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SERBIA AND MONTENEGRO: THE NEW LEGAL FRAMEWORK FOR THE PROTECTION OF ETHNIC MINORITIES

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Résumé de l'article

Au début de l'année 2003, la République fédérale de Yougoslavie fut reconstituée en tant qu'État uni de Serbie et du Monténégro. La reconstitution fut légalisée par la *Charte constitutionnelle* de la Serbie et du Monténégro le 27 mars 2003. Le succès de cet union est assez incertain, étant donné qu'il reste à voir si l'État va survivre et sous quelle forme, ou si les Républiques devront bientôt se séparer pour reprendre leur autonomie respective. Au cours des dernières années, et même des derniers mois, certaines modifications du système légal ont été introduites en Yougoslavie. À travers ces changements, sont particulièrement intéressants ceux relatifs à la législation concernant les droits de la personne et les droits des minorités ethniques. L'analyse de la législation d'un État donné débute logiquement avec celle de sa législation suprême, soit sa constitution, et continue ensuite par celle de ses autres lois et sources de droit. Ayant à l'idée les réalités courantes de la Serbie et du Monténégro, une analyse chronologique de la situation est nécessaire. De surcroît, suite aux notes introductives, sera présenté le *Federal Act on Protection of Rights and Freedoms of National Minorities*, adopté en 2002 en République fédérale de Yougoslavie et toujours en vigueur, pour finalement répertorier les diverses législations qui l'ont suivi.

SERBIA AND MONTENEGRO : THE NEW LEGAL FRAMEWORK FOR THE PROTECTION OF ETHNIC MINORITIES

Par Boris Krivokapić[*]

Au début de l'année 2003, la République fédérale de Yougoslavie fut reconstituée en tant qu'État uni de Serbie et du Monténégro. La reconstitution fut légalisée par la *Charte constitutionnelle* de la Serbie et du Monténégro le 27 mars 2003. Le succès de cet union est assez incertain, étant donné qu'il reste à voir si l'État va survivre et sous quelle forme, ou si les Républiques devront bientôt se séparer pour reprendre leur autonomie respective. Au cours des dernières années, et même des derniers mois, certaines modifications du système légal ont été introduites en Yougoslavie. À travers ces changements, sont particulièrement intéressants ceux relatifs à la législation concernant les droits de la personne et les droits des minorités ethniques. L'analyse de la législation d'un État donné débute logiquement avec celle de sa législation suprême, soit sa constitution, et continue ensuite par celle de ses autres lois et sources de droit. Ayant à l'idée les réalités courantes de la Serbie et du Monténégro, une analyse chronologique de la situation est nécessaire. De surcroît, suite aux notes introductives, sera présenté le *Federal Act on Protection of Rights and Freedoms of National Minorities*, adopté en 2002 en République fédérale de Yougoslavie et toujours en vigueur, pour finalement répertorier les diverses législations qui l'ont suivi.

In the beginning of 2003, the Federal Republic of Yugoslavia was reconstituted as the State Union of Serbia and Montenegro. The reconstitution was legalized by the Constitutional Charter of Serbia and Montenegro of March 27th, 2003. The fate of this union is pretty uncertain as it remains to be seen whether it will survive and in which form, or whether the associated republics, Serbia on the one side, and Montenegro on the other, shall soon separate. However, life goes on. In the last few years, even months, certain changes of the legal system were introduced in Yugoslavia. Among these changes, particularly interesting were those related to the regulation of rights and the situation of ethnic minorities. The analysis of the legal regulations of a certain state logically starts with its supreme legal act, its constitution, and then continues to its other relevant statutes and regulations. Still, having in mind the current realities of Serbia and Montenegro, a form of chronological order seems more suitable. Therefore, after the introductory notes, the Federal Act on Protection of Rights and Freedoms of National Minorities (adopted in 2002 in the Federal Republic of Yugoslavia and still in effect) will be presented, with the relevant supreme legal acts of the State Union of Serbia and Montenegro after that.

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Introduction

Serbia and Montenegro (the former Federal Republic of Yugoslavia) belong to the group of countries characterized by a very diversified ethnic structure and a high share of national or ethnic minorities.

Though the latest population census was held in the spring of 2002, it did not cover the whole country as Montenegro, Kosovo and Metohia were not included. In that respect it is interesting to note that, according to the results of the previous population census held in 1991, there were around thirty national minority groups in Yugoslavia with their total numbers reaching 3.4 million. This means that approximately every third Yugoslav citizen does not belong to the Serbian or Montenegrin nation[1].

In any case, it is interesting to note that not only because of the ethnic diversity, but also for other various reasons, among these the high standards reached in the Socialist Federal Republic of Yugoslavia, requests by the international community and by minorities themselves and the fact that the norms concerning minorities were scattered within several statutes and other legal provisions, in 1992, the Federal Ministry for Human Rights and Minority Rights undertook to form an expert team to draft a special federal statute in order to regulate the matter of minorities in a unified way. By early 1993, the team of experts completed its work by offering a draft law on freedoms and rights of minority communities and their members. Although the text was highly praised by national as well as foreign professionals and by the general public, the law-making process stopped with the draft, due to political reasons such as the downfall of the government of the then Prime Minister Milan Panic and, as a matter of fact, soon afterwards the Ministry itself was abolished.

The minority policy developed in the following years may be evaluated differently depending on who is evaluating it. If the representatives of minority organisations or non-governmental organisations were given the chance to speak, many of them would, probably with good reason, point to various inconsistencies in the legislation and to the fact that there were cases of non-implementation and even direct violation of certain legislative and other norms to the disadvantage of minorities They would also particularly point to the fact that even when it was obvious that in practice some minority rights were being violated, such as certain provisions of the Official Languages Act or federal and other provisions of the Publication Act on Minority Languages, these violations had not been sanctioned in a proper way.

On the other hand, someone viewing the whole thing from the stand-point of the then power holders or from the stand-point of a member of the majority of the

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[1] For more details concerning the ethnic structure of Yugoslavia according to the 1991 census, see Boris Krivokapić, "The Ethnic Structure of the Federal Republic of Yugoslavia and the Concept of a Minority Community" (1993) 1 Yugoslav Law 11-24.

population would maintain that, in spite of everything, minorities in Yugoslavia had a far better status than that existing in any other neighbouring country, including many European nations, and that certain inconsistencies and deviations were the result of objective factors such as economic shortages and general insecurity as a result of international sanctions, wars on the territory of the former Socialist Federal Republic of Yugoslavia and conflicts between different options and leaders within particular minorities. In this sense, and also with good reason, it was emphasized that in a situation where the country was threatened with war, facing hundreds of thousands of refugees and having the average wage be only two to three American Dollars per month, there were more urgent matters than opening schools for minorities, investing in the development of information in minority languages, and such matters, but that, in spite of this, the protection of minorities maintained a relatively high level of priority during the whole period, at least in comparison to other countries of the region.

As it is to be expected, the truth lies somewhere in the middle. The author of this paper belongs to the group of those who think that in the mentioned period, the Yugoslav legal regulations and applications in this matter were basically above the level that can be seen in a great number of, if not in most, contemporary states. This, however, does not mean that they were adequate in all respects.

Without reopening that issue here[2], and particularly without any intention to analyse the former situation, it must be remarked that the crucial weakness may be found in the fact that the norms guaranteeing the most important rights to minorities, although sufficient in number, were lacking coherence and were not uniformly on the level of practical requirements. To be precise, the relevant legal norms were included in all three Yugoslav constitutions, or, more precisely, in the constitution of the Federal Republic of Yugoslavia and the constitutions of both member-republics, Serbia and Montenegro, as well as in a whole series of statutes and other legal acts regulating, for example, education, public information and official languages. It was always felt, though, that an enactment completely and exclusively regulating this matter in a manner that was clear, uniform and entirely democratic would finalise the question most important to the consistent implementation of the rights of minorities and their members. Such a text was missing. This, of course, was not the only shortcoming of the existing legal regulations, and particularly of the general situation, but the author of this text believes that the enactment of a special federal statute on minority rights would have improved the supplementary legislation and practice substantially.

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[2] See Boris Krivokapić, "Neki problemi u vezi sa pravnom uređenošću položaja manjina u SRJ" ("Some Problems of the Legal Regulation of the Status of Minorities in Yugoslavia") in *"Položaj manjina u Saveznoj Republici Jugoslaviji" ("Status of Ethnic Minorities in the Federal Republic of Yugoslavia")* (Beo grad: Serbian Academy of Sciences and Arts, 1996) 155-169 and also Boris Krivokapić "Ethnic Minorities in the Federal Republic of Yugoslavia and their Rights", 1994 2-3 Yugoslav Law 63-71.

I. Innovations in the Minority Policy after the Political Changes of 2000

The atmosphere of social reform and democratisation, or at least the general declaration to that end, that took place following the well-known political changes in the Autumn of 2000 was favourable to further improving the situation in this field of social relations.

Namely, the new government formed after the Democratic Opposition of Serbia won the elections noticed the need to improve the situation in at least two respects; firstly, by means of further development and improvement of relevant legal regulations, and, secondly, by means of consistent implementation of legal regulations by specifically improving the factual situation. In this respect, a new minority policy has been formulated on the following grounds[3]:

- the development of democratic institutions and the recognition of the rule of law;
- the development of a comprehensive legal framework in the field of minority rights;
- the implementation of a social environment favourable to the cultivation of a spirit of tolerance and respect for differences;
- the faster tempo of economic development of the country.

The leading role in this field, at least concerning the issues of direct importance to minorities, was entrusted to the newly formed Federal Ministry of National and Ethnic Communities as the main institution of the new minority policy.

Specifically, it was established by Article 34 of the Federal Government Decree[4] that the Federal Ministry of National and Ethnic Communities shall perform functions related to:

- implementation of the rights of national minorities and ethnic communities established by the constitution of the Federal Republic of Yugoslavia;
- protection and advancement of collective and individual rights of national minorities and ethnic communities in the Federal Republic of Yugoslavia;

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3 *"Prvi izveštaj SR Jugoslavije o ostvarivanju Okvirne konvencije za zaštitu nacionalnih manjina"* (Beograd: 2002) 14, hereinafter referred to as "The First Report of the Federal Republic of Yugoslavia on the Implementation of the Framework Convention".

4 *"Službeni list Savezne Republike Jugoslavije"* ("Official Gazette of the Federal Republic of Yugoslavia") No. 67/2000.

- supervising the situation and proposing measures concerning implementation of the rights of national minorities and ethnic groups, in accordance with the international legal documents in the field;
- enabling contacts between national minorities and ethnic groups and their parent-countries;
- other responsibilities established by the federal law such as the ratification of international treaties in the field of human and minority rights.

It would probably not be an exaggeration to claim that the Ministry, headed from the beginning by officials belonging to minority groups[5], devoted itself to the entrusted functions with full rigor. Within a wide comprehensive action that is still in progress and assisted by other competent official bodies, it is possible to provisionally discern three trends of activity, including[6]:

(1) specific "practical" measures at various levels, such as a large-scale campaign in favour of tolerance carried out by the media and other such players, organising of panels and round tables for the purpose of direct communication with the members of national minorities, training officials for work in multiethnic environments, opening of multicultural centres in Belgrade and places with a high concentration of minorities, organising of multiethnic youth camps, providing financial aid as well as other forms of aid to minority organisations, establishing broadcasts in minority languages in several forms of government media, particularly where there were no such broadcasts or these were insufficient in quantity, taking measures for the improvement of education in minority languages, including the introduction for the first time of education in the Croatian language and providing free textbooks for the year 2002-2003 to all elementary school students of Romany nationality[7], introducing minority languages as official languages in localities where this was not the case before, for example, the Albanian language in Bujanovac;

(2) activities in amending relevant federal legislation and the legislation of the Republic of Serbia. Among many, the relevant provisions of the Self Governance Act of the Republic of Serbia, the acts on elementary schools, high schools and the university were amended and improved, while the amendment of other relevant legislation is in preparation;

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5 The personnel of the Ministry should guarantee the quality of its work. The federal Minister belongs to the Bosniak community, his closest associate (the deputy Minister) is a representative of the Hungarian community and members of other minority communities are also represented (among others, one of the Minister's advisors is a Rumanian).

6 See more on this in "The First Report of the Federal Republic of Yugoslavia on Implementation of the Framework Convention" 12-19.

7 Approximately 5000 sets of books.

(3) action on an international level, including the accession to certain international agreements and other instruments and initiatives. It is probably sufficient here to mention that Yugoslavia is a member of the Facultative Protocol to the International Pact on Civil and Political Rights[8], that it has signed the Instrument on Minority Rights Protection of the Central-European Initiative, that the preparation for acceding to the European Charter on Regional and Minority Languages is in progress, and it certainly has to be pointed out that negotiations with a number of neighbouring countries such as Croatia and Macedonia for the purpose of making bilateral agreements on the protection of minorities have been initiated. With Romania, such an agreement was signed on November 4th, 2002, and is now in the process of ratification, while with Hungary such an agreement has been negotiated and is expected to be signed in 2003[9]. In addition, cooperation with relevant international organisations and bodies is taking place, most of all with the Council of Europe and the Commission on Security and Cooperation in Europe.

However, if we are to look for the most important moments in such a comprehensive campaign for the advancement of regulations and realisation of the general status of members of ethnic minorities, they would undoubtedly include the accession of Yugoslavia to the Council of Europe Framework Convention on the Protection of National Minorities, and the enactment on February 27th, 2002 of the Federal Act on the Protection of Rights and Freedoms of National Minorities.

Namely, in the light of the new political reality, Yugoslavia was invited by the Council of Europe Committee of Ministers to join the Framework Convention for the Protection of National Minorities[10]. This was in pursuance of the provision of Article 29/1 of the Convention authorising the Committee, among other things, to initiate the joining of non-treaty-member states to the Council of Europe, following consultations with the member states.

In answer to this invitation, Yugoslavia joined the Convention on May 11th, 2001, and, according to the provision of Article 29/2[11], it came into force with respect

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8 Ratified on June 22nd, 2001 and entered into force for the Federal Republic of Yugoslavia December 6th, 2001.

9 It was initialed by the heads of the two delegations (expert teams) in December 2002, which signifies that the text has been agreed upon and cannot be changed.

10 It is interesting to note that Yugoslavia has, of its own initiative, ratified the Framework Convention as early as December 3rd, 1998, which was probably aimed at showing its firm resolution concerning the consistent respect for national minority rights. However, in spite of this, the ratification instruments were not deposited with the Council of Europe, because the whole action was carried out without the mentioned invitation of the Committee of Ministers (which is, in the given case, a *condition sine qua non*).

11 This provision specifies that, with respect to any country that becomes a member, the Framework Convention enters into force on the first day of the month following the expiry of three months from the day of the deposit of the accession instruments with the Secretary General of the Council of Europe.

to Yugoslavia on September 1st, 2001. Consequently, Yugoslavia has undertaken an obligation to consistently implement the solutions provided by the Convention[12].

On the other hand, since an effort at conceiving a special federal act which would regulate the rights of minorities in a single document in a manner as democratic and comprehensive as possible was taking place parallel to the mentioned process, this gave an opportunity to include in the act the solutions provided by the most important international instruments, those treaties that have reached the highest standards in this matter. In other words, the Framework Convention imposed itself both as a legal obligation and as the source and model of high standard solutions.

II. The Law on the Protection of Rights and Freedoms of Minorities of 2002

The Law on the Protection of Rights and Freedoms of Minorities (hereafter the *Law* or the *Law on Minorities*) was enacted on February 27th, 2002, unanimously by both chambers of the Federal Parliament. When it is known what political struggles are taking place within the still very divided Yugoslav political scene, particularly within the highest representative body, the fact that this Law was adopted without any kind of obstruction deserves special attention.

However, what is more important still is the content of the Law's solutions. Without the intention to recapitulate this Law, as it is available in the languages of all the minorities and in several foreign languages[13], this text shall concentrate upon some of its especially interesting aspects.

It should be noted here that although in early 2003 a State Union of Serbia and Montenegro was established instead of the Federal Republic of Yugoslavia, in this text the minority rights in the Federal Republic of Yugoslavia will be discussed, such as certain provisions of the Federal Republic of Yugoslavia's Constitution, simply because at the time when the Law was enacted, the state still existed under that name and its supreme act, the Federal Republic of Yugoslavia's Constitution, was in effect. Therefore, the Law's solutions were conceived in line with the then prevailing legal and other realities[14].

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[12] In principle, the Convention is enforceable on the whole territory of the Federal Republic of Yugoslavia, yet, according to Resolution No. 1244 of the United Nations Security Council, KFOR is stationed on the territory of Kosovo and Metohia so this province is *de facto* not under the control of the government of the Federal Republic of Yugoslavia and Serbia, in spite of the fact that Yugoslav sovereignty of this territory has been confirmed for several times at the international level.

[13] Among others, the Federal Ministry of National and Ethnic Communities has published a special publication containing the Serbian version of the Act as well as translations in ten languages, namely, Albanian, Bulgarian, Macedonian, Hungarian, Romany, Rumanian, Ruthenian, Slovak, English and German). See *Minorities Protection and Freedoms of Minorities Act*, Belgrade, 2002.

[14] The Law was passed on February 27th, 2002, and the Constitutional Charter of Serbia and Montenegro on March 27th, 2003, precisely 13 months later.

A. Designation and Definition of Minorities

The Federal Law on Minorities calls minorities defined by ethnic characteristics *national minorities*[15]. Such an approach is in full accordance with the one followed by the 1992 Constitution of the Federal Republic of Yugoslavia[16] and the later Constitutional Charter of Serbia and Montenegro of 2003, but differs from the solutions accepted by the constitutions of the member-republics. Namely, the 1990 Constitution of Serbia uses the term *nationalities*[17], while the 1992 Constitution of Montenegro with equivalent meaning uses the term *national and ethnic groups*[18]. Probably for this reason, the Law on Minorities, as shall be seen immediately, in defining national minorities, explicitly mentions this term, which, among other things, includes the groups named or defined as *national and ethnic groups*, meaning *nationalities*.

It is particularly interesting to notice that the Law on Minorities makes an attempt to define the concept of a national minority, although this is done in an insufficiently precise way. Namely, the provision of Article 2 establishes that, pursuant to this Law, a national minority is any group of Yugoslav citizens which is sufficiently representative by its number and, although it is a minority in the territory of the Federal Republic of Yugoslavia, belongs to one of the population groups that has a long-standing and firm connection with the territory of Yugoslavia and has characteristics such as a language, culture, national or ethnic affiliation, origin or religion that differs from the majority of the population and contains members that are characterised by maintaining a common identity, including culture, tradition, language or religion.

Probably having in mind the complex ethnic structure of Yugoslavia, the provision of paragraph 2 of the same Article specifies that, pursuant to this Law, a national minority shall include all the groups of nationals that consider themselves a nation, national or ethnic communities, national or ethnic groups, nationalities, and who fulfil the requirements from paragraph 1 of the mentioned article.

Therefore, the Law on Minorities, in line with the attempt to define minorities[19], builds its own definition of minorities on the basis of objective and subjective elements by requiring a minority to be:

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[15] In the relevant international documents and the practice of various states, different names are used for the designation of minorities defined by ethnic characteristics such as "racial and ethnic groups", "national, language and religious minorities", "national or ethnic, religious and language minorities", "national communities", "other nations and minorities", "ethnic and national communities or minorities", "national and ethnic minorities", "nationalities", "national minorities", etc.

[16] See Articles 11 and 46 to 48 of the Constitution of the Federal Republic of Yugoslavia.

[17] See the Preamble, Article 8/2 and 43/4 of the Constitution of the Republic of Serbia.

[18] See Articles 9 and 67 to 76 of the Constitution of the Republic of Montenegro.

[19] See Boris Krivokapić, "Položaj etničkih manjina u obrazovanju ("Status of Ethnic Minorities in Education – A Comparative Analysis") (Beograd: 2000) 26-32 and Boris Krivokapić "Problem definicije manjina" ("The Problem of the Definition of Minorities") *"Strani pravni život"* 1/1994, 32-34.

1) a group of citizens of the Federal Republic of Yugoslavia;
2) sufficiently numerous and representative;
3) a minority in the territory of Yugoslavia;
4) a group of citizens in a long-standing and firm connection with the territory of the Federal Republic of Yugoslavia[20];
5) a group possessing characteristics such as a language, culture, national or ethnic affiliation, origin or religion according to which it can be distinguished from the rest of the population (the objective element);
6) a group whose members are characterised by maintaining their common identity, including culture, tradition, language or religion (the subjective element).

What is specific to the solution established by this Law is, as it has already been said, that its Article 2/2 specifies that shall be considered minorities all the groups of citizens fulfilling the above-mentioned requirements, irrespective of how they are named or defined. The purpose of this solution was probably to provide as complete as possible a protection to all those who are essentially in the position of a national minority, and feel themselves to be so. On the other hand, during the preparation of this Law, it was suggested that all the minorities in Yugoslavia should be enumerated in the Law itself, but this idea was later abandoned since it was considered that in a reality such as that of the Yugoslav, it would be impossible to satisfy all the relevant interests by such a method.

B. Recognition of Collective Minority Rights

A lot of energy was spent in discussing the question of whether minority rights are only individual rights or, at least in part, collective rights as well.

In contrast to this, but in full accordance with what has been stipulated by the already mentioned Federal Government Decree[21], this Law explicitly recognises the collective rights of minorities. This is, in any case, demonstrated by the name of that document itself which does not mention *members of minorities*[22], but only *national*

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[20] In other words, the legislator adopts the conception according to which the essential element of a minority status is the autochthonous character of this population. More on this conception and its weak points in Boris Krivokapić "Conception of Distinguishing Between So-called Autochthonous and Alochthonous Minorities – a Critical Appraisal", in Boris Krivokapić, ed., *Act on the Protection of National Minorities (Expert Discussion on Preliminary Draft of the Act on the Protection of National Minorities)* (Belgrade: 2002) 57-88.

[21] As it was already pointed out, Article 34 of this Decree establishes that the Federal Ministry shall perform functions relating, among other things, to the protection and advancement of the *collective* and individual rights of national minorities and ethnic communities in the Federal Republic of Yugoslavia (my italics).

[22] My italics.

minorities as such, which means that they are subjects, or are at least (together with the members of minorities as individuals) among the subjects of guaranteed rights. To this it should be added that, although in several instances, it uses the term *members of national minorities*, Article 1/1 of the Law clearly determines that it "regulates the method of implementation of *individual and collective rights* guaranteed to the members of national minorities by the Constitution of the Federal Republic of Yugoslavia or by international treaties". Finally, in Article 1/2, the Law specifies collective rights by establishing that its provisions shall secure protection of *national minorities* from any form of discrimination in the implementation of rights and freedoms as well as in the instruments protecting special rights of *national minorities* to self-government in education, use of their own language, information and culture, and the establishing of institutions for the purpose of easier participation of *minorities* in the process of government[23].

These solutions are developed in subsequent provisions regulating the official use of minority languages such as Article 11 and freedom of expression, of preservation, development, transfer and public expression of national, ethnic, cultural, religious and linguistic specificity, as part of the tradition of citizens, *national minorities* and their members, established as their inalienable *individual and collective right* (Article 12/1), right to education in the native language (Articles 13 to 15), right to use national symbols and to observe the holidays of national minorities (Article 16), right to information in the languages of national minorities (Article 17) and other rights enjoyed essentially collectively or in community with others.

Finally, it is also worth pointing to Article 19 of the Law which provides that members of national minorities may, for the purpose of realisation of the right of self-government, elect their National Councils. Such a council represents a national minority in the fields of official use of language, education and information in the language of the national minority and culture and also participates in the process of decision making on issues from these fields and establishes relevant institutions (Article 15/7). In other words, the role of councils is to represent minorities as collectives.

C. The Sphere of Guaranteed Rights

The catalogue of guaranteed rights is very wide. Some of the most important rights protected by the Law are the following:

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[23] This may not be such a novelty. Namely, although according to the formulation of the relevant international documents and comparative practice, the *members of national minorities* (see, for example, Articles 46 to 48) are defined as subjects of guaranteed rights, the Constitution of the Federal Republic of Yugoslavia, in its Article 11, departs from such a conception and introduces certain elements of collective minority rights by establishing that the Federal Republic of Yugoslavia recognises and guarantees the rights of *national minorities* to the preservation, development and expression of their ethnic, cultural, linguistic and other specificities, as well as to the use of national symbols in accordance with international law. This may lead to the conclusion that the Constitution itself defines minorities collectively as the subjects of the mentioned rights.

- protection against discrimination, formulated as prohibition of discrimination against persons belonging to national minorities (Article 3);
- possibility or, in the case of Romany national minority, duty of adopting legislation and individual legal acts and developing measures for the purpose of full and effective equality of the members of national minorities and the members of the majority nation (Article 4);
- freedom of national determination and expression (Article 5);
- right to cooperation with compatriots in the country and abroad (Article 6);
- protection of acquired rights (Article 8);
- right to a free choice and use of personal name and names of one's own children (Article 9);
- right to use one's own native language (Article 10);
- official use of language and alphabet (Article 11);
- right to promote culture and tradition (Article 12);
- freedom of association (Articles 12 and 19);
- right to education in native language (Articles 13 to 15);
- right to use national symbols (Article 16);
- right to public information in national minority language (Article 17);
- right to effective participation in decision-making concerning questions of specificity, in government and in administration (Articles 18 to 20);
- right to participation in public affairs and equality of employment in public service (Article 21);
- right to protection against measures aiming to change the demographic structure in areas inhabited by national minorities (Article 22);
- right to judicial protection and protection of guaranteed rights before constitutional courts (Article 23); etc.

We believe that it is unnecessary to quote the provisions of the Law. In spite of this, a kind of review of the way that the most important rights are regulated seems unavoidable, and it is necessary to point, briefly, to some other characteristics of this Law.

D. Some Peculiarities of the Law

1. Prohibition of Assimilation, Stimulation of the Spirit of Tolerance and Protection against Threats or Discrimination

These matters are regulated by Article 5/1 of the Law that says that "Any act or measure of forceful assimilation of the national minority members shall be prohibited", meaning that any such act or measure shall be prohibited regardless of who performs it, whether it be state authorities or other subjects.

Prohibition of assimilation and protection against threats and discrimination are further reinforced by some other provisions of the Law, such as those from Article 7 prohibiting the violation of the guaranteed freedoms of man and the citizen and prohibiting the incitement of national, racial and religious intolerance or hatred, Article 8 providing for the protection of acquired minority rights, Article 22 prohibiting measures aiming to alter the proportion of population in regions inhabited by national minorities and measures impeding the enjoyment and realisation of national minority rights, Article 23 providing for judicial protection including protection by constitutional courts of guaranteed rights, and many other such provisions.

Although the question of the stimulation of a spirit of tolerance is rather a matter of policy and programme action than a matter of legislation, it should be stressed that the Law, in order to stimulate tolerance regarding national minorities, contains several provisions creating a sound basis for further advances in the field. It is worth mentioning that Article 13/7 provides explicitly that plans and programmes in Serbian language educational institutions and schools should contain topics on the history, culture, and status of national minorities and other matters stimulating mutual tolerance and coexistence. In addition, the Law establishes that on territories where a minority language is in official use, plans and programmes in Serbian language educational institutions and schools should provide for the opportunity of learning the language of a national minority.

2. Measures of Affirmative Action

Starting from the well-known truth that actual protection of minorities requires more than only the prevention of their discrimination, the Law in its Article 4 termed "Equality securing measures" and unequivocally establishes that the state authorities of the Federal Republic of Yugoslavia may, in accordance with the Constitution and statutory law, make provisions, individual legal acts and undertake measures for the purpose of providing full and effective equality between the members of national minorities and the members of the majority nation. While the aforementioned provision says that the mentioned authorities *may* pass the relevant legal acts and undertake measures, the provision of Article 2 unequivocally establishes that *they shall pass* such legal acts and undertake measures to improve the status of persons belonging to the Romany national minority. As a result, while with respect to other minorities there is a possibility left that the relevant provisions,

individual legal acts and measures aimed at providing full and effective equality of those groups and their members be undertaken when necessary, in the specific case of the Romany minority, the Law itself, taking into account the particularly difficult economic and social status of that community, specifically establishes the state authority's duty to undertake specific steps in order to improve the minority's status. Finally, the provision from paragraph 3 expressly determines that provisions, individual legal acts and measures resulting from this Article shall not be considered an act of discrimination.

Here it should probably be brought to attention that in addition to mentioning universally the possibility or the duty to undertake appropriate measures for providing full and effective equality between the members of national minorities and the members of the majority nation, the Law also mentions specific modalities of state intervention for the purpose of attaining such ends[24].

3. Choice and Use of Personal Name

Article 9/1 of the Law not only recognizes the right of members of national minorities to freely choose and use their own name and the names of their children, but also to *enter these names into all public documents, official records and collections of personal data according to the language and orthography of the members of the national minority.* The provision of Article 9/2 makes it clear that this right does not exclude parallel registration according to Serbian orthography and alphabet, which, of course, is not a limitation of the recognized right, but a necessary

[24] So, among other things there is: the provision of Article 6/2 that establishes that the state should provide benefits for the purpose of the realisation of the right of national minorities to free establishment and maintenance of peaceful relations within the Federal Republic of Yugoslavia and outside its borders with persons legally staying in other states, particularly with those having a common ethnic, cultural, linguistic and religious identity or common cultural heritage; Article 12/3 that provides that the state, proportionally to its means, shall participate in financing special cultural, artistic and scientific institutions and societies and associations of the national minorities members; the provision of Article 13/2 that provides that, if at the moment of passing the Law, there was no education in the minority language within the system of public education for the national minority members, the state shall have the duty to provide conditions for organised education in the national minority language and, until this is done, to provide bilingual instruction of the national minority language with elements of national history and culture for the members of the national minority; Article 14/1 establishes that, for the purpose of education in the national minority language within higher establishments and university education departments and faculties, there shall be provided the education of pedagogues, teachers and language professors in the minority language; the provision of Article 14/4 that provides that the state shall stimulate international cooperation for the purpose of enabling the national minority members to study abroad in their native language and that such diplomas shall be recognised according to the law; Article 15/3 provides that, in the case of a financial or other donation by a national or foreign organisation for the purpose of education in minority languages, the state shall provide certain benefits or tax reductions; Article 17/2 establishes that the state shall provide informative, cultural and educational contents in the national minority language on the radio and within television programmes and it may establish special radio and television stations broadcasting programmes in national minority languages; etc.

measure providing for a needed level of mutual understanding and legal safety in a multiethnic society.

It should particularly be emphasised that this is an important step forward with respect to the Framework Convention, which at the level of use and recognition of first and second names in minority languages (Article 11/1) does not mention the right of their registration in public documents in the language and orthography of national minorities.

4. THE RIGHT TO USE NATIVE LANGUAGE AND OFFICIAL USE OF LANGUAGE AND ALPHABET OF A NATIONAL MINORITY

First of all, in its Article 10, the Law guarantees a general right to the free use, in private and in public, of the languages and alphabets of minorities, in a formulation that completely corresponds to the one in the Framework Convention. Also, the question of free use of minority languages is touched upon in some other provisions dealing with freedom of choice and use of personal name in the language of a minority (Article 9), education of minorities in native language (Articles 13 to 15), information in minority languages (Article 17) and other such provisions.

What should be particularly emphasised is the fact that Article 11 in as many as eight paragraphs regulates the question of *official use of minority languages* in a truly democratic and comprehensive way. Not only does it provides for the possibility of equal official use of minority languages in its paragraph 1, but it explicitly establishes in its paragraph 2 that the self governed units shall introduce equality in official use of national minority language and alphabet, if the percentage of the members of such a minority reaches 15% of the total population on that territory according to the last population census. The provision of paragraph 3 specifies what is meant by official use of national minority languages. This particularly includes[25]:

- use of national minority languages in administrative and judicial proceedings and in the carrying out of administrative and judicial proceedings;
- use of national minority language in communication between public authorities and citizens;
- issuing of public documents and keeping official records and collections of personal data in national minority languages and recognition of documents in such languages;
- use of language on ballot papers and election materials;

[25] The employed formulation of using “particularly” points to the fact that this enumeration does not exhaust the forms of official use of the languages of national minorities, but that this it is only the citation of a few most important and typical examples.

- use of national minority language in the functions of representative bodies

To this it should be added that on a territory inhabited to a proportion of 15% by minority members, names of public authorities, names of self governance units, inhabited places, squares and streets and other toponyms should be written in the language of the minority in question, according to its tradition and orthography[26]. In addition, according to the provision of paragraph 6, federal statutes and provisions shall appear also in minority languages, according to special regulations. Finally, members of national minorities whose percentage in the total population of the Federal Republic of Yugoslavia reaches at least 2% may address the federal authorities in their own language and have the right to get the answer in that language, while the member of federal parliament belonging to such a minority has the right to address the parliament in his language.

5. THE RIGHT TO EDUCATION IN NATIVE LANGUAGE

It is of crucial importance to the survival and development of any minority that the education in its language, or at least the possibility of studying the native language as a special subject, is provided. Although such rights are guaranteed by the constitutions of the Federal Republic of Yugoslavia and of the member-republics and are more specifically regulated by the relevant educational statutory provisions, such as, for example, the Elementary Education Act, Secondary Education Act and University Act, the federal Law on Protection of Rights and Freedoms of National Minorities devotes substantial attention to this matter in three substantial articles that are Articles 13 to 15.

The Law, in its Article 13/1, establishes universally that the members of national minorities have the right to education in their own language in pre-school, elementary and secondary educational institutions. However, the next provision, Article 13/2, already deserves special attention as it establishes that the state, if there is no education provided in the national minority language within the system of public education for national minority members, has a duty to establish until then a bilingual teaching programme or the study of national minority language with the elements of national history and culture for the members of the national minority. Consequently, this is a formulation of direct and specific duty of the state, although it does not establish a deadline for its fulfilment.

Due to the special importance of this matter, it is also worth mentioning the other solutions concerning this matter, expressed in the following provisions of the Law (Articles 13 to 15):

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[26] Thus, along with the official language.

- for the purpose of accomplishment of minority education, a minimum number of students may be specified, but it is provided that such a number may be smaller than the minimum number of students provided by the law for appropriate forms of teaching and education. In other words, minority teaching may be organized even when there is not the sufficient number of students otherwise required for the organizing of regular education (in the language of the majority population);
- the education in the national minority language shall not exclude compulsory studying of the Serbian language[27];
- the curriculum of education of national minorities should contain, in the part devoted to national contents, a large measure of topics related to history, art and culture of the national minority;
- in making curricula for the teaching of subjects expressing specific features of national minorities in the language of national minorities, bilingual education and study of national minority languages with elements of national culture, the participation of National Councils of national minorities is compulsory;
- for the purpose of advancement of tolerance, the plan and programme in educational institutions and schools with teaching in Serbian language should include topics on the history, culture and status of national minorities, and other subjects improving tolerance and coexistence;
- in territories where a minority language is in official use, plans and programmes in educational institutions and schools in Serbian language should include the possibility of studying the language of a national minority;
- for the purpose of education in national minority languages, in higher and university education, departments and faculties should be organized for the education of pedagogues, elementary and high school teachers of national minority languages (Article 14/1). The provision of the second paragraph of the same article provides that in addition to the mentioned higher and university education, faculties shall organize lectureship in national minority languages, thus enabling the national minority students to learn technical terms in minority languages, while the provisions from paragraphs 3 and 4 establish additional duties of the state in this field by specifying that it shall help expert education and terminological training of teachers for the purpose of education in national minority languages. This means that it shall stimulate international cooperation with the purpose of enabling the members of

[27] Such a solution is in accordance with the one contained in Article 14/3 of the Framework Convention which established that education in a minority language or the receiving of instruction in that language must not be to the disadvantage of the study of the official language or of teaching in that language.

national minorities to study in their native language abroad and to recognize such diplomas according to the law;

- the members of national minorities shall have the right to establish and maintain private educational institutions, schools or universities that organize education in the languages of national minorities or bilingual education, according to the law;
- national and foreign organizations, foundations and private persons may take part in financing education in the languages of national minorities, according to the law;
- in case of a financial and other donation from the previous paragraph, the state shall provide certain benefits or tax relief.

6. The Right to Effective Participation in Social Life and Public Affairs

Concerning the right to effective participation of the members of national minorities in cultural, social, economic and public affairs, it must be immediately remarked that these questions are partly regulated by some of the already mentioned articles of the Law, for example, by Article 3 establishing prohibition of discrimination and by Article 12 concerning the right to development of culture and tradition, and that the problem is here reduced to consistent implementation of established principles.

Even though, special attention should be paid to Article 21 of the Law requiring that, in case of employment in public services, including police forces, care should be given for the national structure of the population and its right proportion and knowledge of the language spoken on the territory of the public authority. Equally important are the provisions concerning the Federal Council for National Minorities (Article 18), which, according to the Law, is constituted of representatives of organizational forms of national minorities for the purpose of self-government, as well as the provisions regulating the status of National Councils of the national minorities (Article 19) which shall be discussed later in more detail.

7. The Right to Use National Symbols

In Article 16, the Law explicitly provides and establishes in sufficient detail this right frequently omitted from the group of minority rights, both in international documents and comparative law.

It is interesting to note that the Law establishes that the members of national minorities have the *right to the choice and use of national symbols and insignia*.

The only restriction that the Law establishes in this respect is that such national symbols and insignia may not be identical with the symbols and insignia of another state. Such a solution is in itself comprehensible and is essentially not a

limitation of this right since national symbols and insignia may be quite similar, but not completely identical to the ones belonging to a foreign state, and is, among other things, a consequence of the international law obligation to protect state symbols of other states[28].

In addition to national symbols and insignia, the Law also permits the celebration of national minority holidays.

According to the Article 16/3 of the Law, national symbols, insignia and national minority holidays shall be proposed by the National Councils. Symbols, insignia and national minority holidays shall be verified by the Federal National Minorities Council.

Pursuant to the provisions of Article 16/4, national minority symbols and insignia may be *officially posted up* during national holidays and national minority holidays on buildings and premises of local authorities and organizations with public authority, in the regions where the minority language is in official use. However, in this case too, there is a quite understandable restriction consisting in a request that, along with the national minority symbols and insignia, it be compulsory to post up the insignia and symbols of the Federal Republic of Yugoslavia and of the member-republic.

8. RIGHTS OF RELIGION

It might be remarked that the Law fails to regulate sufficiently the religious rights of the members of minority groups. There are several reasons why the Law does not specifically deal with those rights. First of all, it is an act completely concentrating on the protection of rights and liberties of *national minorities*, and not other such collectives, not even religious minorities as such. On the other hand, the church is separate from the state in the Federal Republic of Yugoslavia through Article 18/1 of the Constitution of the Federal Republic of Yugoslavia[29], all the churches being equal and free in performing religious activities and rituals (Article 18/2 of the Constitution). According to this, there is no "official", "state" or otherwise institutionalised "majority" religion or church.

Religious freedom in the Federal Republic of Yugoslavia is enjoyed as an individual freedom equally guaranteed to all, not only to the members of national minorities. The Constitution of the Federal Republic of Yugoslavia, through its Article 43, guarantees the freedom of belief, public or private confession of faith and performing of religious rituals, and specifies that no one shall be obliged to declare

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[28] As far as it is known, this solution was confronted with resistance by only one national minority, the Albanian, the greater part of which insist on national symbols identical to the state insignia of Albania.

[29] Although it has already been explained earlier in this text, it should be reminded that the relevant provisions of the Constitution of the Federal Republic of Yugoslavia are quoted here because the Constitution was still in force when the Law was adopted. It was only in 2003 that the Constitution was derogated by the Constitutional Charter of Serbia and Montenegro.

his religious belief. Similar provisions are contained in the constitutions of the federal units of Yugoslavia.

The relevant statutory acts (mainly of the member-republics) provide for facultative religious instruction in elementary and high schools, for the members of all the large confessions, essentially the Orthodox, Catholic, Muslim and Jewish communities, the right not to work on the days of their main religious holidays, the right to establish and operate religious institutions, organizations and associations, etc[30].

It should particularly be stressed that, although the Law, in defining national minorities, takes religion as one of many possible objective characteristics, since there is no official religion in the Federal Republic of Yugoslavia and that religious belief is an individual matter, the religious moment is not always a reliable criterion for identification of different national or ethnic communities. Namely, practice proves that in the Federal Republic of Yugoslavia the members of the same national minority quite often belong to different religious confessions: for example, although most of the Albanians are of Islamic faith, there are Catholics among them; although Bulgarians are mainly Orthodox Christians, there is an enclave of Catholics in Banat; Hungarians are mainly Catholics, but a number of them belongs to the Christian Reformers Church; the Romany are mainly Orthodox Christians, although there are Muslims and members of other religious communities amongst their numbers.

9. MINORITY SELF GOVERNANCE

The Law explicitly provides for the creation of National Councils as forms of minority self-governance, entrusting them with important functions in various fields of social life, primarily those of vital importance to the survival and development of minorities.

Namely, the Law establishes that the members of minority groups may elect the National Councils for the purpose of realizing the right to self-government in the fields of use of language and alphabet, education, information and culture. The councils shall be established according to the voluntary principle through proportional and democratic election.

According to the provision of Article 19/3, the Council shall have at least 15 and at most 35 members, depending on the total number of members of a national minority, and shall be elected for a term of four years.

The Council shall represent a national minority in the fields of official use of language, education, information in minority language and culture, shall participate in the decision making process of making decisions upon the issues within its scope of activity and shall establish institutions in these fields. It establishes in particular:

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[30] See more on this in "The First Report of the Federal Republic of Yugoslavia on the Implementation of the Framework Convention" 56-60.

- that in deciding on the above mentioned questions, the state authorities, authorities of territorial autonomy or units of self-governance shall request the opinion of the Council;
- that a part of the authority in those fields may be entrusted to the Council if the state provides necessary financial means;
- that in establishing the scope and forms of authority, care should be taken of the requests of the National Council as well;
- that the Council may address those authorities in regard to all the questions affecting the rights and the status of a national minority;

The Council is a legal person. It shall enact its own statute and budget in accordance with the Constitution and Statute and shall be financed out of the budget and donations. The register of elected councils shall be kept by the competent federal authority.

According to the provision of Article 24 that includes transitory and concluding provisions, until the passing of the Law from Article 19/13 which shall regulate the matter concerning the rules on election of the National Council, the National Councils shall be elected by the national minority electors assemblies.

It is another question to determine who shall be the electors. According to the Law, electors may be the members of the federal assembly and the assemblies of the republics and autonomous provinces who are elected as the members of national minority groups, or persons who declare themselves to be minority members and speak the minority language. Electors may also be members of municipal assemblies who are at the same time members of a minority group, elected in the units of self-governance where the minority language is in official use. Finally, the right to be an elector belongs to every citizen declaring himself to be a member of a national minority, so long as his candidature is supported by at least 100 members of a national minority with the right to vote or he is nominated by one national organization or association of a national minority.

In Article 24/5, the Law specifies that the other questions concerning competences and operation of national minority electors assemblies shall be regulated by a federal authority competent in matters of minority rights, within 30 days after the coming into force of the Law.

It should be added that since the matters concerning minority rights fall within the competence of the Federal Ministry of National and Ethnic Communities, the federal minister, on July 5th, 2002, enacted a special *Rulebook on the Operation of Electors Assemblies for the Election of National Minorities Councils*[31].

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[31] Pravilnik o načinu rada skupština elektora za izbor saveta nacionalnih manjina, *Službeni list SR Jugoslavije* 41/2002, 1-3

This act specifies questions such as: how to summon the electors assembly, its mode of operation, the election mechanism of the National Council, how to organize special meetings of the electors assembly and other such matters. So, among other things, in Article 2, it establishes that the initiative for summoning the electors assembly may be made in written form by:

1. 20 members of a national minority with the right to be electors, in the case of a national minority whose number, according to the last population census, is not separately registered or whose number does not exceed 20 000 persons;
2. 30 members of a national minority with the right to be electors, in the case of a national minority whose number according to the last population census was between 20 000 and 50 000 persons;
3. 40 members of a national minority with the right to be electors, in the case of a national minority whose number according to the last population census was between 50 000 and 150 000 persons;
4. 50 members of a national minority with the right to be electors, in the case of a national minority whose number according to the last population census was over 150 000 persons.

These initiatives shall be handed to the Federal Ministry of National and Ethnic Communities which shall within 30 days determine the date and place for the holding of the electors assembly. The date and place for the holding of the elector's assembly shall be published by means of public information with a public invitation to all the electors to promptly submit filled applications for participation in the elector's assembly (Article 3/3 of the Rulebook).

Without entering into the details of other solutions provided by the Rulebook, which is a separate subject, it is worth to give at least a review of the method of election of the National Council (Article 14 of the Rulebook). The Council shall be elected according to the proportional system. The candidate lists for the members of National Councils may be proposed by one quarter of the electors present, the list having at least 5 candidates, and at most the number of candidates equal to the number of members of the National Council. The elector may support only one list.

The list shall be declared by the president of the elector's assembly, determining their ordinal number and their holder. The electors shall vote secretly on previously prepared ballot papers by entering the name of the bearer of the list or, more precisely, the number of the list. The number of mandates won by a list shall be estimated by dividing the number of votes won by the list by the numbers starting from one up to the number of the members of the National Council. The quotients calculated in this way shall be distributed according to their extent, taking into account the number of greatest quotients equal to the number of members of the

National Council. The mandates belonging to the list shall be distributed according to the order of the candidates on the list.

10 PROTECTION OF VESTED RIGHTS

In full accordance with the basic logic of minority protection, the Law in its Article 8 establishes that it will not alter or revoke rights of the members of national minorities acquired on the basis of the provisions applicable prior to this Law's coming into force, such as the rights acquired on the basis of international treaties made by the Federal Republic of Yugoslavia.

Before the Law's coming into force, Yugoslavia belonged to the group of contracting parties to the International Pact on Civil and Political Rights, whose Article 27 is still the most important contractual provision at the universal level, as well as the Framework Convention on the Protection of National Minorities which is the most important regional instrument, and also a series of other relevant documents[32]. This clearly establishes that no interpretation of the Law or practice may go below the standards established by those documents.

11. PROTECTION OF GUARANTEED RIGHTS

In addition to the prohibition in Article 22 of measures that alter the population ratio and hinder the exercise and implementation of minority rights, the Law provides for mechanisms for the protection of minority rights.

So, the provision of Article 23/1 establishes that, for the purpose of protection of their rights, minority members and the minority National Councils (organizational forms of minority self-governance) may file suit to the competent court for compensation of damage.

The provision of paragraph 2 of the same Article specifies that, in accordance with the provisions of the Federal Constitutional Court Act, the Federal Ministry of National and Ethnic Communities and the National Minority Council are authorized to file constitutional appeal to the Federal Constitutional Court in case where they estimate that a violation of constitutional rights and freedoms of national minority members took place or in a case where they were approached by a national minority member whose constitutional rights and freedoms were violated. However, it should be reminded that, according to Article 128 of the Constitution of the Federal Republic of Yugoslavia, the constitutional appeal may be filed only in the case where no other legal protection is provided.

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[32] Yugoslavia (now Serbia and Montenegro) is, for example, a contracting party to such important international agreements as the International Convention on the Elimination of all Forms of Racial Discrimination of 1973 and the Convention on the Rights of the Child of 1989.

The Law also provides for some other forms of protection such as, for example, the protection of vested rights in Article 8.

12. Special Federal Institutions of Consequence to the Protection of Minorities

For the purpose of securing the guaranteed rights, the Law provides for certain additional mechanisms appearing for the first time in the Yugoslav legal system.

So, the Article 18 provides that, for the purpose of the preservation, advancement and protection of national, ethnic, religious, linguistic and cultural specificities of members of national minorities and for the purpose of realization of their rights, the Federal Government of the Federal Republic of Yugoslavia shall establish the *Federal Council for National Minorities*. The same provision specifies that the make-up and competences of the Council shall be determined by the Federal Government. It should particularly be pointed out that Article 18/3 establishes that the representatives of national councils of national minorities shall be members of the Council.

On the other hand, in Article 20, the Law provides that the *Federal Fund for Promotion of Social, Economic, Cultural and General Development of National Minorities* shall be established. According to the letter of the Law, the Fund shall take part in financing activities and projects with budgetary means aimed at the improvement of the status and development of cultural creative work of national minorities. At the same time, it is provided that the Federal Government shall pass the detailed provisions regulating the make-up and activities of the Fund.

Although the true importance and the role of all new institutions will have to be proved only through practice, there should be no doubt that the idea as to their establishment is in line with a general aspiration to regulate the status of minorities in an optimal manner.

13. Duties of Minorities

Rights are always a correlative of duties. In that respect the solution from Article 7 of the Law prohibits the abuse of rights established by this Law aimed at forceful change of constitutional order, violation of the territorial integrity of the Federal Republic of Yugoslavia or of a member republic, violation of the guaranteed rights and freedoms of man and citizen and incitement of national, racial or religious intolerance and hatred. The provision of paragraph 2 of the same Article specifies that the rights established by this Law shall not be used for purposes contrary to the principles of international law or be directed against public security, morality or health. Finally, Article 7/3 establishes that the implementation of rights guaranteed by this Law shall not affect the duties and responsibilities based on citizenship.

The solutions analysed above are at the same time the basic limitations to the rights guaranteed to minorities by the Law, meaning that the recognized rights may not be abused in any of the above-mentioned ways.

III. Supreme Constitutional Acts Of Serbia And Montenegro

As it is known, on March 27, 2003, the Constitutional Charter of Serbia and Montenegro was passed[33]. It derogated from the Federal Republic of Yugoslavia Constitution while at the same time establishing basic principles of future coexistence of the two republics. However, the issues directly related to minorities are also, and even more so, regulated by another document - *The Charter on Human and Minority Rights and Fundamental Freedoms*[34] - that, although passed after the Constitutional Charter and having no adjective "constitutional" in its name, is still is a part of the Constitutional Charter.

A. Constitutional Charter of the State Union of Serbia and Montenegro

The Constitutional Charter, among other things, explicitly declares that the objectives of Serbia and Montenegro are the respect of human rights of all individuals inhabiting its territory, and the preservation and promotion of human dignity, equality and rule of law. Moreover, these objectives are cited first, prior to all others, in Article 3.

From the point of view of protection of minorities, of special importance are solutions provided by Article 9, entitled "Exercise of Human and Minority Rights and Fundamental Freedoms". The Article establishes that the member states regulate, ensure and protect human and minority rights on their territories, that the achieved level of human and minority rights, individual as well as collective, and fundamental freedoms shall not be minimized, and that Serbia and Montenegro observe the exercise of human and minority rights and fundamental freedoms and provide for their protection when member states omit to do so.

It is worth noting that Article 10 specifies that the provisions of international agreements on human and minority rights and fundamental freedoms in effect on the territory of Serbia and Montenegro are directly implemented. Of equal importance is Article 16, which specifies that ratified international agreements and universally recognised rules of international law have supremacy over the law of Serbia and Montenegro and the law of member states. It is an important step, since these solutions straightforwardly establish that an internal legal order shall in no way go below the undertaken international legal obligations or universally recognized rules of international law.

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33 *"Službeni list Srbije i Crne Gore"* 1/2003.
34 *"Službeni list Srbije i Crne Gore"* 6/2003.

Among the solutions of special interest for the protection of minorities, those in Articles 26 to 45 should be underlined, as these, among other things, specify the make-up and competence of the Council of Ministers. It is worth noting that among the 6 members of this body with the President of Serbia and Montenegro as its chair, one is the Minister for Human and Minority Rights.

The competences of the Minister for Human and Minority Rights are defined in Article 45. Namely, he is in charge of monitoring the exercise of human and minority rights and, with other competent bodies of member states, coordinates attempts at implementation and respect of international conventions on the protection of human and minority rights. It is clear from this formulation that the issue of human and minority rights is within the competence of the member states.

And finally, among other solutions provided by the Constitutional Charter related to the protection of minority and human rights in general, Article 46/1 deserves special attention. It stipulates that the Court of Serbia and Montenegro, among other things, decides on citizens' appeals when the institutions of Serbia and Montenegro jeopardize their rights or freedoms guaranteed by the Constitutional Charter, if no other legal procedure of protection is provided for.

B. The Charter on Human and Minority Rights and Fundamental Freedoms (2003)

As its very name suggests, the Charter contains fundamental solutions in the field of human rights and freedoms, including minority rights, in effect in the Serbia and Montenegro State Union. Though its name is bereft of an adjective, the Charter should be treated as a constitutional act because, despite its being a separate document, it actually is part and parcel of the Constitutional Charter, as Article 8 of the latter clearly puts it[35].

The Charter on Human and Minority Rights, hereinafter referred as "the Charter", offers a number of important solutions that are not to be discussed here in more detail as many of them only indirectly influence the situation of minorities, yet the basic principles and rules should be mentioned.

The Charter, in its Article 2, clearly establishes that everybody is obliged to respect the human and minority rights of others, while in the next Article, it explicitly prohibits discrimination. Article 3 provides that:

- all persons are equal before the law;
- every person has the right to equal legal protection, without discrimination;

[35] This article reads: "The Charter on Human and Minority Rights and Civil Freedoms, which consists as an integral part of the Constitutional Charter, shall be adopted according to the procedure of and in the mode anticipated for the Constitutional Charter adoption."

- every direct or indirect discrimination shall be prohibited, on any ground, such as race, colour, sex, national or social origin, birth or similar status, religion, political or other opinion, property status, culture, language, age and mental or physical disability;
- temporary imposition is permitted for special measures required for the exercise of equality, special protection and prosperity of persons or groups of persons in unequal positions, in order to enable them to fully enjoy human and minority rights under equal conditions. Such measures, however, may only be applied until the achievement of the aim for which they were undertaken.

Practical importance belongs to the solutions from Article 7 according to which human and minority rights guaranteed by universally accepted rules of international law as well as by international treaties in force in the State Union of Serbia and Montenegro are guaranteed by this Charter and are directly applicable. At the same time, Article 8 clearly prohibits the restriction of human and minority rights under the pretext that they are not guaranteed by the Charter or are guaranteed to a lesser extent.

Among the general principles of the Charter, of particular importance are those related to effective legal protection and the elimination of consequences of violations of human and minority rights in Article 9 and Article 10 that provides that human and minority rights guaranteed by the Charter are to be interpreted in the way favourable to the promotion of the values of an open and free democratic society in accordance with valid international guarantees of human and minority rights and the practice of international bodies monitoring their implementation. Equally important are the provisions related to freedom of opinion, conscience and confession (Article 26), religious communities (Article 27), freedom of media (Article 30), freedom of association (Article 32), citizenship (Article 35) and others.

Particular importance, however, belongs to the provisions of the Chapter III entitled "Rights of persons belonging to national minorities". Articles 47 to 57 guarantee the most important rights and freedoms relevant for the free existence and development of minorities, such as freedom to express national identity (Article 48), prohibition of discrimination (Article 49), prohibition of instigation of racial, ethnic and religious hatred (Article 51), right to maintain identity (Article 52), right to assembly (Article 53), co-operation with compatriots in other states (Article 54), promotion of living conditions (Article 55), development of a spirit of tolerance (Article 56) and the guarantee of acquired rights (Article 57).

Among all these issues, some deserve special consideration.

First of all, it should be noted that the provisions of Article 47 define the grounds and scope of rights of the members of national minorities, specifying:

- that the rights of persons belonging to national minorities shall be exercised in accordance with international legal protection of human and minority rights;
- that persons belonging to national minorities shall have individual and collective rights, signifying rights that are exercised individually or in community with others, in accordance with the law and international standards;
- that collective rights imply that persons belonging to national minorities shall, directly or through their elected representatives, take part in the decision making process or directly decide on issues related to their culture, education, information and the use of language and alphabet, in accordance with the law;
- that for the purpose of exercising their right to autonomy in the fields of culture, education, information and the official use of language and script, persons belonging to national minorities may elect their national councils, in accordance with the law.

Though, as it has already been noted, the prohibition of discrimination is fairly comprehensively guaranteed by Article 3 of the Charter and it is again, in the case of minorities, explicitly stressed in Article 49, specifying:

- that persons belonging to national minorities shall be guaranteed equality before the law and equal protection;
- that any discrimination based on belonging to a national minority shall be prohibited;
- that those regulations, measures and actions that are aimed at ensuring the rights of persons belonging to national minorities when they are in an unequal position with the objective of enabling them to fully enjoy the rights under equal conditions shall not be considered to be acts of discrimination.

Of particular importance are the provisions of Article 50 which prohibits forced assimilation and, of even greater importance, are those of Article 51 that stipulate that any incitement or promotion of national, racial, religious or other inequality is prohibited and punishable, as well as the incitement and promotion of national, racial, religious or other hatred and intolerance.

As for the preservation of culture, identity and the very being of minorities, of particular importance is the provision of Article 52, entitled “Right to maintain identity”, that specifies that members of national minorities are entitled:

- to express, keep, cherish, develop and publicly manifest their national, ethnic, cultural and religious identity;

- to use their symbols on public places;
- to freely use their minority language and alphabet;
- in communities with a considerable minority population, for the state authorities to conduct proceedings also in the minority language of the national minority constituting a considerable part of the population;
- to be educated in their minority language in state institutions;
- to establish private educational institutions at all levels;
- to use their own name and surname in their language;
- in communities inhabited by a substantial minority population, for traditional local names, street names and other topographical indications to be written in the minority language;
- to a certain number of mandates in the Assembly of the State Union of Serbia and Montenegro, proceeding through the principle of direct representation, in accordance with the laws of the member states;
- to be adequately represented in public services, state authorities and local self-governant authorities;
- to be fully and impartially informed in their language, including the right to express, receive, send and exchange information and ideas;
- to establish their own media.

The Charter does not stop at the mere declaration of prohibition of discrimination and enunciation of special minority rights. In that sense, Article 55 specifies:

- that member states shall undertake to, whenever necessary, adopt adequate measures to promote full and effective equality between persons belonging to national minorities and persons belonging to the majority in all spheres of economic, social, political and cultural life;
- that measures mentioned above shall, when necessary, envisage the removal of expressly unfavorable living conditions particularly affecting members of a particular national minority;
- that the State Union of Serbia and Montenegro, within the competence established by the Constitutional Charter, and the member states shall guarantee to persons belonging to national minorities the right to equally, with other citizens, participate in the conduct of public affairs, including the right to vote and run as candidates for public functions.

Finally, the Charter explicitly states in Article 56 that, in the fields of education, culture and the media, the State Union of Serbia and Montenegro and its member states shall encourage a spirit of tolerance and multicultural dialogue and take efficient measures to promote mutual respect, understanding and co-operation among all persons living on their territory irrespective of those persons' ethnic, cultural, linguistic or religious identity. It particularly underlines in Article 57 that the achieved level of human rights, both individual and collective, shall not be reduced, that the Charter shall not abolish or change the rights of persons belonging to national minorities acquired by regulations that had been applied until its entry into force or the right acquired on the basis of international treaties to which the Federal Republic of Yugoslavia has acceded.

IV. Attempt at an Impartial Evaluation of the New Legal Framework for the Protection of Ethnic Minorities

A. The Law on the Protection of Rights and Freedoms of Minorities

1. A General Review

According to everything that has been said, Yugoslavia (now Serbia and Montenegro) has adopted an important document guaranteeing in one place, at the federal level, the most important rights of national minorities. It should be particularly emphasized that those are good quality solutions completely following the solutions of the Framework Convention for the Protection of National Minorities, as the most important regional international document in this matter, going somewhat ahead of it in two specific ways:

1) by regulating some of the rights recognized by the Convention such as, for example, the right to the choice and use of personal name according to the language of the respective minority, the right to use the language and the right to education in the native language, in a more precise, comprehensive and, for national minorities, more convenient way, and

2) by prescribing some new, additional rights and institutions such as, for example, the right to use national symbols, organisation of minority self-governance and special federal institutions such as the National Minorities Council and the Federal National Minorities Fund for the purpose of fuller protection of national minorities.

Some of those solutions, such as the national councils of national minorities as forms of organizing minority self-governance and the above-mentioned federal institutions, are a novelty in the Yugoslav legal system. The other rights, however, were already guaranteed by the constitutions of the Federal Republic of Yugoslavia and of the member-republics, as well as by the means of a whole series of relevant statutes and other regulations, both on the federal level and on the level of the member-republics. Anyhow, it is probably sufficient here to mention that the

Constitution of the Federal Republic of Yugoslavia and the Constitution of Montenegro both contain 27 articles, and the Constitution of Serbia 13, relating in one way or another to the rights of the members of national minorities[36]. Those provisions cover all the most important rights of minorities, such as the right to equality, freedom of expression and of national affiliation, the right to use the native language including its official use, the right to education in the native language, the right to public information in the native language, the right of the members of national minorities to establish educational and cultural organisations or associations, the right to establish and maintain mutual relations in the country and with the members of their own nation abroad, the right to participate in international organisations, the right to the use of national symbols.

It may be asked what the contribution of the Law in this matter has been if the minority rights were already so properly and comprehensively protected by the Yugoslav legal system? The answer is very simple: not only has the Law collected all the most important norms of this field in one place, but it has also elaborated them and introduced some new solutions.

For example, although the right to official use of minority languages was recognised and practically realised earlier, the Law introduces in its Article 11 some new distinctions and guarantees by providing for the compulsory official use of the language and alphabet of a minority which in a given unit of self-governance reaches 15% of the population according to the last population census. At the same time, although the Constitution of Yugoslavia in its Article 11 guarantees the right of national minorities to use national symbols, the Law further elaborates this issue and specifies its methods of implementation. Similar remarks may be made with respect to many other solutions.

In addition, the Act has, as has been remarked several times, supplemented the Yugoslav legal system with some completely new institutions, such as the national councils of national minorities, the Federal National Minorities Council and the Federal National Minorities Fund. This has already been discussed in sufficient detail.

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[36] Constitution of the Federal Republic of Yugoslavia – Articles 1, 10, 11, 15, 16, 18, 20, 23, 26, 36 to 43, 45 to 50, 62, 67, 124 and 128; Constitution of Serbia – Articles 3, 8, 11 to 13, 22, 32, 41, 43 to 46 and 49; Constitution of Montenegro – Articles 9, 11, 15, 17, 22, 34 to 40, 42 to 44, 62, 67 to 76 and 113.
It should be reminded here that the Constitution of the Federal Republic of Yugoslavia was derogated by the Constitutional Charter of Serbia and Montenegro. However, the Charter also contains 6 articles (Articles 3, 8, 9, 10, 16 and 45) and the Charter on Human and Minority Rights and Civil Freedoms over 24 articles (among others, Articles 2 to 10, 27, 30/5, 32/4, 38/1 and 47 to 57) relating in one way or another to the rights of the members of national minorities.

2. PROBLEMS AND OMISSIONS NOTICED

In spite of the compliments paid to the legislator, both for being one of the first in the world to pass such a Law and for the specific solutions adopted in this document, it is necessary to give attention to certain noticed problems and omissions. Some of them concern the situation when this Law was adopted and its somewhat uncertain fate that is related to the uncertain fate of the federal state itself, others are the outcome of the particular solution provided by the Law, and, finally, some concern its implementation.

(1) The Law was passed in an atmosphere of reform and universal optimism in hope of the imminent coming out of an enduring and general political and economic crisis, but also of uncertainty as to the further future of the common state. Namely, more than a year since the Law has been passed, it is still unknown what shall be the fate of the federal state, whether it will end in a complete separation of the two republics into Serbia and Montenegro, or whether Yugoslavia will continue to exist and under what name. Any kind of drastic change would affect, in one way or another, this Law also through its implementation. For example, it would be a problem if the common state survives, but the matter concerning human rights is transferred to the competence of the member-republics. What would happen then to the Law as a federal statute? But those are questions depending directly and completely on political decisions and processes, it being clear that the legislators are unable to deal with them.

(2) However, in spite of all the praises, some errors and inconsistencies may be noticed in the Law itself. It is astonishingly unlikely that a Law of such importance, a federal Law, could have been passed and published in the "Official Gazette" as a text containing numerous grammatical and stylistic errors and omissions. Thus in several places, there occurs such errors as, for example, the use of the plural instead of the singular and vice versa (see, for example, Article 13/6). In two places, there is a wrong enumeration of paragraphs that the Law refers to (such as in Article 12/4 that refers to paragraph 5 instead of paragraph 2 of the same Article or Article 16/5 that refers to paragraph 2 instead of paragraph 4). Although such omissions were undoubtedly caused by the wish to pass this Law as soon as possible and, consequently, to enable the implementation of the provided protections of freedoms and rights of national minorities, which, of course, should be applauded, it has to be remarked that such errors are no credit to the legislator. Also, certain comments may be made as regarding the legal technique which could have been better, particularly concerning the style of certain provisions.

(3) If, however, we turn to specific solutions, then it should be reminded that in defining national minorities, the legislator has attempted to include all the relevant communities and their members. But the weak point of such a definition lies in including as one of the elements the distinction according to language, culture, national or ethnic affiliation, origin or confession from the "majority population". But who is to be included in the majority population of Yugoslavia?

Namely, according to Article 1 of its Constitution, Yugoslavia is defined as a state of its citizens, not as the national state of any nation. The same applies to the Constitution of Serbia in its Article 1 and the Constitution of Montenegro in its Articles 1 and 2. Consequently, the highest legal acts as well as the name of the country itself (Yugoslavia) fail to support the assertion that the Serbs and the Montenegrins are the majority populations.

On the other hand, if we stick to the facts, the results of the last population census in 1991 showed there were about 6.5 million Serbs and about 519 000 Montenegrins, but also over 1.7 million Albanians, nearly 350 000 Yugoslavs, about 345 000 Hungarians and about 340 000 Muslims. An even better picture is given if we turn to percentages: there were 62,3% Serbs, 5,0% Montenegrins, but also 16,6% Albanians, 3,3% Yugoslavs, 3,3% Hungarians and 3,1% Muslims.

If, as a consequence the Montenegrins are treated as a majority population which, for the Serbs, is not disputable, how is it to be explained that they are approximately three times less numerous than one of the minorities (the Albanians) or just slightly more numerous than three other communities (Yugoslavs, Hungarians and Muslims).

For this very fact, the definition that uses the distinction from the "majority population" can hardly be acceptable, although logical in itself. The above comments apply also to other parts of the Law where "majority" or "majority nation" is mentioned[37].

(4) The definition of a national minority as given by the Law may be criticized for other reasons, including the solution according to which should be considered as a national minority only those groups which, among other conditions, fulfil the requirement of a "long-lasting and firm connexion with the territory of the Federal Republic of Yugoslavia". If we disregard the problem of undefined standards used here (what kind of connexion is this? how long should it last?, etc.), this still means accepting a very debatable conception of distinguishing the autochthonous ("old" or "traditional") from the alochthonous ("new") minorities[38].

(5) Certain provisions of the Law, although elegant, are ill defined. As an example, Article 13/2 may be mentioned, deserving much praise for its democratic character. It should be recalled that it provides for the case that, if at the moment of the enactment of the Law, there is no instruction in the language of a national minority within the unified system of public education for the persons belonging to a national minority, the state is obliged to create conditions for the organization of instruction in the native language of a national minority, and until then to guarantee the bilingual instruction or the instruction of the minority language with elements of national history and culture for the persons belonging to the respective national

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37 See, for example, Article 4/1.

38 See generally Krivokapić "Conception of Distinguishing Between So-called Autochthonous and Alochthonous Minorities – a Critical Appraisal" *supra* note 21.

minority. The problem with this provision is that the meaning of the phrase "to create conditions" for the organization of instruction in the native language of a national minority may be debatable, because it does not specify what the specific duties of the state are in this case. Further problem is caused by the fact that there are no provisions specifying the time given to the state to fulfil its duty, giving to all of this the character of a programme and not of a legal norm. It is clear that in an enactment such as this, particularly in the mentioned provision, it is not easy to define precise time limits for the realisation of specific ends and the purpose of legal norms, at least in this case, is to universally regulate the relevant relations during a longer period of time, not to simply serve the purpose of realising some specific task, but it was possible to specify within the transitional and concluding provisions all the terms for fulfilment of the mentioned duties of the state.

(6) As regards the time limits, the Law provides in Article 24/5 that the federal authority competent in questions concerning minorities shall, within 30 days from the coming into force of this Law, regulate the matters regarding competence and the methods of operation of the assemblies of national minorities. As has already been mentioned, the Federal Minister of National Minorities and Ethnic Communities has in fact passed the Rulebook on Methods of Operation of Assemblies of Electors for the elections of national minority councils. The problem, however, lies in the fact that the Law was enacted on February 2nd, 2002 and came into force on the eighth day from its publication, thus at the beginning of March), while the Rulebook was passed on July 5th, 2002 which also came into force on the eighth day following its publication in the "Official gazette of the Federal Republic of Yugoslavia". Therefore, not only 30 days passed, but more than 4 months, meaning that the Law was violated at the very beginning of its enforcement by the authority responsible for its enactment and responsible for its implementation. It has, however, to be admitted that this delay was caused by several external factors such as, in the first place, conflicts in the ranks of some of the minorities themselves which had yielded several leaders, even political parties, competing on who is to represent the respective minority. In spite of it all, this does not alter the fact that the time limits established by the Law have been substantially broken. Anyhow, the Rulebook either had to be prepared and adopted along with the Law or a longer time limit had to be prescribed, such as six months, for example.

(7) In several places the Law contains solutions worthy of every praise, yet it does not concretise them but leaves this to some other enactments and statutes. If this can be understandable in certain fields, it is not clear why the legislator, in Article 18, leaves it to the Federal government to determine the composition and competences of the Federal Minority Council. We believe that it would have been much better if the Law itself had established some basic rules as regards the composition of this body and particularly if it had, at least in general lines, determined its competences.

(8) One of the possible disputable solutions is also the one concerning the Federal National Minorities Fund of Article 20. Although the introduction of this new institution should be praised, the problem is that the Law contains only two brief provisions concerning it, and then, in Article 20/3, it specifies that the Federal

Government shall pass specific provisions that will regulate the composition and activities of the Fund. It is our opinion that these questions should be regulated in more detail by the Law and that the solution that leaves this up to the Government, which should be limited to a greater extent by the provisions of the Law, is not the happiest one. As a consequence, the Law only states that the Fund shall be established and specifies that the Fund shall participate in financing the activities and projects related to the improvement of the status of minorities while leaving all the rest to the Government.

(9) It may also be remarked that the opportunity has been missed to introduce other new solutions which, it must be admitted, have not been provided by the Framework Convention, but are known by the legislative systems of certain other countries. They include the right of ethnic minorities to be represented in the parliament by at least one representative or by a number of common representatives, irrespective of the results of the elections[39].

(10) But to forget for a moment the fact that some rights could have been regulated more fully and precisely, the fact remains that it is not enough for the realisation of the guaranteed rights of national minorities and their members for them to only be proclaimed, it is also necessary to provide effective mechanisms for their protection. Unfortunately, the Law does not speak of special mechanisms for the protection of minority rights but reduces everything to judicial protection and protection by constitutional courts. As an exception, the Federal National Minority Council provided by the Law may play a certain but still unclear role.

In this respect, it may be remarked that protection by the judiciary is usually slow, often expensive and insufficiently effective (lawsuits usually last quite long - even for several years), not to mention that this is a very significant field which, due to the delicacy of the matter and the large number of minorities that presupposes numerous and often very complicated lawsuits requiring expert knowledge, needs a certain specialisation. On the other hand, protection by the constitutional courts by means of constitutional appeal to the Federal Constitutional Court has proved in practice not to be sufficiently effective. It particularly has to be emphasised that, according to Article 128 of the Constitution of the Federal Republic of Yugoslavia, constitutional appeal may be submitted only if no other form of protection is provided. Finally, the third mentioned way through the Federal National Minority Council is of a completely different nature and, as has already been mentioned, is, unfortunately, not regulated precisely enough in that it depends almost completely on

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[39] This right is provided, for example, by Article 59/2 of the Constitution of Rumania of December 8th, 1991. However, if such an approach is accepted, it would be necessary, in introducing this right, to determine the lowest proportion of the respective minority in a certain territory. As such, the right to one representative in parliament could be guaranteed to those minorities who have failed to get even one representative in the parliament yet who still encompass a certain percentage of the population in a given territory. Other solutions are also possible, such as that the minorities that satisfy a certain lower limit percentage as to their number in a certain territory (municipality, province, republic or federation) and fail to get a single place in parliament would be represented by a number of common representatives.

the Federal Government which shall determine the composition of the Federal Council and, what is more important, its competences.

Having in mind the above remarks and particularly the complex and sensitive character of the matter, it is to be regretted that the opportunity was missed to include within the Law certain instruments such as additional mechanisms for the protection of minorities. It is sufficient to remark that it would probably have been a good solution to create a special body to deal with the protection of minorities such as, for example, a commissioner acting as Ombudsman for minorities[40]. To establish such an authority or authorities would, however, be reasonable only if they are invested with relevant effective powers. Otherwise, it would all be reduced to a kind of decoration[41].

(11) If, on the one hand, in spite of the general high quality of the Law, it was possible to formulate better and additional rights, we believe that, in other respects, there were some exaggerations. As it was pointed out, the provision of Article 9 regulates the right to select and use one's own name, including the right to enter such a name in all public documents, official records and collections of personal data according to the language and orthography of the minority members. The provision of paragraph 2 of this Article establishes that this right "does not exclude parallel entry of the name according to the Serbian orthography and alphabet".

That is exactly the root of the problem. It is this author's opinion that the word "compulsory" should have been written before the word "parallel" so as to form "compulsory parallel entry [...] according to the Serbian orthography and alphabet as well". Namely, the formulation given by the Law only *enables* the entry of a respective name according to the Serbian orthography and alphabet, which is understandable since Serbian language is the official language, but does not prescribe it as a legal duty.

In this respect, as it is quite acceptable to allow the members of national minorities not only to choose and use their names in accordance with their language, but also to enter such names into official documents according to their orthography, it is also necessary to enable their names to be understandable to persons not acquainted with their language and alphabet such as, in the first place, administrative authorities, but also other subjects who do not speak the respective minority language. This is particularly so since there are languages and orthographies that are known to a wider public, but also those that are not understandable to the majority. Who can read a name (and so establish the identity of the person) written in the native languages of the Jewish or Armenian community? For such reasons, we fear that the solution contained in the Law, which was adopted under the pressure of the representatives of certain minorities, may not only influence legal certainty, but may produce negative consequences for the members of minorities themselves, which could cause them to

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[40] For example, Article 32/B of the Hungarian Constitution introduces a special Ombudsman for the protection of rights of minority or ethnic groups.

[41] The Ombudsman for minorities did not prove to be very effective in Hungarian practice.

entirely give up the right to enter their names in their native tongues. On the other hand, we do not see how the compulsory parallel entry of names in Serbian language would in any way violate or diminish anyone's right.

(12) It should be added that there are certain problems concerning the implementation of the Law. It has already been pointed out that the Rulebook on the Operation of Electors' Assemblies for the Election of National Minorities Councils was adopted with considerable delay. To this, it should be added that, for various reasons, among them the disorganisation and disagreement of the minorities themselves, the process for the establishing of the national councils is proceeding rather slowly and the Federal National Minorities Council and the National Minorities Fund are also still not operative. The fact is, however, that the reason for this is not the unreadiness of the actual government to consistently implement the Law that it has enacted, but rather some other factors of a peripheral nature, so that in the near future, the removal of these obstacles and the consistent implementation of the Law is to be expected.

(13) Since some comments were made above as to the missed opportunity for supplementing the Law with certain other solutions, it might be objected that those solutions, or at least some of them, were impossible to include in the Law without amending the Federal Constitution. However, even if such an objection is accepted, there remains the dilemma of whether it wouldn't have been better to postpone the enactment of the Law for a couple of months and make use of the opportunity that is the adoption of the highest act of the federal state (meaning the Constitutional Charter) in order to include in it the necessary alterations that would make the solutions of the Law more wide-ranging and enduring. This would have been done in spite of the pressure of the national minorities and the awareness that, for various reasons especially regarding those of international politics, it was opportune to enact the Law as soon as possible. But those were and remain questions for politicians, not for jurists.

(14) Finally, having in mind the most recent constitutional and state changes, specifically the transformation of the Federal Republic of Yugoslavia into the State Union of Serbia and Montenegro, it is obvious that this Law, as well as many other federal statutes, considerably lags behind political developments. Despite everything, its solutions are not essentially challenged, which deserves compliments, but it is essentially dated, especially in its provisions related to the Federal Republic of Yugoslavia, which does not exist any more, for example, in Articles 2/1, 4/1, 6/1 and 7/1, or in those that refer to the Federal Republic of Yugoslavia Constitution, for example in Articles 1/1 and 5/1[42]. The same applies to provisions referring to federal statutes and federal bodies, such as, for example, Articles 11/6, 11/8, 16/2, 18, 20 and 23/2 that mention, among other things, the Federal Parliament, Federal Constitutional Court and the like. In this spirit, although some of the mentioned provisions could be

[42] The Constitution of the Federal Republic of Yugoslavia was, to mention it again, derogated by the Constitutional Charter of Serbia and Montenegro of March 27th, 2003.

quite well implemented in the future if due attention is paid to new realities, especially to new institutions that overtook respective functions of former federal bodies, there is no doubt that the Law should be subjected to certain changes in order to become adjusted to the legal order of the state union[43].

B. Constitutional Documents of the State Union of Serbia and Montenegro

Generally speaking, it could be concluded that the relevant provisions of the Constitutional Charter and Charter on Human and Minority Rights as such are of relatively high quality since, if they are adequately specified by respective laws, they contain substantial guarantees of the rights of members of national minorities and other persons who could be victims of various forms of discrimination. In this respect, it should be reminded that the Constitutional Charter introduces a novelty into the internal legal order: namely, it stipulates that the provisions of international agreements on human and minority rights and civic freedoms that apply to Serbia and Montenegro shall be directly applicable on its territory. It is even more important to have in mind that the other provision of the Constitutional Charter explicitly states that the ratified international agreements and universally recognized rules of international law shall have supremacy over the law of Serbia and Montenegro. Some other above mentioned solutions are also worth praising.

However, it does not mean that certain weaknesses should not be noted. For example, a serious problem seems to stem from the fact that, if nothing else, human rights and fundamental freedoms basically fall under the jurisdiction of member states which, as the Constitutional Charter puts it, "regulate, ensure and protect human and minority rights and civic freedoms on their territory". In that respect, the role of the bodies of the State Union of Serbia and Montenegro is secondary, bereft of actual responsibilities and duties.

Namely, Article 9/3 of the Constitutional Charter of the State Union of Serbia and Montenegro only "provides for supervision of the respect of human and minority rights and civil freedoms" (what does that actually mean?) and "provides for their protection in the event that such protection is not provided in the member states" (what are such particular cases? for whom does the state union effectively provide such a protection?)[44].

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[43] According to the Constitutional Charter, there are no more federal bodies, only "institutions of Serbia and Montenegro"; instead of federal government, it speaks of the Council of Ministers that include 6 ministers only; there is no more federal constitutional court, although the new Court of Serbia and Montenegro has its functions, etc. However, it should be underlined here that these are not just terminological differences, but different solutions which signify the transformation of a federation into something defined as a "state union", which basically represents a certain, by all means insufficiently defined, form of loose connection between member republics (states).

[44] It could be noted that a case in which no protection of human and minority rights is provided in member states is the case where these rights are violated by institutions of the State Union, while the way provided for their protection is filing an appeal to the Court of Serbia and Montenegro. However,

Accordingly, the Minister for human and minority rights just "monitors the exercise of human and minority rights and, with the respective bodies of member states, coordinates the implementation and respect of international conventions on the protection of human and minority rights". Similarly, the Court of Serbia and Montenegro is only in charge of the appeals of citizens in cases where a certain institution of the state union has jeopardised their rights or freedoms guaranteed by the Constitutional Charter, and even then, only in the case where no other legal means are provided.

In this sense, although the constitutional acts of the State Union of Serbia and Montenegro establish a fairly good legal framework for the protection of human rights and freedoms, and minority rights in particular, a lot of facts reveal serious blank points. This is mainly due to leaving responsibility in this field to member states which, in principle, opens space to the reality that certain human and minority rights and freedoms might be, without good justification, regulated or exercised in a relatively different way in identical or similar situations. In other words, discrimination related to the exercise of rights is theoretically possible between citizens of Serbia and those of Montenegro, such discrimination only depending on the territory of which member state citizens live or reside.

Another serious problem is the fact that, except for the possibility of filing an appeal to the Court of Serbia and Montenegro (and that procedure is subject to certain limitations already dealt with here), at the level of the state union, no other effective mechanisms for the control of the exercise of guaranteed human and minority rights and the redressing of evidenced violations and omissions can be identified. With all that taken into account, it means that everything is transferred to member states, and the question then arises as to how to fill in the opened vacuum (in the Federal Republic of Yugoslavia, there existed certain mechanisms on the level of the republics, but at the same time, there were certain federal instruments) and, on the other hand, what is to be done with the bodies whose functioning was stipulated by the former "federal" legislation.

And, even more so, both the Constitutional Charter in its Article 9/2 and the Charter on Human and Minority Rights and Civil Freedoms in its Article 57 explicitly establish that the achieved level of human and minority rights, both individual and collective, shall not be decreased and that these acts in no way abolish or change the rights that members of national minorities had in accordance to regulations applied prior to the adoption of the Charter. The Act on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro[45] specifies in its Article 19 that the federal statutes and other regulations in the fields that the Constitutional Charter sets under jurisdiction of the Serbian and Montenegrin

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such an explanation is obviously insufficient. Anyway, had such a situation been in view, it could have been clearly specified in the Constitutional Charter, but it was not.

45 *"Službeni list Srbije i Crne Gore"* 1/2003.

institutions are applied as the legal acts of Serbia and Montenegro, except in parts obviously incompatible with provisions of the Constitutional Charter.

In this context, a number of questions arise and this text will mention only one here for illustration, which is how to reconcile the above solutions such as the basic transfer of the whole matter or, more precisely, of the essential levers of protection of human and minority rights, to the domain of member states and, on the other hand, the preservation of the attained level of guaranteeing these rights and the fact that the relevant federal regulations that are still in effect provide for certain federal mechanisms of protection of respective rights. Those mechanisms are unlikely to be implemented, at least not as federal institutions.

More precisely, the federal Act on Protection of Rights and Freedoms of National Minorities of 2002 provides for the establishment of the federal Council for National Minorities, as well as the federal Fund for National Minorities. Neither of them was established before the adoption of the Constitutional Charter in 2003. Does it mean that these will be established anyways as institutions of the State Union of Serbia and Montenegro or that they shall not be established at all since if that has not happened yet. But that would mean reduction of formerly guaranteed although not practically realized rights, which would be contrary to the explicit provisions of Article 9/2 of the Constitutional Charter and Article 57 of the Charter on Human and Minority Rights and Civil Freedoms[46]. However, many other questions are still waiting for answers, but things will become clearer as the new solutions, as well as the relations they establish, come into being.

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By enactment of the Law on the Protection of Rights and Freedoms of National Minorities, a big step was made towards a better regulation of this exceptionally important and delicate field of social relations.

Finally, at the level of the country as a whole, a legal act was enacted which regulates the general position and concrete minority rights in a relatively comprehensive and basically adequate way. As a special quality of this act, it should be underlined that national minorities participated in its drafting, and that, as far as it is known, they accepted and favourably evaluated its solutions.

Certainly, the Law, as good as it may be, and it has been seen that it is good, although it probably could have been better, is not made once and for ever. The rise of the level of general living conditions and the accession of Yugoslavia to some new

[46] These provisions make it clear that the achieved level of human and minority rights, both individual and collective, shall not be reduced and that the charters do not abolish or change the rights of national minorities that were acquired by regulations that had been applied until the entry into force of these documents.

international instruments will probably require certain amendments to this Law. Anyhow, certain technical improvements that were mentioned above should be made right away.

Far more interesting is the question of the general fate of this Law. It certainly largely depends on the fate of the Yugoslav federation or, rather, the State Union of Serbia and Montenegro. We believe that, irrespective of the final solution, it should be secured that the Law and its solutions shall continue to live in the legal order of the common state, in the legal order of the member-republics or in the new sovereign states.

In this spirit, it is encouraging that the recently adopted supreme acts of the State Union of Serbia and Montenegro essentially remain in the tracks of the achieved solutions and that, despite all the changes, the Law itself is still in effect. Its solutions have in no way been challenged; on the contrary, they were confirmed.

However, the adoption of legal acts is not an end in itself. Good norms are many, but they are of little, if any, use.

Therefore, a more complete and comprehensible perception of the legal framework and especially of the practice of the protection of minorities in Serbia and Montenegro would be possible only when the relations within the state union stabilize and some still insufficiently clear legal solutions become complete.

As for the legal side of the problem, it should be taken into account that, in Serbia, intense efforts are invested in the drafting and adoption of a new constitution (a previous one was enacted in 1990, while the adoption of a new one is expected in 2003 or 2004), as well as in the improvement or replacement of a number of important acts, many of them in a way relevant to different aspects of the situation of minorities. A similar activity, which would likely be on a smaller scale, should be expected in Montenegro too. Following the degree to which the State Union of Serbia and Montenegro shall exist and develop, its legislation is also likely to be improved.

Although all the facts point to the conclusion that, following the course of the current changes, minority rights will not in any way be reduced, but may be even more completely and liberally regulated[47], it only remains to be seen what shall be the real scope of the forthcoming changes. Anyway, two things are certain: firstly, that it would be another opportunity for additional definition of mechanisms for the protection of minorities, broadening the scope of guaranteed rights and making the rights themselves more operational and concrete and, secondly, that the first results could be expected relatively soon, by the end of 2003, although much more is to be said within the next two or three years, when the future fate of the State Union of Serbia and Montenegro shall be disclosed.

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[47] Such developments are most likely to be influenced not only by positive traditions and the tolerance of the majority population, but also by the demands of minorities themselves and by the suggestions and influences of international factors.