

**THE RULE OF LAW,
SECURITY IN THE
REGION AND
HUMAN RIGHTS**

**Regional Conference on Democracy
and Human Rights held in Sarajevo
from 10 to 12 October 2003
Proceedings**



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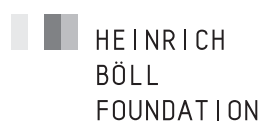
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Heinrich Böll Foundation, Regional Office
Sarajevo

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Conference opening, introductory greetings

SRĐAN DVORNIK

Heinrich Boll Stiftung, Zagreb

I am opening this regional conference entitled "The Rule of Law, Security in the region, and Human Rights", organised by the Heinrich Boll Regional Office with its branch offices in Belgrade and Zagreb.

Before you are greeted by some of our distinguished guests, let me say a few words about what has motivated us to organise a gathering on this subject. Globally speaking, for over two years now there have been discussions amongst both professionals and activists dealing with human rights about how the increased and dominant concern for security has pushed aside or even jeopardised the concern for human rights. This seemingly obvious contradiction between security and law is neither a logical, given condition, nor a political necessity. The notion of human rights, however, does not contain any contradiction between law and security. What is law if not guaranteed and secured freedom, and its basic value - life itself? Law is an institutionalised guarantee of the security of these basic values translated into written norms. Where does this contemporary and notorious contradiction between security and human rights come from? When security is contrasted with human rights, the main issue is not the security of people but of the state or some other governmental collective entities; and there have been many in this turbulent decade. The alleged overall concern for the security of such creations, supported factually and by the terrorist actions propaganda is, in fact, a threat that due to external dangers (even if, or particularly if it occurs within the territories of the "endangered states"), the supra-individual political creations will establish themselves as values, regardless of the rights of people, and often even causing damage to them.

This is why we believe that because of the frequent and excessive emphasis on security, its objects should come under careful scrutiny and these are - in our context - the states and regimes that have been established in post-Yugoslav countries.

When we refer to human rights - and this has happened in numerous interactions between local and foreign activists who have come here to assist, teach or intervene - it is often wrongly assumed that there is an existing institutional and normative system of the rule of law which provides the foundation for the rights to really be the rights, and where they are guaranteed and protected by these institutions. What are the legal and political systems like in the three post-Yugoslav countries in which we are active? What kind of states do we have here? The experience from the last decade has shown that these entities anticipated long ago the trend from the beginning of the third millennium - in the

name of collective security, the states act exactly as the major threat to human rights. This trend, the trend of remilitarisation of international relations and of the new imperialism, surely does not represent the most suitable context for what in these areas should be the first topic on the public agenda: normalisation, establishment and the stabilisation of the systems based on the rule of law that guarantees various aspects of people's freedoms.

The question of the character of the newly established states was not even asked properly at the time when there was a lot of wild and uncontrolled violence, but it is high time now to address these issues. In order to prove that people should not be killed, evicted or that their property should not be destroyed, it was not necessary to refer to a comprehensive system of the rule of law. It was clear in itself that such actions were not legitimate in any system of values. Now, when open violence has decreased, when the rate of killings for political or similar reasons has also considerably gone down compared to the situation in the middle of the 90's, and in some areas even later, the concern for human rights has become much easier in terms of results. However, although there is less brutal violence, the issue has become more complicated. Therefore, we have invited to this gathering not only the "usual suspects", i.e. those who fight for human rights, for the return of refugees and for democratic initiatives, but also experts and distinguished representatives of international organisations. I shall not even try to anticipate the outcome of our dialogue but we hope that it will result in a productive illumination of the increasingly complicated issues of security, rule of law and human rights.

I kindly invite our guests to address the gathering, as well. Let me first give the floor to His Excellency, Arne Freiherr von Kittlitz, the Ambassador of the Federal Republic of Germany to Bosnia and Herzegovina.

Introduction and greetings

ARNE FREIHERR VON KITTLITZ

Ambassador of the Federal Republic of Germany to Bosnia and Herzegovina

Dear ladies and gentlemen: I feel honored to have been asked to address the opening of this important session of the Heinrich Böll Foundation. I believe that it would be fair to say, not only for historical reasons, that human rights are high on the German political agenda and in German public affairs, not least due to the Greens and the HB Foundation. Therefore, the promotion of human rights is the elementary concern of the German Foreign Policy. This does not stem from any lofty theory of what foreign policy should be about, let alone from any ideological orientation. The real reason is rather that we have all come to realize

that the absence or the violation of human rights is a primary cause of conflict within and between states. In this sense, the concept of non- interference in the affairs of other states has undergone a fundamental change. Human rights are not only a priority of the German policy, but of the whole International Community. This policy constitutes the very basis of all the efforts undertaken so far to help bring B&H on the path to Europe. The support that the IC is giving to the national human rights organizations clearly demonstrates that human rights are the main focus. Just to mention a few of them: OSCE, which maintains an effective field structure for the human rights monitoring on the ground, the Human Rights Chamber, the Ombudsman institution at the state and entity levels, the Council of Europe, the Helsinki Committee, Human Rights Watch and International Commission for Missing Persons. Germany is supporting many of these institutions with personnel and financial means and we will continue doing it in the future. Even if the IC can and will (the sooner the better) hand over more responsibility to the local authorities and institutions, the process that has just begun within the area of human rights institutions does not mean that we shall end our involvement in the sphere of human rights in B&H. Close monitoring by the Council of Europe, OSCE and EU will of course be continued as long as it is necessary. This is the common understanding by all the relevant actors of the IC. One may ask whether the human rights situation in B&H actually requires this level of involvement; is the human rights record in B&H a problem of such significance, and is it a problem of potentially international dimensions? Your meeting will consider this issue in depth, so it is not for me to discuss it any longer at this point. However, I would like to underline that the human rights record in B&H should not be the only issue to discuss on your agenda. It has been, as a matter of fact, quite good. The real issue and the pertinent question to ask at this conference is directed to the B&H authorities and the international activists: what is the political, social, economic and the security context for human rights here? How is it developing, how stabile is it? Until less than eight years ago, B&H had seen the worst possible human rights violations inflicted by one group on the other, and sometimes even within one group. The country has not completely recovered from such tendencies. Ethnic groups continue to dominate both public affairs and private lives. It seems to me that for Bosnia they can be the worst enemies. Looking at the agenda of this conference, I am convinced that current issues will be discussed. There is one more aspect I would like to mention and I am aware that this is perhaps the most difficult questions for all of you. How can your conclusions be translated into practical actions? Public awareness of human rights in B&H is at a high level. So, the public in general does not need to be enlightened. Those who actively curtail or violate the rights of others politically, economically and socially must be revealed. Physical and spiritual rights have to be dealt with. The medium here is as important as the message. I would like to conclude by wishing you success in your work.

This is the first time that I am here visiting a conference organized by our Sarajevo Office and I am basically here to learn about your activities in the region. I was in Sarajevo once in 1986 and obviously, both the city and the region have changed their face since - and so has Europe. The rule of law, regional security, and human rights are the focus of this conference. However, I want to highlight some of the Heinrich Böll Foundation's broader activities. I want to focus on our work regarding the European Union and its neighbours and on how we see Europe.

The year 2004 is a very important one for the EU. We have three political developments coming together. The first and the biggest is the EU enlargement, the second one is the new European Constitution, which we hope to get passed by next spring, and the third are the next elections for the EU Parliament in June next year, for the first time with EU 25 Member States, we hope. We want to use the Europe Year of 2004 not only to discuss the technicalities of these three processes, but to discuss the future of the EU and of the rest of Europe, including the relations with the EU as a whole.

We will focus on three main areas: firstly, the future identity of the EU; secondly, the future borders of the EU and thirdly, how the EU will continue to function with 25 or more Member States. Let me just make some initial remarks, maybe we can pick up on that and continue our discussion during the conference or in the future. The question of the EU identity is a very important one, and it becomes even more important with this enlargement and with other rounds of enlargement we are expecting. We have to ask ourselves: is this a secular union or is it one where religions play an important role? In the EU, we somehow have to combine the political traditions of secularism and the religious tolerance. We also have to strike a balance between the EU as a union of nation-states and the reality of multi ethnic, as well as multi cultural societies. This will be a difficult task because, on the one hand, everyone is proud of their nation-state and we will have national states for a long time to come and they will fulfil their tasks and functions. We will not become the United States of Europe or a European super-state - I also do not think this should be our vision for the future. On the other hand, I come from Germany - a typical immigration country - which, as many other countries in the EU, has nowadays a multi ethnic makeup. How do we reconcile these contradictory trends and characteristics of Europe's national states and societies when developing the future EU?

The question of identity is very much linked to the one of the European borders. Where should these borders be and what should they look like?

Croatia - one of the countries in your region - has applied for the EU membership some months ago. How does Croatia fit in our future work is for us an important question, as well as the structure and strategy of the Foundation. The problem is how we shall reorganize ourselves knowing that perhaps some other countries will apply for the EU-membership. What does this mean for the programme of political education and other programmes? However, I do not think that the decision about where the borders are is the crucial one. In my opinion, the more important decision concerns the character of the borders. What do these borders mean for the cross-border cooperation, traffic, trade, the questions like migrations, security? What do they mean for the issues that have come up in the last few years, like international crime and terrorism? What we hope to be able to do is not to discuss and decide these issues in the EU, but to discuss these questions with the countries which may join the EU in the future and those who might stay out of it as its neighbours. Some weeks ago, the European Commission proposed the first strategy for Europe's wider neighbourhood. This strategy and its implications for the South Eastern European states and the civil society might be the issues for the discussions at this conference. How can we create a EU surrounded by friends and neighbours who will all cooperate?

Let me come to my third point. How should the EU of 25 Member States be organized? How can it continue functioning? Can every decision be reached by consensus? Consensus building, as a political method, has been one of the major achievements of the European unification in the last few years. It was a major achievement in the terrible first half of 20th century. World War II started in Europe, in Germany, where consensus building is of a high value as a political principle. On the other hand, we also should create the conditions in which those who want to move ahead have the possibilities to do so, where political innovations are still possible, where not everything ends up as the smallest political denominator. When drafting our Constitution and creating the institutional structure of relations with our neighbours, we have to remember that we are preparing for a Union of up to 35 members. Therefore, we have to discuss the future functioning of the EU with its future members, as well.

Your region was one of those where the EU has learned the lesson. It concentrated too much internally, rather than externally. Europe was busy with the unification and the EU members were deepening their relations. It did not look on the outside, so it overlooked many problems outside its present borders, in another part of the world. In the 90's, Europe looked away for too long from what was happening in the former Yugoslavia. I think that we have to give the EU all the necessary institutions and the decision-making mechanisms, so we can play a role in the world. As responsible citizens, we have certain responsi-

bilities because the EU is economically strong, it is a powerful block and we have to contribute to the debate on global security, regional security, globalization and disruption of common goods. In my opinion, the most important task is to save the global environment.

Let me close my introductory remarks by emphasizing that this debate should not be held only by the political elites in the EU countries. In my opinion, we have to engage more countries, more nations, and a whole range of economic, social, and intellectual groups in this European discourse. The partners of the Heinrich Böll Foundation should be an integral part of this endeavour.

LIMITING FACTORS, OBSTACLES AND PREREQUISITES FOR THE INTRODUCTION OF THE RULE OF LAW

Moderated by Srđan Dvornik

The Law and the Creation of Post-Yugoslav States

The Nature of Statehood in Post-Yugoslav Societies

MILAN PODUNAVAC

Heinrich Boll Foundation and the Faculty of Political Science, Belgrade

I am honoured that I can open the working part of this conference and that I am doing this as a member of Heinrich Boll Foundation team.

So, in my presentation I am going to analyse the nature of statehood in the post-Yugoslav societies. I will use a generic term 'unfinished states' to refer to these states. I borrowed this term from late Zoran Đinđić, the then Prime Minister of Serbia, to be more precise, from his research paper dedicated to the statehood of the socialist Yugoslavia. Đinđić referred to that state as a pre-modern and unfinished one. And this will be one of the main elements in my analysis of the traditional, social and political issue that Otto Kirchheimer marked as limiting conditions in which newly established states are searching and establishing the first principles of their political constituency. Having said that, I have offered my first general thesis for our discussion. The states established in the post-Yugoslav societies do not have the characteristics of modern constitutional statehoods, of constitutional democracies that form the core of the political integration of the contemporary political societies. Let me support this thesis by Robert Dal's arguments. He says: "All modern states are poliarchies, constitutional democracies or they are aiming at having such systems". However, the nature of statehood in the post-Yugoslav states cannot be described by this feature. I am going to analyse in short three groups of reasons why post-Yugoslav states are unfinished, and three convenient circumstances that will enable these states to proceed faster toward the contemporary European statehood.

The first structural deficit of these states has been caused by the fact that they are post-communist states. They all contain strong cores and strong features of

the pre-modern socialist statehood. Their first and most important features are a very low autonomy of the society and of civil society.

These societies are more communities (*Gemeinschaft*), than complete societies, as in the dichotomy by Ferdinand Tönnies. To be more precise, the main lines of political divisions, the main lines of political articulations are still predominantly primordial, predominantly ethnic and national. This results in a specific kind of limited political pluralism and limited party structuring. These kinds of divisions, therefore, that remain within the field of identity and conflict of identities, define the political societies of this region as societies of deep conflict. This is reflected in limited political effects, in a particular powerlessness, and especially in the lack of political capability and capacity for the basis of a social contract to be established, the basis of a consensus about their own collective identities. To round up this thesis, I will add that for an authority of the state to be accepted as legitimate, that state must belong to all its citizens, and at the same time its citizens must be connected among themselves with the horizontal loyalty bonds. A modern state must have a shared conviction that its subjects recognize each other as members of a political community, i.e. they must be aware of their common identity and recognise their state as their own political organisation. In cases where there is a national state, a political community created by such a state is a nation. However, in my opinion, it is the main difficulty and the main feature of the post-Yugoslav states that they have to, in order to be fair, and first of all due to their ethnic and national complexity, denounce an integrative capacity of the nation and the nation itself as a model of the creation of a modern state.

The second key deficit for which I refer to these states as unfinished ones, is a deficit expressed in the current, still strong tradition of anti-legalism. The post-Yugoslav states may be democratic or rudimentary, i.e. minimally democratic, but they are certainly not the states of law nor permanent political establishments. Let me remind you that socialism was essentially an anti-modern establishment, not only because it denied the autonomy of the society but because its institutional articulation and the functioning of the order was not based on a legally defined authority of public governance. Deprived of a stable constitutional and legal framework, the post-Yugoslav societies have been, by a rule of thumb, a field for non-legal and non-political struggles for a diffuse support of the people (Serbia is perhaps the most obvious example). In such a Hobbes-like situation, the main axis of the political state of affairs in these societies is still the relationship that can be defined as: friend-enemy, us-them, majority-minority, Christian-non-Christian, Orthodox-non-Orthodox, nationalists-internationalists, etc. Such relationships cause fear of an enemy, usually enlarged by various conspiracy theories that become the core of the political mobilisation and of the reproduction of political power. The particular conceptual and identify-

ing closeness of the collectivist ideologies of communism and nationalism is clearly manifested here. There is a particular mutation of a utopian communist myth about the future as a balanced and the only possible movement, a nationalistic myth about the past as a specific natural condition of a political community. In all these countries nationalism, a particular idea-free ideology, still substitutes and demolishes a modern and rational formula of a procedural and democratic legitimacy. Nationalism does not contain the idea of justice, the idea of truth or the idea of well-being. It is, as I mentioned, an ideology without ideas. For that reason, nationalism in the long term cannot form the basis of the individual identity. However, this very feature makes nationalism a handy instrument for the political rule. Politically empty nationalism is a very appropriate framework that has been filled in by many different doctrines characterised by anti-individualism, anti-rationalism and anti-democraticism. The third deficit of the post-Yugoslav states that prevents them from forging modern states, especially in the processes related to the consolidation of the rule of law, is the fact that these are post-war societies. All these societies have undergone a dramatic and tragic experience of the collapse of legality and the establishment and this is the most traumatic experience that a political community can go through. When the legality of a political body is destroyed, even under the circumstances when such destruction is explainable and caused by the negative features of the political establishment, the members of such a political community generally feel insecure and do not have any clear direction that would enable them to make their individual and collective experience become a routine in the long term. Fear and a diffusion of insecurity become the main drives of both individual and collective action. Under such circumstances, a society legally crumbles into a condition of non-establishment. The values of confidence and solidarity are destroyed. An unwritten social contract that used to model and connect a political community does not function. A particular kind of existential fear substitutes all other forms of behaviour. Nothing like war itself or some other great cataclysm defines better such a condition of great fear, existential fear. It is then that people discover how the institutions that used to connect their society, like the armed forces, the legal system, the police, administration, begin to disappear and are substituted by terror, violence, destruction and wars without any rules.

In the early 1990's, the political societies in the former Yugoslavia underwent such a situation. War is a systemic context that essentially destroys political and legal institutions. War destroys all initial enclaves of an independent and autonomous society and an independent public. War is always based on the forms of imposed integration and homogenisation. According to Benjamin Constant, everyone wears the same uniforms during the war, and those who wish to destroy the freedom of young nations know that the best way to do it is to

embroil them in a war. The war conditions, in my opinion, have had decisive influence on the way the states are established in the post-Yugoslav territories. An important feature of these states is that they have not emerged in a politically important way and they are not based on political principles. In Croatia, it was the end of the homeland war, that carries all the characteristics of a myth of creation, the myth about the homeland war. In Bosnia and Herzegovina, it is the international intervention and a particular international contract built into it. In Serbia, it is also an international intervention, with the civil revolution built into it. The paradox of the political dynamics in Serbia is that, although it had the worst heritage of the October change, it received a powerful constitutional change and a wide range of possibilities of constitutional choice. Today we can say with certainty that this chance, including the time after the tragic death of Zoran Đinđić, has not been used. The Kosovo myth, as a specific form of a myth of creation, has to a large extent lost its mobilizing force. However, this myth is still a powerful and a latent resource of mobilization of political resentment, negative political sentiments, in particular those related to the Albanian political community.

The third important factor that clarifies the establishment of a modern constitutional statehood is the fact that all the post-Yugoslav societies are based on specific forms of post-dictatorial memory. Both Serbia and Croatia were based on explicitly powerful regimes of the 'personal cult'. These types of regimes were based on a continuous process of deinstitutionalization of the establishment of law and politics, and this process is their core feature. They are, as Treitschke put it, recognised by the names of their rulers. Any attempts to put the authority cords together in such systems were always personalized and never institutionalized.

And now, let me elaborate on three factors that would enable the creation of a modern constitutional statehood in the post-Yugoslav societies. The first, and in my opinion the most important condition, is the establishment of civil peace. Political and legal institutions may be modelled only under peaceful circumstances. Let me make a small digression: Plutarch, in his essay about Numa Pompilius, the second king of Rome, famous for introducing and arranging almost all civil institutions, gives an important piece of data. Namely, during his reign, the door of peace was kept open for 43 years, and the door of war was closed for 43 years. This could be a good and serious message to the peoples in our region.

The second key condition for the creation of a normal state would be to win the minimum of democratic legitimacy. The establishment of minimal democratic legitimacy, political and party pluralism, elections, relatively developed and

influenced field of political public and civil society are the most important effects of the dynamics in the post-Yugoslav societies. However, what makes this region still vulnerable, and therefore its democratic public unconsolidated, is the fact that all the political actors in these countries still do not accept the democratic principles of a political game, and the power of systemic actors in the political organizations is still too great. That is why, in my opinion, these states are still under the imperative to establish a stable legal order and to consolidate their democratic legitimacy.

The third powerful corrective factor is the international surroundings. Due to the lack of a stable institutional framework, the international factors, and in particular the open-ended process of Europeanization of this region are strong factors of stabilization and internal modernization of this region. However, from the point of view of the internal political dynamics, this relationship between the international and internal factors has controversial characteristics. In one of its important aspects, while introducing the values and principles of modern constitutional democracies, this factor of Europeanization represents a powerful catalyst of democratic and modernization processes.

However, in my opinion, while building the institutional and legal framework based on the primordial, distinctively non-political changes, and Bosnia is the best example of it, such political and civil society segments are mobilized that could represent the main generator of that type of political integration - the rule of law, citizenship, democratic legitimacy - that would bring the post-Yugoslav societies closer to such a type of order, essential to modern European statehood. And this is, as I emphasized at the beginning of my presentation, the type of establishment based on the primacy of civil and political freedoms controlled and limited authority and democratic legitimacy.

The Rule of Law in Post-War Societies

RADMILA VASIĆ

Centre for Development of Law Studies, Belgrade

This topic calls for a process of transformation of monistic societies with a monolithic conception of authority into pluralist societies with the constitutional democracy in its conventional sense, and all this in the societies where former (common) state order was deconstructed by force.

The problem will be presented in the following three parts:

1. Doctrinal insight: one misapprehension and one sensitive reality

2. Transition and the post-war context
3. Miniatures from the Serbian state-legal culture: Serbia on a steep slope - slowly climbing and overcoming the obstacles

1. A short doctrinal recap seems to be necessary because a reference point is needed in order to think about and conceptualise our current reality. Therefore, in the first part of this discussion it will be shown that the objective of transformation of the post-authoritarian societies is a state with a liberal-constitutional democracy. This model does not have an alternative, not because it is better than other models to govern the transition processes, but because it is the only one capable of pacifying the tensions or managing them.

Western liberal democracy believed that the rule of law would spontaneously and without difficulties spring out from the ruins of communism. However, the problems related to multiculturalism, nationalism, secession, immigration, not only in post-socialist countries, but also globally, forced this doctrine to admit its misapprehension and, through its instruments and within the context of established values, find the solutions to these problems.

The note about the theoretical reference point seems to be invaluablely important for the Serbian society that was inclined to understand its own being as an autonomous one. This thinking style generated an apotheosis of a "third way" politics and the one of sui generis systemic solutions. This discussion is therefore a warning that there is no third way of any sort, that there is no systemic alternative to a liberal arrangement of the constitutional democracies of a Western type.

Moreover, a question arises whether a theoretical model undergoes any alterations due to the context, so if the answer is positive, can such alterations be doctrinally justified? There are two such alterations related to the context. The first one is a certain relativisation of the division of power, or a concentration of power that should enable a legal state undergoing a transition process to overcome a crisis and prevent a "velvet restoration", to integrate and consolidate its society and to enable the existence and the functioning of its civil society. The second transformation refers to a normative overload of the constitution by guaranteeing certain privileges containing social rights, i.e. promises in the form of rights and social concessions in order to overcome the forms of fear which accompany transition and prevent economic and social obstructions. All this comes with two limitations. As I mentioned, the alternative to the model must be limited by time and proportionate to the need, and, on the other hand, legitimacy can be recognized to the necessary efficiency only as long as it does not jeopardize the functional essence of the principle of limited government.

2. The second part of this presentation will attempt to define the causes of the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), and in particular to determine why the dissolution was carried out in a violent way.

- a) Even if the causes of dissolution are of a structural nature and are reflected in ethno-cultural heterogeneousness, I consider the elites recruited from the surviving ruling structures responsible for the dissolution. The elites were the bearers of the huge negative synthesis gathered around ethnic resentment and nationalism of the worst kind. They attempted to fill in an ideological vacuum and legitimate space with such nationalism. Where the process of establishment of the "antithetic solidarity" did not occur, as was the case with the Czech-Slovak federation, violent disintegration was avoided.
- b) In post-socialist countries where a denial of a regime was not followed by a state crisis, the constitutions played a positive role enabling its revision norms to undergo a peaceful and gradual legal transformation. But, in countries where the identity and legitimacy of the state community were questioned, the constitutions represented fresh tools for (peaceful) disintegration. The disputed SFRY Constitution of 1974 served not only as a tool that speeded up the disintegration, but also as a controversial platform to gain independence and justify succession and "defend" the surviving, even if damaged, federal subjectivity.
- c) Finally, the disintegration of SFRY was marked with a syndrome of escape from Serbia that seemed to be so strong that it escorted the third Yugoslavia (SRY) into the museum of antiquities, too.

In the post-war transition period, and in order to establish the rule of law, it seems to be necessary to determine individual, subjective, criminal responsibility of those who committed war crimes, and not primarily because of retribution, but also because of general prevention. Parallel to this, collective, political, indirect responsibility is also determined, i.e. the responsibility without guilt, for the actions of others - members of a group (people, nation, ethnic group) for the crimes committed against another group (collective). The unconditionality of living together in a paradigm I have described ("a state as a joint enterprise" and "a burden as a guarantee for the benefit") is represented as a reason and the basis for this type of responsibility. The purpose of collective responsibility refers to a community being - it aims at the public restitution of consciousness, moral recovery, return of self-respect, and the improvement of destiny. In one word, it is a chance that represents its main point. The answer we give ourselves to the question of responsibility "will represent the basis of our being and self-awareness". In the process of stepping out of an authoritarian sediment, the announcement of responsibility will ripen the phase in the

development of the spirit of people. The true transformation into a society of freedom is possible only after there is a change of a spiritual setup, public atmosphere and total political circumstances that had brought about political dictatorship, now formally denounced. To accept the responsibility, therefore, means to be given a new chance.

3. In the third part, the effects of the new democratic authorities in Serbia are analysed. Several striking paradoxes and deficits can easily be placed between the public opinion "we live more normally but not better" and a political slogan "Serbia on the right path". In the institutional sense and from the point of view of human rights, the most serious deficit on Serbia's path to implement reforms is the fact that Serbia still does not have its new constitution. In the practical sense and from the point of view of the concept of the rule of law, the fact that the newly proclaimed arrangement about the division of power is not respected, the function of the judiciary is marginalized in comparison to the executive power. The courts are also inefficient and they have not become independent yet.

To conclude, Serbia is in the horizon of a proclaimed and postponed transition. This does not by any means mean that some effects, even if they are very fragile, cannot be considered positive. The point is that the pattern of power has not changed yet, and a miraculous continuity of the model of power distribution - thesis distribution should have been done in a limiting way. Instead, power has been distributed amongst the multinational elites with no limits. If one adds to this some inherited (and still surviving) codes - such as traditionalism, authoritarian mentality, deficit of political culture, the non-resolute political public, patriarchy and clientelism, then the picture will be clearer about the obstacles to the social implementation of the historical capacity of the idea of the rule of law in post Yugoslav Serbia.

Finally, I believe that normal integration and co-operation in the region, including that amongst ex-Yugoslav republics, will be possible not when a proclaimed and popular but a dishonest formula "truth-confession-reconciliation" is filled with some content, but when there is approximately the same substance of the rule of law in each of these countries, and when the implementation and the protection of human rights become a routine and not a very attractive subject just for the gatherings like this one.

Ethnic relations and (in)security in the post-Yugoslav countries

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Introduction

The issues of security became particularly important in the twentieth century that, contrary to what had been hoped for, became the bloodiest and most hatred-charged in the history of human kind. The wars and sufferings in the twentieth century, mostly initiated by ethnic and religious contradictions, were particularly characteristic of South-eastern Europe. Despite millions of victims and immeasurable suffering of the people in this century, not a single ethnic problem has been solved yet in area of South-eastern Europe. Many of these problems now, at the beginning of the twenty-first century, look even more complex, threatening peace and security.

The discussions about international security as a concept and practice became particularly important in the 20th century, when ideas arose about a global community of states and about security as the basic value of the international system as a whole. These ideas are objectified through a concept of collective security, first within the League of Nations and later within the United Nations. Within such a concept the solution to the ethnic conflicts have been very important. This refers in particular to the area of post-Yugoslav countries. In the recent past and today as well the ethnic minorities in these countries have been faced with numerous problems with security implications and will continue to do so in the near future. These problems may be divided into several groups, depending on the intensity and objectives of pressure exercised against a particular ethnic minority. Basically the groups of such problems are:

- discrimination - implemented by an imposed subordination of an ethnic minority just because they belong to a different ethnic, cultural or language group
- cultural subordination - expressed by the negation of ethnic minorities' rights to have an education system in their mother tongue, their rights to use contemporary means of public communication and the negation of their right to participate in a cultural life at all
- economic subordination - the interests of ethnic minorities are systematically neglected, while the migration is encourage of the majority group to the territories where the minorities live

- the politics of genocide - an attempt to destroy an ethnic minority altogether through various violent measures or in other ways

With reference to these groups of problems, ethnic minorities are in different situations in the states they live in. The first situation is when an ethnic minority is generally satisfied with its status. The second situation is when members of an ethnic minority are dispersed into smaller groups in several countries and it is therefore difficult for them to express their dissatisfaction with their status and the politics of assimilation (the Roma people). The third situation is when an ethnic minority is dissatisfied with its status due to:

discrimination and denial of their elementary rights,
its seeking of more (collective) rights,
because it is instrumentalised by their mother country
because it wishes to join its mother country

The experiences of the post-Yugoslav countries show that there is a mutual influence between ethnic relations and problems on one hand and of national and regional security on the other. Unsolved ethnic problems have, after the end of the cold war and the dissolution of the former SFRY become the main issue, contrary to the expectations of the political and scholarly public. Ethnic relations and problems are still considered dangerous for the national and regional security of the South-Eastern Europe.

Ethnic relations and (in)security in the post-Yugoslav countries

Ethnic conflicts and majority-minority relations have burdened the security of South-eastern Europe for over a century. These are at the same time internal problems of the states that have had to tackle them rarely because of their own political reasons and more often because of the pressure exercised from abroad. When one researches the literature about this issue, it can be concluded that the question of majority-minority relations has not been solved on the regional level and that, on the other hand, there are very few countries that can be proud of the way in which they treated their minority groups in the past. Even today, when the laws about ethnic minorities in most of the countries in this region are "flawless", there is something wrong with the implementation of such laws, so that there is no ethnic minority that is satisfied with its status and does not seek more respect for their rights. It is well known that by applying different forms of the international community's instruments a state can be forced to regulate the status of its ethnic minorities properly, but the problems are not solved in

this way. It is often said that a state or its bodies are neglecting or breaching the rights of its ethnic minorities. However, an important part of this problem is neglected in this way because it may happen that those who breach the minorities' rights are various non-governmental groups, organisations, parties and movements, that operate under the influence of prejudices and traditions. It may happen that a government is ready to protect and improve the rights of ethnic minorities, but that it is not able to do so due to the pressure exercised by society.

The heritage from the distant and recent past in almost each country in the region is such that the members of different peoples (majority and minority ones) cannot be separated in a way that the totality of each group is given the exclusive authority over that group. In the states with ethnic minorities, such as any post-Yugoslav country, the relations of ethnic majorities and minorities are often interwoven from the point of view of territories. It often happens that an ethnic minority forms a majority population in a certain area, even if it is a minority in the state itself, which additionally complicates the problems. Very complex majority-minority relations have been subject to different solutions, varying from separation of an ethnic minority into a new state or joining it to its parent ethnic state, (which was almost always followed by wars), to exercising policies of tolerance and confidence that enables each ethnic group and minority, regardless of their location and the extent to which it is mixed with other groups, to maintain a cultural cohesion necessary for the preservation of their identity. Various international organisations have tried to support the policy of tolerance, as an alternative to more and more ethnic conflicts and wars.

Tolerance is the subject of bilateral agreements more and more often. The interested states develop their bilateral relations through improvement of the status of their respective ethnic minorities. In this way minorities may become a factor of co-operation and not conflict between states.

The European organisations that deal with the stability of post-Yugoslav countries, based on the principles of pluralist democracy, human rights and the rule of law, are particularly active in supporting the policy of tolerance. The Council of Europe is one of the most important organisations that promote the rights of ethnic minorities. Its policy is based on the activities related to the protection of human rights, their experience in educational, cultural, social and other fields, as well as flexibility in the working methods.

The activities of the international, and European organisations in particular related to ethnic minorities have been exercised by "the measures for confidence building" and are based on the following principles:

- ethnic minorities form the multicultural nature of European societies, which

is why it is necessary to manage diversity and co-existence in European multi-cultural societies. This is important in order to prevent disputes among the Western, Central and Eastern Europe;

- various management models require a highly developed political approach. This is a question of respect for the basic principles of European democratic systems, that include not only freedom of expression and support for the majority's opinion but, and above all, the respect for the opinions of the minority, too;
- the measures that support confidence building must, in their broadest sense, take into account close educational and cultural co-operation between the majority peoples and ethnic groups;
- the measures for confidence building are interpreted as preventive ones and their purpose is to eliminate tensions which threaten to evolve into more serious conflicts.

Ethnocracies, that were a feature of post-Yugoslav countries in the 1990s, jeopardised the survival of ethnic minorities. Therefore the reflex of the ethnic minorities was to resist ethnocracies. It was hard for ethnic minority groups of different sizes, accommodated into different political surroundings, to get and act together in order to request the improvement of their rights. It can even be said that the ethnic minorities were often instrumentalised in the fight for their rights, both by the parent ethnic group's country and by the state they lived in. The only realistic principal support for ethnic minorities are international law and international organisations, as shown by the analysis of majority-minority relations and the status of ethnic minorities in post-Yugoslav countries.

The analysis of security in South-Eastern Europe is possible only within the framework of understanding the contemporary tendencies in the area of national and international security. While searching for their own security systems, the post-Yugoslav countries must take into consideration not only the current state of affairs in this region, where the challenges of ethnic, national and religious conflicts created the worst crisis spot in Europe, but also the search for appropriate security policies in the regional and wider European context. These countries must base their efforts on the wider European attempts for finding the appropriate policies of European security related to different security challenges, amongst which ethnic conflicts represent an important part. In the connection between these European and Balkan references one should look for the possibility to establish a sub-regional system that could satisfy the countries in this region and enable them to turn more easily to their huge internal problems.¹

¹ **Vukadinović R.**, Post-Communist Challenges to European Security, Grafotisak, Grude, 1997, pp. 50

Ethnic relations and relationships amongst the post-Yugoslav countries

The internal situation in the countries of this region, primarily defined by the economic situation and inter-ethnic relations, influences significantly the overall security in South-Eastern Europe. Similarly, there is an important influence between the countries and peoples who live here, and the conflicts based on ethnicity as a result of their relations.

The conflict of Serbia and Montenegro with Albania over Kosovo was the most dramatic one. During the communist reign, and after that until the fall of Sali Berisha's regime in 1997, Albania strongly supported the claims of Albanians in Kosovo for independence. At the root of the Kosovo problem, it is necessary to distinguish among the three bearers of Albanian politics towards the Albanians in Kosovo. These are the attitudes of the Republic of Albania, the attitude of Kosovo Albanians and that of the Albanians in the Republic of Macedonia. During the dictatorship of Enver Hoxha, Albania, even if it was reluctant to tackle the Kosovo problem, occasionally used it by supporting the secessionist forces in Kosovo. The Democratic Party that ruled Albania from 1992 to 1997 had a pretty ambivalent attitude towards this problem. It mostly advocated close ties between Albania and Kosovo. The socialist government of Fatos Nano refused to confront Serbia directly about the Kosovo problem and it consistently advocated the autonomy of Kosovo within Serbia. But, the escalation of conflicts in Kosovo found Albania impoverished and weakened by the collapse of its institutions in 1997. The disintegration of the army in Albania made it possible for the citizens and criminal groups to come into possession of huge amounts of armaments, and a significant portion of those armaments was transferred to Kosovo². It was only thanks to the internal problems in Albania and the pressures exercised by the international community over Serbia and Montenegro that the escalation of the ethnic conflict in Kosovo did not evolve into an open war until 1998. It was then that this conflict became impossible to supervise and it provoked a NATO intervention in Kosovo, followed by the introduction of the international protectorate over this province. In this way a final solution to the question of Kosovo was postponed for some time.

Some open questions in the relations between Serbs and Croats fall into the disputes of post-Yugoslav countries. Even if their disputes, inherited from the two former joint states, were seemingly unsolvable, today these have been reduced to the question of borders, the succession of formerly shared state property and the consolidation of the consequence of the war. This primarily refers to the return of refugees, return of their property and the tracing of missing persons from the

² **Minorities in Southeast Europe:** Inclusion and Exclusion, Minority Rights Group, 1998, pp. 25

war. It is certain that the security situation may be considerably improved not only bilaterally and in the neighbouring Bosnia and Herzegovina, but in the whole region if a process of normalisation of the Croatian-Serbian relations continues. That is why this process keeps progressing, first of all thanks to the constant care and pressure exercised by the international community. The process of normalisation between the republic of Croatia and Serbia and Montenegro has advanced intensively after 1996. In August 1996 the Agreement on Normalisation of Relations between the Republic of Croatia and SR Yugoslavia was signed. Individual agreements on various issues were signed after that. By the Agreement on Normalisation of Relations, SR Yugoslavia recognised the territorial integrity of the Republic of Croatia. A peaceful reintegration of the Croatian Danube basin, that was a condition for stability and prosperity in these areas, would not have been possible without normalisation of relations with SR Yugoslavia. Exclusively because of its own interests, the Republic of Croatia must pursue normal neighbouring relations with Serbia and Montenegro, which does not include any options for the creation of joint states or any special integration links. The establishment of normal diplomatic, economic and cultural relations is useful for both countries and for the whole region. Normal relations and diplomatic relations are also a prerequisite for regional security, as well as for the return of refugees.³ In the future relations between these two countries it will be important that a bilateral agreement about mutual protection of national minorities is signed.

The controversial questions between Croatia and Slovenia are mostly those related to the border between the two countries, and there is also an open question about the recognition of the rights of the Croatian minority in Slovenia. Most of these problems originate from the process of disintegration of the former Yugoslavia. There are several key bilateral questions that have not been solved yet between Croatia and Slovenia. These are the questions of the land and sea border areas in the Piran Bay, the Ljubljanska Bank's debts to Croatian citizens, and some issues of property rights. However, the main features of these problems are not related to security. Both countries co-operate well in almost all areas, especially in multilateral issues and the questions of the succession of former Yugoslavia's shared property. Regular bilateral meetings at all levels confirm such good relations, and both countries have signed around thirty agreements and protocols that have stemmed from such meetings.⁴

There are much more serious disputes that Macedonia has with Greece, Albania and Bulgaria, and therefore the Macedonian problem is considered a significant security problem in the Balkans.⁵ Macedonia's declaration of inde-

³ **Grizold A., Tatalović S., Cvrtić V.**, *Contemporary Systems of National Security*, Zagreb, 1999, pp. 353-354

⁴ **Ibid.**, pp. 353

⁵ **See: Klemens L.**, *Lexicon of Ethnic Minorities in Europe*, Panliber, Osijek-Zagreb-Split, 2001, pp. 119

pendence led straight into its dispute with Greece, because it is claimed in Macedonia that a large portion of Macedonian people live in the Aegean Macedonia in Greece, and because the Macedonian nation is not recognised in Greece, it is even less likely that Greece would recognise that a portion of the Macedonian nation lives in Greece itself. There are three questions that essentially define the Macedonian-Greek dispute: the name of Macedonia, the state flag and those parts of the Macedonian Constitution, which, in the opinion of Greece, may imply its territorial claims towards Greece. However, during the last few years, the prerequisites for the solution of these problems have been made.

Even if Bulgaria was one of the first countries that recognised Macedonia, it did not recognise the Macedonian nation and language for a long time, and this might have caused a dispute between these two countries. Macedonians have been denied minority rights in Bulgaria. Some imposed measures of the Bulgarian government aimed against the Macedonian organisations in Bulgaria disrupt traditionally good relations between these two nations. There were two interpretations of Bulgaria's refusal to acknowledge the Macedonian nation: as Bulgaria's tendency to prove that there are no Macedonians in Bulgaria (the Pirin Macedonia), but also as an expression of Bulgarian territorial claims towards Macedonia in which, as it is considered in Bulgaria, Bulgarians live and there are no Macedonians. This was a potential threat not only for the relations between Bulgaria and Macedonia but also for the overall security in Southeast Europe.

When it comes to the relations between Macedonia and Albania there is a controversial issue of a large number of Albanians who live in the western and north-western part of Macedonia. Some Albanian parties in Macedonia particularly radicalise this question. These parties lead a coordinated politics with the parties in Kosovo and in Albania. Even if the Albanians in Macedonia have never had any territorial autonomy within the former Yugoslavia, during the expression of claims for the status of the republic for Kosovo, the Albanians in Macedonia joined that claim, as well as the one for the establishment of Greater Albania (or Greater Kosovo). They even held an unofficial referendum on autonomy in 1992.⁶

Ethnic relations in post-Yugoslav countries

The internal ethnic conflicts in almost all countries in Southeast Europe signif-

⁶ **Minorities in Southeast Europe:** Inclusion and Exclusion, Minority Rights Group, 1998, pp. 25-26

icantly influence the security of these countries, as well as European security. This region is a specific meeting point of different peoples, cultures, religions and languages. Throughout its whole history this was a field of turbulent events and wars that led to both unification and separation. In the twentieth century only, it saw two Balkan, two world and several local wars. This confirms a well-known thesis that "the Balkans produces more history than it can cope with". All this continuously complicated ethnic relations in individual countries in south-east Europe.

Today most of the countries in this region have a mixed ethnic structure. In the four of them, Bosnia and Herzegovina, Macedonia, Serbia and Montenegro, and Bulgaria, the majority ethnic community represents less than 80% of the total population. Therefore we can describe these countries as "heterogeneous societies". The results of empirical research conducted in 1991 illustrate best the state of ethnic relations in this region. Some of these results say the following: "The peoples of Eastern and South-Eastern Europe, put simply, do not like their neighbours. Their ethnic divisions are so sharp, and national intolerance so deep that any radical improvement of their relations will have to wait for new generations".⁷

One of the most complex problems of the states in South-eastern Europe is ethnic and religious conflicts. Ethnic and religious minorities in this region, with minor exceptions, have never been fully recognised nor have they enjoyed minority rights in the legal sense. In most of these countries the policy of voluntary or imposed integration of ethnic or religious minorities into the majority nation of a certain state was conducted, as shown by most of the analysis of inter-ethnic relations in almost all countries of this region.

Even if as a result of the Dayton Agreement, Bosnia and Herzegovina remained a unified state of its three constituent peoples (43,7% Bosniaks, 31,4% Serbs, and 17,3% Croats - according to the census conducted in 1991), who live in two entities - The Federation of Bosnia and Herzegovina and Republika Srpska - its ethnic problems have not been definitively resolved. Both entity constitutions reduced constituent rights to the entity levels. This fact divided all three constituent peoples into two separate groups - the majority one, that lives in the entity where it enjoys the position of a constituent, and a minority one that lives in another entity, where it is deprived of its constitutional right guaranteed by the Dayton Agreement. Such groups within each ethnic people did not enjoy the level of constitutional protection that is guaranteed to the traditional national minorities. Therefore, the Serbs in the Federation of

⁷ **The Pulse of Europe**, A Survey of Political and Social Values and Attitudes, 1991, pp. 140

BiH or the Croats and Bosniaks in Republika Srpska could not claim any constitutional-legal protection.⁸

The obstacle of inequality was theoretically removed by the decisions made by the Constitutional Court of Bosnia and Herzegovina that declared the parts of entity constitutions tackling the constitutive rights incompatible with the Constitution of Bosnia and Herzegovina, and which expanded the constitutive rights of the whole state. The status of the members of the three constitutive peoples does not depend on constitutional-legal protection only; their actual status in those parts of the country where they are minorities perhaps deserves more attention. Even if they are not facing constitutional-legal limitations, the Serbs in the Federation of Bosnia and Herzegovina and the Croats and Bosniaks in Republika Srpska are in an unenviable position.

The dominance of a national factor in the form of a national collectivity is emphasized to a large extent in Bosnia and Herzegovina. The aggravating circumstance in Bosnia and Herzegovina is that national identities are interwoven with religious identities. Inequality has been identified in different areas. There are even breaches of the basic human rights of the constitutive peoples who are in the minority in particular territories. An example of this can be seen in the school systems built in a way that they put a majority national group in a privileged position in certain territories. In addition to a difficult position the constituent peoples are in Bosnia and Herzegovina, the war also put the traditional national minorities into an unenviable position in comparison with the pre-war period. Unfavourable positions and jeopardised national and civil rights for all national minorities are noticeable, and this is particularly the case with the Roma minority. The war itself influenced displacement of the Roma people. In addition to this, there is another complicating circumstance for them now reflected in the fact that the post-war authorities pushed the Roma people to the margins of social interest. The main problem of the Roma is their communication with different state services and inconveniences often with the police, but also at schools and other educational institutions. According to all indicators, there is a realistic threat that the Roma language, culture and identity may disappear.⁹

One of the main internal problems of Bosnia and Herzegovina is the one concerning the return of refugees to their homes. A few years' experience has shown

⁸ **If those who are constitutive people** in one part of Bosnia and Herzegovina did not have any rights in another part of it, then the rights of national minorities could not be discussed. The problem was also in the fact that the entities had more authority than the state. In other words, Bosnia and Herzegovina had less rights than it would be appropriate for a state.

⁹ **Kukić S.**, The Status of National and Religious Minorities in Bosnia and Herzegovina, *Political Thought*, no. 3, 2001, pp. 122-132

that the process of return is slow, and that it is directed mostly at that entity or region where the returnees' own people are in the majority. If the return process is analysed through a prism of national (ethnic) identity, it can be concluded that the citizens of Serb nationality return at the slowest rate. The situation in this regard is much more favourable for the Croats and Bosniaks.¹⁰ This indicates that a certain exchange of population was done. Almost all security studies about Bosnia and Herzegovina have shown that this will be an unstable region in the long term, and that a war will be one of its options.¹¹ The outbreak of war can be avoided only by stationing considerable NATO forces in Bosnia and Herzegovina and by continued external assistance.

Since its declaration of independence Croatia "solved" most of its ethnic problems. According to the census of 1991, Croats made up 78,1% of the population and according to the census of 2001 they made up over 90% of the total population in Croatia. This was achieved firstly by reducing the number of Serbs by around 400.000 who, due to the war, took refuge in Serbia, Republika Srpska and third countries, but also by the resettlement of Croats from Bosnia and Herzegovina and other countries into Croatia. The considerable number of the members of ethnic minorities in Croatia has "vanished" during the last ten-year period through assimilation. In Croatia, ethnic problems were related to the completion of peaceful reintegration of the Croatian Danube basin and to opening the process of return of a large number of refugee Serbs to Croatia. The minority question in Croatia becomes more and more important primarily because of the pressure exercised by the international community, but also because of the aspirations of the Republic of Croatia to enter the European Union. EU accession is only possible after the fulfilment of many conditions, of which an equal treatment of all citizens, and particularly of national minorities, is a very important one. Over 150.000 Serb refugees from Croatia who now live in Serbia and in Bosnia and Herzegovina represent an additional problem. Their return is hampered by their inability to prove their right to Croatian citizenship, which puts them in a very difficult position given their current status in Serbia, so that they actually do not belong anywhere at the moment. Important initiatives undertaken during the last few years have been completed when Croatia passed its Constitutional Law on the Rights of National Minorities. This law will, together with the bilateral agreement between Croatia and Serbia and Montenegro regarding the mutual protection of national minorities, raise the level of the Serb minority rights in Croatia.

Serbia and Montenegro has the most complex ethnic situation. The Serbs, who are a majority group, make 62.6%, Montenegrins 5%, and the national minori-

¹⁰ **Ibid**, pp. 122-132

¹¹ **See: Tindemans, L.**, (ur) *Unfinished Peace*, Croatian Helsinki Committee, Zagreb, 1997

ties, including those in Kosovo, make as much as 34.4% of its total population. The largest minority is the Albanians, followed by the Hungarians who mostly live in Vojvodina, and then Muslims who mostly live in Sandžak. The concentration of the Albanians in Kosovo, where they make over 95% of the total population of Kosovo, and the claims for independence of Kosovo, is the major destabilising factor in these countries.¹² It is crucial for the democratisation of Serbia and Montenegro to protect the rights of all its national minorities. There is also the question about the final status of Kosovo. The relationship between Serbia and Montenegro may also become questionable, given that their state union was established for the period of three years. The government of Montenegro let Belgrade know that it wishes to stay in the federation only as a full member with equal rights as Serbia itself. Otherwise, a referendum and a declaration of independence by Montenegro can be expected. The political parties in Vojvodina are also claiming a redefinition of the relations between Vojvodina and Serbia. They are claiming a higher level of political, cultural, and economic independence for Vojvodina. Vojvodina's Hungarians, who make up 17% of the population of that province are in favour of autonomy for Hungarians that, apart from a territorial autonomy, means the creation of a Hungarian region in the north of Vojvodina where the Hungarians are a majority population. The Bosniaks in Sandžak, dissatisfied with their status, are claiming their rights in that area, and this could become a new source of instability in the region. The continuation of ethnic conflicts may lead to the danger of the disintegration of Serbia and Montenegro. Such growing inter-ethnic, political and social tensions increase the risk to national and regional security.¹³ The security situation in this country is more and more influenced by the relations between Serbia and Montenegro, while a Serbian issue still remains open. In the opinion of some Serb politicians, given that the political objective according to which all Serbs should live in one state has not been achieved, the Serbian issue has not been solved. The Serbs now live in different countries in the region instead. Given the current political and economic circumstances in Serbia caused by the lengthy sanctions and wars, a new radical reopening of the Serbian issue is not likely in the near future. It may be expected that this issue will be partially solved, if the relations within the international community are taken into account and if the security risk is reduced to a minimum. This means first of all an intensified connecting of Serbia with Republika Srpska and greater care for the Serbs in the Croatian Danube basin, as well as a redirection of the focus of attention to Kosovo.

For Macedonia the worst ethnic problem is the status of its Albanian minori-

¹² **Grečić, V.**, National Minorities as a Factor of International Relations in Balkan, *International Politics*, no. 1051, pp. 14

¹³ **Briza J.**, *The Rights of National Minorities in Yugoslavia*, MRG, The Open University, Subotica, 2000, pp. 29

ty, which makes up 22.6% of the total population of Macedonia. Even if, with the assistance of the international community, this majority has been integrated into Macedonian society to a large extent and it enjoys a high level of political, territorial and cultural autonomy, it may still represent a major security problem for Macedonia in the long term. After an armed rebellion on the part of the Albanian population in Macedonia in 2001, the Ohrid Agreement was signed which guaranteed a wide autonomy for the Albanian national minority in Macedonia. In this way, with the assistance of the international community, opportunities were given for the Albanian participation in political institutions and for more Albanians to be employed in public services in Macedonia. One of the important rights is the introduction of the Albanian language as an official one, which has made Macedonia a bilingual state. This agreement therefore significantly contributed to improvement in Albanian-Macedonian relations that used to be very tense. If there is a long-term peaceful coexistence of ethnic Macedonians and Albanians the Albanians will, with their current demographic growth, become a majority population in Macedonia in a few decades. It will be difficult for Macedonians to accept this. If it happens though, a second Albanian state would be created in this region, and it would wish to join Albania, with all the security risks. Not only for that reason, the Macedonian issue is possibly the most complex and dangerous one. On one hand, this issue includes the recent Greek denial of the Macedonian state, the Bulgarian denial of the Macedonian nation, and the Albanian denial of the Macedonian state integrity, and, on the other hand, it includes the fact that some parts of the Macedonian political public believe that a part of the Macedonian nation lives in Greece and in Bulgaria.

In Slovenia, an ethnically homogeneous state, where Slovenes make around 90% of the total population, only two minorities are officially recognised: the Italian one (0.16% population) and the Hungarian one (0.43% population). These are so called 'indigenous' national minorities that enjoy special constitutional protection. The autochthonous Roma community in Slovenia also enjoys special minority protection. Slovenia is one of the few states that consider its Roma group an autochthonous ethnic community. Due to the specific position of the Roma community it was impossible to apply an equal concept of protection as the one applied to the Italian and Hungarian minorities. A solution was accepted that would arrange the special rights and status of the Roma community by individual local laws. However, such legislation, which would fully establish and protect the position of the Roma people, has not yet become operational. Members of other nations of the former SFRY who stayed in Slovenia (Croats, Serbs, Bosniaks) have not been granted the status of national minorities there. The ones among them who succeeded in undergoing a strict procedure for obtaining Slovenian citizenship were granted individual rights only.

Legally speaking, they were labelled "ethnic minority communities in Slovenia". The members of this category are the citizens of the Republic of Slovenia, but these ethnic communities are not defined as national minorities who enjoy special protection by the Constitution and the legal establishment in Slovenia. This category is divided into smaller autochthonous ethnic communities, i.e. these are the remains of the autochthonous ethnic minority communities, as well as the non-autochthonous ethnic minority communities who moved to Slovenia only recently, in principle after the Second World War, and their members have Slovene citizenship. As all these ethnic communities differ from each other significantly, it was therefore not appropriate to treat them equally in the Constitutional or legal arrangements regulating inter-ethnic relations and the protection of minorities. When it passed its Constitution in 1990s Slovenia decided to respect international standards of minority protection for the members of each ethnic minority community in its territory. Due to historical reasons, and on the basis of the Basic Charter,¹⁴ Slovenia decided to introduce additional protection for its Italian and Hungarian minorities, which are constitutionally defined autochthonous national communities, as well as for the Roma community. Regarding its other minority ethnic communities, Slovenia is trying to establish an appropriate system of protection for each of them in its ethnic policy. Even if they are more numerous than the recognised national minorities (the Hungarians, Italians and Roma), the Croats (2.76%) and Serbs (2.44%) do not enjoy special minority rights established under Slovene law. The members of the Croatian and Serbian communities have the same guaranteed rights as other Slovene citizens. These rights only include the preservation and development of their specific ethnic culture and identity (Articles 16 and 61 of the Constitution of the Republic of Slovenia).¹⁵ Without a possibility to accomplish their collective ethnic rights, these groups are exposed to rapid assimilation.

Conclusion

Following the coming of communist rule after the Second World War in the majority of the South-Eastern European countries, ethnic conflicts were pushed aside by force but not resolved. They occasionally escalated mostly in the area of culture, as happened for example in SFRY in the 1960s and early 1970s. These conflicts later turned into ones with economic and political features, and escalated into armed conflicts. Under the circumstances of social despair and the inability of the existing communist regimes or, later on, the new democrati-

¹⁴ **The second paragraph of Article 3.** The basic constitutional charter of independence of the Republic of Slovenia, year 1, no. 1/1991

¹⁵ **Žagar M.**, The Status and Rights of National Minorities in the Republic of Slovenia, Political Thought, no. 3, 2001, pp. 115-116 Unable to exercise their collective rights, these groups are exposed to an instant assimilation.

cally elected authorities to solve these successfully, the appeals for national unity and conflict with other nations coming from the political elites were well received. This was why in most countries of South-east Europe such democratic institutions were established that did not pay enough attention to ethnic (and religious) heterogeneity of particular states. There have been many warnings from different sources that states with heterogeneous ethnic or religious structures are particularly dependent upon good institutions.¹⁶ According to these warnings, the more complex and heterogeneous the society is, the maintenance of its political community becomes more dependent on the political institution's actions. Bearing this in mind, and with the objective to reduce the possibility of an eruption of ethnic conflicts, some of these countries built into their constitutions certain political institutions that would assist a more effective implementation of ethnic minorities' rights.

Although all South-eastern European countries are based on the principles of equality and non-discrimination of their citizens, their approach to the issue of ethnic minorities' status is different. For example, the Constitution of Bulgaria of 1991 refers to individual rights only, without mentioning at all any collective rights of the minorities in that country. The Constitution of Bulgaria even forbids the creation of any political parties based on ethnic principles. It forbids everything that may be interpreted as a collective political right of ethnic minorities. No territorial autonomy is allowed in Bulgaria either. Turkey, in its Constitution of 1982, has the same approach as Bulgaria. Namely, the operation of the Kurdish Workers' Party is banned in Turkey. The Constitution of Bosnia and Herzegovina, which is built into the Dayton Agreement, talks about individual human rights only, and establishes a network of institutions and procedures for the implementation of human rights.

As the Constitution of the Republic of Croatia of 1990 did not guarantee any collective rights to Croatia's national minorities, the Constitutional Law on the Rights of the National Minorities was passed in Croatia. This law guarantees national minorities' collective rights, too. The Ohrid Agreement, passed at the Macedonian Parliament on 6th of September 2001, is a set of constitutional changes and political reforms that define the status of the Albanian minority in Macedonia. In the political sense, the Albanians have been granted more rights by the Ohrid Agreement than any other ethnic minority in the newly established states in the territory of the former Yugoslavia. The constitutional changes and the Law on Local Self-Management, as well as the Law on the Representation of Minorities in the State Administration and the Law on the Albanian Language followed the Ohrid Agreement that initiated a new phase of democra-

¹⁶ **Goati V.**, The political systems of the Balkan countries in Balkan '97., The European Movement in Serbia, Belgrade, 1997, pp. 31

tisation in Macedonia due to international pressure and the war. The status of national minorities in Serbia and Montenegro is regulated by the State Constitutional Charters and Republics' Constitutions. Also, some minority rights are regulated by other laws and legal acts such as the Act on the Protection of Rights and Liberties of the National Minorities that regulates the implementation of both the individual and collective rights granted to ethnic minorities by the Constitutional Charter and international agreements.¹⁷

Faced with different approaches in regulating their status, the behaviour of ethnic minorities in the South-Eastern European countries can be defined by four typical situations. The first one refers to the behaviour of those ethnic minorities that refuse to recognise the state they live in and are trying to establish their own state or join the state of their parent ethnic group through different means including armed violence. The second situation refers to those ethnic minorities that refuse to recognise the state they live in and opt for the tactics of mass protest and the gradual realisation of their political goals aimed at establishing their own state or joining the state of their parent ethnic group. The third group refers to the ethnic minorities who officially recognise the state they live in, participating in its social and political life, but also using certain forms of political struggle to increase the level of their minority rights. The fourth group refers to small ethnic minorities who recognise the state they live in, using the existing level of their granted ethnic rights primarily through cultural and educational activities.

A number of problems caused by the transformations in South-East Europe refer to unsolved ethnic and minority questions. Primarily for that reason not a single country in South-East Europe today has fully solved the question of relations with its neighbours. This part of Europe will still be referred to as an unstable area full of economic difficulties and crisis, nationalism and xenophobia. Is it, under such circumstances, going to be possible to conduct a rational policy that should bring the countries of Southeast Europe into the European Union? This is a question to which not only the countries of this region are looking for an answer, but also the leading European countries and the USA. The ultimate goal is to raise the level of economic development of this region and establish better co-operation amongst its countries. These are the main prerequisites for ethnic conflicts to be solved and for the overall security level to be raised. All this should reflect positively on European security.

¹⁷ **The Act on Protection of Rights and Liberties of the National Minorities**, Pregled evropskih zakona o nacionalnim manjinama, The Federal Ministry for National and Ethnic Communities, Belgrade 2001

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Discussion

GAJO SEKULIĆ

The Faculty of Political Sciences, Sarajevo

The introductory discussions and greetings are based on the assumption that the rule of law in this region, the regional security and human rights are badly implemented. It really is a huge challenge for the civil society activists. But this time I will speak from the position of those described by Srđan Dvornik in his introduction as the so-called "experts" amongst the participants. I believe that this subject is a significant scientific challenge. All three previous discussions dealt with it in their specific ways, and in particular the introductory presentation by my colleague M. Podunavac. In my free interpretation, it is first of all the thesis that unfinished states dominate in this region. The unfinished states represent a historical phenomenon that we should confront. Three reasons were given because of which these states are unfinished: they are the legacy of communism, they exist in a post-war context and finally, they belong to a large anti-liberal system. The main point of my colleague's discussion was civil peace, which also offered an opportunity to put a question more appropriately in terms of how to achieve the minimal rule of law in these societies where the fundamental human rights are disrespected, where people are humiliated almost every minute. I would problematize this by saying that civil peace is still thought of in a Kantian way, as a non-war condition in which citizens exercise their existence after the war has stopped. I believe that the problems of peace are a separate discourse that does not exist in these newly created states in the territory of the former Yugoslavia. In my opinion, peace is also one of the points that offers a perspective of Europeanization.

In the discussion of my colleague Vasić, apart from a series of other aspects, a thesis was given on socialism we lived in for over 40 years, as well as the thesis about the so-called collapse of socialism. I believe that it is good to take the analysis of the unfinished states phenomenon as a starting point. For the civil society activists, this practically means bad states that do not do their jobs, in which even the most elementary, democratically granted monopoly over legitimate force, which Schmitt labels as the essence of a state, is not represented in practice. I do take into account all these aspects that Milan Podunavac elaborated on: that we are post-war societies, that these countries are unfinished today due to the war, particularly in Bosnia and Herzegovina, and that the anti-liberal heritage is also a huge historical factor that makes these states unfinished, incomplete. I consider the burden of the communist heritage a rhetoric at this level of analysis of the socialist countries in the regional and wider context. I do not know what post-communist and post-socialist mean, but a thesis

I would like to offer not only to my colleague Podunavac, but to all of you for our further discussion is that the thesis about the unfinished state should be derived from a wider historical context. If the rule of law, regional security and human rights are in a bad shape, if we had wars, all these are terrible historical experiences. The historical process I see behind the unfinished states is what Nebojša Popov has called for a long time, and during the war, the populist revolutions. With a group of researchers in Sarajevo, for years now I have been trying to find an answer to the assumption that the central historical events behind this subject, behind these causes my colleague Podunavac talked about, are the existence or a historical sequence of a series of unfinished ethno-nationalistic revolutions, that were manifested in the form of civil, religious, ethnic wars, but also aggressions. For Bosnia and Herzegovina, this is one of the fateful questions because we have lived with the truth split in halves. In one entity there is a dominant story about civil wars, and in another one the story about aggression. These two stories have clashed. A higher level of discussion is needed in Zagreb, Belgrade and Ljubljana, too. If our discussion reaches a higher level of discovery of the general and dominant historical process, i.e. ethno-national revolutions which have not been completed and which used violence as legitimate tools to achieve their goals, then our future is very uncertain.

Concerning Europeanization, I will refer again to the fact that since June 2003, there has been a wide discussion in Europe, initiated by Jurgen Habermas and Jacques Derrida, about how Europe can find its identity again. My estimate is that our best writers take the ethno-centric character of cultures into consideration, and think of Europe in its best sense as "another America". I am against such discourse because even one America is too much for us. Related to this, there are open questions of Europeanization and security. Unfortunately, neither amongst the democratic public nor in the nationalistic-populistic governing apparatus has there ever been an alternative political strategy that would, instead of headless rushing into an out of date military pact such as NATO, develop an alternative project of neutrality that would ensure a higher level of security in our region.

NEBOJŠA POPOV

Republika Magazine, Belgrade

Let me improve the average length of discussions by asking a short question: the thesis about unfinished states or an unfinished state is based on the arguments that we have heard. I would like to ask those who elaborate on this thesis if it is perhaps about the unfinished states rather than an unfinished state. Is it possible to identify anything in the intentions of the main players who participated in the historical events here, during and right after the war, that

appeared to be a possibility for the creation of a state, or is it a variant of a permanent revolution that does not have its end and does not have a state either? The thesis that nationalism does not have its teleology is an interesting one and related to my question.

PAVEL DOMONJI

Helsinki Committee for Human Rights, Novi Sad

Mr Tatalović drew our attention to some very important issues. For example, when ethnic relations in a society escalate, they challenge all three key concepts which are in the title of our conference, i.e. the rule of law, regional security and human rights. It depends on several factors whether ethnic relations will improve or evolve into conflicts. The economic circumstances are one factor. It was noticed a long time ago that economic disparities overlap with cultural differences, creating an inflammable mixture that challenges all these three key concepts. I come from the Helsinki Committee office in Novi Sad and I can tell you that in Vojvodina, as well as in Serbia, not a single minority has been satisfied with its status. The Roma people have requested for a long time the status of a national minority because they believe that the framework provided by such status would enable them to reproduce their culture. Finally, they were granted such status so that the Roma people are one of the minorities recognised by the Law on Protection and Freedom of National Minorities. However, their status has not changed at all.

What I wish to say is that in Vojvodina there is no danger that ethnic relations will evolve into conflicts. Something that I would once again like to draw your attention to is happening: under the surface which gives an impression of political stability: a process of ethnicisation of the society and politics has been unfolding. You are aware that today's ethno-nationalists do not offer racist or biological but cultural arguments. They believe that there needs to be a separation of different groups for them to preserve their culture. In Vojvodina, we have had such suggestions, for example that separate schools are established for Serbs, Hungarians, etc. Or, there has been another suggestion concerning education and dealing with some dwarfish, mini schools. It is obvious that the idea behind this was to close all members of the minority into their own ethnic group. Ethnic elites, obviously, saw the educational system as one of the tools they could use to control their compatriots. It may be said that the roots of such ethnicisation are Serbian, and that all the anachronistic defining of Serbia as a state of the Serbian people, ethnic assimilation of Vojvodina as an exclusively Serbian province, the introduction of religion into schools, the promotion of Saint Sava's religious rituals and festivals etc. have influenced all of this.

However, this ethnicisation is not only a reactive mechanism, but it is also a preventive action; this can be seen in the example when minorities expect to be seen, as professor Trkulja put it, as some kind of a national badge.. Or, for example, when one does not expect a theatre to deliver any aesthetic satisfaction but to be a tool of national identification. Therefore, it happens that sometimes one is not sure what the meaning of education is, whether it is to develop a national identity or to enable individuals to become fully equipped players in a market game.

I mentioned the Minorities Act because I believe that this Act contains an instrument of pacification of nationalism in Serbia. You all know that the Minorities Act introduced institutional protection and that it introduced three new institutions. All the minorities perceive the National Council as a key institution. One can make a lot of complaints about the national councils but I believe that these are the means that help Serbia complete the post-October game share, and represents some kind of the institutional care for the minority elites. But, these councils are also a means for the pacification of nationalism, which deprives it of its explosive potential, of course, under the condition that the question of the funding of the national councils is solved, and it has not been solved yet, and that a law on the election of members into the national councils is passed, since they were not elected by the national minorities but in an indirect way in the assemblies; the creation of representative bodies in a democratic way was not applied at all to the minorities whereas it was applied to the majority only. This is the first fact that influences pacification. Secondly, through the national councils the conflicts that exist in the society are changing their quality and becoming intraethnic instead of interethnic. The third important fact, in my opinion, is not an unrealistic assumption: let us assume that if the character of the conflict is changed very few liberal individuals connect. Such individuals exist within each nation. I believe that their cooperation may lead to the pressure directed at the regulation of ethnic relations on the basis of ethno-cultural justice and not on the basis of the minority elites' corruption and share of power, privileges and well-paid jobs that do not require any serious work (*sine cura*) amongst them.

FRANK ORTON

Ombudsman of Bosnia and Herzegovina, Sarajevo

I would like to use this opportunity to ask a question. One of the concepts discussed here is the rule of law. Much has been said about the rule of law, but I rarely hear anyone elaborating on what exactly the term means. My understanding of the rule of law is that the law should rule rationally and that it should be followed even if it is a bad law, in which case it should be changed.

In that sense the law is important for regional security, as well as for the security of individuals. It is obvious and it is the instrument for the implementation of human rights. I would like to hear other interpretations regarding the rule of law, too.

MIRSAD TOKAČA

War Crimes Commission of Bosnia and Herzegovina, Sarajevo

I would like to reply to previous presentations. I believe, it is very wrong to elaborate the thesis about the conflict between the nations and ethnic conflicts in this region. Everything that we have done in the past years has shown that there were no conflicts amongst the nations or ethnos but rather between dictatorial relations and regimes that happened to rule in particular states at the same time. The second thesis was the one given by Mr Tatalović that the minority nations were mostly endangered through such conflicts amongst the nations. Perhaps this thesis could refer to a wider region that used to be called Yugoslavia. In Bosnia, exactly the contrary happened. I do not have a habit of talking about majorities and minorities because these terms have been used since the international community arrived here. There was no ethnic war, and if a nation was endangered and killed, then it was certainly the majority nation in Bosnia. So, the two expansionist policies, from the left and from the right, initiated the extermination of the majority Bosniak nation. This should be said loud and clear, here and now.

The second thesis is the autonomy of the civil society. This is an important question, and particularly when Bosnia is concerned, as it has had its own state in the last five hundred years, since its kingdom was lost. Namely, Bosnia is specific in many aspects when human rights are concerned. It did not have a state but it did have a developed society. It seems to me that this is an extraordinary Bosnian quality. And Bosnia survived the centuries exactly because of the existence of its society, a strong civil society, that would withdraw into an underground existence under the pressure and threat of repressive regimes, either the occupying or the communist ones, or of any other ideology. The war against Bosnia could not have been a war against a country, but it was actually, according to all its features, a war against Bosnian society and an attempt to kill the essence of that society. The foundations of Bosnian society was a common life and what many refer to today as multi-culture. And these were the strong foundations that were supposed to be destroyed.

When we talk about the rule of law, about security and human rights in post-war Bosnia, we must say that this is a country that is still burying its dead found

in mass graves and a country that desperately needs the rule of law. It is less important what that rule of law is like, it can even be imposed by the intervention of the international community. The international intervention has made several strategic mistakes in Bosnia because it first dealt with the elections instead of tackling the problems of reconciliation in the society and prosecuting war criminals. Instead of eliminating those who caused everything that happened here, they kept organising elections in Bosnia; instead of supporting civil society and affirming human rights, they again returned to the question of elections. So, in Bosnia, we do not have any human rights or security because war criminals are still walking freely in this and in other Bosnian cities. The only rule of law that we have, currently exists partly in the institution of Ombudsman Orton and the Hague Tribunal.

BEĆIR MACIĆ

The Institute for Research of Crimes against Humanity and International Law, Sarajevo

When analysing the question of post-communist countries in the territory of the former Yugoslavia, I believe that it is necessary to respect or bear in mind the context itself or the social reality these countries grew from. First of all, one has to take into consideration the fact that all this was preceded by a period of 40 years of a totalitarian society with almost no democratic culture or democratic tradition. Right after the collapse of communism, the only option that was ready to organise itself and it did organise itself, were the national parties. The introduction of political parties in that plural post-communist society did not in fact represent any innovations. The terms such as "socialist", "democratic" in the title of a party did not mean anything new. On the contrary, certain retrograde ideologies and phenomena were hidden under such terms. We should also add that a question of borders in the territory of the former Yugoslavia was actualized, so that even nowadays some international conflicts regarding the borders exist in this region. National states or their meaning in this region were not elaborated in these societies and in what we are trying to build here in Bosnia and Herzegovina. One should have all this in mind when analysing the countries in the territory of the former Yugoslavia. It is obvious that we will need a lot of time to stop using the syntagm "unfinished state". However, other states have existed for centuries, so that in that respect the societies in the territory of the former Yugoslavia will need a lot of time, too.

There is a paradox in the essence of the first subject. We are talking about such systems that can hardly be called states because they are subject to constant turmoil and in which it is not certain that the law has prevailed over violence. And still, in such volatile times and changes, there have been attempts to present, structure and model externally at least all these populist revolutions and ethnic conflicts we discussed, as well as national states understood as ethnic states, as legal systems. One should not forget that societies have a need for normalisation. And that is a very important point given at the end of the presentation by Professor Vasić. Even if she did not use the term "normalisation", that is how I interpret it. It is not a solution to find a way to reconcile. The reconciliation may only follow the sufficient normalisation of relations. That is how I interpret the discussion of my colleague Domonji, too. So, something that looks like a legal act by its form, that was written as a law, has the main features of a norm applied to citizens in an abstract way. This, by itself, influences the expectations and contributes to the emergence of privileges and voluntary violence as non-legitimate.

The similarities in the legislation of Croatia and Serbia are also an example of this (perhaps in Bosnia and Herzegovina the situation is somewhat different due to the activities of the international community). In the 1990's, in Croatia we had hundreds of chances to regret the complete removal of staff that the nationalistic administration carried out in the legislative system. But what did we actually regret? Which staff? Those who were established in the non-democratic regime that did not respect the rule of law. And yet, the developments during the last 45 years went in the direction of normalisation, if for nothing else than for the economic reasons. There are some conflicts that still exist, perhaps some are latent, and perhaps some will re-emerge. But, there is a need for stabilisation and normalisation too, by the possible use of the means of legal reforms.

As I share the responsibility for defining the subject of this conference, I will offer a part of the answer, which certainly remains well below the level of professional answers, to the question of the meaning of the rule of law. This is a language trick: in our languages we are lucky to have a word law that contains both an objective and a subjective meaning, that refers to one's justified legitimate request as well as to a current system of norms that ensures the answer to that request inter-subjectively. So, when we talk about the rule of law, we actually mean the rule of rights, too.

Srđan Dvornik's discussion has encouraged me to say something at least to those people who strongly advocated the right to political pluralism in the 1980s: the kiss of political pluralism did not turn the state into a prince, but into a frog. So, the events that many of us had not envisaged did happen. Many of us who are sitting in this room tried to do something about it then. It seems that our central question here is the one that Mr Tokača referred to, when he said that there was no conflict of nations but that there was a conflict of dictatorial regimes. The central problem is, as it seems to me, that those "dictatorial" regimes had a licence granted by the multi-party elections' results. In this kind of discussions, we must be aware of the fact that what we hear during this conference is not an average opinion but a minority one. The regimes that initiated the conflict again have strong support from the electorate and this is a fact that we need to be aware of. This is an open question, and I would kindly ask today's presenters to focus on it for a while and answer it because this is the questions which the organisations for the protection of human rights have been trying to solve all this time and they will have to keep trying to do so. These organisations are in fact defending a point of view which is in the minority. We have got democratures, or however we wish to name these regimes, that have had substantial support from their electorates.

There are many problems in the legal systems and in many other areas. Let me refer to what Mr Orton mentioned concerning the problem of the rule of law and the country of law. We are faced with the situation where we have got the laws, that are perhaps bad, but we have also got a certain number of court rulings that cannot be tolerated. Such rulings simply turn the idea of an independent legal system into its own contradiction, they ridicule the system in which the judges are independent to make unfair and partial decisions. We know that in extreme cases we can talk about such states of law like the Third Reich. I certainly do not equate any of the court rulings I referred to with that kind of regime. But I believe that, at least in Croatia, regardless of the existence of laws, there is a problem of court rulings that often ridicule the independence of courts; there is a difference between the rule of a legal state, in which the laws are respected, and the state of law, in which the laws are formulated in such a way that they do defend the basic fundamental human rights.

PAVLE RADIĆ

The Multinational Association of Bosnians and Herzegovinians, Belgrade

Something that Mr Tokača mentioned seems particularly important to me. Namely, there is a frustrating point for everything we have been discussing here, and that cannot be reduced only to the title "the Rule of Law, Regional Security and Human Rights". In other words, there is a moral field that opens up here. Culturologists could perhaps contribute to that field to elaborate our tradition. For whatever we do, politics may norm any kind of value it wishes to norm. It is even possible to reach a consensus and the respect of rules around some inverted values.

However, one of the important questions in this region is a question of identity and a frustration due to identity. In this post-war period, this question is a very painful one. Both culturologists and writers have to offer an answer to it: what is it that creates a prerequisite for us to overcome our traumatised past? I agree that it is not possible to talk about the rule of law if some difficult and painful frustrations remain unresolved and lead to social frustrations. I do not know if I was clear enough, but I believe that a wider aspect of this problem should be contemplated, especially from the field of tradition and culture and what creates these populist blows and frustrates the identities, and only then we would have the norms of law.

SINIŠA TATALOVIĆ

I thank you for this discussion and your questions. I would like to raise a few points in response to the speech of the gentleman from the Commission for War Crimes from Bosnia and Herzegovina, whose right to his own opinion I respect. When I said that minorities were endangered in these wars (and you called it "minority nations"), I supported my thesis with the fact that in all the wars in the Republic of Croatia, Bosnia and Herzegovina, Kosovo and Macedonia it was those who were in a minority in certain war-torn areas who were endangered, regardless of whether they were a majority people or an ethnic minority in the whole state. I come from the Republic of Croatia. One should not forget that the Serbs, who were an ethnic minority in Croatia, endangered the Croats in these areas they controlled, i.e. where the Serbs were in the majority, because they were stronger. In Bosnia and Herzegovina, this can be said for all three "sides". In Kosovo, we now have the same situation that the Kosovo Albanians, who used to be an ethnic minority in a wider state and who were endangered as an ethnic minority, having gained the control of one territory, behave in the same way, endangering the ethnic minorities that continued to live in Kosovo. So, this is what I was referring to and not what you understood from that part of my discussion.

Regarding ethnic conflicts, the nations did not conduct the war. That is why the

nations created the states as the institutions which satisfy their interests and through which they conduct such conflicts. The wars I referred to in the territory of the former Yugoslavia were, unfortunately, ethnic wars because they were motivated by the reasons leading to the politics of the creation of a great national state. So, we talk about the Serbian, the Croatian or some other peoples who in this region have pursued such greater national states projects. I believe that we have understood each other now and that you accept this additional explanation I have given.

RADMILA VASIĆ

I would like to answer to the Ombudsman and explain what I understand under the term 'the rule of law'. In my presentations I usually define the term I later want to operationalise; there is too little time for that, but it is still necessary because at these types of gatherings we often keep coming back to the question of what it actually means. Therefore, instead of this term, the syntagm "the rule of law", I am using the term "liberal-constitutional democracy", and I have often emphasized that in Serbia the syntagm "legal state" is more often used, probably because we are a part of the continental tradition. But, as I deal with the theory of the state and law and teach in the first year study programme at the Faculty of Law in Belgrade, it is also my obligation to explain to my students the difference between these two syntagms.

What do we understand under the term "the rule of law", and why do I believe that it is better to use the expression "the rule of law" than "the legal state"? Because "the legal state" mostly insists on legality, human rights, the subordination of the executive branch of government to the administrative one, and on independent judiciary. But the experience teaches us, and the examples for this are numerous, that purely criminal contents may be hidden under the form of law. This is why the term "the rule of law" represents a step forward or backwards or a step more and requires the so-called meta-legal limitation of the contents of the law that the state will create. This means that human rights and freedoms, and the rights based on them are a pre-state category, that an individual enters a state with these rights and that the state cannot in any way limit or suspend them. In order to have the rule of law in a country it is necessary that those who create law, i.e. the sources of law, are the people who possess what in theory is called an educated mind. This is a mind for reality, for possible specific situations, for a historical context. They should also be educated on such paradigms which the rule of law has been based for over five centuries now. Further interpretation of the law must always determine ratio legis and affirm and support human rights and act on their behalf.

We will understand better what the rule of law is if we show how it is obstruct-

ed in practice, i.e. how it is misused and suppressed. I will try to put it briefly: the current Serbian Constitution does not recognise the right to a constitutional appeal. At this moment, as the Court of the State Community of Serbia and Montenegro has not been established, and even if the Constitutional Charter enables a citizen of Serbia to file a constitutional appeal as the ultimate legal remedy in a case in which he has already exhausted all other remedies to protect his rights, this citizen cannot exercise that right. Of course, the citizens of Serbia also cannot address the European Court for Human Rights until Serbia and Montenegro ratify the European Convention. Even when they do ratify it, the Convention will be valid *pro futuro*. Therefore, the main question is what should be done with the law if its contents are not valid and if it cannot in any way affirm the rule of law.

We have seen such examples in our recent history. The most typical ones are the Law on Information and the Law on Universities that actually wanted to destroy two presumably free thinking professions. When the change of 5 October took place, the criminal law judges, who should have undergone a certain degree of frustration (which I disapprove of as it would have been *ad hoc* and arbitrary), they claimed that they were only applying the law *dura lex sed lex*.

The rule of law between the arbitrary and chaotic approaches and the impeccable respect of law at any cost requires that, in case the laws are invalid and do not correspond to the idea of the rule of law, those who own the rights should then apply the Constitution directly. This is where another manipulation is hidden, as I have already said and written about. From the legal point of view, even the socialist constitutions were not bad. These constitutions were very nice decorative proclamations about human rights. However, it has happened in this remaining Yugoslavia, the third Yugoslavia, and also in Serbia only, that all the rights are guaranteed by the Constitution directly, and then a possibility is given that the implementation of these rights is conditioned and arranged by the law, disqualifying in such a way the rights concerned. Therefore, if there is no political awareness and no political culture and willingness for the rule of law to be really implemented, there are many ways in which the laws can be suppressed and misused. And finally, it is easy to consider as archaic and strict everything that does not help people, and that is why I always advise my students to use Radbruch's formulae saying that there is something that is a legal right and something that is not.

Therefore, we must conclude that a law does not correspond to the current principles of justice, respect of human dignity, human rights and so on, such law cannot be considered a law but, as many in the Antic and Scholastic period stated, it is a distortion and does not fit the term law. This is why I believe that the expression the 'rule of law' will establish itself here. It will become closer and

closer to the people who will refer to it. In our current situation, we can simply describe what the rule of law is not; the fragile and newly created democracies that claim to guarantee the rule of law demonstrate that there is no rule of law in practice, yet.

MILAN PODUNAVAC

It is not my intention to offer any finite answers here. However, I will refer to a few questions that in my opinion are extremely important. Firstly, it seems to me that without reflecting, without being sensitive to these questions that the modern set-up of this area depends both in terms of the two states and the political communities, the process of reconstitution can hardly be successful. This is why it is important for these questions to be always present in the public sphere, in public debates and in the spheres of public and political discourse, even if there are no finite answers to them.

I will start with what for me seemed to have been the most important point in the intervention of Professor Gajo Sekulić. I share all the arguments he presented in his discussion. It is difficult for the post-Yugoslav states to remodel and redefine their collective political identity in a contemporary way, and such new identity would bring them closer to the political idea of Europe. One should not forget that some of these areas, take Serbia for example, have been the focus of resistance to the political idea of Europe throughout a century. Talleyrand in his memoirs says that it took France 50 years after Napoleon to regain its confidence in the republican political institutions. And how long is it going to take us, after these dictatorships, to regain confidence in the institutions, the values of law and everything else a modern state is based on.

Why do I believe that these states are unfinished? Because they are faced with the problems and with structural difficulties to answer all the key imperatives a modern state is based on: an imperative of a collective identity and an imperative of democratic legitimacy. This state is finding it difficult to establish an imperative of the rule of law, and an imperative of a collective identity in a rational way. What is it that a European state is based on that cannot be done here? A modern European state is based on some kind of a compromise. It uses the integration capacities and a pre-political unity of the members of one political community, articulated in political traditions, memories, etc. On the other hand, there is an agreement on the universal principles and universal values. So, it is based on what is constructional and pre-political. These unfinished states and their societies cannot solve this kind of compromise. In my opinion, all post-communist societies in the territory of the former Yugoslavia have been

unable to resolve that kind of compromise, so they have to deprive themselves of the integrative capacity of a pre-political unity of their members, expressed in these national and political traditions. It is because these countries were soaked in wars, crimes, negative heritage, particularly negative effects in the last ten years. This is perhaps most obvious in Serbia. We ask ourselves what the causes are. What was it that the political elites, who had taken power after these deep changes, did not possess? What was lacking was a critical and moral reflection on the meaning of tradition.

Without a critical and moral reflection, it was not possible to make a radical deviation from the old regime. In Serbia, we have had two concurrent, dominant strategies: a pragmatic one that said let us forget what had happened and the legalist one that initially rationalized and justified, in fact, the national political traditions in Serbia. Both these strategies have been insufficient to take Serbia radically away from the old regime. And without a radical break up with the traditions of the old regime, i.e. dictatorship, it is not possible to establish a new political constituency. Let me bring a little optimism into this discussion: I did say that the states were unfinished but I can also accept Nebojša's suggestions that they are unfinishable states. I believe that political formations created in the post-Yugoslav region, must be looked upon in relation to what a modern European state actually is. The formula of a modern political formation is a constitutional state. And what is happening here? What is happening in the Balkans that significantly jeopardises such a modernisation process that has been dominant in Western Europe? There was a certain type of a modernisation process in Western Europe in which a legal state preceded freedom, and freedom preceded democracy. A different process has been unfolding here. What has happened here is that the main result of the post-communist revolutions, post-communist changes, was that all these countries adopted a form of proto-democratic framework, and it is from this proto-democratic framework that all these other important state qualities must be derived because no state can function without them as a stable legal and political order. The problem is that the effects of democracy make political life more dynamic, powerful and lively. However, as professor Vasić said, democracy on the other hand has low effects related to the control mechanisms and setting limits to political power. This cannot be achieved if the law is not the top priority in these states. And the top priority in the territory of the former Yugoslavia is not the law but the ideologies.

Demo-dictatorships or populist dictatorships that were born in the territory of the former Yugoslavia had a democratic core, but, as Nebojša illustrated in his texts about populism, this core was a populist one. This was shown with an example of a populist democracy in Serbia that, from the legal point of view, collapsed into an open dictatorship, and finally into a state of affairs characterized by complete, open violence and lack of order. This plebiscitary appeal that

was thrown onto the populist public kept spending its resources, but in the end it hit the wall as there were no more answers from the political public to such types of political authority, so that it completely imploded. The problem is that a chance given to redefine the political identity of the community, in my opinion, was unfortunately not used. Serbia is perhaps the best example of an unordered society, it is almost a non-order and a non-state that started perpetuating itself caught by surprise by the October change. The collision of the two types of political power structures that culminated in the assassination of Serbia's Prime Minister Zoran Đinđić did show that we really had two forms of political power in Serbia whereas we did not have a stable and legally established political order. In that sense, the absence of the constitutional reconstitution is a proof that Serbia still needs to grasp all the imperatives that should establish it as a modern state and that should constitute it as a legitimate and a democratic state.

2nd Plenary session

Political and Legal Realities of the Post-Yugoslav States and Human Rights

Moderated by Milan Podunavac

Bosnia and Herzegovina in the regional context: political and legal aspects

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The Constitution of Bosnia and Herzegovina is a part of the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: Dayton Peace Agreement), agreed in Dayton on 21 November 1995, and signed in Paris on 14 December 1995. The General Framework Agreement for Peace contains 11 annexes.¹⁸ Annex 4 refers directly to the Constitution, and Annex 3 (Elections), Annex 6 (Human rights), and Annex 7 (Refugees and displaced persons) regulate the constitutional issues.

I will deliberately not elaborate on the questions related to the manner in which the Constitution was passed,¹⁹ because such questions go beyond the

¹⁸ **Annex 1A:** Military Aspects of the Peace Settlement and Appendices to Annex 1A

Annex 1B: Regional Stabilisation

Annex 2: Inter-Entity Boundary Line and Related Issues

Annex 3: Elections

Annex 4: Constitution

Annex 5: Arbitration

Annex 6: Human Rights

Annex 7: Refugees and Displaced Persons

Annex 8: Commission for the Preservation of National Monuments

Annex 9: The Establishment of Bosnia and Herzegovina's Public Corporations

Annex 10: Civilian Implementation of the Peace Settlement

Annex 11: International Police Task Force

¹⁹ **The Constitution which is a precedent in the theory and practice of constitutional law**, given that a constitution is an exclusively internal legal act in a material, formal and procedural sense. The Constitution of Bosnia and Herzegovina is a part, i.e. Annex 4, of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement in further text).

scope of this text. However, the statement remains that the General Framework Agreement, as well as the Constitution, are an expression of a political compromise reached in order to end the war, is obvious from a series of constitutional solutions. However, as one of the objectives of the war against Bosnia and Herzegovina was to dissolve the state of Bosnia and Herzegovina and to impose a violent destruction of its social, political, cultural and ethnic fabric through crimes, genocide and mass breaches of human rights, the General Framework Agreement is permeated with the idea that it is democracy and human rights that are the key factors in the construction of the Bosnian state, as well as the prerequisites of the reconstruction of that fabric and the mechanism which will lead the state of Bosnia and Herzegovina to European integration.

So, the Constitution of Bosnia and Herzegovina is not an internal but an international legal act, as it is a part of a multilateral international agreement. While trying to detect the sources of the constitutional law in Bosnia and Herzegovina, it seems that one very interesting and pretty convincing opinion about it is worth noticing. It states that the Dayton Agreement is a very unusual document from the aspect of international public law. Therefore, a court or arbitration that would try to judge, interpret it or determine its legal nature, or classify it on the basis of the Vienna Convention on Contractual Law, would not call it an international agreement at all because of the way in which it was signed and because of the way in which the signatories obliged themselves to respect it. The representatives of three countries signed it - the Republic of Bosnia and Herzegovina, the Federal Republic of Yugoslavia and the Republic of Croatia, and this was not done in an ad referendum way, i.e. under the condition that the legislative bodies of the signatory countries accept and ratify it later finally and irrevocably. This agreement, in fact some of its annexes, were signed together by the representatives of the three states and the representatives of the entities of Bosnia and Herzegovina. The entities are not the subjects of international law and they accepted the obligations of the international character as if they were states, which they are not. Further on it is claimed that this constitution was imposed nominally on a sovereign country, a member of the United Nations, and that the signatories of the Dayton Agreement signed it under compulsion." - Dr Nurko Pobrić: Constitutional Law, published by "Slovo" Mostar in 2000, pp. 19

"The constitutional scene of Bosnia and Herzegovina looks very unusual. One does not need to go into any deeper analysis to notice that the criteria of "constitution" and "constitutionalism" in a legal state cannot be applied to the situation here. There is no doubt that this situation has very important and long-term consequences in relation to the being of the state, its overall legal order, freedoms and rights of its citizens, their legal protection and the overall social, as well as state and legal processes to follow in Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina was adopted by three institutions - the Chief of State of Bosnia and Herzegovina, of Serbia, and of Croatia, while not one of their Heads is the constitutional institution in their respective countries. It was adopted by the consensus of wills of these three institutions, i.e. it represents a contract. However, no ratification of this contract in the parliaments of the three states concerned was carried out. Therefore, as these institutions represents their states (the President of Serbia represented the Federal Republic of Yugoslavia) and they concluded contracts on behalf of these states, it is obvious that their will (contract) is not based on the legal orders of their countries. Further on, this consensus of the will of the three presidents, analysed from the perspective of the international legal order, cannot be considered legal because it is more than obvious that the international legal order cannot support anyone's individual will only when tackling the constitution of one country. Thus at least two basic rights that the international order guarantees to each country in the world were breached - the sovereignty and the sovereign equality amongst the states" - Dr Ibrahim Festić: "Some Questions of Statehood of Bosnia and Herzegovina", a report presented at the seminar "The Statehood of Bosnia and Herzegovina and the Dayton Peace Agreement" held on 10 April 1998 in Sarajevo, organised by the Faculty of Law of the University of Sarajevo, the American Bar Association / Legal Initiative for Central and Eastern Europe - Sarajevo Branch, and the Law Centre of the Open Society Fund BiH; pp. 138

"The Dayton Agreement is an of the shelf product of the three political parties, as well as of Western European and American diplomacy. Its adoption therefore cannot be related to the idea about state order "from the grass-roots". Therefore, at the very beginning of any discussion, one should reject a possibility that Annex 4 as a constitutional legal act of "national self-determination" is actually considered the Constitution" - Edin Šarčević: The Constitution and Politics, Sarajevo, 1997, pp. 122

The Preamble of the Constitution of Bosnia and Herzegovina and its possible interpretations

This tendency is obvious in the very Preamble of the Constitution.²⁰ It begins with the philosophical background of human rights, about the respect of human dignity, freedom and equality. Given that the Preamble of the Constitution refers to the objectives and principles of the United Nations Charter and to the Universal Declaration on the Protection of Human Rights, it is possible to draw certain parallels here.

The United Nations Charter, that established inter-state relations at the global level, the Universal Declaration that marked the entry of human rights onto the international arena reflecting the experience of fascism and of the Second World War. Fascism is a reference to the mid-twentieth century, directly connected with the Second World War, with the destruction of people on the basis of their ethnic identity, the mass exodus of refugees, and expulsions based on ideological, political, religious convictions. All these phenomena originate from the ideology of totalitarianism, militarism and racist theories developed in the second half of the nineteenth and the first half of the twentieth century.²¹

If one neglects some individual differences all the bearers of racist theories had certain features in common: extreme intolerance for civil democracy on the one hand, and to liberal political philosophy on the other hand. Political liberalism has been challenged mostly in domain it recognizes freedom and equality of citizens. Racist theories a belief that there are higher and lower types of races. The white race was defined as a superior one in comparison the "yellow and black races". According to that logic, the culture created by the white race is a superior culture (European culture) in comparison to the culture and civilisation created by the "yellow and black races". The racist theories envisage the end of history in which a cultural and civilisational mission of the "Aryan Race", and in which that race itself is endangered by mixing with other races. The com-

²⁰ **Relying on** respect of human dignity, freedom and equality, **Dedicated** to peace, justice, tolerance and reconciliation, **Convinced** that democratic institutions and fair procedures are the best instruments for the creation of peaceful relations within a pluralist society, **Wishing** to support the overall well being and economic development by protecting private property and by the development of a market economy, led by the objectives and principles set forth in the United Nations Charter, **dedicated** to the sovereignty and territorial integrity and political independence of Bosnia and Herzegovina in accordance with international law, **determined** to ensure a full respect for international humanitarian law, **inspired** by the Universal Declaration of Human Rights, by the international agreements of civil and political rights, as well as of the economic, social and cultural rights, and by the declaration of the rights of people who belong to ethnic, religious, and language minorities, and by other human rights instruments, **Referring** to the basic principles agreed in Geneva on 8 September 1995 and in New York on 26 September 1995, Bosniaks, Croats and Serbs, as the constituent people (in association with others) and the citizens of Bosnia and Herzegovina set forth the Constitution of Bosnia and Herzegovina hereafter

- "The Constitutions of Bosnia and Herzegovina" - translation to the Bosnian language, Published by the Federal Ministry of Justice, Sarajevo, 1997

²¹ **Refers to** the race theories of Arthur de Gobin, Newston Chamberlain, V.de Lapuge, Oto Ramon and Carl Person.

plet historical mission of the Aryan race would lead to the creation of a new, pure, Aryan type through selection and the cleansing of the inferior burden in society by all possible means; from political means to war, from the use of civil criminal law the use of religion.

History clearly demonstrates that it was a short journey from the espousal of such theories to the waging of war, which was undertaken by the 'Aryan Race' in a campaign to fulfil its historical mission. This was supported by the idea of cleansing and removing the inferior, which paved the way for the creation of concentration camps. At the same time such ideas about superiority led to the justification of dominance, and serving a nation led to the denial of individualism, and a triumph of a victorious force was connected with millions of dead, expelled and miserable people.

That is why the Catalogue of human rights that the United Nations established uses the term of man in its generic sense, free from any circumstantial features related to race, gender, ethnic identity, religion, political ideology, language, ownership, social status, social position, and at that generic level recognises the inherent dignity of each man and the equality amongst human being. Fascism annulled and disputed human dignity itself on the basis of its ideological features and the consequences of its actions. The dignity of the followers of fascism is annulled by the fact that they are reduced to machines that blindly execute the will and implement the 'Aryan Race's' mission. The dignity of victims is annulled by the fact that they were reduced to a worthless burden that should be physically disposed of.

The philosophical concept of the catalogue of human rights promotes the dignity of human beings as a feature they are born with, and that should be recognised and protected under all conditions and under any circumstances. Thus human beings not only have the right to life, but also the right to a dignified life in which they will be able to, liberated from fear, poverty, existential uncertainty, in peace, realize the fullness of their existence. Dignity should be preserved in all interactions between government institutions and individuals.

Human dignity is protected by the prohibition of discrimination based on any of the above mentioned features; the prohibition of torture, inhumane and humiliating treatment and punishment, the prohibition of slavery and of such relations that are similar to slavery, the trafficking of slaves, rights in criminal court procedures, minimum standards regarding the treatment of prisoners, the set of rules about medical ethics. In other words, the whole concept of the catalogue of human rights is interwoven with the idea of the protection of personal dignity. The recognition of the dignity of each person is a philosophical expression of humanizing relations between people on one hand, and of the individual-state relationship on the other.

If we ponder over the meaning of freedom for a while, then we can say that the whole history of philosophy is imbued with the idea of freedom as the highest human value. The idea of freedom is a measure of all things. From Greek philosophy to the present day, hardly a single philosophical or political theory was without a definition of the concept of freedom.

The idea of freedom found its philosophical expression in the concept of the Catalogue of human rights as a concept, which encompasses man, people and states. The catalogue of human rights and basic liberties broadly encompasses this very subtle and sensitive point of human existence. The idea of a free individual, and of a free people was directly or indirectly referred to in almost all international documents dealing with human rights issues, sometimes as a reference to direct protection and sometimes as a prerequisite of realisation of other rights.

According to the Catalogue of human rights, a free individual has: personal freedom (that can be limited only under exceptional circumstances based on law), freedom of movement and choice of place for living, freedom to leave any country, including his or her own, freedom of speech, thought, choice of identity and religion, freedom to marry, freedom to his or her intimacy, or freedom from unauthorised interference into his or her private life, freedom to associate with other(s) and gather peacefully, political freedom (freedom of choice of political identity, freedom to elect political representatives and freedom to be elected in political bodies), freedom from slavery, inhuman and inhumane treatment, freedom from social and economic poverty, intellectual and artistic freedom, freedom to participate in cultural life, freedom to decide on one's life by oneself.

The freedom of a people is expressed in their freedom to, independently and without foreign domination, decide about their model of political and economic order, free use of natural and economic resources, freedom of their own cultural expression, free and equal participation in international exchange and use of scientific, artistic and cultural wealth of the humankind.

Some of these liberties fall outside the legal realm of human rights. However, in the philosophical dimension of the concept of the catalogue of human rights they are given an important place. Even if they do not have a legal possibility to be implemented and protected, they do possess a strong humanistic and ethical power. By using their moral strength, intensified by the authority of the international community, they may exercise pressure in order to change a particular situation positively.

The Constitution of Bosnia and Herzegovina was passed as part of the effort to end the war that resembled the Second World War in its elements of genocide, crime, mass breaches of human rights and mass expulsions of refugees. The Preamble of the Constitution of Bosnia and Herzegovina talks about the terms of human dignity, freedom, equality, peace, justice, tolerance, reconciliation.

Democratic governmental institutions are linked to the state, as well as fair trials, peaceful relations within a pluralist society, general welfare, economic development, sovereignty, territorial integrity, and political independence. The international documents this Preamble refers to are the UN Charter, the Universal Declaration, the international treaties on political, economic, social and cultural rights and the Declaration of the rights of persons who belong to national or ethnic, religious and linguistic minorities, as well as to other human rights instruments.

From the Preamble of the Constitution, from the human rights instruments it refers to, from the terms that should be understood in the fullness of their meanings, one can read the intention to create a legal framework for a state with sovereignty, territorial integrity and political independence, based on democratic principles. Civil, political, economic, cultural and social human rights should be respected in it.

Political rights

In the Catalogue of human rights listed by the Constitution of Bosnia and Herzegovina a complete list of political rights has not been given. However, given the international instruments built into the Constitution of Bosnia and Herzegovina, the list would look like this:

- the rights that include freedom of thought, consciousness and religion,²²
 - the freedom of expression and press,²³
 - active and passive electoral rights,²⁴
 - the right to democratic elections and political representatives
- all these rights should be understood in accordance with the principle

²² **The United Nations Universal Declaration of Human Rights, Article 18** "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

ICCPR (International Covenant on Civil and Political Rights), Article 18: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.."

2. "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The European Convention, Article 9, Paragraph 1: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

²³ **The Universal Declaration, Article 19:** "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

of equality, or prohibition of discrimination, as defined by Article II, 4 of the Constitution of Bosnia and Herzegovina in accordance with the international instruments dealing with human rights.²⁵ "All persons in Bosnia and Herzegovina have the right to enjoy the rights and liberties set forth in this Article or in the international agreements listed in Annex I of this Constitution. This right is guaranteed to all persons in Bosnia and Herzegovina without discrimination on any basis such as gender, race, colour, language, religion, political and other opinion, national or social background, links with a national minority, property, birth or other status".²⁶

ICCPR, Article 19: "1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The European Convention, Article 10: "Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

²⁴ **Active and passive electoral rights are connected** to the right of free expression of one's political will at periodic democratic, general, equal and secret elections.

The Universal Declaration, Article 21:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. "

ICCPR, Article 25: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country."

The European Convention, Protocol 1, Article 3: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

²⁵ **The Universal Declaration, Article 1:** "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

ICCPR; Introduction: "Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."

The Constitution of Bosnia and Herzegovina thus confirms the thesis about the interdependence of democracy and human rights; the relationship in which democracy is seen as a human right and at the same time it is only a democratic state that can ensure the respect of human rights. A nation, that consists of all its citizens regardless of any of these differences, as a bearer of sovereignty, has got the right to political self-determination, to a free expression of political will. The notion of democracy is directly linked with the idea of sovereignty and the idea of a freely expressed political will. Democracy is a form of political authority in which people possess a real possibility for undisturbed expressions of their free political will, that is an inseparable part of human rights. The political will of the majority of citizens is realised in parliaments that have legislative authority. Therefore active and passive electoral rights emerge as classical civil political rights. These are the rights to express one's political will at periodic democratic, general, equal and secret elections. This means that the citizens, under the circumstances of general equality, i.e. regardless of ethnicity, religion, gender, of political or other determination or status, have the right to elect and be elected into electoral political bodies. Political rights guarantee a possibility to the citizens to participate in the governance of public affairs, both directly and indirectly through their freely elected representatives and to be recruited into public services under general and equal terms.

Annex 3 of the General Framework Agreement of Peace in Bosnia and Herzegovina sets forth the intention that free, fair and democratic elections be the basis that will ensure democratic objectives in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and Republika Srpska, in accordance with the relevant OSCE (Organisation for Security for Co-operation in Europe) documents. In this sense the parties (BiH, FBiH, RS) are responsible for ensuring that free, fair and democratic elections are held in politically neutral surroundings, that the right of a secret ballot without fear and pressure is protected, to ensure the freedom of press, to allow and reinforce the freedom of association (including the political parties) and the freedom of movement. The parties also undertake to apply the document adopted at the Second meeting of the Conference for Security and Co-operation in Europe, held in Copenhagen in 1990, and in particular the paragraphs 7 and 8, that state the following:²⁷

Article 26: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The European Convention, Article 14: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

²⁶ **The Constitution of Bosnia and Herzegovina, Article II, Point 4:** Non-discrimination, Federal Ministry of Justice, Sarajevo 1997.

- (7) In order to ensure that the will of the people is the basis of the authority of power, the member states will:
- (7.1) organise free elections in reasonable intervals, as determined by the law,
 - (7.2) allow that all seats in at least one house of the national legislative body are subject to free choice expressed through the people's votes,
 - (7.3) guarantee a general and equal right of voting to all citizens of age,
 - (7.4) provide for secret voting, or voting based on an appropriate procedure of free voting, as well as that the votes are counted and publicised fairly, and that the official results are published
 - (7.5) respect the right of the citizens to be elected to political, i.e. public offices, individually or as representatives of political parties or organisations, with no discrimination,
 - (7.6) respect the right of individuals and groups to establish their political parties or other political organisations freely, as well as to ensure that necessary legal guarantees are granted to such political parties or organisations so that they can compete on the basis of equal treatment given to them by the law and authorities,
 - (7.7) ensure that the law and public policy function in a way that ensures that political campaigns are run in fair and free surroundings in which no administrative measures, violence or fear prevent the parties and candidates from expressing their attitudes and qualifications freely, i.e. to ensure that voters are familiar with their attitudes and discuss them, and that they vote freely without a fear of revenge,
 - (7.8) ensure that no legal or administrative obstacles block free access to the media in a way which is non-discriminatory in relation to all political groups and individuals who wish to participate in the electoral process
 - (7.9) ensure that the candidates who receive a sufficient number of votes prescribed by the law are properly included into their posts and that they carry out these functions until the end of their mandate or throughout the envisaged duration of the post in a way regulated by the law and in accordance with the democratic parliamentary constitutional procedure.
- (8) The member states believe that the presence of observers, both foreign and local, may enhance the electoral process in the countries where the elections are carried out. Thus inviting all other OSCE member states, as well as certain private institutions and organisations that may be interested, to observe the national elections process

²⁷ **Annex 3: Agreement on Elections**, Introduction and Article 1, Point 1 and Point 3, according to the English version published by the Office of the High Representative (OHR): The General Framework Agreement on Peace in Bosnia and Herzegovina, http://www.ohr.int/dpa/default.asp?content_id=371.

The final document from the OSCE meeting on the human dimension of OSCE, held in Copenhagen, paragraphs 7 and 8, The Rights of Man, conference documents, Prometej, Belgrade 1991.

to an extent allowed by the law. They will also try to facilitate simpler and easier access to the electoral process organised at levels lower than the national one. Such observers would oblige themselves not to interfere in the electoral process.

Consequently, the fact is that a citizen, a national of Bosnia and Herzegovina is granted political rights and liberties, regardless of the entity he or she lives in, under no discrimination based on anything. The state and both its entities are obliged to ensure that their rights are enjoyed and protected.

These provisions are in collision with the constitutional provisions that refer to Article IV, Paragraph 1 (about electing members of the House of Peoples) and to Article V Paragraph 1 (about electing members of the Presidium of Bosnia and Herzegovina). According to the Constitutional provision ²⁸"The House of Peoples consists of 15 delegates, of which two thirds come from the Federation, including 5 Croats and 5 Bosniaks, and one third from Republika Srpska, including 5 Serbs". Such provisions about the structure of the House of Peoples clearly show that Croats, Serbs, and Bosniaks are privileged ethnic groups, and that members of other ethnic groups are not given a chance to be politically represented and are therefore discriminated against on the basis of their ethnic identity. When providing for a structure of both parliament houses, the House of Representatives and the House of Peoples, the Constitution recognizes only Bosniak, Croatian, and Serbian ethnic interests as legitimate political ones, while all others are excluded.

The next form of discrimination, now with reference to members of the same ethnic group, is based on the territorial representation. According to the international documents, the protection of ethnic interests refers to the protection of language, alphabet, culture and religion. One can therefore assume that this interest is the same regardless of the entity where a member of the ethnic group lives. The

²⁸ **Article IV, Paragraph 3, Point (b):** "Each chamber shall by majority vote adopt its internal rules and select from its members one Serb, one Bosniac, and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected."

"(e) A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb Delegates selected in accordance with paragraph 1(a) above. Such a proposed decision shall require for approval in the House of Peoples a majority of the Bosniac, of the Croat, and of the Serb Delegates present and voting.

(f) When a majority of the Bosniac, of the Croat, or of the Serb Delegates objects to the invocation of paragraph (e), the Chair of the House of Peoples shall immediately convene a Joint Commission comprising three Delegates, one each selected by the Bosniac, by the Croat, and by the Serb Delegates, to resolve the issue. If the Commission fails to do so within five days, the matter will be referred to the Constitutional Court, which shall in an expedited process review it for procedural regularity.

(g) The House of Peoples may be dissolved by the Presidency or by the House itself, provided that the House's decision to dissolve is approved by a majority that includes the majority of Delegates from at least two of the Bosniac, Croat, or Serb peoples. The House of Peoples elected in the first elections after the entry into force of this Constitution may not, however, be dissolved."

question is why ethnic Serbs from Republika Srpska are privileged in comparison with the Serbs from the Federation and vice versa, why the Bosniaks and Croats from the Federation are privileged in comparison with the Bosniaks and Croats from Republika Srpska. It should be assumed that their vital interest is the same regardless of the part of Bosnia and Herzegovina they live in.

Exclusively ethnic political representation led to the disappearance of a political citizen in the pluralism of his/her identities and political interests. Identity does not exhaust itself in one's ethnic identity only. It is also defined by gender, social background and status, region, political convictions, education, profession, i.e. all these and other elements that define a specific individual civil physiognomy. According to the features of the international instruments for human rights incorporated into the Constitution of Bosnia and Herzegovina, it is mostly individual rights that are protected. These rights refer to all citizens who live under the jurisdiction of Bosnia and Herzegovina.²⁹ Even if the Preamble of the Constitution states that "Bosniaks, Serbs and Croats as constituent peoples (in association with others) and the citizens of Bosnia and Herzegovina", other Constitutional provisions address only Bosniaks, Serbs and Croats, taking into account their collective rights and collective identities.

The Constitution entitles the Presidium of Bosnia and Herzegovina to exercise an executive-political function of a Head of State³⁰. Article V defined: "The Presidium of Bosnia and Herzegovina consists of three members: one Bosniak and one Croat, both directly elected in the territory of the Federation, and one Serb, directly elected from the territory of Republika Srpska." By strictly defining the ethnic identity of the Presidium members, the Constitution is directly discriminating against citizens from other ethnic groups, thereby limiting their passive electoral right, i.e. the right of all citizens to be granted the availability of all political electoral functions in the state.

On the other hand, Paragraph 1, Point a) states that "the Presidium members are directly elected in each entity (so that each voter votes for one seat in the Presidium only), in accordance with the Electoral law passed by the

²⁹ **Except the European** Charter for Regional Languages and the Languages of Minorities of 1992, and the Framework Convention for the Protection of National Minorities of 1994, that are integral parts of the Constitution.

³⁰ **The Constitution of Bosnia and Herzegovina, Article V Paragraph 3**; Federal Ministry of Justice, Sarajevo 1997, "The Presidency shall have responsibility for:

- a. Conducting the foreign policy of Bosnia and Herzegovina.
- b. Appointing ambassadors and other international representatives of Bosnia and Herzegovina, no more than two-thirds of whom may be selected from the territory of the Federation.
- c. Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.
- d. Negotiating, denouncing, and, with the consent of the Parliamentary Assembly, ratifying treaties of Bosnia and Herzegovina.

Parliamentary Assembly...". This highlights the fact that ethnic elections are indirectly established here. There is an assumption that members of one ethnic group will vote for a Presidium member of the same ethnic identity. Ethnic elections are in contradiction with the request for general, equal rights of each citizen to vote, moreover because Bosnia and Herzegovina is a multi-ethnic state in which, besides Bosniaks, Croats, and Serbs, other ethnic groups live, too. As the Presidium is the body with jurisdiction over the whole territory of Bosnia and Herzegovina, there is a question of its full legitimacy on the one hand, and the question of limited active and passive electoral rights on the other hand.

Conclusion

The Catalogue of human rights presented in the Constitution of Bosnia and Herzegovina, with special emphasis on political rights, may channel further discussion and analyses into several directions:

the research and analysis of those normative parts of the Constitutions that are in direct contradiction with the principles of equality and non-discrimination of citizens on any basis,

toward possibilities of efficient legal protection of these rights,

toward an analysis of the actual state of affairs regarding human rights, the extent to which these are breached at both state and entity levels, and the way of implementation of human rights in comparison with the standards provided for by the Constitution,

toward an analysis of the actual political, economic and social context in which these rights should be enjoyed and protected, and the challenges their implementation is faced with,

toward an analysis of operations of both international and local institutions dealing with human rights as their main concern, or of those whose operation only affects the area of human rights.

e. Executing decisions of the Parliamentary Assembly.

f. Proposing, upon the recommendation of the Council of Ministers, an annual budget to the Parliamentary Assembly.

g. Reporting as requested, but not less than annually, to the Parliamentary Assembly on expenditures by the Presidency.

h. Coordinating as necessary with international and nongovernmental organizations in Bosnia and Herzegovina.

i. Performing such other functions as may be necessary to carry out its duties, as may be assigned to it by the Parliamentary Assembly, or as may be agreed by the Entities."

However, this would lead to the opening of new subjects that would not fit into this short presentation. Therefore one may be satisfied with the statement given at the opening of this text, that the Constitution of Bosnia and Herzegovina, as well as the constitutions of its entities, are the result of political compromise. The compromise is incorporated into all these constitutions. At the same time, the compromise represents a beginning of the process with powerful levers in the form of human rights instruments. With the help of human rights ideology that promotes human dignity, recognises the right to difference - ethnic, religious, gender, cultural, political, language and any other difference amongst people - while at the same time recognising the equal legal treatment of all of citizens and the prohibition of their discrimination, a possibility opens for a democratic development of Bosnia and Herzegovina. The efficient protection of human rights requires an efficient state that operates in its whole territory within the internationally recognized borders, with all the instruments of authority necessary for that state to ensure the protection of its citizens.

As a process is always dynamic and goes through different phases from the moment when it is started, the human rights instruments built into the constitutions give possibilities to the local political forces, as well as to the international community that operates in Bosnia and Herzegovina, to use legal means, in accordance with the Constitution, to develop a democratic state with the rule of law, human rights and freedom for all its citizens in the whole territory. A stable, democratic state is able to create prerequisites for the realization of economic, social and cultural rights and to advance the living standard of its citizens. Therefore the extensive catalogue of human rights may at this moment provoke some criticism and show how distant the objective of the human rights' actual standard is, but, if considered as a part of a dynamic process, this may be a mechanism leading to that objective.

Serbia: A Constant Source of Instability in the Balkans

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The global changes brought the question of security order in the Balkans in a whole new context. The wars in the last decade pointed out to the main security parameters without which it is not possible to complete the security situation in the Balkans. The starting point for the new security architecture is the completion of the process of the dissolution of Yugoslavia. The Badinter's Commission defined the principles of that process and solved some main dilemmas raised by the Constitution of 1974 which stated that the republics and not the peoples had the right to self-determination. The Constitution of 1974 was a trauma for the Serbian elite because it was in contradiction with their perception of Yugoslavia as a unitarian state. The Serbian elites have relied on a retrograde approach to the state, or to the constitutionalism of the 19th and not of the 21st century. That is how they see the Constitution, i.e. the order of Yugoslavia as well as Serbia nowadays. The attempt of the recentralisation of Yugoslavia failed, and so did the implementation of the project of Greater Serbia. However, an illusion that it is still possible to implement this project, i.e. that the unification of Serbian lands will be possible once the international constellation changes, still significantly affects the security of the region.

Even though the project was defeated, Milosević's logic has, unfortunately, won. The multi-ethnic and multi-cultural tissue of Bosnia has been destroyed, and its recovery will take decades. It won because of the slow reaction of the international community and because of its incomprehension of the logic of Yugoslavia's dissolution. In addition to that, all the solutions that the international community has imposed are still burdened with the fact that the process of the dissolution of Yugoslavia has not been completed yet, as well as by the existence of Republika Srpska, legitimizing the war crimes and genocide committed against the Bosniaks. Republika Srpska remains the key and the model of the solution of a strategic state in the social and cultural map of the Balkans.

The international community stopped the war in the Balkans by two NATO-led interventions, i.e. one in Bosnia and one in Kosovo, and the stabilization process started through the two peace agreements: the Dayton Agreement and the Security Council's Resolution number 1244. Due to its lack of readiness to engage itself fully in this region under the given circumstances, but also due to the character of the process itself, the international community has stopped the

wars in these areas and left the process of regional stabilization open through international engagement (protectorates in Bosnia and Kosovo), as well as through the constant pressure it has exercised over Serbia and Croatia. Both these documents are sources of frustration because they have offered half-solutions for Bosnia and Kosovo respectively. The names of the newly created countries in the region show that there has been a process here which has not been completed yet: The Former-Yugoslav Republic of Macedonia, the State Union of Serbia and Montenegro, and Kosovo - according to UN Resolution 1244, a part of the Federal Republic of Yugoslavia (so that after the FR Yugoslavia ceased to exist a legitimate question about the status of Kosovo has been raised). Furthermore, Republika Srpska still behaves like an independent state. In this sense a recent statement made by Richard Holbrooke about "the "Nazi" character of the SDS" is encouraging. In the US the Dayton Agreement is more and more looked upon as a process and not a definitive solution. This primarily refers to the establishment of Bosnia and Herzegovina as one state and to the dissolution of its entities.

Serbia is still in the centre of this process as a country that started the war and the fact that it refuses to accept these peace agreements, constantly generates crisis, tension and a lack of confidence in the region. The pretensions of the Serbian elite to be the leader in the region are still present. Moreover, the Serbian elite keep heightening these pretensions. After the October changes of 2000, they had support for this from one part of the international community. The State Union of Serbia and Montenegro, and the Federal Republic of Yugoslavia (FRY) before, is in fact an area that does not function as a unified state framework. There are three independent entities there that, due to internal instability and external factors, have not been established as independent (sovereign) communities.

The changes of October 2000 did not cause the discontinuity of the Milošević's regime. The main players of his regime succeeded in preserving their positions and interest networks, as well as to prevent the dismantling of his institutions, i.e. of the police and military forces and of the judicial system in particular. It was only after Prime Minister Đinđić was assassinated that the first steps were made towards a solution to the problem of organized crime, as well as the reform of the military and police forces, and, to a certain extent, of the judicial system. The patriotic block has remained dominant in the political scene in Serbia and it keeps resisting all changes in the military and police forces, as well as in the educational and economic systems, and in particular in the privatization process. This political constellation is followed by the dominant cultural and intellectual elite whose activities have been reduced to the interpretation of the last decade through relativisation and the de-ethnocentrification of crime, as well as to the maintenance of the illusion that the Serbian defeat will be revised shortly and that time will ensure the unification of the Serbian lands.

The politics of Slobodan Milošević has wasted Serbia's potential for change. This wasted Serbia lives today under the burden of its own nationalism: the implementation of the anachronistic national project has not gathered the Serbs into a unified state framework. Moreover, the state borders of Serbia itself have not been defined yet. Serbian nationalism is deeply rooted and it successfully adjusts itself to new situations because it is essentially an ideology based on history. Serbian nationalism, after all its defeats and frustrations, has now turned to the ethnocentrification of the Serbian state, and it is still dangerous for the region given the numerous minorities that live in Serbia. The assassination of the Prime Minister Zoran Đinđić was an attempt to revitalize the project, but that attempt has failed.

Today Serbian nationalism within Serbia is reflected through a discussion about the new Constitution, including the discussion about the autonomy of Vojvodina. Nationalists and the Serbian national movement "Svetozar Miletić" in particular, claim that the current Vojvodina Assembly "does not have a democratic legitimacy" because "it openly acts against the Serbian state". They fear that the new Constitution will turn Vojvodina into a state of national minorities, and that the introduction of the mechanism of a two-house assembly, i.e. the Council of National Minorities, will put the Serbian representatives into the position of a minority who will be outvoted by the other minorities. The followers of the Miletić Movement see this solution as an imposed one, created by the Constitution of 1974.

On the other hand, the autonomists are emphasizing Vojvodina's specific identity and fight to prevent the degradation of Vojvodina's cities. They are against assimilation and are fighting for the principle of positive discrimination towards the national minorities that are less numerous, which means their mandatory participation in the local authorities, that would be based on the principle of citizenship as opposed to the concept of a collectivist understanding of the state of the leading nation. Such a concept always imposes the idea of the "unity" of parliamentarianism and centralism, an undemocratic political culture with constantly present totalitarian tensions.

Apart from these two main divisions within the Serbian corpus, there are intensive activities of the so called patriotic block in Vojvodina, too. The Serbian Orthodox Church (SPC) decided to proclaim the Fruška Gora a sacred hill. This essentially completes the process of the Serbianisation of Vojvodina because, as the nationalists say, "the remembrance of Vojvodina naturally flows into a Serbian remembrance" as "the Serbian consciousness has always been most powerful there". A mass desecration of the catholic cemetery in Novi Sad was an obvious illustration of the underlying process of ethnocentrification in Vojvodina.

The Serbian elite are again proving itself incapable of making its mind up about the question of the concept of the state. Returning to centralism and Unitarianism, it contains the same component of dissolution, as was the case with the SFRY. The refusal of Serbia at the beginning of the XXI century to establish itself as a complex state, in which Vojvodina would be granted its autonomy, potentially means further tensions about this question, with uncertain consequences for Serbia itself. This inevitably radicalizes minorities, as well as the Serbs.

The unsolved Kosovo question is still generating Serbian populism and nationalism, even if with the attempt to recentralize Yugoslavia and the implementation of the Greater Serbia project, Kosovo has had the opportunity to highlight the Serbian question. In the background of the Greater Serbia project there was a plan to move the Serbian state north-west and withdraw from Kosovo as the latter did not fit the concept of a Serbian ethnic state due to the demographic explosion of the Albanians there. The current manipulation of the Kosovo question, on the one hand, has that background, whereas, on the other hand, it illustrates the irrationality and the archaic nature of the Kosovo myth in the Serbian consciousness. The obvious determination of the international community to speed up the solution of the status of Kosovo, given the current reality (a de facto independent Kosovo), exposes more and more the actual intentions of Belgrade, which speaks about the compensation for Kosovo so that Serbia does not come out the loser not only concerning Kosovo, but also Bosnia and the Adriatic Sea.

All these uncertainties are still the key to security in the Balkans. The uncertain future of Serbia, and of the Balkans, lies in the fact that in most of the newly established countries in the territory of the former Yugoslavia the dominant policies are nationalistic and these are, ipso facto, xenophobic and intolerant. Such ethnic states have not shown yet that they can elevate themselves to the level of a modern national state that guarantees equal rights to all its minorities. Parallel to that, Serbia is still an unfinished state and incapable of facing its immediate past. If we look at the Balkans as a microcosm, it must be concluded that the foundations have not been made that would guarantee the stability of the region.

The only way out for Serbia is its Europeanization, i.e. reaching a consensus about the reforms and the accession to the European Union. Such consensus does not yet exist, and an attempt to reach it ended with a sniper's bullet that killed the Prime Minister. The reform of Serbia's military forces and its joining the Partnership for Peace is a sine qua non. It will only be through the demilitarization of Serbia that its democratization will become possible.

Unfinished business

National Security and Parliamentary Democracy

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Introduction

National security is one of the most complex areas of operation of contemporary states. The international surroundings in which these operate is characterized by the relationship of co-operation, conflict, various interpretations of international law, etc. On the other hand, the contemporary states are obliged to ensure their own survival as well as the survival of their citizens through different instruments. They do this by modeling their concepts of national security. The contents of a national security system are a political concept, in which the objectives of the defence, protection and security of the community are contained. The organization of that concept very often turns itself into a struggle for power in a political community. The instruments of national security become a threat under such circumstances, and not a guarantee of security.

In the states of South-Eastern Europe, after the dissolution of the totalitarian regimes, the security sector became one of the most important parts of the transition process. It has not only changed its organizational form, but the contents and scope of its operation, too. The system, apart from securing the state from an external military aggression, had to preserve the internal non-democratic order. Its reform has proven to be very complex, in particular in those states that dissolved or in those which disappeared through war. Different agencies of the national security system have, during the war and right after it, achieved enormous political and financial power, to the extent that they could act towards preventing or slowing down the attempts aimed at reforming them. The slowness of reforms jeopardized at the same time a democratic tradition and individual security through breaches of human rights and freedoms of citizens. The reform of a security sector is an imperative and a prerequisite of a democratic transition. Certain moves were made, but they were insufficient, so that we can now talk about unfinished business.

National Security and Constitutional Order

Regarding the questions of national security and its relationship to the freedoms of the individual, there is often a theory that these are, in their very nature, the values that contradict each other. Their relationship is described by giving with one hand and taking with the other: by increasing one, the second value is reduced. The national security agencies insist on national interests and they are not too much interested in the consequences of the national interests' operation.

The statement that there is a polarity between the freedoms of individuals, human rights and national security is, in fact, wrong. If the action undertaken in the name of national security brings about breaches of human rights and guaranteed freedoms as its result, then its justification cannot be found in weighing the needs for security against these values. It is not possible to measure the security of a state by human rights breaches. In both cases there is a loss at both sides. Insisting on the "needs" of national security leads us towards an authoritarian or totalitarian concept of national security in which the demands for the implementation of national security will always prevail over individual freedoms and rights. The concept of national security, therefore, is at the very centre of democracy and legitimacy of the order built by any state.

The new states in the territory of the former SFRY, established by violence in the war, continued to practise that violence during peace time, certainly in a different way and mostly against "the new" enemies, media and particular social groups. It is therefore necessary to limit such countries in the application of instruments of violence that are at their disposal.

Buzan believes that a state may become a threat to individual security: by its legal system, political actions, struggle for power control, and realization of national security (where insisting on a large army and expensive military may jeopardize the decent living standards of citizens of a citizen).

A state may jeopardize individual security while ensuring national security. However, it can also jeopardize its own security in that way. If a state applies incorrect measures and mechanisms to ensure national security, then the order itself will be challenged. At the same time, it is the state itself which is most responsible for ensuring national security so that it is implied that what the authorities are doing in that area is right and unquestionable. Certainly, the ruling structures will always present their actions in that way. It often happens that little or no care is taken about human rights and freedoms of individuals in a political community. By breaching the rights and freedoms of individuals not only their freedom is jeopardized but also that of the overall community, as well as

the values it was built on. Furthermore, the ruling structures participate in modeling and presenting dangers that a community is threatened with. Thus a vacuum is filled, in which there is a lot of room for wrong judgments or wrong interpretations of certain processes and actions. The state authority and governing structures of the national security system tend to avoid giving certain information and explanation to the public, especially when they themselves make mistakes. It can safely be said that the most common mistakes in the functioning of the national security system occurs when the security services apply their special measures.

National Security and Political Practice

Any contemporary society should reach a consensus around the term and contents of its national security, and then implement security through its political practice. If there is no consensus about the definition, or there is no clear definition of what the term itself contains, the possibility of manipulation through political practice increases, i.e. the instruments are used that are entirely inappropriate to the context.

Most of the countries of South-Eastern Europe have been very slow in giving a clear description of the national security area. Five or more years after the military violence ended, a possibility was open for partial judgments to be given about the events and processes which endanger national security. It very often happened that public opinion was manipulated while public support was claimed for undertaking certain measures that very often were not proportionate to the nature of danger. In such situations national security was really jeopardized and human rights and freedoms of both the individual and groups were breached.

The state structures, apart from the instruments ensuring national security, tend to have "intellectual support" at their disposal for the actions they undertake. In Western democracies where there is a developed public, the scientific public has two roles: first as a corrective factor in case the state undertakes something that is not in accordance with democratic practice, and second as intellectual support to political practice.

In transitional states their public has not yet become a corrective of political practice, and therefore their academic communities mostly have another role. It should be emphasized that their academic communities in the area of security studies is very small and weak in all the states of the former SFRY. Its members were mostly recruited from various parts of the former national security system that primarily advocate the interests of the system itself and not those of the community. In addition to this, the state structures develop their expert community within the state administration. It also tries to convince the public

of the necessity of the interests and measures undertaken by the government and its national security agencies.

However, the state structures of transitional states tend to "control" their scientific and expert public whose function should mostly be directed towards the support of the political practice. The political function of security is reflected in creating the powerful state structure or some of its parts, resulting in the ignoring of a normal, democratic procedure. "To cultivate" enemies is the main "job" of the state structures. This results in the intensification of political supervision of democratic processes and of citizen rights. It seems that it is very difficult for security institutions to stop their old practice when they were a part of the system of internal political repression.

This is best seen in the following:

1. The inauguration of political suitability (the governing structures define what is suitable)
2. Expression of too much power (state structures through the police and secret services)
3. Ruling through arbitration in the area of national security (state structures define with no explanation what is "best" for the state and its citizens)
4. The introduction of much secrecy into the operation of national security system (secrecy of operation, no disclosure of information)
5. The Favouring of national security in relation to other fields.

In these forms, the national security and the institutions established for its implementation represent a threat not only to the state and its citizens but to the overall democratic life and constitutional order in a country. The institutions become more important than order itself and the political practice is directed towards the "take over" of these institutions.

National Security at the Centre of Protection of Democratic Values

When a question is categorized as one concerning the national security, this instantly provokes an intensified caution and attention among the politicians, state administrators, journalists and wider public. In the opinion of many people, as well as in the wider public, national security and secrecy are almost identical terms, or two terms that are often linked. Even if there are some similarities, it is wrong to say that these terms are synonyms. A common stereotype is the identification of the security services with the area of national security. In other words, these occur as the only institutions or instruments in charge of ensuring national security.

Under such circumstances, one of the essential questions is asked: do the services do certain things on their own initiative or have they undertaken their actions on the basis of verbal suggestions received from state officials? Which instruments can be used to prevent the influence of politics on the work of the security services (when this happens, it usually is a matter of the abuse of authority.)? In other words, which instruments can be used to prevent too much concentration of power in the security services and the misuse of authority? Once security services become an independent centre of power, it cannot be controlled by the ministers in charge or the state administrative bodies and there is a serious threat then to society and national security.

Any contemporary democratic society is faced with the problem of supervision over the work of services that act within the national security system. Such services are entitled by law to use special measures and instruments to collect data. They are also entitled to work secretly. It is necessary to emphasize that supervision over the work of the security services cannot be reduced to external or internal control only. The key point for achieving more efficient control of each service is a clear definition of its mandate and of the tasks it has to accomplish. If in a state there is no public document which defines the tasks and the scope of work of the security services, then they are exposed to all forms of misuse we have written about in this paper. Apart from that, what are the elements on the basis of which internal or external supervision can be organized, unless there is a written record defining what is allowed and what is not? Retroactive defining and deciding if the services abused their authority usually does not lead to qualitative changes towards a different operation of the services.

Under such circumstances the security services gain huge power and may become a serious threat to democratic transition and political development. Numerous examples from the political practice of transitional states point out that some services have interfered with issues that should not have been their responsibility and that they were not in charge of. In addition to that, the political structures are trying to control such centres of power, but not by using the means of parliamentary or expert control. This is reflected in the request that the leading positions in security services are also subject to party appointments. All this leads to a continuation of the agony in a very sensitive area of national security.

Democratic control over security services has several critical points.

Firstly, it requires the supervision of services as well as of state officials. The elected officials must be familiar with all aspects of the work of the services. But, at the same time the services must be "protected" from the officials, i.e. from their attempts to exercise pressure over the services and to request action that is not in accordance with democratic political practice.

The second critical point are the mechanisms of supervision that are used. It is

important to emphasize that it is not common to copy and paste mechanisms from one political system into another because the mechanisms must adjust to the context in which they would be applied. Every political system has its specific characteristics (regardless of the similarities of the institutions of the system), and therefore the security services vary in many elements. Under such conditions it would not be appropriate to request a "take over" of supervisory mechanisms. It can even be said that such requests unintentionally (and sometimes intentionally, too) define the efficiency of supervision over the services in the future. At the same time they prevent deeper analysis of the conditions the services are in.

Besides, at the internal scene, their usage also depends on the context in which they are applied. For example, when measures for secret data collection are applied (the supervision of equipment for technical long-distance communication; the supervision of postal shipments; technical filming of areas and premises; the supervision of transactions of transit-international telecommunication links; supervised traffic of objects and valuables; secret tracking, monitoring, light and sound recording in open space and in public spaces; secret access to the personal data of citizens in registries and data files) then the judiciary authorities enter the whole process (or a special body entitled by the parliament or the government), so that a proposal for the application, a decision about the application and the application itself are separated and put under the auspices of various subjects.

The third critical point is a mandate, i.e. the scope of the operations of the security services. A clearly defined scope of operation written in a legal text is taken as one of the most stable elements of supervision over the security services' operation. If the scope is defined by a written law, as well as the procedures that the services will use to apply the measures, the possibility of misuse carried out by the security services or the officials is then reduced. A very important place in the whole legal text must be given to the procedures for initiating the measures whose application may breach the freedoms and privacy of citizens. These do not only apply to the application of TKTR measures, but to other fields as well, such as for example the maintenance of data files collected information about citizens who, in a certain period of time, were subject to the security service investigations. This issue should under no circumstances be forgotten or presented as less important than other issues.

Security Services' Operation in Democratic Societies

The essence of liberal democracy is the separation of the private and public sphere. All contemporary states' constitutions in Western democratic countries clearly separate these two spheres, while they focus on a private sphere in par-

ticular by arranging the issues of personal and human rights and freedoms. Any interference of public structures into a private sphere is usually banned or limited by law in democratic societies. There are well known symptoms of 'Big Brother' constantly watching and listening to us and it is not only an issue of privacy or merely a political issue of secondary importance. The repercussions have very wide social and psychological consequences in relation to the lives of an individual as well as to the development of a whole community. The conviction that any technical means of communication or any other form of social and private activity may be "put under control" causes serious problems at an individual level (and it affects one's personal identity). It also causes problems with collective values. The final consequence of this is a society in which masses of individuals and groups practice self-censorship with one main goal: to protect their own security!

The awareness or just the suspicion that the words we exchanged with another person by telephone or in some other way (at a public or private space) are heard by someone else (i.e. a person to whom these words are not directed), creates a society of frightened and shy people. It is almost a rule that this happens in societies that do not have clearly defined terms and content of national security and that do not have documents clearly describing the instruments the state uses to guarantee security to its individuals as well as to its order.

It is in such cases that the contents of national security, the instruments and measures for its implementation are defined arbitrarily, that creates an open space for political manipulations and the breaching of personal and human rights and freedoms. The state structures can justify their every action by national security needs because it is allowed to, under extraordinary circumstances, to interfere with a private sphere due to the needs of the national security again. But, unless such extraordinary circumstances are defined by the law, then there is a wide interpretation of "national security needs" and consequently state structures act in a way that significantly exceeds the actual needs for action.

Paradoxically, those whose rights and freedoms are jeopardized by such state actions do not have any legal basis to take legal action to protect themselves because this matter is not arranged by any legal act other than by the constitutional provisions perhaps.

The state acts in accordance with a "trespass" doctrine (a doctrine of legal breaches of law) and justifies such behaviour by protecting national security. Why? National security, as a term and as a field, offers enough room for "secrecy" of action of state structures that, when they undertake action "in the inter-

est of national security" they are not obliged to explain too much about such actions to the public. Therefore it may be concluded that national security is useful for political structures.

If state structures must, due to the national security needs, enter into a private sphere, then such exceptions must be coded by legal texts, that will undergo a public procedure, i.e. receive a consensus from a representative body concerned about the actions that are allowed or forbidden in particular situations. Any form of such action requires a justification that must satisfy the principles of legality and of a legal state. The famous McDonald's Commission in the 1970s had to assess the work of the Canadian secret services, suggested a few principles that should be followed concerning the issue of the monitoring of individuals and groups within a state security operation. These principles are:

1. Define legal procedures and all exceptions in which special techniques for collecting data can be used
2. The instruments that will be used in particular situations must be proportionate to a security threat, and all this in relation to an estimate to which extent the basic human rights and freedoms may be breached in the process
3. In each particular case those techniques that do not infringe on personal and human rights and freedoms should be used first
4. The supervision of the instruments the state uses raises proportionately with an estimate that a certain action will interfere in or perhaps breach personal freedoms and human rights.

So, the state must legally arrange the situations, in which it is allowed to use particular instruments for collecting data, define in which situations there is a danger of misuse and define a special legal procedure with "intensified" supervision for such situations. In the legal text, which is a public document, it is necessary to record which actions are permitted and through which procedure. This would mean that an internal security service must explain, to a court authority for example, the reasons why it undertakes certain measures, and the independent court authority can, but does not have to accept its proposal. The security service cannot undertake certain measures without a signed court order. So, these issues should be incorporated into a written mandate of security services and then these provisions represent a level of supervision over the services' work.

The second level is a set of issues related to the supervision of the operations the services undertake, i.e. of those activities that started since the approval has been granted. Should the supervision over that part be exhausted by the previous procedure (a priori) or would it be desirable to introduce certain mechanisms for ex-post facto supervision? Perhaps there are situations in which both

mechanisms should be applied? Should internal or external control be organized or both? These would be only some of the questions related to this field. One should point out straight away that contemporary states create their own models in various ways. The Republic of Croatia should do this, too. It will have to adjust its model of supervision to its overall political and social situation, as well as to the situation within its services. The Court authority should manage a priori authorization whereas the executive authority should manage ex post facto supervision. Internal or administrative supervision, by its nature, is subject to the executive authority's management. It can be exhausted by internal controls that usually exist in the security services, but it can also have an internal body that will, in the name of the executive authority, perform administrative supervision. Similarly, this form of supervision is executed by the minister in charge, or the service director, whose job description requires that the service he is in charge of must operate exclusively in accordance with the law.

Conclusion

Political authorities in the states of the former Yugoslavia have hesitated to reform their security sectors during all these years after the war. There are at least three reasons for such behaviour:

1. A lack of political will to reform the system that underwent most of the efforts in the process of the creation of the state, as well as during the war operations (in its own territory or outside it). Any attempt of reform was prevented. There was a tacit agreement that any such change would jeopardize the privileges and credits of the key players.

2. Using the system for controlling political opponents and media and in order to prevent the development of political oppositions and any confrontation with the political elite in power.

3. In the states where the reforms have started some members of the national security system continued, after leaving their previous posts, to operate towards the destabilization of the system and discrediting members of the political elite in power. Their activities have been supported in particular by those parts of the system that have remained unreformed or partly reformed only. Any attempt at further reform seems dangerous and uncertain so that the political elites quit such attempts while maintaining the status quo and hoping that in this way they would "save" themselves from any further unwanted activities.

However, there is huge misapprehension regarding the possibility of the continuous effects of a mutual "strategy of non-aggression". Political authorities must start the reforms of the security sector, and in particular of those parts of it that by its nature have a possibility to interfere in a private sphere of a citizen. These

reforms seem to be a key step in the process of democratization in the field of national security. But, at the same time, they represent a necessary prerequisite for creating a new capacity of the system that aims at acting effectively against new threats and challenges. As it is already known, such threats are aimed at, almost exclusively, the dissolution of a democratic system and its institutions, as well as the establishment of a parallel system beyond the control of the state and its national security agencies.

The Socio-Cultural Context of Bosnia and Herzegovina as a Determining Factor of the Implementation of the Mechanisms for the Protection of Human Rights

DINO ABAZOVIĆ

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It is important to think critically about the socio-cultural context in which this implementation phenomenon is happening. I will restrict my discussion here to B&H. However, we must also critically reflect on the phenomenon itself. It is often said that the traditions of multiculturalism, tolerance, one thousand years of cohabitation, especially in Bosnia and Herzegovina, have given us specific cultural sensitivity towards the question of human rights, as well as the fact that our traditional institutional neighbourhoods are our advantage in the context of human rights. I believe that one needs to speak critically about these issues. It seems to me that we take certain issues, certain phenomena for granted. We take time as a given, as something that exists by itself, whereas it is obvious that its role, importance, and power in the today's society of Bosnia and Herzegovina do not remotely resemble the image we romanticize and idealise and wish to represent as an ideal picture that existed in the past.

There is a new socio-political situation in Bosnia and Herzegovina, a different socio-cultural context, not at all related to the tradition we have inherited. The second issue is our ideal picture of the phenomenon, or rather of the implementation of human rights. It rarely happens that someone advocates the violation of human rights publicly or in private circles. In reality, we can see that there is an epidemic of violations of human rights as such.

In the same way, promoting slogans in certain contexts, such as the phenomenon of "brotherhood and unity", for example, or advocating the ideas of advanced living standards, or our current ideological promotion of human rights, do not mean much since there is no implementation. The ideas that appear on the surface, that are simplified in a socio-political context to the extent that they are not subject to discussions, are in fact exactly the issues that we should discuss again. We should criticize such an approach and deconstruct the policies that say: "Well, yes, certainly, human rights - who has anything against them?" I believe that it is not sufficient to say that no one has got anything against human rights.

Moreover, I wish to emphasize the importance of the time factor and how the dynamics of time play a role in all this. Time, namely, plays a role in two ways:

firstly, we have to face the fact that the tradition of what we refer to as the culture of human rights does not exist here. The previous regimes did not maintain the legal tradition of human rights protection or implementation, and what was introduced by the new documents and new practices did not exist within the courts of law.

Recently, the United Kingdom again allocated a large amount of money to educate its judges to apply the European Convention of Human Rights. However, only a few years have passed since the terrible crimes and violence were committed and it is to some extent unrealistic to expect things to be moving on faster. Nevertheless, we must recognize this as an improvement, because until a few years ago, our people looked at each other over their gun barrels, and now we can already expect our case to appear before the court of this or that entity.

Needless to say, this discussion will concentrate on the post-conflict period. I am using this reference because it must have become abundantly clear even to the most optimistic people that the Dayton Peace Agreement only succeeded in ending the war operations and creating weak, very weak prerequisites for the reconstruction of the country. Unfortunately, the frequently used syntagm is very true even seven years after the war conflict - in Bosnia, there is neither war nor peace. Just to remind you: now, ten years after the war, we are witnesses of a repeated triumph of the nationalistic parties in Bosnia and Herzegovina as seen in the recent multi-party elections in October 2002.

Let me give you an example what the term post-conflict period in Bosnia and Herzegovina means: in Bosnia and Herzegovina, we have three key political, administrative, economic, and cultural centres that reflect very different and totally incompatible models of accommodation of ethnic differences. Unfortunately, these centres are all very active, independent of each other and, most interestingly, they each tend to become a paradigm of the solution of the so-called Bosnian problem. The general scene is one of an underdeveloped civil society, due to the nonspecific activism of key actors - local decision-makers, the creators of politics and the religious authorities. Unfortunately, within the civil society there are self-sufficient elites, the media of questionable professional standards and the politically uneducated population. The causes of such a situation are, unfortunately, less and less present in our agendas, while more and more energy is directed to the implementation of very short-term particularistic interests. Some rare positive initiatives offering the modalities for efficient action and usually gathering free-lance activists from the world of politics, science, culture and arts, and only a few professional printed media, doomed to a collapse in advance, do not have adequate funds for a continuous action. Also, their initiatives do not attract sufficient number of followers. Therefore, there is no critical mass that would start the implementation of possible sustainable projects.

The next important factor for this topic is the role of what we refer to as the international community. There are two specific phenomena important for the current analysis of the international community. The first one is the phenomenon of delay - all decisions vital for the stabilization of this country, that would considerably improve the situation, are four to five years behind. For example, the law regarding the constitutive rights of a people, where one has to wait for around two to three years for a decision to be adopted. Such long delays have a negative impact on any rational possibility that a larger number of people be mobilized around an initiative. On the other hand, there are cases in which already adopted decisions are delayed in their implementation. For example, there is no doubt that war criminals must be arrested, but we are all aware of the dynamics of that process.

The second phenomenon, which is much worse than the previous one, is the transfer of responsibility. Simply, as time passes, we are more and more aware of the practice of the transfer of responsibility. I refer here to the practice where everything that local decision-makers do not know, do not want or do not intend to do is simply declared a sphere of the responsibility of the international community in Bosnia and Herzegovina. Their excuses are usually that the issues concerned are sensitive or complex, while, in fact, such issues are often about the necessity to make some unpopular steps that would be negatively interpreted within a homogenous electorate voting for such decision makers exactly because of the protection of their own, single national interests.

The international community also delegates the responsibility to the local authorities when it is faced with the issues over which there is a wide consensus amongst its key actors. I do not disagree that the final responsibility should always and increasingly be in the hands of the local authorities, but some key questions in Bosnia and Herzegovina have remained unresolved exactly because of the transfer of responsibility. Therefore, due to such practices, these questions lie somewhere in between.

One sees the same situation in the field of the implementation of the mechanisms of human rights protection. I would like to draw your special attention here to the majority of direct players in the process - from those whose rights have been violated to those who work in the field of the protection and monitoring (professionals, governmental and non-governmental sector, including activists and non-activists in the field of human rights), to governmental institutions. This should all take place within the socio-cultural context as a determining factor.

Discussion

MILAN PODUNAVAC

I would like to point out two core issues that seem to me to be of particular importance: the first one is the thesis given in the introduction about the deficit of legal and constitutional culture, i.e. about the deficit of human rights culture - I believe that this can be the basis of our discussion. The second one, which I simply see as an innovation, is the thesis about the "parallel models of integration" (and here I refer to Bosnia and Herzegovina) that have exceptional political autonomy and follow the lines of ethnic and national divisions, thus imploding significantly the idea of Bosnia and Herzegovina being a united political community, i.e. a state.

MIODRAG ŽIVANOVIĆ

The Faculty of Philosophy, Banja Luka

The remark and the question I am presenting here refer to the relationship between **ethos and demos**. A few months ago, a TV channel in Bosnia and Herzegovina broadcast a report about the return of Bosniaks to their pre-war homes. The main message of the report was that there were no problems with the return itself - it all went well. However, there is a problem concerning livestock. Namely, the editor of the report said that the Bosniaks - returnees brought their livestock with them and it could not graze because the Serb livestock was grazing was disturbing them. This real life picture was not actually a simple media incident; it shows how far the ethnicisation of our lives can go. So, animals have their ethnic identity, too. I believe that this example with animals illustrates much better what I want to say. The second extreme is our frequent and abstract advocating the civil society and democracy. As if we were of the opinion that the civil society is a model that we, in a certain period of our lives, must achieve. Civil society, in my opinion, is not a model that should be achieved; it is simply a way of life.

My question, on the basis of this remark, is the following: "Can we quit this false dilemma between ethnos and demos, or ethnicisation and democratization, and try to find a way in which we should live in the lifestyle of citizens? It seems to me that this dilemma of ethnos or demos is really a pseudo-dilemma. We must explore further, because if we remain closed in the circle of ethos-demos dilemma, we will be at the level of one, two or three groups of livestock that disturb each other while grazing.

My understanding of this conference is that we do not have to describe the situation over and over again and that we do not have to keep saying "this is it". The right question is: **how can the situation be changed?** Political parties, particularly those in Bosnia and Herzegovina, cannot do that; people have not realized it yet, and are not able to do so. And how could they possibly realize it, when the parties turned the citizens of Bosnia and Herzegovina into political Lilliputians?

If we are voting for one out of three Presidencies and not for the Presidency of this country, then my vote is devolved to thirty percent. I used to be a deputy of Senka Nožica in the OSCE's Electoral Commission, but I conditioned my working there, after they had invited me, by a change of the status quo.

The first thing that must change in Bosnia and Herzegovina is the way in which the representatives of our sovereignty are elected, i.e. the Presidency, because it is the establishment of triple ethnocracy. This is the key problem. The Dayton Agreement must be changed. The question is: "Who is going to change it?" The political parties here are not going to do it, nor will the international community. Our only hope lies in the initiatives coming from non-governmental organizations, the non-governmental sector not only in Bosnia and Herzegovina but also in Croatia, Serbia, Montenegro, Macedonia and Kosovo, i.e. in the whole region. As soon as "national" is seen as the key element, we are dealing with a lost cause. I was one of the seven members of the commission that prepared the state symbols of Bosnia and Herzegovina that were adopted, or rather imposed. Then I noticed how people who were critical about the whole situation wanted to impose the national and religious features, but fortunately, their requests were not accepted. The symbols of our country are ideologically clean and every citizen of our country can accept them.

The question of the security of this region cannot be avoided. I will touch upon the topic concerning secret services, and add that it does not make any sense to talk about the secret services in a democracy. Everything should be said openly and those who committed deceptions, crimes, etc. should be revealed. Jacques Russo said that only small peoples can be democratic and rich, but he added that anyone may be democratic given that everything is fully transparent and, clearly, that everyone tries hard to achieve democracy beginning with human rights.

The non-governmental sector is the subject of such changes, together with all clearly defined objectives. We should reconcile people whereas the politics, and even the laws here, keep forcing them to be nationalists. This situation may change by the next elections if the non-governmental sector becomes active, certainly with the international support.

Marko's warning about how things should be changed emphasizes yesterday's question by Nebojša Popov about the completeness of the post-Yugoslav states given the current players on the scene. I am personally sceptical about the response regarding "civil society" and even more so regarding "non-governmental organizations". Let us look into the problem itself: critical descriptions of legal, political, as well as intelligence and security realities of these countries may sound familiar, but the criticism of the whole situation is not complete, and therefore not true if it does not include the awareness of the vicious circle and an active refusal to accept it, an attempt to find solutions through action. We have what we have in the societies and states - legal systems that only resemble legal systems, and partly legitimize, maintain and fix the same political pattern that used to exist in the foundations of ethnic conflicts. It is the pattern of collectivism, antagonism towards other ethnic collectives and internal discrimination of minorities. The vicious circle is, however, reflected in the fact that such a paradigm apparently lives in a complex co-existence with democracy and legal states. Political systems, party structures, dominant profiles of the parties, ideologies and normative systems, reflect such a collectivistic political culture. On the other hand, it offers them the necessary legitimacy. As pointed out many times, dominant nationalistic political parties have significant, and mostly the support of the majority.

How to change this is the most important question. We could go on and on with bad examples. What Professor Živanović mentioned is not an exquisite anecdote, it is only a paradigm brought to an obvious level of absurdity (we also had such reports in Croatia about the potato beetles that allegedly came from Serbia to destroy "our" potatoes). Whatever we find in ethnically biased norms which are only seemingly legal, whatever we find in the biased application of rules (where the rules are general and formally equal for all, the implementation mechanisms in judicial systems, government administrations, the police, the intelligence sector and similar bodies will take care of the biases). In all these aspects we just need to become aware of the whole. "States" based on nationalistic policies and mobilizations cannot just put their legal gown on, so that the practice of discrimination is not an excess.

However, when this deep connection is grasped (and I do hope that we shall at least get closer to this in our discussions), the question arises whether it is not in fact humiliating to understand and control reality and whether the wholeness of the picture is not at the same time an alternative perspective. In other words, one should endure the critical point - not to start enjoying the depth of our own fall and to start enjoying masochistically in the darkness of the picture.

Namely, the only reasonable meaning of emphatic painting with the black paint on a black canvas is, in fact, childish: it is calling for help of some good and powerful master.

The only realistic addressee of such dark statements that we make would be what we laughingly call "the international community" as someone who would allegedly come and rescue us. This is a childish deception. Firstly, the international community does not exist; secondly, no one will rescue anyone without his own interests involved. Therefore, the only way out of this situation would be something similar to the story of Baron Munchhausen and his getting out of the swamp by pulling his own pigtail. In the societies that do not possess the capacity to establish internal order, the change should be introduced exactly by the (non-existent) internal forces. "Theoretical" pessimism still leaves the space for activists' optimism. How to achieve this is the question that our discussions at this conference should address.

These descriptions should be summed up by only one statement - when we talk about human rights and security, it is not about a contradiction in itself: human rights are indeed a guarantee of the safety of human lives and freedoms. And when security and human rights are seen as contradictions, it means that it is the security of something else and not of the people. If we analyse why the armies and intelligence services enjoy the status Mr Cvrtila was talking about, the only reason we can think of is that in the general consciousness, the main "object of defence" is a collective, the state community, and not the people. Many of you remember an old book by Ralph Miliband, *State in a Capitalist Society*, in which 30-40 years ago the status of the military forces and the defence in the United Kingdom was described with almost the same words. They are something we do not touch upon, something that the administration in power will always manage to finance by outvoting the opposition in the Parliament. In addition, we are familiar with the way the state additionally legitimizes itself as "something worth the bloodshed". It is only at the civilisationally lower and dirtier level caused by the recent conflicts that we radically assert that the community is more important than its individual members and that the state is the embodiment of that community.

The more a state is unfinished in this formal, theatrical sense of external cosmetics, the more it is insufficient - and this is most obvious in the countries under the international control, such as Kosovo, Bosnia and Herzegovina and partly Macedonia. This is also the case in the states having the "guarantee deadlines" like Serbia and Montenegro where it is not clear whether they will last. There is an illusion that the main problem in completing the state's independence lies in the symbolism of the state itself. What should be changed and com-

pleted, however, is not the state structure itself, its legal system and its constitutionalism.... It is first of all the willingness and the awareness of at least the decisive part of the society that the relations should be arranged in a legal way, without violence, and that the state is organized as an impartial, institutionalized system that will ensure human rights. However, any action based on the willingness and awareness is a discouragingly huge and complicated task and one should be particularly aware of the shortcuts to its alleged implementation. One should also be aware of the mystifying miraculous formula of the "civil society", and particularly of its form that developed in our countries with no real economic or cultural prerequisites for a wider state participation, partly due to immediate reactions to the war crisis, violence and ethnic discrimination, but partly also as an intermediary network of "importing" liberal and pluralist democracy. Our western supporters and helpers have kept us for more than ten years under the illusion of an educational paradigm, i.e. that it is a matter of "educating" the public, the institutions and others so that many non-governmental organizations adjusted themselves to this idea and many professional careers were built on that paradigm.

What is disappointing and frustrating here is not the mere fact of dependence on foreign assistance. It is the irresponsible simplicity of reducing all social learning to "education". We who sit here are not the elite the nation is looking at and asking for advice and, thank God, we do not have the authority of a teacher. If in our role of activists, we are trying to change, move something, then we can do it only by provoking the events that will enable the society to "learn" and not by any form of direct teaching. If applied to the vicious circle in which the social mentality and political structures mutually confirm and reinforce each other, such "learning" should probably follow the path that indirectly decomposes the ethno-collectivistic pattern. In other words, what we need to raise is the awareness of our intra-ethnic conflicts which in any society concern the majority of people. This does not mean, however, that the activities of the civil society must be depoliticized. It means that politics should be transferred from the zero-contents plan of confronted ethnic collectives, whether organized into "states" or not, to the plan of realistic social relations with all the differences of interest, contradictions and conflicts included. Only such experience can open up ethnic identities as the main lines of gathering and confrontation, as well as show the political sphere as an arena for solving the problems of the society and for the responsibility to use the positions of legitimate power.

A question for my colleagues Bakšić and Abazović: "Do you think that the judges and the whole organization on the one hand, and the governance or administration Abazović referred to, selected by some ethnic criteria, on the other are defending the interests of their ethnic groups? Can we have a situation where they would co-operate and find common interests? That is to say, that the organisations chosen similarly by the criteria we disapprove of, find a common language disapproving of some recommendations that would come from the groups such as ours? They are very similar and do not represent any real opposition to each other. Their opposition are organizations like the ones we belong to and they oppose the suggestions coming from non-governmental organizations.

I would like to ask our colleague Biserko a similar question: she, as usual, is very critical of the situation in Serbia. I believe that this is encouraging for the people from Croatia who have been listening because it is always good for people to analyse closely the situation in their own country.

It seems to me that the interests of particular groups in Serbia and Croatia are much closer than we think, regardless of all the fuss about it. In other words, there is common ground in the activities of these nationalistic and chauvinistic movements that are on opposite sides.

For Professor Cvrtila: I have a question that we shall come across more and more often and it concerns the following: "The co-operation between the non-governmental organizations and the state that can always turn into something that we do not want and have not foreseen." When Paraguay, in the period of its statehood, decided to arrange its legal system according to the examples of excellence from the rest of the world, it introduced the same electoral law as in Switzerland: in the local elections, the first three citizens showing up at the polling station in the particular morning become members of the electoral commission. However, when this was applied in Paraguay, that morning the polling stations were surrounded by machine-gun nests, so that each party was sure that its own first three citizens would be elected in the commission.

Everything can be turned upside down, indeed. In Croatia, something we should all welcome are the elections of the citizen's control of secret services. However, in this election process, three chiefs of these secret services to be controlled wrote the recommendation. Some people, such as an ex-chief of the secret services from Tudman's era were elected as independent civil supervisors. The decision was made by the Minister of the Interior from the period when HDZ (Croatian Democratic Party) was in power, infamous for ordering wiretapping

of citizens, including journalists, and who participated in the activities that the commission is now supposed clear up. So, the whole issue has turned into a farce. My question is: "Is this Commission going to react to such issues?"

HANS ODENTAL

OSCE Mission to Bosnia and Herzegovina, Sarajevo

I would like to comment on the discussions of today's working groups and look back to a comment made by one of our distinguished speakers, the one who spoke before me. I must admit that there were many descriptions of the current situation in his presentation, but not enough suggestions about the future course of action. This is a problem that I have been faced with while carrying out my duties. I would like to elaborate on this point so it will be easier for you to understand why I am making this comment.

BOŽIDAR JAKŠIĆ

Institute for History and Social Theory, Belgrade

The ethnocracies or natiocracies ruling in the region are not of a recent date. The authoritarian type of rule in this region is a historical tradition. It happened during the Kingdom of Serbs, Croats and Slovenes, during the Kingdom of Yugoslavia, as well as during and after the period of Tito's rule. The paradigm that in Bosnia and Herzegovina, a Serb, a Croat, and a Bosniak all have to be awarded a literary prize has not been invented by the new nationalistic leaders. It is much older than that. Let us not forget that the Vidovdan Constitution in the Kingdom of Serbs, Croats and Slovenes was practically adopted by purchased votes - the question of the legitimization of a particular authority is, in fact, unavoidable. Already Tito's authoritarian and endemic-totalitarian system adopted as its legitimacy. The citizens were hoping that such a system would collapse and that the democratization process would begin. Unfortunately, the direction we took was utterly tragic and within the same collectivistic matrix. One totalitarian and authoritarian system was replaced by five, six, or seven more or less authoritarian systems. This is one of the three things that characterize our situation. The second one is the fact that certain mafia, criminal structures, have their states in the region. Other states also have mafia structures, but their citizens have some institutional mechanisms of protection. In this region, the mafia structures have their states and they rule the people, adopt laws to their own benefit and particularly the laws regarding privatization. The third issue is the absence of citizenship. We speak about the civil society or civilian society by actually flattering the subordinates. Where are the people to rebel against crime? Very few of them are present, but most of the pop-

ulation have accepted, in the role of subjects, their national leaders and they will continue accepting them in the future. Therefore, it is very difficult to turn a subject into a citizen and it takes generations to carry out this difficult task.

NEVEN KAZAZOVIĆ

The Parliament of the Federation of Bosnia and Herzegovina, Sarajevo

I must admit that I have frequently attended conferences such as this, and there has always been one and the same subject under discussion: civil society, citizen, how to achieve civil society. The problem situations and descriptions are always presented, but we have never identified at least a small foothold to see where we stand and how we can proceed. It was Mr. Jakšić who said that this would take generations. Can we, as the victims of this war, do something in order to make the first step towards civil society?

Let me look back to a comment that I have recently seen on the UEFA web site about that day's football match between the national teams of Bosnia and Herzegovina and Denmark: "Football did more for the political unity of the country and for its unification than politics." And I would add: "and more than the non-governmental sector and the non-governmental organizations."

Four non-governmental organizations have initiated an action for the constitutional amendments some two or three years ago. The action was generally accepted. How far have we gone until today? Recently, we had a big discussion in Bosnia and Herzegovina about a unified army. A new law on armed forces in Bosnia and Herzegovina was proposed. However, what was interesting was how the non-governmental organizations reacted to the draft proposal of that law. There was a lot of misunderstandings, the reactions were focused on "here and now" and it was not understood that it was a matter of a process. This process unfolded in a very difficult way because there was a war here between the three armies which fought against each other. The proposal which was implemented mostly under the pressure of the international community led to "the Armed Forces in Bosnia and Herzegovina". A long process began with its two aspects: the first one being, if the Defence Act is adopted, if this reform approach is accepted, then the state of Bosnia and Herzegovina will get some significant qualities that it did not have before, particularly in the sectors of security and defence. The second aspect is that if the law was adopted, it would be a minimum for Partnership for Peace, but a maximum for us in the current situation. The non-governmental sector, even Circle 99, has not detected these elements in the proper way: it was not recognized that there was one rule for the army, as well as for the intelligence services. The armies and the secret intelligence services are fully politicized here and the only way to confront this is to either

reduce or abandon altogether the system of politicization. Similar to the Republic of Croatia, in Bosnia and Herzegovina there are also councils to control the system of security, and here there are parliamentary controls and commissions which are supposed to do the job. In the Federation of Bosnia and Herzegovina, a reform of the intelligence system took place in the course of the last three years. However, the implementation of the law goes to the extreme which was not intended by the law. This sector, again, remains within a remit of a governing structure or the ruling elite. How can the non-governmental sector influence this? During the discussions about the reforms the comments were made like, "that is the Army of RS and it must defend the Serbian national feeling"; in the Bosniak part, the same issue was raised; and the situation has not been different with the Croatian Council of Defence (HVO). This situation is blocking the progress towards one army. We have the constitutional amendments and their application. One may ask, "Why cannot Bosniaks and Croats be soldiers and officers in the RS Army given that the constitutional amendments are accepted? As a parallel, why not Serbian officers in the Federation Army?" etc. A situation may be created and we, in the sector that was out of the domain of the non-governmental organizations, can create such an approach where we will create one united army, and its entity divisions will not have any significance.

SONJA BISERKO

There was a question of the similarity and difference between Serbia and Croatia. Croatia is, first of all, an established state, it reached an internal consensus about the EU accession, and it acts in that direction. On the other hand, Serbia has not been established as a state, it is not known when this is going to happen and what its borders will be like. Serbia cannot reach the consensus about its constitution, i.e. what kind of state it will be, whether unitary, centralist, or a state that will tend to a certain degree of decentralization. The war of administrative measures is still fought on Serbia's scene and this may refer to the Republic of Croatia too, given the issue of the return. In Serbia, it refers to many more aspects related to its minorities, related to the whole legal field that has not been regulated. There are several legal systems that are used according to the needs.

Let me mention a very important factor that has not been mentioned yet, and that is the Hague Tribunal. I personally believe that this is a very important institution and process that is going on. Perhaps it is good that it has lasted for so long because it has given us an opportunity to learn about the international law and its future developments, the international law that will be incorporat-

ed in the national legislations. It cannot be denied any longer. It lives in the sub-consciousness of the citizens in this region. All my criticism of Serbia is an attempt to define precisely its current position. It is still about the process that will depend on us and our efforts should be harder in order for us to reach the objectives.

RS is a paradigm of what will happen in the Balkans given what it symbolizes after the war and given what it established. Bosnia and Herzegovina is the centre or the focus of all our analysis because the destiny of the whole region will be resolved through it.

JASNA BAKŠIĆ-MUFTIĆ

Just a comment about the relations between Bosnia and Herzegovina and the international community. I agree that B&H and all the countries in the region are part of the international community. However, their relations are not those of partners. It is clear who is in the superior position and who is in the inferior one. So, this is the question of partnership and not of participation or non-participation.

Concerning activism and the non-governmental sector, I myself have tried to find the answers to these questions. I am not a member of any political party. The parties are determined to create action plans, to bear the responsibility. Belonging to the non-governmental sector, I fulfil my citizen's duty by raising any significant questions and by initiating debates. This is a relevant direction for those who make the decisions. So, we influence the government, but we are not the government. It is very important to highlight the weaknesses, and each of us can, in his or her own domain, contribute to it by small actions.

The third comment refers to the relations between ethnos and demos. Unfortunately, there is no demos in Bosnia and Herzegovina, i.e. demos as political citizenship of all citizens who live in this country. The reality is such that we cannot neglect collective identities or the ethnic ones. The question is how to build a functional state. A state that will take into consideration the citizens' interest, and in which these collective identities will be collectively incorporated as a mechanism, because it is cynical to have a constitution that defines individuals by their ethnic background and whose structure asks for a Serb, a Croat, and a Bosniak and thus regenerates the divisions and at the same time keeps posing the question "Why don't you change this?" A change is a social consensus that did not exist in the Dayton Agreement. So, both the citizens and all ethnic groups, everyone in Bosnia and Herzegovina, must agree what kind of

state they wish to live in, and also take their collective frustrations and fears into consideration. These collective frustrations and fears should be discussed.

VLATKO CVRILA

When we drafted this law, the idea actually was that the council should fulfil the function of civil supervision, that the representatives of the parties or their members would not be its members, no matter whether active or not. So, the initial idea was that the distinguished members of the non-governmental sector would participate in the council. This idea got distorted later on. The process of nomination was organised on a voluntary basis. Namely, the Parliament invited the Croatian society, non-governmental organisations and others to nominate their representatives. There were 27 nominated candidates. According to the obligations and the law on the security services, a security check was needed for all these candidates as they would be coming across state secrets. Such security check can be partial or complete. I was very disappointed with this news since this would be one of the mechanisms that could be used later on to influence the work of the council itself. And now, let us look into the process of nomination. It happened that one member of the council was at the same time a member of a political party even though, when we dealt with the council, it was not laid down in the law. However, when the Parliament was passing its decision about the council, it made an interesting amendment to Article V about the establishment of the council: political officials and party leaders, as well as those who are active in the parties, cannot become members of the council. This means that those who are party members can still be the members of the council. The involvement of politics is obvious here, and it was very negatively reflected on the establishment of the council itself. I hope that we will manage to move away from this kind of pressure that will certainly exist. The members of the council cannot comment the area of the national security in the Republic of Croatia (RH). Therefore, they have to be silent as they become important state officials - this is one of the mechanisms of control that was imposed on the council.

DINO ABAZOVIĆ

Concerning the question that Mr Pusić raised about the alliance of ethno-administrations or ethno-birocracies, I must admit that I really doubt the sincerity of such an alliance, i.e. to what extent they can mobilise themselves to work together and to fight any recommendations aimed against them. In principle, this alliance is a short term one. If we assume that the non-governmental sectors and the civil society are against these administrations, that they are

fighting against the ethno-birocratic walls, then I have to say that we must become stronger and hope that such temporary alliance will fail.

Mr Odental's comment is an important one. I made a distinction between the "group - we" and the "group - others" when we spoke about the international community and the local decision makers. The international community is the first to delegate the responsibility to the "group - others" when it comes to delegating the responsibilities. There is some kind of unity on our scene, some organisations act like national institutions but on specific and highly sensitive issues. When there is no consensus within the international community, then the responsibility is delegated to the local decision makers.

In the context of ethnocracies, I believe that we have not learned anything from it; I am afraid that our transition is a transfer from one ethnocracy to an even gloomier one.

ETHNO-POLITICAL CONFLICTS AND VIOLATIONS OF HUMAN RIGHTS

Moderated by Srđan Dvornik

The Influence of the International Community on the Implementation of Human Rights in Bosnia and Herzegovina

SENKA NOŽICA

Helsinki Committee for Human Rights of Bosnia and Herzegovina, Sarajevo

There have been repeated requests lately for changing Annex IV of the Dayton Agreement, i.e. the Constitution of Bosnia and Herzegovina, due to a complicated structure of the state, the authorities of the individual entities and the favouring of the national over civil issues. Regardless of whether we agree or not with such criticism, I believe that the Dayton Peace Agreement made a significant step forward in the area of the protection of basic human rights and freedoms, particularly when we bear in mind the period that had led to this agreement. According to Annex IV, Article 2, Bosnia and Herzegovina, as well as both its entities, are obliged to apply "the highest level of internationally recognised human rights and freedoms" that are primarily guaranteed by the European Convention on the Protection of Basic Human Rights and Freedoms. This Convention is directly applied throughout Bosnia and Herzegovina as a legally binding act that takes precedence over internal regulations. Bosnia and Herzegovina is thus the first country in the world that applies directly an international contract such as the Convention on the basic human rights and freedoms even though it is not a member of the Council of Europe. The direct application of the European Convention on the Protection of Human Rights and Freedoms in Bosnia and Herzegovina has been very difficult because it is, first of all, an unknown document in this area, and because the judicial institutions in Bosnia and Herzegovina were professionally and financially not able to directly apply the Convention. In particular, one should bear in mind that the knowledge of the practice of the European Court of Human Rights is necessary for the application of the Convention. This Convention is based on the application of the law of precedent. This was almost an unknown issue not only in our pre-war legal system, but also in the post-war one which is based on the continental legal system.

With reference to the Dayton Agreement, we will mention the institutions for the protection of human rights that were established by the Agreement. In fact, these institutions, by their composition, partially and conditionally, represent also the international institutions because of their international membership as a guarantee of an easier implementation of the European Convention, and as a guarantee of the protection of human rights in general.

The Commission for Human Rights was established in Annex 6, Paragraph 2 of the Dayton Agreement. This Annex is entitled "The Agreement on Human Rights". The Commission for Human Rights consists of two operative parts: the institution of the Ombudsman and the Human Rights Chamber of Bosnia and Herzegovina. Article 13 envisages the obligation of the parties to the contract to encourage the work of non-governmental and international organisations for the protection and promotion of human rights, and Article 13, Paragraph 2 lays down that the UN Commission for Human Rights, the OESCE, the UN High Commissariat for Human Rights and other international or regional commissions or organisations for the protection of human rights intensively monitor the situation concerning human rights in Bosnia and Herzegovina (B&H) and in fact act as a guarantor for the protection of human rights in that country.

It is important to mention that the Appendix to this Annex contains a list of other international documents that regulate the field of basic human rights, (sixteen in total), which must be respected as a basis that includes the adopted international standards of the protection of basic human rights.

In addition to these institutions, the Dayton Agreement envisages the Constitutional Court of B&H. The protection of human rights is also the main task of the Commission for Displaced Persons and Refugees. Its mandate is to accept and process all claims related to real estate in B&H unless the property has been voluntarily handed over or exchanged in some other way since 1 April 1992.

Let us reflect briefly on the work of these institutions.

Human Rights Chamber

Let us not elaborate on the structure of the Human Right Chamber here, as I assume my colleagues here are familiar with it. It is important to emphasize though that out of 14 judges of this Chamber, six of them are citizens of B&H, and the remainder are foreigners. The Human Rights Chamber has had an important role in the area of the protection of human rights since it was estab-

lished in March 1996. This is illustrated in the best way by the number of applications submitted by the citizens to the Human Rights Chamber. From March 1996 to 30 September 2003, the Chamber received and registered 14,504 applications. Up to the present day, 5,200 applications have been resolved, and 9,304 have remained unresolved. Before 1999, the Chamber registered 3,449 applications. This means that almost 10,000 applications were submitted in 2001, 2002 and in the first eight months of 2003. This illustrates the number of violations of human rights in B&H and the confidence of citizens in the Human Rights Chamber.

The issues that the Chamber has discussed mostly refer to the cases related to the protection of property rights and tenancy rights, employment rights, freedom of religion, applications regarding the missing persons, the right to fair treatment, illegal detention, the abuse by the police and by other official government organs, as well as the violations of rights guaranteed by the European Convention. The decisions of the Chamber are final and binding. The obligatory nature of these decisions, unfortunately, rely on the political pressure and the authority of the High Representative. Recently, the resistance to the implementation of these decisions has been evident. The procedures or mechanisms of implementation of the Chamber's decisions have not been defined yet. This, unfortunately, diminishes the importance of this institution which was obviously envisaged as an institution that would be a guarantor of the protection of human rights and freedoms and would represent a substitute for the Court of Human Rights. The prerequisites needed for the operation of the Court of Human Rights did not exist.

It was envisaged that six months after B&H joins the Council of Europe, its citizens would be able to submit their applications to the Court of Human Rights in Strasbourg. However, this is not possible yet. Namely, the Human Rights Chamber still exists, even if its operation was limited to a 5 year period by the Dayton Agreement. We currently have a situation in which the Human Rights Chamber would be in operation until the end of 2003, and then the Commission for Human Rights should be established within the Constitutional Court of Bosnia and Herzegovina. This Commission should consist of two foreign judges and three local judges.

The Ombudsman

The Ombudsman is an institution that represents the second part of the Commission for Human Rights established by Annex VI of the Dayton Agreement. Its mandate was also supposed to last for 5 years, but it was extend-

ed until the present day. According to Annex VI, no citizen of Bosnia and Herzegovina can be the Ombudsman of B&H. The Ombudsman's mandate is similar to that of the Human Rights Chamber, but the procedure of questioning allegations, applications and decision making is different.

The problem of the implementation of reports drafted by the Ombudsman is also based on the method of political pressure vested in the High Representative, or in the good political will of entities and cantons, i.e. local authorities, in implementing the decisions of this body. This unfortunately, cannot often be relied on, so the institution of the Ombudsman in B&H does not have such importance as it has had in the states with a democratic order.

The constitutional courts of the entity of B&H also have the mandate to protect human rights. However, it has been evident that their decisions concerning the protection of human rights, due to the model of voting and the possibility of a separate opinion, do not represent unity of the court as an organ representing the higher level of protection of the Constitution and the laws of B&H. To the contrary, these courts often represent an arena of conflict of various political powers in Bosnia and Herzegovina, and the judges of these courts themselves happen to be the exponents of such political powers.

The Commission for the Restitution of Property to Refugees and Displaced Persons

The mandate of this Commission has been the restitution of property to refugees and displaced persons. Generally speaking, bearing in mind the number of requests it has already resolved, it can be said that the Commission contributed to the scope of the restitution of property to refugees and displaced persons. However, this has unfortunately not resulted in the return of people to their pre-war homes.

The problem of the restitution of property in B&H is that there are parallel institutions dealing with the property claims, i.e. the Commission for the Restitution of Property of B&H and the institutions in both entities. The Commission for the Restitution of Property of Refugees and Displaced Persons is, by its decision making procedures, considerably different from the proceedings based on the provisions of the Restitution of Property Act applied by the governing institutions of BiH. This very often creates problems for citizens, and it certainly raised the cost of the administration staff dealing with these issues. This is an unnecessary expenditure that could have been used in a more quali-

tative way for the actual return of refugees and displaced persons and for the creation of the preconditions for the refugees to return to their homes.

When we talk about the influence of the international community on the implementation of human rights, it is necessary to emphasize the institutions established by the Dayton Agreement, i.e. the High Representative for B&H established by Annex X of the Dayton Agreement, the International Police Task Force (IPTF) established by Annex XI of the Dayton Agreement, as well as the mandate of the international armed forces for the implementation of the Agreement established by Annex 1a of the Dayton Agreement.

According to the responsibilities defined by Annex X of the Dayton Agreement and the conclusions of the Council for the Implementation of Peace that met in Bonn on 9 and 10 December 1997, the High Representative can make obligatory decisions that may include measures against the persons who obey public functions. Such decisions are final and binding, and no possibility of protection against them is provided either before the domestic organs in B&H or before the international institutions for the protection of human rights.

We should also mention here that not a single B&H citizen has received any satisfaction against the decisions of the High Representative at the Court in Strasbourg, because of the attitude of that Court that it still cannot accept applications from the citizens of B&H. Therefore, we cannot expect that the powers of the High Representative will soon be considered by this Court.

A special problem for the citizens concerned by such decisions of the High Representative is the fact that the decisions were made without the procedure outlined in the European Convention for the Protection of Human Rights and Basic Freedoms. The violation of this Convention is also reflected in the fact that there is no right to complain or right to challenge such decisions.

We have had an identical situation with the decisions made by the IPTF, as well as the Commander of the Multinational Armed Forces for the Implementation of the Dayton Agreement in Bosnia and Herzegovina.

The Human Rights Chamber has discussed several applications submitted against the decisions by the High Representative and the IPTF. These applications were filed against the state of Bosnia and Herzegovina. In all such cases the Chamber decided to proclaim the applications unacceptable because *ratione personae* were not incompatible with the Dayton Agreement. Even if this is about the institutions envisaged by the Dayton Agreement, it is not possible to file applications against such institutions to the Human Rights Chamber or to the constitutional courts.

If we try to summarize the position of the international community in relation to the protection of human rights, we can undoubtedly state the following:

- that the institutions entitled to protect human rights in B&H contributed to the protection of human rights that were breached by the B&H authorities,
- that they contributed to raising the awareness of the human rights of B&H citizens,
- that the procedures implemented in the protection of human rights are very often long and inefficient,
- that there are still violations of human rights that cannot be prevented, and this is by no means acceptable and in direct contradiction to the European Convention for the Protection of Human Rights and Basic Freedoms that, according to the Constitution of B&H, should be directly applied in this country.

Post-Conflict Dilemmas: Democracy and/or Peace

BILJANA VANKOVSKA

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Unlike the majority of the participants of this conference, I come from a country which for some ten years has been an oasis of peace and which has approached difficult situations from a democratic point of view. We were a success story until violence happened to us, too. It was the conflict in 2001 when, in a very short time, we became comparable to B&H. Therefore, I have found many similarities between the situation in my country and the situation in B&H in terms of democracy learning and building through our own processes, mistakes and the influence exerted by the international community.

A democratization thesis that was supposed to mean the elimination of violence has not succeeded. Moreover, it seems to me that it is very difficult to build democracy in the post-conflict period after so much violence. When the process of democratization started in the former Socialist Federal Republic of Yugoslavia (SFRY), democratic principles such as elections, pluralism, etc. made it possible for the nationalistic, extreme ethno-national forces to wear political colours and start ruling our societies. So, a grave abuse of democracy as such took place - ethnos happened to us in the name of demos. The same thesis is offered to us again. After all these conflicts in the region, it is very difficult to build democracy on something that resembles a protectorate (in our case it is a semi-protectorate), so that we already have a new theoretical term democracy of the protectorate. Now, in this breaking period, we have been faced with the situation that has introduced the culture of violence. We have many myths about the heroes, the armed forces which have built the state, etc. This reminds me that we have moved from the starting point only to walk in the circle and return to the same point again. The misuse of the thesis of democratization started at the end of the disintegration of the SFRY and it was followed by the creation of armed forces, which were the nucleus of future states. The disintegration process of the former Federation was followed by a parallel disintegration in the area of security. Now, some thirteen years later, these armed forces of ours should lead us towards the West. They were given a role to get us closer to the Partnership for Peace, NATO, etc. In my country, it is shouted from the rooftops that it is our army that will take us to NATO and we have to invest our last "denar" (the official currency of Macedonia) in its reform. So, we are waiting for 2006 to join the club, and while doing so, we have neglected certain facts concerning our society, namely that there is over 40% of unemployed, that a third of the population lives below the poverty line, that there is a lot of apa-

thy and that the young people are leaving the country to go abroad.

So, the importance of individualism and humane security is widely spoken about in public, but we still give a lot of importance to the military aspect of security. Paradoxically, we must instead face up to what our young men did in particular situations, including in Macedonia. We have invested all our strength in armed forces and expect them to take us into the family of normal European countries.

At a recent conference in Ohrid, I saw a panel that read: "Are the democracies in the south-eastern Europe really European democracies? They are some sort of democracies but it is difficult to prove it."

Our politicians and citizens live in two different worlds. According to all surveys of public opinion carried out in Macedonia, one can learn that the priority for our politicians is "to join NATO", whereas the priority for the citizens is that the problems of unemployment, corruption and poverty be solved. So, there is no dialogue between politicians and citizens. Now, there has been a thesis that the state, i.e. the national interests are the most important and that we should all forget for a while about the suffering of mere mortals in the name of these higher interests. One Bulgarian analyst described the relationship between the international community and our local politicians in a nice way: "Our politicians in the region are making love with their people, especially during the elections, but they are loyal to the international community". And that is really true. Our politicians are courting the international community and telling it only what it likes to hear, instead of really talking to it and helping their country in any way they can. Of course, they do not listen to their own citizens at all.

With reference to what Hans Odental has said, the problem is that we do not have "confidence building" not only in the society in general but also amongst its fragmented groups. What we need is "confidence building" between the local and international factors because a lot of distrust, frustrations, change of attitudes etc. have accumulated there.

If we want to help ourselves, if we are really part of the international community what I, unfortunately, disbelieve, then let us talk openly about how they can be successful in their missions and how we can create the greatest benefit for our societies. What bothers me is that as far as a discourse and a dialogue are concerned, our politicians prefer to listen to foreign advisory teams. They do not invite their own experts to the counselling sessions, so we usually find out post festum what has actually happened. I am of the opinion that we have gained quite useful experience over the last ten years but we had had a lot of knowl-

edge about many things even before the tragedy, having learned from our own mistakes. It is high time we gave ourselves some homework, too.

Let me make a small parallel between the situations in Macedonia and in B&H. You are known as the "Dayton Bosnia" and we as the "post-Ohrid Macedonia". I am not able to explain the rule of law from the point of view of "post-Ohrid Macedonia", but the fact is that the rule of law has been derogated. When violence occurs, it is a clear signal that something is wrong in the state. And then, an imposed document was passed. There were no negotiations. It was only when the document was signed that those who signed it stopped hiding themselves from the Macedonian public. The public did not know where the signing took place - as if the politicians were ashamed of what they had done. The whole atmosphere around it was already negative, regardless of the contents of the document. What is most important, the original version of the document is in English. The Macedonian and the Albanian translations are different and full of different interpretations. This is not the rule of law because what we have is a soft document that everyone can interpret in his own way. Our thesis was that the Constitution of 1991 was the *casus belli* in 2001. So, it turned out that the constitutional framework created conflicts and served as a cause of violence, which is unacceptable to anyone who had some legal training. And I am referring here to the Constitution that was passed with the blessings of the international community. The Ohrid Agreement was built into the Constitution. However, many now refer to the Ohrid document itself and not to the Constitution that is valid and that should be applied.

There is a confusion about the rule of law. Often there is no parliamentary debate, which is the essential feature of the central institution in any democracy.

Last year elections were another example. Allegedly, according to the international community, those elections were the highest expression of democracy in Macedonia. The lack of violence was understood as a success. However, people perceived the elections as a security threat, so the whole event looked too weird to be called an example of democracy.

I think that it is no coincidence that this conference is entitled "The Rule of Law, Regional Security and Human Rights". I consider the rule of law and human rights as universal values. So, if we talk about the rule of law, I expect the rule of law at the international level as well, and if we talk about human rights, these should then be the universal human rights. If I relate this to the questions of regional security and the role of my country in it, we are a member of the pathetic coalition in the war against Iraq. We are facing the problems in our own society. We should condemn any violence and solve the problems contaminating our society. Instead, and at the same time, we are taking part in the

violence on a global scale. Our politicians explain that it is all in the national interest of our country, they say that we must support our strategic partner because we must join the NATO Alliance.

We and the Americans signed the contract that violates the rule of law and the international law as such, thus diminishing our chances of Europeanisation, proving as a matter of fact that this region is far from it and that it is much closer to Americanisation.

Discussion

SRĐAN DIZDAREVIĆ

Helsinki Committee for Human Rights of Bosnia and Herzegovina, Sarajevo

I would like to draw your attention to two issues my colleagues tackled upon in their discussions: the first one is the influence of the international community, especially in Bosnia and Herzegovina. The second one is deliberation on what Bosnia needs in order to move forward.

The international community means the heterogeneous group of countries and international organizations labelled as such. When one refers to Bosnia and Herzegovina, two phases must be distinguished: a positive and a negative one. The first phase lasted while we really had an ally and the support of the international community. In the second phase, which in our case coincides with September 11 as well as with the change of the High Representative, we have seen the reinforcement of an upward hierarchy, i.e. a situation that has never been called a protectorate in public, but in its essence it actually is a protectorate. The elements of the international community define the priorities in Bosnia and Herzegovina, which is why it is a protectorate that does not recognize the priorities in Bosnia and Herzegovina itself and does not see human rights and democracy as important factors. To the contrary, the protectorate marginalizes these factors. I will refer again to a paradigm of this relationship, as Senka Nožica pointed out, the dismantling of the Human Rights Chamber of Bosnia and Herzegovina. This was the only independent court, the only court that gave hope to the citizens of this country that their rights would be respected in the future. The Chamber was dismantled for two reasons: one is the arrogant opinion that we are not mature enough to talk about human rights, and the second one is an immediate reflection of the USA attitude to the Human Rights Chamber decision that the Americans did not like. This decision refers to the Algerian Group, i.e. the opinion of the Chamber that the human rights of the people in that group were breached.

Fragmented and incomplete reforms have been implemented in B&H. On the one hand, laboratory experiments have been carried out here, and on the other hand, the experience that succeeded elsewhere has been imposed on us, as well. It is obvious that when we reform the legal system and it becomes independent, and when the salaries of judges are raised, but not the salaries of policemen, prison guards etc., the overall reform in the sector is not successful. This illustrates the fact that without an overall reform of the society and of the attitudes

in Bosnia and Herzegovina, all the fragmented reforms do not stand a chance of any form of success.

The international community, SFOR, the Office of the High Representative and the civil police have been breaching human rights in B&H and all these institutions are supposed to have been here to help us respect human rights. It is obvious that the European Convention is valid only for the local population but not for the officials of the protectorate.

Let me elaborate on two points regarding my second thesis. One is the ethnicity based approach of non-governmental organizations. Given the current state of affairs, it cannot happen in today's Bosnia and Herzegovina that its civil society makes a qualitative step forward in order to make the political elites change their attitude. It is necessary to establish a triangle of partnership: the international community, the local authorities and the local civil society. Without such a dialogue and without a gradual transfer of the responsibility and ownership of the processes to the local subjects, there will obviously be no progress.

My second point is about the insistence on multi-ethnicity and its reinstallation, i.e. the reestablishment of multi-ethnicity in the Bosnian way. The international community made a mistake by aligning multi-ethnicity under the parallel feeding of ethnicities and nationalisms, rather than insisting on and building what we all have in common. Therefore, if our civil society fails to establish, for example, the Association of Journalists of Bosnia and Herzegovina, rather than six different ethnic associations, I doubt that any progress is possible.

My third point is the insistence on democracy. It is not possible to talk about democracy in a provocative and radical way. We should all insist on democratic elections instead. Biljana's arguments also illustrate that we do not have any connection with democracy. Therefore, my third statement would be that we should insist on democratic processes, on the opening up of the parliament, on our own topics and not those imposed by others.

Lastly, the fourth factor that might change our situation, apart from our programmes, projects and arrangements, are social movements. It is obvious that in Bosnia and Herzegovina such deep and strong movements are about to emerge and these may drastically change the situation.

I would again like to emphasise these four points as the potential factors of change of our current situation in which we still cannot see the light at the end of the tunnel.

SRĐAN DVORNIK

Moderator

In the process of changing the balance between human rights and the national and state security, the transition processes in the post-Yugoslav countries are suffering from the consequences that are interpreted and manifested in a different way. One of these manifestations is the one that Srđan Dizdarević tackled briefly in connection with the decision of the Human Rights Chamber. The Helsinki Committee of Human Rights in B&H was involved in that case. By its direct involvement and its direct corruption of a fair procedure, it provoked an arbitrary foreign intervention "in the name of security". It became obvious that this region, and B&H in particular, is a part of the American hunting ground full of imaginary or real terrorists from all over the world.

There is another manifestation and that is the loss of allies. The participants of various civil activities undertaken by the civil society concerning the protection or promotion of human rights found their foothold in what is often arbitrarily referred to as "the international community" and what actually translates as the countries of North America and Western Europe. The foothold means anything, from the models or sources of knowledge, education, exchange of experience or the sources of donations for the activities of civic organisations. And now, these "allies" are not bothered any longer by such government representatives or political leaders and parties, etc. who, in fact, were the main players in the violation of human rights. We had a similar situation at the end of the war when those who were most powerful were considered partners. I kindly ask my distinguished colleagues to try to judge what is more dangerous here: the continuation of direct interference, or abandoning and handing over all these worries to us, locals citizens, which perhaps is not such a bad idea? Finally, what can be the effects of the new acceptance of nationalistic leaders by foreign governments and intergovernmental organisations that are so influential in this region?

BILJANA VANKOVSKA

The time has come for risk taking, therefore for making mistakes as well, in the process of building peace not in the absence of violence, but as a start from some painful points such as reconciliation, facing the truths about the conflict and about everything that cannot and should not be hidden by hypocrisy and slogans about democracy, about legitimacy, etc. So, to work in a society and take the responsibility for it, even if we have to pay the price of saying that perhaps we are not up to some democratic institutes such as elections. Perhaps, the right direction for us is to take a step backwards, not to emphasize some

empty slogans about democracy and show how good we are and how much we deserve to be part of the western world in order to actually face the real problems. It seems to me that the international community has fallen into our own trap of ethnicizing everything around us, and has thus contributed to the bloody dissolution. That is our responsibility, indeed. They adopted our own scheme, so each time any conflict arises, they rush to qualify it as an ethnic conflict. In Macedonia, it is a feigned war, and therefore, I disagree with the analysis of my colleague Tatalovič that it is about the problem of minorities, etc. The problem of minorities is a never-ending story, and there is always room for improvement there. However, the question is what is the cause of violence, why is there any violence, why at a particular point in time, etc. I have many arguments to prove that it was not an ethnic conflict, that there were many criminal and disguised elements and motives in it. We still do not know what actually happened in 2001. We got the "Ohrid Agreement" as an answer to the problems that we have not even defined. While analysing the constitutional framework, before and after Ohrid, we took a step backwards in a negative sense, by introducing the communities to replace citizens, human rights and individuals. We still do not have any entities, but we do have the communities that have become part of the parliamentary structure, so that at a certain point I must declare myself as member of a particular community.

My instinct tells me that we have to make a U-turn by building peace first, and then democracy, because the fight against violence is a prerequisite of democracy. As long as we have any form of violence, it is absurd to talk about legal democracy.

SENKA NOŽICA

Let me refer to two phases of influence exercised by the international community and to the human rights issues in B&H. In the first phase it was training, learning and setting up the highest standards. The second phase is a protectorate, as Srđan calls it. And here, I do not fully agree with Srđan Dizdarević because perhaps everything would probably be fine if it was a protectorate. But, our protector has not taken the responsibility. Therefore, at this point in time, there is no responsibility of anyone: the protector imposes the solutions, the local authorities are not responsible for these solutions because they are imposed, and the local government does not come up with any solutions whatsoever because they would not be the ones that the protector wants. Given this perspective, I am asking the question what to do and how to proceed.

I believe that at this moment, the international presence in B&H is necessary, as long as the Dayton Agreement is in force. In such a situation, I fully support Srđan Dizdarević's suggestion that the only way forward is to take a step back-

wards first and establish a dialogue between the local authorities, the international community and the civic sector. And this is the biggest mistake of the High Representative. The reason for this is the fact that he is not a diplomat, but a politician.

ŽIVORAD KOVAČEVIĆ

We brought ourselves into a situation of being the objects, and therefore we cannot in any way be equal members of the international community because we are under either a military or a political protectorate. I can see two serious limiting factors of the arbitrariness of the authorities. One is the international community itself, and the second one are the media. Other factors, such as trade unions, non-governmental organisations, etc. come next. The authorities and the elites are afraid only of the international community and the media. We cannot speak of "the international community" in singular, but only in plural, because there is a process of internal synchronizing within the international community.

The only system of security is the UN, and their role is extremely marginalized. However, they are getting a positive role again. This process will take a long time, and we are part of it. Imagine what kind of a moral situation it is, where we see America pressuring Macedonia to become a member of the International Criminal Court, whereas Europe is saying "Do as you wish!" It does not help getting angry about such situations. We should take advantage of their positive aspects. One should bear in mind their priorities and how we cease to be the acute area of instability, so they are withdrawing. However, they still consider the stability as their first objective and criterion. All these new agreements are called agreements on stabilization and accession.

The relationship is essentially a provincial one, so that it is necessary to do only what is requested, what we shall gain and how we will get out of such situations. That is our future and we cannot run away from it.

BISERKA MILOŠEVIĆ

Centre for Peace, Non-Violence and Human Rights, Osijek

From the today's presentations, comments, questions and answers, I realized that the Dayton Agreement does not suit any of us. If this is so, why don't we simply say that it was an agreement that was the necessary solution at a certain point in time, when the war had to be stopped, but that it was initially made by Tuđman, Milošević, and Izetbegović. We do not any longer have confidence in

what they signed then; the situation is different now and we have different ideas, so the initiative to change it should come from us. The question is, for how long shall we run around in circles before we can finally say that something does not suit us, and we cannot solve it. I believe that this is important because it is reflected in both Croatia and Serbia. Until B&H resolves its internal situation in a way that will be most suitable for the citizens of B&H, Croatia will not be stable either, because we keep looking across the border or Croatia is looked at from Herzegovina, or the RS looks at Serbia while Serbia looks at the RS. So, this is not only the issue of Bosnia and Herzegovina, but also the one concerning Croatia and Serbia, and we can certainly initiate some solutions.

SENKA NOŽICA

So, this is about the initiative for changing the Dayton Constitution, and not an Agreement, which is the Framework Agreement for Peace. I believe that we, the citizens of Bosnia and Herzegovina, should change our state, our Constitution, and you in Croatia and Serbia, you represent for us the international community. We have one Constitution that has brought peace, but it does not satisfy all the needs of our citizens nor does it recognize the human rights for all of them. Therefore, it would be good if the citizens of Bosnia and Herzegovina, following the initiative of the civic and non-governmental sector, change it very soon in a democratic way.

ŽIVORAD KOVAČEVIĆ

I mentioned the Belgrade Agreement as a typical example of something that could be done only with the mediation and pressure of the international community. The Agreement regarding the Prevlaka area touches upon a very delicate question, which was solved by that Agreement without any direct involvement of the international mediators. It was solved by a direct contact of the two diplomacies that realized they had to do something and neither party could be absolutely right.

It is necessary to take unilateral steps because only such steps will lead to a solution.

NEBOJŠA POPOV

You said that a new Constitution of B&H should be prepared and that the non-

governmental organisations should play an important role in that process. My question is: "Is it possible for the non-governmental organisations alone to prepare an act on the political structure, and if they cannot, who should they go into partnership with in order to do it?".

SENKA NOŽICA

How to solve the political structure in Bosnia and Herzegovina has been a hot topic recently. The non-governmental organisations cannot initiate the change of the Constitution. The Constitution should be adopted in a way in which it is usually adopted, i.e. in the state Parliament. Our problem in B&H is that both the Parliament and the current authorities are very pleased with our current Constitution. The international community drew up our current Constitution, and it would not be a good idea that the change of the Constitution, which is obviously needed, is again initiated by the international community. The authorities are not interested in it, so the non-governmental organisations should initiate a discussion that would lead to a platform that will be dealt with by the legal experts and all those who should be involved in the drafting of the Constitution which will be adopted by the citizens of B&H.

The non-governmental organisations in the whole territory of B&H, as well as all of you here, should be the partners in this project at this point. Your support is very important in any way in which you can exert your influence on the citizens of B&H. It is very important that the initiatives come from the non-governmental sector and that we start a discussion on what to amend in the Constitution, so that it can become a constitution that will satisfy the needs of all citizens of Bosnia and Herzegovina.

DINO ABAZOVIĆ

The problem in B&H and in the wider region is that the non-governmental sector is considered anti-governmental, which is entirely wrong. We should quit such a concept and recognize that those who work in the civic society, in the non-governmental sector, do not necessarily have to be the opponents of the government.

In my previous discussion, I intentionally made a distinction between the governmental officers and the decision makers. The decision makers are not necessarily office holders, who work for and within the government. These decision makers are often in a different kind of establishment. The establishment may vary from the political parties to religious organisations, from the academy to

the non-governmental sector, and that is the key issue. In most cases it cannot refer to the governmental/non-governmental sector only.

SRĐAN DVORNIK

It would be good if we translated "non-governmental" as referring to the government only and not as "non-state" because the term refers to the players and activities of not only executive but also any institutionalized authority.

SAŠA POPOV

Centre for Regionalism, Novi Sad

It is important to define the time frame we have in mind so that we can understand all the three questions from the title "The Rule of Law, Regional Security and Human Rights" and give positive answers to all the three. It is important for us to set realistic objectives and not be defeatists. The framework is obviously very wide so I will try to define it with an example. In the spring of 1997, I participated in a discussion entitled "500 days of Dayton". The discussion was initiated by Senka Nožica, Srđan Dizdarević and a few other members of the Alternative Council of Ministers. If they had told us then that six and a half years later we would hear such statements about the situation in the region, we would have been extremely depressed. In the meantime, we have been hoping to see some democratic changes, seeing the regimes guilty of the war leaving the political scene. It happened that after repeated elections, those who are responsible for what happened some ten years ago, are again elected and given power.

We should not allow the politicians to waste our time and energy, we should not allow them to use us as a cover up for a quasi-supervision over some individuals in the form of commissions or advisory bodies. In the end, the work of such bodies and commissions end up being only their assertions of what cannot be done.

SRĐAN DVORNIK

These discussions point to a question that has not been uttered yet: "How can the activists of the civic sector efficiently initiate and support such an enormous change?" The term civic society itself, according to its common usage in the last few decades, means simply active practising of political participation by the citizens, which is more than just their periodical voting at the elections.

In other words, this means continuous "interference in the internal affairs" of

the office holders. The non-governmental organisations may but do not have to be a good institutional backbone, a foundation or a logistic body for such interference of citizens in the state and public institutions activities. The civic society, therefore, does not consist of any network of organisations. It is created every day, or rather not created at all.

If we take the suggestions made at this conference seriously, and these include even a possible participation in drafting a constitutive act of the state (which would only then become a state), it requires very strong politicisation of the society, whatever it may mean.

Part 2

NORMALIZATION, CIVIL SOCIETY AND RECOGNITION OF HUMAN RIGHTS

1st Working Group

The Struggle for Human Rights and Civil Society

Moderated by Pavel Domonji

The Possibilities of Prosecution of War Crimes in B&H

BRANKO TODORVIĆ

Helsinki Committee for Human Rights in RS

The establishment of the rule of law is certainly one of the most important issues that the society of B&H has been faced with in the post-war period. There have been some obvious encouraging developments in that direction, achieved by powerful and systematic engagement (very often in the form of powerful pressure) from the international community. This is not surprising if one bears in mind that the gravest breaches of humanitarian rights, during the war in B&H, were committed with the active participation of some individuals who have found themselves after the war, as well as now, in the highest public positions. Extreme political ideologies that had planned and carried out ethnic cleansing, crimes and the persecution of the civilian population, as well as the widespread destruction of public property, used the fact that they remained in power, after the Peace Agreement, to ensure that they are not brought to justice because of the terrible crimes they committed during the war.

Aware of the possibility that they could be legally prosecuted for their crimes, because they had breached humanitarian law during the war, the political leaders tried to fully control the work of the judicial system, so that any investigation or court proceedings against them would be prevented. Parallel to this, by influencing the media, the educational system and exercising wide political manipulations, they tried to show and justify the crimes as an existential framework that was allegedly unavoidable because they were jeopardized by another

ethnic or religious group. The collective public image of the criminals as heroes has been created, as well as a need that they should be celebrated as role models and not as persons responsible for the committed crimes.

There have been two groups of activities of the international community that changed such a situation in which the local judicial system was unable to initiate court proceedings against the persons indicted for war crimes, and in which the support to the criminals was almost plebiscitary. The first, and certainly most important, has been the work of the ICTY (the International Criminal Tribunal for the former Yugoslavia) where slowly but surely the truth has been revealed and admitted. The truth entirely undermined the stereotypes regarding the innocence of the members of the ethnic group the war criminals came from. Regardless of strong and continuous obstacles, attempts to classify the ICTY as a political court, and a refusal to co-operate with it, this court has strongly influenced the change of attitude of the citizens of B&H, as well as in the region, about the nature of the war and war criminals. It has also created hope that the war criminals will be punished. The second group of activities of the international community is related to the overall and long-term reform of the judicial system in B&H. During recent years, these activities have resulted in the reinforcement of the internal capacities of the judicial system, as well as the reduction of the politicians' influence on the work of the courts.

In the previous judicial system of the B&H, as well as the one during the war, there was certainly a legal framework for the prosecution of persons who committed war crimes. This legal framework exists today, too, and in that regard the judicial system in B&H can be compared to the judicial systems in most European countries. An essential question can be asked: "Why haven't the prosecution offices and courts been doing their job?"

There are certainly many reasons for this, and we have already mentioned some. The fact that in the Federation of Bosnia and Herzegovina (FBH) there are at this moment over 80 court cases in progress, and some of these have been completed. In RS it was only recently that the first court cases were initiated (i.e. against the group of policemen from Prijedor, suspected of murdering the catholic priest Matanović and his family). This shows a continuous obstruction exercised by the authorities and judicial institutions in Republika Srpska and their reluctance to establish criminal responsibility for the crimes committed during the war.

Right after the war, the judicial systems of individual entities showed extraordinary interest and activity in order to instrumentalize these systems as a means of the continuation of the inter-ethnic conflict and accusing the other side of being the criminal one. The rules, introduced by the ICTY, stopped such attempts of political manipulation with the courts and introduced seriousness and respon-

sibility in this matter. In the interviews with judges and prosecutors it was easy to notice a few elements that they mentioned as obstacles to expand and strengthen the prosecution of the persons indicted for war crimes.

Firstly, political pressures and even threats are still very much present, as well as attempts to disqualify and obstruct any activity aimed at the investigation of war crimes. The largest number of those potentially responsible for war crimes still have a very powerful social influence, or they are members of the political parties, the police or the army that secretly or openly support them.

The second element, emphasized by the employees in the judicial system as a limiting one, is the personnel and the technical and material equipment of the prosecution offices and courts whose internal capacities are not fully capable to handle very complex and demanding proceedings for war crimes. After the new Criminal Procedure Act and the new Criminal Act of B&H were adopted, there has been a vacuum due to the unpreparedness of the staff in the judicial system to implement some very significant changes. The prosecution teams still have very limited number of employees, modest facilities to conduct investigations and collect field data, and this very often makes them powerless to collect sufficient evidence.

At the end of June, the Helsinki Committee of Human Rights in RS organized a training seminar at Mount Bjelašnica with 40 judges and prosecutors from Bosnia and Herzegovina. At the training seminar, we discussed with the ICTY experts the violations of law and of customs of war, command responsibility, serious breaches of the Geneva Convention, genocide and crimes against humanity. The objective was to consider the possibilities for the experience gained by the ICTY to be used in the judicial circumstances in Bosnia and Herzegovina. At the seminar, some crucial questions were raised, especially regarding the possibilities of the strengthening the internal structures in the B&H judicial system, so that it can become capable of prosecuting the cases against war criminals. A question about the possibilities of co-operation was asked in relation to the use of documents that are now at The Hague Tribunal, as well as the use of material evidence at B&H courts. The prosecutors and courts in B&H consider this question as very important because at this moment several million documents about the war in Bosnia and Herzegovina are at the ICTY.

Criminal prosecution and the establishment of the criminal responsibility of the persons indicted for war crimes in B&H have shown, to a certain extent only, that the internal and international legal order partially complement each other.

The establishment of the State Court of B&H and the State Prosecution show that the proverb about justice, to be slow but attainable, is true. The State Court of B&H should have three councils (for organized crime, for corruption and misuse of the economy, and a criminal council for the war crimes prosecution). Unfortunately, serious estimates have shown that at least two more years are needed for this court to become operational. In his speech delivered at the UN Security Council a few days ago, the High Representative for B&H, Paddy Ashdown, indicated that over 20 million Euros would be needed to ensure a five-year operation of this court. In the State Court of B&H, apart from the local prosecutors, the international legal experts should be engaged, too.

The beginning of the work of the State Court of B&H will indeed significantly influence the work of the current district courts in RS and the Canton courts in the Federation of B&H by demonstrating legal courses of action and the professional responsibility they will be faced with.

After the recent visit to the largest mass grave in B&H - the "Crni vrh" near Zvornik, the Helsinki Committee highlighted the unacceptable lack of interest shown by the Prosecutor's Office in the RS. Namely, the Office did not find it necessary to open an investigation after over 600 corpses of civilians murdered during the war were exhumed at this location. It is worrying that the persons indicted of this serious crime have not been brought to justice by the ICTY or by any local court. This shows the unacceptable reality and the necessity for significant changes to take place in the way in which the judicial system is functioning. In this regard, further significant changes which would result in the establishment of the rule of law and the punishment of war criminals are certainly needed.

PAVEL DOMONJI

Mr Todorović drew our attention to some problems related to the prosecution of war criminals in B&H. He also mentioned that all political elites are trying to exploit a regressive element that exists within each culture, i.e. that the crime is reattributed to another ethnic group and that, in accordance with the national myth, one's own community is always seen as a victim, and the other one as the perpetrator. And now, I will give the floor to Mr. Pusić. He will speak about the reactions of the non-governmental organizations to some biased court sentences.

Reaction of Non-Governmental Organizations for the Protection of Human Rights to Biased Court Sentences

ZORAN PUSIĆ

Citizens' Committee for Human Rights, Zagreb

This conference, as many before, confirmed that we, people who advocate the protection of human rights, agree in most of our attitudes and remarks. This makes us, in a way, the supranational interest group, whose interest is to protect the rights of individuals and most often, to protect these rights from the state itself. I believe, and am sure that my colleagues share such experience, that this is best done by protecting the individual citizens' rights from one's own state. The subject I selected is the one inspired by a recent event in Croatia. Let me summarize it here (it was published in the latest issue of the Feral Tribune). It is about, in my opinion, several flagrant violations of human rights committed by judicial institutions, i.e. the courts. Namely, a certain Colonel Novaković was arrested at the Macedonian border because he had been put on trial in his absence in Žibenik, and sentenced to twenty years in prison. It was then discovered that the sentenced person was the wrong one. I find the justification by the court in this particular case very interesting: "We did not check his parents' names, i.e. whether he was the son of Mate, Mara, or Kate. The defence attorney appointed ex officio did not complain, so the person was sentenced to twenty years."

The second example is the one of the judge Lozina in Split. First, he had classified one act as a typical cold-blooded murder, and then he found some mitigating circumstances for it. The murderer was the commander of a military police unit at the time when he committed the murder. He murdered a young man for no reason and in cold blood in front of a coffee shop. He was sentenced to four years and eleven months of imprisonment which is a sentence shorter than six years, so the perpetrator can stand trial while free.

At the same time, a judge in Gospić sentenced a former member of the military police from the "Republika Srpska Krajina" to thirteen years in prison for beating the detainees, and the explanation the judge gave for the sentence was that the perpetrator "and his ancestors lived for eighty years off the Croatian people after they had, together with the Osmanlis, terrorized the Croatian people".

All these events have happened during the last month, but illustrate a long series that began with the liberation of the murderers of the Zec family, who

pleaded guilty. A forged court sentence, in which the Abolition Act was applied on Reihl Kir, to whom this law was not applicable. These are only some examples of hundreds of similar sentences. There is a well-known sentence of Mirko Graorac, who is still detained in the Banja Luka prison. He was transferred to another prison after we had published a few articles, and then his sentence was analyzed. He was first detained in the Lepoglava prison. The evidence and the indications we gathered showed that the whole case was invented, including the alleged murder committed in Prijedor that he was charged with. He was sentenced in 1996, and then again in 2000, with the statement of reasons of the Supreme Court which had first rejected the sentence. From the sentence itself one could conclude that the first-degree sentence was rejected only because the members of the Croatian Army were in B&H and that could have had bad and far-reaching consequences for the Republic of Croatia. Namely, this fact was the only one that the Court proved beyond any doubt as the witnesses claimed they had been arrested as members of the Croatian Army.

There is a whole series of examples that, in my opinion, highlight an interesting and a complicated problem, i.e. what attitude should the non-governmental organizations have towards the judicial system in a situation where they themselves advocate, on the one hand, the independence of the judicial system, and on the other hand, bad and immoral judges turn the very idea of the independent judicial system into a farce. Such judicial system becomes a derision of justice and of the very idea of justice. This is a problem of the formal institutions in Croatia, and I believe it concerns other countries, as well. Such a formal institution may, unfortunately, be the judicial system. The courts should be the most powerful institutions for the protection of human rights. If this does not function, then we have an institution that creates more damage than if it did not exist at all. There was a good example of a public attorney (ombudsman) in Croatia. Professor Babac from the Osijek University was appointed. During the three to four years of his mandate, he filed only one complaint, and this happened when he had a dispute with the government. This was during the period of the gravest breaches of human rights, and he had a dispute with the government because he asked for additional room for his cabinet. So, he was at an important post, the government was showing off with him before the international community representatives confirming that they also had an ombudsman; they also had a public attorney. In this particular case, the nominated person created more damage than benefit.

A similar thing may happen with the independent judicial system if you have bad judges, and they are independent. That is actually worse than to have dependent judges, and this is my question that I want to pose for our further discussion. The problem with Croatia, and I believe with other countries as well,

is that it is a small country, so we cannot achieve a critical mass. Generally speaking, we may have a few bad judges, but given that in the whole society there is a "pool" from which better and more professional persons can be recruited. If a country is small, it may happen that there is simply no choice. If a bad judge becomes the president of the constitutional court, the whole matter may become almost unrectifiable. This is also illustrated by the example about the unscrupulous public attorney; this matter went wrong and had not been corrected for years. I will end my presentation here with one idea and one suggestion. Namely, the problem with the judicial system is that we want it to be independent, but the question is who is the one who is going to say that judges are corrupt and unscrupulous. Can politicians say it? Politicians a priori cannot say that because if politicians and executive authorities have control over judges, it naturally leads directly into a dependent judicial system. Therefore, I suggest that we discuss my suggestion that the independent organizations for the protection of human rights are ideally structured organizations for controlling and reacting to biased court sentences and unfair and biased judges. On the one hand, such organizations have moral reputation, and on the other hand they do not have any formal authority in their hands. This is certainly often a negative aspect of things, but in this particular case I believe it is their advantage, that their only argument is a spoken and uttered word, given that it is a truthful one, and they should then use it to start monitoring such court proceedings. This is actually the only way in which we can act in order to correct things in the long term.

PAVEL DOMONJI

Not very long ago, there was a suggestion initiated by the refugees who live at a collective centre in Subotica - they requested that the status of a national minority be granted to them in Serbia. This suggestion illustrates the social desperation in which these people found themselves. And now, Ratko Bubalo from the Humanitarian Centre for Integration and Tolerance from Novi Sad will speak; his topic concerns refugees and displaced persons.

Refugees and Displaced Persons: From Civil Inequality to Civil Equality

RATKO BUBALO

Humanitarian Centre for Tolerance and Integration, Novi Sad

Refugees are a specific minority indeed, not in the national sense, but in the cultural sense and in many other aspects. Their position resembles to a great extent the position of minority peoples. Refugees are the most vulnerable social group affected by grave and mass breaches of human rights. Refugees are neither citizens nor subordinates. They are excommunicated people, outcasts from the society and the community. And why is that so? I will illustrate this by an example from Bosnia and Herzegovina, which struggled under the weight of clashing nationalisms. In the Serbian, and then in the Croatian nation, two ethno-centric hegemonic policies aimed at ethno-homogenisation had won. They fought for a Greater Serbia, a Greater Croatia, and for the creation of the territorially compact states, and all this at the expense of the negation of the historic subjectivity and statehood of B&H and the negation or arrogation of Bosnian Muslims. Let us remind ourselves of the statement made by the current leader of the Serbian SPO Party (Serbian Movement for Revival), who still pretends to be a democrat. He stated on the eve of the disintegration of our former state: that only three peoples entered Yugoslavia, i.e. the Serbs, the Croats, and the Slovenes. And today, there are Slovenes who remained Slovenes, Croats who remained Croats, and the Serbs turned into Montenegrins, Macedonians, Muslims and Yugoslavs; or the statement of Franjo Tudman, made also on the eve of the war, that Muslims belong to the Croatian national corpus, that they live in the Croatian territory and "are an integral part of the historical fate of the Croatian land". And, in the Bosnian-Muslim group too, an option won that provoked fear amongst the two other peoples in Bosnia and Herzegovina. The political option of the SDA Party (Party of Democratic Action) of Alija Izetbegović, inspired by the principles of the "Islamic Declaration", interpreted the interest of the Bosnian Muslims in the creation of their national state, which in reality could have been established as a pocket Muslim state only. And the two warriors, Milošević and Tudman agreed. Unfortunately, such policies won. This demonstrated their full readiness to sacrifice the human resources of a nation to the state reason of national gratitude. Let us illustrate this with an example of the fragmentation caused by the war in B&H, reflected in the Dayton Peace Agreement by the issue of constitutive rights, so that each of the three peoples in Bosnia and Herzegovina is both the majority nation and the minority, depending on the entity they belong

to; it served the purpose of discriminating the minorities and discouraging the returns of refugees and displaced persons. The Constitutional Court of Bosnia and Herzegovina stated this in its fragmentary decision of July 2000, in which it declared the provisions of the Constitution of RS and the Constitution of FBH unconstitutional. Namely, according to these unconstitutional provisions, only the Serbian, out of the three B&H peoples, had constitutional rights in RS, whereas in the Federation B&H, only Bosniaks and Croats had such rights. The perspective of the mass return of refugees to Bosnia and in particular of the so-called minority returns, largely depend on whether B&H is possible as a prospective community of its three peoples. In order to achieve this, B&H must, in its very constitution, be a negation of the principle of both a historical Serbian land and the Croatian state right in B&H, as well as of the conception of Bosniaks being the founding nation, as if they were the tenants in B&H whereas the Serbs and the Croats are sub-tenants. No part of Bosnia and Herzegovina, or B&H as a whole, should identify itself with any of these nationalistic or radical homogenous conceptions, and this, in my opinion, was the main intention of the Constitutional Court of B&H. This is, in my opinion, the only way in which it is possible to realize and develop a prospective B&H and overcome the consequences of ethnic cleansing resulting in millions of refugees and displaced persons. The nationalist forces in Croatia, after they had won the elections in 1990, imposed their ideological and political vision of the character of the Croatian statehood and order of the Croatian State. Perhaps it is the easiest to illustrate this briefly by the statements of the Croatian State leader Franjo Tudman as "the president of all Croats". He kept addressing the citizens of Croatia with "male and female Croats". Such an ethnocentric vision sent multidimensional political messages to the Croats in B&H, in Serbia, or in any other country in the world to look in the direction of Zagreb, where their leader was. At the same time, it sent a clear message to the non-Croatian citizens of Croatia that he was not their president. Therefore, you are not an equal citizens of the Republic of Croatia, you are sub-tenants in it and you should behave yourselves in the way prescribed by the owner of the house. If you do the contrary - you'd better leave wherever you want. And this was a clear message that the Serbs in Croatia had received. I am not your president, look for your own president, and I will help you by supporting your "humane resettlement". This confirms that various nationalisms are allies and they cannot live without each other. They mutually nourish and support each other. With such excommunicating messages, Tudman simply pushed the Serbs away from Croatia into the Milošević's arms to be politically manipulated and used as scapegoats in the global Croatian-Serbian and Serbian-Croatian national and territorial bargaining. Milošević used this situation skillfully for his scenario of a Greater Serbia, thus helping Tudman to impose on the Croatian public an image of the Serbs in Croatia as a "disruptive element" for the Croatian statehood, as a danger for the Croatian people and the state, and as a cancer in the national tissue that was finally and ultimately removed during "the glorious actions Bljesak and Oluja".

The final solution to the Serbian question in Croatia, which is the aim of Croatian national policy, was achieved. To allow any mass return of the Serbs to Croatia would annul that aim. Therefore, in order to preserve and cement the results of ethnic cleansing, the Croatian Government at that time, and in particular after the Croatian military actions "Bljesak and Oluja" in 1995, undertook a number of measures to prevent a mass return of the displaced and refugee Serbs to the Republic of Croatia on the one hand, and, on the other hand, to stimulate and encourage the colonization of Croats in Krajina. Special laws were passed in order to significantly restrict the property rights of the displaced and refugee Serbs. This was an understandable consequence of the newly established character of the Croatian statehood, as well as of the establishment of a special pseudo-legal system applicable to the Croatian citizens of Serbian nationality, so that many of them still have the status of refugees and displaced persons. For example, such parallel systems of law were created in the form of *lex specialis*, i.e. in addition to the existing general laws for a particular area, such as the law on ownership and real property rights, or a regulation of the same rank, such as the Act on Temporary Take-Over of Rights over Particular Property as *lex specialis*. When there are two laws of the same rank, i.e. a general and special one, then *lex specialis* or the special law is applied. This is the main method used by the Croatian Government in order to create a parallel legal system, through special laws or *lex specialis* applied and relevant to only some citizens of the Republic of Croatia (RC). The Law regarding the temporary take-over of property was later replaced by the Programme of Return of 1998. The programme of return of refugees suspended to a large extent the general legal system and introduced a parallel pseudo-legal system for the refugees from RC. The Programme is neither the Constitution nor the law. It is not a resolution, or a declaration, or a recommendation. It is actually all that, and moreover, it was used as a supra-constitutional act in its part in which it unconstitutionally deprived the refugees - the property owners - of the legal capacity to initiate court proceedings for the protection of their property.

The Return of Refugees and Restitution of Property in the Republic of Croatia

MIRJANA GALO

Organization for Human Rights, Pula

As you know, this year has for the third time been declared the year of the return, reconciliation and reconstruction. Our experience suggests that, each time the year of return is declared, very little is done about it. We know that in the long term, it only becomes a new reason for unrest, hatred and insecurities in the region. My view about the situation in Croatia regarding the return is that it has been done in a planned and systemic way in order to preserve certain areas ethnically "clean". We were hoping that the change of government in 2000 would improve the situation. However, we have seen that the new Government has been implementing Tudman's programme much better than Tudman himself. There are obstructions at all levels and there is no chance of any return. The people are deprived of their ownership rights, reconstruction rights and employment rights. You can imagine how things are if I tell you that the Croatian Government has recently started issuing official decisions for reconstruction. However, they have very good co-ordination with investors, who refuse the reconstruction because the roads leading to the houses which need reconstruction are inadequate to get close enough to the ruins. Therefore, the investors allegedly do not reconstruct the returnees' houses.

Not to mention the judicial system where the situation is particularly intimidating. Let me illustrate it with one example: a small place called Jezerce, in the heart of the National Park "Plitvice" used to have 198 citizens according to the census of 1991. Out of that number of residents, 56 of them were declared war criminals. The charges against these people were in the meantime dropped, but today none of those who had been "accused" can return. No refugees or displaced persons occupied that area, but our "liberators" or people from other places who were deserving members of the "appropriate" political party.

Our organization issued warnings about all this a few years ago:

"On 8 June 2000, in Slunj, a memorial tablet was officially unveiled, dedicated to Jure Francetić, the commander of the Ustashi Black Legion. Many local electronic and printed media reported at length about this event in their informative programmes. The launch of this memorial tablet is just one in a series of disrespectful attempts to revise Croatian history. It is also a test for you from the executive authorities, and for us, citizens of Croatia, who entrusted you with our confidence by our votes.

The extreme right groups use exactly the iconography from the darkest part of the history of Croatia, from the times when the fascist Ante Pavelić ruled over Croatia. He was the leader of a quisling creation entitled NDH (The Independent State of Croatia, an ally of the Third Reich), and in reality, he was the chief of slaughtering units. These units murdered and suffocated at least 80,000 people in only one location - the concentration camp Jasenovac. Jure Francetić is one of the symbols of Pavelić's quasi-state. Moreover, he is one of the symbols of everything negative that can happen in a state to all those who are different. In NDH, the "different" ones were the Serbs, Jews, Roma, communists, as well as numerous Croats who disagreed with the slaughter methods of Francetić and his black legion, as well as with other followers of the Ustashi movement.

Dear gentlemen of the Government, the unveiling of the memorial tablet to Francetić was preceded by a series of ruthless breaches of human rights, and the glorification of Ustashi crimes. All this has happened in the last few months, exactly since you came to power. The urination of the mother of a false Croatian defender over the memorial dedicated to the victims of Ustashi terror in Veljun, the right-wing rally-goers singing Ustasha songs, the fist raised in Vukovar, the raping and animal-like torturing of a helpless old man in the Šibenik area, the rallies in Gospić and on the waterfront in Split, also underlined by the Ustashi iconography, attempts of physical conflicts at the Victims of Fascism Town Square in Zagreb, the invitations coming from the presidents of the voluntary associations to block traffic roads, the gathering in Bleiburg, etc

Even during the autocratic rule of F. Tuđman and his regime we did not see so many pro-fascist performances and gatherings of such intensity. Moreover, the representatives of the Government, its delegates, as well as the vice presidents of the Croatian Parliament are present at all these gatherings. They even deliver speeches there with often the same, and sometimes even worse vocabulary and content than the organizers of such gatherings.

The extreme right-wing forces have never enjoyed this level of freedom. They revise history, they threaten people with eviction, they block the normal functioning of the state, they physically fight with those who do not have the same opinion as themselves, and in particular with non-Croats. This situation in the state cannot be called a marginal gathering of the defeated forces, because these forces have not been defeated at all, as one may have concluded on the basis of the results of our recent Parliamentary elections, but they have been supported by the highest bodies of the state authorities. You have supported them, because you have not reacted adequately to their actions, and because you yourselves have participated in such actions.

Dear gentlemen of the Government, it is sad to remind you of our current situation of all the rights that the Constitution of the Republic of Croatia provides for all its citizens. The people of this state selected you to run the state, but in the way prescribed by the Constitution. No one can be discriminated against just

because of their different skin colour or because they follow a different calendar for their church prayers, or because they pray to some other God. That same Constitution states that today's Republic of Croatia has inherited the achievements of ZAVNOH (the post World War II National Anti-Fascist Council of the Peoples' Liberation of Croatia), and anti-fascism is its source. By your systemic lack of action against various Đapićs, Jelšovecs, Merčeps, and Hazlers you are taking on yourselves the guilt for all the crimes, for what has been happening to helpless old men and unprotected individuals. By such behaviour of yours you have been approving fascism, which has flourished in these areas again in its most malign form. By your lack of action against it you have taken over the responsibility for the possible repeated isolation of the Republic of Croatia, which went out of isolation once just because its peoples said they wanted changes to happen. Time flies fast, and, because of your behaviour, you are less and less of a guarantor of changes. Therefore, on my own behalf and, I hope, on behalf of the democratic public and all free-thinking citizens of this state, who are disgusted by such behaviour of yours that floods everything from Vukovar to Dubrovnik like a liquid poison, we demand that you use all the means granted to you by the law and stop the flourishing of fascism in Croatia.

For all citizens to enjoy freedom and the rights that belong to them, for all of us to feel secure and happy in the Republic of Croatia (RH), including those nostalgic for the NDH- who should be helped as they are "our ustashas" after all, you must however stop those who glorify butchers and murderers, those who do not want the national minorities to "litter" here; you must break the chain of misfortune that has been circling in these areas. Do that sooner rather than later because the confidence that the citizens granted you with has been melting and disappearing, and with it the hope and the future of this country."

This was our letter that we sent to the Government as our reaction to all the evils that took place and that continued to happen. The only change has been that the name was given back to the Victims of Fascism Square, and that the President of the RH Stjepan Mesić said that the memorial to Francetić should be removed because it did not have a construction license, and not because of what is written in the Constitution of RH. The memorial tablet is still there; it is located in the area with the Serbian majority, where evil and hatred have been swelling and therefore there has been no possibility of return. So, the return is obstructed.

And now let me present a poem written by a returnee. We can feel all the sorrow and misery it reflects. I am not claiming that the situation is better in other areas, but I still believe that this is a good example.

A returnee wrote this poem entitled "A dog and a man":

A dog and a man

In my native village I found a waste land
No trace of life, and I felt awful,
Oh, my birthplace, my happiness, oh my native village
Is that really you?

I could not find a friend or a brother
Nor memories from my youth
The tomb-like silence rules over my birthplace
And only the graves still stood there silent.

And yet I met, let me tell you,
Mica, Nena, Jelka and Marija
And that old Peja, oh my fresh wound,
My first neighbour from childhood.

As an ancient oak this old man has tumbled
His eyebrows are grey, his face full of wrinkles,
He is staring into the distance, sorrow in his eyes,
His dog is his only companion.

A lonely old man stands still at the fire place
All he has got is his dog.
Both of them have eyes full of sorrow,
A dog and a man - two only companions.

I handed a packet of tobacco to the old man,
And he took the present with his shaky hand,
From his eyes dried up with pain
Two tears scrolled down his face.

You should not have, thank you, he whispered.
I hope that evil is now behind us.
I hope that I will live long enough to see a better world,
And if not I, then my dog will.

The old man opened his painful soul,
Some words got stuck in his throat,
His pain moved me to tears
I cried, and the land cried.

The old man says there is no more hope.
I am tired; I had enough of everything,
All my stars have been extinguished,
And only sorrow remained in my life.

Solitude is my scary fortune,

And my only companion is this loyal dog.
The old man speaks as his eye cries,
His eye cries and his voice trembles.

I find the long winter nights scary,
My whole life is a Golgotha,
I did not know that I would live long enough
To see that death is dearer to me than my life.

I parted from the old man unwillingly
Carrying my soul full of wounds,
And he stayed with the dog
To hope until Doomsday.

Shaken by pain I am walking slowly,
There is only sorrow in my senses,
Oh, fucked, cursed man's fate!
A dog and a man two only companions.

Appendices³¹

"HOMO" Pula, G. Martinuzzi 23, 52100 Pula, Croatia

• conference subject

1. Breaching of human rights in Croatia has been manifested in two segments in particular:

- through actions and deeds that prevent or slow down the return of displaced persons and refugees,
- by breaching employment rights.

The displaced persons and refugees are prevented from returning to Croatia through:

- no restitution of property: of private family houses, and tenants' rights that used to be valid before the war
- the slowing down and long lasting process of reconstruction
- frequent arrests that deter the young population from returning.

³¹ **Information materials** Mirjana Galo and the organisation Homo forwarded in writing, and these materials were distributed in advance - editor.

1. Property return

Even if the process of property return, in particular of family houses, was announced as a dynamic one in 1998, now, five years later, the results achieved in this field are not encouraging.

Property return has been locked by the co-ordinated activities of the legislative and local administrative bodies in charge of the return of property to its owners. The local administrative bodies, the same ones that allocated private property in 1995/1996 to third persons, have obstructed the laws, dealing with this issue, which are insufficient anyway for years. Therefore it has been possible to maintain a status quo for years.

Until now there has not been any objective data about the actual number of property claims filed by the properties' owners, the number of houses returned, and the number of houses sold. It happens quite often that, while dealing with the data about property return to their owners, the Ministry in charge of public works feeds false information to the public, so that, for example, the houses sold to the APN³² (the Agency for Property Sales) are counted as returned to their owners, and the actual owners, even if they filed their property claims, were in fact forced to sell these houses because the chances of returning ownership were hopeless. Moreover, it is a widely known fact that such sales were done at shamefully low prices.

It is not advisable to disclose unconfirmed estimates. However, it is well founded to draw a conclusion based on a number of parametres that the number of houses sold in this way is higher than the number of houses actually returned to their owners.

The judicial institutions have not offered adequate legal protection to the ownership rights of the returnees due to loose and discriminating laws in this area, as well as due to the major influence of politics on their work. Their sentences have been obviously supportive and patronising in favour of the temporary owners, and to a disadvantage to the actual owners. Namely, if nothing else, the courts at least dragged the proceedings over a few years.

Appendix: The sentence of the Municipal Court in Korenica - in the case of the owner Žigić Milan from Korenica, Josipa Jovića Street no. 12.

The party submitted a request for the return of his property in 1996. His house of over 200 square metres in the centre of Korenica has both a residential and business part. The whole house was given to a temporary user, a person from Zagreb to do business from there. In the house yard the temporary user also occupied the whole house of the party's brother. The second house is over 200 square metres large, too, and the temporary user uses it for his accommodation only. From 1996 to 1999 the party undertook a number of activities aimed at the return of his house, so that it happened not sooner than in mid 1999 that

the warrant for eviction was issued by the Municipal Commission for Accommodation of Plitvička jezera. This warrant has not been implemented yet. As the temporary user refused to follow the warrant. Then, in accordance with the mandate of the Commission for Accommodation, a complaint was filed against him at the Municipal Court. The proceeding was completed by a sentence demanding the temporary owner to leave the property concerned. This sentence is valid before the law, the executive process started a long time ago, and the eviction has not been carried out yet. The temporary user still uses the house concerned for his business, whereas the actual owner is forced to live abroad for the time being until he is able to enter his property.

In order to extend his stay in the house concerned, the temporary user filed a complaint against the actual user requesting that three quarters of the co-owned part of the house is acknowledged as his property because he made some investment there: he made aesthetic changes to the interior, entirely unnecessary ones. These changes, in fact, disturbed the actual owner's space. Of course, the owner rejected such a complaint and claimed that it was entirely arbitrary and baseless, and filed a counter-complaint requesting: compensation for the usage of the business space, bringing the business area into its original condition as the temporary user disturbed and changed the look of the family house by illegal building interventions and compensation for the damage caused by preventing him from doing his job as he used to run a professional restaurant in the business part of his family house. The Municipal Court in charge then ordered the actual owner to pay the temporary user approximately 60.000 Kunas (The official currency of Croatia) including the interest rate and absolutely rejected the actual owner's request.

There was an almost identical case involving Jovan Rapačić, a party in a property claim law suit from Korenica. His house was badly damaged by fire. The Police Municipal Headquarter officer and his fiancée occupied his house. These two actually did make certain investments, but they took the property away from the actual owner. They turned the whole house - both its residential and business area - into solely business premises in which they opened a pizza restaurant and a video club. This case has been processed by the court and it has not been resolved for years. This same party (i.e. Jovan Rapačić) as a displaced person used a family house temporarily in the Podunavlje area. The local authorities there issued a warrant for an eviction within 7 days in mid-1997, and he had to leave the house unconditionally.

So, the family house of a returnee Croat had to be returned to him within seven days in the proceedings before the administrative bodies, whereas a returnee who belongs to a Serb national minority has been waiting for a return of his family house for over five years in the court proceedings that has lasted so long, and it is still not clear how much longer it will last.

In the proceedings for the reconstruction of a damaged family house, the party received a negative decision with the explanation that the house concerned was not damaged at all and therefore it was categorized as having a '0' grade of damage.

In contrast with private ownership over family houses, the rights of the former bearers of accommodation rights over socially owned apartments have not been on the agenda yet. The regulations that are in legal force now absolutely favour the current users of the apartments.

In this area there is a grave breach of property rights of the former bearers of accommodation rights, because these persons used to purchase these apartments with their own money, on the principles of solidarity with other employees for their companies. Then the state used the given circumstances and declared the apartments its own property. Now it uses these apartments in the following way: it allocates them for use to whomever it wants, and not to the ones who have property rights and claims over them. The former bearers of accommodation rights either do not have any of having their rights returned so that they can use these apartments or, in the best instance, compete for these apartments, by proving their need for accommodation. This, however will certainly not be met.

2. Reconstruction

The returnees started to file their requests for the reconstruction of their damaged and ruined family houses in October 1997. For several years then (1997 to 2000) their cases were entirely blocked, and then, due to the pressure exercised by the bodies in charge, the institutions that were supposed to process such claims started to complete necessary documents for each case for two more years: many times the owners were invited to complete their documents with allegedly missing identification papers, so that any valid processing began only in mid-2002. It was only then that the institutions concerned started to issue valid decisions to a certain number of actual owners to return their property to them.

Remark: If decision making about the claims filed by the actual owners continues at such a pace, then it will take around 15 more years for this whole job to be completed.

After a decision recognizing the right for reconstruction is issued, its implementation can be expected only one or more years after: as a cash payment if a level of destruction is lower or a contract is signed about the reconstruction of the house which is more damaged or completely destroyed.

Humanitarian organisations that offered their assistance to the reconstruction

on the ground have very much eased the work and sheltered the obstructions of the Ministry of Reconstruction and Civil Construction in charge. These humanitarian organisations mostly offered grants for lower damage (I to III grade damage), and the amount they invested in the reconstruction was then deducted from the amount allocated by the Ministry to the owner as compensation for the damage. This eased the work of the Ministry. Very often the returnees themselves noticed that the amounts which the humanitarian organisations running such programmes presented to the district offices for the reconstruction in charge were not realistic, i.e. they were much higher than the amounts that were actually donated, expressed as a bulk sum, and with no possibility of analysing the correctness of particular items of expenditure.

Many citizens felt that they were cheated in such situations. Furthermore, the returnees were often deprived of their rights because incorrect estimates of the damage levels done by the commissions in charge of estimating war damage. This has created additional problems for the owners: it has often happened and was recorded that a family house was without doors and windows, floors, that its plumbing and power supply installation systems were destroyed, and that such a house would still be registered as a '0' category one, i.e. as if it had no damage. Then such owners were forced to file their complaints to the Ministry. The action of the Ministry initiated by citizens' complaints of this nature takes years. Some owners then withdrew their complaints as they cannot wait for the Ministry's final decision.

In this part of my presentation some remarks can be pointed out related to the lack of insurance of the basic infrastructure in many places to which the returnees returned, and where their houses have been partially refurbished. Namely, there are frequent and well known cases that certain places have not had power or water supplies provided yet. Their minimum needs have thus not been met. The water and power supplies existed in such places before 1991.

However, in contrast to the cases described here, the Ministry of Reconstruction and Civil Construction is very efficient when it decides about the need to knock down some heavily damaged family houses - with the explanation that the construction is dangerous for its surroundings, that it disturbs the scenery or the surfaces close to the motorway that has been built nearby.

It has been noted that this is done mostly with houses owned by the Serbian national minority. Also, a number of sacred buildings owned by the Serbian Orthodox Church have been affected by this programme.

Appendix: The list of ruins along the main tourist motorways

3. Arrests

Returnees have often been arrested and unexpectedly charged with committing criminal deeds during the hostilities in the period from 1991 to 1995. There is no question that any one who committed a criminal deed - and in particular such deeds that qualify as war crimes, should not be charged and trialed. However, it should be noted that the arrests of the members of the Serbian national minority may go out of control and escalate to worrying levels.

The following trend can be noticed in the processes of local arrests, i.e. from the arrest itself, the conducting of the investigation, to the passing of sentences:

a high degree of revenge towards the perpetrators of criminal deeds (the duration of their detention, the duration of the sentence, etc.),
the sentences passed are usually very long in terms of their duration,
while running the proceedings, the courts, at the expense of professionalism, frantically listen to local public opinion, so that such proceedings are under a powerful influence of the intolerant political mood.

The arrested persons are faced with an additional difficulty, too. Namely, they are not able to cover the expenses of any professional defence themselves: a lawyer (defender) is allocated to them by official duty, the opinions of such lawyers very often do not differ from those of the state attorney (prosecutor) who is in charge of the prosecution of perpetrators.

It has been noted that in the second half of 2000, after the Law on Changes and Amendments of the Law on the areas of special state concern that was in force since 1 August 2002, the regulation that should have given more support to the return of property, there were a number of arrests in a short period of 10 to 15 days in various places in the areas of special state concern. This made potential returnees feel insecure and, in the long term, turned many young people and the whole families away from return in general.

4. Breaches of employment rights

has several manifestations, such as:

- a) The impossibility to prove years of service accumulated before 1991
- b) a negative effect of convalidation
- c) employment
- d) etc

The impossibility to prove years of service accumulated before 1991:

It has often happened that many persons cannot officially prove even a third of their years of service, even if they have never stopped working.

The periods when the employee received his or her best income are the very ones that are missing from their working record. The official explanation for this is that the companies who employed them did not pay contributions for their employees regularly and fully; it was absolutely impossible for this to happen before 1991, because the legal obligations (the contributions concerned) had been first paid from gross income, and then the net salary had been paid to the employees.

Convalidation

Many persons who worked from 1991 to 1995 were deprived of their rights in this sphere, mainly by very short deadlines for the submission of applications for the convalidation of their officially recorded years of service. The Law on Convalidation was passed in October 1997, and then the Regulation about bringing this Law into force was pending until October 1998, after which all interested parties were given only six months to apply (the deadline expired on 10 April 1999). So, many of these persons, because they were not informed, due to objective reasons, did not submit their requests as at that time they were not in the Republic of Croatia. Some of them are still not in the country, and they have never applied for convalidation.

This is what has happened with the requests from a small number of persons who submitted their requests within a given deadline:

the persons whose requests have not been processed yet - most of them are like this,

the persons whose requests were processed and their years of service were not officially recognized,

the persons whose requests were solved, and the number of these is symbolic, if one does not take into account the number of agricultural workers whose years of service were convalidated, but only after they themselves had paid the insurance fees for the whole period from 1991 to 1995.

Therefore a general remark concerning this problem that the years of service accumulated in the period from 1991 to 1995 in the temporary occupied territories can be considered entirely lost.

Employment

The members of the Serbian national minority have found employment for themselves very exceptionally and rarely, and only at private companies, whereas the possibilities for them to get employed by state and public institutions such as court, police, local administrative bodies, health centres, schools etc, have been almost non-existent.

In this sense a transparent discrimination is obvious as early as the public advertisement phase, or later during the work itself.

Appendix:

Subject: Seka Prica from Korenica
Vejin Nada from Srb.

Seka Prica from Korenica:

The Korenica Branch of the Karlovac Bank was looking to hire one employee: Head of Korenica Branch, and for this post the bank asked, in addition to the general requirements, that the applicants present evidence of the following special skills: High School certificate in Economics), 3 years work experience, work on a PC, and knowledge of English and German.

Following the public advertisement, two candidates applied for this post: the client Seka Prica, who met all the requested requirements, and another candidate. However, a candidate who did not meet the expert qualification criteria, as she finished secondary school only, was offered a job. Seka Prica belongs to a Serbian national minority, and the second candidate who was offered a job belongs to the Croatian nationality. When the first party Seka Prica complained about the legality of the candidate selection process, the Korenica Branch of Karlovac Bank annulled the whole competition and enabled more candidates, who did not apply for the post concerned before, to apply. By doing so, it opened a possibility for the elimination of the first party Seka Prica from the process, and this was precisely what was done. The first party asked for court protection, but it is clear that the court cannot dictate to an employer which candidate to employ.

Nada Vejin from Srb (Gračac Municipality)

The party made a contract about employment in 2001 with a Primary School in Srb for the post of cleaning lady. The contract was made for a limited period of time. However, it was annulled as soon as a Croat returnee from abroad came back to Srb. The first party Nada Vejin was then told straight away that her contract was annulled, and parallel to that the returnee Croat started to work at her post. The first party asked for the protection of her rights, but the Municipal Court in Zadar passed a sentence that dismissed her request. This sentence was

challenged by an official complaint, but the complaint has not been implemented until now. The District Court in Zadar has been processing the case.

In Pula, 6 October 2003

For HOMO

Mirjana Galo

The rights of the former bearers of accommodation rights to return their apartments

In mid-June 2003 the Government of the Republic of Croatia adopted a document addressed to the former bearers of accommodation rights who were deprived of their apartments and have not been accommodated elsewhere. The title of this document is:

"The Conclusion regarding accommodation of the returnees who are not house or apartment owners and who used to live in socially-owned apartments (the former bearers of accommodation rights over the socially-owned apartments) in the territories of the Republic of Croatia that are outside the areas of special state concern".

However, this document should not be given too much importance due to several reasons:

this is not a legal document, but a political statement that may be annulled as soon as the next elections are over,

this act is treating the problem of accommodation rights in its segments only: its subject are only those apartments that are outside the area of special state concern.

For this document to become one that would tackle the problem of the accommodation of the refugee population more seriously, this question should be resolved by at least a legal regulation that would encompass its essential issues, such as:

who, and under which circumstances can file a request for accommodation, what is the cut-off point for defining which persons are entitled to file requests,

who is in charge of processing such requests, and which procedures should be applied (a general or a special one),

what is the timeframe in which the authorized bodies should solve the request submitted to them,

what are the ways in which accommodation problems of the applicants will be solved, etc

In the Conclusion I stated that it is generally mentioned that accommodation can be solved in several ways: by renting state-owned apartments or by purchasing apartments with the possibility of paying by instalments in the long term. This provision implies that former bearers of accommodation rights will not have the same conditions as the citizens who, in the early 1990s managed to purchase their apartments at discounted prices. It was logical to incorporate into these new measures passed by the Government the provisions about the same purchase options that were valid for all citizens in 1991/1992, and in particular regarding the purchase of the apartments used by the former users, because they invested parts of their gross income into these apartments. Namely, such apartments were not built by state funds but by the employees' ones. However, the state declared itself the owner of these apartments at a later stage and adopted a new criteria on how to manage them.

By this act the Government of the Republic of Croatia did not take a step forward to the essence of the accommodation problem that the former bearers of accommodation rights over socially-owned apartments had. If the return and purchase of the apartments that, due to the circumstances, had to be abandoned, turned out to be too complex, then the state could act in several ways:

a) define a realistic value of the investment made by the former bearers of accommodation rights, and then incorporate that value into the purchase of their former or new apartments,

b) offer them the possibility of accepting certain rights over state-owned houses, purchased through the APN in the areas of special state concern. The official data about the total number of houses purchased in these areas is not available, but it is more than obvious that the Government does not tend to compensate the injustice and damage caused to the former bearers of accommodation rights from this significant accommodation fund

It is obvious that it is assumed how the former bearers of accommodation rights would not, in exchange for the apartments they had accommodation rights for, accept houses already purchased by the state in the areas of special state concern, and this option should have been certainly incorporated into this act.

Therefore, the way in which the accommodation issue should be solved should be more specific and precise, and it should envisage the following:

the purchase of apartments for the former bearers of accommodation rights under the same conditions that were offered to other citizens,

the renting of apartments (the status of a protected landlord) for those who wish to use them, but do not want any ownership rights,

the purchase of apartments for those who were not the bearers of accommodation rights, and they want to return and live in the Republic of Croatia.

Those who are not well acquainted with the situation in RH may conclude from this text that all former bearers of accommodation rights - potential returnees, were treated fairly and that their claims were solved a long time ago, and that there is only a symbolic number of those whose accommodation problems should be solved. However, the actual situation is that the problem has not been solved, and, in addition to that, it has not even been discussed seriously until now.

There is no reliable official data available about the number of citizens of RH who are the former bearers of accommodation rights and who lost their apartments. However, it can be concluded from secondary sources that there are around 35,000-50,000 confiscated apartments in Croatia. Until 5 to 7 years ago there were at least that many purchased private houses from refugees who, for various reasons, were forced to sell their property: they could return to their property, they could not for other reasons - most often existential ones - decide to return, or for other personal or family reasons it did not suit them. The purchase of these houses was done by the APN. The APN's fund was also significantly enlarged with the houses sold by the citizens of the former SFRJ Republics, so that at the moment RH has such an accommodation fund at its disposal that it can solve the accommodation claims of all its citizens. Instead, the Government is suggesting ways which are long-lasting, complicated and uncertain.

Furthermore, it is not clear why the apartments in the areas of special state concern have not been encompassed by this document. Namely, it refers to the apartments in urban areas only. Let us remind ourselves that RH has always tackled this problem (return of private houses, return of apartments) selectively, by applying double standards:

For example, in November 1999 a regulation was adopted that regulated the question of the return of apartments to the former bearers of accommodation rights - the returnees in the Podunavlje valley. However, this same Regulation has not been applied at all in other returnee areas in RH: Lika-Senj District, Goranska, Karlovac District, in which at that time a more dynamic process of return was starting. It was not mentioned in this regulation that it would be applied in the Podunavlje valley exclusively, but in its implementation it was known that such tacit rules would be applied.

Furthermore, the former "Programme of the Return of Refugees and Displaced Persons" was applied in a way that the temporary users in the Podunavlje valley - the Serbs - were obliged to leave the houses of Croat returnees unconditionally within seven days. However, according to the identical provisions of this law the Serb owners could not get their property back until five years later on average.

The conclusion I mentioned was created in this way. Its contents may only mean that the actual intention of the authorities in charge is never to solve this

problem, or to solve it after several decades.

The conclusion implies another discouraging circumstance, which is that one administrative body - the Ministry of Public Works, Reconstruction and Civil Construction - was allowed to regulate purely legal questions dealing with the acquired property rights. This Department could have been entitled to eventually complete the practical details in the legal act, but it is unacceptable that it is entitled with such wide authority as envisaged by the conclusion concerned.

Let us remind ourselves that this Ministry has been implementing the return of private property to its former owners for years in a slow and extremely inefficient way, that the results it achieved in this area were the results of the pressure exercised over the Ministry, that the Ministry did everything in its power to extend the process of return over a few years; therefore, it is not difficult to assume the attitude of this Ministry in the cases of accommodation claims submitted by the former bearers of accommodation rights while the Government hands over entirely to it the authority to pass discrete judgements in that area.

To conclude with, it can be stated that this problem can be solved with the coordinated action of the legislative (by passing clear legal frameworks) and executive administrative bodies (by removing obstacles in the implementation process), and then also the judicial bodies (these should offer adequate legal protection).

Insisting on double standards, a selective approach, a unbalance between publicly stated opinions and their realization do not bring optimism into this sphere.

Citizenship

The procedures for granting citizenship of RH to foreigners are very slow and long. The process is divided into two phases. In the first phase permanent residence should be confirmed. This requires an active foreigners' address in Croatia, which is checked. After the permanent residence is allowed, then the process of granting citizenship can be initiated.

The groups of foreigners who lived in RH for decades, had their residence registered there, realized their entire working lives there and gained a pension in this country, as well as valuable property, but, due to the events that took place between 1991 and 1995 left this area, so their residence was officially cancelled with the explanation that they did not notify the RH institutions in charge that they would leave the country for over a year within a legally defined deadline, which was not possible in their situation.

This population is very intensively linked with RH over a longer period of time and, finally, they wish to continue to live in the territory of RH. However, the way

in which they have been treated is very complex: firstly because they have been waiting a very long (many years) for their personal status to be officially defined, and this is a prerequisite for them to realize their other, rights of existence, and secondly because the procedures for permanent residence were imposed on these persons when their former status had been cancelled officially and without their knowledge or influence. The procedure for proving permanent residence in RH also lasts long (1 year) because it contains the process of court investigations of the legality of the legal provisions applied to them, as well as the process of proving that not all the preconditions were satisfied at the Ministry of Interior when their data was deleted from the register of citizens with permanent residence.

The category of foreigners, whose position is slightly more privileged than that of others, are the persons who are married to RH citizens. However, the procedure these persons have to undergo in order to regulate their personal status, and the citizenship status in particular, takes approximately 2 to 2.5 years.

Foreigners can freely stay in Croatia, but their residence permits must be regularly extended. When they want to work in Croatia, then they are required to present the employer with a work permit.

Pula, 6 October 2003

For HOMO Pula

Mirjana Galo

VJERA SOLAR

The Citizens' Association Against Violence, Sisak

The Citizens' Association Against Violence has been active since February 2003. In accordance with our programme, we advocate that all crimes committed in the area of Sisak District are disclosed and the perpetrators brought to justice. In addition to this we advocate that the victims of these crimes as well those forced to leave their homes due to pressure exercised against them should be able to return to their homes.

Because I had a personal tragedy, when my nineteen year old daughter Ljubica was killed on 17 September 1991 under circumstances that have not been officially disclosed yet, and driven by my wish to discover who committed this crime and why, I wish to gather together all the victims of similar crimes.

Our Association consists of 30 members. In the short period of our operation we collected 31 statements from witnesses of crimes against civilians in Sisak and its surroundings. All the institutions that should have handled these cases - from the police, prosecutor's office, to the court - have remained indifferent to these crimes.

The whole Vila family were killed in Sisak, (the father, mother, and three sons). The Trivkanović family also suffered a similar tragedy. The father and two sons were all killed and only the mother survived, by pure accident, as the perpetrators did not find her at home at the time. There are more individual cases like this where two or three family members were killed. Until now no one has been indicted of the 31 crimes, for which we collected data. As we continue collecting such data, this number will certainly increase.

The silence of the judicial system and of other bodies in charge in this state has sent a clear, discouraging message to the victims. That is why we feel that we are double victims. Not only did we lose our dearest family members, but we have not seen the support of the state institutions that should fight against the perpetrators of such crimes. Apart from the fact that the crimes committed in this area left heavy psychological scars on close and wider families of the victims, it can also be stated that these crimes seriously endangered the bare existence of such families, and in particular of the women and children, as well as the parents of the victims.

The younger women lost their husbands, and their jobs because they were treated as suspicious persons. The children were therefore even more affected because they lost both their fathers and financial security. It goes without saying that they grew up under difficult circumstances, that they did not have a lot of options to go to school, get jobs, or, to put it simply, to survive. The state has not shown any concern about the children, regardless of its current population policy.

Our Association was established as an association of desperate people, who suffered most, and cannot exercise our essential rights that the crimes committed in 1991/1992 are officially disclosed, even if these crimes happened in the area that was not subject to activities of the war. It should be pointed out that the court, prosecutor's office, police were regularly operating in Sisak all that time, but none of these institutions or individuals did anything to prevent the crimes from the very beginning. Everyone pretended they did not see the citizens who were taken away from their houses. The dead bodies were floating in the River Sava, while the police was making official records about unknown perpetrators. The investigation processes are still conducted against such unidentified perpetrators. This means that in 12 years they have not moved away from the very beginning. All our attempts to get equal status as any other citizens' association active in that area mostly failed due to the decisions made by the municipal authorities of Sisak.

Today we do not have any premises to work at. We have not received any financial support, nor encouragement that such support could follow in the following year.

I kindly ask all of you here to support us in any way, in accordance with your possibilities, so that we can continue with our work, and to share your fund raising experience with us.

Discussion

PAVEL DOMONJI

I hope that, as far as we are concerned, there will not be any shortage of support. It is important that others provide for the work of your association so it can become efficient and effective. Your association will, over time, grow from an association of desperate people into an association that will make those indicted of war crime desperate and mad .

Concerning the discussion led by Branko Todorović and particularly his statement that those indicted of war crimes, i.e. those who are potential prisoners, enjoy wide public support. This leads me to the following question: "What are the nations for? Is their purpose to be turned into some kind of "safe houses" for those indicted of war crimes and who should be processed by the judicial system? Is the purpose of nations the fact that we can enjoy the beautiful Croatian or Serbian languages, or a greasy pie or a spicy Leskovac stew or a beautiful Užice kolo, or should they ensure safety for us? Freedom? Justice?"

A historian was recently a guest on a Novi Sad TV programme. He said that Hungarians are beautiful because they have got beautiful Slav faces, whereas the Slovaks are colonizers. So, in accordance with the nationalistic rhetoric they came into possession of someone else's land and therefore they can never own it themselves. And in Vojvodina, according to the same historian, there are no Croats, as all of them are the people of Bunjevac, and not Croats. What does it mean when, for example, all larger cities in Serbia are full of posters saying, "Every Serb is Radovan"? In my opinion this means only one thing, that the Serbs are not able to constitute themselves as a modern democratic nation. If they are not able to do that, then they will not have an independent judicial system, or the institutions that operate impartially, they will not be able to ensure the safety of private property, or the safety and equality of the persons who are returning to the places where they used to live before.

LJUBO MANOJLOVIĆ

Serbian Democratic Forum, Zagreb

Our organization operates in B&H, Croatia, Serbia and Montenegro, and we deal with human rights, economic reconstruction and social programs. Even if the name of our organization is not that nice, I must point out that the repre-

sentatives of all five nations of the former Yugoslavia are members of our Steering Board, which means that we have representatives of Bosniaks, Montenegrins, Macedonians, Croats, as well as Serbs.

I would like to speak about the issue of normalization and human rights. Namely, as you know, some 300,000 to 350,000 citizens of Croatia left their homes following the police action called "Oluja". Until today, some 100,000 to 110,000 persons returned to Croatia, depending on the various sources and interpretations. However, this figure is variable, depending on the perspectives of those who stayed and those who returned. I will not elaborate all the obstacles that have arisen, but I do have to refer to the law that was passed about the return. This is the Law about the Change of the Law regarding the Areas of Special State Concern. So, we have here a reference that sounds strange to both legal experts and those who deal with human rights, which is that the temporary users of property have priority over the actual owner of that property.

Let me also talk about a category of refugees that is very important when we discuss the process of return. They represent a special example for all those who wish to return. This, in fact, is the category of refugees having tenancy rights over the flats they had occupied in Croatia before the war. A sociologist would promptly conclude that those persons who were educated, i.e. the economists, engineers, professors, doctors and good craftsmen, were the ones who had such tenancy rights. So, persons from this category of refugees have returned in very low numbers. It is our estimate that mostly villagers returned.

So, the question of tenancy rights is not only a formal one as it is often referred to, and it is not the same as the question of property. The question of tenancy rights has a sociological dimension, implying that the return of such persons would be very significant for RH and for the creation of more normal relations in these areas.

So, for example, while the refugees were leaving, the state of Croatia cancelled tenancy rights to many of them. A recent proposal of the Government, made under the pressure of the international community, was about tenancy. I would rather call it "charity". However, this category of returnees does not need charity as their former accommodation rights were gained on the basis of their own income. They used to pay participation from their income in order to buy the flats they lived in. Therefore, the question of tenancy rights is in fact the question of property rights.

I would like the associations from the whole region to give their support to the solution of this question for a simple reason, that criteria should become balanced. Namely, the tenancy rights were also tackled in Serbia and Montenegro

and B&H, while it turned out that only in Croatia they have not been solved in accordance with the basic requirements set forth in the Human Rights Charter. This means that only refugees from Croatia cannot realize the rights that the citizens of B&H and Serbia and Montenegro already realized a long time ago. I would suggest that this Government's offer to solve the problem of tenancy rights is taken as an initial one, the starting one for negotiations between the NGOs representing the refugees and the Governments itself, until the law is passed. The law would have to be flexible, it should not have any negative effects when the refugees do not return to their flats but decide to sell them. Senka Nožica has already spoken about these issues. The laws on this subject should also be flexible because there are many people in Petrinja, Sisak, Osijek, who sit there and wait as they have no place to go back to. They did not have any property of their own, but just flats with the corresponding tenancy rights.

My suggestion is that, before such a law is passed, the Government should recognize that there is a problem related to the tenancy rights. Secondly, all cases of the cancellation of tenancy rights should be reopened, i.e. all 23,000 cases; thirdly, in cases in which a flat was bought off by the temporary user, the former owner of tenancy rights over that particular flat should be able to buy off a flat under the same conditions. In the cases in which the flat is damaged, the reconstruction, the possibility of buying off, or a similar flat should be offered.

We, as an NGO, represent people before the courts because there are many persons who can realize their rights through courts only. On the other hand, there are many persons who would like to realize their elementary rights but there is no one to represent them. We have used the power of attorney method, i.e. that the party who is claiming the protection authorizes our lawyers to represent him/her. We have 16 offices in Croatia and 25,000 to 30,000 clients annually who seek our assistance. Right now, there are two court hearings we are summoned to because we have been accused of pseudo-paperwork. So, I would like to hear about the experiences from B&H and Serbia and Montenegro on this subject, and learn how to solve this problem. I firmly believe that in Croatia, the Chamber of Lawyers is the basis from which a NGOs' action in the protection of human rights is obstructed. The question is, who is going to represent so many people who claim protection of their elementary rights before the courts.

BISERKA MILOŠEVIĆ

Centre for Peace, Non-Violence and Human Rights, Osijek

I would like to talk about the prosecution of war criminals and about court decisions. In fact, about the role of the non-governmental organizations in the prosecution of war criminals, because I believe that this is a prerequisite of normalization in our region.

I am a member of the Centre for Peace, Non-Violence and Human Rights, that has operated for 11 years, since 1992. We have offered support, including free legal assistance, to the persons whose human rights were breached during those ten years. I believe that, like all other human rights organizations, we have got extensive documentation about what happened, at least from the moment when our Centre was established. We have many documents about breaches of human rights in 1991, 1992, 1993, and until 1996. Fortunately, I can say that the extent to which human rights were breached in recent years is lower than that of 1992. We are unsatisfied indeed with the way in which war crimes have been processed not only in Croatia, but also in Bosnia and Herzegovina, and Serbia and Montenegro. Many in Croatia imagine that somehow the situation is better here than in the other two neighbouring countries, in the sense that the Croatian state is "more completed". There were a few cases in which the war crimes were processed, so our **case law** is relatively good. However, we can now draw a conclusion about these trials from it, of how satisfied we are or are not. We are certainly not satisfied by the lack of promptness, as we in the non-governmental organizations believe that if it had been sanctioned in 1991 when it happened for the first time, then it would not have happened the second or third time at all. But, since the war crimes and breaches of human rights were not sanctioned in 1991, but praised, then it naturally followed that the war crimes and other violations of human rights were happening on such a large scale.

The Centre for Peace, while offering legal assistance in the last ten years, collected a lot of documentary evidence about the activities of the Military Commission in charge of the tenancy rights in Osijek, about the ways in which people were evicted from their flats. It turned out that not only were their property rights over socially owned property annulled, but they were also evicted from their privately owned houses and flats. This was done with reference to the allegedly applicable Temporary Accommodation Act, which, in effect, has never envisaged that non-owners could temporarily use private property. However, the president of this Commission in Osijek, Petar Kljajić, who at the same time was the president of the District Court in Osijek, extended his authority in practice to private houses and flats, too.

The persons whose human rights were breached in this way were our clients. We represented them at court and now we have got documentation about their cases. This means that, in case a court process is open for crimes against civilian populations, we would not even need to necessarily invite the victims concerned to the court hearings as witnesses. So, the witnesses would not have to be there at all because we have got the documentation that consists of court decisions. In the explanation of these decisions, it was clearly stated that the Military Commission for Tenancy Issues, i.e. its president Petar Kljajić, issued decisions concerning private houses or flats to be used by new occupants. It was

clearly stated that Petar Kljajić was breaching the law. At the time when this happened no one asked how that was possible. However, those who were courageous enough to file their restitution claims with the court and ask for the users of their private houses or flats to whom Kljajić issued decisions, succeeded because the courts ruled in favour of their claims. However, they have not succeeded in realizing the decisions for a long time. They succeeded in the execution of the court orders only after eight or nine years.

What is important is that the judges ruled already in 1992 that the actual owners should be given their property back, that they specified such breaches in their court decisions. However, these same judges did not notify the State Attorney's Office or any other institution that such breaches of law were happening at that time, and that the president of the District Court committed them.

In those years, we were desperate because something like that could happen, but we thought that what was happening was simply a misuse of the official positions, that such actions would be prosecuted, and that the judges should not allow them. However, at that time we did not think it was a war crime; I did not think so either. Today, ten years later, when I look at all the documentation, when I realize its scope and when I see that there was a pattern to it, it has become clear that all that can be connected. I believe that there is enough documentation for charges to be filed in accordance with Article 158, i.e. war crime against civilian population. That particular person, Petar Kraljić, did not kill anyone himself, so this is not about the most serious war crimes that had already been prosecuted in Croatia and the perpetrators were released. What he did, even if it was not murder, can certainly be categorised under war crimes against civilian population. Such crimes have not been prosecuted anywhere in Croatia yet, but I believe that it can be proved. The procedures should therefore certainly be initiated accordingly. We in Osijek are certainly not the only ones with such documentation. I believe that the organizations from Split, and DOS in particular which dealt a lot with the victims of evictions also have sufficient documentation to initiate such proceedings. The organizations in Karlovac and Zagreb, although Zagreb is very specific in this respect, also have such documentation.

I believe that our role in this matter is an important one. At the Centre, we had a meeting to discuss whether we should simply collect the documentation and submit it to the State Attorney's Office, expecting it to do its job if the rule of law is functioning. We drew a conclusion that the moment was not right yet in which it would be realistic to expect that the State Attorney's Office itself would focus on the key facts and open an investigation on the basis of such material; in other words, we believe that we have been much more involved in this matter, that we can connect and contribute to the indictment. We must be at the State Attorney's disposal as his assistants and supporters. This would be a way to get

involved. Another way is certainly the monitoring of such proceedings. I believe that the court councils do act differently if they realize that someone is monitoring their work, whether it is OSCE or someone else. This should at the same time be support for potential witnesses, as there are many persons in Croatia who know a lot about it, and yet they keep silent; I believe that ten years is already too much time to keep silent.

In relation to what Ljubo Manojlović has said about tenancy rights, the court decisions cancelling tenancy rights definitely had nothing to do with the rule of law. They were connected to the legal state in the worst meaning of the term. However, every judge must interpret any legal norm primarily with regard to the goal for which the law was passed in the first place, and it was not passed to be misused, but to protect human rights.

MIRJANA GALO

As far as I know, there have been about six court proceedings against the citizens of Croatian nationality indicted of war crimes. The "MerĐep Group" was tried after they had admitted guilt. There was a trial in Karlovac, for an act in which, allegedly in self-defense, 12 persons were killed, then the cases of Lora, Bjelovar, Gospić (for the planting of mines), and all the accused were released. Other court decisions for war crimes were mostly rendered against the Croatian citizens of Serbian nationality, and these were very long sentences, one being 13 years of imprisonment. Together with OSCE, we monitored one case, in which the accused was sentenced to six years of imprisonment for a slap in someone's face which had not even been proven.

MIRJANA RADAKOVIĆ

Centre for Direct Protection of Human Rights, Zagreb

Our organization initially operated on a professional basis, but now it operates on a voluntary basis. It seems to me that after these discussions we have not moved to an improvement of human rights in relation to the situation we had at the end of the 1990s, in Croatia in particular. Shall we still waste our energy, knowledge, experience and willingness to work that should be done by well-paid state officers, our officers, who took over, following their victory at the elections, the responsibility to protect the rights and freedoms granted by the Constitution? For how much longer are we going to play the role of "the crazy Mary"?

All these countries that were established in the post-Yugoslav territories obliged themselves, when they were created and recognized, to respect interna-

tional standards. That was the first thing they did, some did not even have their constitutions, but still, during the initial negotiations for recognition, they took on some important obligations. But essentially, the only ones who take care of these are human rights organizations.

At the end of the 1990s the Croatian Parliament discussed the interpretation of Article 14 of the Law on Refugees and Displaced Persons. Our Centre translated that "parliamentary interpretation" because the Council of Europe became frantic and asked itself: what is this new legal category that is called "the parliamentary interpretation"? The professors from the Faculty of Law could not tell me what the power of the Parliament's interpretation was. For years I have been listening to how we should educate our judges. But one becomes a judge by graduating from the Faculty of Law, passing the bar examination, by practicing law, and finally by possessing moral qualities.

Who actually stays after the change of the authorities in the institutions for the promotion of human rights?

SRĐAN DVORNIK

We are present here at a ritual, in which we all have in common the understanding of what is/is not allowed regarding human rights, as well as a more or less common critical attitude to what is going on in reality. This may make a person feel more comfortable, especially under the influence of all the difficult experience. I do not pretend to be one of those who felt such experience first hand, but I do believe and respect that those who are "in the front line", who directly deal with serious violations of human rights daily, find support and empowerment in such exchanges. However, from the point of view of someone who is eager to grasp the situation and find ways in which something can be done, this is at least to say fruitless, and perhaps even counterproductive. Namely, if we believe that there is some sort of planned policy, some kind of a "plot" as Mirjana Galo put it, that the return is systematically obstructed, on purpose, in a planned way after the recent change of government - we should then purely and logically warn that this is a very "strong" statement, which certainly does not mean that it is more or less truthful, but in that form it requires very detailed analysis, that can wait for later or simply be implied, or it requires that we all go home for we are powerless when confronted with such situations.

With reference to this, and in the context of the "change of authorities", there has been a disappointment expressed everywhere, and even now we can say that this feeling is what all three post-Yugoslav countries we have been dealing with

have in common. In short, this is disappointment at the policies of self-declared reform parties, and the disappointment at the lack of any serious improvement after the "change of authorities". I should warn you about a fundamental issue here: it is not the authorities that have been changed at all, but merely its bearers. The authorities are a structure of power, the way in which power is legitimized and normatively conducted, but also the way in which power normatively disguises itself. And there is no place for disappointment there because, by the mere change of the authorities' structure, the authorities themselves did not have to and could not change. During the last two days we have been trying to discuss here the prospects of an actual change of authorities, and we will have to continue to discuss this issue - and not only discuss - for years, for it is the issues about the essential changes. One round of elections and one round of changes of the staff in all the institutions do not change any authority. The structure is there, but the occupants are different. They work via facti indeed, while making themselves comfortable, according to what they learned and, in fact, in accordance with their own interests they do what "should" be done, i.e. they violate human rights, they are corrupted and they do everything else related to it, as expected by the usual "order".

If it is necessary to use a particularly dramatic discourse here. I believe that I should remind ourselves that we are not facing any public whom we can shock, we are not in front of any audience whose eyes can be opened by our message. We are just facing ourselves and we already uttered and heard these same criticism many times before. What one should actually do is analyse seriously what kind of authorities these are. I believe, it is very important to notice that this is not happening due to some major dominance by extremists. They have been mostly done with their activities. If it happened once that, as in February 2001, one could gather 100,000 people to demonstrate along the Split seafront, and declare that there were twice as many protesters gathered there to defend the Croatian general indicted of war crimes who was on the run at that time. Today there is no chance of doing anything similar. So, the extremists are not a problem, and they were not a problem at that time. The problem is that the silent majorities think in the same way, as if, after all, there is some meaningful message contained in the shouting of extremists. The majority of the population are not afraid of extremists but they share the basic beliefs that what the extremists are doing is justified, because we all ultimately belong to the same community and recognize it as a measure of good and evil.

We have had a chance to see some important analysis of this, highlighting the hegemony of collective awareness and its accompanying discourse. If there is a public debate initiated in Croatia about any male or female Croat who committed any crime over a non-Croat in the name of Croatia, there will always be someone who will say that such examples are the "equalizing of guilt". Almost

all active participants in public discourse - journalists, intelligentsia, and politicians - will accept and respect the basic twisted framework and set-up of such discourse. Logically, this means that in the collective awareness, for example, a unit of analysis is the term "Croats" as opposed to another unit of analysis, i.e. "Serbs" as *singularia tantum*. If the relationship between these two units is interpreted as the one between an aggressor and a victim, then it is clear that, depending from which "community" one looks at it, all "Croats" can only be victims, whereas all "Serbs" can only be aggressors, or vice versa. If one mentions that the crimes were committed on "our" side as well, then he is not introducing any deeper differences in such ideological contexts but, on the contrary, he is "equating the aggressor and the victim". In the given ideological context, although "twisted", this is entirely consistent, and politically realistic in practice.

Such logic is still mostly implicit, and it has not been challenged in public yet. I believe that there is a need to publicly analyze intra-ethnic conflicts much more because that is the only way in which the "unity" can be dissolved in order to show that something that is falsely presented as the basis of inter-communal coexistence has no resemblance with the actual existing daily problems. When Biljana Vankovska said that in Macedonia the poll showed that the common people there thought their main problems were unemployment, poverty and corruption, it occurred to me that most similar polls in Croatia had the same results. And I saw that at a workshop in Kosovo the results were the same, too. So, this is not specific to any particular nation. Contrary to that, the political parties put the symbolic questions of national "identity", "pride", "dignity" high on their agendas... As if discontent, fear of unemployment, poverty, revolt about corruption live in some parallel world and practically cannot be politically articulated except in the form of a diffused resentment, which in itself is an ideal basis for social demagoguery. So, the same people will again vote for those who advocate national dignity as the most important issue. (We had a convenient example in our Parliament when it had to vote for an ecological and fishing exclusion zone in the Adriatic Sea, when one picturesque representative of the national party said clearly that it was "not about the protection of fish but of our national dignity".)

What can be done about it? On the one hand, in relation to the "legal" visible forms of such policy, the parallel regulations that Ljubo Manojlović was talking about, the "legal" regulations that make obvious discrimination possible, there is no other option but to pretend that everything is normal and try to challenge these regulations in the way in which illegitimate legal norms are normally challenged, and the legitimate ones adopted. This, I am afraid, will take a lot of time, and therefore the other side should not be neglected. This is public and political advocating for civilized standards such as equality, individual freedom and responsibility, etc.

Finally, I believe that it must be pointed out here that it is encumbering and too dangerous to rely significantly on the international factors while trying to achieve this. We have been relying on them for a long time and referring to other countries and "Europe" as the sources of such standards, or to that entirely unserious and contentless syntagm "the international community". Even if these instances mean anything, the standards of civilization can truly be achieved only within one's own society.

BRANKO TODORVIĆ

I want to react to what we have just heard, i.e., I would like to share some of my thinking with you. The fact is that we represent a relatively closed circle, which exchanges our impressions from time to time. However, the fact is that, in addition to all these meetings, all of us have been working actively indeed. The results of the work of our organizations do change something after all, including some usual stereotypes. They have brought about some changes to the collective awareness, so that a day will come when the criminals will be criminals, distanced or outcast from their people and the national group they belong to. What is really interesting is that all of us are trying in some way to influence some of those who directly or indirectly support extremists, so to the majority of citizens who keep claiming that they are undecided, that they really do not want to openly participate in social life, but they just occasionally vote and then, silently, and perhaps with a slightly bad conscience, give their votes to these extremists.

With reference to the issues of return, I want to say two things. The first one is that recently, an agreement was signed about the return of refugees between Serbia and Montenegro and B&H.

I believe that this is an important step forward, and that the agreement will not remain a pure act of rhetoric. It is obvious that RH is out of this, even if we keep talking about the regional approach to the issue of return, about the same legal principles for all, because we all carry forward the former legal heritage of Yugoslavia and because we all belong to a region that strives to join Europe. I believe that this problem of obstructionism that partly comes from Croatia should be analysed. Croatia obviously wants to distance itself from the Balkan context.

I will mention something very important that happened here in Sarajevo two years ago. We had a large gathering then, together with the ministers or the Ministry of Foreign Affairs, in particular. As I did not know the situation well enough, I had a conflict then with Mislav Kukoč from the Croatian Embassy. Namely when I accused the new Croatian authorities of not doing much to

enable 50,000 Serbs who now live in Republika srpska to return to Croatia. Mr Kukoč attacked me verbally in a very fierce way and told me that I was telling lies. Everyone from B&H kept silent. Only Zoran Pusić replied very calmly and confirmed that Croatia did not respect all the norms, and procedures and that there was a background calculation to preserve ethnically clean territories in that country.

The second issue that I would like to comment on concerns the discussion of Mirjana Radaković. What are we exactly doing? Are we able to educate judges? We are not the ones who educate them; the experts from The Hague do it. I believe that this creates some improvements. Let me mention three cases of monitoring. We were included in the most important court processes in B&H after the war:

"The Zvornik Group" or The Zvornik 7,
the Andrić case before the Canton Court in Sarajevo, and
the case of Dragan Opačić, a witness before the Hague Tribunal.

It was shown here that the judicial system in Bosnia and Herzegovina was turning the law into a complete farce, i.e. that everything was entirely politically manipulated.

However, our engagement did prove to be very meaningful, because in the end, the authorities sent us away from there as a "hot potato" because they did not want to deal with NGOs any longer, neither the international nor the local ones, because these NGOs kept drawing their attention to a complete lack of respect for the basic legal norms.

Our engagement does make sense if it is directed, to put it optimistically, to the final solution and to the problem we are facing in our societies.

ZORAN PUSIĆ

I believe what Mirjana Galo and Mirjana Radaković said is true if we take some specific cases into consideration. However, I believe that the overall picture, at least as far as we are concerned, is a bit more optimistic. First, I believe that there has been some progress, both in Croatia and in general. But, this progress has been slower than we would have liked it to be. Simply, those things move forward in a difficult and slow way. You can look at the democratic countries, that have had a much longer tradition of democracy, and then they elect a president such as G.W.Bush, and as a consequence, without any wars, many breaches of human rights started to happen too. Some of the essential documents on which human rights and democracy are based on, including the Declaration of Independence, were declared during the period of slavery in

1766. Therefore, what these documents deal with is not reality by itself, but the ideal that we should try to achieve. The day when this ideal will be achieved in its totality is still very far away.

I believe that during the last ten years or so we have really swum against the main tide. We have often been accused of things in the newspapers. We have never been supported by the opposition in Croatia who have always wisely kept silent about these problems, about the worst violations of human rights there since they believed, and were unfortunately right, that any different behaviour would not bring them the votes of the majority. This, in my opinion, is exactly the role of NGOs, their primary role, to preserve the ideas that have always been the ideas of the minority. In fact, all progressive ideas are always the ideas of the minority, and they are always in contradiction with the majority opinion. Over a long period, for years, and centuries of a difficult struggle, such ideas usually turn into some standards of civilization. This was the case with the women's right to vote, with the right to political pluralism, and this is the case, in my opinion, with the problems we have been faced with in these three countries. Therefore, what we have been doing is a patriotic effort par excellence. I must say that I am proud of having been in such company for the last twelve years and that I have been doing a job, which I believe, is the most useful for our countries.

LJUBO MANOJLOVIĆ

Srđan Dvornik inspired me to speak again about the prerequisites for a return to Croatia, as I, because of inertia, mentioned only negative examples in my previous discussion. Concerning the obstacles for a return to Croatia, I must point out that the resistance in Serbia was, if not stronger, then of at least the same proportions. The political parties and the authorities promised us a lot. RS used to have a person in its Ministry in charge of the return. He did everything he could so that no one, including Bosniaks, Croats or Serbs, could return to Croatia. It has occurred only recently that we have established a dialogue about the return with RS, when Jasmin, a Bosniak, became the Head of the Commission, his two new assistants, one Croat and one Serb, were appointed. Now everything works well. It would be rude to say that there have not been any changes related to the issue of return. There has been a large improvement after the change in Croatia, the same happened in Serbia after the change of their authorities the same happened in Serbia, and it is moving slowly in RS, too. A municipality, which was until recently run by HDZ, gave us a donation for our human rights activities. This would have been unthinkable before. Our mission related to the issues of return has been "postponed" for some five years, but it is moving on, now. This is why we should not be discouraged.

I cannot be satisfied with these developments, and we are again talking about the year declared the year of return, reconciliation and reconstruction. In reality, in the Lika-Senj County, only some thirty persons returned.

Why is it that there is no political will here? If it had existed, then the key people would have been replaced, i.e. those who are doing everything they can to prevent the return, such as Lovre Pejković who, as we know, during the HDZ rule allocated the houses owned by the Serbs refugees to other occupants. I will document one thing here: when the people in power in the area of the National Park "Plitvice" were afraid of the changes, they changed their name, so they were no longer referred to as refugees and displaced persons but as "settlers". I often warn people that they are not refugees, but mainly profiteers and businessmen who play the key political roles in the areas of the National Park and the Gacko Valley. None of them has been evicted yet. Some individuals left on their own, but the owners had to pay from 20,000 - 30,000 DM for it.

The third argument which I believe is a planned action is the following: take the motorway Zagreb-Split where very few buildings were destroyed and where the majority of settlers arrived at. This means that the population was settled in a planned way, whereas the surrounding villages had been totally devastated. There has been no reconstruction taking place there at all. In the Gacko Valley, there are five villages where 3,500 people used to live. Only around 200 of them returned. In the private fields in Podum there is the largest waste dump in this part of Europe. In the village of Škarava, plum orchards were dug up in the length of one kilometer, and at night something was buried in the woods there. What it is - we do not know, but we will check with Mr Banjac, the Minister of Environmental Protection. The fourth reason for which I believe that this is a planned action is that at Korenica, where there had never been a Catholic Church, one was built and it is larger than the one in Gospić.

Therefore, this situation has been cemented and it remained unchanged. I cannot be an optimist if eight years after the war activities we are still using wrong figures. I would like to know where these returnees the Government has been talking about are. They are not out there in the country. Well, at least there are not so many of them, not even one third of the figure the Government has been talking about.

When I was talking about the international standards and the functioning of the state institutions, it seemed to me that I started elaborating on these subjects from a somewhat unclear definition. When I use the term "international standards", I also think of international contracts. That is international law. I spoke about the international law of human rights which is based exactly on the fact that there is no reciprocity. Therefore, when I refer to international standards and the respect of the international law and human rights, I do not mean that we should again start relying on the international community. The international community nowadays has a very dubious relationship towards the international standards, which it had developed over 50 years ago and later translated into the international obligations for each member state. I will take the liberty of being critical when I speak about the status of human rights and the respect for international standards in Croatia. This position seems entirely natural to me, regardless of who is in power. My estimate is that over the last three and a half years we as an organization for human rights have become too involved in the so-called partnership relations. We can co-operate, we can educate, but if I waste all my energy on it, then my role of a critic becomes questionable, the role that I have given myself. In general, there is much I would like to say about the "mandate" of the work on human rights, about the international organizations, etc. However this is a separate subject.

Let us look at the minimum requirements that the organizations for human rights have in Croatia, and then also in the wider region. Let us disclose these requirements publicly and let us support them, without any bargaining. I agree with Zoran that one should fight for ideals, but here it is about the ideals being translated into laws. If we discuss this in terms of law, as Zoran Pusić has just said, the ideals were conceived some 300 years ago. However, I would like to speak about specific rights that these countries undertook to respect, sign and incorporate in their domestic laws. We still talk about what discrimination is, although we have signed the International Convention on the Prohibition of Racial Discrimination. In this Declaration, in Article 2, there is a good definition of discrimination. Our judges, our state officials are obliged to apply international law directly. This is the kind of bargain I had in mind, the bargain with such values that human rights are based on. The issue of return is the one that UNHCR has kept convincing me that its implementation has been difficult and slow. That is within their mandate. However, my independent judgment, a judgment of a female activist for human rights is that it is not possible to bargain in such a way that a law is valid for one month, then there is an amendment to that law, and then the human rights activists waste their time, write complaints and wait for the ministries, the Constitutional Court, the Public Attorney's Office to act on their complaint regarding the amendment...

I am not satisfied because it seems to me that those who have been paid to protect human rights in Croatia are not doing it, while most of us keep silent.

ZDENKA ŠIMPRAGA

The Association "I want to go home" Knin

I have listened to this discussion for the last two days, and I simply feel like crying. I cannot believe that I have heard all these complaints of the NGO sector since 1998. Firstly, if we define a problem in the field, then we must try to solve it and ask ourselves what our responsibilities are and what it is that we can do about it. I do not agree that there has been no progress, because I come from a place that is very specific, from Knin. Since 1998, we have been monitoring the situation and created our database with all the cases. So, we can say that until 2003, we have procured around 6,000 documents for the return of refugees.

About 15,000 people returned to the area of the Knin Municipality. This does not mean that we are satisfied with the situation in Knin. However, I am happy simply because now everything we advocated as an NGO, together with the Helsinki Committee for Human Rights, is about to come true. Therefore, we can exercise pressure. We cannot replace the persons who work in certain institutions, but we can certainly exercise pressure over them in order to make them do the jobs for which they are paid. What does this mean? To lobby, advocate in public, as much as we can move things forward. If we want to initiate change, we will succeed in it. I would just like to add that today, two secondary school teachers of Serbian nationality returned to Knin to teach at the secondary school there. We have achieved this by working together in the Council. There is also a doctor, a pediatrician, who have returned to work at the Knin hospital.

So, we cannot say that there has been no return. On the contrary, I believe that these have been major steps forward. It seems to me that the NGO approach at the local level is significant. However, I believe that the local authorities are a problem and not the executive or supreme authorities in Zagreb. For the sake of comparison, let me say that there are 30 NGOs in Knin, and there we have seen an improvement, too. In Benkovac, there is SDF, but there have not been any positive changes there and over the last two years, there has been no return to that area. Therefore, the local authorities represent a problem, and it goes without saying that the non-governmental sector is necessary. It is necessary, but the question is what kind of responsibility those working in the non-governmental sector are ready to assume.

MIRJANA GALO

Zdenka, you have just shown yourself that the situation is devastating. First, you spoke about the number of documents that you had procured regarding the return. I did not say how many documents my or any other organization had collected. Isn't it devastating that when we talk about the return, we are still talking about the documents that need to be taken care of? Are we going to be doing the same for the next 15 years?! We know that documents are the main prerequisite for the solution of all other problems, from the reconstruction to the restitution of property, pensions and everything else. Therefore, we cannot talk about any progress, yet. Does progress mean the realization of the elementary prerequisite of seeing to the documents?

ZDENKA ŠIMPRAGA

Many things, such as the Act on the Croatian Citizenship and its provisions, have been left out of this conference. Has anyone here wondered what the Act on the Croatian Citizenship provides? It is more about the economic situation and the economic incapacity of refugees to pay the government fees and duties. We helped them to obtain their personal documents they had not been able to obtain alone and without our financial assistance. I hope that by the end of this year, Serbia and Montenegro (S&M) and Croatia will ratify the agreement that B&H and S&M ratified on 6 October, concerning the three-way return to S&M-Croatia-B&H. Serbia is as responsible for this issue as Croatia. I know very well that the City Secretariat of Belgrade kept the official personal records for more than three years; they did not want to return the books. The bargaining here is the following: visas were cancelled, in fact the Republic of Croatia (RH) cancelled them because this was the condition that Batić made for the return of the official registers of the Croatian citizens to RH and we had been negotiating for more than three years. The Helsinki Committee for Human Rights and the Consular Office in Belgrade have really supported our claims. If that was not the case, how many people would have returned to these areas?

MIRJANA GALO

Those who have been deprived of their documents, regardless of the reason, have lost the deadline for entries to reconstruct their houses and flats which expired a year ago. Therefore, they cannot return now, even if they have all the necessary documents and their houses have been torn down or devastated. How shall we, the NGO's, deal with the return and react to this?

ZDENKA ŠIMPRAGA

Their rights have already been realized. The Office for Reconstruction has worked on it, in particular in our District in the Northern Dalmatia. However, they all submitted their claims through the UNHCR while they had the status of refugees. Their claims have been registered, but there are also around 740 claims which have to be completed in order for the decisions on reconstruction to be issued. We cannot say that the situation is the same now as it used to be in 2000, when not a single building was reconstructed in the area. This is something that cannot be neglected.

SRĐAN DVORNIK

Can anyone explain to me what practical difference does it make whether Mirjana Galo or Zdenka Šimpraga is right? Is it about assessing the current situation, and if so, about the practical aspects of the return and about the situation in the whole state, or about an ideological viewpoint?

BISERKA MILOŠEVIĆ

Even if it is good to be radical, and we have no intention to present anything in a better light here, if some things have changed, then it should be said. I believe that we, as NGO activists, are also responsible because we expected that the authorities would do something after 3 January 2003. They have not done anything and we have not made any effort to draw their attention to it. My reason for optimism is the fact that whoever wins in Croatia now, whether HDZ or SDP, after this experience, we shall not wait a single day to tell either of these two parties what they need to hear. Thus, even if we made a mistake in the previous mandate because we waited for too long, they will now have to be faced with this problem, regardless of who will be the winner.

Fortunately, we do not have president Tudman any more. He used to address the public by saying "Croatian ladies and gentlemen". We now have president Mesić who invited the citizens of the Serbian nationality to return to Croatia. The prime minister did the same. Another issue is the policy of the local authorities and how much it corresponds to these attitudes. It is our duty to draw their attention to it and to influence the process. Although it is actually the job of some state institutions, we will continue doing it. In the months to come we have to be able to say that people like Göttlicher cannot be at the head of the Government Office for Human Rights. I do not think that the Government Office

for Human Rights should be discontinued because it is not the fault of the institutions but of the persons who work in such institutions. I do believe that the Governmental Office for Human Rights can play a positive role, but only if the persons working in it wish to act in such a way. Similarly, if a person like Pejković sits at the Ministry of Public Works, Construction and Reconstruction, it will not function well. However, if we immediately say that such a person should not sit there, for various concrete reasons, then it may be useful. I believe that we can exert influence on the public, as well. On the basis of our experience in Osijek, I can say that when we announce our submission of a criminal report for the war crime against the president of the Military Commission for Tenancy Issues, we can expect the reactions such as "And how many of our people have been killed?". The public should be told what crime is - either slapping someone in the face or killing them. Everyone should be responsible for his deeds. These are two entirely different things. It seems to me that our local public has finally understood what it is all about because the local media have reported on it. Unfortunately, at the national level, it is not how it was reported. However, if we all continue acting locally in an appropriate way, changes will also take place at the national level and the improper accusations of "equalizing the quilt" will not constantly be repeated.

RATKO BUBALO

I believe that in the last ten years Serbia has been working very hard on the return of refugees by actually not doing anything, by its failure to act with respect to integration. The fact that most refugees in Serbia are subtenants speaks about their position in that country, just like the fact that most of them are unemployed, or working in the so-called grey economy which must be significantly reduced because of the requirements of the transition and the rule of law. The main source of income for the refugees in Serbia is being cut off. In the last ten years, there has been no economic perspective, and the refugees have lived in an existential agony. Serbia does not have the necessary economic capacity to cover the cost of the transition for its local population, let alone refugees. Therefore, there has been a general lack of economic perspective and uncertainty for the refugees.

It is surprising that the wave of returnees is not larger, that the pressure for the return has not been stronger because according to the last census of 2002, 5% of refugees expressed their wish to return to their pre-war homes. This probably speaks more about the conditions and the possibilities of return than about the wishes of refugees to do so. I suppose that if the conditions were better, the will of refugees to return would also increase, especially in this context of hopelessness and manipulation which has also been a huge problem. It was a partic-

ularly serious problem during the Milošević's rule. The refugees were Milošević's bad consciousness, an issue he kept pushing under the carpet and pulling it out and misusing politically when he needed it for some of his international moves. The current authorities have many priorities that for them are more important than refugees and we cannot realistically expect that any significant part of political energy will be dedicated to the concrete solution of the refugee problem. In Serbia, all state and legal questions are open. Serbia has started an extremely uncertain transition. Soon, the elections will take place in Serbia, and to expect that the refugee question will be resolved in such a situation is really an illusion.

Therefore, the overall general situation for the integration of refugees in Serbia is extremely unfavourable. Let me go back to my initial thesis: Serbia has contributed to the return of refugees by its lack of action or by its very modest capabilities. I believe that much more could have been done, especially when the democratic forces are concerned. They have ignored the refugee issue by not taking any clear position and by not doing as much as they could. By not doing anything, they have pushed the refugees from a traumatized position of a victim into a radical political option. Unfortunately, the dominant mood of the refugees is very close to the SDS programme. I believe that the behaviour of the democratic forces who have ignored the refugee issue has contributed to such mood. Their last resort has been: "Pack your things and go home".

PAVEL DOMONJI

When one analyzes the public discourse in Serbia, a discouraging fact comes to the surface: there are no refugees in the discourse, not even as a rhetorical figure.

Let me conclude by saying that we have had a very interesting discussion in this session. We have asked some questions, highlighted some problems and, most importantly, we have made some suggestions and recommendations about how they should be solved.

THE POSSIBILITIES OF ESTABLISHMENT OF CIVIL PEACE

Moderated by Božidar Jakšić

Truth and Reconciliation at the Service of Human Rights

SRĐAN DIZDAREVIĆ

Helsinki Committee for Human Rights in B&H

If we analyze the events in the territory of former Yugoslavia in the period from 1991 to 1995, we can say that breaches of human rights took place during that period. The dominant phrase, that at that time all well known and recognized human rights were rudely and systematically breached is a synthesis of what actually happened. However, as the time passes and as the burden of everyday problems becomes the main focus of attention of public life actors, one is of the opinion that a pertinent analysis of the breaches of human rights during the armed conflict have gradually faded away.

As a reminder, from the viewpoint of the provisions of other numerous breaches, several articles of the International Pact on Civil and Political rights have been breached:

Article 6 that guarantees the right to life, breached by systematic artillery attacks against the civilian population and killings in the camps;

Article 7 that guarantees the right to physical integrity, was breached by torture and other inhumane and humiliating acts and rapes;

Article 8 or the provision about the prohibition of slavery and similar subordinated positions;

Article 9 and the right of freedom and personal security breached by voluntary arrests, detention and disappearance of around 20,000 people;

Article 12 and the right of freedom to choose a place to live, breached by the destruction of residential facilities and violent expulsion and detention of population;

Article 17 that guarantees the right to a family life, breached by the separation of families.

In addition to the International Pact on Civil and Political Rights, taken as an illustration here, other international standards were rudely breached, such as the provisions of the Convention on Prevention and Punishment of the Crime of Genocide, The Geneva Conventions with their Additional Protocols, The General Convention on Human Rights, The Fourth Hague Convention of 1907, The Hague Convention on the Protection of Cultural Wealth in the Case of Armed Conflicts with its Protocol of 1954, as well as The Convention on Prohibiting or Restricting the Use of Certain Kinds of Conventional Weaponry, with its protocols of 1980.

This list of international standards that were breached can be amended by other United Nations and the Council of Europe conventions that refer to the rights of the child, the rights of women, the rights of minorities, etc.

The attitude towards the breaches of human rights, in their nature, imposes at least two questions: how can we avoid that the atrocities are repeated and how can the perpetrators become accountable for what they did?

Undoubtedly, the creation of the Hague Tribunal for the War Crimes in the Territory of the Former Yugoslavia represents one of the answers to these inevitable questions. The work of the Tribunal has initiated a process of establishing criminal responsibility for the committed crimes, which is the first step towards the creation of prerequisites for a stable peace and reestablishment of mutual confidence, tolerance and understanding. By sanctioning the crimes, satisfaction is offered to the victims and their families. It is a preventive action aimed at those who would be inclined to start a war adventure again. Criminal responsibility is individualized, which removes the possibility of blaming the whole nations for the committed crimes.

The role of justice in the post-war context is unavoidable and irreplaceable. In this framework, the Hague Tribunal has got a key role due to its powers and its, by definition, impartial character. However, one should bear in mind the limitations of the Hague Tribunal, because it is going to prosecute and try up to 150 key actors of the war events. According to the most recent statements made by the President of the Hague Tribunal, this court will not cease to operate until Radovan Karadžić, Ratko Mladić, and General Gotovina are brought before it. However, the estimate is that as many as 10,000 persons are in the list for potential trials. This figure refers to all the areas over which the Hague Tribunal has jurisdiction. Therefore, it is unavoidable to envisage the involvement of the domestic judicial system in the proceedings against the perpetrators of war crimes, the crimes of genocide and the crimes against humanity.

Neither Bosnia and Herzegovina nor its neighbouring countries have reached

the stage where they could seriously get involved in such proceedings on their own. In the centres of political power, there is still a belief that the recent war was a defensive one, and that the most serious crimes cannot be committed in defensive wars.

There is neither willingness nor readiness of the domestic judicial systems to face the crimes committed by the members of their own nation. This is the reason of the reluctance to co-operate with the Hague Tribunal which is manifested by the refusal to extradite some individuals indicted of war crimes. However, apart from the lack of political will that the domestic judicial system be faced with the crimes committed during the war, the situation in the judicial system of B&H itself is a limiting factor. It is dependent of the centres of political power, corrupted and it does not satisfy the professional criteria.

When Bosnia and Herzegovina is concerned, the newly established court in B&H should start dealing with these cases in the middle of 2004. However, it is a matter of the will of the international community and the Hague Tribunal on whose insistence the first proceedings should start in the following two years.

Justice and its implementation are not sufficient for the process of normalization in Bosnia and Herzegovina which implies the reestablishment of confidence, removal of tensions and the restoration of tolerance.

Taking into consideration the experience gained after World War II, it is clear that being silent about the truth about the events in that period were, to a large extent, the basis for the preparation and the beginning of the conflict in the 90's. After World War II, in the name of the project, the winners pushed under the carpet a number of facts. Four decades later, these facts were misused through their subjective interpretation and used to raise international tensions, distrust, strengthening of the feeling of each nation that they were the main or even the only victim during the global tragedy such as the World War II.

Our experience is not isolated. It has become clear elsewhere too that hiding the historical facts does not contribute to the process of normalization in the sensitive areas. To the contrary! In addition, some contemporary experience has shown that the efforts invested in defining the truth in the post-conflict situations, significantly contributed to the decrease of tensions and the reconciliation of the parties that used to fight against each other. According to the experiences of the South African Republic, Chile, Guatemala, El Salvador, Argentina and a few more other countries, where the bodies for the reconciliation have been established, it can be concluded that these efforts have been worth the trouble and have created a healthy foundation for the process of reconciliation.

Starting from the arguments I have given here, some non-governmental organ-

izations in Bosnia and Herzegovina decided that to establish the truth about the events that happened in the period from 1992 to 1995 would contribute a lot in the endeavour to heal the consequences of the war and create the prerequisites for the reconciliation on a healthy and stable foundation.

The brutality of the conflict in Bosnia and Herzegovina, the amount of suffering and hardships, the dimensions of the breaches of human rights, the destruction that was recorded, represent a hint that the establishment of the truth is going to be a painful and a difficult task. However, without such process it is not possible to believe that the reconciliation will remove the obstacles according to the wishes of those who strive for a normal and better life; on the other hand, the repeated underestimation of the need to establish the truth would be a threat that the recent events would be repeated.

The cynics might say that there is too much truth in Bosnia and Herzegovina, given the fact that there are at least four interpretations of the recent events. The Serbian, Croatian and Bosnian side have their own interpretations and we should not forget that the international community also has one of its own. Each "national" interpretation sees its nation as the victim, whereas other two nations are seen as "criminals" responsible for the committed atrocities. There have not been any signs of reconciliation between these two interpretations.

The consequence of such a situation is that these different interpretations have entered the textbooks. The children have been educated and raised in the atmosphere that does not contribute to bridging the gaps created during the war. The impression is that the new generations are being prepared for some future war rather than for the life in a civilized multi-ethnic society.

The need of a great number of people, the victims of war in particular, to talk about their experience from the recent war, the need for such experience to be recorded, the need that everyone goes through a catharsis is an additional argument of those who advocate the creation of the Commission for Truth and Reconciliation in Bosnia and Herzegovina. Without such catharsis, there is a serious danger that the accumulated difficult experience translates into a constant distrust and irreconcilableness that would be difficult and bitter to live with. So, both the historical experience and the human need coincide with the need that an effort should be made for the truth about the conflict in Bosnia and Herzegovina to be determined.

The B&H Commission for Truth and Reconciliation, as envisaged, would address the victims primarily because its mandate does not envisage amnesty-ing the perpetrators of the crime and it does not in any way challenge the mandate of the Hague Tribunal or the domestic judicial system. This does not rule

out the possibility that some of the perpetrators of the crime address the Commission and give their testimonies before it.

It is worth mentioning that among the testimonies there will be those that will speak about humanity, self-sacrifice in the name of humanity and about the brilliant examples of those who refused to get on the trains of evil. On these examples, once they become a common good, it will be easier to build the future of the people who live here and their descendants.

Those who oppose the idea that the truth should be established and that the Commission for Truth and Reconciliation should be created have different motives and they are of different provenance. Some are afraid of the truth because it would cast light on the crimes they themselves committed. There are some who, with good intentions, believe that this would jeopardize the work of the International Criminal Tribunal for the War Crimes Committed in the Territory of the Former Yugoslavia. However, when B&H is concerned, the truth is not only compatible with justice but it is compatible with the efforts of the Hague Tribunal. To establish the truth can only be useful for justice because its disclosure does not grant amnesty to the perpetrators. These two processes conducted at the same time can heal the war traumas. There is also an opinion that searching for truth could deepen the existing wounds and reinforce hatred, distrust and intolerance. These opinions are essentially also well-intentioned, although an objection can be raised that by giving up a fair attitude towards the past cannot solve anything. To accept such an attitude would mean that we accept that the four interpretations of the past events will continue to exist.

One should not run away from the fact that the disclosure of testimonies and the establishment of the truth will be painful indeed, but it simply cannot be avoided. However, it would be most painful if some new war is encouraged, and the damage it would cause would be much greater than the temporary shock that we must put up with during the work of the body that should establish the truth and initiate reconciliation. Although more than a year ago the Association of Citizens "Truth and Reconciliation" working on the establishment of the Commission with the same name, submitted a draft of the Act ensuring the prerequisites for the work of the Commission to the Minister of Human Rights and Refugees, there has been no official reaction to the draft yet, and it has not been put in the regular parliamentary procedure.

As a rule, the process of settling up the acts of serious breaches of human rights starts being actualized at the early stages of a democratization process and in the transition phase from a non-democratic to a democratic way of ruling. If we, as a criterion, take the attitude of B&H authorities towards the breaches of human rights that took place during the last decade, then we may conclude that these authorities are not ready yet to open up towards democratic processes.

The ownership of the idea that there is a need to determine the truth and rec-

conciliation is still in the hands of the civil society which, in the environment managed by non-democratic authorities, cannot impose this idea to the governing structures. Therefore, the insistence on the creation of the Commission for truth and Reconciliation must become one of the priority issues for all democratic forces in B&H.

Legal Conquering of the Evil from the Authoritarian Past From Nazi to democratic legitimacy

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It is my intention to present the topic "Legal Conquering of the Evil from the Authoritarian Past" by posing three questions:

- 1. What should be our attitude towards the evil of the authoritarian past?**
- 2. What are the ways and obstacles to conquer the authoritarian past in the region?**
- 3. Why has this question remained out of the focus of the new authorities in Serbia, as well as in other post-Yugoslav countries?**

Despite the democratic changes in the political system of Serbia, we have not faced the evil of the authoritarian past yet because the scale of the key values of the behavioural patterns has remained unchanged. Therefore, the categorical imperative of our age is to conquer the authoritarian past, and I would formulate it in only one sentence: "The evil of the authoritarian past must be conquered so it does not repeat itself." It is about conquering evil and devastation that the former authoritarian regime, or better to say regimes, left behind, in which the law turned into a servant of politics and in which an inch of the authority was more powerful than a kilometre of law. That is where the first question I announced derives from: "What should be our attitude towards the evil of the authoritarian past?". It is well known that authoritarianism produces no law in a legal way. Its manifestations are breaches of human rights, business crime, unpunished breaches of law committed by the officials, misuse of power, fraud at elections, political liquidations. All this leads to war crimes.

Each new authority that replaces a broken authoritarian regime and commits itself to a legal state and the rule of law is inevitably faced with the dilemma of how to treat the dark side of the evil from the past. In an answer to this question, comparatively speaking, there are two answers:

One answer is the so-called policy of remembering, confrontation with the evil and an attempt to remove its consequences primarily through the mechanisms of a legal state. The examples here are Germany after its unification, the Czech Republic, Poland, Hungary, the Baltic countries.

The second possible answer is the so-called policy of forgetfulness, the policy of a thick line, underlining what has happened and an attempt to push it under the carpet and move on. Greece, Portugal, Spain took this path after the fall of their authoritarian regimes - and even had some results.

The third way is also possible, in which one follows the policy of forgetfulness and, when the issues hidden under the carpet start coming back, the policy of remembering sets in. The examples for such an attitude are Poland, and hopefully Serbia.

The process of overcoming the authoritarian past evolves in two parallel tracks:

1. the revision of the legislature of the state without the rule of law (opening of files, rehabilitation, denationalization, lustration, etc.);
2. conquering the past after the war activities, bloody ethnic or religious conflicts, interventions of military, paramilitary forces, police, para-police forces - a distress that has affected the whole region.

In this regard, various forms of legal responsibility are applied, such as: criminal, disciplinary and fiscal, as well as the one connected with employment, lustration, damages, taxation of profiteers and the like.

The comparative experience has shown that the process of conquering the authoritarian past, particularly in the legal sense, is like opening the Pandora's Box. I would like to remind you here of a brilliant metaphor by Adam Mihník who compared such processes, once when they had started in Poland, with throwing a grenade into a septic tank.

This leads me to the second question: "the ways and obstacles of conquering the authoritarian past". In Serbia, we are still going along the by-ways rather than the main ways. The first question that emerges here is more theoretical, but with deep practical consequences. It is, in fact, an aporia: is it possible at all to remove the consequences of an authoritarian state without the rule of law by the mechanisms of a legal state and the rule of law? Instead of answering this question, I will just refer you to what our colleague Vasić has said having reminded us of Radbruch's formula.

The second question is the question of opening the files of the national security service. After 5 October, in a relatively short period of time, in Serbia, the disclosure of the files of the state security service took place. On 25 May 2001 a decree, not a law, was adopted by the Republic of Serbia about abolishing the confidentiality status of the citizens' files kept by the state security service. It was already during *vocatio legis*, not even seven days had passed and the decree was renamed - instead of a decree to remove the confidentiality status, it was called a decree to allow an insight into the files. This "providing an insight into

the files" was just a deception. The problem of the state security service affects also other post-Yugoslav countries and it is an extremely complex one, especially after 1966, when de-centralization took place, so that the files were shared with other republics and were analysed, lost, etc.; also, after 5 October, the same persons who had created the files and who were using them over three years, kept them open in an extremely dubious way and for only one category of people, the so called "internal enemies". The files of the intelligence bureaux staff, anarchists-liberals, right-wing followers, etc. remained closed, so that serious people did not even go to see these files, and the law governing it did not exist at all.

In the autumn of 2000, several non-governmental organizations in Serbia started drafting a model of law on the file opening: the Centre for the Legal Studies in Belgrade developed one model; the second one was developed by the Centre for Anti-War Action and based on the successful experience of other countries. The Forum "Juriš " made the third model. Some of these models have been blended and the draft has been around for over a year and a half now. The Minister of Interior said twice in public that the law on the secret file opening would be passed. However, nothing has been done in that respect yet. This question is raised again and again whenever someone from the authorities is referred to by the Hague Tribunal, or in any other way or when someone is indicted of co-operating with the Service, for example. This is very indicative and it is not only taking place in Serbia. In any case, this process of opening the files and revealing the authoritarian past is very important because apart from the files, it also concerns the problem of rehabilitation, lustration, denationalization. None of these problems can be seriously included in the agenda unless the files are opened.

The following question I want to address is the responsibility of the officials for the breaches of law and it is my intention to focus here on the responsibility of judicial officials in particular.

We live in an area where, in my opinion, the division of power has never existed because it has been dislocated from the triangle administrative-executive-judicial and vested in certain personalities, so that when these persons moved, the centre of power also moved with them. However, what happened in Serbia with the holders of judicial functions is, in my opinion, a serious lesson for a wider region. Namely, during the Milošević's regime, the judicial authority was factually reduced to only a political branch office, so that the judges were brought into the position of breaching the law, which, of course, is a criminal act. Typical examples of this were frauds at the elections. These were, in fact, judicial frauds because the judges in the courtrooms would take the votes of one candidate and allocate them to another, thus turning themselves into the soldiers of particular parties in the courtrooms. Of course, by doing this, they committed

serious criminal acts provided for and prohibited by both Serbian and Federal laws. However, no one has been indicted for this type of crime in Serbia yet.

To make a parallel, I will mention a completely opposite experience of another country which seriously tackled this problem, i.e. the responsibility of the judicial officials. It happened in Germany after the unification. Namely, in the Democratic Republic of Germany, after the unification with Germany in 1998, there were as many as 44,300 indictments for the breaches of law. Out of this number, 2/3 concerned the judicial officials.

The next question refers to the responsibility of the intellectual elite. In these areas, I believe, the responsibility of the intellectual elite is not at all any lesser for the evil that has occurred. In Serbia, it is perfectly clear that an obvious betrayal of the intellectuals happened in the sense described by Julien Benda in 1928 regarding the role of the intellectuals in fascism. They then, just like the intellectuals here in 1990's, gave moral and intellectual credibility to the devastating and imbecile political decisions. In Serbia, in addition to the betrayal of intellectuals, a process of auto-discrediting of the leading Serbian intellectuals took place. They abandoned their professional fields, their economists, philosophers, lawyers, etc. and joined the political arena, engaging themselves in an operational and political way either as the leaders of the state or the leaders of the political parties and servants of the most powerful political figures. They acted as chameleons in the political parties, thus wasting otherwise very modest credibility that the intellectuals in this region have. Therefore, it is not surprising that we see the graffiti on the facades of the faculties and academies saying: "This is all the fault of our professors and academics". The opening of the question of the role of intellectuals, from the point of view of conquering the evil of the authoritarian past, might open a question of dissidents or false dissidents. In these areas, in my opinion, the authorities themselves have been producing the so-called dissidents who were even part of the mandatory literary curriculum in schools. Their books were published in large editions to annul and block any real alternative. In the field of culture, too much value has been given to some authors and their works.

I believe that each of the following points can also be applied to other post-Yugoslav countries:

We are faced with the problem of reshaping the past, and not with the problem of conquering the authoritarian past. The past has been reshaped because it has served the current political needs;

We are faced with the problem of conquering the authoritarian past not only in its narrow sense of removing the consequences of the state without the rule of law, but in a wider sense of removing the war consequences and the involve-

ment of military and paramilitary formations;

In Serbia, the initial preconditions for conquering the authoritarian past do not exist because there is no clear distinction between the victims and the perpetrators. There, and I am afraid also in other countries, too many volunteers co-operated with the former authoritarian regimes, regardless of whether they had the omen of Broz, Milošević, Tuđman, or anybody else;

We live in the countries in which it has always been unbearably easy to forget.

After the change of the so-called democratic authorities in Serbia, as well as in other parts of the region, there has been a continuity between the new regimes that like to be called 'democratic' and possessing the rule of law and those authoritarian regimes they have replaced. If we carefully analyse the levers of the authorities, the mechanisms by which they are ruling have remained unchanged.

By analyzing the past from the legal point of view and the actions taken by the so-called democratic authorities over the last two years, we can conclude that this question has not been seriously included in the agendas. The new authorities are too busy with their strategies of keeping the power and they do not care about our juristic hair-splitting and grumbling about the legal responsibility and lustration.

Human Rights and the Role of the Media

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I will speak about the topic "Human Rights and the Role of the Media" and elaborate on a few theses in that regard, using the situation in Bosnia and Herzegovina as an example. I believe that a great deal of this refers to our neighbourhood, too. My first thesis is that the role, or to be more precise, the position of the media in relation to human rights is paradoxical. When I say this, I primarily refer to the so-called public media such as the press, the radio, or the television.

There is no doubt that the legal and constitutional order is discriminatory. Even the constitution at the national level, as well as at the lower levels in B&H, apart from being discriminatory, contain some elements of racism. Consequently, the public media, if they wish to affirm the legal and constitutional order, if they wish to insist on legality, they must necessarily (and this is a structural anomaly) insist on discrimination and, in some radical cases, even racism. It is exactly here that we see such a paradoxical role of not only the media but of the judicial system, ombudsmen, etc. This paradox shows that from such a position, our media can present the contents that we call human rights only in an artificial and a fabricated way. Such an artificial and a fabricated link between the media and human rights has been dominant because the media treat human rights exclusively through the so-called "paid programmes" or "paid media space".

There is no original link, no authentic vital link between human rights and the way in which these are presented in the media. With reference to the media and media space, Bosnia and Herzegovina has got its protector, the Office of the High Representative. Let me mention an example when the Office of the High Representative in B&H offered a model for public broadcasters which actually reflected a well known idea or concept of 1991. Namely, at that time the three winning parties, in fact their political leaders, suggested that the Television of Sarajevo should have three channels: one for the Serbs, one for the Croats, and one for the Bosniaks. This is a well known idea of Radovan Karadžić, then for a while also of Izetbegović, and certainly also of the Croatian representatives. And now, the same division is suggested by the Office of the High Representative, annulling the entity radio-television broadcasters, both the Radio-Television of Republika Srpska and that of the Federation of Bosnia and Herzegovina. Therefore, what they are proposing is the old mechanism of three channels.

This example shows that the protectors, in this particular case being the institutions of the international community, or the Office of the High Representative, are beyond the time and space. They want a remake of the movie that we have already seen and experienced. This indicates that the role of media in the human rights domain is manifested in its exclusively negative form. This unfortunately means that the media have contributed to a large extent to the widening of the ethnic gaps between the peoples in B&H. All this contributes to the strengthening of such processes that we mark as "auto-national isolation". I will repeat the thesis that I already spoke about: if ethnic gaps are larger than human rights are lesser.

The research has shown that nowadays, eight years after the Dayton Agreement, ethnic gaps are deeper and greater than during the time when the war was still raging here. The research has also shown that the members of some ethnic groups that do not have their constitutive rights are closer to some peoples in the region than with those we used to live with. It is also interesting that when we speak about the relationship between the Croats and the Bosniaks, we must say that some other nations seem to be closer to the Croats than it is the case with Bosniaks. The data have shown that when we speak about the Serbs and their relationship toward other peoples, we can see that no one feels close to them and that Slovenes actually feel closer to them than, for example, Bosniaks. These indicators have rarely or almost never been presented to the public by the media. The public, as a factor of relationship between human rights and the media in our circumstances has not been well-defined. Some very strange things are happening and the media do not treat the serious problems of our current authoritarian situation in a relevant way. The media have given very little attention to the fact that B&H, in fact its institutions, have signed an agreement with USA about the exemption of American citizens from the jurisdiction of the International Criminal Court. In fact, this signature has destroyed the basic principles for which Europe has been fighting for centuries: **Egalité, liberté, fraternité (equality, liberty, fraternity).**

Therefore, the basic principle of civil society has thus been destroyed. I resigned from the membership in the State Commission for UNESCO because I believed that it was not moral of me to be a member of any state institution if the state had signed such a discriminatory agreement. The media dedicated more attention to my act, an act of a common man, than to what the state had done. Of course, my case was treated as an excess, and the essence of the whole problem was simply not presented.

Let me conclude by making a remark that is usually made in similar circumstances: a reform of the media is necessary so they can have a normal attitude to the human rights sector. However, there is another question which is much more important: how should it be done? I do not think that intellectuals can

help us much in finding a solution to this problem. In radical situations they have, in principle, possessed two key characteristics: politeness and conformism.

Finally, I would like to pose the following question for a general debate: Which social force or structure can lead the process of changes, not only in the domain of human rights and media, but in general?

A critical reflection of the criticism of nationalism

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On this occasion I am not going to talk about the theme that was announced, but I will adjust my speech to the main topic of the discussion, i.e. the questions of civil peace and human rights.

One of the reasons for which I changed the focus of my discussion is that the participants in this debate come from the whole region, that is from BiH, Serbia and Montenegro, Macedonia, and Croatia, and they have proven that there is one similarity they all have concerning the main problem. That problem is perhaps not the same, but it is very similar from our various perspectives. Namely, with reference to the beginning of our debate yesterday, following the discussion of our colleague Podunavac, and his thesis that we have been dealing with an uncompleted state, it seemed to me that we have more precisely been dealing with an uncompletable state. So, if we take seriously everything that we said happened here over the last ten years, and all the results of it, first of all I refer here to the wars, terrible violence, crimes, plunder, the perpetrators and leaders of all that and what they did, then it is difficult to envisage a possibility for the state to be completed in such horizon. It seems to me that, bearing in mind everything I said before, it is more appropriate and justified to talk about an uncompletable state. It can be said that it is better to talk about a noun than about an adjective, that it is about the state itself. In my opinion the focus of all the subjects we have discussed here is there, and that is: the serious sense of the word 'state' has disappeared in the previous period. I believe that it can be proven that during the recent wars in these areas it was not only the Socialist Federal Yugoslavia that was destroyed, but all meaning was stripped off of the very concept of state in the sense that it was destroyed as an institution of civilization, as an innovation of human kind, which was using it to go out of the natural condition of "the war of every one against every one ", where no one's life is safe, no one's property is safe, where every one who has got more power can kill, cripple, resettle, rob whomever he wants.

The whole world was shocked by what happened in the heart of Europe.

So, a series of events that destroyed the heritage of a civilization, a wave of barbarism that shocked and frightened many people, mostly those outside our circle, because the wars here were not finished by the main participants, the end of the armed conflicts was not a result of an agreement of the warring parties, but the end of hostilities was imposed. It was imposed, I believe, precisely

because it happened in the heart of Europe, so that there was a change that started to happen later, in particular two years ago, i.e. emergency interventions were launched in the distant countries of Asia, Africa, and Latin America. Here, because it happened in the heart of Europe, the reaction was extremely strong.

And what happens after the end of armed conflicts? There have been attempts to establish some sort of state: in one case these were open protectorates, but under the protectorate it is not possible to create a state by the protector or tutor only, and it cannot be created with the subordinates of such order whose right is denied as well as their civil (legal) capacity to create institutions and a state. And the circle closes down here, so that from a temporary arrangement in the form of a protectorate, a symbiosis is created that suffocates the acquisition of civil capacity, the acquisition of political maturity and the capability to create a state.

Here we come to the question of the creation of a new Constitution. I believe that there is a great extent of agreement amongst the participants from various parts of this region that it is necessary to make a constitution, but not as a facade of some symbiosis of a tutor and pupils, the subordinates of a non-democratic system of control and those who are not capable of handling the task themselves. In order to start this more seriously, it is necessary to state our problem clearly: the state is destroyed, we have not rebuilt it yet, perhaps we are on our way to doing so; but the key question is: "How can we guarantee the right of life and other consequent rights: the right of work and the rights related to labour, the right to manage the resources for development: air, water, power, infrastructure?" There are big problems, open ones. Some processes of big transitions have started, but it is not clear whether that transition and the arrangements with the international community lead towards the creation of normal states or not. This has not been discussed seriously yet, but such discussion is necessary.

The thesis presented yesterday by my distinguished colleague Podunavac is that, without necessary reflection and auto-reflection, there is a little new that we can say coherently, seriously and usefully about the issues that we have discussed here. This may sound ceremonial, like a good phrase. But, if we take it seriously, then it means that we cannot understand the paralyzing of the state through crimes, robbery, terrible violence and cynical arrangements with local and international power holders, unless we include resistance to all these into our analysis. The resistance, as well as the very ideas about the final outcome, have been present before the beginning, during, and after the end of the wars.

A convenient circumstance is that we have discussed these issues here in Sarajevo, because it was not only an execution site, the site of death, victims and

crimes, but also the site of resistance. Even before the wars (let me mention the pre-parliament) there were attempts to prevent a total war in BiH, then the activities of the Circle 99, Radio-TV 99, literature, periodicals, as well as all other similar experiences that have existed in Belgrade, Zagreb, and in other parts of our region. A lucky circumstance is that in Europe and in the rest of the world there have been reactions to all these events that we found ourselves in, which should be the subject of a serious debate. Otherwise, it may become an infinite academic and fruitless debate or we may allow ourselves to follow yet another infinite layer of civil sector non-governmental organizations that avoid taking responsibility for the creation of a political constitution. I believe that the potential of Sarajevo should be used as a symbol of not only suffering but of an attempt to find a way out of the problems of the war in BiH and in the whole region - as well as of contemporary problems that have emerged during the outburst of barbarism in the heart of Europe. And as long as it is considered that we are outside of Europe and we are asked to pass some preparatory entry exams to become qualified for maturity, whereas we are not gaining our maturity in our society and state on the basis of our work, I am afraid that it is not useful at all. I am not sure that there is much we can do ourselves. The only suggestion I want to make is that we do not have the right to be ignorant, not to know what the problem is all about - for, if we are familiar with the problem, then a solution will be a bit simpler.

Political public and democratic consolidation

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Within the given general theme I will talk about "The media in Serbia after 2000 and their participation in the democratic consolidation of the opposition in power".

If we try to find the smallest common denominator for various forms of political resistance to the regime of Milošević during the 1990s, then there would be the least dispute about the estimate that the thin red line of various resistance forms was a struggle for and around the media, i.e. the freedom and accessibility of information as opposed to media darkness, the empire of negative propaganda and warmongering discourse. In such struggles there were more citizens beaten up, tear-gassed, and smashed on the head and, unfortunately, innocent victims victimised, than about some other political questions. In the first big conflict that was initiated regarding Radio-TV Serbia, i.e. the model of warmongering information broadcast, two completely innocent victims got killed. A similar thing happened again in 2000, when the cause was not the media, when the Radio-TV Serbia building symbolically collapsed together with the regime of Milošević. But, in that conflict it was not only the Radio-TV Serbia building that was affected, but the Parliament building was set on fire too. However, on that kind of burnt site it was expected that a phoenix of free information distribution in Serbia would rise from ashes. The answer to the main question regarding where the media in Serbia are now, i.e. three years after 5 October, is the essence of my presentation today. I will list eight points, and elaborate only two of these:

1. it is only deregulation that is worse than the bad regulation of media - and this is the reason why the media in Serbia are in such a situation;
2. a painful transformation of RTS from a state- and party-controlled into a public service;
3. indulgence and take-over of the media that played crucial servant roles during the regime of Milošević, and now they get along very well with the new representatives of the authorities and even play a decisive role in the media scene in Serbia;
4. interests and lawlessness - the scent of money, mysterious privatization, mysterious ways in which future frequencies were allocated, mysterious establishment of the government's analytical and other services, the lack of key media laws, etc.;
5. censorship and auto-censorship: this became very present and obvious, even if it usually exists during extraordinary political

circumstances, after the murder of the Prime Minister Đinđić, when one non-constitutional and entirely illegal category such as the Government's Information Service led by a "fanatic of censorship" controlled all the media, and certainly produces auto-censorship amongst the media professionals themselves;

6. the idea that the "White Book" should be rewritten with a somewhat different role, i.e. that a retroactive analysis of the media content is made for the period from 2001 to 12 March 2003, when Zoran Đinđić was killed, with the aim of investigating how the media encouraged the assassination of Đinđić. This analysis was made in a professional way and its result was that no suspects were found in the media for the murder of the Prime Minister Đinđić.

Over 88% of all texts, out of more than 3000 texts, showed that their attitude was neutral, and this, on the other hand, is not affirmative. All this simply indicates that Đinđić and his model of reform was not supported by the media, but the stories about the attack on him were simply not true;

7. The situation regarding the position of the local and regional minority media given that according to the amendments of the law on local and military self-governance, it will be only for two more years that the media owned by minorities, for example, can be funded from any form of state budget, after which they will become a part of the market, which is a new situation for them;

8. All this has been happening under the circumstances of overall deregulation. After the arrival of the new new Republic authorities, a need emerged for the media scene to be regulated. A set of regulations that were supposed to be passed was considered: the act on free access to public information, the act on public information (unfortunately, this act was adopted during the state of emergency), the act on telecommunications, the act on advertising and advertisements, and the act on radio broadcast.

Of this legislation, the acts on free access to public information broadcasts and on telecommunications and advertising have not been passed yet. The act on information was passed by the Parliament while it was in an irregular state, so it cannot be taken as a valid one. The act on radio broadcast, that had eight versions, was accepted with many issues unsolved. These provisions have become obvious only after the implementation of the act has started. One of the important elements of this act is the creation of the co-called Agency Council for Radio Broadcast of the Government of the Republic of Serbia and it was supposed to consist of nine members. Out of these, eight members were to be selected on the basis of nominations by various institutions, including the Parliament, the Government, and the University, then the media, civil society, etc. The ninth

member was selected by the previously selected eight members, and he is the representative of Kosovo and Metohija in the Council. This is not the only anachronistic issue about this act. The second one may be that one of these members is the representative of the Church, and of one Church only, even if there are many religions in Serbia.

So, the way in which the members of the Council were selected was truly scandalous. Two representatives in the Council, i.e. the representative of the Parliament of Serbia and the representative of the Government of Serbia did not undergo the procedure envisaged by the law: one month for the suggested candidates to be presented to the public and the public to get to know them. But, regardless of this, these representatives were not only verified in the Council, but the representative of the Government was elected the president of the Council, and the representative of the Parliament was elected the vice president of the Council. And then these two exercised the major, key pressure on other members of the Council: that approximately 2/3 of them should consist of the electoral machine of the current government, i.e. the members appointed by the Government itself. By the way, I will add that a member suggested by the University, and who is himself a university professor, refused to withdraw his membership upon the request of the university, as he said that he was legally elected.

The Council selected in this way has enormously wide authority: it is elected for the period of six years, with a possibility of an extension of the mandate for another six years, regardless of the situation in the state, i.e. the change of government or other similar changes.

The Radio-TV of Serbia will become a public service; this Council decides on the Steering Board of that public service, which elects its director, as well as the director of all its programmes. The Council makes decisions about the allocation of frequencies too, so this is also about the personal benefit of its members. The interests of the two private TV-channels will be pushed forward. These two channels made extra profit during the regime of Milošević, but recently they have become inclined to the new authorities. Certainly, I am talking about the television channel "Pink", which is also present in the territory of Bosnia and Herzegovina, and the second private TV channel is the "Karić Brothers" one. The importance of the allocation of a national frequency is reflected in the fact that the whole country is covered, and this means a large profit from advertisements, which are shown at a rate of 40-45% of the total programme. If one does not cover the whole country with the signal, then only 5% of programme can be used for advertisements.

Certainly a political conflict is present too - the directors of "B92" and Mr Cekić, who used to be the Editor-in-Chief of "Radio Index", had an argument

about Anem— and now Mr Cekić is in a position that he can eliminate "B92" with his personal opponent Veran Matić.

The media scene is quite dirty. Perhaps in two years the frequencies will become irrelevant, when everything becomes closer through cable television. However, the fact is that there have been some indicators showing that the licenses for cable television have, to a great extent, been transferred to the two specific private television channels I mentioned, whereas the state service, i.e. the RTS has slowly crumbled thanks to very dirty and unfair agreements that "Pink" made a while ago with RTS. The agreement on business co-operation was made according to which "Pink" can use the frequencies of the state television, and use the satellite programme free of charge. This agreement was made for a period of five years. If any party wishes to end it, then the agreement is automatically extended for another three years. These contracts were not ended and there is a very good reason for it. Namely, "Pink" was forbidden to broadcast any informative programme by that agreement. However, "Pink" has been broadcasting its informative programme anyway for six years now.

Discussion

ALEKSANDAR POPOV

Centre for Regionalism, Novi Sad

In my discussion, I am going to elaborate on an approach to the process of reconciliation and coming to terms with the truth modeled by the Igman Initiative. The Igman Initiative is about the model of reconciliation within the "Dayton triangle". The group that made this project consists of distinguished intellectuals, experts from Serbia and Montenegro, Bosnia and Herzegovina, and Croatia. The expert consultant who worked with this group is the famous author of the "South African Model of Reconciliation" - Alex Boraine.

The reasons for approaching the formation of this expert analysis are numerous: the first reason is the fact that we do not have an original local model of approaching this process of facing the truth and the restoration of confidence. There are some well-known models, such as the "South African model", "the Chilean model", "The French-German model" that have produced very good results. However, these models are good for the situations and countries they refer to, but cannot be just copied and pasted to other countries or situations.

The second reason is the fact that, as opposed to the "South African model", where there was a conflict between the two population groups of the same country, here, apart from the fact that there was a conflict within BiH and Croatia, we also had a wider conflict in which three countries took part, which was finally sanctioned by the Dayton Agreement. Therefore, in our opinion, a tripartite approach is necessary for this problem to be tackled, in order to avoid having at least two more truths, the Croatian, the Serbian and the Montenegrin one, in addition to the four or five Bosnian truths. The search for an appropriate model does not exclude practical efforts such as the non-governmental group in BiH that Srđan Dizdarević talked about; on the contrary, these are two sides of the same coin. Parallel to the search for the model, some practical steps should be taken too, as Mr. Vehid suggested, towards facing some specific questions from our recent past and preparing the public for the opening of these difficult questions. I have to mention here an unsuccessful attempt, which is the well-known Koštunica Commission that failed at its very inception, first of all because of the names of its authors and initiators, as well as because some well-established nationalists were its members.

The search for a model is a difficult and a long process and therefore no unrealistic expectations should be raised about it in public, because the whole idea

would thus be discredited. It was only some ten years after the end of the Second World War that the "French-German model of reconciliation" was introduced, and this model was an introduction to the creation of the European Community.

GAJO SEKULIĆ

Faculty of Political Sciences, Sarajevo

I would like to open my discussion with the thesis that the origin of civil society is in the resistance raised against the bad sides of the socialist regime. This history of that resistance, that was mostly individual but also group oriented, until the first elections in 1990, is an unwritten history of what has happened to the efforts of the NGO scene and civil society since the war and right up to the present day.

Let me reflect on the text on refugees by Christine Weiss entitled "No one wants to forget", published in **Die Zeit**. The text is about the initiative of the Bundestag regarding the creation of the European Centre against Expulsion. I believe it is a good initiative, even though the ongoing discussion has produced some mixed messages.

The motive is 12 million Germans expelled after the Second World War from the neighbouring countries, and the situation in which the citizens of the DDR have found themselves after the reunification. The issue of human rights and security and the issue of reconciliation should be looked at as a regional problem, but the regional discourse should be very much strengthened. However, our problem is not only the regional one; it is a standard European experience; ethnic cleansing is not an exception but it has been a European historic norm over hundreds of years. I believe that we should join the initiative with the suggestion "that they do not forget about us" because the expulsion and the drama related to it can be looked at as a section **in vivo**. In that sense, one should look at the inconvenient position of the initiative for the drafting of the law on the creation of the commission for truth and reconciliation. The non-governmental organizations in B&H have never discussed the draft. All these discussions about contemporary discourse in the historical science, cultural anthropology, political science, sociology and political philosophy have been conducted within a term forged in Germany after its Nazi past: "getting over the past". In all the stories about truth and reconciliation, i.e. about the most important questions of our recent past and our future, the three subjects are represented (the subjects of the today's conference), given that the central category of the current American political discourse is security. It has advantages over human rights. Let me remind you that Markuse called all modern societies "defensive societies". These have become the societies with American leadership, the security societies, so that great truths and values of enlightenment are in the background. We are

entering this process so that history is happening behind our backs, and we have been its unconscious political players. Since 1990, there has been an ongoing process of preparation for an introduction, for an opening up of a basic social and historical process. This process is a war capitalism that ends with ethnocapitalism and the joining of the NATO Alliance. A radical discourse is missing from our stories about the civil society, and that is to define clearly what all these categories mean behind what is called direct and real life.

I would like to mention here a sentence by Marx that has had an impact on me: **"Philosophy and the study of real life are related like onanism (being philosophy and real physical love (being the study of real life)".**

Negative politicization of the civil society discourse is taking place and it is forgotten that the syntagm civil society is just a parlor, west European and American chapter of what in theory, in fact in history, was called civilian society. We remain in the civil discourse, while forgetting that a process of the crudest capitalist constitution continues with the new class being established and with most of the employed and unemployed being wage workers. They have progressively lost their social status of wage workers in the last two decades, which is the what happened in the most developed democratic countries with the rule of law, human rights and security. I would like to see the academic circles paying more attention to this differentiation between civil and civilian society, that is incorporated in the preamble of the Charter of the Citizens' Alternative Parliament.

JASNA BAKŠIĆ-MUFTIĆ

The Faculty of Law, Sarajevo

Let me reflect here on two questions that may be discussed: the question of truth and reconciliation, and the question of the commission. In relation to this I believe that the role of the two Hague courts is very important, precisely because of the quantity of interpretations depending on the region, political option and involvement, and also of the possibility of an impartial body defining the general directions of legal responsibility. The Commission for Truth and Reconciliation should be regionally oriented. The State Court will process war crimes, and the Commission is there as a social factor that will allow social tensions and authentic individual experiences to be disclosed. Its legal dimension, its true role should be discussed a bit more, and in particular regarding the relationship between its social and legal aspects. I believe that it is very good, in order to decrease social tensions, to give every one the right to say what happened to him or her. In that sense, each truth is authentic because it is based on the individual experience.

ANKICA MIKIĆ

Centre for Peace and Legal Advice, Vukovar

There has been a lot of discussion about reconciliation and agreements. However, no one referred to a particular peace agreement, and that was the Erdut Agreement. It was the first peace agreement in these areas and it referred to the eastern part of Croatia. After the agreement had been signed, instead of establishing a commission, we developed a programme for reconciliation and immediate return. This happened in 1997. I must say that some political figures of great importance were leading this programme. However, they have not submitted a single report yet of their work to any local or national body. The process of reconciliation in eastern Slavonia took several directions: an attempt to gather people, on a professional, social or other basis. We came across a big problem here. Namely, after all the sessions we conducted with different categories of people i.e. refugees, professors, legal experts, etc. we had no success. What we noticed in our area was that every attempt of reconciliation was simply fruitless. However, we succeeded in linking these people on the basis of their interests, the economic interests in particular. So, we succeeded in establishing contacts with local administrations, with all the municipalities in the area. We thus realized how little is needed to gather these people on the basis of their common economic interest. When we found some donors for particular areas, they started to make contact with each other. We also organized some other activities such as education by holding education sessions with the representatives of various communities involved and in particular with young people in different municipalities. Of course, we brought them together on the basis of economic interests and therefore we achieved some results. After all these education sessions, the participants remained in contact, they started to co-operate, employ one another, and that was the best result of all. However, I am sceptical about the establishment of the commission for reconciliation, although I must say that, regardless of its form, whether it is a commission, a programme or a similar project, every effort should be made to arrive at the truth and justice. What can put people in contact in such a situation are their interests, and in particular the economic ones, given that we all live in poverty.

NEVEN KAZAZOVIĆ

The Parliament of the Federation of BiH, Sarajevo

Sarajevo was the most important front in the B&H war zone. The Sarajevo front line was 64 kilometres long. From the Serbian side, 12 brigades covered this line, and from the Sarajevo side, there were eight brigades. On both sides of the front line there were between 50,000 and 60,000 people. It was clear from the first moment that Sarajevo was the most important strategic goal, and that

the fiercest fighting would take place in its surroundings. Any army makes estimates about the enemy's intentions during a war. The Army of BiH made its estimates about the intentions of the opposite side and obviously it was very interested in the intentions of that side regarding Sarajevo. A whole study was made about all this.

Sarajevo was the target, amongst other reasons, because of the hatred, lack of confidence and internal chaos created by ethnic conflicts which were supposed to be provoked there. Namely, on the eve of the war, in autumn 1991, the people in B&H, and in Sarajevo in particular, who realized what was going to happen, found a document, which was for a long time thought to have been a forgery in which it said that three cities in the territory of the former Yugoslavia should be destroyed. Those three cities were Vukovar, Sarajevo, and Mostar. Vukovar because it was the most Yugoslav-oriented city, Sarajevo because it was the largest city with a mixed population, and Mostar because it was a city with the highest percentage of mixed marriages.

The actions against Sarajevo were conducted in such a way that they did not have any military justification or military objective. These activities were aimed at creating an internal conflict, at the ethnic level. Our commanders, who were commanding at the first front lines, were often faced with a serious dilemma: if the opposite side arrested a member of the B&H Army, regardless of his nationality, then it always conditioned the return of such prisoners by requiring the Serbs to leave Sarajevo. There was always a dilemma whether this should be done, because it could be argued that by complying, the B&H Army would also become a participant in ethnic cleansing, or whether the army should not answer such demands. This shows that there was a systematic pressure exercised over Sarajevo, and that there was an attempt to change it from the inside, i.e. from being the largest city with a mixed population. So, there was a planned, systematic attack launched against Sarajevo.

My question is: "What is the reality of Sarajevo like today? Can Sarajevo be reconstructed so it becomes again what it was prior to 1991?" The non-governmental organizations have been working on this. However, their work has not been much of an achievement. We should also deal with the question, of whether people are returning, or whether they are selling their flats, or is the situation changing and Sarajevo is becoming a one-nation city? I am deeply convinced that Sarajevo is returning to its previous shape. However, I am not sure whether this is just wishful thinking or reality.

When a city is systematically destroyed as a multi-ethnic community, there is a serious question how it can regain its previous characteristics of not being a city of hatred, separation, but a multi-ethnic city and a multi-ethnic environment.

NEBOJŠA POPOV

With his pedagogical skill, Professor Milan Podunavac concluded the first part of the debate about the topic discussed here by saying that the topic about the completion of the formation of a state remains open. I suggest that we single out the topic "The possibility of the creation of constitutional states after the Yugoslav wars" and that we organize a discussion around that topic in Sarajevo again, after we elaborate in detail the ideas and the experiences about such possibilities. In this way, we will step out of the usual scheme of the fatalistic observation of issues suggesting that everything circles towards the final catastrophe or ultimate salvation that will be provided by the accession to the NATO Alliance, the European Union, etc.

Sarajevo is still a place for a detailed analysis of the war destruction and suffering and how to save it from its consequences..

VEHID ŠEHIĆ

Since most of the controversy was about the subject of truth and reconciliation, we suggested at one conference that in order to avoid reconciliation as an individual act, and forgiveness as an individual act, we should try to advocate understanding and confidence, understanding of everything that happened in order to build confidence amongst citizens. Then, reconciliation can follow as an individual act.. The forgiveness must be left to the victims to deal with.

STJEPAN GREDELJ

To talk about reconciliation means, essentially, to talk about the efforts that are not dominantly those of the state but also not purely governmental but rather a combination of the two. I plead for an attempt to recognise the people's opinion - what they think about the war, the responsibility, confidence and reconciliation in their everyday lives.

BOŽIDAR JAKŠIĆ

"The truth always rises to the surface, but most often as a corpse." It is very painful, but it does not cause death. I personally believe that the only proper path to a true reconciliation and understanding is to establish a factual situation without compromise, or in other words, to establish the truth based on the

basic facts only. It is necessary to make a summary of the results and consequences of the war. I am afraid that attempts to find a model of reconciliation within a "Dayton triangle" may lead us to the "Bermuda Triangle", in which both truth and reconciliation may fail. And all sides have done this so far in systematic, professional and propaganda-oriented ways.

I am afraid of the commissions for reconciliation and truth, I am afraid of experts because when you do not want to solve the problem than you form an expert commission. It is important that a common citizen does not look at another citizen of a different nation and of a different political orientation as an enemy - this is our key task, whereas the big commissions serve mostly to cast a shadow over vulgarism and, partly, to act on behalf of the state propaganda in which I do not want to participate.

Trafficking in Human Beings, Organised Crime and Corruption as a Casual Factor of Economic Impoverishment in Bosnia and Herzegovina³²

MADELEINE REES

Chief of Mission OHCHR, Sarajevo

Bosnia and Herzegovina has been governed under the auspices of the constitutional framework provided by the Dayton Peace Agreement since December 1995. The agreement brought into being a complicated administrative, political, economic, social and legal framework overseen, in its various manifestations, by the international community.

There have been multiple consequences of the presence of the international community (IC) and its programmes and policies since its arrival, some of which were good, some not. One of the primary, stated aims of the IC was to assist B&H to secure the highest standards of the internationally recognized human rights protection. The long list of Conventions contained in the GAFFP, the direct application of the European Convention of Human Rights and Fundamental Freedoms, the creation of institutions to adjudicate human rights issues, are all a testament to this objective. The problem has never lain in the intention but, as always, in understanding the context in which the violations of rights occur.

In this article, the emphasis is on the context in which a particular issue had arisen, was ignored for too long and resulted in enormous and very detrimental consequences.

The presence of the international community has helped to provide the context for a series of events which it did not intend to provoke: since 1995, the economy has been characterized by the significant role of organized crime, and the predominance of the black economy. Concomitant with this has been the development of serious exploitative labour, in particular the sexual exploitation of women and children, commencing primarily through the trafficking of foreign nationals and evolving into a new, semi regulated form of economic enterprise.

To understand the impact that this has had on labour dynamics in B&H, not just in relation to exploitation and the consequent political, economic and social dislocation, it is necessary to examine the manner in which this has developed and hence, the context in which it has occurred.

³²The paper by M. Rees was prepared for the conference, but since she was unable to attend the conference herself, we are publishing it as an appendix to the Proceedings of the conference.

B&H has suffered on two fronts: it is both post conflict and a country in transition. The latter has been heavily influenced by the former. In December 1995, there was no organized economy in B&H and the structures to do so existed on paper only. The predominant force in the provision of goods were those engaged in war profiteering. The commodities they provided were determined by the market, or the perceived market. By the end of 1995, there were some 60,000 foreign nationals in B&H, all of whom derived their income from outside the country. Therefore, there was an excess of disposable income and the market for commercial sex was identified. Essentially, the entrepreneurs were the war racketeers linked to organised crime and based predominantly in Serbia. The users were mainly members of international forces in B&H, and those who were forced to provide sex were foreign women and children predominantly from Moldova, Romania and Ukraine. At this stage, there is little dispute that the exploitative element was predominant, with traffickers being able to profit from the desire for clandestine migration from the countries in transition. The exploitation was characterized by violence, fear and isolation of their "labour force", the lack of effective law enforcement, and an unquestioning, rich market.

Hence crimes and consequent human rights violations occurred on a regular basis, the majority of the profits went out of the country. Some were diverted to support those in the positions of power, some to commence the integration of the business into the B&H economy. It should be added that the holding of elections in April 1996 served to assist in this process. The links between the political power and those who wield economic influence continue to dominate and this is one of the largest obstacles to establishing the rule of law and development. In consequence, in some areas the local economy became wedded to the activities of the black market: without work in other areas, the unemployed, particularly men, became part of the demand for the businesses to continue finding paid employment as security guards, drivers, doormen, barmen etc. This unregulated labour market therefore became an integral part of the continuance of sexual exploitation.

There is little doubt that this illegal economic activity has contributed to the situation in which there is obviously insufficient income for the State. In addition, many legitimate firms do not deduct taxes and many assert that they are paying minimum wages so individuals could get more take-home money. Therefore, there is an obvious lack of ability of the State through its many delegated authorities to support social welfare, health, education, etc., all of which contributes to the creation of conditions in which B&H becomes a state of origin for trafficking in human beings. This element was growing at the same time as the modalities of trafficking were beginning to change.

The trafficking industry has to maintain its highly criminal nature during a relatively short period of time. Once the transportation network has been estab-

lished, the political protection secured and the market expanded to include domestic elements, the business can switch into the less overt criminal sphere into more informal, grey economy and hence a different legal framework. Since 2003, foreigners mostly have had genuine documents; those who were most vulnerable were taken out of the public view and continued to be exploited in the conditions of slavery and others were getting paid at low rates. Coercion remained, but less visible. This made the work of the law enforcement agencies more difficult. Recent research has shown that many of those who are now in B&H have been in the country for several years and the fact that they are now remunerated is not testament to a free choice to work in the sex industry but it is indicative of the absolute lack of alternatives to those caught in the trafficking in human beings. If these women go back to where they came from, they would return to the same conditions they had wanted to escape from in the first place, this time with the additional problem of being labelled as prostitutes and/or being at a physical risk by those who trafficked them. Most women were initially trafficked by persons they knew and some 20% are known to be re-trafficked once they returned.

Returning to the Bosnian context, the economic conditions in B&H have failed to improve, (in part because of the existence of the black and informal economy). The OHCHR and UNDP are currently engaged in assessing the municipalities to ascertain to what extent human rights are respected and to use this analysis to assist in the process of development. So far, the results have been uniformly depressing. The levels of unemployment, (which tend to substantiate the governmental assessment of 48%), the lack of any real economic prospects in most municipalities plus the low levels of social assistance, mean that there are many in B&H who live in poverty. NGO's are reporting a large increase in the number of young people, not exclusively female, who are offering sex on the streets. From there it is not that difficult to recruit them into working in controlled environments, nightclubs, motels etc. since the easiest persons to traffic are those who are already working in sex industry. There is a link between the semi- legitimization of the sex industry (interestingly, most municipalities have foreign women with work permits enabling them to work as waitresses or dancers, even in remote villages) and the increase in poverty in B&H. The next phase of the trafficking chain is to regulate this element of the economy. The reasons for this are the following:

- the illegality of the black market means that it cannot indefinitely hold an obvious public space,
- there is a need for legitimization of the bosses in the industry as businessmen and officials,
- a reduction of the market in its early manifestation, i.e. a decrease of the demand among foreigners thus also of the profit

Therefore, there is a need to reorient the business, partly making B&H a country of origin and transit for trafficking and a country of destination for those who will work in the regulated sex industry. The critical factor is that the same actors are in control of the business, despite the change in their status from war racketeers to businessmen. Similarly, the vulnerable groups remain unchanged but the way in which the exploitation takes place is developing, e.g. by an increase in the number of internally trafficked women for sexual exploitation and by regulating regularisation of the exploitation of foreign women.

Formal Economy

The above has continued to coexist with the attempted creation of the formal economy characterized by transition. The decision on the privatization of the state owned companies has created a two-layer system. In the first one, there is a greater possibility of the implementation of the Labour Act, accountability to employees and trade unions. In general, taxes and contributions are paid and the premises are subject to health and safety regulations (the reality of the latter is that the inspection organs barely exist and their findings are usually ignored). The negative part is the lack of resources which often means that salaries are not paid on time or not in full and the legal framework remains underutilized. There is also the issue of false accounting.

The situation in the formal private sector varies, but in general terms, the regulatory legal framework is ignored and the general employment crisis opens the door to various forms of exploitation and frequent violations of the labour legislation. A large number of official, legal employees are unprotected, some working without contracts, most working unpaid extra hours, deprived of resting time or holidays and, in some cases, without any social protection (health insurance in particular) due to the costs involved for the employer. The low level of trade union membership, the weakness of the labour inspection and above all, the fear of losing the job, do not help the situation. Hence, there is very little practical difference between the formal private sector and the grey economy. In all sectors, discrimination on grounds of gender, ethnicity and political affiliation are widespread.

Mention should also be made of the way in which those engaged in organized criminal activities are able to money launder their illegal profits. This can be done by building hotels, petrol stations, by participating in the privatisation process, etc. etc. The opportunities are infinite in a country where the legal mechanism for the regulation is so weak that it is almost irrelevant. This, in turn, feeds the informal economy and the reduction in the collection of revenues continues thus perpetuating the cycle.

Conclusion

There is no easy solution to dealing effectively with the series of events which all contain the violations of rights. Although a great deal is known about trafficking in human beings translating that into an effective action is not an easy process for a multiplicity of reasons, not least the lingering misconception that trafficking is all about prostitution. Research is still needed in B&H and in general, in order to identify the approaches that must be taken in order to break the trafficking cycle. For each phase we need to look into the following:

- the nature and extent of the economic activity
- the market.
- the extent and type of exploitative labour
- the legal regulatory framework
- application of the law
- the impact on the local community.

Whilst the elements of these have already been considered, to date we have not been able to integrate all these factors so as to be able to understand the situation and the context in which trafficking can take place. As in most countries, B&H has prioritized the law enforcement approach and it has been left for the NGO's to try to assist the victims. There is a national plan of action but much needs to be done in order for it to be effective and to date, there has been no activity to prevent recruitment.

Real progress will only be made when we are successful in changing the context in which trafficking can flourish; for Bosnia and Herzegovina, only a coordinated effort and the understanding of the issues set out above will make it possible.

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