništvo obeshrabri da učestvuje u javnom životu”, da bi krajem juna, kada je M. Štajner podneo izveštaj SB, očena bila suprotna: „došlo (je) do povećanog povratka izbeglica” i da je „zakonodavstvo na Kosovu usaglašeno sa međunarodnim zakonima uz poštovanje standarda o ljudskim pravima”. Ovaj obrt izaziva utisak da se radi o drugom podneblju, jer su u to vreme izvršena ubistva u Lipljanu i porodice Stolić; (4) formiranje *Saveta za prenos ovlašćenja monoetničkog sastava*, uprkos tome što od 8 tačaka osnovnih standarda ništa nije zaživelo; (5) dopuštenje Unmika da se izglaša *Izborni zakon* za 2004; (6) Štajnerova saglasnost da *Krivični zakon* i *Zakon o krivičnom postupku* pređu u nadležnost Skupštine Kosova, dva dana pre njego-

ima za predmet moju zasebicu, – ima uistinu u životu jednoga naroda svoj dovršeni realitet” (Hegel, *Fenomenologija duha*, str. 195).

vog napuštanja položaja predstavnika UN i posle podnošenja izveštaja SB; (7) sklapanje sporazuma o slobodnoj trgovini sa Albanijom i pozivanje pravne službe UN na „autoritet Unmika”, kao pravno valjani subjektivitet u sklapanju trgovinskog međudržavnog sporazuma; (8) zašto nije raspušten *Kosovski zaštitni korpus* posle četiri godine prisustva međunarodnih snaga; (9) da se ne realizuje istinski i proverljiv multietnički sastav policije; (10) nepokretanje optužnica pred Haškim tribunalom i za kosovske Albance koji su počinili zločine; (11) da Kfor nema nijedan rešeni zločin nad Srbima; (12) nevrednovanje stavova međunarodnog ombudsmana za KiM Antonija Novickog (pogotovo treći godišnji izveštaj), uprkos tome što su izveštaji česti i javni; (13) neizveštavanje delovanja ANA, pa se ima utisak da je Kfor suzbio terorističko delovanje; (14) odbijanje Unmika da se isporuči optuženi Š. Musliju; (15) vrednovanje stavova pojedinih međunarodnih zvaničnika da se izjašnjavanje jedne populacije za samostalnost unutar regionalne koncentracije kao značajne većine smatra dovoljnim legitimitetom za formiranje samostalne države, uprkos ustoličenim međunarodnim pravilima i standardima i (16) da se u okruženju kod srpskog etniciteta nadanahronim smatra i najmanja razborita briga za teritorijalno zaokruženje.

Pitanje jesu li navedene anomalije dovoljne da se shvati da treba „menjati mentalne granice – ali ne na mapama”,¹⁰ jeste pitanje koje ostaje pred nama, kao što je znatno ranije napisao V. Zimerman.

b) Izlaz iz balkanskog sunovrata sugerije se, s drugog aspekta, kroz poštovanje prava suverene „države-nacije” – sa uvaženim vestfalskim prerogativima, pošto je potpisnik Dejtonskog sporazuma i direktni partner NATO u prelomnom trenutku međunarodne humanitarne intervencije. Relevantnost subjektiviteta u međunarodnoj zajednici vidan je u otklanjanju autoritarnog sistema, što je bio osnov akcije NATO i saveznika, *univerzalnom humanitarnom intervencijom*. Njen povod je bio ugrožen položaj ljudskih prava albanske populacije, a uzrok totalitarna vlast države sa demagoškim vokabularom o slobodama i ravnopravnosti, pogotovo za manjine. Uoči NATO-akcije SAD poručuju srpskom narodu: „NATO saveznici podržavaju Kosovo kao deo vaše zemlje”, dok će „sporazum garantovati prava svih naroda na Kosovu – etničkih Srba kao i Albanaca na Kosovu” (prema: H. Kisindžer, „Da li je Americi potrebna spoljna politika”). Ovim pristupom SAD su ispoštovale princip moralnog u *Vilsonovo doktrini*, izražen u zaštiti ljudskih prava i odbrani koncepta multietničnosti, ali se i pridružile članicama EU u *politici konsenzusa*, što predstavlja poštovanje OUN, finalnog akta KEBS iz Helsinkija, nastalog iz stava Badinterove komisije o nemenjanju državnih granica, Rezolucije SB UN 1244, dogovora iz Rambujea i Kumanovskog vojno-tehničkog sporazuma, uz isticanje celovitosti države, ali i novostičenog statusa SCG u OUN kao njene članice – po kojoj je Kosmet savstveni deo Srbije.

¹⁰ Voren Zimerman, *nav. delo*, str.19.

Apel A. Demaćija na svest srpskih političara da zanemare fakticitet ute-meljenja Srbije i omoguće samostalnost Albancima na osnovu izjašnjavanja kao jedinog legitimnog prava (kao uslova za pomirenje s Albancima), previđa da uvažavanje apela nije deo volje političara, tj. da je ona izraz strukturisane sagla-snosti svih članova zajednice, takođe životno zainteresovanih za karakter pravne i političke sigurnosti. Legitimitet nije samo stvar nečije želje,¹¹ već izraz stica-nja kredibiliteta kroz institucije pravno ustoličene procedure. Treba podsetiti i da se legitimitet priznaje kada postoje instrumenti za ostvarenje interesa svakog sloja, grupe i bilo koje drugosti. I. Valerstein potkrepljuje ovaj pristup ističući da je „legitimitet rezultat dugoročnog procesa koji obuhvata centralnu komponentu ubedivanja posebne vrste: ubedivanje onih koji u kratkoročnom periodu stoje loše da će im, u nekom dugoročnom periodu, biti bolje i to baš zbog strukture sistema, te da zbog toga treba da podrže kontinuirano funkcionisanje sistema i njegov proces odlučivanja“.¹² Apostrofiranjem strukturisanosti društva osvetlja-va se, još jednom, razlog zbog kojeg se insistira na potrebi implementacije de-mokratskih standarda, odnosno zašto se ne bi prvo priznala „nacija-država“, što bi po A. Demaćiju trebalo uraditi. Međutim, imajući u vidu da se na Kosmetu sučeljavaju *prirodno* i *ugovorno pravo*, te da reperkusije u praksi, obrazložene takvom matričnošću, mogu da budu i novi sukobi i još veće žrtve – što otvara potrebu da se zađe u pravo definisanje osnove iz koje se deluje, međunarodni faktori nagoveštavaju da bi jedino moguće rešenje bio regionalni princip organi-zovanosti.

3. OSNOVA DELOVANJA ALBANSKE VOLJE

a) Shodno navedenoj praksi na kosmetskoj društvenoj sceni i izjavama predstavnika albanske populacije, nakon što je Srbiji anuliran suverenitet nad Pokrajinom, evidentno je da je na delu maksimalistički zahtev – *nezavisno Kosovo*. Uprkos tome što je ista opcija dominirala kod Albanaca i u vreme autori-tarne vlasti, nakon njene promene volja ka samostalnosti dolazi potpuno do iz-ražaja – pošto poseduju i vojnu silu u liku nerasformiranog *Zaštitnog kosovskog korpusa* i njen paravojni deo ANA. Ako se ovome doda započeta izgradnja društvenih institucija sa monoetničkim sastavom ili majorizacijom većine (Skupština Kosova), evidentno je da kosmetsku albansku populaciju ne zanima

¹¹ Na ovaj momenat o postupku priznavanja nacije-države poziva se i J. Habermas: „Definišanje te jedinice je izvan domašaja za većinsko odlučivanje: ‘Sam većinski princip zavisi od prethodnih pretpostavki o toj jedinici: da je jedinica unutar koje će on funkcio-nisati i sama legitimna, i da pitanja na koja se primenjuje potpadaju pod njegovu nadle-žnost’“. (prema: Habermas, *nav. delo*, str. 148).

¹² I. Valerstein, *Utopistika ili Istoriski izbori dvadeset prvog veka*, Republika, Beograd, str. 7.

nikakva veza sa Srbijom, ne vrednujući to što je sadašnji karakter vlasti u njoj priznata demokratska opcija i što su u primeni već mnogi zakoni, među njima *Zakon o zaštiti prava i sloboda manjina* i pripreme za novi Ustav Srbije koncipirani na decentralizacionoj/regionalizacijskoj osnovi.¹³ Jednostavno, *albanski etnos želi svoju teritoriju na kojoj će on imati suverenitet*, bez obzira na to šta o tome misli, šta oseća i u kakvom je položaju narod koji nad tom istom teritorijom ima već stečeni legitimitet. Odnosno, prema zahtevu nacionalnog oslobođenja albanskog etnosa ne teži se konvergenciji participacije i saživota u okviru srpske pravno-političke ustrojenosti i kada u njoj ima visoku autonomiju. Koji su to razlozi na kojima se gradi svako odbijanje života pod istim pravno-političkim utemeljenjem? U osnovi стоји kategorija *naroda i njegova prepostavljena prava* kojima se potražuje *zamišljeni status suvereniteta*, suprotno savremenoj paradigmi kojom se uz ograničeni državni suverenitet čini iskorak iz anahronog saodnosa pripadnika naroda omeđenog državom-teritorijom i građanina (ili etničke grupe) koji uz slobode/oslobodenosti jurisdikcije državnog aparata postaje uistinu slobodna i nezavisna ličnost/etnički kolektivitet. Šta se kroz odbranu *opstojanja pojma naroda* prenebregava na tragu njegovog ovapločenja, objašnjavajući i funkciju naroda – time postaje i pravo pitanje, shodno stepenu konfliktnosti koji se, osiono kao nikada, oslanja na terorističku aktivnost.

b) U dolasku do subjektivnosti moderna ispostavlja kategoriju naroda, koji kroz „prirodno pravo” obezbeđuje samoodržanje, što obuhvata pravo na svaki vid otpora, opstanka radi. Institucija države potom postaje okvir kojim se opstanak operacionalizuje i, uspostavljajući „ugovorni odnos”, uzdiže iznad svake drugosti – pojedinca, grupe, etničke i/ili verske zajednice, sloja, klase. Većina stanovništva, uprkos pripadnosti različitim i ne retko suprotstavljenim društvenim segmentima, prihvata državu kao instrument svoje zaštite kao naroda – kategorije kojom se kroz identitet, istoriju, kulturu, običaje i simbole stiče sigurnost u neposrednom okruženju i svetu u celini. Dužina trajanja ovakve ustro-

¹³ Istraživanja sa Kosmetom pod albanskom većinom su retka i nedostupna – osim kratkih napisa u dnevnoj štampi. Ali, iz onoga što se moglo saznati o stavu javnog mnjenja prema Srbiji ili SCG sledi da je saradnja moguća i, štaviše, potrebna, ali tek nakon utvrđivanja samostalnosti Kosova. Do tada postoji ogromna predostrožnost, zbog straha da bi mišljenje Beograda moglo da se ispostavi relevantnim za status Kosova. Zbog toga bi to bilo i najgore moguće ishodište po Albance – pa se i ispitnici izjašnjavaju da sa srpskim političkim centrom nemaju više ništa zajedničko. Time se nagoveštava i stav da albanska populacija ne bi želela da bude u bilo kakvoj vezi sa Srbijom, smatrujući da sada predstoji period izgradnje samostalne države. Sa tih pozicija Evropa nije, kao što su SAD, po ukusu albanskog mišljenja, potencirajući da su SAD oslonac koji im daje propulzivnost ka konstituisanju *nacije-države*. Už takav pristup ide i verovanje da SAD imaju poslednju reč o uređenju geopolitičkog prostora Zapadnog Balkana, ali i da je EU načinila dosta propusta prema Albancima. (Za prikaz vrednosnih stavova korišćena su dva napisa u listu: Danas od 4–5.01. i 10.04. 2003. godine).

jenosti sveta i njegovog funkcionisanja – kroz sintagme „krv i tle”, „vlasništvo”, „samobitnost”, „legitimitet” i „suverenitet”, izrodila je podlogu ljudske svesti da svaka promena, npr. u shvatanju „suvereniteta”, lančano aktivira i ostale, sve do one o „krvi i tlu” iz koje sukob postaje centralni čin. I tada počinje glavna manipulacija pripadnicima/podanicima države kao naroda, tj. kao članova države koji su, radajući se na jednom podneblju, istovremeno i deo tog naroda, vere i svih vrednosti koje se smatraju presudnim za njegovo postojanje i opstanak. Tim pre država i narod, izjednačeni u svom postojanju i nastupu, ne vide potrebu da se iz njihove osnove izdvoji pojedinac-građanin/etnicitet i da prema savremenim vrednostima može da participira izvan kategorija na kojima se gradila doskorašnja celina – kao državna zajednica. Prelaz iz stroga tradicionalne državne zajednice ka društvenoj formi organizovanosti podrazumeva samostalnu i slobodnu ličnost, odnosno takva politička i druga identitetna pravila kojima bi se opstanak naroda garantovao univerzalnim zakonima. Ostaci ranije svesti ispoljeni kroz elitu (političku, ekonomsku, vojnu, versku, obrazovnu) ne prihvataju novi ambijent, smatrajući da se rastače mukom stvoren integritet. I sada, kada je i prostor zapadnog Balkana u fazi izgradnje građanskog društva – sa demokratskim institucijama i zakonima prava i pravde, albanska populacija na Kosmetu, uz ogromne ljudske i druge žrtve, ispostavlja zahtev za legitimitetom zastarelog oblika integriteta i suverenosti, čineći korak unazad ne samo u odnosu na svest i delovanje vlastite populacije, već i iz ugla samopropitivanja ostalih naroda koji su započeli svoju tranziciju ka integrativnim društvenim odnosima. U ma kako otvorenom društvenom okruženju Srbije kategorija samopotvrđivanja nema vezivni značaj za Albance kao posebnost, jer se po njima ne gradi ambijent sa dovoljnim stepenom samoustrojstva – sa političkim pravima, participacijom i ravnopravnosti u vlasti, u posedovanju svojine i njenom raspolaganju, u odlučivanju o dobrima od društvenog značaja, korišćenju identitetnih odlika (jezika, pisma, obrazovanja, običajnosti) itd.¹⁴ Drugim rečima, za albansku zajednicu se ispostavlja autentičnija egzistencija ako bi se ona zaokružila u samostalnu *na-*

¹⁴ Albanska elita je, inicirajući i sprovodeći referendum 1991. o izdvajajući iz SFRJ i Srbije, htela međunarodnoj javnosti da stavi na znanje ne samo rešenost populacije u kom smeru želi da se kreće, već i da je život u zajednici u kojoj su na takvom nivou organizovanosti da ona nije više u stanju da kontroliše granice, poredak, zakonitost i sve ono što bi po rezolucijama OUN bilo razumljivo, te da imaju pravo na samoopredeljenje, tj. da su stekli pravo na samootcepljenje i zasnivanje samostalne države. Time bi bili na tragu onog stava OUN da je moguće izdvajanje iz postojeće države, ali je, istovremeno – ipak – Generalna skupština postavila uslov: bilo o kom manjinskom entitetu da se radi, on nema prava na otcepljenje ukoliko unutar centralne vlasti ima političku i svaku drugu propulzivnost. Svako mora da bude priznat, jeste početni stav svih uslova, i time se supstituišu svi aspekti samostalnosti na tom tlu, kulturnih ispoljenja, ali ne i samootcepljenje. Dakle, albanska elita je upravo na toj razmeđi: prava na autonomiju i neodobravanja otcepljenja.

cion-državu, pa makar se unutar takve zajednice prava drugosti ne poštovala u potpunosti. Ta vrsta samodovoljnosti ne korespondira sa interesima društva građanskog duha, u kome i manjinskoj zajednici pripadaju ista prava i slobode kao i većinskoj. Ovde se nacion izdiže iznad svake pravde i zaokružuje u samodovoljnosti po prirodi postojanja – kao samostalnost koja je izborila pravo na postojanje i iznad koje nije nijedna od univerzalnih građanskih normi. Pojam suverenosti koristi se samo radi zagovaranja nadkontrolne pozicije, pošto država stoji kao osnova omogućavanja (doziranja) slobode, prava i pravde. Pravi subjekat je državna oligarhija (zlo)upotrebo snage žrtvovanja pripadnika naciona, a ne građanin, pojedinac, slobodna ličnost. Kakav se pozadinski vrednosnodruštveni ambijent potražuje da bi pojam naroda mogao da se ovaploti od strane predstavnika elita, jeste dodatno pitanje. Iza toga je uvek ideja o jedinstvu, viševkovnom snu i metafizičkoj instrumentalizaciji pojma mita: da postojanje upravo tog naroda ima svoju istorijsku utemeljenost i vrednost u osmišljenim istorijskim koracima. Problemi na putu realizacije predestiniranosti samo su minorna iznenadenja koja ne bi trebalo da pokolebaju celinu, uprkos nekim trenutnim žrtvama, pošto je ostvarenje sna nadohvat ruke. Tako delotvorna matrica moguća je samo kod one populacije koja nije osetila institucije demokratski uređenog društva, tj. kod takve mentalne strukture stanovništva koja je uvek imala za uporednu vrednost zajednicu sa autoritarnim sistemom – tradicionalno-patrijarhalnim. Dodatna homogenizacija, koja je uvek potrebna – kao u vreme Miloševića u Srbiji, insinuira krvica, neprijatelja, ako ne po unutrašnjem, onda po društvenom miljeu iz šireg okruženja. To je „urađen posao“ elita koje predstavljaju zvaničnu politiku u već dobro pripremljenom javnom mnjenju, uprkos tome što nije reč o instituciji u građanskom smislu reči. Da je takvo društveno raspoloženje kod albanske populacije već stvoreno, proverljivo je i kroz analizu istraživanja dostupnih u raspoloživim izvorima. Ona nesumnjivo pokazuju da se albanska populacija sa najviše poverenja odnosi prema institucijama sile, tj. prema *Kosovskom zaštitnom korpusu* i *Kosovskoj policiji*, kao i prema personalnim predstavnicima tih institucija.¹⁵ Da je ovde dominantna primordijalna svest, potvrđuje nivo poverenja vezanog za ličnost – Nedžata Dacija, ali ne i za samu instituciju Skupštine Kosova čiji je predsednik. I potonja vrednovanja su refleksni učinak matrice, pošto je Fatmir Ljimaj¹⁶ naredna ličnost koja zaslužuje poverenje.¹⁷

¹⁵ Razlog zašto nije došlo do *redukcije i transformacije Kosovskog zaštitnog korpusa*, za koji se uvek naglašava da ima „određenu“ ulogu, leži i u činjenici da (uz *Kosovsku policijsku službu*) uživa najviše poverenje građana Kosova, stoji u istraživanju izvršenog na uzorku od 1100 punoletnih ispitanika Albanaca. (Danas od 4–5.01. i 10.04. 2003).

¹⁶ Fatmir Ljimaj je optužen za ratne zločine i nalazi se u pritvorskoj jedinici u Ševeningenu.

¹⁷ Za prikaz vrednosnih stavova korišćena su dva napisa u listu: Danas od 4–5.01. i 10.04.2003.

c) S obzirom na to da je Kosmet sa većinskom albanskom populacijom okrenut kolektivizmu, međunarodna zajednica, svesna toga, smatrala je da se privrednim tranzicijama aktivnostima može započeti stvaranje novog društvenog ambijenta i za stanovništvo tog dela zapadnog Balkana. U tom smislu je usledilo i prenošenje ovlašćenja *privredne i ekonomske sfere*¹⁸ na Vladu Kosova. Na takvu odluku javnost je reagovala, budući da u stvaranju novih društvenih uslova moraju da se procene i oni postojeći. Realno viđena društvena situiranost populacije govori o manjkavosti te ideje, jer privredni ambijent mora da se temelji na slobodnom pojedincu i na bazi izgrađenih demokratskih institucija u kojima je dosegnuta svest o vremenu u kome se živi, a ne da se u prepostavljrenom nastajanju slobodnotržišnih odnosa vide samo namere koje nemaju potvrdu u društvenom ambijentu. Pošto je albanskoj populaciji cilj država u kojoj zadugo neće biti slobodnog pojedinka, zanemaren je osnovni demokratski slobodnotržišni princip, kako napominje i Z. Golubović, jer „osnovu civilnog društva ne može činiti pojedinac prosto kao vlasnik privatne svojine, već kao građanin, slobodan u svojoj privatnoj i javnoj delatnosti za samo-organizaciju i samoodlučivanje kako o svom privatnom životu tako i o javnim, kolektivnim poslovima“.¹⁹ Dakle, regulisanje privrede, bez uspostavljenje javne sfere svakog oblika, o kojoj sada nema ni govora, ka demokratskoj i multietnički stvorenoj sredini, jeste nonsens i više doprinosi aktualizaciji primarnosti oformljenja *nacije-države* nego što se tim aktom priprema integracija u evropsko (regionalizovano) društvo. Ako se ima na umu da je sektor stvaranja dohotka deo ukupnog društvenog obrasca, tj. da su privredivanje i tržišna pravila prepostavka sublimisane društvene samoodrživosti, sa ostalim demokratskim pravilima, može se konstatovati da njih na Kosmetu nema, pošto nedostaju institucije i organizacije kojima se obezbeđuju pravila ukupnog demokratskog aktivizma, pa i privrednog. Jer, kako napominje Brajan Fej,²⁰ „za demokratski proces su važne *institucije*, odnosno formiranje *struktura* društvenog entiteta. Njihova funkcija je da se obezbede, reći će on, uslovi za demokratsko ispoljavanje akcija, budući da i karakter samih struktura upućuje na potrebnu sadržinsku stranu mogućeg zastupanja i delovanja sa interesima svih slojeva, grupa, etniciteta“. Pošto i dalje na Kosmetu nisu uspostavljene druga i treća tačka demokratskih standarda – *vladavina zakona i sloboda kretanja* (nema institucija za prohodnost demokratskih standarda), onda je svaki napor radi konsolidacije privrede i ekonomske sfere i nepravedan – pošto u njemu ne učestvuju Srbi, Crnogoraci, Romi, Aškalije,

¹⁸ Pored nadzora nad formiranim institucijama na Kosmetu u delokrugu UNMIK-A ostaju spoljna politika, sudstvo, bezbednost, vojska, decentralizacija, prava manjina i povratak raseljenih, i ne mogu se preneti na postojeću lokalnu pokrajinsku vlast pre rešenja konačnog statusa Kosova.

¹⁹ Z. Golubović, u: *Potisnuto civilno društvo*, str. 54.

²⁰ U: *Da li nas naša kultura ili društvo čine onim što jesmo*, Nacija, kultura i građanstvo, str. 81–82.

Turci, Goranci, Egipćani i pripadnici drugih etniciteta, takođe nasilno izgnani. Ako ljudi po osnovnim pravima ne mogu da reše ni pitanje *lične imovine*, takva je regulacija privrede sračunata na proces unutar većinske albanske populacije. U cilju prevazilaženja ideje o stvaranju monoetničke države, a radi formiranja demokratskih društvenih struktura, B. Fej potencira „kako je u društvenom okruženju potrebno imati i takva *mišljenja i osećanja* koja će biti inspirisana *kulturom i vrednosnim stavovima* kojima se gradi demokratska akcija”. Ako ove stavove primenimo na stavove albanskih državnih i političkih lidera, onda je izvesno da je kosmetska društvena stvarnost potpuno diskutabilna sa aspekta potrebnog nivoa političke kulture i prihvaćenih vrednosti demokratskog ambijenta u ovoj regiji.

Dakle, *Uredba o privatizaciji društvenih preduzeća na Kosovu*,²¹ kojom se vrši prenošenje prava vlasništva društvenog zemljišta državnoj (albanskoj) strukturi na 99 godina (kako je najavljeno), jeste akt koji nije u vezi sa demokratizacijom i pravnom regulacijom ove regije već je jednostran inaugukturativni zahvat u postojeću tranzicionu društvenost kojom će se *dodatno zaoštiti već loši odnosi i za duži period nego što se računa*.²²

4. AUTONOMNOST – NOVI RAZVOJNI KONCEPT DRUŠTVA

Međunarodna zajednica se temelji na otvorenim društvenim odnosima u kojima dominiraju sloboda i sigurnost. Zato se svaki centralizam, ekstremizam, autizam i konfliktnost naspram društvene integracije, proskribuje i dovodi u pitanje. Kompatibilnost pojedinačnih podneblja realizuje se ujednačavanjem demokratskih standarda, čime se obezbeđuje opšta funkcionalna sigurnost. Tražeći rešenje za krizu na Kosmetu, međunarodna zajednica insistira na autonomnosti, decentralizaciji, teritorijalnoj konstitucionalnosti i jačanju lokalne samouprave unutar regionalnog principa.

²¹ Doneta je od strane M. Štajnera, 13.05.2003. godine.

²² Nakon ove odluke M. Štajnera reagovala je ukupna srpska javnost – stranke, državni zvaničnici, sindikati, SPC. Državna zajednica SCG je pravnoj službi UN podnела žalbu na odluku M. Štajnera. Od konkretnih reakcija navodimo stavove SPC: „Ova uredba otvara proces u kome će se imovina SPC konfiskovana za vreme momunističke vlasti, uskoro naći u albanskim privatnim rukama i tako zauvek otuditi od Crkve” (Danas, 15.05. 2003, str. 2) i LSV: „Ovakav vid privatizacije je neprihvatljiv ukoliko se zna da Srbija kao garant treba da vрати gotovo 1,5 milijardi dolara na ime kosmetskog spoljnog duga, kao i da je dobar deo trebalo da bude vraćen iz sredstava od privatizacije preduzeća iz Srbije koja na Kosovu još uvek imaju pozamašan broj nekretnina ... a Vojvodina je izdvajala najviše novca za pomoći Kosovu i u ovoj Pokrajini ima 140 objekata”. (Danas, 15.05.2003, str. 18).

a) Nakon što je EU donela odluku da sve zemlje Balkana treba da budu njen deo, E. Busek – specijalni koordinator Pakta stabilnosti za jugoistočnu Evropu, izjavljuje da „Evropa treba što pre da preuzme odgovornost za Kosovo”, u cilju smanjenja „korišćenja nesuglasica između UN i SAD”, a V. Šlimer,²³ generalni sekretar SE potvrđuje „da pokrajina Kosovo ostaje velika briga SE”.²³ U međuvremenu P. Šider, predsednik PS SE, nakon prijema SCG u SE objašnjava kosmetskim Albancima da je i Kosmet zahvaljujući tome u SE, dok šef misije SE na Kosovu K. Ćivileti smatra da rešenje nije izvan procesa decentralizacije i jačanja lokalne samouprave. Doda li se ovome i projekcija J.D. Blaua, predsednika interparlamentarne Skupštine Zapadnoevropske unije, da o statusu Kosova ne može da se razgovara dok se tamošnje društvo ne demokratizuje („jer je na njemu izvršeno etničko čišćenje”, J.D. Blaua), pa se u traženju koncepta može razmišljati o specijalnoj evropskoj zoni radi jačanja lokalne samouprave i uspostavljanja demokratskih institucija,²⁴ onda je evidentno da će EU, radi integrisanja Kosmeta u Evropske institucije, kombinovati poštovanje suvereniteta SCG, s jedne strane, ali i prava na samoorganizovanje i slobodu po teritorijalnom i etničkom principu, s druge strane. Tome najviše inklinira regionalni koncept i on će, nesumnjivo, biti pravac aktivnosti međunarodne zajednice. Svakako, međunarodni faktori ne ostaju po strani ni kada je u pitanju rešavanje položaja ostalih etničkih grupa koje su vezane za Kosmet.

Međunarodna zajednica nije prekoračila *politiku konsenzusa* ni u sporazumu iz Rambujea ili Kumanovskom vojno-tehničkom sporazumu, kao ni u Rezoluciji 1244 SB OUN. Uvek je ispoštovano osnovno pravilo – da se, sledeći prava nacionalnih manjina, ne mora istovremeno, i po automatizmu, da realizuje pravo na otcepljenje, samostalnost. U svakom od navedenih dokumenata su, po pravilu, prisutne dve stvari: (1) respektovanje prava Albanaca na veću slobodu i autonomost, ali i da (2) međunarodna opredeljenost nije za narušavanje postojeće srpske teritorijalnosti unutar koje Albanci potražuju nezavisnost. Činjenica da nema nijednog zvaničnog međunarodnog stava da bi u budućnosti trebalo Albancima na Kosmetu omogućiti pravo na otcepljenje i zasnivanje samostalne države, upućuje na to da se generalni pogled ka novom društvenom ustrojstvu ne usmerava na izgradnju suverenih zajednica na etničkom principu, jer bi to bilo kontraproduktivno ne samo za opšte integracione procese, već i zbog mogućih reakcija u rešavanju sličnih problema, dovođenje do usitnjavanja postojećih država i smanjenje bezbednosti regionalne celine.

b) Realizacijom nekog od oblika regionalizma²⁵ stvorio bi se prostor za ispunjenje istorijskih, ekonomskih, etničkih i kulturnih interesa, ali i sublimaci-

²³ Prema: Danas, 25.07. 2003.

²⁴ Prema: Glas javnosti, 05.06. 2003, str. 8.

²⁵ „Zamisao o ‘državi regionala’ naročito je postala privlačna, kako piše V. Stanovčić, krajem 1980-ih godina u vreme očigledne krize ‘etničkog federalizma’ i zaoštravanja problema koji su u vezi sa izvesnim oblicima i težnjama koje polaze od ideje nacional-

ju dvaju pristupa savremenosti: (1) ravnopravno učešće građana na svim nivoima vlasti, prevazilazeći stav da je država izvor prava i moći i (2) ostvarenje individualnih i, pre svega, kolektivnih prava i sloboda.²⁶ Koliko se prvim pristupom ukazuje na samoupravu kao esencijalni oblik odlučivanja, da oni koji stvaraju budu kreatori i korisnici postojećih odnosa, toliko drugi sugeriše integraciju svih drugosti kroz interesno povezivanje sa opštinom, okrugom i preko regiona sa centralnom vlašću. Stav K. Fridriha da „predstavljanje teritorijalnih zajednica zahteva priznavanje svakom članu političkog poretka uže zajednice da bude građanin dve zajednice, koje deluju na dva nivoa – regionalnom i nacionalnom”, jeste pristup kojim se sprečava opstrukcija napredovanja ka demokratskim odnosima, pošto bi, u suprotnom, veoma lako mogao da se revalorizuje prepolitički mitomanski impuls većinskog principa i da se reaktivira negativna dimenzija značaja većine.

Za međunarodnu zajednicu je ključno da se oforme stabilne demokratije u cilju stvaranja ambijenta ka daljim integracionim procesima, ali i neposredno podizanje prava građana na viši nivo u svakoj od država koje ulaze u krug saradnje. S obzirom na to da u svakom integracionom procesu participira određen karakter vlasti, odnosno oblik vlasti, koji je više ili manje otvoren prema savremenosti (manja otvorenost znači veće sputavanje građana/manjinskih zajednica ka slobodama i pravima), proklamovana je obaveznost regionalizacije²⁷ i standardizacija kroz decentralizaciju po horizontalnom i vertikalnom nivou. Ideja je da se princip unitarane vlasti razloži, a regionalizacija je sredstvo²⁸ u sprovodenju decentralizacije vlasti i odgovornosti do najnižeg lokalnog nivoa. Poseban napor se ulaže u stvaranje adekvatnog modusa za različita podneblja u cilju afirmacije autonomnosti ne samo po pitanjima kulturnih i identitetnih prava, već i

nih država, a kojima se takoreći bezrezervno pridavala prednost u odnosu na svako rešenje koje bi polazilo od regiona kao osnovnih konstitutivnih delova zajedničke države”. (U: *Oblici decentralizacije i disperzije moći: federalizam, autonomija, regionalizam, lokalna samouprava*, Autonomija i multietnička društva, str. 37).

²⁶ Šire u: J. Živković, *Značaj regionalizma za društva u tranziciji*, Teme 1–4, Niš, str. 181–186.

²⁷ O pristupu pojmu regionalizacije Nadia Skenderović-Ćuk piše da „je regionalizacija pre proces nego stanje, koje zahteva prilagođavanje tradicionalne organizacije države njenom okruženju. Upravo na toj liniji se susreće logika regionalizacije i potrebe za integracijom Evrope”. (U: *Evropske koncepcije regionalizma*, Sandžak multietnička regija, str. 9).

²⁸ U *Evropskoj povelji o regionalnoj autonomiji* definicija regionalne autonomije glasi: „Pod pojmom regionalne autonomije podrazumeva se pravo i stvarna sposobnost najširih teritorijalnih zajednica u okviru svake države članice, sa izabranim organima koji se nalaze između države i lokalnih zajednica i koji imaju prerogative samouprave, bilo prerogative državne prirode, da obavljaju pod svojom sopstvenom odgovornošću i u interesu svog stanovništva, značajan deo poslova u javnom interesu, u skladu sa principom subsidiarnosti”.

radi „ovladavanja” sferama (političkom i ekonomskom) u kojima se donose bitne odluke. Tek u tom pravcu videna regionalizacija jeste poželjna društvenost u skladu sa savremenom evropskom idejom o stvaranju demokratskog ambijenta spremnog za integracijske procese.

c) Pored akcentovanja nacionalnog principa iz vestfalskog poimanja države, sa regionalizacijom i teritorijalni aspekt postaje konstitucionalni faktor državne ustrojenosti, što doprinosi stvaranju ambijenta u kome odnos etničke većine i manjine ne bi bio u zavisnosti od centralne vlasti ili bilo koje oligarhije. Ako se i danas može čuti da na Kosmetu neće biti paralelne vlasti, onda su to refleksije u razumevanju mogućeg upravljanja iz centra (ili centara) i sa autoritarnih predispozicija, pošto regionalna ideja upravo sugerije svaku dalju decentralizaciju – do lokalnog nivoa (otklanjajući potrebu za paralelnom vlašću koja se i uspostavlja zbog nezaštićene drugosti), kako nijedan etnicitet ne bi bio manjinski (npr. Romi, Goranci i Srbi na Kosmetu, Romi u Bujanovcu i Preševu itd). Od prihvaćenog koncepta regionalizacije (mada bi se moglo govoriti i o etničkoj regionalizaciji) zavisi po kojoj se *dubini* vrši afirmacija pojedinačnih i kolektivnih interesa, „u cilju prevazilaženja bilo koje etničke ili kulturne segregacije” (Edit Soos).²⁹ Naime, ono što sledi kao dalji transformacioni proces srpskog društva, a biće i predmet nastupajućih javnih debata povodom donošenja novog ustava Srbije, jeste iskorak iz stereotipija u razumevanju šta su to *izvorna* a šta *prenesena ovlašćenja*, tj. neposredno državotvorna, spuštaju na niži nivo, povećavaju se uloga, odgovornost i subjektivizacija pojedinaca i kolektiviteta. Tako usmeren društveni proces bio bi dostignuće koje je od ključnog značaja u pomaku političke kulture u kojoj je centralno mesto *participativna* i *neposredna* demokratija, kojima se jedino i može ići ka evropskim standardima i sadržinskim integracionim procesima. Već na osnovu ovih naznaka, evidentno je da svaki strah od majorizacije većine gubi podlogu. Treba uspostaviti standarde – pre svih bezbednost, čime bi se stvorio prostor za obrazovanje multietničkog sastava (povratak raseljenih Srba, Roma, Aškalija, Goranaca i dr., kao četvrta tačka od osam predviđenih za postizanje standarda kao uslov za razgovore o konačnom statusu Kosmeta),³⁰ od čega i zavisi zaživljavanje interkulturalnog društva. I pored toga što prilike na Kosmetu nisu trenutno nimalo ohrabrujuće, ipak стоји да овај prostor може – poput udžbeničkog primera, da se reorganizuje, pogotovo ako se ima u vidu i mogućnost stvaranja asimetričnog oblika regionalne celine. Pored toga što asimetričnost

²⁹ Ovim principom organizovanja izbegle bi se situacije svakog oblika segregacije, na šta nas podseća Edit Soos: „... u mnogim evropskim državama postoji etnička i kulturna segregacija, te je potrebno njihovo bolje uključivanje u proces odlučivanja u okviru lokalnih javnih službi”. (U: *Regionalizam i multietničnost*, Sandžak multietnička regija, str. 39).

³⁰ U izveštaju Pegi Higs, šefa Odeljenja za povratak pri UNMIK, стоји да se prošle godine u svoje domove na Kosmetu vratilo svega 2.744 lica, a od toga Srba samo 969. Problemi povratnika su, pre svega, loša bezbednosna situacija, (Danas, 10.04. 2003)

ostaje opcija i za Vojvodinu, Kosmet dodatno potražuje takav pristup, stvarajući od države sasvim drugačiji geopolitički entitet – bez starog insuimiranja suvereniteta, ali i sa dosadašnjim pojmom granica. U prenesenom smislu to znači da bi regionalna celina mogla da ima određen *nivo* zakonodavne, izvršne i sudske vlasti, ali i samostalnost u podsistemima kao što su privreda, zdravstvo, prosveta, bezbednost itd. Takvim društvenim promenama anulira se centralizam ili kolektivističko shvatanje države, budući da se građanskim principom aktiviranja svakog nivoa vršenja javne vlasti afirmiše kolektivitet i, svakako, pojedinac; rečju, ovim konceptualnim pristupom bi se unapredila realizacija korišćenja ljudskih prava, pravednosti i slobode.

d) Već skretanje pažnje na kompleksnost ovog regiona u odnosu na njegovo okruženje, s obzirom na to da su Albanija i dobar deo Albanaca koji žive u Makedoniji u graničnoj oblasti sa Kosmetom, s jedne strane, ali i gledano iz ugla Srba neposredna državotvorna veza sa Srbijom i SCG, s druge strane, inicira značaj prihvatanja *Evropske povelje o regionalnoj autonomiji* kao dobrog ishodišta u cilju omogućavanja etničkim zajednicama da se povezuju sa drugim sredinama. Članom 8 *Evropske povelje o regionalnoj autonomiji*³¹ pruža se mogućnost za novi oblik prožimanja sa entitetima preko državnih granica, ali i po drugim interesnim okvirima, čime se u potpunosti prevazilazi i pojednostavljuje svaka međudržavna procedura, što će reći da granice više nisu zona razdvajanja već administrativna crta koja više nije prepreka sa dosadašnjim značenjem. Ako se iz ovog ugla razmatra sklopljeni ugovor između Albanije i predstavnika Unmika o trgovinskoj saradnji sa Kosovom, onda se on može videti i u svetu instruiranja novog pogleda na prava regionalnih celina da pristupaju integracionim procesima. Svakako, međuregionalna saradnja ne mora da bude samo sa graničnim regionima, ali ni samo po etničkoj interesnoj sferi. Odatle se daljim decentralizacionim principima može ispostaviti potreba za zadovoljavanjem interesa i drugih kolektiviteta – Roma, Goranaca, Aškalija, Turaka itd.

Ne bi trebalo zaboraviti da se zaštita manjinskih etničkih zajednica ne odvija samo kroz regionalizam i decentralizaciju, već i u primeni *teorije konsocijalne demokratije*, budući da određena prava manjina mogu da se institucionalizuju kroz ustavna, zakonska i podzakonska akta od opšteg prema lokalnom ni-

³¹ *Evropska povelja o regionalnoj autonomiji* u čl. 8 precizira: „U oblastima koje spadaju u njihove nadležnosti, regije imaju pravo, uz poštovanje postupaka određenog unutrašnjim pravom, da preduzimaju akcije saradnje među oblastima i preko državnih granica. Ove akcije moraju poštovati unutrašnje pravo i međunarodne obaveze svoje države.” Takođe, u istom članu stoji i mogućnost da „Regije koje pripadaju pograničnom prostoru mogu stvarati, uz poštovanje svih nacionalnih zakonodavstava odnosnih država i međunarodnog prava, zajedničke organe savetodavne i/ili izvršne prirode. Akti ovih organa će podlegati postupcima nadležnih sudova isto kao da su usvojeni od strane regionalnog organa, u skladu sa načelima propisanim konvencionalnim normama u odnosnom predmetu”.

vou. Manjinama se omogućava participativnost u društvenoj sferi po pitanju političkog angažovanja (npr. niži cenzus), obrazovanja (npr. uvođenje nastave na maternjem jeziku), zapošljavanja (npr. afirmativna akcija), ali i kroz standarde koje regulišu posebni zakoni (npr. Zakon o zaštiti prava i sloboda manjina, Zakon protiv diskriminacije manjina, Zakon o lokalnim izborima itd).³²

Imajući u vidu izloženu neposrednu praksu na Kosmetu, videći je kao još jedan refleksni identitarni društveni konflikt usled procesa globalizacije, ali i kao primer želje da se izvrši prekomponovanje regionalnih granica kroz etničke i religijske sukobe u naletu retribalizacionih procesa sa matricom kolektivističko-centralističkih vrednosti (primer BiH, Hrvatske, Makedonije – u kojima se nije stvaralo gradansko društvo), mora se konstatovati da se tek naknadnim naporima međunarodne zajednice postavljaju osnovne pretpostavke za takav vid društvene organizovanosti. U tom smislu je opravdano i zalaganje međunarodnih institucija kada insistiraju na ustoličenju regionalnih principa i standarda kako bi se stvorio ambijent za stvarnu afirmaciju opštih, posebnih i pojedinačnih prava.

Problemi koji su se ispoljavali na ovim prostorima u deceniji iza nas, u vidu secesija, dezintegracija, militantnosti i svake druge rušilačke akcije, odraz su nepostojanja opšte demokratske kulture, odnosno izraz su pretpolitičke svesti koja se kroz ispostavljenu osetljivost na identitetni položaj ne može opravdati, tim pre što izražava nesamostalnost i nesamoodrživost novostvorenih i novostvaračih subjekata pošto se odstupa od svake standardizacije: u društvenim odnosima, ekonomskoj sferi, socijalnom dijalogu, gradenju političkog ambijenta itd.

Savremeni integracioni procesi iniciraju nove ideje za ovo geopolitičko podneblje i mogu se operacionalizovati u nekoliko tačaka:

1. Prihvatanje standardnih oblika savremenih društvenih odnosa na demokratskim principima.
2. Uvođenje regionalizacije na principima supsidijarnosti i asimetričnosti u teritorijalnoj organizaciji javne vlasti radi poštovanja istorijskih, kulturnih, geografskih i drugih predispozicija.
3. Poštovanje svakog oblika ljudskih prava i sloboda, odnosno njihovu implementaciju kroz institute građanski ustrojenih društvenih oblika,
4. Izgradnju novih i autentičnijih institucija u sklopu razvoja interkulturalnog koncepta ljudskih odnosa.

³² Na to da u stvarnosti ima primera da se pretpolitička svest skriva iza zalaganja za demokratske promene do nivoa kada se zadovolje određeni grupni interesi ukazuje V. Stanočić: „... da se elite etničkih grupa obično zalažu za maksimalnu heterogenost, decentralizaciju i liberalizam ili labavost u organizaciji šire državne celine u kojoj grupa ili uža teritorijalno-politička jedinica živi, a istovremeno se zalažu za homogenizaciju unutar grupe, centralizaciju usmeravanja aktivnosti i upravljanja unutar nje”, (nav. tekst, str. 35).

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ROMI NA BALKANU:¹ SIROMAŠTVO

BOŽIDAR JAKŠIĆ

Biti siromah bilo gde u svetu nije nimalo priyatno; biti siromah u siromašnim društvima, kakva su većinom balkanska društva, posebno je teško, a biti na dnu lestvice siromaštva u takvim društвima i održavati se u životu ravno je podvigu. Taj podvig svakodnevno ponavlja ogromna većina od preko tri miliona balkanskih Roma. U pravu je Rahim Burhan kada kaže: „Razmere stradanja u nekom društvu uvek možete da proverite na manjinskim zajednicama, a Romi su svuda manjina. U Nemačkoj je naravno drukčije, ali ni тамо kao ni bilo где u Evropi, ne postoji jedan model rešavanja romskog pitanja. Sve se nekako odgada za sutra, iako u Evropi živi oko 12 miliona Roma. To su ljudi koji ne mogu da nestanu, ne mogu ići nazad u Indiju, niti mogu svi stati u neki novi konč logor. S time se moraju pomiriti evropski političari i konačno ponuditi neki model kako da se taj narod integrira, emancipira”.²

Postoji jedna čudna igra brojevima kada su Romi u pitanju. Motivi za tu igru su veoma različiti. Jedan od tih motiva je namera da se uveličaju ili smanje razmere siromaštva balkanskih društava, najčešće u zavisnosti od trenutnih potreba. Procene o rasprostranjenosti i broju romskog naroda u svetu su, uglavnom, nepouzdane i veoma se međusobno razlikuju, kao što se zvanični statistički podaci u pojedinim državama znatno razlikuju od realnog stanja. Prema jednoj od ambiciozno urađenih procena, u novonastalim državama bivše Jugoslavije u Sloveniji je živelo 8.000–10.000 Roma, u Hrvatskoj 30.000–40.000, u Bosni i Hercegovini 40.000–50.000, u Srbiji i Crnoj Gori 400.000–450.000, a u Makedoniji 220.000–260.000 Roma. Prema toj proceni od ostalih balkanskih zemalja najveći broj Roma živeo je u Rumuniji, 1.800.000–2.000.000, zatim u Bugarskoj 700.000–800.000, Grčkoj 160.000–200.000 i u Albaniji 90.000–

¹ Prilog za skup je većim delom zasnovan na rezultatima socijalnog istraživanja *Romska naselja, uslovi života i mogućnosti integracije Roma u Srbiji*, koje su podržali Beograd-ska kancelarija OXFAM (Oxford, Velika Britanija) i Savezno ministarstvo za nacionalne i etničke zajednice, a radjen je u okviru realizacije šireg projekta u IFDT, broj 1926 *Društvenorazvojne mogućnosti Srbije/Jugoslavije u evropskim i svetskim procesima* po ugovoru sa Ministarstvom za nauku, tehnologiju i razvoj vlade Srbije.

² Rahim Burhan, *Previše je lažnih i površnih slika o Romima*, Danas, subota–nedelja, 23–24. avgusta 2003, VII. Rahim Burhan je inače reditelj i osnivač Romskog pozorišta *Pralipe* (Bratstvo) u Skopju (Makedonija) koji više od deset godina živi i radi u Nemačkoj.

100.000.³ Zoltan Baranji (Barany) u svojoj veoma dokumentovanoj knjizi *Istočnoevropski Romi (The East European Gypsies, Regime Change, Marginality and Ethnopolitics)*, pozivajući se na različite izvore, nudi sledeće podatke za devedesete godine prošlog veka:⁴

Tabela 1. – Procena rasprostranjenosti Roma u balkanskim zemljama – izvedena

Zemlja	Zvanični podatak	Romske procene	Mogući broj	% u populaciji
Albanija		120.000	55.000	1.65
Bosna	7.000	nema podataka	35.000	1.04
Bugarska	313	1.000.000	700.000	8.50
Hrvatska	7.000	150.000	35.000	0.75
Makedonija	47.000	220.000	60.000	2.89
Rumunija	409.000	3.000.000	1.500.000	6.59
Slovenija	2.000	nema podataka	7.000	0.35
Jugoslavija	112.000	140.000	537.000	4.79

Oficijelni podaci se znatno razlikuju od stručnih procena, a naročito od procena romskih aktivista i vođa u pojedinim balkanskim zemljama. Tako rumunska zvanična statistika beleži samo 1,8% Roma u ukupnom stanovništvu Rumunije, Bugarska 3,7%, Makedonska 2,3%. U Crnoj Gori, na primer, zvanič-

³ Uporedi: specijalni dosije „Cigani, rađanje jedne nacije“ u reviji *Courier International*, № 364, 23–29. oktobra 1997. Za svaku od država dosije prezentira i podatak koliko ljudi govori romski, kao i podatke o vremenu naseljenja Roma u pojedinim zemljama ili regionima sveta. Tako naseljavanje Roma na Balkanu smeštaju u period od XII do XIV veka. Među balkanskim zemljama jedino u Rumuniji Romi čine više od 5% stanovništva. Napokon, autori dosjeva ističu da su fašisti u Hrvatskoj za vreme Drugog svetskog rata ubili 26.000 od 28. 000 Roma, da su u periodu 1960–1990. hiljade Roma otišle u Nemačku na rad, te da je u vreme rata i neposredno posle rata, u periodu 1991–1997, više hiljada Roma emigriralo kao izbeglice. Da je i ova procena o broju Roma u balkanskim zemljama nepouzdana svedoči očigledno precenjen broj Roma u Makedoniji!

⁴ Uporedi: Zoltan Barany, *The East European Gypsies, Regime Change, Marginality and Ethnopolitics*, Cambridge University Press 2002, p. 160. Iz opsežne Baranjićeve tabele koja obuhvata više zemalja i podataka, ovde je dat samo izvod s osnovnim podacima za balkanske zemlje. Baraniju su očigledno bile nedovoljno poznate procene romskih aktivista u Srbiji i Crnoj Gori, koje su daleko iznad njegovog uvida. Takođe je za popis iz 1991. godine za Srbiju i Crnu Goru neprecizan i podatak zvanične statistike. Autor u svoju tabelu nije uključio podatke za Grčku, članicu Evropske unije. Maja Štambuk u svom radu *Romi u društvenom prostoru Hrvatske*, (Društvena istraživanja, God. 9/2000, br. 2–3/46–47, str. 197–210, preuzima procenu iz 1993. godine po kojoj je u Rumuniji živelo 2.500.000 Roma, u bivšoj Jugoslaviji 900.000, Bugarskoj 800.000, Grčkoj 150.000 i Albaniji 80.000.

na statistika je popisom obavljenim 1991. godine zabeležila 3.282 lica romske nacionalnosti, dok su organi Crvenog krsta registrovali samo u Podgorici 7.500 Roma, a stručne procene⁵ za Crnu Goru se kreću oko 20.000 lica romske nacionalnosti. U ovaj broj nije uključeno oko 6.500 Roma i preko 900 Egipćana sa Kosova koje su registrovali Komesarijat za raseljena lica Vlade Republike Crne Gore i organi Ujedinjenih nacija.⁶ U Sloveniji je zvanična statistika u popisu iz 1991. godine zabeležila samo 2.293 Roma, u Hrvatskoj u popisu iz iste godine je zabeležila 6.695 Roma, a u Bosni i Hercegovini njih oko 9.000.

Kako su Romi prostorno veoma disperzirana etnička zajednica to se i procene o njihovom broju razlikuju. Prema zvaničnim podacima popisa stanovništva iz 1991. godine u Srbiji je živelo 140.237 lica romske nacionalnosti. Rezultati popisa stanovništva sprovedenog 2002. godine pokazuju da je broj Roma u poslednjoj deceniji dvadesetog veka opao za 32.044 lica, jer se samo 108.193 građana Srbije izjasnilo kao Romi.

Dok su zvanični statistički podaci o broju Roma svakako značajno ispod svakog realnog stanja, procene romskih aktivista najčešće značajno precenuju realno stanje.⁷ Prema nekim procenama iz romskih krugova, veruje se da u Jugoslaviji živi između 700.000 i 900.000 Roma, ali su te cifre očigledno nerealne, dok se procene istraživača i demografa kreću između 400.000 i 450.000 Roma. Staviše, pojedini romski aktivisti procenjivali su broj Roma u Srbiji i Crnoj Gori na milion građana! Neki pisci o problemima Roma u želji da što snažnije izraze simpatije prema Romima, nekritički prihvataju nerealne procene, pa se tako može naići na „podatak” da je u Bosni i Hercegovini pre poslednjeg rata živelo 300.000 Roma!⁸

A kakvo je zapravo realno stanje? Na to pitanje su članovi istraživačkog tima socijalnog istraživanja *Romska naselja, uslovi života i mogućnosti integracije*

⁵ Istraživanje koje je obavio Živorad Tasić.

⁶ Izvor: Goverment of the Republic of Montenegro, Commissariat for Displaced Persons and UN High Commissioner for Refugees, *Census of Refugees and Internally Displaced Persons in Montenegro*, Podgorica, March 2002.

⁷ Pitanje da li romski aktivisti žele na taj način da steknu značajniju ulogu kao »vođe« brojnog romskog naroda ovde će biti ostavljeno po strani. Interesantno je ipak napomenuti da među romskim aktivistima nije bilo mnogo protesta protiv očigledno potcenjenog broja Roma u zvaničnom popisu 2002. godine u Srbiji.

⁸ Videti: Katarina Luketić, *Apartheid za 12 milijuna Roma*, Zarez, God. V, №101, 27. ožujka 2003, str. 17. Ti oblici pristrasnosti koji za realizaciju interesa Roma mogu biti kontraproduktivni, nisu neuobičajeni među neromima koji pišu sa nekritičke distance prema Romima. Tako je i Srđan Vukadinović „pronašao“ u Crnoj Gori preko 41.000 Roma sa Kosova. Uporedi: Vukadinović Srđan, 2000, *Položaj Roma u Crnoj Gori (The Status of Gypsies in Montenegro)*, Romi, Sv. 1, str. 43–50, Pelikan Print, Niš. Na engleskom u Facta Universitatis, *Series Philosophy and Sociology*, Vol. 2, № 8, 2001, pp. 517–526. Predrasuda je verovanje da su samo Romi skloni preuveličavanju brojki!

*cije Roma u Srbiji*⁹ pokušali da nađu odgovor. Istraživanje su izvršili u 593 naselja u kojima živi više od 100 stanovnika Roma ili više od 15 romskih porodica. Ustanovili su da je u tim naseljima nastanjeno ukupno 201.353 Roma staroselaca. Takođe su registrovali u tim naseljima i 46.238 Roma raseljenih sa Kosova, što je broj daleko ispod onih podataka s kojima se često u javnosti ope-riše kada su u pitanju Romi sa Kosova.¹⁰

Odakle tako značajne razlike? Jedno od mogućih objašnjenja svakako leži i u činjenici da je odavno zapažen fenomen etničke mimikrije koja je široko rasprostranjena kada su u pitanju balkanski, i ne samo balkanski, Romi. Veliki broj romskih porodica koje su uspele da se istrgnu iz začaranog kruga bede, promene životnu sredinu, ili na bilo koji drugi način uspeju u životu, veoma često prestanju da se identifikuju kao romske. Takođe je poznata i prilagodljivost Roma većinskom stanovništvu u sredinama u kojima žive. Promene porodičnih prezimenava, verske pripadnosti, brzo savladavanje jezika većine, otvorenost „romske duše“ prema drugima u borbi za preživljavanje su činioći koji često opredeljuju Rome da se „zvanično“ izjašnjavaju kao pripadnici većinskih naroda. Ako se ovim činiocima doda i smišljena politička akcija, kakva je, na primer, sproveđena decenijama u Bugarskoj, „bugarizacije nebugarskog stanovništva“, ¹¹ onda su razlike koje se pojavljuju između realnog stanja, podataka zvanične statistike i želja romskih aktivista sasvim razumljive, mada ne i opravdane.

Uz uvažavanje značaja navedenih činilaca, ova »igra brojevima« svakako ima i druge daleko ozbiljnije dimenzije. Pre svega upućuje na zaključak da su Romi u balkanskim zemljama – naravno ne samo u balkanskim – „gradani drugog reda“, ma koliko da i taj izraz može biti eufemizam za označavanje stvarnog stanja. Ogromna većina romskog naroda su jednostavno u tim društвima „ljudi sa dna“ o kojima niko na sistematičan način ne vodi računa, a oni sami su

⁹ Istraživanje je obavljeno u letu i jesen 2002. godine. Istraživački tim su činili Božidar Jakšić, kao rukovodilac, Dragoljub Đorđević, profesor Univerziteta u Nišu, Đokica Jovanović, profesor Univerziteta u Prištini (Kosovska Mitrovica), Miloš Marjanović, profesor Univerziteta u Novom Sadu i Goran Bašić, u tom periodu savetnik u Saveznom ministarstvu za nacionalne i etničke zajednice. Rezultate istraživanja o romskim naseljima u Srbiji obradio je u izveštaju mr Goran Bašić.

¹⁰ Naravno da ni ovaj podatak ne treba uzimati kao apsolutno tačan. Cilj istraživanja nije bio neki novi, korigovani „popis“ Roma, nego je to bio skroman pokušaj da se stekne realnija slika o disperziji romskog naroda u Srbiji. Takođe treba imati u vidu i činjenicu da romske porodice ne žive uvek u romskim naseljima, tako da je broj Roma u Srbiji svakako značajno veći i da bi realna procena mogla da se kreće oko 400.000.

¹¹ Ta politika je krajem osamdesetih i početkom devedesetih godina prošlog veka u Bugarskoj odbačena, ali je vredno zabeležiti jedan skoriji utisak iz Hrvatske: „Istina o 'ljubavi' države prema Romima leži negdje u osjećanju da država ne čini ništa bolje za Rome zato što za njih ne žili zamisliti ništa bolje“. Uporediti: Bojan Munjin, *Kako odgojiti odgojitelje ili Romi ne spadaju u Lepoglavlju*, Zarez, God. V, N° 102, 10. travnja 2003, str. 14.

upućeni na borbu za preživljavanje. Ako se ostave po strani romantične predstave o Romima kao posebno muzički obdarenom narodu, ili negativni stereotipi kao o „prljavim ljudima”, „sklonim sitnim prevarama” i „kradama”,¹² onda se za ogromnu većinu Roma može reći da im je svakodnevica satkana od beskrajne borbe za preživljavanje.

Da u ovoj *igri brojevima* nisu u pitanju ljudska bića – bila bi ta „igra” farščna ili irelevantna. Međutim, u pitanju su ljudi, Romi, i osnovni izvor ove „igre” leži u činjenici da je ogromna većina romskog naroda siromašna, da je, kao siromašna, „teška i Bogu i ljudima”. Da su Romi bogati, tačno bi se znao njihov broj do poslednjeg pojedinca!¹³ Zapanjujuće je visok stepen siromaštva Roma, konstatiše se u Nacrtu studije Svetske banke o siromaštву: „Procenat siromaštva Roma u Bugarskoj, Madarskoj i Rumuniji je 4 do 10 puta veći od siromaštva ne-Roma. Koristeći USD 2,15/glavi stanovnika/dan kao apsolutnu granicu siromaštva, 41% Roma u Bugarskoj je siromašno, u poređenju sa 4,1% ne-Roma u toj zemlji. U Rumuniji se na ovom nivou siromaštva nalazi 38% Roma u poređenju sa 7,3% ne-Roma”.¹⁴ Prema podacima Integralnog pregleda domaćinstava iz 1997. godine u Rumuniji je 79% romskih domaćinstava živelo u siromaštву, prema 31% domaćinstava u ukupnoj populaciji. U Bugarskoj je stopa nezaposlenosti Roma 1998. godine bila između 80–90%, a broj nezaposlenih Romkinja kretao se do 98%. U to vreme između 50–60% korisnika socijalne pomoći u Bugarskoj su bili Romi, pri proceni udela romskog stanovništva u

¹² U toku svojih istraživanja u Crnoj Gori 1999. i 2000. i u Srbiji 2002. godine sam u pojedinim opštinama tražio od orgrana unutrašnjih poslova (policije) podatke o kriminalitetu među Romima. Prema policijskim saznanjima broj »sitnih krađa« i drugih prestupa među Romima je proporcionalno manji nego za većinsku populaciju. Takođe među Romima nisu zabeleženi kriminalni slučajevi velikih razmara u privredi i finansijama, a broj ubistava u kojima su izvršioci Romi je takođe daleko ispod opšteg proseka. S druge strane, s obzirom na razmere siromaštva, higijenski uslovi života većine romskih porodica su zaista nepodnošljivi. Ali i u takvim siromašnim uslovima nije nikakvo iznenadnje naići na romsku porodicu u kojoj je higijena na izuzetno visokom nivou.

¹³ Istina, veoma retko, među Romima postoje i bogate porodice. U pravilu se te porodice odriču svog romskog identiteta, što je njihovo pravo. Ali je i pravo istraživača da zapaze da bogati ljudi, poreklom Romi, u pravilu, nisu spremni da pomažu siromašni narod iz kojeg su potekli. S druge strane, među romskim aktivistima je dosta onih koji nisu sirotinja, ali se uporno zalažu za poboljšanje životnih uslova svog naroda. U žaru njihove borbe za bolji život svog naroda, što je sasvim legitimno, primećena je, nažalost i „profesionalizacija zvanja Rom” i „...odbojnost prema ne-romima kao i romski nacionalizam i netolerancija prema drugima”. Uporedi: Anđej Mirga i Leh Mruz, *Romi, razlike i netolerancija*, Beograd: Akapit, 1997, str. 190.

¹⁴ Navedeno prema *Biltenu Ministarstva za ljudska i manjinska prava Srbije i Crne Gore*, God. I, avgust 2003, br. 2, str. 30. Tekst izvoda iz Nacrtu objavljen je pod naslovom *Romi u Evropi koja se širi: kako rešiti problem siromaštva*.

ukupnom broju stanovnika od 3,7%. U Makedoniji je 1996. godine, neka bude naveden još jedan primer, stopa nezaposlenosti Roma bila 80%, a procenat nezaposlenih Romkinja iznosio je 97,7%. Slična situacija je i u drugim balkanskim zemljama.¹⁵

Ta situacija se krajem dvadesetog veka počela menjati, zahvaljujući pre svega delatnosti samih Roma na javnoj sceni balkanskih društava, ali i merama vlasti balkanskih zemalja, uticaju međunarodnih institucija, kao i donacijama usmerenim u tom pravcu. Istraživanje koje smo moje kolege i ja obavili u Srbiji 2002. godine otkrilo je više okolnosti značajnih za ovo razmatranje.¹⁶

Većina romskih porodica smatra sebe vlasnikom prostora u kojem stanuje (58,3%), stanarsko pravo ima svega 35 porodica (5,0%), u neuslovnim kućercima žive 182 porodice (26,05%), dok su podstanari ili bez stalnog boravišta 69 porodica (9,8%). Svega pet ispitivanih romskih porodica koristi stanove solidarnosti, mada Romi čine većinu depriviranog stanovništva. Njihovi susedi neromi – i sami većinom siromašni – su ipak u boljoj situaciji: 77,7 % poseduje kuću ili stan u svojini, 12,3 % živi u neuslovnim kućama, stanarsko pravo uživa 4,9 %, a podstanari su u 5,2 % slučajeva.

Opremljenost romskog domaćinstva savremenim kućnim aparatima jedan je od značajnih pokazatelja njihovog životnog standarda i ekonomskog statusa savremene porodice. U kakvoj se situaciji nalaze ispitivane romske porodice? Najbrojnije su one koje poseduju televizore – 86 %, električne štednjake i frižideri poseduju dve trećine porodica (66 %), mašine za veš jedna trećina (33 %), automobile – jedna šestina (17,7 %), a mašine za pranje posuđa svega 1,4 %. Mašina za pranje posuđa je najređa u kući. Naravno, treba imati u vidu da je najčešće reč o starim televizorima, frižiderima i drugim stvarima, tako da i sami naglašavaju loš kvalitet i zastarelost tih aparata. Radio, uključen često po ceo dan, poseduje praktično svaka romska porodica, a televizija im je najjeftinija kućna zabava. Gledaju filmove, snimaju svoje rođendane i druge porodične proslave, slušaju muziku.

¹⁵ Prethodni podaci preuzeti su iz knjige *On the Margins, Roma and Public Services in Romania, Bulgaria and Macedonia* (ed. by Mark Norman Templton), Open Society Institute, N.Y. 2001. Relevantne stranice su 27–28, 43–44 i 67.

¹⁶ Istraživanjem je obuhvaćeno 700 romskih porodica i 350 porodica suseda Roma (Srbija, Albanaca, Mađara itd.) na teritoriji Republike Srbije bez Kosova, prema uzorku Republičkog zavoda za statistiku Srbije, a na osnovu rezultata službenog popisa stanovništva iz 1991. godine. Takođe je anketirano, slobodnim produbljenim intervjuiima, 40 romskih aktivista, kreatora javnog mnenja, predstavnika zainteresovanih institucija i NVO.

Tabela 2. – Posedovanje kućnih aparata u porodičnom domaćinstvu

	Poseduje	%	Ne posedu-je	%	Bez odgo-vora	%
Elektr. šporet	468	66,9	224	32,0	8	1,1
Frižider	466	66,6	231	33,0	3	0,4
Televizor	602	86,0	95	13,6	3	0,4
Muzički stub	184	26,3	512	73,1	4	0,6
Mašina za veš	234	33,4	461	65,9	5	0,7
Maš. za suđe	10	1,4	669	95,6	21	3,0
Video rekorder	187	26,7	509	72,7	4	0,6
Automobil	124	17,7	571	81,6	5	0,7

Posebno je dramatičan broj nezaposlenih – 68,4%. Zbirna stopa povremeno zaposlenih, na plaćenom odsustvu i nezaposlenih je 78,3 %. U zavodima za tržište rada stalno je prijavljeno u evidenciji nezaposlenih 57% domaćina/ca. Tom procentu treba dodati i 6,9 % onih koji se povremeno prijavljaju zavodima kao nezaposleni. Koji su razlozi da se ovaj podatak smatra izuzetno dramatičnim? Jednostavno, nezaposlenost se odnosi na domaćine/ce koji su u pravilu u porodicama najvitalniji i najodgovorniji za život ostalih članova. Stope zaposlenosti u porodicama suseda neroma su drastično različite u odnosu na romske porodice; 41,1 % ih je zaposleno u državnim firmama, čemu treba pridodati 13,4 % zaposlenih u privatnim firmama, što ukupno iznosi 54,5 %, u odnosu na romsku stopu od 18,6 %. Susedi neromi su nezaposleni u 15,7 %, a Romi u 68,4 % slučajeva. Penzionera je u porodicama suseda neroma 19,4 %, prema 2,6 % Roma, što potvrđuje prethodni zaključak da Romi nisu ni bili zaposleni, pa nisu ni došli u priliku da steknu penzije.

Dok neromi, naročito eksperati za pojedina pitanja, ocenjujući značaj problema romskog života u prvi plan mera za poboljšanje uslova života Roma stavlju obrazovanje, ispitivani Romi zapošljavanje osećaju kao ključni problem za život porodice. Dosledno se izjašnjavaju i u prvi plan ističu zapošljavanje u 51,6% slučajeva i naglašavaju da bi bilo šta radili u 38,3 % slučajeva. Stalno zaposlenje nekog od članova porodice se vidi kao ključni problem romskih porodica u skoro 90 % slučajeva. Kvalifikaciona struktura Roma se sporo i neznatno popravlja, ali se zaposlenost smanjuje. U posebno teškoj situaciji su Romi raseljeni sa Kosova. Za njih se može reći da su žrtve diskriminacije u zapošljavanju.¹⁷

¹⁷ Romi su, kao što pokazuje sledeći slučaj, diskriminisani ne samo u zapošljavanju nego i u načinima kako gube stalno zaposlenje. Karakterističan je primer jednog broja Roma sa Kosova koji su bili stalno zaposleni „na železnici”. Izbegli su u centralnu Srbiju, na primer u Kraljevo, zajedno sa Srbima takođe zaposlenim „na železnici”. I dok Srbi nisu izgubili status stalno zaposlenih, Romi su taj status izgubili. Srbi, zaposleni u pra-

Stalno zaposlenje se, dakle, percipira i kao želja romske porodice da pravi svoj status i stavlja se na prvo mesto. O bavljenju švercom izbegavaju da se izjašnjavaju (11 %), a ponekad umanjuju značaj humanitarne pomoći (1,7 %). Zaposlenje većina ispitivanih romskih porodica vidi kao prvi uslov integracije. Suočene sa izazovima svakodnevnog života i u svakodnevnoj borbi za preživljavanje, romske porodice u prvi plan, dakle, ističu problem zapošljavanja, za razliku od «eksperata» i predstavnika državnih organa koji u prvi plan ističu – obrazovanje dece. Očigledno je daleko lakše upisati romsko dete u školu nego odraslot građaninu Romu naći pristojno stalno radno mesto. A detetu u školi – kako bude! Niti mora, niti će u najvećem broju slučajeva da je završi.

Ma koliko to na prvi pogled izgledalo neobično, izvori prihoda ispitivanih romskih porodica su raznovrsni i odgovori se kreću od izjava da je osnovni prihod porodice plata nekog od članova koji je stalno zaposlen do karakterističnog, ali paradoksalno preciznog odgovora u svojoj neodređenosti – „ni sami ne znamo”. Način sticanja prihoda odnosi se na članove porodice koji mogu privrediti, a ne samo na domaćina/cu, pa se pojavljuju razlike u odnosu na podatke o zaposlenosti. Pred istraživačima i anketarima u romskim porodicama se nerado govorilo o švercu i „crnom tržištu” kao izvorima prihoda, a sagovornici su umanjivali i značaj humanitarne pomoći, verovatno zato što je nivo te pomoći bio ispod njihovih očekivanja.¹⁸ U 50% slučajeva nisu davali podatke o drugom zanimanju. Najčešći modaliteti, u preko 1.000 dobijenih odgovora bili su: zaposlenje 18,5%, poljoprivredni radovi 1,7%, zanati 3,2%, šverc 9,5%, prošnja 0,6%, prodaja otpadaka 9,1%, sezonski radovi 18,2%, socijalna pomoć 18,3%, penzija 5,6%, pomoć rođaka 1,0%, humanitarna pomoć 4,3%. Odgovor „ni sami ne znamo” navelo je 1,9 % ispitivanih romskih porodica, a „nešto drugo” 7,4 %. Kao što se može primetiti skoro 10% romskih porodica bavi se skupljanjem sekundarnih sirovina, odnosno otpadaka. Procenat onih kojima je to jedino zanimanje je nešto viši. To je za Rome, nesumnjivo, značajna mogućnost zapošljavanja i samozapošljavanja, ali bi bilo dobro da se „sakupljanje sekundarnih sirovina” ne pretvori u „biznis rezervisan za Rome”, jer bi na taj način bio potvrđen princip segregacije romskog stanovništva u Srbiji.

vosudnim organima, prosveti i zdravstvenim institucijama dobijaju redovno izvesne mesecne „plate”, dok su Romi dobili rešenja o otkazu. Objašnjenje da se u Kraljevu nisu prijavili na posao i da su zato dobili otkaze, zamenjeno je naknadnim, da je reč uglavnom o nekvalifikovanim radnicima „za kojima ne postoji potreba”.

¹⁸ Možda i u strahu da neko ko donosi odluke na osnovu rezultata ovog istraživanja ne „zaključi da su i vrste i količina pomoći prevelike”. Iz istog razloga su ponekad prikrivali i podatke o tome ko sve u porodici privređuje. Nije bila reč samo o nepoverenju prema istraživanju i anketarima nego jedno nataloženo životno iskustvo koje je radalo strepnu zbog saznanja „da se država interesuje za Rome”, a „sa državom se nikad ne zna”.

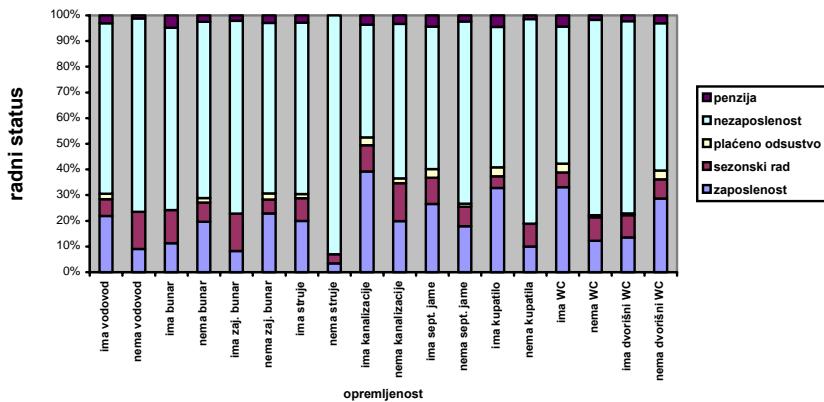
Već je konstatovano da je među Romima najmanje penzionera, a najviše nezaposlenih, da je tek svaki šesti domaćin/ca porodice zaposlen, ali je ipak veoma zanimljivo uporediti radni status sa opremljenosću naselja. U apsolutnim brojevima i procentualno je nezaposlenih najviše, ali su takođe najbrojniji među onima koji nemaju mogućnosti da koriste električnu energiju. I obratno, među onima koji su priključeni na kanalizacionu mrežu ili poseduju kupatilo i WC u stanu najveći je broj stalno

Tabela 3. – Način izdržavanja romske porodice

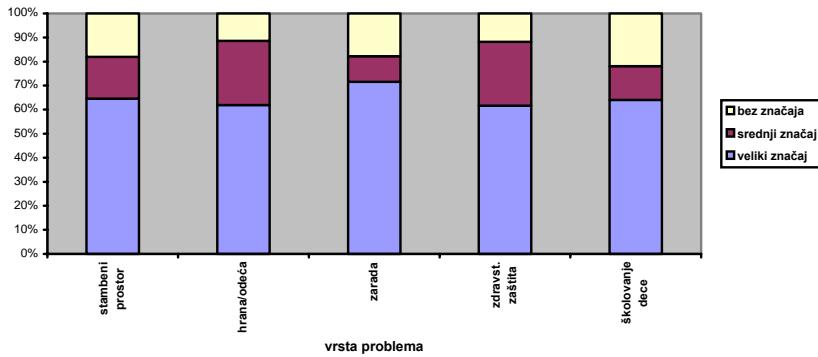
Izvori prihoda	%	Zbirni %
bez odgovora	0,4	0,4
zaposlenje	18,4	18,8
poljoprivreda	1,7	20,5
razni zanati	3,2	23,7
trgovina/šverc	9,5	33,2
prošnja	0,6	33,8
prodaja otpadaka	9,1	42,9
sezonski poslovi	18,2	61,1
soc. pomoc/dečji dodatak	18,3	79,4
penzija	5,6	85,0
pomoć rođaka i prijatelja	1,0	86,0
humanitarna pomoć	4,7	90,7
ni sami ne znamo	1,9	92,6
nešto drugo	7,4	100,0
Ukupno	100,0	100,0

zaposlenih domaćina/ca. Ostali podaci se mogu videti u grafičkom prikazu odnosa radnog statusa i opremljenosti naselja u kojima žive Romi. Ako se ima u vidu ovaj odnos između radnog statusa i opremljenosti naselja, razumljivo je zašto Romi u prvi plan ističu problem zapošljavanja, a tek zatim obrazovanja. Za njih „školovanje dece“ kao značajan ili veoma značajan problem dolazi posle zdravlja, zaposlenja, hrane, odeće i obuće, pa i stambenog prostora. Porodice suseda neromaće obrazovanju kao „veoma značajnom problemu“ dati prvenstvo nad svim ostalim problemima romske porodice. Taj stav će biti korigovan stanovištem da su i drugi problemi «važni», ali je to sasvim razumljiv i logičan zaključak. Na ovaj zaključak upućuju grafički prikazi koji slede:

Romske porodice: radni status i opremljenost



Romske porodice: Koliko su vam značajni sledeći problemi



Nekoliko godina ranije (1998) istraživanje u pet naselja u Hrvatskoj na nešto skromnijem uzorku dalo je slične rezultate: bez stalno zaposlenih bilo je 73,0% romskih porodica, sa jednim zaposlenim 20,6%, sa dva zaposlena 5,6%, a sa tri i više zaposlenih 0,8% romskih porodica. Takođe je skoro polovina romskih porodica (45,2%) bez povremeno i sezonski zaposlenih članova. Napokon – bez penzionera i osoba sa trajnim ličnim prihodom je bilo 82,5% anketiranih porodica. Opremljenost domaćinstava je, prema rezultatima tog istraživanja, nešto bolja nego u Srbiji, ali su razlike neznatne, naročito ako se uzme u obzir da je anketiran znatan deo urbane romske populacije. I među Romima u Hrvat-

skoj televizor je najčešći aparat koji poseduje domaćinstvo (od 75% do 95,7%, u zavisnosti od naselja).¹⁹

Namera nam je bila da pokažemo da je bitni izvor svih životnih teškoća Roma siromaštvo i da do stvarne promene njihovog ekonomskog, socijalnog i kulturnog statusa ne može doći dok se Romi trajno ne oslobole siromaštva. Tačno je: Romi su vekovima deprivirana, čak i satanizovana socijalna grupa. Žive u izuzetno lošim uslovima, najčešće su neškolovani, nepismeni. Higijenski uslovi njihovog života i stanje zdravlja su često poražavajući. Nedostupna su im tzv. bolja zanimanja. Marginalizovani su i prostorno i ekonomski i kulturno.

Zato je važno da se razviju strategije integracije Roma u balkanska društva,²⁰ da sva romska deca pohadaju i uspešno završavaju škole, da se poboljšavaju infrastrukturni, a naročito higijenski uslovi života u romskim naseljima, da se maksimalni broj romske dece obuhvati radom predškolskih ustanova, da se romskim ženama obezbedi i posao i obrazovanje, naročito zdravstveno obrazovanje. Od izuzetnog značaja je da se sačuva autentičnost romske kulture, da se standardizuje romski jezik itd. Sva ova pitanja nužno je rešavati – što pre to bolje!

Polja rada na poboljšanju uslova života Roma na Balkanu su nepregledna. Državne institucije, međunarodne organizacije, lokalne zajednice, nevladine i humanitarne organizacije, ali i svaki građanin u balkanskim zemaljama mogu i treba da daju svoj doprinos poboljšanju uslova života Roma. Ali pre svih i iznad svih – sami Romi! Pri tome treba imati u vidu upozorenje koje upućuju Anžej Mirga i Leh Mruz: „Egzistencija romske grupe svuda je zavisna od mogućnosti koje pruža ovaj većinski kontekst, dominantna populacija. Ekonomski razvoj, dobrobit, obično zavise od dobrobiti okoline. Pri tome ekomska nesamostalnost Roma, takođe krije u sebi opasnost za grupu. Opasnost predstavlja i atraktivnost kulturne okoline”.²¹ Balkanska društva su, naime, uglavnom siromašna. U delovima Balkana koje je opustošio „treći balkanski rat” došlo je do izrazitog pada životnog standarda i značajnog osiromašenja većinskog stanovništva. Brz i jednostavan oporavak i „beg” iz zone siromaštva je iluzorno očekivati. Jedina šansa za sve gradane Balkana je da svojim radom izbore sebi povoljnije uslove života. To je jedina šansa i za Rome, naše ravnopravne sugrađane.

¹⁹ Uporedi: Maja Štambuk, *Romi u Hrvatskoj devedesetih*, Društvena istraživanja, God. 9/2000, br. 2-3/46-47, str. 291-315.

²⁰ Čini se da bi primerenije bilo govoriti o strategiji emancipacije nego integracije.

²¹ *Op. cit.*, str. 82.

ETNIČKA HOMOGENIZACIJA STANOVNIŠTVA SRBIJE KRAJEM XX I POČETKOM XXI VEKA

NADA RADUŠKI

UVOD

Balkanski etničko-verski i kulturni mozaik rezultat je mnogobrojnih ratova koji su tokom istorije vođeni na ovom području, što je imalo za posledicu česte teritorijalno-političke promene i velike migracije stanovništva, pri čemu su se istovremeno odvijali i mnogi etnički i etnobiološki procesi koji su bitno determinisali etnički sastav i prostornu distribuciju naroda na Balkanu (Cvijić, 1966). Balkanske države su, zbog svog geopolitičkog i geostrateškog položaja, istorijskog razvoja, demografskih, kulturnih i drugih činioca, etnički heterogene, multikonfesionalne i multikulturene sa brojnim nacionalnim manjinama, koje često predstavljaju izvor međunalacionalnih sukoba s obzirom na nepostojanje etničkih granica, s jedne strane i aspiracija za nacionalno homogenom državom, s druge strane. Manjinski problemi i nacionalne konfrontacije postaju dominantno obeležje Balkana jer nigde na tako malom prostoru nema toliko potencijalnih žarišta i sukoba, što se često objašnjava samom prirodom ovih zemalja koje čine poseban svet jer je po svojim osobenostima „Balkan dalje od Evrope nego Evropa od Amerike” (Poulton, 1991).

Srbija u etničkom smislu, zbog mnogobrojnih nacionalnosti i konfesija koje egzistiraju na njenom prostoru, predstavlja najšarolikiju balkansku zemlju ili „Balkan u malom”, što je rezultat ne samo njenog geografskog položaja već i istorijsko-političkih prilika, demografskog razvitka i drugih faktora. Zbog velikog broja različitih nacionalnosti i njihovog specifičnog teritorijalnog razmeštanja manjinsko pitanje je teže i složenije nego u drugim zemljama. Početkom 1990-ih godina opšte društveno-ekonomske i političke promene u bivšim real-socijalističkim državama (u kojima je, prema zvaničnim ocenama, nacionalno pitanje bilo „rešeno”), a posebno dezintegracija SFRJ, doveli su do međunalacionalnih konfliktata i sukoba. Stvaranje novih etnonacionalnih država na prostoru bivše Jugoslavije, rat i „etničko čišćenje”, voljne i prisilne migracije, ogroman broj izbeglica i interno raseljenih lica, imali su za posledicu velike etnodemografske promene na etničkoj karti Srbije. Proces etničke homogenizacije stanovništva, na šta ukazuju podaci poslednjeg popisa, bio je uslovljen prvenstveno velikim etnocentričnim migracijama, zatim prirodnim kretanjem stanovništva (diferenciranim prirodnim priraštajem po nacionalnosti), nekim nedemografskim faktorima (promenom nacionalne pripadnosti, asimilacijom i sl.), kao i složenom političkom i socio-ekonomskom situacijom krajem XX i početkom XXI veka na ovom području.

ETNIČKA STRUKTURA STANOVNIŠTVA SRBIJE (BEZ KOSOVA I METOHIJE) 1991–2002

Republika Srbija (bez Kosova i Metohije) predstavlja u etničkom smislu homogeno područje budući da, po popisu iz 2002. godine, od ukupno 7,5 miliona Srbi kao većinska populacija čine 82,9%.¹ Najznačajnije nacionalne manjine su Mađari (3,9%), Bošnjaci/Muslimani (2,1%), Romi (1,4%), zatim Jugosloveni (1,1%), dok sve ostale pojedinačno beleže ideo manji od 1% (tabela 1 u Prilogu). U poslednjem međupopisnom periodu (1991–2002), broj stanovnika se smanjio (za oko 52.000), pri čemu su pripadnici srpske nacionalnosti zabeležili apsolutno (za oko 172.000) i relativno povećanje (za 3 procenata poena) uprkos negativnom prirodnog priraštuju (oko – 180.000) što ukazuje na doprinos imigracione komponente, kao i subjektivnog faktora tj. izjašnjavanja za ovu nacionalnost.² Pored Srba povećanje su zabeležili još Vlasi i Romi, kod kojih je veći apsolutni porast od ukupnog prirodnog priraštaja uslovjen prvenstveno promenom etničkog identiteta - pojavom karakterističnom za te nacionalnosti. Ovaj značajan faktor determiniše etničku strukturu, ali za razliku od prirodnog priraštaja i migracija, ne u smislu promene ukupnog broja stanovnika već redistribucije između pojedinih etničkih grupa. Iako teško merljiva, promenljiva i ne-pouzdana kategorija „subjektivna promena nacionalne pripadnosti je, sa društvenog stanovišta, objektivna promena“ (Petrović, 1983). Kao značajan indikator razvojnih procesa integracije, etnoasimilacije i etnodivergencije može imati privremeni karakter, u smislu reakcije na društvene okolnosti, ili trajan, kao posledica voljne ili prisilne asimilacije. U posmatranom periodu, sve ostale nacionalnosti beleže opadanje, a naročito Crnogorci (za oko 40%) i Jugosloveni (kojih je samo deceniju ranije bilo četiri puta više), prvenstveno zbog promene u izjašnjavanju, zatim zbog iseljavanja i etničke asimilacije. Istovremeno, izrazit porast broja lica čiju nacionalnu pripadnost je teško proceniti, a koja nisu želela

¹ Prema međunarodnim preporukama o sprovodenju popisa na svakih deset godina, popis u SR Jugoslaviji trebalo je da se održi 2001. godine, ali je iz političkih razloga odložen za godinu dana, pri čemu je popis 2002. godine sproveden samo na teritoriji centralne Srbije i Vojvodine (u Crnoj Gori je ponovo odložen, a na Kosovu i Metohiji je najavljen za 2004. godinu). Najvažnija odlika poslednjeg popisa jeste promenjena metodologija. Primenjen je princip „de facto“ prema kojem ukupno stanovništvo čine stanovništvo u zemlji, jugoslovenski građani koji su u inostranstvu kraće od godinu dana (dok su u ranijim popisima, prema konceptu „de jure“, uključivana sva lica na privremenom radu u inostranstvu, nezavisno od dužine boravka), kao i strani državljanji koji u našoj zemlji borave duže od godinu dana. Dakle, ne postoji potpuna uporedivost ukupnog stanovništva prema definiciji primjenjenoj u poslednjem i prethodnim popisima.

² S obzirom na to da migracioni popisni podaci još nisu obrađeni, razlika između apsolutnog porasta i ukupnog prirodnog priraštaja daje zajedničko delovanje migracija i subjektivnog faktora (tj. opredeljivanja).

da se izjasne, jasno reflektuje aktuelnu političku i socio-ekonomsku situaciju u zemlji.

U okviru Srbije, prema karakteristikama etničkog sastava stanovništva, područja centralne Srbije i Vojvodine se dijametralno razlikuju.

Centralna Srbija

Srbi čine 89,5% ukupne populacije centralne Srbije, što ovo područje čini naglašeno homogenim³ i gotovo monolitnim, sa elementima unumodalnog tipa, s obzirom na to da sve ostale etničke zajednice participiraju sa vrlo niskim udelom (Bošnjaci/Muslimani 2,8%, Romi 1,4%, a ostali pojedinačno oko 1% i manje). Posle započetog pravca ublažavanja etničke homogenosti, od 1990-ih godina javlja se obrnut slučaj – stepen etničke homogenosti, izražen učešćem najbrojnije grupe, se povećava (tabela 2 u Prilogu). Naime, iako se broj Srba smanjio, njihov udio se povećao zbog veće prosečne godišnje stope rasta (-0,5 promila) od one za ukupno stanovništvo (-2,0 promila). Ukupan negativni prirodni priraštaj (oko -137.000), bio je veći od apsolutnog smanjenja (-26.000), što ukazuje na pozitivan uticaj udruženog delovanja imigracija i promene nacionalne pripadnosti. Naime, tokom 1990-ih godina u centralnu Srbiju stigao je veliki broj izbeglica (pretežno srpske nacionalnosti), koji su u najvećem broju i ostali na ovom području što je ublažilo smanjenje broja Srba, dok se istovremeno jedan broj lica i opredelio za ovu nacionalnost (Crnogorci, Jugosloveni i dr.).⁴ S druge strane, treba imati u vidu da se i veliki broj Srba zbog političko-ekonomske situacije odselio u inostranstvo.

Najrelevantnije nacionalne manjine su Bošnjaci/Muslimani (2,8%), Romi (1,4%) i Albanci (1,1%). Njihov reproduktivni model ponašanja, dijametralno suprotan od većinske i svih ostalih nacionalnosti, imao je za posledicu visok prirodni priraštaj usled relativno visokih stopa nataliteta i niskog mortaliteta (zbog mlade starosne strukture), mada su i izvesni nedemografski faktori imali bitnu ulogu u populacionom razvitu. U poslednjoj deceniji prošlog veka, Bošnjaci/Muslimani su imali pozitivan i relativno visok prirodni priraštaj (oko 12.000), ali uprkos tome negativnu prosečnu godišnju stopu rasta što upućuje

³ U literaturi se navodi podela na monolitni sastav (kada jedna etnička grupa čini preko 90%), naglašeno homogen sastav (80%–89%), niža homogenost tj. niža heterogenost (70%–79%), viša heterogenost (60%–69%), i vrlo visoka heterogenost stanovništva (50%–59%). Svakako, ove granice se mogu postavljati i u drugim rasponima u zavisnosti od brojčanih odnosa etničkih grupa.

⁴ Prema popisu izbeglica i ratom ugroženih lica, koji je sproveo Komesarijat za izbeglice Republike Srbije 2001. godine, registrovano je ukupno 451.980 ovih lica, od čega se u centralnoj Srbiji nalazilo 51,2%, u Vojvodini 48,7%, a na Kosovu i Metohiji 0,1% (Raduški, 2001).

na delovanje emigracione komponente. Treba, međutim, podsetiti da su i etno-statistički podaci često bili u zavisnosti od primenjenih (ili promenjenih) popisno-metodoloških rešenja, jer je ova nacionalnost različito tretirana u ranijim popisima (Muslimani – neopredeljeni, Jugosloveni –neopredeljeni, Musliman u etničkom smislu, Musliman kao jedan od šest konstitutivnih naroda SFRJ, a u poslednjem popisu, s obzirom na nove geopolitičke promene, Bošnjaci ili Muslimani). Smanjenje broja pripadnika albanske nacionalne manjine uprkos pozitivnom i relativno visokom prirodnom priraštaju (oko 16.228) ukazuje prvenstveno na emigracije Albanaca bilo da su u pitanju iseljavanja prema Kosovu i Metohiji ili u inostranstvo. Kod romske populacije registrovano povećanje broja i udela rezultat je u prvom redu pozitivnih i visokih vrednosti prirodnog priraštaja (12.815), ali je intenzitet promena ipak bio manji od očekivanih, s obzirom na neke nove okolnosti (dobijanje zvaničnog statusa nacionalne manjine, romski pokreti i nevladine organizacije itd.). Ipak, opravdano se prepostavlja da je na području centralne Srbije kod jednog broja Roma ponovo došlo do „etničke mimikrije“. Pripadnici vlaške nacionalnosti (0,7%) su, pored srpske i romske, imali pozitivan demografski rast na koji je presudan uticaj (s obzirom na negativan priraštaj) imalo sve češće opredeljivanje za ovu nacionalnost. Promena etničkog identiteta je pojava imanentna ovoj etničkoj grupi i stalno prisutna (samo različitog smera), bilo između dva popisa ili popisa i registracije vitalnih događaja. Preovlađujuća društveno-politička klima najviše se reflektovala na Crnogorce (0,6%) i Jugoslovene (0,6%) koji su zabeležili neočekivano veliko smanjenje, pri čemu je subjektivni faktor imao presudni uticaj. Naime, izvensa kolebanja prilikom deklarisanja Crnogoraca nastaju upravo u vreme burnih nacionalnih previranja. Raspad zajedničke države, ratno okruženje i nacionalno „prebrojavanje“ uticali su na to da se 1991. godine izjasne drugačije (kao Srbi najčešće), kao i u vreme poslednjeg popisa koji je održan u atmosferi političkih rasprava o budućem statusu Srbije i Crne Gore. Takođe, Jugosloveni su još u pret-hodnom popisu nosili ime države koja nije postojala u nekadašnjim okvirima, da bi u popisu 2002. verovatno poslednji put dobili priliku da se izjasne kao Jugosloveni, s obzirom na to da je već naredne godine i zvanično, konstituisanjem Državne Zajednice Srbija i Crna Gora, SR Jugoslavija prestala da postoji.

Razlike u demografskom razvitu stanovništva prema nacionalnosti, kao i ekonomski, socio-kulturni i politički činioci uticali su na teritorijalni razmeštaj stanovništva centralne Srbije, koji odlikuje proces nacionalne homogenizacije i prostorno-demografske polarizacije. Tako, Srbi imaju apsolutnu većinu u 109 opština, Bošnjaci/Muslimani u tri (Tutin 94,2%, Novi Pazar 78,2% i Sjenica 75,5%), Albanci u dve (Preševo 89,1% i Bujanovac 54,7%), dok Bugari imaju jednu opštinu sa apsolutnom (Bosilegrad 70,9%) i jednu sa relativnom većinom (Dimitrovgrad 49,7%). Od ostalih etničkih zajednica neke su veoma disperzivno nastanjene (na primer, Romi i Jugosloveni), dok su druge koncentrisane u određenim regionima (na primer, Vlasi u istočnoj Srbiji).

Vojvodina

U etničkom pogledu Vojvodinu odlikuje izrazito heterogena struktura stanovništva bimodalnog tipa jer, mada mnogobrojne etničke zajednice žive na ovom području, izrazito preovlađuju dve – Srbi i Madari (tabela 3 u Prilogu). Stalne migracije (kako doseljavanja, tako i iseljavanja) bile su i ostale glavni činilac demografskog razvoja i promene etničke slike Vojvodine. Tokom 1990-ih godina dolazak velikog broja izbeglica (koji je prevazišao čak i veliku kolonizaciju Vojvodine posle Drugog svetskog rata), odnosno veći broj doseljenih nego odseljenih, uticao je na povećanje ukupnog broja stanovnika u ovoj pokrajini (za oko 66.000) uprkos negativnom prirodnom priraštaju (oko -82.000). Imigracije, imajući u vidu nacionalni sastav izbeglog stanovništva, uticale su na majorizaciju vojvodanskog stanovništva, pa su Srbi (65,1%) imali porast i posred negativnog prirodnog priraštaja (-40.418), tj. stopa rasta u tom periodu (14,7 promila) bila je znatno veća od prosečne za ukupno stanovništvo (3 promila), kao i od stope rasta pripadnika drugih nacionalnosti (osim Roma). Pored doseljavanja, promena prilikom deklarisanja (opredeljivanje za srpsku nacionalnost) delovala je u pozitivnom smeru, dok su u isto vreme emigracije Srba u inostranstvo uticale u suprotnom pravcu na njihovu populacionu dinamiku.

Najrelevantniju nacionalnu manjinu – Madare (14,3%), koji zajedno sa Srbima čine gotovo 80% ukupnog stanovništva Vojvodine, odlikuju višegodišnje depopulacione tendencije, ali apsolutno smanjenje broja pripadnika mađarske nacionalnosti (oko -42.700) koje je nadmašilo njihov ukupni prirodnji priraštaj (oko -32.000) upućuje u prvom redu na delovanje emigracione komponente. Slično, kod hrvatske nacionalne manjine (2,8%) ukupno smanjenje (-15.848) znatno je veće od prirodnog priraštaja (-8.860), što ukazuje na iseljavanja prema matičnoj državi zbog političke situacije i međuetničkih konfliktaka u tom periodu, dok je promena opredeljenja imala nesumnjivo manji uticaj. Slovaci (2,8%) su takođe zabeležili apsolutno i relativno opadanje, prvenstveno zbog negativnog prirodnog priraštaja, dok su ostali faktori (emigracije, promena opredeljenja) bili manje relevantni. Za Vojvodinu, kao izrazito heterogeni region, karakteristično je da se veliki broj lica deklariše kao Jugosloveni, ali rezultati poslednjeg popisa (2,5%) pokazuju drastično smanjenje njihovog broja (za preko dve trećine), uprkos pozitivnom prirodnom priraštaju (oko 9.000), što je nesumnjivo posledica njihove promene opredeljenja usled složenih etnopolitičkih okolnosti. Samo su Romi (1,4%) imali porast broja i udela, zahvaljujući visokom priraštaju (oko 4.800) koji je ipak bio manji od apsolutnog porasta (6.118), što implicira na delovanje subjektivnog faktora tj. sve češće opredeljivanje za romsku nacionalnost. Nepovoljni trendovi u populacionom razvitetku zabeleženi su kod većine etničkih zajednica (Rumuna, Bunjevaca, Nemaca, Makedonaca, Rusina i dr.) zbog negativnog prirodnog priraštaja, emigracija, promena nacionalne pripadnosti, ali i asimilacionih procesa uslovljenih njihovom pro-

stornom disperzivnošću, malobrojnošću, velikim brojem mešovitih brakova i drugo. Porast broja lica (za gotovo pet puta) koja su se izjasnila u smislu regionalne pripadnosti (kao Vojvođanin, Banaćanin, Sremac i slično), kao i nacionalno neopredeljenih, najbolje odslikava etnopolitički trenutak u kome je popis sproveden.

Etnička kompleksnost Vojvodine manifestuje se ne samo u velikom broju različitih nacionalnosti i udelu u ukupnom stanovništvu, već i u njihovom prostornom razmeštaju, s obzirom na to da je preko 80% vojvođanskih opština etnički heterogeno. Teritorijalni razmeštaj mnogobrojnih nacionalnosti je specifičan jer su istovremeno prisutni procesi etničke homogenizacije, ali i visoke disperzivnosti pojedinih etničkih grupa. Tako, pripadnici srpske nacionalnosti imaju absolutnu većinu u 33, a relativnu u dve opštine (Vrbas 47,8% i Bač 46,7%). Prostornu distribuciju Madara odlikuje visoka koncentrisanost u Severnobačkom i Severnobanatskom okrugu, gde imaju absolutnu prevagu u šest (Kanjiža 86,5%, Senta 80,5%, Ada 76,6%, Bačka Topola 58,9%, Mali Iđoš 55,9% i Čoka 51,6%), i relativnu u dve opštine (Bečej 48,8% i Subotica 38,5%). Slovaci beleže etničku dominaciju u dve opštine i to u jednoj absolutnoj (Bački Petrovac 66,4%), a u drugoj relativnoj (Kovačica 41,1%). Za neke etničke zajednice karakteristična je teritorijalna disperzivnost, a za druge visoka koncentrisanost u pojedinim opštinama (na primer, preko 80% vojvođanskih Bunjevaca živi u Subotici, a preko 60% Rusina samo u dve opštine – Kuli i Vrbasu).

ZAKLJUČAK

U celini posmatrano, može se zaključiti da je etnička slika centralne Srbije i Vojvodine složena i u stalnim promenama. Krajem XX i početkom XXI veka na ovim prostorima prisutan je proces etničke homogenizacije kao posledica, prvenstveno, velikih migracija stanovništva (dobrovoljnih i prisilnih), zatim razlika u prirodnom kretanju stanovništva po nacionalnosti, kao i složene ekonomsko-političke situacije. Etnički faktor, koji se nalazi u osnovi reproduktivnog ponašanja izvesnih etničkih zajednica, takođe je uzrok nacionalno homogenih migracija u specifičnim političkim i socio-kulturnim okolnostima. Pored toga, u promenama etničke strukture primetno su učestvovali etnogenetski procesi bilo u smeru učvršćivanja grupnog identiteta (pa čak i pojave novih etničkih grupa), bilo u smeru asimilacije sličnih etničkih grupa i prisustva promene etničkog opredeljenja. Naime, voljna asimilacija je poznata kod sličnih nacionalnosti gde ne postoje religijski i istorijski antagonizmi, pri čemu je najveći kohezionalni elemenat jezik i vera, ali kod različitih nacionalnosti u specifičnim društvenim okolnostima postaju dominantni drugačiji modeli ponašanja, nedostatak tolerancije i međuetničkog poverenja.

Dakle, uzročno-posledični faktori demografske, socio-ekonomske i političke prirode uticali su na etničku strukturu i nacionalnu homogenizaciju stanovništva centralne Srbije i Vojvodine, a s druge strane aktuelni etnički odnosi uslovili su odredene društvene karakteristike ovih područja.

P R I L O Z I

Tabela1. – Etnički sastav stanovništva Republike Srbije (bez Kosova i Metohije)*

Etnička pripadnost	1991		2002	
	Broj	%	Broj	%
Ukupno	7.548.978	100.00	7.498.001	100.00
Srbi	6.040.854	79.93	6.212.838	82.86
Crnogorci	117.570	1.55	69.049	0.92
Jugosloveni	311.753	4.12	80.721	1.08
Albanci	72.699	1.02	61.647	0.82
Bošnjaci	–	–	136.087	1.81
Bugari	26.394	0.35	20.497	0.27
Bunjevci	21.221	0.28	20.012	0.27
Vlasi	15.368	0.21	40.054	0.53
Goranci	–	–	4.581	0.06
Madari	337.080	4.46	293.299	3.91
Makedonci	43.933	0.58	25.847	0.34
Muslimani	175.729	2.35	19.503	0.26
Nemci	–	–	3.901	0.05
Romi	90.016	1.21	108.196	1.44
Rumuni	37.350	0.50	34.576	0.46
Rusi	–	–	2.588	0.03
Rusini	17.782	0.23	15.905	0.21
Slovaci	65.266	0.86	59.021	0.79
Slovenci	–	–	5.104	0.07
Ukrajinci	–	–	5.354	0.07
Hrvati	94.066	1.24	70.602	0.94
Česi	–	–	2.211	0.03
Ostali	33.832	0.42	11.708	0.16
Neopredeljeni	9.944	0.13	107.732	1.44
Region. pri- padnost	4.717	0.06	11.485	0.15
Nepoznato	33.425	0.41	75.483	1.01

*Napomena: Zbog približnog metodološkog usaglašavanja, za 1991. dati su podaci za stanovništvo u zemlji, a za 2002. "de facto" i to za sve nacionalnosti (sa 2000 i više pripadnika) po zvaničnoj klasifikaciji RZS.

Izvor: Za 1991. knjige popisa br.15 i 17, SZS, Beograd; za 2002. Saopštenje, br. 295, RZS, Beograd.

Tabela 2. – Etnički sastav stanovništva centralne Srbije, 1991–2002

Etnička pripadnost	1991		2002	
	Broj	%	Broj	%
Ukupno	5.582.611	100.00	5.466.009	100.00
Srbi	4.917.414	87.96	4.891.031	89.48
Crnogorci	73.172	1.30	33.536	0.61
Jugosloveni	141.323	2.53	30.840	0.56
Albanci	70.194	1.33	59.952	1.10
Bošnjaci	–	–	135.670	2.48
Bugari	24.117	0.43	18.839	0.34
Bunjevci	–	–	246	0.00
Vlasi	15.237	0.28	39.953	0.73
Goranci	–	–	3.975	0.07
Mađari	4.183	0.07	3.092	0.06
Makedonci	26.853	0.48	14.062	0.26
Muslimani	169.983	3.08	15.869	0.29
Nemci	–	–	747	0.01
Romi	67.077	1.21	79.139	1.45
Rumuni	2.922	0.06	4.157	0.08
Rusi	–	–	1.648	0.03
Rusini	387	0.01	279	0.01
Slovaci	3.107	0.06	2.384	0.04
Slovenci	–	–	3.099	0.06
Ukrajinci	–	–	719	0.01
Hrvati	21.672	0.39	14.056	0.26
Česi	–	–	563	0.01
Ostali	15.284	0.07	6.397	0.12
Neopredeljeni	4.890	0.09	52.716	0.96
Region. pripadnost	2.251	0.04	1.331	0.02
Nepoznato	22.545	0.46	51.709	0.95

Izvor: Kao za tabelu 1.

Tabela 3. – Etnički sastav stanovništva Vojvodine, 1991–2002

Etnička pripadnost	1991		2002	
	Broj	%	Broj	%
Ukupno	1.966.367	100.00	2.031.992	100.00
Srbi	1.123.440	57.02	1.321.807	65.05
Crnogorci	44.398	2.25	35.513	1.75
Jugosloveni	170.430	8.67	49.881	2.45
Albanci	2.505	0.13	1.695	0.08
Bošnjaci	–	–	417	0.02
Bugari	2.277	0.12	1.658	0.08
Bunjevci	21.221	1.07	19.766	0.97
Vlasi	131	0.01	101	0.00
Goranci	–	–	606	0.03
Mađari	332.897	16.90	290.207	14.28
Makedonci	17.080	0.87	11.785	0.58
Muslimani	5.746	0.29	3.634	0.18
Nemci	–	–	3.154	0.16
Romi	22.939	1.19	29.057	1.43
Rumuni	34.428	1.78	30.419	1.50
Rusi	–	–	940	0.05
Rusini	17.395	0.88	15.626	0.77
Slovaci	62.159	3.16	56.637	2.79
Slovenci	–	–	2.005	0.10
Ukrajinci	–	–	4.635	0.23
Hrvati	72.394	3.69	56.546	2.78
Česi	–	–	1.648	0.08
Ostali	18.548	0.89	5.311	0.26
Neopredeljeni	5.054	0.26	55.016	2.71
Region. pripadnost	2.445	0.12	10.154	0.50
Nepoznato	10.880	0.63	23.774	1.17

Izvor: Kao za tabelu 1.

Etnička homogenizacija stanovništva Srbije krajem XX i početkom XXI veka

Sažetak

U radu se analizira etnička struktura stanovništva Srbije (bez Kosova i Metohije), kao i Centralne Srbije i Vojvodine prema popisu stanovništva iz 2002. godine, sa posebnim osvrtom na kvantitativne i kvalitativne etnodemografske promene koje su se desile u poslednjem međupopisnom razdoblju (1991–2002). Istaknut je značaj faktora koji determinišu i menjaju etničku sliku pojedinih područja, kao što su prirodno kretanje stanovništva (natalitet, mortalitet tj. razlike u prirodnom priraštaju po nacionalnosti), migracije i subjektivni faktor – promena etničkog opredeljenja. Aanaliza etnostatističkih podataka poslednjeg popisa stanovništva nesumnjivo je od velike važnosti jer ukazuje na pravac i intenzitet promena u etničkoj strukturi Srbije u proteklom veoma burnom periodu.

Ethnic Homogenization of the Population of Serbia in the end of the XX century

Summary

In this article is presented the ethnic structure of the population of the Serbia (excluding Kosovo and Metohia), as well as that of Serbia proper and Vojvodina according to the 2002 census results that characterized by process of ethnic homogenization and spatial demographic polarization. On the whole, the ethnic picture of Serbia Proper and Vojvodina is a complex one and undergoing changes continuously. Some areas have a more complex ethnic composition, while ethnic homogenization on the population prevails in others, in consequence of different natural growth rates and ethnocentric migrations, as well as many political, socio-economic, cultural and other factors.

MEDIA AND CULTURAL DIVERSITY IN SERBIA

MIROLJUB RADOJKOVIĆ

MAIN CHARACTERISTICS OF MASS MEDIA SYSTEM IN SERBIA

During the period before 1990 the citizens of former Yugoslavia were denied the right to private possession of the mass media. The right to communicate, in line with socialist ideology, was considered to be a collective rather than an individual freedom. The mass media system was extremely decentralized, with each federal unit (six republics and two autonomous provinces) allowed to develop and care about its own press and broadcasting media. There were eight major broadcasting networks covering federal units in the form of social property, named after the capital cities (RTV Belgrade, RTV Zagreb, etc), 214 local radio stations and some 20 local television emitters. The press consisted of 27 dailies and some 60 local newspapers, and more than 600 factory press outlets.

The last federal government of SFRY, led by Mr. Marković made the decisive step to liberalize and open for privatization media system through the Federal Public Information Act of 1990. This occurred during the time when former Yugoslavia still formally existed, as republics aiming to secede had not yet been successful. However, by 1990 all the republics had started to behave as completely independent states. In spite of that, all contemporary new states adopted basic principles from the mentioned Public Information Act 1990, fostering three major avenues of mass media transformation: the possibility of foreign investment in the mass media industry up to 49 percent of capital stock, the abolishment of prelicensing of potential media owners and right of private subjects to found newspapers or local broadcasting media.

The process of gradual political disintegration of SFRY was followed by the fragmentation of the former, common information space. The new political masters in ex-federal units, legalized through the first ever multi-party elections, were able to confine their citizens into eight isolated preserves and thus mobilize populist support for themselves like new, by the rule nationalistic, political elites. If the media had not been restricted in this way, there would have been no need for people to fight for press freedom, no need to fight for transmission masts in order to receive signals from other parts of their ex-state, and no need to smuggle newspapers across the newly established state borders. At the top of all of that, telephone lines were cut, Internet lines did not function (in Serbia until 1996) and free movement of people was prevented by introduction of visas and

other administrative obstacles. This last remnant from the days of hostile disintegration of ex-Yugoslavia still exists so far Slovenia and Croatia are concerned.

As the events following the break-up of former Yugoslavia showed, after the demise of the one-party state, the media in quite all parts of Yugoslavia hindered rather than advanced processes of democratization. This is particularly true for Serbian media, from which some reverted to the state control, such as the most powerful broadcasting network Radiotelevizija Srbije (see The Broadcasting Act 1991). From pragmatic reasons it was immediately centralized (units in Priština and Novi Sad being submitted to Belgrade) and redefined as watchdog of “national and state interest” under strict control of the Milošević government. Ordinary citizens were embarrassed by the flood of nationalistic propaganda and manipulative messages in the form of semi-truths, negative stereotypes of national or ethnic groups of “others” and so-called “hate speech” (see Thompson, 1995). The destiny of culture and language followed hand in hand political upheaval as illuminated by the destiny of the former Yugoslavia. They were torn into pieces in favor of small but pure economically exhausted states, which are arrogant and blown out at civilization periphery. Each of them is now celebrating its “liberation” – minded at the same time cultural cleansing in order to be self-sufficient.

During 1990-s the media in Serbia were divided into two groups: pro-regime in one hand and oppositional (or “independent” as they preferred to call themselves) in the other. RTS had at its disposal the best infrastructure (terrestrial) and the biggest number of RTV frequencies. Its infrastructure was not used as a common carrier serving public interest, offering to the public pluralism of information. That is why during this period fight for change had one pivotal goal: to break down monopoly of the state and government over national TV and radio network. This monopoly existed in all aspects: technical, financial, program making and personnel one. Allocation of frequencies was in hands of government. RTS had the right to hold in reserve large number of frequencies, having at the same time the privilege of lending or denying their use to other broadcasters. If new appearing emitters were obedient to the regime this technical resource was at their disposal, and vice versa. Some of the currently biggest, private RTV media became leader at the market thanks to the advantages in frequency allocation, e.g. coverage, from these days of authoritarian regime. Regarding the financial aspect, there was a clear difference between the state and independent (opposition) media. The latter had no right to collect subscription, but neither did they have enough revenues from the commercials due to impoverished economy. In many cases, state enterprises did not advertise in press and broadcasting media performing oppositional editorial policy. Pro-regime media were also cleared from disobedient journalists. In the year 1993 some 3000 journalists were fired from state controlled RTV and press.

Finally, winning the war inside the media the regime was capable of dictating and controlling great deal of media production. This influence was exercised overtly during all election campaigns until 1996, when the opposition parties have won local elections in 44 major cities for the first time. That part of the media, performing the role of propaganda machine, was finally badly hurt during NATO bombing of Serbia in 1999. Terrestrial broadcasting infrastructure lost 17 from altogether 19 masts, 25 transmitters of RTS and 11 belonging to other, local RTV stations were destroyed additionally. Complete buildings of RTV Priština and Novi Sad were leveled down by air strikes, and the main building of TV Belgrade hit NATO vessel, which killed 16 workers at the same time.

In practice, the position of all independent media was during 1990-s under cross pressure. On one hand, they were struggling for an alternative approach to informing so that the citizens were able to realize their right to know those truths, which were hidden by official media. On the other hand, independent media were by the rule private ones, so they followed the commercial interests. They entered mutual competition, quarrels and accusations, which were weakening all of them. At the same time, economic potential of the country did not provide enough income for the wild proliferation that has been happened. In spite of general poverty the number of media was steadily growing during 1990-s. The number of both press and broadcasting newcomers was in 1997 – 123, in 1998 – 114, in 2000 – 157 and in 2001 – 132 media. (*Vodič kroz medije Jugoslavije*, 2002, XVI). The same source reports data for 513 radio and 216 TV channels and 656 press outlets in 2001 (*Ibidem*, XI). Currently, the assessments deal with 1200 radio and TV stations in Serbia (nobody knows the exact figure), more than 90 per cent of them completely illegal. Their equipment is often out of date, mutually incompatible and unreliable. In case of opposition media, a part of equipment was obtained through foreign aids. The main body of the program consists of the cheapest shows, movies, serials, quiz shows and interviews in the studio. A great number of local, even municipality-owned stations do not serve information function at all. Majority of RTV stations is oriented towards entertainment of the lowest taste, presenting video cassettes (mainly the pirate ones), or towards the re-distribution of the programs “stolen” from the satellite dish (without authorization). This is why instead calling them “micro wave stations”, they might be called “micro wave ovens”, because they simply “warm up” foreign products broadcast them at the local market and gather few advertisements. On the other hand, the political-informative press has decreased to only 12 dailies with aggregate, average, daily circulation of 600 thousands copies only! More than 30 percent of adult population does not read any daily newspaper at all. The percentage of not-readers, so far weeklies are concerned, is doubled (60 percent). Credibility of the newspapers is low and their content is almost the same due to absence of qualified, well paid journalists.

Another common feature of the transition of the media and culture in Serbia during nineties was the magical revitalization of ethnic myths. They were given the role of the ferment for growth of national cultures in order to establish tyranny over language and minds. Ethnic myths were being recycled in all ethnic cultures. The elements of these myths were constituent parts of the “ruling languages” which were to restrain the untamable “I” into an immovable “We”. This process was taking place in an industrial way through “consciousness industry”. The final products were quite modern since they used popular music, video contents, cartoons, movies etc. (See Čolović, 1993) The selection was very simple. Only useful mythological passages have been revived – the more in line with national pride and glory, the better. This is how contemporary speech concerning the others, continued to be more and more radicalized and we. There was no fear of too harsh words, of stereotypes, fanaticism and prejudices. Even if the desirable “We” lacked authority it did not matter. There was always reserve (political) authority to replace the missing one. At the end, the clash of national folks and cultures escalated into real violent clash, that one of civil war.

Similar tendency was visible till first days of XXI century in the states aiming towards European Union, all of them by the rule located at West Balkan. On the road to Europe they have to reconsider both national and emerging European cultural policy and identity. Among the other prerequisites, on which the inclusion or exclusion of Balkan states from European integration depends, there is the demand for harmonization with European cultural standards and norms. Also, in the broad field of human rights and fundamental freedoms, the question of intercultural communication and freedom of the media occupies high place of importance. For, Balkan countries are by the rule multi-ethnic societies. This is exactly the case of Serbia, in which 33% of their citizens (including Albanians at Kosovo and Metohija) do not belong to majority population. Like other Balkan states Serbia is now looking towards European Union, although it lost precious time and some advantages due to tragic mistreatment of other nations and national minorities and misunderstanding with the spirit of unifying Europe. Serbia is the best example of a society, which till recently was politically guided completely opposite to all changes taking place in European community. In words of one social scientist: “We can observe that since 1989 Europe has witnessed a rise of nationalism, especially in the South-East, and the coming to the fore of groups, which are xenophobic, racist or ethnicist and have a strong tendency to exclude the Other. These developments represent a serious danger for the collective representation of *an open Europe with flexible frontiers, and Europe that defines itself as an association of all those who share the principles that express Europe's specificity*”. (Berting, 2001, 44). It is not necessary to repeat at this place, what contribution of Serbian previous government was to these wrong tendencies. During last decade of XX century, it pushed the state at the track of exclusion from Europe. At the same time, Serbian

citizens were isolated becoming a “ghetto society”, which among other things was prevented from intercultural communication with the rest of the world and its immediate environment. Official propaganda of former authoritarian regime abused this fate to create a myth of “international plot” against Serbian nation, hampering additionally efforts of small groups that remained in intercultural communication with surrounding “others” and European community of states. After upheaval in October 2000 the situation has changed completely. New government started encompassing social reform that opens Serbian society towards European integration in all aspects.

MEDIA OF NATIONAL MINORITIES

If one wants to measure intensity of intercultural communication coming out from cultural diversity, one must take into consideration, among other things, structure and way of functioning of mass media both of majority and minority population. Though the notion of culture have a broader meaning, mutual, permanent influence of people leaving at relatively tight space contributes to the wealth of cultural varieties. Usually it is the protection of customs, folklore, literature, artistic creativity and use of media what constitutes the main issues of culture of minority communities.

There is a certain paradox concerning treatment of national and other minorities in Serbia so far their mass media are concerned. As one of republics of ex-Yugoslavia, it was offering the advanced context for free and broad intercultural communication. Concept of federative state, rights of minorities, power of local governments, self-management, respect of cultural uniqueness and linguistic equality – all these achievements were better elaborated than in European Community until 1990-s. In the field of communication the policy of “positive discrimination” of minority media was performed. According to this concept, ethnic minorities were being favored in such a way that they were all represented in public offices and institutions proportionally to their real participation in the population. This policy had as its outcome the forming of the informative institutions of all national minorities and their supporting with no regard to economic sustainability. This meant that media of minority groups were highly subsidized, that neither the scarcity of the audience nor the scarcity of market constituted any threat. All this was being done in order to realize truly the principle of communication equality of these social sub-groups. Thanks to such a policy, public and mass communication in Serbia was conducted in fifteen languages and all national minorities had at least one relevant means of public communication in their jurisdiction.

Serbia entered the transition period with a very high and hardly maintainable amount of minority media. Just to remind, Radio Novi Sad had the

program in Hungarian language that lasted 24 hours, what was unprecedented worldwide. Television Novi Sad also recorded a similar expansion – it was making programs in Hungarian, Rumanian, Slovak and Ruthinian. On the radio “the program in Slovak usually lasted 7 hours a day, in Rumanian also 7 hours a day and in Ruthinian 4 hours a day...Towards the middle of 1992 Radio Novi Sad also started the programs in Ukrainian and Roma language...RTV Pristina also records a similar expansion. It had to satisfy the information needs in Albanian and Turkish and from 1992 it also made programs in Romany. The programs in Albanian lasted 10 hours a day, on 2 TV channels and 34 hours a day on 3 radio stations. According to the Statistic Yearbook 1990, Serbia also had quite large number of newspapers in the language of national minorities: In Albanian – 27 titles, in Hungarian – 18 titles, in Check and Slovak – 26 titles...In addition to this, the Assembly of Autonomous Province of Vojvodina was the founder of three more newspapers in Rumanian and as many (3) in Ruthinian.” (Lučić, 1993, 55–57). Radio Belgrade and Radio Niš were serving communication needs of Bulgarian national minority located at the East Serbia.

Apart from outburst of nationalistic policy, economic disaster and international sanctions were responsible for collapse of the policy of “positive discrimination” of minority media in Serbia. Catastrophic economic situation has ruined the federal, republic and province budgets and caused the reduction of all kinds of expenses. This also applied to the subventions for the media of national minorities, which were reduced but not completely canceled. However, dependence of minority media on state subsidy represented later a tool by which the regime of Milosevic was able to make moves towards “negative discrimination” of these media. This had been extremely successfully exercised on Kosovo and Metohija, because of attempts of the Albanian minority to form an illegitimate Republic of Kosovo and a parallel government. Serbian government dissolved Albanian publishing company “Rilindija” and transformed it into a state-owned company (“Panorama”). With the introduction of the state of emergency at Kosovo and Metohija (1991) RTV Priština was made part of state-owned RTS. 1.300 out of 1.800 Albanian journalists were fired or boycotted the new employer. At the same time the amount of the programs in Albanian was drastically reduced. After 1992 there were 3 hours of program a day and 16 hours of radio program – only one half of what there was before. Even worse, this program in Albanian language was only translation of official propaganda from Serbian information sources. (See Radojković, 1996) Kosovo crisis finished in the armed conflict, which was resolved by NATO intervention 1999. According to Resolution number 1.244 this Province is brought under UN protection and Serbia has currently no legal rights and duties in media field. Hence, changes that happened during nineties brought about an ambiguous political situation so far the treatment of national minorities and their media was concerned. In spite of that, all preconditions and needs for intercultural communication survived, since Serbia remained and still is a real multi-ethnic society

With the upheaval done in October 2000 Serbia has turned itself towards European perspective again. New elected government of DOS (coalition of 18 ex-opposition parties) opened the process of harmonization with EU laws and rules. The same is true regarding the national minority cultural rights and media. European standards require any state to secure through the publicly owned media minimum of information, education and entertainment to all minorities in their mother tongue. (European Charter on Regional and Minority Languages, 1998, paragraph 11) Also, another standard invites states to secure any technical and financial help to the members and associations of minority groups, in order to enable them to found their own mass media as well as other cultural institutions. (*Framework Convention for the Protection of National Minorities*, 1998, paragraph 9). Hence, any country that wants to join to the European Union has to fulfill these standards and principles. Interestingly enough, first attempt in Serbia to comply with European standards goes back to 1993, when the working paper *Democracy and Minority Communication* (Beograd – Subotica, 1993) under the auspice of federal government (FRY consisting of Serbia and Monte Negro) was made public. In its paragraph 13 was stated: "Everybody is free to start private and joint foundations for development of radio-television stations or programs in the language of minority communities, as well as for development of programs and the media aimed at mutual understanding and connecting of different national and ethnic communities". Apparently, lawmakers were following the intention of Framework Convention for the Protection of National Minorities. For, their recommendation was to establish a special budget line from which the individuals and associations of national minorities could have lent "soft" credits in order to start their indigenous media. Unfortunately, this policy has never come into being, since Milosevic conquered power at the federal level soon, closing at the same time the space for pro-European efforts.

CONTEMPORARY SITUATION OF MINORITY MEDIA

Current media restructuring in Serbia has been marked by harmonization of their legal framework with European standards and norms. This endeavor should change their structure by introduction of a set of so called "media laws". It is composed out of 5 new Acts: Public Information Act, Broadcasting Act, Telecommunication Act, Advertising Act and Freedom of Information Act. All of them are basically prepared by domestic experts and specialized NGO-s, with the support of OESCE office in Belgrade and help of Council of Europe consultants. In this regard, one can notice that representatives of civil society have an important word in this process. But, since they are not final lawmakers in many cases their drafts were distorted through the legislative process in undesired directions. So far, three new, first mentioned acts came into power.

For the purpose of this report, the Broadcasting Act 2002 and Public Information Act 2003 are the most important ones, as real promoters of substantial changes. The most important novelties, which Broadcasting Act has established, are: independent broadcasting regulatory body, public service companies for Serbia and Vojvodina, dual property of electronic media and introduction of new forms of broadcasting stations. On the other hand, Public Information Act is important too, because it denies the right of state, or any state institution, to found and possess mass media. This is substantial change, bearing in minds the fact that founder of many media of national minorities are assemblies of municipalities and Autonomous Province of Vojvodina. Hence, such media must get new (private) owners until 2005 according to Public Information Act 2003.

Broadcasting Act 2002 calls for the change in media ownership structure too. In line with European standard, it requires dual media ownership – with public services at one side, and private broadcasting media at the other. It has no consequence upon printed press. Similar to other European countries, Serbian newspapers are already privatized, since the state plays the role of founder only in three out of 12 existing daily papers (one of them in Hungarian language). Quite contrary, within the plenty of over 1.200 broadcasting stations, there are still some 175, or 14,5% in quasi-state ownership. Those are by the rule RTV stations of local governments, e.g. municipalities. As a remnant of “social property”, they will have to be privatized until year 2005.

In some municipalities, this kind of local broadcasters serve the cultural and informational needs of national minorities in their mother tongue. This is the case with local, municipality broadcasters in five communes located at north top of Vojvodina, in several municipalities with majority population of Rumanians, Slovaks and Ukrainians in this province too. Albanians living in three southern communes of Serbia (Bujanovac, Preševac, Medveda) got first local radio station ever thanks to help given by international community and new Serbian government in 2001. Similarly, Muslim population concentrated in west corner of Serbia (Sandžak) enjoys foreign aid in order to improve its culture. For the time being this group manifests its cultural identity mainly by insisting on use of new, Bosnian language. This time the official policy tolerates this endeavor. In this light one must look the establishment of new University for Sandžak area. This year a new radio station is also erected in city of Novi Pazar. Local station called “Stoplus” will be financed next two years directly by French government. But, to repeat, all broadcasters mentioned above must change the ownership structure after 2005. Therefore, quite all-national minorities have expressed fears of possible deprivation from means for intercultural communication through restructuring imposed by new legislation.

The lawmakers were aware of this risk. Therefore, the *Broadcasting Act secures* (paragraph 78) obligation of new-established public services (both in Serbia and Vojvodina) to dedicate “appropriate” amount of their programming

to cultural, informational and educational needs of all national minorities living at their territory of coverage. Serbian public service network therefore broadcast daily program in Roma language since members of this group are spread around the whole Republic. Another beneficiary is national minority of Bulgarians being served twice a week. In addition, there is local station "Radio Caribrod" in city of Dimitrovgrad (next to the border with Bulgaria), which broadcast in Bulgarian language. Public service in Vojvodina will continue to serve communication needs of Hungarians, Rumanians, Slovaks, Ukrainians, Ruthinians and Roma in their mother tongues. Because they are not all confined in few, typical municipalities, a complete TV channel of public service of Vojvodina is foreseen to serve this purpose. In addition, many local RTV stations operate and will continue to operate in languages of national minorities. If they will be privatized or transformed into new kind of local media is to be seen in next years. Privatization is not the single perspective ahead.

Not only private, but also a new form of local RTV stations is guaranteed By the Broadcasting Act (paragraph 95). If members of national minorities could not buy (privatize) local stations in municipalities where they are concentrated, they can transform them into *Civic Media*. Such a medium of civil society has clear theoretical justification: "The press is free when it does not depend on either the power of government or the power of money". (Kean, 1991, 150) Theoretically, such a position is very suitable for realization of communication equality of national, cultural and linguistic minority groups. For, if the government of nation-state establishes (and finance) minority media, this solution turns easy into paternalistic policy. On the other hand, if only market rules decide about the fate of minority media, they have poor chance to survive, because they are unprofitable business (market). Hence, appropriate way out, foreseen by the Serbian Broadcasting Act, is to restructure local, minority media into *non-profit, public foundation*. Of course, this legal form can't automatically guarantee financial viability. Therefore, the law gives considerable advantage to the civic media in advance. It offers license, e.g. frequency use, to the civic media for free. Additional sources of their income could be donations from abroad and home, projects grants obtained from domestic state and local governments, sponsorship, donations from citizens as tax deductible expenses, etc. Non-profit foundation as media form does not mean that all collaborators will work for free. Certainly, some staff, doing the most sophisticated jobs, will get salaries. But, program production and creativity must depend as much as possible on volunteers and amateurs, e.g. ordinary citizens, being keen to express and self-reflect their local, national, cultural or linguistic self-being and identity.

So far, response to this novelty is poor. Big, traditionally recognized, national minorities still have the tendency to (re) call upon "established rights" from the time of socialist past and its policy of "positive discrimination" of

national minorities. They hesitate to enter into restructuring of local, municipality media in either new direction (privatization or civic media), although deadline to do it is approaching fast. Among newly recognized and organized minorities, Roma (Gypsy) groups are the most enthusiastic to take part in restructuring process. Hand in hand with official recognition of themselves as new, institutionalized, national minority, they establish new, non-state (but basically commercial) means of mass communication. Those are: the press agency (Rompress), TV station "Nišava" and radio under the same name with 24 hours transmission in Niš, new radio station in Valjevo, etc. Since Roma are spread around the whole Serbian territory, they want to establish specialized national radio and TV channel as well. Assembly of Vojvodina founded in 2003 publishing company "TNEM", which prints the paper under the same title. With the wider use of media of communication, the process of standardization of Roma language (dialects) is gradually taking place. This is also an interesting, unique cultural change. On the other hand, among thousands of non-governmental organizations in Serbia only few, deeply rooted into citizenship and future directed ones, are preparing to use the legal offer for establishment of civic media. As an early bird of this kind, radio "Stav" in city of Leskovac could be mentioned.

It is worth noting that possession of broadcasting organization is not necessarily the best way to fulfill cultural and information needs of minority groups. In order to let all kinds of such groups to speak for themselves, in manner they prefer, Broadcasting Act 2002 gives them opportunity to use the form of *independent program production companies*. It is to say that much more groups could make their documentaries, music, plays, folklore etc. in form of ready-made radio or TV products than to finance and feed with it complete RTV station. Any potential producing group will have low expenses and even better access to the public. For, all broadcasters, being public service or commercial ones, are obliged by law to dedicate minimum 10 per cent of their annual output to performances prepared by independent program producers. In this way, a large space for dissemination of messages created by minority groups is open. At the same time, their cultural achievements could be in many cases more visible (disseminated by large emitter) than using low-power, local broadcasting media. So far, independent program production form is used by three groups of freelance journalists (in Belgrade and Novi Sad). Because this practice shows good results (rating and number of re-broadcasters), it is to expect national minorities and sub-culture groups to follow the same path in near future.

"The protection of cultural heritage and cultural identity of minority communities was most developed, and still is, in Vojvodina. In this Autonomous Province there is long lasting tradition of institutionalized cultural creativity of minorities, as well as its improvement through the work of amateur associations". (Bašić, 2002, 54–55) This is only to say that in Vojvodina intensity of

multicultural ties is most intense. It is almost impossible to find any region in Europe with such a cultural and linguistic variety. Therefore, diversification of national and other minority media is biggest in this Province. It will be shown by overview that follows in accordance with the size of these groups.

Hungarians are typically settled down in Vojvodina. There is no single municipality in this Province without Hungarian citizens. With more than 340 thousands Hungarians are second large national minority of Serbia (after Albanians if Kosovo and Metohija is included). They represent majority of population in 7 (out of total 45) municipalities in northern part of Vojvodina. In line with these facts Hungarians have schools, University, theaters, and media in their mother tongue.

This national minority has daily newspaper "Magyar Szó", appearing six times a week, with average circulation around 10 thousands copies. The same printing house "Forum holding" publishes family journal "Het Nap". Other printing houses are private enterprises. They publish three journals for kids and youth in addition. The Official Gazette of Autonomous Province of Vojvodina is published in Hungarian language too. In three smaller cities (Kanjiža, Kovin and Temerin) there are Hungarian weeklies. Local newspapers in 6 municipalities (Bačka Topola, Bečej, Vršac, Kula, Kovin and Novi Kneževac) are bilingual, e.g. appear in Serbian and Hungarian simultaneously. There are also 10 Hungarian journals. Television program in Hungarian is broadcasted at TV Novi Sad, TV Kovačica and TV Pančevo. First mentioned TV emitter has its regional center in Subotica. Radio program in Hungarian language broadcast public service Radio Novi Sad and 10 local, municipality radio stations. There are also 6 private, commercial radio stations that broadcast in language of this national minority.

Rumanian national minority has its publishing house "Libertatea" founded by assembly of Vojvodina. Printed press published by this company encompasses one political weekly, two journals for kids and youth ("Tribuna tineretului", "Bucuria copilar") and journal for literature and culture ("Lumina"). In addition there are 7 publications more in Rumanian language. By the rule, they are private endeavors in villages having neither safe source of financing nor regular timing of appearance. TV Novi Sad broadcasts news bulletin in Rumanian language daily and 3 specialized programs in addition. In other municipalities there are no Rumanian TV programs. Radio Novi Sad broadcasts four segments in Rumanian daily, and 4 other local municipality stations have radio program in this language too.

Main newspaper for Slovak national minority is "Hlas Ľudu", the weekly with circulation up to 5 thousands copies. It belongs to the publishing house founded by assembly of Vojvodina. Other publications under the same roof are children, youth and family journals ("Zornjicka", "Vzlet" and "Rovina" respectively). Television program in Slovak is supplied by public service TV

Novi Sad, on average 45 minutes daily. There are 3 local, Slovak TV stations – in Bački Petrovac, Kovačica and Vojlovica (Pančevo) covering all municipalities where this minority is located. Radio Novi Sad broadcasts on average 5,5 hours of programs in Slovak language. There are 3 local radio stations (Bački Petrovac, Stara Pazova and Kovačica) broadcasting in the same language, and 8 other local radio stations using it as second one.

Ruthinians have as most important newspaper weekly “Ruske slovo”. This publication and additional cultural journals in mother tongue survive thanks to subsidies enabled by Province of Vojvodina (the circulation of the weekly mentioned is only 1.600 copies). Since 1975 TV Novi Sad has been transmitting 6 hours of programs in Ruthinian language by a week. Radio program lasts 4 hours a day at Radio Novi Sad. Three local, municipality stations (Vrbas, Kula and Šid) also broadcast parts of their programs in Ruthinian language.

Ukrainian minority in Vojvodina can rely upon TV Novi Sad with 30 minutes of program twice a month. Radio Novi Sad broadcasts 1,5 hours in their language weekly, and local radio station in Verbs 1 hour weekly. Croats are represented with 2 hours of radio program at Radio Subotica every work-day, and with one hour of TV program monthly on TV Novi Sad. Germans have half hour of radio program every Friday at Radio Subotica in their mother tongue. They are preparing to start TV program at public service of Vojvodina soon. In 1999 Matica Aškalija Jugoslavije was established in Novi Sad. This group of people of Muslim religion (some 30.000 in Vojvodina) has once a month their own TV program at TV Novi Sad.

CONCLUSION

Any kind of communication, including intercultural one, cannot be imagined in our days without use of mass media. They are also part and parcel of important cultural institutions of any nation or minority community, hand in hand with theaters, museums, schools, cinemas, etc. In the most common and implicit interpretation, mass media come under the notion of “institutions of importance for dissemination of culture, education, and preservation of national identity”. It is taken as granted because the media, in their operation, always perform educational and cultural function, use the mother tongue and reinforce certain social values and cultural identities. So, regardless if one speaks about cultural issues of Europe, a nation state or a national minority, one must bring mass media into the focus of discussion. That was exactly the intention of this paper.

Number and disposition of different minority media is an apparent indicator of cultural diversity in a given country. The same is true for Serbia today. Hence, in order to use the potential of minority media for cultural

dialogue and interaction to flourish, they must be stimulated to perform truly *intercultural communication* role. For, national and other minorities in Serbia are located very much like “Russian dolls”. It is to say, that many minorities live and work together at the same territory. If one minority represents the biggest number of dwellers, it comes into position to build its cultural institutions easier. Than, it often neglects the culture, identity and language of other, smaller groups living in same area. Doing so, it neglects European standards and ideals. There is not always fair coverage of different national and linguistic minorities in specialized, local media. In the past, it was seen that Albanian media did not refer to the language and culture of Turkish minority at Kosovo and Metohija, for example. Hungarian local media in Vojvodina did not report regularly about the life of Rumanians or Slovaks living in the same municipality, or vice-versa. In Western Serbia (Sandžak) media of Serbs also neglected Muslim population in local media there. Hence, one can conclude that the real, multicultural composition of local areas is not always properly expressed through means of public communication. This is a kind of shortcomings that cannot be cured by the implementation of new legislation only. Hence, stimulation of intercultural communication, driven by variety of cultures of existing minorities and majority, will remain very important task for all institutions dealing with cultural policy in Serbia.

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CULTURAL POLICY RESPONSES TO CULTURAL DIVERSITY OF SERBIA

BRANIMIR STOJKOVIĆ

The political and especially territorial map of Europe was defined after World War II. Most of the states formed at that period continue to exist. The fact of political and territorial continuity of these countries lies at the very heart of their cultural policies, even though these policies have changed over time, sometimes quite radically. Serbia is one of the few European countries whose political and territorial continuity has been undermined in at least two ways. The first, Yugoslavia – the federal state to which Serbia had belonged as one of its republics – underwent violent disintegration during the 1990s. Secondly, while the province of Kosovo is formally part of the Republic of Serbia, it is de facto governed by a UN administration.

All this was happening to Serbia at a time when the neighboring countries were preoccupied primarily with transition – the change from the one-party state socialist system to the multi-party market system, followed by the process of joining the European Union. Simultaneously, in 2003 an arrangement has been struck between Serbia and Montenegro to form a state community of the two republics. This community has been internationally recognized and accepted in the Council of Europe. However, the arrangement has a specified time limit – i.e. it is subject to reconsideration within three years. This fact influences greatly the national cultural policy, particularly the one concerning ethnic minorities, since their status is legally regulated at the level of the state community rather than at the level of the Republic of Serbia.

The disintegration and successive "shrinking" of the former Yugoslavia, which had consisted of six republics, resulted in increasing ethnic and cultural diversity of the "rump" Yugoslavia. Members of formerly Yugoslav nations that have remained in Serbia – Bosniacs, Croats, and Macedonians – have become new minorities. Likewise, during the 1990s several hundred thousand refugees from former Yugoslav republics that in the meantime have become independent states – especially Bosnia-Herzegovina and Croatia – have come to Serbia. Their situation may be likened to the condition of people who were "repatriated" into their ancient homeland within the operations of "redressing historical injustices" after WWII. Upon arrival, they were received as foreigners – of the same ethnic background, but of different culture and language. Culturally speaking, the situation of people – Serbs, Roma, Ashkali – forced to leave Kosovo after 1999 is the same. They are not even refugees, according to

the international definition of the term, but rather "internally displaced persons", since they have not left the territory of their state. The cultural and social distance of the domicile population towards the refugees from other parts of the former Yugoslavia and IDPs from Kosovo is sufficient to make them feel not at home.

The Law of Protection of National Minorities (2002) does not explicitly list ethnic minorities living in Serbia and Montenegro; instead, it only specifies the features a group has to possess in order to be recognized as an ethnic minority. Due to this fact, it may be assumed that the process of constitution and recognition of ethnic groups in Serbia is not yet finished. Insofar, the Law... performs the function of the *unmelting pot*, since it not only prevents the assimilation of the existing minorities but also contributes to the affirmation and recognition of new ones. The examples of Ruthenians (Ukrainians), Vlachs (Romanians), and Bunjevci (Croats) may be taken as illustrations. Had the Law on Minorities defined these three groups as minorities whose mother countries are, respectively, Ukraine, Romania and Croatia, they would have been forced to renounce some of their cultural diversity (language, customs, etc.) and adapt to the culture of the nation ascribed to them as their mother-nation. The legislator rightly refused to do so and left freedom of choice to the members of minority groups. They can opt either for claiming autochthonous origins or for acknowledging a mother-state. In all three cases listed above, both options have proved to enjoy sufficient support. Therefore various forms of cultural and civic organization emerge within each of them. Still more importantly, there is no either/or exclusivism, so that we may find associations gathering adherents of both the autochthonous and the mother-nation options alike.

The site where cultural policy and cultural diversity meet may be visualized in the form of a triangle. Its top consists of the Government of Serbia, more precisely its Ministry of Culture and the Media, while its base is made of the local communities or municipalities, with their main urban centers. The Province of Vojvodina, i.e. the provincial Secretariat for Culture, Education and Science, occupies the central part of this imagined triangle since Vojvodina has rightly been called a "multiethnical haven" (A. Dević).¹ On the basis of such a visualization we may conclude that concrete forms and contents of cultural diversity are concentrated at the local level, while higher levels (provincial and republican ones) deal mostly with cultural policy, i.e. regulating (channeling and encouraging) diversity.

As for the Ministry of Culture and the Media, within its range of competences as defined by the Ministries Law (Article 18) minority culture or cultural diversity are not mentioned specifically. One would be tempted to

¹ Ana Dević, *Nationalism, Regional Multiculturalism and Democracy in the Province of Vojvodina, Serbia's Multiethnical Haven*.

conclude there from that the Ministry is "diversity insensitive". The conclusion however would be unwarranted. For, among nine long-term strategic goals set by this Ministry there is "Advancing the cultural heritage and creativity of ethnic communities". This is followed by an explanation that this commitment stems from the "respect for the fact that citizens of the Republic of Serbia have multiple roots and identities". Furthermore, in its 2002 Annual Report the Ministry states that it "supported numerous projects and programs of ethnic communities, encouraging thereby the expansion of the idea of tolerance and coexistence, and the affirmation of the multicultural character of our Republic".

The Report goes on to list the examples of special attention the Ministry devoted to the culture of ethnic and minority communities, including activities and projects it supported. Among them, we find instances of amateur artistic production, folklore, literary manifestations, and children's creativity of the following communities: Roma (World Roma Day), Slovaks (the 70th anniversary of the Slovak *Matica*²), Romanians ("Koleda" and Winter Customs Festival), Ruthenians ("Red Rose" Culture Festival), Hungarians (Folklore Festival), Bunjevci³ (Festival of Bunjevci Folk Culture), and two highly successful music festivals – "Aven Romalen" and "Ring-Ring", held in Belgrade. The Report also emphasizes the series of *public panel discussions* organized in cooperation with the Civic Parliament of Čačak, entitled *Truth and Reconciliation*, as well as the project *Dialogue, Culture and Civilization* in Novi Pazar, devoted to the topic of interethnic relations and affirming the idea and practice of interethnic tolerance. In addition, within its sphere of competence related to the media, the Ministry has supported the Beta News Agency to establish daily news services in Hungarian and Roma languages, with the aim of offering them free of charge to the interested minority media.

The Vojvodina provincial Secretariat for Culture, Education and Science, i.e. its Culture Sector is in charge of minority culture in the territory of the Province. It appoints directors and members of managing boards of the institutions whose work, maintenance and programs are financed wholly or in part from the provincial budget. Similarly, financial resources intended for cultural institutions listed in the Law are channeled through the Culture Sector: this covers the entirety of costs of regular activity, investments and maintenance, and two-thirds of program costs. The Sector is especially concerned to provide resources for the regular activity and/or program realization of the institutions devoted to the advancement of ethnic minority culture. Since over

² *Matica* is a traditional form of cultural self-organizing in Central and Eastern Europe. It is the central cultural institution of a national/ethnic community, maintaining and advancing its identity and serving as the focal point for its different associations and initiatives.

³ Bunjevci are a specific localized ethnic group whose name cannot be translated. See the explanation below.

one-third of Vojvodina's population consists of members of ethnic minorities, minority cultural institutions, organizations and manifestations obviously occupy an important place in the work of the provincial Secretariat for Culture, Education and Science. Recipients of financial support include not only minority cultural programs with province-wide significance, but also many local institutions, and particularly cultural manifestations. Publishing in minority languages must also be mentioned. This refers to the culture of Ashkali, Bunjevci, Croats, Hungarians, Germans, Ruthenians, Slovaks, and Ukrainians.

Since the beginning of the 1990s, minorities have been using the possibilities offered by urban cable TV systems for transmitting TV program from their mother countries. Thus, cities (and even villages) with a substantial concentration of Hungarians, Romanians or Slovaks take over (via satellite) the programs of their respective national televisions. In this way members of minorities are actually enabled to abide within the virtual electronic environment of their mother culture without leaving the territory of the country whose citizens they are.

The positive, pro-diversity attitude toward minority cultures is confirmed for instance by the fact that the Culture Sector of the provincial Secretariat allocates resources for advancing the Ashkali culture, although the 2002 population census registered just 146 members of this minority in the entire territory of Vojvodina. What is more, they are not an autochthonous group, but emerged in Vojvodina only after 1999, when they left Kosovo and moved to different towns in Serbia and Vojvodina. The situation is similar with Slovenians, whose number in Vojvodina is also counted in hundreds. Their cultural association, named "Kredarica", enjoys the support of the provincial Secretariat for Culture although, unlike the Ashkali, they are not "internally displaced persons". Cultural diversity is most strongly manifested at the local level – in towns and villages where ethnic minority members live. This is particularly the case in the communities where they are numerically dominant, like Hungarians in some Vojvodina municipalities and towns (Ada, Bečej, Kanjiža, Subotica...), or Bosniacs in southwestern Serbia (Novi Pazar, Priboj, Tutin...) or Bulgarians in the southeast of Serbia (Dimitrovgrad, Bosilegrad). This also holds for two (of the three altogether) municipalities in southern Serbia inhabited by Albanians: Bujanovac and Preševo.

This local quality of ethnic minorities is further confirmed by the fact that in Vojvodina, characterized by a large number of different minorities, there is a special provincial Secretariat for Minorities, Local Administration and Regulations. Its basic function is to implement effectively the regulations concerning minority rights at the local level. This is an indirect proof of upholding the principle of subsidiarity (though perhaps the term itself is not used), i.e. the idea that problems should be solved at the level where they arise, and that, in the case of minorities, means the local level.

1. The development of the culture, language and identity of the Hungarians in Yugoslavia would not be possible without an appropriate system of education in the Hungaria language. The development of education in this language, as well as in other national minority languages, had been taking place at an accelerated pace until the mid-1980s when first restrictions were imposed. Particularly difficult moments were experienced in the past decade. The Hungarian language is in official use in 29 Vojvodinian municipalities where the concentration of the Hungarian population varies from 2.8 percent in Bela Crkva (Banat) to close to 88 percent at Kanjiža (Bačka). In particular local communities, the exercise of the right to the official use of the Hungarian language and script has been difficult. A particular problem is the (lack of) bilingual inscription of names of towns and villages, streets, squares and institutions in the municipalities where the Hungarian population does not form a majority. These problems stem from the different approach to the problem by the local authorities within whose competence the implementation of this right falls.

2. A large number of authors write and their works are published in the Hungarian language that belongs to the Ugrofinnic group of languages. In the period from 1993 to 1996 over 20 new titles were published in this language annually but the volume of the publishing activity in the Hungarian language has been decreases and relative to the period prior to 1990. In the early 1990s, 48 titles of books and brochures were published in Hungarian every year.⁷² Already in 1991 no more than 23 titles came out and in 2000 – 27.⁷³

3. The authors writing in Hungarian in Yugoslavia promote annual happenings the following of which enjoy a reputation transcending local borders: the “Szenteleky’s Days” that are traditionally held at Sivac; the “Ferenc Feher Memorial”; and the “Karoly Szirmai Memorial”. The libraries in 27 Vojvodinian municipalities, as well as in Novi Sad, hold over half a million books in the Hungarian language. In addition to the Novi Sad libraries, the libraries in Subotica and Bačka Topola have the largest holdings in this language.

4. Although in the 1990s there were cuts in the information sector in the national minority languages in FR Yugoslavia, including Hungarian, the following continue to be published in Hungarian: the daily “Magyar Szó” (Hungarian Word); the weekly “Het” (Seven); the youth bi-weekly “Kepes Ifjusag” (Youth in Pictures); and the children magazines: “Jo Pajtas” (Good Friend) and “Mezes Kalacs” (Honey Cookie). In addition to local and regional papers and magazines in Hungarian established by the local administration or private individuals, some more come out in Novi Sad. These are: the magazine for culture, literature and the arts “Hid” (Bridge); the magazine for scientific

and social issues “Letunk” (Our Existence); the magazine on the arts containing critical reviews “Symposion” (Symposium); the magazine for literature and culture “Zenit” (Zenith); the bilingual (Hungarian/ Serbian) magazine for literature, the arts and culture “Orbis” (Lat. World); and the journal “Hungarologial kozlemenek” (Hungarological News).

5. Television Novi Sad and its regional center in Subotica broadcast annually 865 programs or 30.125 minutes in Hungarian. Despite numerous personnel, financial and program-related problems, the situation at this desk improved. In 2001 broadcasts in Hungarian have included the following: TV news bulletin twice a day, total duration 45 minutes; the weekly news programs “Our Days” and “Jelenlet” (Presence) taking up 60 minutes each; the program for farmers “Furrow” twice a month lasting 45 minutes; and the weekly 90-minute call-in show “Hello, TV”. According to the data of the Provincial Secretariat for the Exercise of the Rights of National Minorities, Radio Television Serbia (RTS) Novi Sad broadcasts a whole day program in the Hungarian language. In addition to entertainment (35,5 percent of the total programming time) and other similar programs (19,2 percent), it also includes of the Novi Sad Faculty of Philosophy. News programs (15,4 percent) and news and politics programs (14,3 percent). Educational programs account for no more than 4,3 percent. Twenty-two other local radio stations also broadcast radio programs in the Hungarian language.

6. Hungarian minority members take part in the cultural life of Vojvodina and Serbia by working actively both at the institutions implementing various programs in Serbian and at the institutions preparing programs in Hungarian. Since 1973 the “Ujvideki Szinhaz” (Novi Sad Theater) has been active in Novi Sad. The “Nepszinhaz” (National Theater) in Subotica, established immediately after the Second World War, promotes drama in Hungarian. For a long time this theater played a prominent role in the cultural life of the country. Numerous members of the Hungarian nationality act at the amateur theaters in 16 municipalities in Vojvodina. In 1997 they established the Amateur Theater of Vojvodinian Hungarians. This theater puts on stage one play in Hungarian every year and gives performances in all towns and villages where Hungarian minority members live. The amateur actors who perform in the Hungarian language get together at annual amateur theater festivals of the Hungarian national minority.

7. Persons belonging to the Hungarian national minority foster and develop their culture and customs by meeting within over 80 culture and art societies. At these societies, folklore groups are particularly successful and present their achievements at the following annual festivals: “Durindo”; “Gyongyos bokreta” (Pearly Bouquet); “Vive” and at the municipal festival of

amateurs the “Tisa River Valley Games”. In addition, also traditional have become the visual arts colonies that are organized at Bečeј, Senta, in Bačka Topola, Subotica, Ečka, Pančevo and Mali Iđos.

8. The center of Slovak cultural life is in Bački Petrovac. This town is the site of the Slovak *Matica* in Yugoslavia. This organization was established as far back as 1937. With its 22 local branches and about 15.000 members it is the most important cultural organization of Slovaks in Vojvodina. In the territory of the municipality of Bački Petrovac there are three Slovak-oriented cultural institutions: "28 October" House of Culture, "Bački Petrovac" House of Culture with "Štefan Homola" Library, as well as the Zuska Homolova Gallery. There is also a cultural journal in the Slovak language, "Novi život" (New Life), and the theatrical journal "Igric".

9. Each year the Slovak *Matica* organizes Slovak Popular Festivities devoted to cultural, commercial, sports and educational pursuits. Slovaks from the Republic of Slovakia and those living in diaspora in other parts of Serbia or in other countries also attend. Furthermore, there is the international festival of soloist singers of original Slovak folk songs held at the village of Pivnice, as well as the Slovak Music and Folklore Festival "Tancuj, tancuj" at Gložan. Slovaks have their own professional theater "Vladimir Hurban Vladimirov" that performs in all communities in Bačka with a substantial proportion of Slovak population. Finally, let us mention Centrum – the Slovak Cultural Coordination, with headquarters in Novi Sad. This organization used to accomplish some of the jobs currently being taken over by the recently established National Council of Slovaks.

10. Speaking of the media, there are three papers in the Slovak language founded by the Assembly of Vojvodina. These are: the weekly "Hlas ljudu" (Voice of the People), youth paper "Vzlet" and children's paper "Zornička". Being the founder, the Assembly of Vojvodina appoints the directors, editors-in-chief and members of managing boards of these papers. In addition to these three printed media, there are twelve more Slovak language periodicals. Since Slovaks live mixed with members of other ethnicities, local papers often appear in Slovak and in some other language. Thus "Opštinske novosti" (Municipal Newsletter) in Alibunar are published in Slovak, Romanian and Serbian languages, while "Pazovačke novine" (Pazova Newspaper) use Slovak and Serbian.

11. The Slovak-language program of the Radio Novi Sad is broadcast for 7 hours a day on the average, while Slovak-language TV programs take up about one third of this time. In addition, local TV and particularly radio stations, such as Radio "Bačka" from Bač, Radio Bački Petrovac, Radio Kovačica, Radio

Stará Pazova and Radio Šid broadcast programs in the Slovak language. The local Radio 021 from Novi Sad also broadcasts slovak-language programs. A short time ago the local TV station Kovačica TV was opened, also broadcasting in the Slovak language. The same is the case with local (village) TV stations in Vojlovica and Orlovat.

12. Ruthenians or Carpatho-Ruthenians (they call themselves Rusjaci) is an ethnic group living in Bačka and Srem. Some of them consider themselves to be a separate ethnic community originating from the border area between Poland, Slovakia and Ukraine, while the others claim they are just the southernmost branches of Ukrainians that preserved the old cultural traits but also acquired new ones, typical for Ruthenians. It is not surprising therefore that among cultural associations and manifestations some are organized specifically as Ruthenian or Ukrainian, while some others are of combined Rutheno-Ukrainian character, such as the League of Ruthenians and Ukrainians. Ruthenians do not comprise a majority in any single community, but Ruski Krstur (located in the municipality of Kula) is held be the center of Ruthenians from Bačka and Srem. In this township almost exclusively Ruthenian is spoken, the street names are in Ruthenian, and there is a high school where teaching language is Ruthenian. There, the most important Ruthenian cultural institutions are concentrated: "Peter Riznič Dada" House of Culture, with theater with the same name. Here also the "Red Rose" Cultural Festival takes place, bringing together all Ruthenians from the territory of the former Yugoslavia. Ruthenian is an official language in five Vojvodina municipalities: Bačka Topola, Vrbas, Žabalj, Kula, Šid and Novi Sad. In addition to books, the "Ruske slovo" Newspaper and Publishing House publishes the literary magazine "Svjetlošć", as well as "Rusinski kalendar" (Ruthenian Calendar). The Society for Ruthenian Language and Literature publishes its own journal "Studia Ruthenica", while Ruthenian artistic colony publishes its annual for literature, art and culture entitled "Erato nad Kucurom".

13. The Assembly of Vojvodina is the founder of four Ruthenian-language papers, which means it finances them from the budget and appoints directors and managing boards. These are: the weekly "Ruske slovo", youth magazines "Vzlet" and "Mak", as well as children's paper "Zahratka". RTV Novi Sad broadcasts special programs in Ruthenian for the entire territory of Vojvodina, while local radio and TV stations in places with Ruthenian populations have several-hour daily programs in Ruthenian.

14. The Romanian ethnic minority is mostly concentrated in Banat, but they do not comprise a majority in any of the 11 municipalities where they live. The Romanian language is in official use in ten municipalities: Alibunar, Vršac, Žitište, Zrenjanin, Kovačica, Bela Crkva, Kovin, Pančevo, Plandište and Sečanj.

Their main cultural organization is the Community of Romanians of Yugoslavia, with headquarters in Vršac and branch offices in several places. It has departments for science, culture, education and information. A prominent cultural role is also played by the Society for Romanian Language, which organizes literary meetings of Romanian-language writers, as well as the international literary manifestation "Writers at the Border".

15. Literary journal "Lumina" publishes prose and poetry by Romanian writers, as well as numerous translations from other languages into Romanian. In addition, there is the "Libertatea" newspaper and publishing house, which, apart from the weekly with the same name, publishes books in Romanian. In Uzdin, the Romanian-language magazine "Tibiscus" is published, also acting as a publisher of books in Romanian. The Romanian Society (Foundation) for Ethnography and Folklore also plays a significant role. It undertakes field (ethnographic) studies in Romanian culture in Vojvodina, organizes festivals and publishes a quarterly named "Traditia".

16. The theatrical manifestation of Romanians in Vojvodina takes place in Alibunar. Theater companies that win the first four awards at this manifestation enjoy financial support from the Vojvodina budget in the next year, according to the criteria applying to professional theaters (subsidies for covering staging expenses, authors' honoraria, etc.).

17. In addition to the weekly "Libertatea", there is the Romanian-language youth monthly "Teneretea", as well as the monthly aimed at children "Bucuria copilar". Local papers in Romanian include "Familia" in Vladimirovac and "Gazeta de Seleuš" in Seleuš.

18. On Radio Novi Sad a Romanian-language department has existed since 1945. On the average, 5.5 hours are broadcast daily. In addition, there are several local stations broadcasting programs in Romanian. These are: Radio VAP (Vršac, Alibunar and Plandište), Radio Zrenjanin, Radio Kovin and Radio Kovačica. TV programs are substantially less numerous – there is a 15 minute daily program "Spectry" on TV Novi Sad, and one-hour weekly "TV Magazin" on Sundays.

19. Croats live predominantly in Bačka (Subotica and its environs), but also in Srem and in border regions with the Republic of Croatia. They belong among the new minorities, since they have become one only after the break-up of the Yugoslav state. Their cultural life is centered primarily at the Croatian Cultural Center and the Croatian Reading Room in Subotica. The latter organizes, among other things, a manifestation of poetry readings in the Croatian language for elementary and high school pupils. At Tavankut, Croatian

Cultural and Educational Society "Matija Gubec" is active. In Sombor, there is a Croatian House, housing Cultural and Artistic Society "Vladimir Nazor". Each August, "Dužijanca" – the festivity celebrating the end of the harvest – is traditionally held in Subotica.

20. The Croatian-language fortnightly "Žig" is published in Subotica. In the same town the "Hrid" Publishing House is located, publishing Croatian-language books. There are Croatian language programs at the local radio station in Subotica, running for two hours daily. The Croatian department of RTV Novi Sad has been active since 2001, making one weekly program.

21. Bunjevci are an ethnic group that, presumably originating from Dalmatinska Zagora, settled in northern Vojvodina several centuries ago and preserved their peculiar cultural features. They have managed to resist attempts at assimilation from both Croats (they are Catholic like them) and Serbs, who have sought to prove that Bunjevci are actually Catholicized Serbs. They have their own *Matica*, the Bunjevci Cultural Center and "Bunjevka" Cultural and Artistic Society. As for the media, let us mention "Bunjevačke novine" (Bunjevci Newspaper), and the annual "Bunjevački kalendar" (Bunjevci Calendar).

22. Roma is in Serbia (like everywhere in the world) spatially dispersed so that there is no municipality, town or even village where they comprise a majority. Still, it can be noted that the percentage of Roma is higher in southern and southeastern Serbia, in municipalities and towns such as Leskovac, Surdulica, Vranje, and Niš. Roma culture may be taken as a paradigm of cultural diversity, because they differ considerably among themselves, depending on the majority culture of the milieu they live in. Linguistic differences are sometimes so great that they cannot understand each other. Religious differences must be added to this, so that in Serbia there are Orthodox, Muslim, Catholic and Protestant Roma. It may be argued that, in spite of all these differences, the cohesion of Roma as an ethnic group is ensured by the fact that others see them as Roma – a group that is socially underprivileged everywhere and discriminated against, not just by the majority but also by other minority groups.

23. Roma are a minority everywhere in the world, which means that there is no nation-state of their own that would proclaim one of the many Romany dialects the standard language and, along with standardized orthography, make it obligatory in the educational and media systems. Yet, it was precisely the Association of Vojvodina Roma that suggested, in 1990, a phonetic script for the Roma language that was later accepted as the common script of European Roma.

24. Roma preserves and cherishes their cultural heritage and contemporary culture through their organizations. Most of these organizations in the territory of Serbia, about 40 of them altogether, date back from the period between 1965 and 1985. They were registered as associations for science, culture, education and social issues, cultural and artistic societies, the ROM society, Roma culture clubs, Roma associations, etc. In the period 1985–1999 thirty-odd new organizations were established, so that in Serbia at the beginning of the third millennium there are about seventy Roma organizations devoted to issues ranging from culture, through sports, to environmental protection. The Cultural-Educational Community of Gypsies of Serbia was active from 1965 to 1982. The manifestation of cultural achievements of Serbian Roma is held each year in Niš. Let us mention a couple of Roma organizations currently active in Serbia: the League of Roma of Yugoslavia (established 1995), the Roma *Matica* in Yugoslavia (1996), Council for the Protection of Human Rights of Roma in FR Yugoslavia (1997), Roma Information Center – Kragujevac (1999), and Roma Community Center (2000).

25. Within the publishing activities of Rrominterpress the series "Special Editions" has been launched, in which 8 books with Roma topics have appeared so far. Rrominterpress is currently preparing the publication of the book "The People that Does Not Exist", devoted to the problems of Roma displaced from Kosovo.

26. "Glas Roma" (Roma Voice) is one-hour program in Romany and Serbian languages. It is broadcast once a week. It invites people interested in Roma issues and emancipation as guests. The program consists of national and international news, a weekly commentary, and a special guest. Apart from news and political contents, which predominate, it also includes cultural contents. It pays much attention to the problems of Roma displaced from Kosovo. The young generation of Roma is another special concern of the program. Rrominterpress plans to enlarge the program and to have it broadcast by as many local radio stations as possible. At this moment it is broadcast at 24 local radio outlets, but this has proved to be insufficient. For this reason a dozen more stations are planned to be included.

27. Radio Novi Sad has two-and-a-half hours of Roma-language program daily. The program is called "Amen Ades". In addition to this, several local stations in Vojvodina (Radio Sombor, Radio Kovačica, Radio Srbobran, Radio Bela Crkva) broadcast programs in Romany. Since Romany programs at the local radio stations are not timed at the same hour, parts of these local programs are exchanged and later rebroadcast. Also, on TV Novi Sad there is Romany program which, depending on the day of the week, lasts between 30 and 90 minutes.

28. "Chavrikano Lil", a children's magazine, started in 1985. The first three issues of this bilingual (Romany-Serbian) paper were published by the "Dečje novine" publishing house from Gornji Milanovac. Shortage of financial resources caused a ten-year pause in the publication of the paper. In September 1995 it was renewed by the independent publishing and information organization "Rrominterpress". 48 issues have appeared so far. The paper is distributed through Roma organizations and individuals, as well as through schools with a substantial share of Roma pupils.

29. "Romani cara", or Roma stall, is the first Roma street bookstore in the world. It offers not only books written by Roma. This bookstore is actually a street stall in Belgrade's main street (Knez Mihajlova) often annoying to the local authorities. About 500 titles by Roma writers from the country and abroad are offered there. In addition to books, magazines such as "Chavrikano lil" (Children's Paper), "Romano lil" (Roma Paper), "Romological Studies", and other publications in Romany can be bought there.

30. The Bulgarian ethnic minority in the southeast of Serbia lives predominantly in two municipalities – Dimitrovgrad and Bosilegrad. These two sparsely populated and economically underdeveloped municipalities are not adjacent. They are located right by the Bulgarian border. The two towns are at a 100 km distance and there is no direct road between them. This is the main reason for the headquarters of the Bulgarian-language newspaper and publishing house "Bratstvo" to be located in the regional center of Niš. In this city, incidentally, Bulgarians are not very numerous. Apart from the weekly with the same name, "Bratstvo" publishes a Bulgarian-language children's paper "Drugarče" and the literary and artistic journal "Most". Cultural organizations of Bulgarians in Serbia sometimes criticize the linguistic practice of "Bratstvo" which, they claim, in its texts uses the local dialect spoken by Bulgarians from southern Serbia rather than the Bulgarian standard language.

31. Center for Culture in Dimitrovgrad is the main cultural institution in this town. A similar center exists in Bosilegrad. Both are financed from the municipal budget. In addition, in Dimitrovgrad there is a Cultural and Information Center of the Bulgarian minority, registered as an NGO. It has a Bulgarian library and invites guest artists from Bulgaria. The amateur theater in Dimitrovgrad stages performances in both Bulgarian and Serbian (the same company does both).

32. Of electronic media, in Dimitrovgrad there is the local RTV "Caribrod" broadcasting in both Bulgarian and Serbian. As far back as the early 1990s, Dimitrovgrad was one of the first towns in Serbia that had a cable TV system. Later on (officially, due to the absence of the license, although cable

TV remains legally unregulated in Serbia to this day), the cable TV in Dimitrovgrad was closed down, reopening after the year 2000.

33. Vlachs are an ethnic minority living in eastern Serbia. They inhabit 134 villages, while in three towns – Bor, Majdanpek and Kučevac – they comprise a significant minority of the total population. In the wake of WWII the attitude towards Vlachs was favorable, so that between 1945 and 1954 the Vlach language paper “Voarba nostra” (Our Word) was published, while Radio Zaječar used to broadcast program in Vlach language. The conflict with Stalin resulted in a complete icing of relations with all Eastern Bloc countries, including Romania. More or less overtly, the loyalty of Vlachs – whose Romanian origin was undisputed at the time – was questioned.

34. The current movement for Vlach cultural emancipation is facing the question of their origins and divides into three currents. The first insists on Vlachs being an autochthonous ethnic group, belonging among the natives of the Balkans, that over time has undergone cultural (particularly linguistic) influences of the Romanized population, as well as of the Slavs that arrived later on. The second current believes Vlachs to be actually Romanian with Romania as their mother country, while the Vlach language is just a dialect of Romanian. There is also the third, conciliatory current, holding the question of origins to be not so important; for them, what matters is the project of cultural emancipation and self-consciousness raising among members of this ethnic group. Each of these orientations has its own organizational forms. As a rule, these are NGOs, such as the Society for the Culture of Vlachs-Romanians of North-Eastern Serbia “Ariadnae filum” from Zaječar, Forum for Vlach Culture from Bor, or the Vlach Cultural Initiative.

35. The electronic media with programs in the Vlach language are predominantly local and private. The first to be mentioned is TV “Salaš” from the village of the same name, specializing in music program in Vlach. In this way, the Vlach language was present in the waves at the time when it was absent from the state-run local TV Zaječar. Another local TV, “Fira”, has recently introduced the practice of leasing out airtime for showing video recordings of private feasts – generally weddings, where Vlach folk customs abound. Let us also mention the issuing of a CD with Vlach music, a specialty of the Radio “Doina” production from Kladovo.

36. Apart from Kosovo, where they comprise an overwhelming majority, Albanians as an ethnic minority live in three municipalities in southern Serbia (Bujanovac, Preševo and Medveda). Due to the recent armed conflicts in the neighboring Kosovo, culture has long been accorded a secondary place. The basic cultural institutions in Preševo and Bujanovac are houses of culture.

Albanians also have the Cultural and Artistic Society “Veliki Trnovac”, whose latest performance in the local cultural center took place in 1997. In the village of Veliki Trnovac a museum was founded in 1993. The library in Bujanovac has about 35.000 books, just 1.000 of which is in Albanian.

37. The extremely unfavorable situation in terms of the supply of information for members of the Albanian minority was somewhat improved during 2001. This may be attributed to the presence and aid of the OSCE, to private initiative in the media sphere, and to the democratic change in Serbia in 2000. Another significant step was the permission for the Albanian-language press published in Kosovo to be distributed in this region.

38. *Jehona* is the only printed media in the Albanian language in Bujanovac. After a long break, the *Jehona* paper restarted on 25 April 2000. The circulation of the paper is about 3.000, and it covers topics from the political and cultural life of Albanians.

39. Radio Toni, the only Albanian-language electronic media in the municipality of Bujanovac, has been working since June 2001. At the moment, it broadcasts experimental, commercially oriented program. The Radio plans to launch its own news programs, as well as to rebroadcast newscasts from other radio stations. In 2001, *Jehona* and Radio Toni launched a journalist school whose students, after completing the course, were supposed to work in local Albanian-language media. Radio Preševo broadcasts news, cultural and entertaining programs in the Albanian language. The Radio works within the Cultural Center at Preševo.

40. When speaking of Bosniacs, the very double name of the region in western Serbia where they live – called Raška by Serbs, and Sandžak by Bosniacs – is an indicator of the cultural diversity prevailing there. Both names originate from the past. The first recalls the domination of the medieval Serbian state (Raška), while the second is the name for an administrative unit (*sanjak*) in the Ottoman Empire, which ruled the region until 1912. Of six municipalities comprising the region, in three (Novi Pazar, Sjenica, Tutin) Bosniacs make up a majority of the population, while in the remaining three they are below 50 percent. They are one of the new minorities in Serbia, being established only after the break-up of the former Yugoslavia. Until 1993, Bosniacs called themselves Muslims – with capital M, to distinguish the name of the people from religious designation. In recent years, a growing influence of Islam is felt in Sandžak, resulting in a retraditionalization of cultural life. The existing forms of cultural activity, e.g. the Society for Bosniac Culture ”Preporod”, are increasingly turning to activities tied to the celebration of Muslim religious holidays.

41. The cultural center of the whole region is Novi Pazar, a town where two universities have been opened in the past two years. One of them is secular, while the Islamic community has founded the other. There is also the "Damad" publishing house, publishing the magazine "Mak". Since 1997 there is also the independent fortnightly "Parlament". In Sandžak there are several local electronic media. These are mostly local radio stations. Among regional ones we may single out RTV "San" which can be viewed throughout the region.

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**MANJINE U CRNOJ GORI – PRAVNI OKVIR
ZAŠTITE NA OSNOVU RJEŠENJA IZ USTAVNOG
ZAKONA REPUBLIKE CRNE GORE O SLOBODAMA
I PRAVIMA NACIONALNIH I ETNIČKIH GRUPA
I NJIHOVIH PREDSTAVNIKA**

SRĐAN VUKADINOVIĆ

Sažetak: Različite nacionalne, etničke i druge kulturološke i životne razlike među stanovništvom, kao i protivurječnosti koje proizilaze iz takvog stanja, predstavljaju probleme sa kojima se suočava većina savremenih društava i država. Mjerila u odnosu prema manjinama bila su dugo vremena velika teškoća i za razvijenu i demokratsku Evropu, a ne samo za društva koja su u stanju parapolitičke i parademokratske strukture, što je slučaj i sa crnogorskim društvenim realitetom. Iako je pitanje manjinskih grupacija ogledalo većine u jednom velikom broju zemalja, prije svega centralne i istočne Evrope, ta problematika nije tretirana i nije u fokusu pažnje kao odraz unutrašnjih zahtjeva i potreba, nego se na dnevnom redu društveno bitnih pitanja našla pod pritiskom međunarodne zajednice. U takvu grupu zemalja spada i većina onih koje su nastale raspadom bivšeg jugoslovenskog društva. Tako je i pitanje manjinskih grupacija, koje se u Crnoj Gori određuju kao manjinski narodi ne na osnovu konstitucionalnih rješenja već shodno političkom konsenzusu iz 1997. godine postignutom od strane većine parlamentarnih stranaka, krajem drugog i početkom trećeg milenijuma predstavljalje je i predstavlja „unutrašnji” problem čijem se pokušaju rješavanja moralno pristupiti manje iz vlastitih političkih potreba, a mnogo više zbog pritiska međunarodne zajednice i uslovjenosti strane pomoći takvim aktivnostima. Dva bitna problematko-manjinska momenta, pravni okvir zaštite i demografska slika crnogorske multietničke stvarnosti, predstavljaju sadržaj strateškog djelovanja političkih činilaca i civilnog sektora u crnogorskom društvu tokom treće godine trećeg milenijuma. Kraj pomenute godine je rok za završetak Ustavnog zakona o slobodama i pravima manjinskih grupacija i popisa stanovništva koji će ukazati na realniju demografsku sliku manjinskih grupacija od one sa kojom se do toga termina operisalo. Trebalo bi to da budu dovoljni razlozi da se od momenta finaliziranja izrade teksta zakona i demografskih parametara kao indikacije opšteg stanja društveno-manjinske stvarnosti može govoriti na jedan realniji i potpuniji način o „ogledalu većine” u crnogorskom društvu. Tranzicija stanja manjinskih pitanja i problema od postojećem ka realno mogućem i ostvarivom strukturnom sadržaju predstavlja bitan prepostavljajući okvir preobražaja Crne Gore od multikulturalne ka interkulturalnoj zajednici svih građana koja se zasniva na shvatanju i prihvatanju različitosti kao komparativnih prednosti, a ne mana ili određenih nedostataka.

PRIRODA I KARAKTER NASTOJANJA I ZANIMANJA ZA PITANJA I PROBLEME MANJINSKIH GRUPACIJA

Mogućnost država za uključivanje u evroatlantske integracije, pored niza strukturnih činilaca, provjerava se i preko inicijativa i prepostavki za rješavanje statusa manjinskih grupacija kao jednog od temeljnih pitanja društvene tranzicije. Malo je zemalja koje su pitanja manjinskih zajednica i grupacija riješile na zadovoljavajući način. Čak i tamo gdje izgleda da se određena rješenja mogu uzeti kao primjer iskustvo pokazuje da ima primjedbi upravo od ovih grupacija na njihov status. Naravno da je zemljama koje su nacionalno homogene, a što znači da je prisustvo većinske populacije iznad 80%, mnogo lakše rješiti probleme koji se javljaju u vezi sa položajem manjina, nego što je to slučaj sa nacionalno heterogenim društvenim realitetima. Može se reći da nema na početku XXI vijeka društva i države koji su status nacionalnih manjina riješili na način da nijedna grupacija nema nekih posebnih zahtjeva u tome smislu i da je u potpunosti zadovoljna svojim statusom. Problemi statusa i položaja manjinskih grupacija potresaju i razvijenu Španiju i jednu od najcivilizovanijih zemalja Veliku Britaniju. Veliki je broj činilaca, institucija i organizacija koje utiču na rješavanje statusa manjinskih grupacija. Često se kaže da država nije spremna ili da čini veoma malo da se status ovih grupacija popravi ili riješi na konsensualan način. Međutim, država može da ima najbolje namjere u rješavanju statusa manjinskih grupacija, ali da je u tome sprečavaju neki drugi činioci koji su van njene dometa i više spadaju u strukturu društva. Vlada jedne države ili odgovarajuće ministarstvo mogu nastojati da štite i unapređuju prava i položaj manjinskih grupacija, ali ih u tome mogu onemogućavati pojedinci, grupe, organizacije, partie ili predrasude i tradicija. I same manjine, pa čak i netrpeljivosti unutar jedne grupacije, kao što je slučaj sa pojedinima od njih u crnogorskom društvu (Muslimani – Bošnjaci, Albanci islamske vjeroispovijesti – Albanci katoličke vjeroispovijesti, Romi – Egipćani) onemogućavaju razrješavanje određenih ključnih strateških položajnih segmenata. Jedan broj navedenih činilaca predstavlja različite nivoe društvene strukture i društvene organizovanosti i u velikom broju slučajeva su suštinski van domašaja države i njenih institucija i više su u domenu iracionalne sfere.

Momenti koji utiču na onemogućavanje zaštite i unapređenje prava manjinskih grupacija i koji su rezultat određenih neregularnih stanja i pritisaka od strane različitih društvenih činilaca naročito dolaze do izražaja u periodu prenaglašene etnifikacije društva kakav je slučaj sa većinom tranzicijskih prostornih ambijenata. Naročito to važi za zemlje nastale na temeljima samourušenog bivšeg jugoslovenskog društva. Etnonacionalne elite nikako ne prihvataju pravo na različitosti životnog egzistiranja manjinskih grupacija kao odraz vlastitog političkog, nacionalnog i društvenog angažmana.

Manjine se svojim zahtjevima za razrješavanje vlastitog statusa suprotstavljaju etnifikaciji na prostorima bivšeg jugoslovenskog društva. Kršenje temeljnih manjinskih prava i nepostojanje želje kod svih etnonacionalnih političkih elita na ex-yu prostoru za poboljšanje takvog stanja dovelo je krajem XX i početkom XXI vijeka do internacionalizacije ovog problema. Naročito snažan pritisak, u smislu, prije svega, postavljanja drugačijeg pravnog okvira egzistiranja manjinskih grupacija, međunarodna zajednica je vršila na zemlje čije su vladajuće garniture bile glavni uzročnici sukoba na južnoslovenskom prostoru. Kvalitet rješavanja statusa manjinskih zajednica ima jednu dimenziju kada je takva aktivnost rezultat zahtjeva međunarodne zajednice, a sasvim drugu kada tako nešto države osjećaju kao svoju unutrašnju, prirodnu i organsku potrebu i obavezu.

Svako statusno razrješavanje problema manjinskih grupacija prepostavlja definisanu konstitucionalnu i zakonsku regulativu uspostavljenu kroz sistem konsensualnog donošenja i usvajanja. Ukoliko nije ostvarena takva procesualnost zakonskim rješenjima se nema namjera poboljšati faktičko stanje, već samo uspostaviti kozmetička legislativa, što i nije neka novost u poplavi različitih institucija i rješenja koje u toku 2002. i 2003. godine nameću državama ex-jugoslovenskog prostora različite međunarodne institucije. Za efikasnu zakonsku regulativu od bitnog značaja je i demografska slika stanja manjinskih grupacija kao indikator opštег stanja multikulturalne društvene stvarnosti konkretnog prostornog realiteta, budući da takav okvir gotovo ni u jednoj zemlji bivše Jugoslavije nije objektivan, imajući u vidu zastarelost podataka iz popisa stanovništva (1991) sa kojima se još uvijek operiše kao validnim i „etnički inženjerir“ koji su gotovo sve manjinske grupacije doživjele u procesu dekonstrukcije društva.

PRAVNI OKVIR ZAŠTITE MANJINA U CRNOJ GORI POLOŽAJ, SLOBODE I PRAVA MANJINSKIH NACIONALNIH GRUPACIJA U CRNOJ GORI

Regulisani Ustavom Republike Crne Gore (1992) i Poveljom o ljudskim i manjinskim pravima i građanskim slobodama (2002), koja čini sastavni dio Ustavne povelje Državne Zajednice Srbija i Crna Gora.

U Ustavu Republike Crne Gore za pripadnike nacionalnih manjina upotrebljava se terminološko određenje nacionalne i etničke grupe, dok se u javnoj upotrebi često primjenjuje i određenje manjinski narodi – kao rezultat konsenzusa većine parlamentarnih političkih stranaka (1997). Pomenutim konstitucionalnim aktom u odjeljku *Slobode i prava* (članovi 15, 16, 17 i 18) definisano je da su svi građani Republike Crne Gore „slobodni i jednaki, bez obzira na bilo kakvu posebnost ili lično svojstvo“, kao i da svako „ima pravo na jednaku zaštitu svojih sloboda i prava u zakonom utvrđenom postupku“. Takođe, svako bez

obzira na bilo koju pripadnost, osim građanske, „ima pravo na pravnu pomoć”. Navedena prava i slobode su nepovrediva što je utvrđeno članom 16 Ustava Republike Crne Gore a što upućuje na zaključak o građanskom karakteru crnogorske zajednice.

Poseban odeljak u crnogorskom Ustavu se odnosi na posebna prava pripadnika nacionalnih i etničkih grupa kojim se regulišu njihov položaj, prava i slobode. Pripadnicima nacionalnih i etničkih grupa jamči se „zaštita nacionalnog, etničkog, kulturnog, jezičkog i vjerskog identiteta” (član 67) u skladu sa međunarodnom zaštitom ljudskih i građanskih prava. Ovakva ustavna regulativa je po svome određenju jedinstvena u odnosu na konstitucionalni tretman manjinskih grupacija u drugim zemljama bivšeg jugoslovenskog prostora budući da crnogorski Ustav jedini utvrđuje pravo na zaštitu cjelovitosti identitetskih svojstava, a ne samo pojedinog od njih. Pripadnicima nacionalnih i etničkih grupa garantovana je upotreba „jezika i pisma, pravo na školovanje i pravo na informisanje na svom jeziku” (član 68). Upotreba sopstvenog maternjeg jezika u postupku pred državnim organima garantovana je pripadnicima manjinskih zajednica (član 72), kao bitno svojstvo jezičkog identiteta koje se ne mora poštovati i zaživljavati samo prilikom školovanja, poslije čega pripadnici ovih grupacija gotovo da i nijesu u mogućnosti da u širim društveno-institucionalnim okvirima koriste maternji jezik. Cjelinu identitetskih svojstava u realno egzistirajućem svijetu determinišu različita udruženja i asocijacije manjinskih grupacija, pa se istima omogućava pravo na „osnivanje prosvjetnih, kulturnih i vjerskih udruženja, uz materijalnu pomoć države” (član 70). Najviši konstitucionalni akt Republike Crne Gore, takođe, omogućava i pravo pripadnicima nacionalnih manjina na upotrebu i isticanje nacionalnih simbola (član 69), kao i „pravo srazmjerne zastupljenosti u javnim službama, organima državne vlasti i lokalne samouprave” (član 73). Treba naglasiti jednu suštinsko-terminološku nepreciznost u ovom ustavnom određenju, a tiče se toga da je pravo zastupljenosti svake grupacije u jedinicama lokalne samouprave (opština) definisano izbornim zakonodavstvom Crne Gore, tako da u ovom slučaju nije riječ o lokalnoj samoupravi već o organima lokalne uprave, odnosno izvršnim opštinskim tijelima. Radi očuvanja i zaštite nacionalnog, etničkog, kulturnog, jezičkog i vjerskog identiteta pripadnika nacionalnih i etničkih grupa, ustavna rješenja predviđaju i formiranje Republičkog savjeta za zaštitu prava pripadnika nacionalnih i etničkih grupa. Ovim savjetom rukovodi predsjednik Republike (član 76) Razmatrajući i analizirajući problematiku manjinskih zajednica u Crnoj Gori u periodu od kada je Ustav stupio na društvenu i konstitucionalnu pozornicu ovog konkretnog realiteta može se zapaziti da ovaj savjet nije imao nekih značajnijih poduhvata u cilju sprječavanja incidenata, bilo organizovanih, bilo individualnih, kojima su bili izloženi pripadnici manjinskih zajednica u ovoj republici.

Poslije dekonstrukcije SFR Jugoslavije i kratkotrajnog desetogodišnjeg egzistiranja SR Jugoslavije, Crna Gora od kraja 2002. godine tvori novu Držav-

nu Zajednicu Srbija i Crna Gora čiju određenu konstitucionalnu formu determiniše Ustavna povelja. U ovoj povelji, usvojenoj 06. decembra 2002. godine, kao jedan od glavnih ciljeva navodi se poštovanje ljudskih prava svih osoba koje egzistiraju u prostornim okvirima njene nadležnosti. U odeljku o ljudskim i manjinskim pravima i građanskim slobodama (član 9) regulisanje ovog pitanja podrazumijeva usvajanje posebne Povelje o ljudskim i manjinskim pravima i građanskim slobodama.

Poveljom o ljudskim i manjinskim pravima i građanskim slobodama Državne Zajednice Srbija i Crna Gora, kao sastavnim dijelom Ustavne povelje, jamči se poštovanje ljudskih i manjinskih prava, građanskih sloboda, kao i prava pripadnika nacionalnih manjina. Garantuje se ljudsko dostojanstvo i slobodni razvoj ličnosti, zabrana diskriminacije i osnovne slobode ličnosti. Zabrana diskriminacije i borba protiv bilo kojeg njenog oblika ili vida je u fokusu angažmana međunarodnih organizacija i institucija koje pažljivo prate mogućnosti državnih realiteta u prihvatanju međunarodnih standarda u oblasti ljudskih prava i na taj način procjenjuju njihove izglede u evropskim integracijama. U tome duhu je u Povelji i naglašeno da je zabranjena svaka neposredna ili posredna diskriminacija, po bilo kom osnovu, pa i „po osnovu rase, boje, pola, nacionalne pripadnosti, društvenog porijekla, rođenja ili sličnog statusa, vjeroispovijesti, političkog ili drugog ubjedjenja, imovnog stanja, kulture, jezika, starosti ili psihičkog ili fizičkog invaliditeta“ (član 3). U opštim odredbama Povelje regulišu se još i zabrane, kao i ograničenja i odstupanja od ljudskih i manjinskih prava.

Pojmovno - terminološko određenje koje se upotrebljava u Povelji o ljudskim i manjinskim pravima i građanskim slobodama Državne Zajednice Srbija i Crna Gora za grupacije koje su manjinske u ovom društvenom realitetu je *nacionalne manjine*, što ukazuje na određenu heterogenost kada je u pitanju naziv za ove zajednice u jednom i drugom državno konstituirajućem strukturnom segmentu. Prava pripadnika nacionalnih manjina se štite u skladu sa međunarodno-pravnom zaštitom ljudskih i manjinskih prava (član 47). Pored toga, odredenjima Povelje jamče se: sloboda izražavanja nacionalnog identiteta, zabrana diskriminacije, zabrana nasilne asimilacije, zabrana izazivanja rasne, nacionalne i vjerske mržnje, pravo na očuvanje posebnosti, pravo na udruživanje, saradnja sa sunarodnicima u drugim državama, unapređenje uslova života, razvijanje duha tolerancije i jemstvo stečenih prava (članovi od 48 do 57).

Rješenja koja su data u Povelji o ljudskim i manjinskim pravima i građanskim slobodama zahtijevaju dalju razradu u oba prostorna realiteta koja tvore državnu zajednicu sa proklamovanim (uslovnim) rokom egzistiranja do 2005. godine. Razrada daljih rješenja kada su u pitanju manjinska prava se treba odvijati u pravcu njihovog egzistiranja shodno međunarodnim standardima, bez obzira na to kakva će biti dalja sudbina Državne Zajednice Srbija i Crna Gora.

STRUKTURA BUDUĆIH ZAKONSKIH RJEŠENJA O SLOBODAMA I PRAVIMA MANJINSKIH GRUPACIJA U CRNOJ GORI

Razlozi razrade i konkretizacije rješenja za manjinske zajednice proistekli iz Povelje o ljudskim i manjinskim pravima i građanskim slobodama inicirali su, od početka 2003. godine, aktivnosti na izradi posebnog zakona (Ustavni zakon Republike Crne Gore o slobodama i pravima nacionalnih i etničkih grupa i njihovih predstavnika) koji bi trebalo da bude usvojen do kraja godine u kojoj je i počela aktivnost na njegovoj izradi. Namjera je da se naprave zakonska rješenja kojima će se, u skladu sa međunarodnim standardima, regulisati mjere za dalje unapredjenje položaja nacionalnih i etničkih grupa i obezbijediti dodatni mehanizmi za zaštitu njihovih prava i sloboda. Do sredine septembra 2003. godine radna grupa za izradu zakona koji ima ustavnu snagu, poslije nekoliko užih i širih rasprava u kojima su pored eksperata, učestvovali i pripadnici manjinskih grupacija koje egzistiraju u Crnoj Gori, uradila je teze koje imaju formu članova budućeg zakona. U Ustavnom zakonu Republike Crne Gore kao terminološko određenje koristi se naziv koji se primjenjuje u važećem Ustavu Republike Crne Gore, a budući da se ubrzo očekuje i izrada novog crnogorskog Ustava, nije se željelo ovim aktom prejudicirati buduće konstitucionalno rješenje, koje će biti ugrađeno u Zakon o manjinskim grupacijama.

Ustavni zakon Republike Crne Gore o slobodama i pravima nacionalnih i etničkih grupa i njihovih predstavnika je strukturisan iz Preamble i sedam posebnih glava. Glava I obuhvata osnovne odredbe koje se tiču predmeta Zakona i Značenja pojmljova.

Osnovna načela su sadržinski okvir druge glave i obuhvataju: jednakost i zabranu diskriminacije, princip afirmativne akcije, pravo slobodnog izbora nacionalne ili etničke posebnosti, zaštitu od štetnih posledica zbog (ne)korišćenja prava, zabranu zloupotrebe prava, opšte obaveze države prema manjinama i njihovim pripadnicima, posebne obaveze države prema manjinama i njihovim pripadnicima, kao i zabranu ograničavanja uživanja prava.

Treći strukturni segment zakonskih rješenja manjinskih grupacija u crnogorskom društvu čine one odredbe koje se odnose na osnovne slobode i prava nacionalnih i etničkih grupa i njihovih pripadnika. Od osnovnih prava posebno se tretiraju: pravo na njegovanje tradicije i zaštitu kulturne posebnosti i baštine, zatim pravo na osnivanje posebnih medijskih, kulturnih, umjetničkih i naučnih ustanova i društava i udruženja, kao i pravo koje se odnosi na korišćenje jezika nacionalnih i etničkih grupa. Od osnovnih sloboda koje treba da uživaju svi građani Crne Gore, bilo da je riječ o većinskoj ili manjinskim grupacijama, u ponutom zakonskom aktu koji ima ustavnu snagu, naglašavaju se sloboda štampe i drugih vidova javnog obavještavanja, kao i slobodan izbor i korišćenje imena. Ovaj strukturni segment Zakona, određen kao treća glava, bavi se i posebnim pravima u oblasti obrazovanja, slobodnom upotrebom nacionalnih simbola,

pravom obilježavanja nacionalnih i tradicionalnih praznika nacionalnih i etničkih grupa, pravom na udruživanje i političko djelovanje, pravom na učešće u organima državne vlasti i lokalne samouprave(?), pravom na učešće u procesu doношења državnih i političkih odluka, pravom na samoorganizovanje i samoadministriranje, pravom na uspostavljanje i održavanje veza pripadnika manjinskih grupacija sa svojim sunarodnicima, kao i pravom na finansijsku pomoć za aktivnosti i rad ustanova značajnih za očuvanje i razvoj sopstvene nacionalne, odnosno etničke posebnosti.

Manjinska samouprava u novim zakonskim rješenjima u crnogorskom prostornom realitetu određena je kroz nacionalna vijeća nacionalnih i etničkih grupa koja se mogu konstituisati u oblasti upotrebe jezika i pisma, zatim obrazovanja, informisanja i kulture, kao i u sferi koja se odnosi na proporcionalnu zastupljenost nacionalnih i etničkih grupa u organima državne vlasti i lokalne uprave. Inače, bliže odredbe o izboru i sastavu, kao i nadležnosti ovog vijeća donosi Ministarstvo za zaštitu prava pripadnika nacionalnih i etničkih grupa Republike Crne Gore.

Među oblicima zaštite prava nacionalnih i etničkih grupa i njihovih pripadnika posebno zanimljivo rješenje je ono koje se odnosi na Fond za afirmativnu akciju koji konstituiše Skupština Republike Crne Gore. Ovaj fond posebno podržava obrazovne, naučne i kulturne projekte i ustanove koje pripremaju stručnjake i programe značajne za očuvanje i razvoj nacionalnih i etničkih grupa, kao i za međuetničku saradnju. Sredstva za rad fonda obezbjeđuju se iz Budžeta Republike Crne Gore, a dijele se proporcionalno shodno učešću nacionalnih i etničkih grupa i njihovih predstavnika u strukturi stanovništva Republike Crne Gore.

Poslednja dva strukturalna segmenta Ustavnog zakona Republike Crne Gore o slobodama i pravima nacionalnih i etničkih grupa i njihovih predstavnika čine odredbe koje se odnose na kaznene odredbe, kao i završne i prelazne odredbe.

Model Ustavnog zakona kojim se regulišu prava i slobode pripadnika manjinskih grupacija u crnogorskom društvu strukturalno je postavljen na način koji omogućava gotovo potpunu zakonsku zaštitu. U ovom zakonskom aktu da je se potpuna i neposredna primjena principa sadržanih u konstitucionalnim rješenjima Republike Crne Gore i Državne Zajednice Srbija i Crna Gora.

Pravni okvir zaštite manjina u Crnoj Gori posmatran kroz rješenja koja se nude u Ustavnom zakonu o njihovim pravima i slobodama pruža garancije da se na pravno ureden i sistemski način mogu riješiti pitanja koja se tiču potrebe zaštite nacionalnih manjina kao nacionalnih zajednica kroz zaštitu njihovih kulturno-istorijskih i identitetskih svojstava. Takođe u istoj ravnini se mogu posmatrati i neki problemi ovih grupacija koja se tiču odnosa prema manjinama u lokalnim zajednicama i njihovog ravnopravnog učešća u organima lokalne vlasti. Može se reći da se ponuđenim rješenjima ostvaruje potreba zaštite prava pripadnika nacional-

nih manjina kao ravnopravnih građana crnogorskog društva. Međutim, kada se govori o manjinskim zajednicama i u Crnoj Gori, a i u ostalim ambijentima eks-jugoslovenskog društva i njihovim problemima, na jednoj strani postoji konstитucionalna i zakonska rješenja i ono što u njima piše, a na drugoj strani je stvarnost i realni život. Između realnog života i zakonskih rješenja postoji, često, velika disproporcija. Treba naglasiti da neke od problema po pitanju manjinskih grupacija proizvode i same zakonske odredbe, što dodatno otežava rješenje. Često se dešava, a neposredni smo svjedoci takve prakse, da se usled nemogućnosti rješavanja problema mijenja norma, zbog čega je vijek trajanja većine zakona veoma kratak. Ovaj zakon treba da prati ne ambijent vječite težnje za promjenom norme i pisanjem nekih novih rješenja, već ambijent stvaranja uslova da se on ostvaruje. Takvi uslovi prepostavljaju ustanovljenje vrijednosti koje ne negiraju nijednu različitost, već je prepoznaju kao jedinstvo u kojem se slobodno ispoljavaju identitetska obilježja.